BELLSOUTH

BellSouth Telecommunications, Inc.
333 Commerce Street, Suite 2101
Nashville, TN 37201-3300

guy.hicks@bellsouth.com

Guy M. Hicks
General Counsel
615 214 6301
Fax 615 214 7406

May 10, 2001

VIA HAND DELIVERY

David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *Interconnection Agreement Negotiations Between AT&T Communications of the South Central States, Inc. TCG MidSouth, Inc. and BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. § 252*
Docket No. 00-00079

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of BellSouth's Post-Hearing Brief. Copies of the enclosed are being provided to counsel of record for all parties.

Very truly yours,

Guy M. Hicks

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Enclosure

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BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *Interconnection Agreement Negotiations Between AT&T Communications of the South Central States, Inc. TCG MidSouth, Inc. and BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. § 252*

Docket No. 00-00079

POST-HEARING BRIEF OF BELLSOUTH TELECOMMUNICATIONS, INC.

BellSouth Telecommunications, Inc. ("BellSouth") submits this post-hearing brief in support of its positions on the issues submitted to the Authority for arbitration in accordance with Section 252 of the Telecommunications Act of 1996 ("1996 Act"), 47 U.S.C. § 252.

I. STATUTORY OVERVIEW

The 1996 Act provides that parties negotiating an interconnection agreement have the duty to negotiate in good faith.[1] After negotiations have continued for a specified period, the 1996 Act allows either party to petition a state commission for arbitration of unresolved issues.[2] The petition must identify the issues resulting from the negotiations that are resolved, as well as those that are unresolved.[3] The petitioning party must submit along with its petition "all relevant documentation concerning: (1) the unresolved issues; (2) the position of each of the parties with respect to those issues; and (3) any other issues discussed and resolved by the

[1] 47 U.S.C. § 251(c)(1).
[2] 47 U.S.C. § 252(b)(2).

parties."[4] A non-petitioning party to a negotiation under this section may respond to the other party's petition and provide such additional information as it wishes within 25 days after the state commission receives the petition.[5] The 1996 Act limits a state commission's consideration of any petition (and any response thereto) to the unresolved issues set forth in the petition and in the response.[6]

Through the arbitration process, the Authority must now resolve the remaining disputed issues in a manner that ensures the requirements of Sections 251 and 252 of the 1996 Act are met. The obligations contained in those sections of the 1996 Act are the obligations that form the basis for negotiation, and if negotiations are unsuccessful, they then form the basis for arbitration. Once the Authority provides guidance on the unresolved issues, the parties will submit a final agreement to the Authority for its final approval.[7]

II. ISSUES AND POSITIONS

ISSUE 1: Should calls to Internet Service Providers be treated as local traffic for the purposes of reciprocal compensation?

BellSouth's position regarding the payment of reciprocal compensation for calls that transit an Internet Service Provider is set out in BellSouth witness Ruscilli's testimony. (*See* Ruscilli Prefiled Direct, pp. 3-4, Ruscilli Prefiled Rebuttal, p. 2). In that testimony, Mr. Ruscilli explains that such calls are not local calls, but rather are interstate calls that are not subject to reciprocal compensation.

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[3] *See generally,* 47 U.S.C. §§ 252(b)(2)(A) and 252 (b)(4).
[4] 47 U.S.C. § 252(b)(2).
[5] 47 U.S.C. § 252(b)(3).
[6] 47 U.S.C. § 252(b)(4).
[7] 47 U.S.C. § 252(a).

As Mr. Ruscilli noted, BellSouth acknowledges that the Authority has addressed this issue in several other arbitrations, including NEXTLINK, Time Warner and ITC^DeltaCom. (Ruscilli Prefiled Direct, p. 3). In those cases, the Authority determined that the parties would pay reciprocal compensation for traffic that transited ISPs on an interim basis until the FCC issued its decision in the reciprocal compensation cases pending before it, subject to a true up based on that FCC decision.

The FCC has now acted. On April 27, 2001, it issued its Order on Remand and Report and Order, FCC 01-131, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98 (released April 27, 2001) and *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68 (released April 27, 2001) ("Order on Remand"). In its Order on Remand, the FCC unequivocally declared that ISP-bound traffic was intended by Congress to be excluded from the reciprocal compensation requirements of the 1996 Act. (Order on Remand, at paragraph 34). The FCC further declared that "[b]ecause we now exercise our authority under section 201 to determine the appropriate intercarrier compensation for ISP bound traffic, however, state commissions will no longer have authority to address the issue." (Order on Remand, at paragraph 82).

This is essentially the result that AT&T suggested might occur. Mr. Guepe clearly stated "Calls made by either BellSouth or AT&T end users, that are ISP-bound, should be treated as local, and reciprocal compensation should be paid for

such calls, until the TRA is pre-empted by the FCC from treating the calls in this manner." (Guepe Prefiled Rebuttal, p. 3) (Emphasis added). That is precisely what has happened, in that the FCC has now declared that this traffic is not subject to reciprocal compensation payments, thus pre-empting the Authority.

Therefore, BellSouth respectfully concludes that the Authority does not have jurisdiction to require the payment of reciprocal compensation for ISP-bound traffic and this issue cannot be further addressed in this proceeding.

ISSUE 2: What does "currently combines" mean as that phrase is used in 57 C.F.R. §51.315(b)?

ISSUE 3: Should BellSouth be permitted to charge AT&T a "glue charge" when BellSouth combines network elements?

Issue 2 is one of the more remarkable issues that AT&T has raised, if for no other reason than the ingenuity with which it has attempted to twist the Code of Federal Regulations (CFR). It is absolutely clear that BellSouth has no obligation to combine any Unbundled Network Elements (UNE) for AT&T that are not currently in fact combined to serve a particular location or customer. Although BellSouth recognizes that the Authority has addressed this issue in its decision in the Intermedia Arbitration in Docket No. 99-00948, the Authority's request to the parties to provide a legal analysis of this issue clearly suggests that the Authority has questions about the position it took in the Intermedia case, and in view thereof, BellSouth provides the following such analysis.

Section 251(c)(3) of the 1996 Act requires incumbent LECs such as BellSouth to "provide such unbundled network elements in a manner that allows

requesting carriers to combine such elements in order to provide such telecommunications service." From the plain wording of the 1996 Act, there is no doubt that the CLECs are required to combine the network elements for themselves. Notwithstanding this very plain language, the FCC initially interpreted the 1996 Act to require the incumbent LECs to combine the UNEs, upon the request of a CLEC. The FCC's interpretation was codified in FCC Rules 51.315(c), which provides in pertinent part that: "Upon request, an incumbent LEC shall perform the functions necessary to combine unbundled network elements in any manner, even if those elements are not ordinarily combined in the incumbent LEC's network...."

CFR § 51.315(c), however, was vacated by the 8th Circuit Court of Appeals in *Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997) *rvsd in part*, 525. U.S. 366 (1999). The reversal of this rule was not a part of the appeal to the Supreme Court of the United States and that part of the 8th Circuit's decision was not reviewed, vacated or reversed. Nevertheless, the 8th Circuit, as part of its review of those sections of its decision that were reviewed by the Supreme Court and remanded for further action, reconsidered, essentially on its own motion, its ruling vacating this particular subsection. That is, even though it was not required to do so, the 8th Circuit reviewed again its decision to vacate CFR §51.315(c), and confirmed its earlier ruling. The 8th Circuit Court of Appeals said:

> Rule 51.315(b) prohibits the ILECs from separating previously combined network elements before leasing the elements to competitors. The Supreme Court held that 51.315(b) is rational because "[section] 251(c)(3) of the Act is ambiguous on

> whether leased network elements may or must be separated." AT&T Corp, 525 U.S. at 395. Therefore, under the second prong of Chevron, the Supreme Court concluded 541.315(b) was a reasonable interpretation of an ambiguous statute.
>
> Unlike 51.315(b), subsections (c)-(f) pertain to the combination of network elements. Section 251(c)(3) specifically addresses the combination of network elements. It states, in part, "An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service. Here, Congress has directly spoken on the issue of who shall combine previously uncombined network elements. It is the requesting carriers who shall "combine such elements." It is not the duty of the ILEC to "perform the functions necessary to combine unbundled network elements in any manner" as required by the FCC's rule. See 47 C.F.R. §51.315(c).

It is hard to imagine how the Court could have been much clearer on this point. Even the FCC understood what it had been told by the 8th Circuit in its first order addressing these rules. In the FCC's Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238, released November 5, 1999 ("UNE Remand Order"), the FCC confirmed that incumbent local exchange carriers ("ILECs") presently have no obligation to combine network elements for CLECs when those elements are not currently combined in the ILEC's network. As the FCC made clear, Rule 51.315(b) applies to elements that are "in fact" combined, stating that "[t]o the extent an unbundled loop is in fact connected to unbundled dedicated transport, the statute and our rule 51.315(b) require the incumbent to provide such elements to requesting carriers in combined form." (¶ 480). The FCC declined to adopt a definition of "currently combines," as AT&T proposes in this case, that would include all elements "ordinarily combined" in the incumbent's

network. *Id.* (declining to "interpret rule 51.315(b) as requiring incumbents to combine unbundled network elements that are 'ordinarily combined'..."). No other conclusion could reasonably be reached.

AT&T's position with regard to this issue is that, irrespective of the clear language of the rules, the court decisions regarding the rules, and the FCC's own view of its rules, that the Authority should order BellSouth to combine UNEs for AT&T, if the particular type of UNEs in question are combined anywhere in BellSouth's network.

With regard to AT&T's position, if the Authority interpreted Rule 51.315(b) the way AT&T suggests, this means that the Authority would have to interpret a rule that clearly only addresses the separation of already combined UNEs, in a manner that would simply turn the rule on its head. Lewis Carroll would be proud of such an interpretation. According to AT&T, although the rule clearly says that ILECs can not separate UNEs, what the rule really means is that ILECs have to put UNEs together. AT&T's position has been rejected by the 8th Circuit and the FCC and should be rejected by the Authority as well.

Clearly the resolution of Issue 2 is that BellSouth cannot be compelled to combine, free of charge, UNEs that AT&T buys. BellSouth agrees that it cannot separate elements that are already in fact combined and serving the particular location or customer in question unless requested to do so by the CLEC.

With regard to Issue 3, BellSouth's position is very straightforward. It has no obligation to combine UNEs at the whim or request of AT&T, as was discussed

in connection with Issue 2, above. Nevertheless, BellSouth is willing to do this combining for AT&T, provided that AT&T pays a fair market price for the service. The difference between this fair market price and the TELRIC-based prices of the UNEs is often referred to as the "glue charge." (Ruscilli Prefiled Direct, at p. 20). No prices have been proposed by BellSouth for this service in this proceeding because AT&T refuses to concede that such charges are appropriate. Nevertheless, BellSouth remains ready to provide this service at a fair market price to AT&T should AT&T ask for such service.

AT&T's position with regard to Issue 2 is contrary to the law and good sense. BellSouth's position should be adopted on this issue. Once Issue 2 is decided in BellSouth's favor, Issue 3 is easily resolved. Since BellSouth has no obligation to combine UNEs for AT&T, then the only appropriate price that can be charged should BellSouth decide to provide such a service is the fair market price for such services.

ISSUE 4: Under what rates, terms, and conditions may AT&T purchase network elements or combinations to replace services currently purchased from BellSouth tariffs? (UNEs, Attachement 2, Section 2.11)

This issue involves the situation where AT&T has purchased tariffed special access services from BellSouth and is using those services to provide both local and long distance service. (Transcript Vol. 1, pp. 35-36). Special access services are available on a month-to-month basis, but they can also be purchased under what can be called "volume and term" contracts. The obvious advantage to a volume and term contract is that AT&T obtains a lower unit price for the special

access services it purchases when it purchases them in "bulk." *Id.* Now AT&T wishes to convert a portion of the special access services that it purchased under a contract to lower UNE rates. (Guepe Prefiled Direct, p. 14; Transcript Vol. 1, p. 32). AT&T is correctly concerned, however, that by converting some of its special access services to UNEs, that BellSouth's monthly billings to AT&T for the remaining tariffed special access services will fall below the threshold established in the agreement between AT&T and BellSouth, and that AT&T will therefore incur additional liabilities for the special access services that AT&T purchased. (Transcript Vol. 1, pp. 32-33).

Having made the choice to enter into a volume and term commitment and having received the benefit of paying a reduced rate for the service, AT&T now desires to terminate the contract prior to meeting its volume and term commitments and asks the Authority to absolve it of having to pay any termination liability charges. Indeed, AT&T's witness Mr. Guepe was essentially asking the Authority to "excuse" AT&T from its contractual obligation to pay the termination liabilities in question. (Transcript Vol. 1, p. 34).

In accordance with its obligations under the 1996 Act as interpreted by the FCC, BellSouth agrees to convert qualified pre-existing tariffed services to UNE combinations at cost-based rates at AT&T's request. Neither the 1996 Act nor any FCC order, however, requires BellSouth to relinquish its contractual right to receive the benefit of its bargain with AT&T when AT&T, for whatever reason, terminates prematurely its volume and term agreement with BellSouth.

In fact, the FCC has found exactly the opposite to be true. In its UNE Remand Order, the FCC specifically said:

> We note, however, that any substitution of unbundled network elements for special access would require the requesting carrier to pay any appropriate termination penalties required under volume or term contracts.

Id. at n. 985.

Notwithstanding this clear statement of the law, AT&T makes two claims for why it should not be required to pay termination charges. First, AT&T claims that it is not actually canceling service from BellSouth, but rather is merely converting an existing tariffed service to network elements. (Guepe Prefiled Direct, pp. 14-15). The difficulty with this argument, of course, is that whether AT&T still uses the facilities to provide services is irrelevant. The agreement was that BellSouth would bill and AT&T would pay for these services at a certain level, and AT&T's conversion of some of these services to UNEs might drop the monthly billings below the level that would trigger the termination liabilities. The fact that AT&T may still be using the same facilities at a cheaper rate does not excuse AT&T from performing under its contract. Moreover, AT&T's theory would render the FCC's finding on this issue meaningless. ("Any substitution of unbundled network elements for special access would require the requesting carrier to pay any appropriate termination penalties required under volume or term agreements.") *Id.* at n. 985 (emphasis added).

Second, AT&T claims that it purchased these services under contract because BellSouth was unwilling to provide combinations of network elements in

lieu of these special access services. (Transcript Vol. 1, p. 34). That fact, however, did not compel AT&T to enter into a term contract in which it sought price concessions in return for agreeing to certain termination liabilities if it did not meet its contractual obligations. This is akin to saying that AT&T had its "fingers crossed" when it entered into the contract, knowing that if it could get these facilities cheaper, it would attempt to do so without fulfilling its contractual obligations. That is simply not right. AT&T could have purchased these services on a month-to-month basis. (Transcript Vol. 1, p. 33). It could have paid BellSouth a market-based rate to put the UNEs together for AT&T. It could have put the UNEs together itself. Any of those choices would have been perfectly acceptable. Instead, AT&T chose to enter into a long-term contract evidently knowing that it intended to try to get out of or otherwise avoid paying for its obligations under the contract, if it could find a way to do so. The Authority should not sanction such conduct.

As previously stated, no federal or state statute, regulation or order permits AT&T to avoid paying termination liability charges that are otherwise owed under a volume and term contractual commitment with BellSouth. Indeed, to the contrary, the FCC has ruled that AT&T has to pay any termination liabilities that come due as a result of such conversions. The Authority should adopt BellSouth's position on this issue.

ISSUE 5: How should AT&T and BellSouth interconnect their networks in order to originate and complete calls to end-users? (Local Interconnection, Attachment 3)

This issue requires a determination of whether AT&T or BellSouth is going to be financially responsible for certain facilities needed to carry local traffic from a BellSouth local calling area to a distant Point of Interconnection established by AT&T. The calls that utilize the facilities in question are calls that originate in one BellSouth local calling area and are intended to be completed in that same local calling area, but must be routed out of that local calling area because of AT&T's network design.

This issue can be most graphically illustrated by reference to BellSouth Exhibit 1 (copy attached), which illustrated a hypothetical LATA containing 20 local calling areas. The exhibit reflects a single AT&T switch in the LATA, located in local calling area 20. The exhibit also shows a BellSouth tandem switch, a BellSouth local switch, a BellSouth customer and an AT&T customer located in local calling area 20.

AT&T agreed that for calls that originated and terminated in Local Calling Area (LCA) 20, the parties had no dispute implicated by Issue 5. (Transcript Vol. 1, p. 45). That is, when a BellSouth subscriber in LCA 20 called an AT&T subscriber in LCA 20, BellSouth would carry the call to the Point of Interconnection (POI) marked on BellSouth Exhibit 1, at no charge to AT&T and would pay AT&T reciprocal compensation for transporting and terminating the call to AT&T's end user. *Id.*

BellSouth Exhibit 1 also shows a BellSouth subscriber and an AT&T subscriber located in LCA 1. However, while BellSouth has an end office switch in

LCA 1, AT&T does not, choosing instead to serve its customer located in LCA 1 from AT&T's switch located in LCA 20. (Transcript Vol. 1, p. 46). AT&T has decided to serve its customer in LCA 1 this way because it is cheaper to provide transport throughout a LATA than to provide multiple switches in the LATA. *Id.* Although that may not hold true as AT&T's customer base evolves, it is the theory that underlies AT&T's current approach to the local telephone market.

On another note, this issue also does not involve calls that flow from AT&T's customer in LCA 1 to BellSouth's customer in LCA 1. AT&T has chosen to have a single switch in this example, and has chosen to incur the cost of providing dial tone to LCA 1 from LCA 20. Similarly, AT&T has chosen to pay BellSouth to transport the AT&T originated call from AT&T's POI in LCA 20 to BellSouth's customer in LCA 1. (Transcript Vol. 1, p. 48).

The sole issue implicated by Issue 5 involves calls flowing the other way; that is, from BellSouth's subscriber in LCA 1 to AT&T's subscriber in LCA 1. BellSouth did not ask AT&T to put a single switch in an area that can be hundreds of miles from the originating point of the local call. AT&T made that choice and now wants BellSouth to pay for it.

When a BellSouth subscriber in LCA 1 originates a call to an AT&T subscriber in LCA 1, but the call is hauled to LCA 20 due to AT&T's network design, there is no question that whichever company hauls the call all the way to LCA 20 is going to incur costs. (Transcript Vol. 1, pp. 52-53). The issue is who will be financially responsible for carrying this call from LCA 1 to LCA 20.

BellSouth's position is that AT&T's network design is the cause of this cost and AT&T should be responsible to pay the cost.

AT&T contends that adopting BellSouth's proposal would force AT&T to incur higher network costs. (Guepe Prefiled Direct, p. 24). That is absolutely inaccurate. BellSouth acknowledges that AT&T can establish a physical point of interconnection with BellSouth at any technically feasible point and if it chooses to have only a single such point in a LATA, that is AT&T's choice. AT&T can, however, lease facilities from BellSouth or any other entity to collect traffic from local calling areas outside of the local calling area in which its Point of Interconnection is found. When AT&T leases facilities from BellSouth, the leased facilities are not a part of AT&T's network and the Point of Interconnection is found at the point where AT&T's owned facilities end and the leased facilities begin. Nothing in BellSouth's proposed solution to this issue would require AT&T to build another (or the first) foot of cable devoted to local service in Tennessee beyond that required to establish a single point of interconnection in the LATAs that AT&T chooses to serve.

AT&T admits that BellSouth incurs a cost for transporting local traffic outside of the local calling area in which it originates and terminates to AT&T's Point of Interconnection in a distant local calling area. (Transcript Vol. 1, pp. 52-53). AT&T contends that BellSouth must recover this cost from either BellSouth's shareholders or end users, rather than from AT&T, the cost causer. If BellSouth is required to carry local traffic outside of the local calling area in which it originates

and terminates to some distant Point of Interconnection established by AT&T, then AT&T should compensate BellSouth for its efforts. Otherwise, BellSouth has no source of revenue to cover the cost of transporting such local traffic. Although AT&T may have the flexibility to establish rate structures to ensure that it recovers these costs, BellSouth has no such luxury due to its established tariffed rates. Neither BellSouth's basic local exchange rates nor any inter-carrier compensation mechanism would compensate BellSouth for these costs.

Thus, when viewing the equities of the situation, it is clear that BellSouth's position that AT&T should be financially responsible for these costs that it has caused is the appropriate position. If AT&T prevails on this issue, then AT&T will have succeeded in requiring BellSouth to subsidize AT&T's entry into the local exchange market in Tennessee. AT&T has caused these facilities to be needed and this cost to be incurred and should therefore pay for the facilities.

It would be convenient to point to a statute or to an FCC order or rule that neatly resolves this issue, but no such statute, order or rule exists. Both parties agree that, as a matter of law, AT&T is entitled to interconnect where it wants and to deliver its originated traffic to BellSouth at that point. MCI, in a proceeding at the FCC, however, asked the FCC to declare that both the incumbent local exchange company and the competitive local exchange company had to declare a single point of interconnection on each other's network where its originating traffic would be delivered. *See In re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, August 8, 1996

(*Local Interconnection Order.*) ¶ 214. The FCC refused, leaving it to negotiation and arbitration to resolve the issue. Therefore, the Authority is essentially left to resolve this matter based on the evidence presented and the Authority's own sense of equity and fair play.

In its First Report and Order in Docket No. 96-98, the FCC did state that the CLEC must bear the additional costs caused by a CLEC's chosen form of interconnection. Paragraph 199 of the Order states that "a requesting carrier that wishes a 'technically feasible' but expensive interconnection would, pursuant to section 252(d)(1), *be required to bear the cost of that interconnection, including a reasonable profit."* (Emphasis added.)Further, at paragraph 209, the FCC states:

> Section 251(c)(2) lowers barriers to competitive entry for carriers that have not deployed ubiquitous networks by permitting them to select the points in an incumbent LEC's network at which they wish to deliver traffic. Moreover, because competing carriers must *usually compensate incumbent LECs for the additional costs incurred by providing interconnection,* competitors have an incentive to make economically efficient decisions about where to interconnect.

(Emphasis added.) Thus, the FCC expects AT&T to pay the additional costs that it causes BellSouth to incur in interconnecting their respective networks.

This interconnection issue has been addressed in a similar fashion by at least two federal courts exercising appellate review over state commission arbitration decisions: *US West v. AT&T Communications*, 31 F. Supp. 2d 839 (D. Or. 1998), reversed in part, vacated in part sub. nom. *US West v. AT&T*, 224 F.3^{d} 1049 (9th

Cir. 2000)[8]; and *US West v. Jennings*, 46 F. Supp. 2d 1004 (D. Az. 1999). In *US West v. AT&T*, the federal court stated that "[t]echnical feasibility answers the question of *whether* a CLEC may interconnect at a given point, but it does not answer the question of *how many* points of interconnection a CLEC must have." *US West v. AT&T*, 31 F. Supp. 2d at 852 (emphasis in original). Although the court rejected US West's claim that a CLEC is required to establish a point of interconnection in each local exchange in which it intends to provide service, the court did rule that "the mechanics of a particular interconnection arrangement are best determined by each state's PUC, ... subject of course to the standards established by the Act and any FCC regulations (where appropriate)." *Id.*

Similarly, the federal court in *US West v. Jennings* found that "whether to require more than one point of interconnection is best determined by each state's public utilities commission, ... subject of course to the standards established by the Act and any applicable FCC regulations." *US West v. Jennings*, 46 F. Supp. 2d at 1021. The court further reasoned:

> In determining whether a CLEC should establish more than one point of interconnection in Arizona, the [Arizona Commission] may properly consider relevant factors, including whether a CLEC is purposely structuring its point(s) of interconnection to maximize the cost to the ILEC or to otherwise gain an unfair competitive advantage. The purpose of the Act is to promote competition, not to favor one class of competitors at the expense of another. As an alternative, the [Arizona Commission] may require a CLEC to compensate US West for costs resulting from an inefficient interconnection.

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[8] The district court's decision regarding the point of interconnection issue was not raised on appeal and, therefore, was not disturbed by the Ninth Circuit's decision.

Id. The court concluded its discussion of this issue by noting that "[i]t would be ironic if a law designed to promote a market-driven economy in local telephone service were instead interpreted to prohibit the consideration of cost when making decisions and thereby subsidize and reward inefficient behavior by market participants." *Id.* at 1022.

The above quoted FCC and federal court decisions provide the following guidance to the Authority for resolving Issue 5: (1) the 1996 Act does not define the minimum number of interconnection points that a CLEC must establish in a given LATA; (2) the decision regarding how many points of interconnection a CLEC must establish is best determined by the state commission; (3) in determining how many points of interconnection a CLEC must establish, a state commission may consider "relevant factors, including whether a CLEC is purposefully structuring its point(s) of interconnection to maximize the cost to the ILEC or to otherwise gain an unfair competitive advantage"; and (4) as an alternative to requiring a CLEC to establish additional interconnection points, a state commission may require a CLEC to compensate the incumbent for costs resulting from an inefficient interconnection.

Further, the South Carolina Public Service Commission ("SCPSC") recently required AT&T to bear the cost incurred by BellSouth to carry BellSouth's local traffic that originates and terminates within a local calling area to AT&T's distant point of interconnection. On January 30, 2001, the SCPSC issued Order No. 2001-079 in Docket No. 2000-527-C, *IN RE: Petition of AT&T Communications of*

the Southern States, Inc. for Arbitration of Certain Terms and Conditions of a Proposed Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. Section 252. In response to this issue, the SCPSC ruled:

> In resolving this issue, the Commission concludes that while AT&T can have a single POI in a LATA if it chooses, AT&T shall remain responsible to pay for the facilities necessary to carry calls from distant calling areas to that single POI. That is the fair and equitable result.

Similarly, the North Carolina Utilities Commission has issued its Recommended Arbitration Order[9] in the AT&T/BellSouth arbitration conducted in North Carolina last year. That arbitration contained many of the same issues as the present arbitration, including Issue 5. In its decision in Docket Numbers P-140, Sub 73 and Docket No.)-646, Sub 7, *In the Matter of Arbitration of Interconnection Agreement Between AT&T Communications of the Southern States, Inc., and TCG of the Carolinas, Inc. Pursuant to the Telecommunications Act of 1996*, issued March 9, 2001, the North Carolina Utilities Commission said:

> The Commission concludes that, if AT&T interconnects at points within the LATA but outside of BellSouth's local calling area from which traffic originates, AT&T should be required to compensate BellSouth for, or otherwise be responsible for, transport beyond the local calling area.

[9] Pursuant to the procedures followed by the North Carolina Utilities Commission, the Commission heard the arbitration, received briefs and proposed orders from the parties, and then issued its Recommended Arbitration Order. The parties are then allowed to comment on that recommended order, and the Commission thereafter issues its final order.

Attempting to justify its position regarding this issue, AT&T relies heavily upon 47 C.F.R. § 51.703(b), which provides: "A LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network." (Guepe Prefiled Rebuttal, p. 33; Transcript Vol. 1, p. 55). Mr. Guepe further states that the FCC has issued a decision that confirms AT&T's interpretation of the federal regulations, citing *In Re: TSR Wireless, LLC, et al. v. U.S. West*, file Nos. E-98-13, et. al., FCC 00-194 (June 21, 2000). (Guepe Prefiled Direct, p. 37).

In the *TSR Wireless* case, the FCC considered a complaint brought by several paging companies against U.S. West for improperly charging paging carriers for delivery of LEC-originated traffic. In resolving this dispute, the FCC interpreted the provisions of the 1996 Act and the FCC rules promulgated thereunder. Specifically, 47 C.F.R. 51:701(b) defines "local telecommunications traffic" for purposes of wireless and wire line providers as follows:

> (b) Local telecommunications traffic. For purposes of this subpart, local telecommunications traffic means:
>
> (1) Telecommunications traffic between a LEC and a telecommunications carrier other than a CMRS provider that originates and terminates within a local service area established by the state commission; or
>
> (2) Telecommunications traffic between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area ....

Thus, section 51.701(b)(1) defines "local telecommunications traffic" for purposes of wire line traffic, while subsection (2) defines "local telecommunications traffic"

for purposes of CMRS providers. CMRS means Commercial Mobile Radio Service, and CMRS carriers include providers of one-way paging and other wireless services. (See *TSR Wireless*, ¶2) A "Major Trading Area" (MTA") represents the local calling area for CMRS providers and is analogous to the local service area of wireline service providers such as BellSouth. (Transcript Vol. 1, p. 59).

On cross-examination regarding the *TSR Wireless* decision, Mr. Guepe agreed that the FCC directed local exchange carriers such as BellSouth to deliver traffic at no charge within the MTA or local service area. *Id.* That is, Mr. Guepe agreed that what the *TSR Wireless* decision stands for is that a local exchange carrier has an obligation to deliver at no charge calls within the MTA. Indeed, Paragraph 31 of the *TSR Wireless* decision provides: "Section 51.701(b), when read in conjunction with Section 51.701(b)(2), requires LECs to deliver, without charge, traffic to CMRS providers *anywhere within the MTA in which the call originated*, with the exception of RBOCs, which are generally prohibited from delivering traffic across LATA boundaries." (Emphasis added.)

Finally, there is the issue of the recent FCC order related to SBC's request for interLATA relief under Section 271 of the 1996 Act. As AT&T clearly admitted, the issue of whether an ILEC could charge a CLEC for delivering local traffic to a distant point outside the local calling area in which the call originated was squarely before the FCC. (Transcript Vol. 1, p. 55). Since the issue was squarely before them, the FCC could have resolved this entire issue with a single sentence, requiring ILECs to deliver, at no charge all local calls originating

anywhere in a LATA to an CLEC single point of interconnection in that LATA. However, that sentence does not appear in the SBC Kansas/Oklahoma order, and AT&T instead was reduced to once again "interpreting" the FCC's order on this point. (Transcript Vol. 1, p. 56). The simple point is that if the FCC shared AT&T's feelings on this point, the FCC has had more than ample opportunity to state that plainly and clearly. It has not done so because presumably even the FCC perceives the unfairness of requiring BellSouth or any ILEC to haul a local call hundreds of miles across a LATA simply because AT&T finds it cheaper to have a single switch in the LATA and to use long lines to serve its customers. Indeed, if it can get BellSouth to pay for half of its transport, it will probably always be cheaper to design AT&T's network in that fashion.

The only reasonable conclusion that can be reached is that BellSouth's obligation to deliver traffic to AT&T's Point of Interconnection at no additional charge has to be limited to calls that not only originate and terminate within the same local service area, but that do not leave that local service area in the first instance. Clearly that is the proposition for which *TSR Wireless* stands. In resolving Issue 5, the Authority should conclude that while AT&T can have a single Point of Interconnection (or two) in a LATA if it chooses, AT&T remains financially responsible for the facilities necessary to carry calls that originate and terminate in a local calling area to that distant Point of Interconnection. That is the only fair and equitable result.

ISSUE 7: Should AT&T be permitted to charge tandem rate elements when its switch serves a geographic area comparable to that served by BellSouth's tandem switch? (Local Interconnection, Attachment 3, Section 1.3)

This issue is also driven in large part by the network design AT&T has chosen to utilize, as described in the discussion of Issue 5 above. BellSouth's local network generally consists of local tandems, end office switches and interoffice transport. However, AT&T's local network generally consists of a few switches and long loops connecting the switch to AT&T's subscribers. (Guepe Prefiled Direct, pp. 20-23). When BellSouth routes a call from a CLEC through one of its tandems, BellSouth completes the call by first switching the call at the tandem, transporting the call to the appropriate local end office and finally switching the call to the intended recipient of the call. (Transcript Vol. 1, p. 71). BellSouth then charges the originating CLEC reciprocal compensation based on the appropriate tandem switching rate, transport rate and local switching rate, since all of these parts of BellSouth's network were used in transporting and terminating the call. *Id.*

On the other hand, when BellSouth hands off one of its calls to AT&T, AT&T carries the call back to its end office switch, where the call is switched once and then placed on the appropriate loop to reach the intended recipient of the call. That is, because of AT&T's network design, the call is only switched once and there are no interoffice transport facilities involved. *Id.*

Nevertheless, and in spite of the fact that only one switch is involved, AT&T wants BellSouth to pay reciprocal compensation to AT&T for calls placed from BellSouth's local subscribers to AT&T's local subscribers at a rate equal to the total

of the tandem switching rate and the end office switching rate for every such call AT&T handles. (Transcript Vol. 1, p. 72). BellSouth objects, for obvious reasons, and that frames the dispute raised by Issue 7.

AT&T's position is based on its reading of the language of a portion of FCC Rule 47 C.F.R. §51.711 (a)(3), which provides "[w]here the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate." (Guepe Prefiled Direct, p. 40).

BellSouth's position is that the determination of whether AT&T is entitled to the tandem switching rate plus the end office switching rate is a factual one determined by a two-pronged test. (Ruscilli Prefiled Direct, p. 30). The first prong is as AT&T states it and involves the geographic coverage of the switch. The second prong, however, requires an examination of whether the switch actually performs tandem switching functions with regard to local traffic. BellSouth's position that the switch must function as a tandem switch is based both on the FCC's Local Interconnection Order, which addressed this matter, and on an earlier section of the same rule that AT&T relies on to support its position. Specifically, Section (a)(1) of Rule 51.711 provides:

> For purposes of this subpart, symmetrical rates are rates that a carrier other than an incumbent LEC assesses upon an incumbent LEC for transport and termination of local telecommunications traffic equal to those that the incumbent LEC assesses upon the other carrier for the same services. (Emphasis Added)

Further, in its Local Competition Order, at Paragraph 1090 where it discussed this subject, the FCC directed state commissions to "consider whether new technologies (e.g., fiber ring or wireless network) performed functions similar to those performed by an incumbent LEC's tandem switch and thus whether some or all calls terminating on the new entrant's network should be priced the same as the sum of transport and termination via the incumbent LEC's tandem switch." (Emphasis added.) That is, the FCC included, in addition to the issue of geographic coverage, a requirement that the switch in question perform functions similar to that of a tandem switch in order to entitle the CLEC to reimbursement at a rate that normally would involve two or more switches, not one. Indeed, this is the test that the Authority applied in recent its decision in the Intermedia arbitration.

AT&T's argument that the test is only a single-pronged one rests solely on the fact that the FCC's rule touching on this issue, 47 C.F.R. § 51.711 (a)(3), only mentioned the matter of similar geographic coverage. However, several courts that have addressed this issue have not taken such a position.

Specifically, in *MCI Telecommunications Corp. v. Illinois Bell Telephone*, 1999 U.S. Dist. LEXIS 11418 (N.D. Ill, June 22, 1999), the district court, in addressing this very issue, noted:

> In deciding whether MCI was entitled to the tandem interconnection rate, the ICC applied a test promulgated by the FCC to determine whether MCI's single switch in Bensonville, Illinois, performed functions similar to, and served a geographical area comparable with, an Ameritech tandem switch.

In the accompanying footnote, the court stated:

> MCI contends the Supreme Court's decision in IUB affects resolution of the tandem interconnection rate dispute. It does not. IUB upheld the FCC's pricing regulations, including the 'functionality/geography' test. (citation omitted) MCI admits that the ICC used this test....Nevertheless, in its supplemental brief, MCI recharacterizes its attack on the ICC decision, contending the ICC applied the wrong test...But there is no real dispute that the ICC applied the functionality/geography test; the dispute centers around whether the ICC reached the proper conclusion under that test.

Similarly, the Ninth Circuit Court of Appeals viewed the rule in the same way in *U.S. West Communications v. MFS Intelenet, Inc.*, 193 F.3d 1112, 1124 (9th Cir. 1999), finding that:

> The Commission properly considered whether MFS's switch performs similar functions and serves a geographic area comparable to US West's tandem switch.

Clearly BellSouth's view of the applicable test is the correct one. It would simply make no sense to compensate AT&T for functions that AT&T's switches do not perform; yet that is exactly what AT&T would have the Authority do.

In spite of the clear and logical basis for BellSouth's position, BellSouth must acknowledge that the FCC, in its recent Notice of Proposed Rule Making, In the Matter of Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, released April 27, 2001 ("NPRM"), addressed this issue in a way that supports AT&T's position. There, at paragraph 105, the FCC said:

> In addition, section 51.711(a)(3) of the Commission's rules requires only that the comparable geographic area test be met before carriers are entitled to the tandem interconnection rate for local call termination. Although there has been some confusion stemming from additional language in the text of the

> *Local Competition Order* regarding functional equivalency, section 51.711(a)(3) is clear in requiring only a geographic area test. Therefore, we confirm that a carrier demonstrating that its switch serves "a geographic area comparable to that served by the incumbent LEC's tandem switch" is entitled to the tandem interconnection rate to terminate local telecommunications traffic on its network.

The FCC's conclusion in this regard makes a mockery of its own rule, since AT&T maintains that it can serve any point, even hundreds of miles from its switch, with a single switch. Under AT&T's view, there is not a single place on within the continental boundaries of the United States that it cannot serve with one switch, which means it would always be entitled to the tandem switching rate. If that is what the FCC intended to happen, it should have just said so. Since it did not, then the only other rational conclusion that can be reached, if tandem functionality is not required, is that some meaningful showing has to be made that AT&T's switches "actually" serve a comparable geographic area, and simply providing some colored maps should not be allowed to suffice, which is all AT&T has done in this case.

Turning to the application of the two-pronged test, the first question is whether AT&T's single switch performs functions similar to BellSouth's tandem switches. It is clear that it does not. The FCC's rule defines "local tandem switching capability" as including "trunk connect facilities," the basic switch trunk function of connecting trunks to trunks and the functions that are centralized in tandem switches, including but not limited to call recording, routing of calls to operator services and signaling conversion features. 47 C.F.R. § 51.319 (c) (3). As BellSouth witness Ruscilli testified, this means that AT&T's switches must

connect trunks terminated in one end office switch to trunks terminated in another end office switch. (Ruscilli Prefiled Direct, p. 35). Since AT&T's switches in Tennessee do not connect in such a manner (Transcript Vol. 1, p. 75), they cannot be found to perform tandem switch functions.

It is equally clear that AT&T should not be entitled to the sum of the tandem switching rate and the end office switching rate for every call it handles based on the second prong of the test, comparable geographic coverage. AT&T's claim here is fairly simple: since it can theoretically use long loops to reach every corner of Tennessee if it chooses to do so, it "obviously" has comparable geographic coverage to that of BellSouth's tandem switches. (Transcript Vol. 1, pp. 79-80).

BellSouth's position, logically, is that in order to qualify for the tandem switching rate, AT&T's switches must actually be serving the same comparable geographic area as do BellSouth's tandem switches. It is not sufficient that the switch simply be capable of serving customers in that geographic area through the use of long loops, should AT&T choose to serve such customers. Yet that is exactly what AT&T's claim rests upon. (Transcript Vol. 1, p. 79).

The adoption of AT&T's position regarding its universal entitlement to the tandem switching rate, without regard to the facts, would lead to nonsensical results. For instance, AT&T agreed that one of its switches could be connected directly to a BellSouth end office. (Transcript Vol. 1, p. 72). In such circumstances, a call that originated from an AT&T end user in a local calling area and terminated to a BellSouth end user served by that BellSouth end office would

result in AT&T paying reciprocal compensation only at the end office switching rate. On the other hand, if that same BellSouth end user placed a call to that same AT&T end user, AT&T would claim that it was entitled to reciprocal compensation at the tandem switching rate (again, the sum of the end office switching rate and the tandem switching rate). (Transcript Vol. 1, p. 73). The exact same end users are involved in both calls, the same end office switches are used in both calls, yet applying AT&T's theory results in one call generating reciprocal compensation at the end office switching rate, while the other generates reciprocal compensation at the higher tandem switching rate. A theory, such as AT&T's, that leads to such a conclusion, simply cannot be right.

BellSouth does not dispute AT&T's right to compensation at the tandem rate where the facts support such a conclusion. However, in this proceeding, AT&T is seeking a decision that allows it to be compensated for the cost of equipment it does not own and for functionality it does not provide. Absent real evidence that AT&T's switches actually serve a geographic area comparable to BellSouth's tandems, BellSouth requests that the Authority determine that AT&T is only entitled, where it provides local switching, to the end office switching rate.

ISSUE 9: What is the appropriate treatment of outbound voice calls over Internet Protocol ("IP") telephony, as it pertains to reciprocal compensation? (Local Interconnection, Attachment 3, Section 6.1.9)

Internet Protocol Telephony refers to, in the context of this proceeding, a telephone-to-telephone telecommunications service that uses a digital packet switched network to complete the call. (Ruscilli Prefiled Direct, pp. 37-38;

Transcript Vol. 1, p. 81). This is to be contrasted with the more traditional method of carrying such calls, which is by using an analog circuit switched network. *Id.*

This issue deals, by its terms, with outbound calls that use IP telephony. The question is whether such calls, when they originate in one local calling area and terminate in a distant local calling area, are to be treated like local calls, or whether they are to be treated like the long distance calls that they are. BellSouth's position is that application of access charges for long distance calls does not depend on the technology used to transport such calls. (Ruscilli Prefiled Direct, pp. 39-40).

AT&T, on the other hand, is trying to shoehorn itself into the same ISP exemption that CLECs have used to claim that calls to Internet Service Providers are exempt from access charges, which of course is the argument that has also lead to the question of whether calls to ISPs are local or interstate calls. *Id.* at 40. If AT&T can convince the Authority that a call from Nashville to Washington, D.C. is really a local call because the underlying AT&T network uses packet switching rather than circuit switching, AT&T will be able to avoid paying access charges and in a proper case, might even be able to argue that BellSouth would owe AT&T reciprocal compensation for handling such a call, just as AT&T contends now for calls that are headed to an ISP.

The answer to this issue has to be that the choice of transmission medium does not transform a long distance call into a local call. As a result, BellSouth respectfully requests that the Authority find that the nature of phone-to-phone calls

are determined by their beginning and ending points and not by the transmission medium that is used to haul the calls.

.ISSUE 10: **Should BellSouth be allowed to aggregate lines provided to multiple locations of a single customer to restrict AT&T's ability to purchase local circuit switching at UNE rates to serve any of the lines of that customer? (UNEs, Attachment 2)**

This dispute involves the application of FCC Rule 51.319 (c)(2) which provides that an ILEC shall not be required to provide unbundled local switching in certain geographic areas, provided that the ILEC provides non-discriminatory access to a combination of unbundled loops and transport (Enhanced Extended Links or EELs) throughout the relevant geographic area. The rule specifically provides that the ILEC does not have to provide unbundled switching for end users with four or more voice grade equivalents or lines in Density Zone 1 in a top 50 Metropolitan Statistical Area, provided it makes EELs available to requesting telecommunications carriers in that area. (Transcript Vol. 1, p. 85).

The specific dispute that the Authority must address involves the question of whether the four lines identified in the rule have to be all located at the same premises or whether it is sufficient that the customer has four or more lines located anywhere in that geographic area. AT&T's position is that the lines all have to be located at the same premises. BellSouth's position is that with the availability of EELs, the actual geographic location of the customer's lines, as long as they are all within the MSA, is obviously irrelevant.

BellSouth's point is that in order to take advantage of this exemption, BellSouth has to provide EELs at any technically feasible location in the relevant

geographic area. (Transcript Vol. 1, p. 86). Regardless of where the customer's individual lines are located, AT&T can use the EELs to connect the customers to AT&T's switch. *Id.* AT&T's counter-argument was to use a hypothetical situation where a customer might have 20 different locations with two lines each (Guepe Prefiled Rebuttal, p. 55). Based on its example, AT&T concludes that the aggregation of the lines at the 20 different locations in order to qualify for the switching exemption could not be what the FCC intended and should be precluded. That conclusion is clearly not accurate.

The relevant FCC Rule is 51.319 (c) (2), which states:

> Notwithstanding the incumbent LEC's general duty to unbundle local circuit switching, an incumbent LEC shall not be required to unbundle local circuit switching for requesting telecommunications carriers when the requesting telecommunications carrier serves end-users with four or more voice grade (DS0) equivalents or lines, provide that the incumbent LEC provides non-discriminatory access to combinations of unbundled loops and transport (also known as the "Enhanced Extended Link") throughout Density Zone 1, and the incumbent LEC's local circuit switches are located in:
>
> (i) The top 50 Metropolitan Statistical Areas as set forth in Appendix B of the Third Report and Order and Fourth Further Notice of Proposed Rulemaking in the CC Docket No. 96-98, and
>
> (ii) In Density Zone 1, as defined in § 69.123 of this chapter on January 1, 1999.

The FCC rule is perfectly clear on its face and there is no language surrounding that rule that suggests a different result. AT&T can use EELs to connect those 20 locations to its own switch or, if it chose to do so, to a competitor's switch. The point is, the FCC determined that a customer with 4 or more lines was large enough to move out of the mass market and that alternatives existed to serve such

customers. While AT&T might disagree with the FCC, there is not any room for AT&T's interpretation under the rules promulgated by the FCC and the FCC's accompanying orders. On April 20, 2001, the Georgia Public Service Commission issued its Order in Docket No. 11853-U, *IN RE: Petition of AT&T Communications of the Southern States, Inc. and Teleport Communications Atlanta, Inc. for Arbitration of Certain Terms and Conditions of Proposed Agreement with BellSouth Telecommunications, Inc. Under the Telecommunications Act of 1996.* In response to this issue, at p. 8, the GPSC ruled:

> The Commission is not persuaded by AT&T's argument that the FCC did not intend the exception to apply in cases where the lines are located at different premises. The plain language of the FCC Rule 51.319(c)(2) states that an ILEC's obligation does not apply to the circumstances at issue. The Commission finds that BellSouth should be allowed to aggregate lines provided to multiple locations of a single customer to restrict AT&T's ability to purchase local circuit switching at UNE rates to serve any of the lines of that customer.

BellSouth's position on this issue is clearly the correct interpretation of the FCC's rules using the logic that the FCC used to create the rule in the first instance. Where the end user is located in Density Zone 1 in a top 50 MSA and BellSouth is willing to provide AT&T with EELs, all of the customer's lines within the MSA should be aggregated in order to determine whether BellSouth is exempted from providing unbundled switching to serve that particular end user.

ISSUE 12: When AT&T and BellSouth have adjoining facilities in a building outside BellSouth's central office, should AT&T be able to purchase cross connect facilities to connect to BellSouth or other CLEC networks without having to collocate in BellSouth's portion of the building? (Collocation, Attachment 4)

This issue arises solely because of AT&T's former ownership of BellSouth's predecessors. There are buildings in Tennessee where AT&T and BellSouth have a "condominium" arrangement. That is, one company owns the building, and the other company has facilities in the building, generally on a separate floor. (Milner Prefiled Direct, pp. 21-22). In such circumstances, AT&T essentially wants to be able to "punch" a hole in a common wall, and to run its facilities into BellSouth's space, without collocating in that space. Stated another way, AT&T wants to expand the definition of "premises" beyond that required by the FCC and beyond that which is fair. *Id.*

The essence of this issue is that it would be unfair to allow AT&T to have an advantage over other CLECs simply because of its former ownership of BellSouth. Indeed, the Georgia Commission, ruling on this issue in BellSouth's favor, determined that "it would not benefit competition to allow AT&T to benefit from its previous relationship with BellSouth." (April 20, 2001 Order at p. 10). Other CLECs would have to purchase space to collocate in the buildings in question. Allowing AT&T to do what it wants would allow AT&T to avoid incurring collocation costs, and would give AT&T a competitive advantage over all other CLECs. No reason was advanced by AT&T to demonstrate why it should have this advantage other than a claim that doing so might free up otherwise scarce

collocation space in the affected central office. (Mills Prefiled Rebuttal, pp. 13-14). AT&T is simply trying to gain an advantage over other CLECs and its position should be rejected.

ISSUE 13: **Is conducting a statewide investigation of criminal history records for each AT&T employee or agent being considered to work on a BellSouth premises a security measure that BellSouth may impose on AT&T? (Collocation, Attachment 4, Section 11.1, 11.2, 11.4, 11.5)**

This issue has actually turned out to be quite a strange one. For months, BellSouth thought that the dispute revolved around BellSouth's insistence that AT&T do a criminal background check on its employees that wanted to enter BellSouth's premises and AT&T's refusal to conduct such an investigation. However, it turns out that AT&T has in fact been conducting criminal background checks on its employees hired since April, 1999, and the actual dispute between the parties is how far back such checks should be conducted. (Transcript Vol. 1, pp. 134-135).

It is undisputed that BellSouth conducts criminal background checks on its own employees and requires its vendors to do the same. (Transcript Vol. 1, p. 129). Even though it has had such a requirement for years, to settle this issue with AT&T, BellSouth agreed that the requirement would only apply to AT&T employees hired after January 1, 1995. *Id.* In essence, BellSouth was willing to assume that if an AT&T employee had been on AT&T's payroll since the beginning of 1995 that this provided sufficient assurance, notwithstanding that BellSouth requires more of its own employees and vendors.

BellSouth believed that AT&T did not conduct such checks, and that this issue addressed that specific concern. Indeed, the AT&T witness testified that he did not learn that AT&T was doing background checks until around November, 2000, although the parties have been litigating this issue since at least the summer of 2000. (Transcript Vol. 1, p. 132).

One matter is perfectly clear. Both AT&T and BellSouth evidently now agree that the criminal background check is important, since they both do it. (Transcript Vol. 1 p. 133). That can no longer be an issue. The question is whether AT&T should be allowed to do less than what BellSouth requires of itself and its vendors. In this regard, AT&T offered absolutely no justification for its position. That is, it obviously agrees that such background checks are important, since it does them, but it offers no reason why an employee hired in March 1999 is trustworthy and thus does not require a background check, but an employee hired in April 1999 is not. Obviously AT&T could raise the same issue regarding BellSouth's January 1, 1995 date, but that was offered as a compromise, since BellSouth has done such checks on its employees and vendors for much longer than that. BellSouth would note that this is the conclusion that the Georgia Commission reached in its decision regarding this same issue in the AT&T/BellSouth arbitration in Georgia. (April 20, 2001 Order at p. 11)

AT&T's position seems to be that money can fix any problems that its employees may cause. That seems a bit cavalier when a simple criminal background check could prevent or at least eliminate some of the opportunities for

such damage to occur in the first place, but that is belied by the fact that AT&T is now doing these criminal background checks itself. AT&T simply offered no viable reason why such checks should not be required. Indeed, should AT&T ever actually get in the business of providing local residential service, it is difficult to understand how it could allow its employees into subscribers' homes without such a check. Such a check should be required before they are allowed into BellSouth's premises as well.

ISSUE 14: Has BellSouth provided sufficient customized routing in accordance with State and Federal law to allow it to avoid providing Operator Services/Directory Assistance ("OS/DA") as a UNE?

The FCC has determined that where an ILEC has provided CLECs with customized routing or a compatible signaling protocol, that the ILEC is not required to provide unbundled access to operator services and directory assistance. (Milner Prefiled Direct, p. 31). Customized routing, as it is used here, means that the CLEC's customers served by a BellSouth switch can reach the CLEC's choice of operator service or directory assistance service platforms instead of BellSouth's operator service or directory assistance service platforms. *Id.*

BellSouth currently provides two means of customized routing, the Line Class Code (LCC) method and the Advanced Intelligent Network (AIN) solution. The LCC method makes use of translations and routing capabilities in the end office switch while the AIN solution makes use of BellSouth's AIN platform. *Id.* at 31-33. Despite AT&T's assertions to the contrary, both methods are available today and both have been tested and proven workable. *Id.* at 33-34.

AT&T's chief complaints about the AIN solution to customized routing seems to involve its allegations that the AIN solution creates post-dialing delays of up to 1 to 2 seconds (Bradbury Prefiled Direct, p. 39) and that the solution is inefficient because it takes switch-based functions and performs them in on-line databases. *Id.* at 39-41. While it ought to be open to question as to whether a one-second or even a two-second delay would be ascertainable by a caller, all switching systems take some time to translate the dialed digits, select an appropriate trunk group and the like and all of these functions contribute to post-dialing delay. (Milner Prefiled Direct, p. 34; Transcript Vol. 1, p. 156). If a delay of one-second, or even two-seconds is unacceptable to AT&T, it of course can simply elect to use the LCC method, which is also available and accomplishes the same result. *Id.*

AT&T may not be happy about the situation, but it acknowledged, for instance, that the AIN technology works (Transcript Vol. 1, p. 156) and that there is no reason the other solution, involving Line Class Codes, would not work as well. (Transcript, p. 159). Indeed, the Georgia Commission determined that BellSouth has provided sufficient customized routing to avoid providing OS/DA as a UNE. (April 20, 2001 Order at p. 12) At bottom, AT&T may not like the way the proffered customized routing works, but it is available and BellSouth is therefore not obligated to offer Operator Services or Directory Assistance as a UNE in Tennessee.

ISSUE 15: What procedure should be established for AT&T to obtain loop-port combinations (UNE-P) using both Infrastructure and Customer Specific Provisioning? (Attachment 7, Sections 3.20 – 3.24)

This issue actually consists of two separate issues that need to be addressed individually. One issue is what is known as the "footprint" issue, which has to do with programming BellSouth's offices to recognize different Operator Services/Directory Assistance (OS/DA) routings. The other issue involves how the various OS/DA options may be ordered once they are programmed into BellSouth's switches. (Transcript Vol. 1, p. 159).

The parties have resolved the "footprint" portion of this issue. Essentially this entire issue involves the various options that AT&T can have to route OS/DA traffic. Generally there is the current default routing, which takes the calls to a BellSouth branded operator platform. The second option is to carry the calls to a BellSouth unbranded platform. The third option is to carry the calls to a BellSouth platform, but with AT&T branding and the fourth and final option is to carry the call to an AT&T or third party platform. (Transcript Vol. 1, pp. 153-154). BellSouth is perfectly willing to make any of these options available to AT&T, but in order to work, each option has to be pre-programmed into the appropriate central offices. AT&T understands that it has to tell BellSouth which offices to pre-program and understands that BellSouth will do the programming, provided AT&T pays for the programming, which AT&T is willing to do. Indeed, the dispute with the "footprint" portion of this issue involved the determination of the documentation that is necessary to describe what AT&T has to tell BellSouth in order for BellSouth to know which offices to program and how to program those offices. That has all now been resolved and nothing further is required from the Authority.

The second part of the issue is not likely to be resolved by the parties. Essentially, the second part of the issue involves how AT&T will select, for an individual subscriber, from among the four options BellSouth has pre-programmed into that subscriber's serving central office. BellSouth is willing to create a default routing, if AT&T will tell BellSouth which option it wants to choose as the default. (Transcript Vol. 1, pp. 161-162). AT&T would then have the option of allowing a subscriber to "default" which would require nothing further from AT&T, or it could select any one of the other three options by placing the appropriate Line Class Codes on the subscriber's order. (Transcript Vol. 1, p. 163).

That solution, which gives AT&T exactly what BellSouth itself has, evidently is not good enough for AT&T. AT&T wants something special. AT&T wants the ability to simply select, by putting a number or a letter on its orders, the option it wants for that customer. AT&T wants BellSouth to incur the expense to program BellSouth's systems so that AT&T can simply label each of the four options with a letter or number, and have BellSouth automatically recognize that label and do the appropriate routing electronically.

The problem is that there is no industry standard governing how this would be accomplished. (Pate Prefiled Direct, p. 16). Essentially, each alternative OS/DA routing in each individual central office will require the use of specific LCCs that tell BellSouth's computers how to route the call for the specific end user. These LCCs are basically instructions that tell the computers how and to what trunks the subscriber's traffic is to be routed. (Transcript Vol. 1, p. 158).

On one level, this is not a problem. The FCC has clearly told BellSouth what it is required to do. In paragraph 224 of its Louisiana II order the FCC said:

> "We agree with BellSouth, that a competitive LEC must tell BellSouth how to route its customers' calls. If a competitive LEC wants all of its customer calls routed in the same way, it should be able to inform BellSouth, and BellSouth should be able to build the corresponding routing instructions into its systems just as BellSouth has done for itself. If, however, a competitive LEC has more that one set of routing instructions for its customers, it seems reasonable and necessary for BellSouth to require the competitive LEC to include in its order an indicator that will inform BellSouth which selective routing pattern to use."

[Emphasis added]

BellSouth has no problem with the FCC's position, provided that a single routing instruction is given as the default. Indeed, this entire issue is about parity. (Transcript Vol. 1, p. 162). BellSouth has a single default for all of its OS/DA traffic region-wide. BellSouth's customers OS/DA calls default to a BellSouth-branded platform. It is appropriate for BellSouth to provide a similar "default" routing for AT&T and BellSouth is willing to do so. If AT&T will designate a single "default" option, BellSouth will program its computers so that AT&T need do nothing else other than submit the customer's order. *Id.* at 161-162.

The difficulty is that AT&T does not want parity with BellSouth, it wants something special. AT&T wants to be able to vary its choices from central office to central office. (Transcript Vol. 1, p. 162). BellSouth does not have a problem with AT&T doing so, but BellSouth's computers will not handle such options automatically. AT&T can select the single option and BellSouth will handle the calls without anything further. If AT&T wants to vary the routing for a specific customer, AT&T can give BellSouth, on the order form, the correct LCCs for the routing selected, and BellSouth can provide that routing. (Transcript Vol. 1, p.

163). AT&T complains, however, that in such circumstances, its service representatives will have to look up the proper LCCs, and it would rather that BellSouth's employees do that if anyone has to. BellSouth is ready to provide the "default" option if AT&T elects to have one. If AT&T does not want such a default, someone is going to have to look up the proper LCCs (*see* Transcript, pp. 167-168), and since it is AT&T's choice to use options other than a default, it is appropriate that AT&T provide the LCCs.

BellSouth has offered parity to AT&T with regard to this issue. AT&T does not want parity, it wants something different. BellSouth has no objection to AT&T having something different, but AT&T is going to have to bear the burden of facilitating those options, absent some national industry standard that BellSouth can use to accomplish the desired result.

ISSUE 16: Should the Authority or a third party commercial arbitrator resolve disputes under the Interconnection Agreement?

Issue 16 addresses the question of who will resolve disputes that arise under the final interconnection agreement that AT&T and BellSouth reach as a result of this arbitration. In the previous interconnection agreement between AT&T and BellSouth, there was a provision for a third party arbitrator other than the Authority to address and resolve disputes under the agreement. AT&T wants to incorporate that provision in the new agreement; BellSouth does not.

A threshold issue that the Authority must address that should dispose of this matter involves the Authority's authority to require BellSouth to go to a third party to resolve a dispute that falls squarely within the province of the Authority. There is nothing in the law that allows the Authority to require BellSouth or any party to

submit to a binding third party arbitration rather than having the Authority itself address these disputes.

BellSouth has had actual experience with third party arbitrations in its region and, as BellSouth witness Ruscilli testified, the third party arbitrations have neither been quick, nor have they been inexpensive. (Ruscilli Prefiled Direct, p. 48). Moreover, while AT&T professes to want third party arbitrations to resolve disputes involving the interconnection agreement, their actions in the region have proven otherwise. Their past agreement included a third party arbitration clause; however, in at least two states, AT&T filed commission complaints seeking interpretations of the existing interconnection agreement rather than seeking a third party arbitration. *Id.* at 49.

The evidence on this point is that third party arbitrations are neither inexpensive nor quick, and they can involve policy matters that are best left to state commissions. As a consequence, the Authority should adopt BellSouth's position and not require third party arbitrations should the parties' interconnection agreement require interpretation in the future. BellSouth would note that it does not object to a provision that would allow the parties to agree to go to a third party arbitration should both parties agree, for some reason, to do so. It simply objects to being forced to go to a third party arbitration at AT&T's whim. BellSouth would note that this is the conclusion that the Georgia Public Service Commission reached in its decision regarding the same issue in the AT&T/BellSouth arbitration in Georgia. (April 20, 2001 Order at p. 13.)

ISSUE 17: **Should the Change Control Process be sufficiently comprehensive to ensure that there are processes to handle, at a minimum the following situations: (OSS, Attachment 7, Exhibit A)**

a) introduction of new electronic interfaces? (Settled)
b) retirement of existing interfaces? (Settled)
c) exceptions to the process? (Settled)
d) documentation, including training? (Settled)
e) defect correction?
f) emergency changes (defect correction)? (Settled)
g) an eight step cycle, repeated monthly?
h) a firm schedule for notifications associated with changes initiated by BellSouth?
i) a process for dispute resolution, including referral to state utility Authorities or courts?
j) a process for the escalation of changes in process? (Settled)

CLECs are entitled to have access to the operational support systems (OSS) utilized by BellSouth to provide service to its customers. To facilitate this access, BellSouth, together with the CLECs, has developed interfaces that allow the CLECs to communicate with BellSouth's OSS. (Pate Direct Testimony, pp. 4-5). Changes in these interfaces are significant, and affect both BellSouth and the CLECs. Therefore, there has to be an orderly process for changes in these interfaces.

In this regard, there is a document that exists that embodies the change control process, and varying versions of the document were introduced in this proceeding as exhibits. (*See e.g.* Pate Prefiled Rebuttal Testimony, RMP-5). The document is constantly undergoing revision, which is illustrated by the fact that at the time this arbitration was tried in North Carolina last summer, the then-current version of the document was Version 1.4. (Transcript Vol. 1, p. 173). The current version at the time AT&T filed its supplemental testimony was Version 2.2. Since this arbitration was first heard in North Carolina, there have been versions 1.4, 1.5,

1.6, 1.7, 2.0, 2.1, 2.1a, and 2.2. (Transcript Vol. 1, pp. 175-176). The document itself is clearly evolutionary, and with that in mind, BellSouth will make some general remarks about the change control process itself, before addressing the specific issues that AT&T has raised in its Petition.

BellSouth began developing processes for keeping CLECs informed and involved in changes to BellSouth's systems quite some time ago. The first process was the Electronic Interface Change Control Process. (Pate Prefiled Direct, p. 23). Subsequently, after receiving input and information from the CLECs, BellSouth introduced a second change control process, the Interim Change Control Process (ICCP). *Id. at* 26-27. These evolving versions resulted from meetings and conferences involving BellSouth and the CLECs that were interested in participating. *Id.* at 24-25. Since the BellSouth's OSSs are regional in nature, the CCP is regional as well, and CLECs from across the region are involved in the development of this process. *Id.* at 26.

AT&T was a participant in those proceedings, but was evidently unhappy with the resolution of some of its specific issues with the CCP. Consequently, AT&T raised a number of individual issues in this arbitration, as well as in its arbitrations with BellSouth in five other states, regarding the change control process. These issues range from the inclusion in the CCP of a dispute resolution process to the scope of the exclusions from the process. AT&T is simply shopping from state commission to state commission (Transcript Vol. 1, pp. 171-172),

hoping to convince one of the commissions in the BellSouth region to mire itself in the minutiae that AT&T keeps complaining about with regard to the CCP.

BellSouth has urged, successfully to this point, that the other state commissions refuse to do what AT&T is asking. BellSouth has urged the state commissions to let the process work, which it is clearly doing. There are over 100 registered participants in the Change Control Process. (Transcript Vol. 1, p. 171). AT&T admits that it does not speak for all the participants in this process. *Id.* at 180. The Change Control Process offers a forum to reach consensus regarding outstanding issues.

The CCP also has a provision that permits CLECs to escalate issues within BellSouth where consensus is not reached. (Transcript Vol. 1, p. 173). In addition, if CLEC participants are not satisfied with the results of their appeal within BellSouth, the CCP provides an additional remedy of taking the dispute to an appropriate state regulatory authority. *Id.* Regarding the unresolved issues that AT&T is now attempting to arbitrate, AT&T admitted that neither AT&T nor any CLEC had escalated those issues within BellSouth as called for in the CCP. *Id.* at 183-184.

Therefore, BellSouth makes the same request of the Authority as it has with the other commissions. BellSouth requests that the Authority not compel the resolution of any of AT&T's specific complaints in this proceeding. (Pate Prefiled Direct, p. 20). This is the result that is reflected in the North Carolina Utilities Commission Recommended Arbitration order, was the basis of the Georgia Public

Service Commission order, and is the practical effect of the decisions that either have been issued, or will be issued in South Carolina, Louisiana and Mississippi, where the issue was not even raised.

A compelling basis for BellSouth's position on this issue is that BellSouth's OSS with which the CLECs interface are regional in nature. It follows that the change control process to address those interfaces has to be regional as well. If BellSouth or any other local exchange company were forced to deal with up to nine different change control processes for the same interfaces and the same OSS, it would quickly become unmanageable. (Pate Prefiled Direct, p. 22). For instance, one of the issues raised by AT&T is the time in which certain steps should be taken to determine whether a defect exists in a particular interface. If BellSouth were given nine different times within which it had to respond, the difficulty in complying would be obvious.

Moreover, not only is the change control process regional in the sense that it applies to interfaces that are regional, it also applies to all CLECs that choose to participate, not just AT&T. *Id.* However, AT&T is the only CLEC that is a party to the present arbitration. It is patently unfair to allow AT&T, because it has an arbitration underway, to dispute and arbitrate the terms of the change control process that, when implemented, will affect 100 other CLECs that are participating in the CCP but are not parties to this arbitration. Simple fairness dictates that the process that affects all of these CLECs cannot be arbitrated in a case involving only one of those CLECs.

Finally, the CCP is an evolving process and if the Authority were to take the matter up, it would never be able to put it down. AT&T hedged on this issue (Transcript, p. 178), but the bottom line is that AT&T is looking for some commission that will buy its argument and involve itself in the CCP process, without having the CLECs use the escalation and dispute resolution process that is embodied in the CCP. Once AT&T finds a commission that will do that, AT&T's quest is over, and that commission will then be the *de facto* arbitrator of every dispute AT&T has regarding the CCP. The Authority should not take that possibility lightly. For instance, Issue 17 initially listed 10 separate sub-issues, (a) through (j), that AT&T raised in its petition and asked the Authority to resolve. By the time the testimony was filed, AT&T had added issues (k) through (o), although Mr. Bradbury conceded that some of the latter issues should not have been included in his testimony in this arbitration. (Transcript Vol. 1, p. 178). At the time of the hearing, sub-issues (a) (b), (c), (d), (f), (j) and (k) had been resolved by the parties, and portions of sub-issues (e) and (g) have been resolved. (Transcript Vol. 1, p. 180). However, waiting in the wings are the issues that Mr. Bradbury raised in his testimony that were not raised in AT&T's petition. Those issues are still out there, and AT&T is just waiting for the Authority to step in and take charge of the CCP, so that those issues and every other issue AT&T can think of can be raised before the Authority. The Authority should not put itself in that position. The CCP is currently working as it stands. To the extent that there is a problem raised that cannot be resolved through the CCP, the CCP has provisions that allow disputes to

be escalated within BellSouth and, if the dispute between BellSouth and the CLECs (not just AT&T) cannot be resolved, there is a dispute resolution process that allows the matter to be brought before a state commission. The Authority should conclude, based on the evidence presented, that the process is working, and should leave these disputes that AT&T has raised to be resolved within the CCP.

BellSouth will not attempt to address each of the individual unresolved sub-issues raised by AT&T in arbitration issue 17 in this brief as they are fully discussed in BellSouth witness Pate's Prefiled Rebuttal Testimony, pp. 25-32. Nevertheless, BellSouth does want to touch upon several of the issues to further demonstrate why the Authority should not simply take over the CCP.

(e) Defect Correction

(g) An eight step cycle, repeated monthly

As the CCP has evolved, the nature of the sub-issues that AT&T has raised have evolved as well. These two sub-issues are no longer what they appear. At one time, the definition of a "defect" was an issue that AT&T wanted the state commissions to resolve. That part of sub-issue (e) has been resolved between the parties, but now AT&T wants the Authority to address the time that should be allowed for BellSouth to address certain matters. (*See, e.g.*, Pate Prefiled Rebuttal, p. 27). For instance, AT&T wants to shorten the times that it takes to do certain things in the process. (Bradbury Prefiled Direct, p. 71). The difficulty with AT&T's position regarding the cycle times is that it presented no evidence upon which the Authority could make a meaningful change in the times allowed for certain steps to

be taken to correct a defect or to process a change. Indeed, AT&T simply asks for reductions in cycle times without a work of explanation to justify the reductions. *Id.* If the Authority were inclined to act on AT&T's requests regarding the unsettled issues involving cycle times, what evidence would the Authority rely upon in reaching a conclusion as to which party was right? The answer is that there is none, and this is a matter that has to be left to the CCP. If it cannot be resolved there, then presumably the aggrieved party could bring the matter to the appropriate state commission with evidence that would support its position on the issues.

The point, of course, is that this is simply not an appropriate matter for the Authority to take up with the evidence it has in front of it. How can the Authority know whether a process takes 10 days, 20 days or 15 days? This is an issue that should be left to the CCP. Again, if BellSouth and the CLECs, as a group, cannot resolve the issue, and it actually makes a difference to someone other than AT&T, then there is a process to address it. That is the path that AT&T should follow.

(h) A firm schedule for notifications associated with changes initiated by BellSouth

The first question the Authority should ask is whether it can determine what the problem is that AT&T wants resolved. Mr. Bradbury stated that AT&T wanted 90 days advance notice for distribution of draft requirements and specifications. (Bradbury Prefiled Direct, p. 72). BellSouth's witness Pate testified the proposed intervals in the newest version of the CCP document was 90 days for drafts and 45 days for final requirements. (Pate Prefiled Rebuttal, p. 29). So, is there an

issue or not? AT&T has not indicated that the issue is settled; however, based on its testimony, it is unclear to BellSouth, and no doubt will be unclear to the Authority as to what relief AT&T wants. BellSouth suggests that this simply highlights, once again, that this is not the proper forum for resolution of these issues.

There is a second point, however, that is also important. Requiring additional advance notice for these types of releases presents several problems. First, as most people would acknowledge, changes in the computer and software industry do not occur at an even and measured pace. AT&T's solution would in essence result in software changes being held for periods of time when the software could be out and being used, just so AT&T could have its lengthy notice. That simply penalizes other CLECs who are more adept, and quicker at implementing changes. Moreover, BellSouth maintains one prior version of the software that is being changed, so if AT&T is not ready to move forward, it can continue to use the prior version while other CLECs who are more adaptable can take advantage of improvements and additions to these interfaces.

As the CCP has evolved, BellSouth has made a number of changes in the time intervals for software releases. (Pate Prefiled Direct, p. 63). Again, this simply demonstrates that this entire process needs to be left with the CLECs and BellSouth. Should those parties be unable to reach a consensus, there is a process for escalating any disputes.

(i) **A process for dispute resolution, including referral to state utility commissions or courts.**

This too is a sub-issue that demonstrates the futility of having the Authority involve itself at this point in this process. The current version of the CCP, and indeed all versions, provide for escalation and dispute resolution. (Transcript Vol. 1, p. 183). In the most current version of the CCP, Version 2.2, there is an escalation and dispute resolution process that begins on page 53 and continues through page 58. It is a detailed procedure, right down to the telephone numbers and e-mail addresses of the BellSouth employees who would be involved in an escalation. The dispute, referring to Exhibit JMB-S5, now seems to have boiled down to a question of whether, when there is mediation, all the CLECs have to be notified of the mediation and whether CLECs having the same issue as the CLEC seeking mediation will be bound by the results the first CLEC obtains. (Transcript Vol. 2, p. 178). Interestingly, the CLEC position is that the CLECs do not want to be bound by the results of what other CLECs mediate *Id.*; yet that is exactly what AT&T is trying to do in this proceeding. AT&T seeks to obtain a CCP that it wants that will bind all the other CLECs that cannot and have not participated in this proceeding. It is remarkable that AT&T wants the Authority to sign up as the decision maker on the issues regarding the CCP that AT&T has raised, when one of the very issues AT&T raises is its concern that it does not want to be bound by what other CLECs do.

AT&T should be left to pursue its requested changes in the CCP to the CCP itself. If the Authority embarks on a course of resolving disputes such as these, it is a journey that will never end.

ISSUE 18: What should be the resolution of the following OSS issues currently pending in the change control process but not yet provided? (OSS, Attachment 7, Exhibit A)

a) parsed customer service records for pre-ordering?
b) ability to submit orders electronically for all services and elements?
c) electronic processing after electronic ordering, without subsequent manual processing by BellSouth personnel?

(a) Parsing Customer Service Records.

As a preliminary matter, BellSouth would note that this specific sub-issue, unlike sub-issues (b) and (c), is presently being considered in the CCP. Consistent with BellSouth's position regarding Issue 17, this matter should be referred to the CCP for final resolution.

Moving to the substance of the sub-issue, placing an order for a customer generally involves three steps. First, there is the pre-ordering phase, then the ordering phase and finally the provisioning phase. In the pre-ordering phase, AT&T checks to see what services are available in the area in which the potential customer is seeking service, and if the potential customer is currently a BellSouth end-user customer, AT&T obtains information about the customer from BellSouth. The information about the customer comes from BellSouth's existing customer service records. These records are transmitted electronically to AT&T in the same format that the records are used by BellSouth's retail operations. (Pate Prefiled Direct, p. 74). The information that is sent, while in a data stream, includes unique section identifiers and delimiters that allow BellSouth's retail operations to populate the necessary fields when a customer is attempting to order new service. *Id.* at 85-86.

AT&T's position, and its change request, is premised upon AT&T's claim that the data stream is not "parsed" or broken down in the way that AT&T wants it. That is, the section identifiers and delimiters that are present in the data stream do not provide the breakdown that AT&T desires.

This is another issue that AT&T is carrying around the BellSouth region and around the country, trying to find a commission that will order the ILECs to do parsing on the ILEC's side of the interfaces. AT&T tried this at the FCC, and the FCC specifically rejected AT&T's argument. (Transcript Vol. 1, p. 190). Nevertheless, as Mr. Pate has testified, BellSouth has a team working on the issue of parsing, as AT&T wants it (Pate Prefiled Direct, pp. 75-76), and the targeted implementation date for this parsing is the summer, 2001. (Transcript Vol. 1, p. 188).

By presenting this issue to the Authority, AT&T is simply trying to "jump the line" and to obtain something that it wants earlier than it would otherwise obtain it. Moreover, it is asking the Authority to afford AT&T with better treatment, in the sense that it wants more detailed data than BellSouth provides to its own retail units. AT&T should not be allowed to jump the line in this fashion, and its request for parsed customer service records should be allowed to proceed through the change control process in the orderly way other such requests are processed.

(b) The Ability to Submit Orders Electronically for all services and elements.

This sub-issue does not involve a change request that has been submitted to BellSouth, but rather relates to a larger philosophical difference that exists between

AT&T and BellSouth. In order to place this sub-issue in context, some discussion of the ordering process is required.

As previously mentioned, when a new customer calls AT&T and asks for service, AT&T first uses a pre-ordering interface, such as the Telecommunications Access Gateway (TAG), to determine what is available where the customer wants service and to look at the customer's service record. Generally, the customer will dial a specific number and get an AT&T service representative. That representative sits at a computer terminal, as does the BellSouth customer service representative. AT&T has developed front-end software that allows its customer service representative to interact with its potential new customer. The AT&T front-end system for pre-ordering and ordering is integrated with BellSouth's pre-ordering and ordering interfaces, thereby enabling the AT&T service representative to obtain the necessary pre-ordering information and, when the order is ready to place, to send the order (technically the request for a service order) to BellSouth. This process flow is set forth on AT&T witness Bradbury's Exhibits JMB-27 through 29.

This sub-issue involves the fact that not every order that an AT&T customer service representative takes from AT&T's customer can be electronically transmitted to BellSouth. Instead, for some orders, the AT&T service representative has to take the order from its potential customer, print the order out, and then manually transmit the order to BellSouth, usually by facsimile. (Transcript Vol. 1, pp. 193-194). When the printed order is received in the BellSouth Local Carrier Service Center (LCSC), a BellSouth worker in that center enters the order

into one of BellSouth's electronic systems. (Transcript Vol. 1, p. 194). Currently, more than 88% of orders are taken electronically for the CLEC group as a whole. (Transcript Vol. 1, p. 198). What AT&T is asking the Authority to do in this sub-issue is to order BellSouth to accept every order electronically, if AT&T chooses to submit the order electronically.

There are several problems with AT&T's position. First, the orders that are involved here are generally complex orders. (Transcript Vol. 1, p. 193). The specific computer programming and cost that would be necessary to accept such orders electronically is unknown. Second, and despite AT&T's assertions to the contrary, BellSouth's similar complex orders for its retail customers are first handled by BellSouth's account teams that then send these orders to the appropriate BellSouth service representatives for entry into the appropriate service order negotiation system. (Transcript Vol. 1, pp. 194-195). That is, BellSouth handles these orders manually, and the orders are handled by BellSouth at least twice, just as AT&T's orders have to be handled twice. Thus, there is no discrimination in the way BellSouth's retail customer service units are treated as compared to the way that AT&T's complex orders are handled.

In spite of AT&T's assertions, it is clear that what it is seeking is simply not required of BellSouth. As was noted during the proceeding, both Bell Atlantic and SBC have now obtained approval from the FCC for the provision of interLATA telephone service. In both those proceedings, access to the incumbents' OSS was at issue, and it is clear that the fact that some orders from CLECs had to be

handled manually did not mean that the new entrants did not have parity. For instance, in its Bell Atlantic decision the FCC acknowledged that some complex orders would be submitted manually. (*Application by Bell Atlantic New York for Authorization Under Section 271 To Provide In-Region, InterLATA Service*, CC Docket No. 99-295, Memorandum Opinion and Order, 15 FCC 3953, released Dec. 22, 1999 ("Bell Atlantic Order") at Paragraph 92, Footnote 230).

Clearly there is no requirement that all orders that AT&T wants to submit have to be accepted electronically by BellSouth. BellSouth does not treat its own orders that way, and cannot be required, in fairness, to expend the resources to do so on AT&T's behalf.

(c) **Electronic processing after electronic ordering, without subsequent manual processing by BellSouth Personnel.**

The prior sub-issue dealt with the question of whether some complex orders could be required to be submitted manually, rather than electronically. That is, it addressed the question of whether AT&T would be required, for some types of orders, to submit the orders to BellSouth for entry into its OSS by facsimile, by hand or through some other process that delivered a piece of paper to BellSouth containing AT&T's orders. The vast majority of the orders AT&T wants to place, however, can be submitted electronically. (Transcript Vol. 1, p. 198). Again returning to AT&T witness Bradbury's Exhibits JMB-27 through 29, for most orders, the AT&T service representative takes the order and enters it into AT&T's front-end computer system. When the order is ready to be placed, the service

representative hits a key, and the order electronically flows, using the EDI interface, into BellSouth's OSS. *Id.*

A large number of these orders simply flow into another computer, where the request for service is reviewed using computer software and then passed to another program where the request is converted into service order format which the provisioning systems can accept for processing. From that point in the process flow, when a service order is generated, AT&T's service orders are treated just like BellSouth's service orders created by BellSouth's retail operations.

This sub-issue revolves around the fact that there are certain requests for service that, instead of "flowing through" to the creation of a service order, "drop out" for manual handling by BellSouth personnel. (Transcript Vol. 1, p. 200). AT&T wants the Authority to order BellSouth to make all of AT&T's orders "flow through" electronically, without any subsequent human intervention (Transcript Vol. 1, p. 199), until the service order is in the provisioning process. This request is simply unreasonable.

This issue, too, has been discussed extensively at the FCC. In its Bell Atlantic Order, the FCC clearly recognized that while some orders "flow through," others are not designed to flow through. (*See, e.g.*, Bell Atlantic Order at Paragraph 160, Footnote 488). Similarly, in the recent FCC order involving SBC's application for interLATA relief in Texas, the FCC acknowledged that SBC's systems were not designed to allow all service order requests to "flow through." (*See, e.g. Application by SBC Communications Inc., Southwestern Bell Telephone*

Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance To Provide In-Region, InterLATA Services in Texas, CC Docket No. 00-65, Memorandum Opinion and Order, FCC-00-238, released June 30, 2000 ("SBC Order") at Paragraph 180, Footnote 490).

Consequently, it is evident that AT&T's request in this regard should not be granted. BellSouth is using its best efforts to insure that as many orders as possible flow through. It is in BellSouth's best interest that this happen, because the more orders that flow through, the fewer people BellSouth has to devote to handling these types of orders. However, at some point the economics of programming make it inappropriate to expect that every order will flow through. The FCC has recognized this, there are perfectly good reasons why it happens, and AT&T's position on this sub-issue should not be adopted.

ISSUE 19: Should BellSouth provide AT&T with the ability to access, via EBI/ECTA, the full functionality available to BellSouth from TAFI and WFA? (OSS, Attachment 7)

Issue 19 deals with repair and maintenance interfaces that are available to CLECs so that when they get customers, they are able to address their customers' service needs. In this regard, BellSouth has made available to AT&T the exact interface that BellSouth's retail operations have access to, but AT&T wants more.

When a BellSouth subscriber calls BellSouth with a service or maintenance problem, the BellSouth representative uses a system called Trouble Analysis and Facilitation Interface (TAFI) to deal with the problem. TAFI is a human-to-machine interface (Pate Prefiled Direct, pp. 13-14) that allows the representative to take the

information from the customer and to do certain tests with the customer on the line. BellSouth has made the TAFI interface available to AT&T on a non-discriminatory basis. *Id.* at 89. That is, AT&T has the exact same access to TAFI that BellSouth's retail units have to TAFI.

The issue here revolves around the fact that TAFI cannot be integrated with AT&T's front-end computer systems. (Transcript Vol. 1, p. 207). There is another system, the Electronic Communications Trouble Administration (ECTA) that is a machine-to-machine interface that could be integrated into AT&T's systems. (Pate Prefiled Direct, pp. 93-94). However, ECTA does not provide certain "on-line" functions that are available with TAFI. *Id.*

AT&T's proposed solution is to either have BellSouth reprogram ECTA to have all of the functionality of TAFI or to have BellSouth create an entirely new interface that has those functions. (Transcript Vol. 1, p. 206). BellSouth's view, on the other hand, is that it makes available to AT&T the exact same functionality that its retail units have and nothing further is required in order for AT&T to have parity with BellSouth.

Once again, this is an issue that the FCC has already addressed and resolved in a manner consistent with BellSouth's positions. AT&T concedes that the FCC has not found that the lack of integration constitutes discriminatory access to the maintenance and repair systems. (Transcript Vol. 1, p. 207). Indeed, in the recent Bell Atlantic proceeding, the FCC stated that it specifically disagreed "with AT&T's assertion that Bell Atlantic must demonstrate that it provides an integratable,

application-to-application interface for maintenance and repair." (Bell Atlantic Order at paragraph 215). The FCC specifically concluded that Bell Atlantic satisfied its obligations by "demonstrating that it offers competitors substantially the same means of accessing maintenance and repair functions as Bell Atlantic's retail operations." *Id.* In this case, as BellSouth witness Pate clearly stated, AT&T has non-discriminatory access to BellSouth's maintenance and repair interfaces, and nothing further is required. (Pate Prefiled Direct, p. 89).

AT&T's position regarding this matter is quite interesting. AT&T concedes that if TAFI were integratable into its systems, AT&T would then have equivalent access to BellSouth's maintenance and repair systems. (Transcript Vol. 1, p. 207). However, AT&T also reluctantly agreed that if BellSouth gave AT&T equivalent access, integration was not necessary. *Id.* AT&T's position is simply that without integration, there cannot be equivalent access and while AT&T has made that argument numerous places, no one has accepted it yet.[10]

AT&T has the same access to BellSouth's maintenance and repair systems as BellSouth does. The one that AT&T wants to use is not capable of being integrated into AT&T's front-end systems, but the FCC has made it clear that this is not required as long at AT&T has equivalent assess. AT&T admits that it has

[10] The North Carolina Utilities Commission, in its Recommended Arbitration Order, found in AT&T's favor on this issue. However, that was done in part on the Public Staff's recommendation that the NCUC do so. Exceptions have now been taken to the Recommended Arbitration Order, and the Public Staff has changed its opinion, leading to a question of what the NCUC finally order will actually conclude regarding this matter.

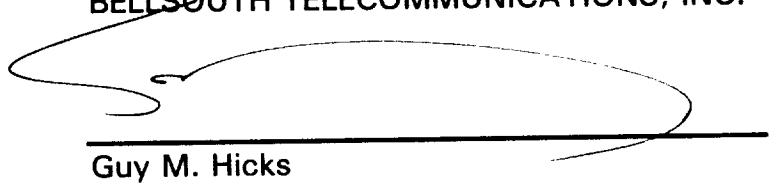
equivalent access, but for the integration issue. The only conclusion that can be reached is that AT&T has no case on this point.

CONCLUSION

There are a number of issues presented in this arbitration. Although some of the issues are complex, others are fairly simple. BellSouth has attempted to negotiate with AT&T in good faith, and believes that its positions, detailed above, are reasonable. On the other hand, AT&T, as BellSouth has explained above, is simply taking its case from state to state, hoping, for a number of its issues, that it can get some state commission, any state commission, to accept its arguments. The Authority should not be entrapped by such "forum shopping." BellSouth's positions on the issues are reasonable, well thought out, fair and should be adopted by the Authority.

Respectfully submitted,

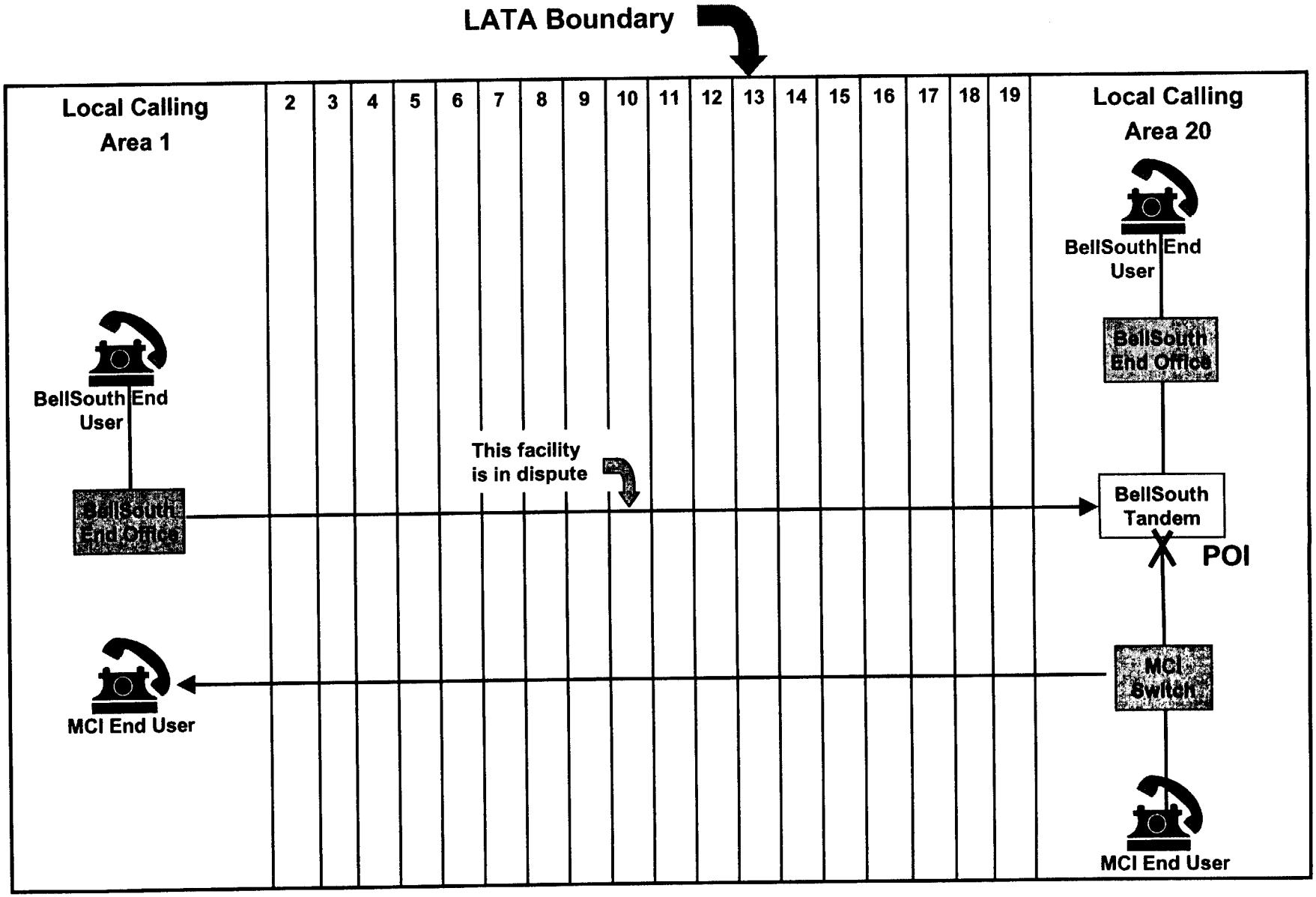
BELLSOUTH TELECOMMUNICATIONS, INC.



Guy M. Hicks
333 Commerce Street, Suite 2101
Nashville, Tennessee 37201-3300
(615) 214-6301

R. Douglas Lackey
Suite 4300, BellSouth Center
675 W. Peachtree Street, N.E.
Atlanta, GA 30375

Docket No. 00-00079
Exhibit 1



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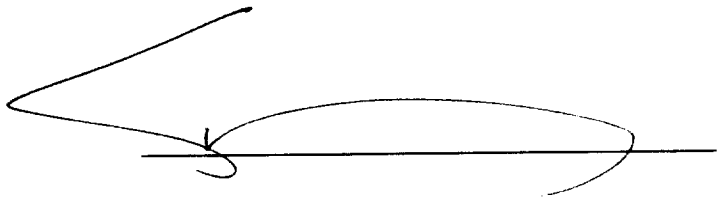
CERTIFICATE OF SERVICE

I hereby certify that on May 10, 2001, a copy of the foregoing document was served on the parties of record, via the method indicated:

[ ] Hand
[X] U.S. Mail
[ ] Facsimile
[ ] Overnight Mail
[ ] Electronic Mail

James Lamoureux, Esquire
AT&T
1200 Peachtree St., NE
Atlanta, GA 30309



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