BEFORE THE TENNESSEE REGULATORY AUTHORITY AT

NASHVILLE, TENNESSEE

November 29, 2001

IN RE: PETITION FOR ARBITRATION OF THE INTERCONNECTION AGREEMENT 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**

FINAL ORDER OF ARBITRATION AWARD

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I. FACTUAL AND PROCEDURAL HISTORY

AT&T Communications of the South Central States, Inc. and TCG MidSouth, Inc. (collectively "AT&T") filed the *Petition by AT&T and TCG for Arbitration Under the Telecommunications Act of 1996* on February 4, 2000. BellSouth Telecommunications, Inc. ("BellSouth") filed a response on February 29, 2000. At the March 14, 2000 Authority Conference, the Directors accepted the arbitration, appointed themselves as arbitrators, appointed a Pre-Arbitration Officer, and directed the parties to participate in substantive mediation.[1] On November 21, 2000, the parties filed a joint issues matrix listing nineteen (19) disputed issues.

On April 3, 2001, the parties filed a *Revised Issues Matrix for Arbitration Between AT&T and BellSouth*. According to this filing, the parties settled Issues 8, 11, 17(a), 17(b), 17(c), 17(d), 17(f), 17(j), and 17(k). The parties also agreed to resolve Issue 6 upon completion of Docket No. 00-00544.[2] Thus, the remaining issues in dispute were 1, 2, 3, 4, 5, 7, 9, 10, 12, 13, 14, 15, 16, 17(e), 17(g), 17(h), 17(i), 18 (a) through (c), and 19. The Directors, acting as arbitrators, held a hearing on the remaining issues on April 9 and 10, 2001. On August 7, 2001, AT&T filed a letter notifying the Authority that AT&T and BellSouth had settled Issues 5 and 9. The Arbitrators deliberated the merits of all outstanding issues immediately following the regularly scheduled Authority Conference on September 25, 2001.

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[1] *See Order Accepting Arbitration, Appointing Pre-Arbitration Officer and Directing Mediation*, p. 2 (May 18, 2000).

[2] *In re: Generic Docket to Establish UNE Prices for Line Sharing Per FCC 99-355, and Riser Cable and Terminating Wires as Ordered in TRA Docket 98-00123.*

II. ISSUE 1 - SHOULD CALLS TO INTERNET SERVICE PROVIDERS ("ISPs") BE TREATED AS LOCAL TRAFFIC FOR THE PURPOSES OF RECIPROCAL COMPENSATION

A. POSITIONS OF THE PARTIES

In its post-hearing brief, filed after the release of the FCC's *Reciprocal Compensation Remand Order*,[3] BellSouth argues that the Arbitrators do "not have jurisdiction to require the payment of reciprocal compensation for ISP-bound traffic and this issue cannot be further addressed in this proceeding."[4] In its previously filed testimony, however, BellSouth had recognized the Arbitrators' previous rulings on this issue and requested that the payment of reciprocal compensation for ISP-bound traffic be an interim mechanism subject to a true-up upon establishment by the FCC of a compensation mechanism for ISP-bound traffic.[5]

In its post-hearing brief, AT&T argues that the *Reciprocal Compensation Remand Order* is not effective and does not "preempt any state commission decision regarding compensation for ISP-bound traffic prior to the effective date of the Order."[6] AT&T requests that the Arbitrators require BellSouth to pay reciprocal compensation for traffic exchanged up to the effective date of the *Reciprocal Compensation Remand Order* and apply the interim mechanism contained in the *Reciprocal Compensation Remand Order* for traffic exchanged thereafter.[7]

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[3] *See In re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, FCC 01-131, CC Docket No. 96-98, 16 FCC Rcd. 9151 (Apr. 27, 2001) (Order on Remand and Report and Order) (hereinafter *Reciprocal Compensation Remand Order*).

[4] *Post-Hearing Brief of BellSouth Telecommunications, Inc.*, p. 4 (May 10, 2001).

[5] John A. Ruscilli, Pre-Filed Direct Testimony, p. 3 (Dec. 20, 2000).

[6] *Post Arbitration Brief of AT&T Communications of the South Central States, Inc. and TCG MidSouth, Inc.*, pp. 3-4 (May 10, 2001).

[7] *See id* at 6.

B. DELIBERATIONS AND CONCLUSIONS

Section 251(b)(5) obligates local exchange carriers to "establish reciprocal compensation arrangements for the transport and termination of telecommunications."[8] Section 51.701 of the FCC Rules "limits this obligation to 'local telecommunications traffic.'"[9] In an order released on February 26, 1999, the FCC applied an end-to-end analysis and concluded that ISP-bound traffic is not local, but rather largely interstate.[10] Nevertheless, the FCC also determined that state commissions may establish a compensation mechanism for such traffic, including reciprocal compensation, pending adoption of a rule by the FCC establishing an appropriate compensation mechanism.[11] On March 24, 2000, the United States Court of Appeals, District of Columbia Circuit, vacated the FCC's decision and remanded the matter to the FCC after finding that the FCC did not supply a "real explanation for its decision to treat end-to-end analysis as controlling."[12]

On April 27, 2001, the FCC released the *Reciprocal Compensation Remand Order*. In this order, the FCC explained:

> Central to our modified analysis is the recognition that 251(g) is properly viewed as a limitation on the scope of section 251(b)(5) and that ISP-bound traffic falls under one or more of the categories set forth in section 251(g). For that reason, we conclude that ISP-bound traffic is not subject to the reciprocal compensation provisions of section 251(b)(5).[13]

Additionally, the FCC discouraged describing traffic as "local," explaining that "local" is not a term

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[8] 47 U.S.C. § 251(b)(5) (Supp. 2000).

[9] *See Pleading Cycle Established for Comments on Request by ALTS for Clarification of the Commission's Rules Regarding Reciprocal Compensation for Information Service Provider Traffic*, DA 97-1399, CCB/CPD 97-30, 12 FCC Rcd. 9715 (Jul. 2, 1997).

[10] *See In re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, FCC 99-38, CC Docket No. 96-98, 14 FCC Rcd. 3689, paras. 1, 18, & 27 (Feb. 26, 1999) (Declaratory Ruling).

[11] *See id.* paras. 21-27.

[12] *Bell Atlantic Tele. Cos. v. FCC*, 206 F.3d 1, 8 (Mar. 24, 2000).

[13] *Reciprocal Compensation Remand Order*, para. 35.

used in Section 251(b)(5) or (g) and is subject to various meanings.[14] Lastly, having determined that ISP-bound traffic falls within the Section 251(g) exception to 251(b)(5), the FCC concluded that such traffic remains subject to the FCC's jurisdiction under Section 201 of the Act.[15] Based on the foregoing, the FCC explicitly affirmed its conclusion "that ISP-bound traffic is not subject to the reciprocal compensation obligations of section 251(b)(5)."[16]

In the *Reciprocal Compensation Remand Order*, the FCC cited the need for immediate action and, therefore, adopted an interim cost-recovery scheme for ISP-bound traffic that "(i) moves aggressively to eliminate arbitrage opportunities presented by the existing recovery mechanism for ISP-bound traffic by lowering payments and capping growth; and (ii) initiates a 36-month transition towards a complete bill and keep recovery mechanism while retaining the ability to adopt an alternative mechanism."[17] The FCC described the structure of its interim reciprocal compensation regime as follows:

> * Beginning on the effective date of this Order, and continuing for six months, intercarrier compensation for ISP-bound traffic will be capped at a rate of $.0015/minute-of-use (mou). Starting in the seventh month, and continuing for eighteen months, the rate will be capped at $.0010/mou. Starting in the twenty-fifth month, and continuing through the thirty-sixth month or until further Commission action (whichever is later), the rate will be capped at $.0007/mou. Any additional costs incurred must be recovered from end-users. These rates reflect the downward trend in intercarrier compensation rates contained in recently negotiated

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[14] *Id.* at para. 34. Note that as a result of the confusion related to the use of the term "local" to describe traffic, the FCC modified a previous ruling as follows:

> For similar reasons, we modify our analysis and conclusion in the Local Competition Order. There we held that "[t]ransport and termination of local traffic for purposes of reciprocal compensation are governed by sections 251(b)(5) and 251(d)(2)." We now hold that the telecommunications subject to those provisions are all such telecommunications not excluded by section 251(g). In the Local Competition Order, as in the subsequent Declaratory Ruling, use of the phrase "local traffic" created unnecessary ambiguities, and we correct that mistake here.

Id. at para. 46 (footnote omitted) (quoting *In re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, FCC 96-325, CC Docket No. 96-98, 11 FCC Rcd. 15,499, para. 1033 (Aug. 8, 1996) (First Report and Order)).

[15] *See id.* at para. 39, 52.

[16] *See id.* at para. 3.

[17] *Id.* at para. 7.

interconnection agreements, suggesting that they are sufficient to provide a reasonable transition from dependence on intercarrier payments while ensuring cost recovery.

* We also impose a cap on total ISP-bound minutes for which a local exchange carrier (LEC) may receive this compensation. For the year 2001, a LEC may receive compensation, pursuant to a particular interconnection agreement, for ISP-bound minutes up to a ceiling equal to, on an annualized basis, the number of ISP-bound minutes for which that LEC was entitled to compensation under that agreement during the first quarter of 2001, plus a ten percent growth factor. For 2002, a LEC may receive compensation for ISP-bound minutes up to a ceiling equal to the minutes for which it was entitled to compensation in 2001, plus another ten percent growth factor. In 2003, a LEC may receive compensation for ISP-bound minutes up to a ceiling equal to the 2002 ceiling. These caps are consistent with projections of the growth of dial-up Internet access for the first two years of the transition and are necessary to ensure that such growth does not undermine our goal of limiting intercarrier compensation and beginning a transition toward bill and keep. Growth above these caps should be based on a carrier's ability to provide efficient service, not on any incentive to collect intercarrier payments.

* Because the transitional rates are caps on intercarrier compensation, they have no effect to the extent that states have ordered LECs to exchange ISP-bound traffic either at rates below the caps or on a bill and keep basis (or otherwise have not required payment of compensation for this traffic). The rate caps are designed to provide a transition toward bill and keep, and no transition is necessary for carriers already exchanging traffic at rates below the caps.

* In order to limit disputes and costly measures to identify ISP-bound traffic, we adopt a rebuttable presumption that traffic exchanged between LECs that exceeds a 3:1 ratio of terminating to originating traffic is ISP- bound traffic subject to the compensation mechanism set forth in this Order. This ratio is consistent with those adopted by state commissions to identify ISP or other convergent traffic that is subject to lower intercarrier compensation rates. Carriers that seek to rebut this presumption, by showing that traffic above the ratio is not ISP-bound traffic or, conversely, that traffic below the ratio is ISP-bound traffic, may seek appropriate relief from their state commissions pursuant to section 252 of the Act.

* Finally, the rate caps for ISP-bound traffic (or such lower rates as have been imposed by states commissions for the exchange of ISP-bound traffic) apply only if an incumbent LEC offers to exchange all traffic subject to section 251(b)(5) at the same rate. An incumbent LEC that does not offer to exchange section 251(b)(5) traffic at these rates must exchange ISP- bound traffic at the state-approved or state-negotiated reciprocal compensation rates reflected in their contracts. The record fails to demonstrate that there are inherent differences between the costs of delivering a voice call to a local end-user and a data call to an ISP, thus the "mirroring" rule we adopt here requires that incumbent LECs pay the same rates for ISP-bound traffic that they receive for section 251(b)(5) traffic.[18]

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[18] *Id.* at para. 8.

In the *Reciprocal Compensation Remand Order*, the FCC expressed its intent that carriers gradually move away from the status quo reciprocal compensation regime to "avoid a 'flash cut' to a new compensation regime that would upset the legitimate business expectations of carriers and their customers."[19] Thus, the FCC determined that the interim compensation regime "applies as carriers re-negotiate expired or expiring interconnection agreements."[20]

Consistent with the FCC's ruling and to effectuate the transition to the interim compensation mechanism, the Arbitrators voted unanimously to require the payment of intercarrier compensation for ISP-bound traffic in a manner consistent with the FCC's *Reciprocal Compensation Remand Order*.

[19] *Id.* at para. 77.
[20] *Id.* at para. 82.

III. ISSUE 2 - WHAT DOES "CURRENTLY COMBINES" MEAN AS THAT PHRASE IS USED IN 47 C.F.R. SECTION 51.315(B)?

AND

IV. ISSUE 3 - SHOULD BELLSOUTH BE PERMITTED TO CHARGE A "GLUE CHARGE" WHEN BELLSOUTH COMBINES NETWORK ELEMENTS?

A. POSITIONS OF THE PARTIES

BellSouth states that it will provide combinations to AT&T at cost-based rates if the elements are combined and providing service to a particular customer at a particular location.[21] BellSouth contends that the FCC has held that incumbent local exchange carriers ("ILECs") are not required to combine unbundled network elements ("UNEs") for competing local exchange carriers ("CLECs") when those elements are not currently combined in BellSouth's network.[22] Further, BellSouth notes that the United States Court of Appeals, Eighth Circuit, vacated FCC Rules 51.315(c)-(f), which require ILECs to combine UNEs, and that the United States Supreme Court declined to reinstate the aforementioned rules upon appeal.[23]

BellSouth defines a "glue charge" as "the difference between market-based and cost-based prices."[24] BellSouth refers to an order of the Arbitrators in the arbitration between BellSouth and NEXTLINK Tennessee, LLC[25] to support its contention that BellSouth has no obligation to combine UNEs and, therefore, the TELRIC[26] pricing requirements of the Act are not applicable to

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[21] *See* John A. Ruscilli, Pre-Filed Direct Testimony, p. 5 (Dec. 20, 2000).
[22] *See id.* at 6.
[23] *See id.*
[24] *Id.* at 11.
[25] *See In Re: Petition of Nextlink Tennessee, LLC for Arbitration of Interconnection With BellSouth Telecommunications, Inc.*, Docket No. 98-00123. BellSouth did not cite any specific order.
[26] TELRIC is an acronym for Total Element Long Run Incremental Cost.

combinations.[27] BellSouth claims it is allowed to include "glue charges" in its UNE combination rates because combinations are not subject to TELRIC pricing rules.[28]

AT&T argues the Arbitrators should require BellSouth to provide a combination throughout its network as long as it provides the same combination to itself anywhere in its network.[29] AT&T claims that BellSouth's position is contrary to the Authority's decision that BellSouth must provide combinations as set forth in the *Second Interim Order Re: Revised Cost Studies and Geographic Deaveraging* in the Permanent Prices proceeding, Docket No. 97-01262.[30]

AT&T claims that "glue charges" lead to UNE rates that are not cost-based.[31] AT&T maintains that the appropriate rates for UNE combinations are those approved in the Permanent Prices proceeding, which do not include a "glue charge."[32]

B. DELIBERATIONS AND CONCLUSIONS

FCC Rule 51.315(b) applies to network elements that an ILEC "currently combines."[33] In the FCC's *First Report and Order*, the FCC stated that the proper reading of "currently combines" is "ordinarily combined within their network, in the manner in which they are typically combined."[34] In its *Third Report and Order*, the FCC stated that it was declining to address this argument at this

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[27] *See* John A. Ruscilli, Pre-Filed Direct Testimony, p. 11 (Dec. 20, 2000).
[28] *See id.* at 11.
[29] *See* Gregory R. Follensbee, Pre-Filed Rebuttal Testimony, p. 15 (Jan. 8, 2001).
[30] *See id.* at 3, 7.
[31] *See id.* at 15.
[32] *See id.*
[33] 47 C.F.R. § 51.315(b).
[34] *In re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, FCC 99-325, CC Docket No. 96-98, 11 FCC Rcd. 15,499, para. 296 (Aug. 8, 1996) (First Report and Order) (hereinafter *First Report and Order*). The Eighth Circuit Court vacated FCC Rule 51.315(b), but the United Stated Supreme Court reversed the Eighth Circuit Court's ruling. *See Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 813 (8th Cir. 1997) *aff'd in part rev'd in part sub nom. AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 393-95, 119 S.Ct. 721, 736-38 (1999).

time "because this matter is currently pending before the Eighth Circuit."[35] Therefore, the only FCC interpretation of "currently combines" remains the one contained in the *First Report and Order*.

The Authority has also addressed this issue, as noted by AT&T, in the Permanent Prices proceedings. In the *Second Interim Order Re: Revised Cost Studies and Geographic Deaveraging*, the Authority defined currently combines consistent with the FCC's decisions. Specifically, the Authority held that "BellSouth must provide the combination throughout its network as long as it provides this same combination to itself anywhere in its network."[36] As to the imposition of the "glue charges" for UNE combinations, the Authority has held that UNE combinations "should be priced at the sum of the [UNE] prices after adjustments for nonrecurring costs to reflect efficiencies."[37] Thus, UNE combinations must reflect the FCC's TELRIC pricing standards. The imposition of a "glue charge" is inconsistent with these pricing standards.

Therefore, consistent with the FCC's orders and the Authority's decisions in the Permanent Prices proceeding, the Arbitrators voted unanimously to define "currently combines" to include any and all combinations that BellSouth currently provides to itself anywhere in its network. The Arbitrators further held that BellSouth shall not include a "glue charge" when providing UNE combinations.

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[35] *In re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, FCC 99-238, CC Docket No. 96-98, 15 FCC Rcd. 3696, para. 479 (Nov. 5, 1999) (Third Report and Order) (hereinafter *Third Report and Order*).

[36] *In re: Petition of BellSouth Telecommunications, Inc. to Convene a Contested Case to Establish "Permanent Prices" for Interconnection and Unbundled Network Elements*, Docket No. 97-01262, *Second Interim Order Re: Revised Cost Studies and Geographic Deaveraging*, p. 10 n.17 (Nov. 22, 2000).

[37] *Id., Correction of Transcript of April 25, 2000 TRA Conference and Erratum to Second Interim Order Re: Revised Cost Studies and Geographic Deaveraging*, p. 2 (Mar. 6, 2001).

V. ISSUE 4 - UNDER WHAT TERMS AND CONDITIONS MAY AT&T PURCHASE NETWORK ELEMENTS OR COMBINATIONS TO REPLACE SERVICES CURRENTLY PURCHASED FROM BELLSOUTH TARIFFS?

A. POSITIONS OF THE PARTIES

BellSouth claims this issue involves the application of termination liability charges to services converted to UNEs.[38] BellSouth claims that if AT&T was purchasing tariffed services at month-to-month rates then "BellSouth will simply effect the conversion to UNE rates."[39] However, because AT&T decided to purchase tariffed services under contract based on a volume and term commitment, BellSouth claims that it should be able to assess any and all applicable termination charges upon conversion to UNEs.[40] BellSouth maintains that when tariffed services are converted to UNEs, service is not being terminated, but the "retail relationship with BellSouth is being terminated."[41]

AT&T notes that all aspects of this issue have been resolved, save the application of termination charges assessed for converting a service to UNEs or UNE combinations.[42] AT&T claims that it is primarily interested in converting special access services to Enhanced Extended Loops ("EELs").[43] AT&T asserts that it is not a retail customer. Further, AT&T asserts that it should not be assessed termination charges when converting services to UNEs because BellSouth prevented AT&T from purchasing combined elements that provided the same functionality.[44]

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[38] *See* John A. Ruscilli, Pre-Filed Direct Testimony, p. 13 (Dec. 20, 2000).
[39] John A. Ruscilli, Pre-Filed Rebuttal Testimony, p. 6 (Jan. 8, 2001).
[40] *See id.*
[41] *Id.* at 6.
[42] *See* Gregory R. Follensbee, Pre-Filed Direct Testimony, p. 13 (Dec. 20, 2000).
[43] *See id.* at 14.
[44] *See* Transcript of Proceedings, Apr. 9, 2001, vol. I-A, p. 34 (Cross-Examination Testimony of Richard Guepe).

B. DELIBERATIONS AND CONCLUSIONS

Based upon the testimony of both parties, the only aspect of this issue brought before the Arbitrators for resolution is the proper application of termination charges when services are converted to UNEs. At the hearing on April 9, 2001, the following exchange occurred between counsel for AT&T, Mr. Lamoureux, and a witness for BellSouth, Mr. Ruscilli:

> [Mr. Lamoureux]: Now, is it your position that if we convert to UNE combinations from special access but we agree to continue to live up to the term commitment or volume per unit commitment that you still intend to assess termination liability provisions?
> [Mr. Ruscilli]: Yes.
> [Mr. Lamoureux]: And yet the contract language says that you will only apply the termination liability provisions set forth in the tariffs or contract. And that tariff only says that those liability provisions kick in if we don't meet the term or the volume commitment. Is that right?
> [Mr. Ruscilli]: That's correct. However, when you have converted to UNE's for special access, you cease to become a special access customer of BellSouth's where you've purchased this service under a retail tariff. You're now a CLEC that's buying UNEs, so you're no longer satisfying this retail commitment.[45]

BellSouth may only assess termination liability charges consistent with the relevant tariffs and contracts to which it and AT&T have agreed. The FCC held in the *Third Report and Order* that the requesting carrier should pay any termination penalties required under volume and term contracts.[46] Thus, the Arbitrators voted unanimously that the applicable termination liability is the termination that is in the contract and the contract is terminated only when AT&T fails to meet its volume and term commitments. The Arbitrators further voted unanimously that it is immaterial whether AT&T meets its commitment through the purchase of special access or UNEs.

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[45] *See id.*, vol. I-D, p. 259 (Cross-Examination Testimony of John A. Ruscilli).
[46] *See Third Report and Order*, para. 486 n.985.

VI. 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?

A. POSITIONS OF THE PARTIES

BellSouth maintains that "in order for AT&T to appropriately charge for tandem switching, AT&T must demonstrate to the Authority that: 1) its switches serve a comparable geographic area to that served by BellSouth's tandem switches and that 2) its switches actually perform local tandem functions."[47] BellSouth asserts that in order for AT&T to demonstrate geographic comparability, AT&T must actually serve customers throughout the area served by BellSouth's tandem.[48]

AT&T states that pursuant to FCC Rule 51.711(a)(3),[49] a CLEC is entitled to the tandem interconnection rate when its switch serves a geographic area comparable to the ILEC's tandem switch.[50] AT&T asserts that its switches cover a geographic area comparable to the area covered by BellSouth's tandem switches because "AT&T has the ability to connect virtually any qualifying local exchange customer in Tennessee to one of [AT&T's] switches through AT&T's dedicated access services."[51] In support of its position, AT&T provided maps of its coverage area and BellSouth's coverage area.[52]

B. DELIBERATIONS AND CONCLUSIONS

In the arbitration between BellSouth and Intermedia Communications, Inc., Docket No. 99-00948, the TRA relied on the *First Report and Order* and ruled that the "CLEC's technology must

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[47] John A. Ruscilli, Pre-Filed Direct Testimony, p. 30 (Dec. 20, 2000).

[48] *See* John A. Ruscilli, Pre-Filed Rebuttal Testimony, p. 24 (Jan. 8, 2001).

[49] FCC Rule 51.711(a)(3) states: "Where the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate." 47 C.F.R. § 51.711(a)(3).

[50] Gregory R. Follensbee, Pre-Filed Direct Testimony, pp. 40-41 (Dec. 20, 2000).

[51] *Id.* at 41.

[52] *See id.* at 42, Exh. GRF-6.

'perform functions similar to those performed by an [ILEC's] tandem switch'" and "the CLEC's switch must serve 'a geographic area comparable to that served by the [ILEC's] tandem switch.'"[53] In a recent notice, the FCC clarified the requirements of the *First Report and Order*. The FCC noted that "there has been some confusion stemming from additional language in the text of the [*First Report and Order*] regarding functional equivalency, section 51.711(a)(3) is clear in requiring only a geographic test area."[54]

There remains, however, a dispute as to what information a CLEC must provide to demonstrate that the CLEC's switch serves an area comparable to the ILEC's tandem switch. It is BellSouth's position that a CLEC must demonstrate that it is actually serving customers throughout the comparable area.[55] BellSouth was unable, however, to provide any guidance on the number or location of the customers necessary to qualify as serving an area.[56] To the contrary, AT&T asserts that a CLEC's switch need only be capable of serving a comparable geographic area in order for the CLEC to receive the tandem rate.[57] Absent further guidance from the FCC or support for BellSouth's position, the Arbitrators held unanimously that a CLEC should receive the tandem interconnection rate for exchanging traffic with BellSouth when the CLEC's switch is capable of serving an area that is at least as large as the area served by BellSouth's tandem switch.

Having set the standard, the issue becomes whether AT&T has met that standard. Evidence presented by AT&T demonstrates that AT&T is entitled to the tandem interconnection rate.

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[53] *In re: Petition for Arbitration of the Interconnection Agreement Between BellSouth Telecommunications, Inc. and Intermedia Communications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket No. 99-00948, *Interim Order of Arbitration Award*, p. 11 (Jun 25, 2001) (quoting *First Report and Order*, para. 1090).

[54] *In re: Developing a Unified Intercarrier Compensation Regime*, FCC 01-132, CC Docket No. 01-92, 2001 WL 455872, para. 105 (Apr. 27, 2001) (Notice of Proposed Rulemaking) (footnote omitted).

[55] *See* Transcript of Proceedings, Apr. 9, 2001, vol. I-D, pp. 283-284 (Cross-Examination Testimony of John A. Ruscilli).

[56] *See id.* at 281-293.

[57] *See id.*, vol. I-B, pp. 79-80 (Cross-Examination Testimony of Richard Guepe).

Specifically, when the maps appended to the pre-filed, direct testimony of AT&T witness, Gregory R. Follensbee are laid over one another it is apparent that AT&T's switches are capable of serving a geographic area at least as large as that served by BellSouth's tandem switches. BellSouth did not challenge the validity of the maps provided by AT&T.[58] Based on the standard adopted above and the evidence presented by AT&T, the Arbitrators concluded unanimously that AT&T's switches are capable of serving all areas served by BellSouth tandem switches and, pursuant to FCC Rule 51.711(a)(3), the appropriate reciprocal compensation rate when AT&T terminates BellSouth's originating traffic is BellSouth's tandem interconnection rate.

[58] *See id.*, vol. I-D, p. 283 (Cross-Examination Testimony of John A. Ruscilli).

VII. 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?

A. POSITIONS OF THE PARTIES

BellSouth claims that if all the conditions set forth in FCC Rule 51.319(c)(2)[59] are met, then BellSouth does not have to offer local switching as a UNE.[60] Specifically, BellSouth notes that in certain geographic areas it is not required to unbundle local circuit switching for customers having four or more lines as long as it provides competitors EELs.[61] BellSouth believes that for the purposes of Rule 51.319(c)(2), it can aggregate lines provisioned to a particular customer even if those lines are spread over multiple locations.[62]

AT&T states that it is inappropriate for BellSouth to aggregate lines for multiple customer locations to determine if the conditions of Rule 51.319(c)(2) are satisfied.[63] AT&T "believes the FCC rule was intended to apply only when more than three lines were being served from the same local switch."[64]

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[59] FCC Rule 51.319(c)(2) 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, provided 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 Section 69.123 of this chapter on January 1, 1999.

47 C.F.R. § 51.319(c)(2).

[60] *See* John A. Ruscilli, Pre-Filed Direct Testimony, pp. 43-44 (Dec. 20, 2000).

[61] *See id.* at 46.

[62] *See id.* at 43-44.

[63] *See* Gregory R. Follensbee, Pre-Filed Rebuttal Testimony, p. 55 (Jan. 8, 2001).

[64] *Id.*

B. DELIBERATIONS AND CONCLUSIONS

In the *Third Report and Order*, the FCC found that an ILEC does not have to offer unbundled local switching as long as certain circumstances exist. First, the ILEC's switches must be located in Density Zone 1 and a top fifty (50) Metropolitan Statistical Areas ("MSAs").[65] Second, the ILEC must provide nondiscriminatory, cost-based access to EELs.[66] Lastly, the requesting carrier must be serving a medium or large business market customer, rather than a mass-market customer.[67]

The measure the FCC chose to distinguish between the mass market and medium to large business market customers is the number of lines purchased by the customer.[68] The FCC found that customers who purchase three lines or less are mass market customers.[69] The FCC noted that "in our expert judgement, a rule that distinguishes customers with four lines or more from those with three lines or less reasonably captures the division between the mass market - where competition is nascent - and the medium and large business market - where competition is beginning to broaden."[70]

At the heart of this issue is a determination of how the FCC intended lines to be counted. BellSouth contends that line counts should not be location specific. For example, if a customer has twenty (20) locations and each location purchases a single line, then the customer has twenty (20) lines for the purpose of FCC Rule 51.319(c)(2). AT&T, on the other hand, would argue that if it captured one of the twenty customer locations, that BellSouth must allow AT&T to purchase unbundled switching to serve the customer location.

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[65] *See Third Report and Order*, para. 278.
[66] *See id.*
[67] *See id.* at paras. 293-97.
[68] *See id.* at 293.
[69] *See id.*
[70] *Id.* at para. 294.

Although the FCC's intent is not clearly stated, the *Third Report and Order* does provide guidance. The FCC chose to utilize the term "customer" throughout its discussion, rather than "customer location." Hypothetically, if the Arbitrators ruled that BellSouth is not allowed to aggregate customer lines, then AT&T would be able to capture a customer with three hundred (300) lines divided equally between one hundred (100) locations and serve all lines with unbundled switching. This outcome is contrary to the language and intent of FCC Rule 51.319(c)(2). Based on the foregoing, the Arbitrators voted[71] to permit BellSouth to aggregate lines provided to multiple locations of a single customer to determine compliance with FCC Rule 51.319(c)(2).[72]

[71] During the deliberations Director Greer commented that, although this outcome may seem unfair to CLECs, as the events of September 11, 2001 demonstrated, the more network redundancy in larger cities the better.

[72] The Authority may address this issue further in Docket No. 01-00526, *In re: Generic Docket to Establish Generally Available Terms and Conditions for Interconnection.*

VIII. 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?

A. POSITIONS OF THE PARTIES

BellSouth acknowledges that, as a result of AT&T's former corporate ownership of BellSouth, AT&T and BellSouth sometimes share buildings in a manner similar to a condominium in that AT&T and BellSouth's respective portions of the buildings adjoin each other, often with special conduits and structures between the building portions.[73] BellSouth states that AT&T's portion of the condominium arrangement is not part of BellSouth's premises.[74] BellSouth claims that "AT&T's proposal has the effect of expanding the definition of premises beyond that which is required by the FCC regulations or that which is necessary."[75] BellSouth states that it is only obligated to provide cross connect facilities to AT&T when AT&T is collocated on BellSouth's premises.[76] BellSouth claims that the United States Court of Appeals, District of Columbia Circuit, held that ILECs are required to provide collocation only when collocation occurs on the ILECs' premises.[77]

AT&T claims that neither the Act nor FCC rules require CLECs to collocate in order to gain access to UNEs or interconnection.[78] AT&T acknowledges that its condominium facilities are not in BellSouth's collocation space.[79] AT&T claims that interconnection using cross connects to its

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[73] *See* W. Keith Milner, Pre-Filed Direct Testimony, p. 22 (Dec. 20, 2000).
[74] *See id.*
[75] *Id.*
[76] *See id.* at 25.
[77] *See id.* at 22.
[78] *See* Ronald W. Mills, Pre-Filed Direct Testimony, p. 33 (Dec. 20, 2000).
[79] *See* Ronald W. Mills, Pre-Filed Rebuttal Testimony, p. 13 (Jan. 8, 2001).

condominium facilities is simply direct interconnection.[80] Further, AT&T claims that the FCC has held that ILECs shall permit direct connection, without intermediate interconnection points, when technically feasible.[81] AT&T claims that allowing interconnection within condominium arrangements is cost-effective and allows for shorter interconnection intervals.[82]

B. DELIBERATIONS AND CONCLUSIONS

Section 251(c)(6) of the Act obligates ILECs to provide for the "physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier."[83] The statutory duty created by this section is clearly limited to the premises of the local exchange carrier. The United States Court of Appeals, District of Columbia Circuit, recognized this limitation when it upheld an FCC order requiring ILECs to provision adjacent collocation space when space in the premises is exhausted. The Court found that such an arrangement is consistent with Section 251(c)(6) because the adjacent property is "on the LEC's 'premises,' which is all that is required by the statute."[84]

In the *First Report and Order*, the FCC interpreted "the term 'premises' broadly to include LEC central offices, serving wire centers and tandem offices, as well as, all buildings or similar structures owned or leased by the incumbent LEC that house LEC network facilities."[85] After taking into consideration the ruling of the United States Court of Appeals, District of Columbia Circuit, the FCC further refined the definition of "premises" to include "land owned, leased, or controlled by an

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[80] *See id.*

[81] *See* Ronald W. Mills, Pre-Filed Direct Testimony, p. 33 (Dec. 20, 2000) (citing *In re: Deployment of Wireline Services Offering Advanced Telecommunications Capability*, FCC 99-48, CC Docket No. 98-147, 14 FCC Rcd. 4761 (Mar. 31, 1999) (First Report and Order and Further Notice of Proposed Rulemaking)).

[82] *See id.* at 31.

[83] 47 U.S.C. § 251(c)(6) (Supp. 2000).

[84] *See GTE Serv. Corp. v. FCC*, 205 F.3d 416, 425 (Mar. 17, 2000).

[85] *First Report and Order*, para. 573.

incumbent LEC as well as any incumbent LEC network structure on such land."[86] AT&T's condominium space does not fit within any of the categories listed by the FCC; therefore, Section 251(c)(6) does not require BellSouth to provide collocation at that space.

AT&T claims that it is requesting direct interconnection and the FCC has permitted such an arrangement. In support of its position, AT&T cites the FCC's *Advanced Services First Report and Order*. In this order, the FCC stated: "Incumbent LECs may not require competitors to use an intermediate interconnection arrangement in lieu of direct connection to the incumbent's network if technically feasible, because such intermediate points of interconnection simply increase collocation costs without concomitant benefit to incumbents."[87] Nowhere did the FCC suggest, however, that the requirement to provide direct connection abrogates the limitation of Section 251(c)(6) that the collocation be at the premises.

Based on the foregoing analysis, the Arbitrators found unanimously that AT&T's condominium space is not part of BellSouth's premises and that AT&T must collocate at BellSouth's premises before interconnecting to BellSouth's facilities.

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[86] *In re: Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, FCC 00-297, CC Docket No. 96-98, 15 FCC Rcd. 17,806, para. 42 (Aug. 10, 2000) (Fifth and Further Notice of Proposed Rulemaking).

[87] *In re: Deployment of Wireline Services Offering Advanced Telecommunications Capability*, FCC 99-48, CC Docket No. 98-147, 14 FCC Rcd. 4761, para. 49 (Mar. 31, 1999) (First Report and Order and Further Notice of Proposed Rulemaking) (hereinafter *Advanced Services First Report and Order*).

IX. ISSUE 13 - IS CONDUCTING A STATE-WIDE 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?

A. POSITIONS OF THE PARTIES

BellSouth claims that AT&T should perform five-year, criminal background checks on any employee that accesses BellSouth facilities and that such checks must be comparable to those BellSouth performs on its employees.[88] BellSouth requires a seven-year pre-hiring, criminal background check on its employees and a five-year criminal background check on vendors and agents.[89] BellSouth claims that background checks are reasonable given the value of the assets at risk and concerns over public safety.[90] BellSouth acknowledges that criminal background checks will not prevent criminally motivated damage to equipment. BellSouth notes that background checks are only one element of an array of security measures used to maintain adequate security.[91]

AT&T claims that BellSouth's required background checks are excessive.[92] AT&T further claims that it has attempted to meet BellSouth's demands by offering to perform criminal background checks on employees who have been working for AT&T for less than two years. BellSouth rejected this proposal.[93] AT&T states that it has assured BellSouth that any AT&T representative that accesses collocation spaces will be bonded.[94] Further, AT&T notes that both parties have agreed to liability and indemnification language in the event of damage resulting from the activities of an AT&T employee or agent.[95] AT&T further asserts that BellSouth has not

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[88] *See* W. Keith Milner, Pre-Filed Direct Testimony, pp. 25-26 (Dec. 20, 2000).
[89] *See id.* at 26.
[90] *See id.*
[91] Transcript of Proceedings, Apr. 10, 2001, vol. II-A, pp. 14-15 (Cross-Examination Testimony of W. Keith Milner).
[92] *See* Ronald W. Mills, Pre-Filed Rebuttal Testimony, p. 15 (Jan. 8, 2001).
[93] *See id.*
[94] *See id.*
[95] *See id.*

provided data in support of its contention that criminal background checks are effective in preventing or limiting property damage.[96]

B. DELIBERATIONS AND CONCLUSIONS

In the *Advanced Services First Report and Order*, the FCC found that ILECs must provide CLECs "access to their collocated equipment 24 hours a day, seven days a week."[97] Additionally, the FCC found that CLEC personnel are entitled to continual, unescorted access to collocation space.[98] To address security concerns associated with access, the FCC determined that ILECs:

> may impose security arrangements that are as stringent as the security arrangements that incumbent LECs maintain at their own premises either for their own employees or for authorized contractors. To the extent existing security arrangements are more stringent for one group than for the other, the incumbent may impose the more stringent requirements.[99]

The FCC limited the extent of security measures such that the security measures implemented by ILECs must be reasonable.[100]

The Arbitrators found unanimously that criminal background checks are a reasonable part of a broad-based security arrangement designed to protect vital equipment and facilities. Thus, pursuant to the *Advanced Services First Report and Order* and FCC Rule 51.323(h)(2)(i), promulgated pursuant thereto, the Arbitrators voted unanimously that BellSouth may require an AT&T employee who accesses BellSouth central offices and related facilities to undergo a five-year, criminal background check.

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[96] *See id.* at 16.
[97] *Advanced Services First Report and Order*, para. 49.
[98] *See id.*
[99] *See id.* at para. 47.
[100] *See id.* at para. 48.

X. 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?

A. POSITIONS OF THE PARTIES

BellSouth notes that pursuant to FCC Rule 51.319(f)[101] it is not required to provide unbundled access to OS/DA where it provides customized routing or a compatible signaling protocol.[102] BellSouth claims that it has met the requirement to provide customized routing by making available two solutions, an Advanced Intelligent Network ("AIN") solution and a Line Class Code ("LCC") solution.[103] BellSouth asserts that both solutions "have been tested and proved workable."[104]

AT&T asserts that in order for a customized routing solution to be sufficient to justify relief under FCC Rule 51.319(f) it must: 1) be fully implementable and available in every end-office where technically feasible; 2) be implementable on a central office basis in a very short time period; 3) be fully tested; 4) provide service equal to that which BellSouth provides itself; and 5) be capable of supporting both branded and unbranded messaging and routing to non-BellSouth platforms.[105] AT&T claims that BellSouth's proposed AIN solution does not provide service to AT&T that is

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[101] FCC Rule 51.319(f) provides:

> (f) Operator services and directory assistance. An incumbent LEC shall provide nondiscriminatory access in accordance with § 51.311 and section 251(c)(3) of the Act to operator services and directory assistance on an unbundled basis to any requesting telecommunications carrier for the provision of a telecommunications service only where the incumbent LEC does not provide the requesting telecommunications carrier with customized routing or a compatible signaling protocol. Operator services are any automatic or live assistance to a consumer to arrange for billing or completion, or both, of a telephone call. Directory assistance is a service that allows subscribers to retrieve telephone numbers of other subscribers.

47 C.F.R. § 51.319(f).

[102] *See* W. Keith Milner, Pre-Filed Direct Testimony, p. 31 (Dec. 20, 2000).

[103] *See id.* at 30.

[104] *Id.* at 33.

[105] *See* Jay M. Bradbury, Pre-Filed Direct Testimony, p. 38 (Dec. 20, 2000).

comparable to that BellSouth provides itself.[106] AT&T claims that BellSouth's AIN solution imposes unacceptable post-dialing delay due to the manner in which BellSouth routes calls to its AIN platform.[107] AT&T avers that "[u]se of LCC technology to route OS/DA calls to third party platforms is not currently available through a commercially viable, timely and repeatable process."[108] AT&T claims that BellSouth has yet to provide sufficient ordering instructions and supporting documentation for its routing solutions.[109]

B. DELIBERATIONS AND CONCLUSIONS

In addition to other requirements, a customized routing solution must be fully tested in the specific service area before BellSouth will be relieved of its obligation to provide OS/DA as a UNE. Such testing is necessary given the FCC's observation that some ILEC offices may have equipment dated to the point that it cannot support customized routing.[110]

BellSouth's customized routing solutions have been insufficiently tested. BellSouth admits that, to date, the only customized routing solution that exists in the entire BellSouth region is a test deployment in Georgia.[111] Based on this finding, the Arbitrators voted unanimously that BellSouth should be required to continue offering OS/DA as a UNE until it can demonstrate that it has implemented a sufficient customized routing solution in Tennessee. In addition, the Arbitrators voted to have the Authority address this issue further in Docket No. 01-00526, *In re: Generic Docket to Establish Generally Available Terms and Conditions for Interconnection.* Investigation of this issue in that docket will allow the entire CLEC community to provide input on any other

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[106] *See id.* at 40.
[107] *See id.* at 39-40.
[108] *Id.* at 41.
[109] *See id.*
[110] *See Third Report and Order*, para. 463.
[111] Transcript of Proceedings, April 10, 2001, v. II-A, pp. 18-22 (Cross-Examination Testimony of W. Keith Milner).

relevant factors that warrant consideration when making a determination of whether BellSouth has provided a sufficient custom routing solution.

XI. ISSUE 15 - WHAT PROCEDURE SHOULD BE ESTABLISHED FOR AT&T TO OBTAIN LOOP-PORT COMBINATIONS (UNE-P) USING BOTH INFRASTRUCTURE AND CUSTOMER SPECIFIC PROVISIONING?

A. POSITIONS OF THE PARTIES

BellSouth claims that the FCC only requires BellSouth to provide LCCs for a CLEC Local Service Request ("LSR") if the CLEC has a single routing plan for all of its customers.[112] Assuming that the CLEC is using a single or default Operational Support Systems ("OSS") routing, BellSouth contends that the necessary information for OS/DA routing is already contained on the CLEC's LSR.[113] BellSouth contends that the focus of the dispute is "which party . . . is responsible for determining which LCCs are to be used for a given LSR in cases where the CLEC has more than one routing plan for its end users."[114]

AT&T claims that BellSouth has failed to provide the necessary technical information to allow AT&T to implement its desired OS/DA routing. AT&T asserts that BellSouth is trying to limit AT&T to a single customized OS/DA routing for the entire nine-state region.[115] AT&T claims that the FCC anticipated that CLECs may have more than one routing option and ordered BellSouth to simplify its ordering processes accordingly.[116] AT&T also indicates a disagreement with BellSouth about the method that AT&T will use to notify BellSouth of the routing option it has selected for a specific customer. AT&T wants to first, establish a "foot print" order specifying its desired OS/DA routing options within a geographic region. After establishing the footprint, AT&T desires to tell

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[112] *See* W. Keith Milner, Pre-Filed Rebuttal Testimony, p. 22 (Jan. 8, 2001) (citing *In re: Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, Interlata Services in Louisiana*, FCC 98-271, CC Docket No. 98-121, 13 FCC Rcd. 20,599, para. 224 (Oct. 13, 1998) (Memorandum Opinion and Order)).

[113] *See* Ronald M. Pate, Pre-Filed Direct Testimony, p. 17 (Dec. 20, 2000).

[114] W. Keith Milner, Pre-Filed Rebuttal Testimony, p. 24 (Jan. 8, 2001).

[115] *See* Jay M. Bradbury, Pre-Filed Direct Testimony, p. 22 (Dec. 20, 2000).

[116] *See id.* at 23.

BellSouth its desired OS/DA routing within its LSR for said customer.[117] AT&T claims that the FCC allows CLECs to order customer specific OS/DA routing with a single code instead of providing LCCs.[118] AT&T also claims that BellSouth does not currently have electronic ordering for customer specific OS/DA.[119]

B. DELIBERATIONS AND CONCLUSIONS

This issue centers on whether BellSouth has an obligation to provide situational customized OS/DA routing for AT&T customers served via UNE-P. Necessarily, this issue entails a determination of the information AT&T must provide to order situational customized routing and if BellSouth has an obligation to provide electronic ordering capability for customized routing.

The FCC has indicated that CLECs are entitled to selectively route individual customers to different OS/DA platforms. In the *Louisiana II Order*, the FCC stated:

> 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 customers' 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 its own customers. If, however, a competitive LEC has more than 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.[120]

The FCC further elaborated that CLECs should not have to provide BellSouth with LCCs "if BellSouth is capable of accepting a single code region-wide."[121] Lastly, the FCC found that "BellSouth must ensure that orders containing a code indicating the desired routing of calls are

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[117] *See id.* at 24-25.
[118] *See id.* at 29.
[119] *See id.* at 31.
[120] *In re: Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, Interlata Services in Louisiana*, FCC 98-271, CC Docket No. 98-121, 13 FCC Rcd. 20,599, para. 224 (Oct. 13, 1998) (Memorandum Opinion and Order) (footnote omitted) (hereinafter *Louisiana II Order*).
[121] *Id.* at para. 224.

efficiently processed," but stopped short of mandating electronic ordering for selective OS/DA routing.[122]

BellSouth claims that it does not process a single indicator for its own OS/DA routing.[123] According to the FCC's language, however, what BellSouth chooses to do for its own OS/DA routing is not relevant. Rather, the standard is whether BellSouth is capable of accepting a single code region-wide. AT&T contends that BellSouth is capable of accepting a single code for selective OS/DA routing.[124] BellSouth did not refute this contention. Based on the FCC's orders and the record in this proceeding, the Arbitrators voted unanimously that BellSouth should be required to provide AT&T with the capability to order selective OS/DA routing with a single code. BellSouth may not require AT&T to provide LCCs for its routing selections. Further, BellSouth must provide electronic flow-through for selective OS/DA ordering if it or one of its affiliates provides itself with the same functionality.

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[122] *Id.* at para. 225.

[123] Transcript of Proceedings, Apr. 9, 2001, vol. I-D, pp. 58 - 59 (Cross-Examination Testimony of W. Keith Milner).

[124] *See* Jay M. Bradbury, Pre-Filed Direct Testimony, p. 27 (Dec. 20, 2000).

XII. ISSUE 16 - SHOULD THE COMMISSION OR A THIRD PARTY COMMERCIAL ARBITRATOR RESOLVE DISPUTES UNDER THE INTERCONNECTION AGREEMENT?

A. POSITIONS OF THE PARTIES

Based on its experience with third-party arbitration, BellSouth claims that arbitration is "neither speedy, nor inexpensive."[125] BellSouth claims that it is difficult to find "neutral commercial arbitrators that are sufficiently experienced in the telecommunications industry."[126] BellSouth asserts that the Authority and its staff are more capable of resolving inter-carrier disputes than commercial arbitrators.[127] Finally, BellSouth asserts that it should not have to waive its rights to have the Authority resolve interconnection disputes.[128]

AT&T avers that it has utilized third-party arbitrators to resolve interconnection disputes in a quick and cost effective manner.[129] While AT&T notes that the Authority is capable of resolving disputes, it notes that the Authority may not be able to address disputes as rapidly as a third-party arbitrator.[130]

B. DELIBERATIONS AND CONCLUSIONS

Resolution of interconnection agreement disputes by the Authority is necessary to ensure consistent interpretation of interconnection agreements and application of public policy. Moreover, consideration by the Authority will ensure compliance with applicable state law and Authority rulings. For these reasons, the Arbitrators voted unanimously that the Authority shall resolve all disputes that arise under the interconnection agreement.

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[125] John A. Ruscilli, Pre-Filed Direct Testimony, p. 48 (Dec. 20, 2000).
[126] *Id.*
[127] *See id.*
[128] *See id.*
[129] *See* Gregory R. Follensbee, Pre-Filed Rebuttal Testimony, p. 56 (Jan. 8, 2001).
[130] *See id.* at 57.

XIII. ISSUE 17: SHOULD THE CHANGE CONTROL PROCESS ("CCP") BE SUFFICIENTLY COMPREHENSIVE TO ENSURE THAT THERE ARE PROCESSES TO HANDLE, AT A MINIMUM THE FOLLOWING SITUATIONS: e) DEFECT CORRECTION; g) AN EIGHT STEP CYCLE, REPEATED MONTHLY; h) A FIRM SCHEDULE FOR NOTIFICATIONS ASSOCIATED WITH CHANGES INITIATED BY BELLSOUTH; AND i) A PROCESS FOR DISPUTE RESOLUTION, INCLUDING REFERRAL TO THE TRA OR COURTS?[131]

A. POSITIONS OF THE PARTIES

BellSouth contends that "the content of the CCP is not an appropriate issue for arbitration with an individual CLEC."[132] BellSouth argues that the CCP involves other CLECs and is regional.[133] BellSouth asks that the Arbitrators not impose requirements on the CCP that will affect parties not involved in this proceeding.[134]

AT&T asserts that the entire range of transactions between AT&T and BellSouth required to provide AT&T access to BellSouth's network should be managed via a CCP.[135] AT&T asserts:

> [T]he change control process should control implementation of new interfaces, management of interfaces in production (including defect correction), and the retirement of interfaces. A robust change control process should provide a process for making normal changes, an exception process, an escalation process, and a dispute resolution process, with ultimate recourse to the state regulatory authority, mediation, or court adjudication. Additionally, a process should be specified which could change the Change Control Process itself.[136]

AT&T acknowledges that BellSouth has a CCP in existence, but contends that BellSouth frequently fails to follow the process.[137] AT&T also claims that BellSouth's existing CCP is inadequate, as it does not "cover all areas that should be included in a robust Change Control Process."[138] AT&T

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[131] The parties have resolved all other sub-issues through negotiations.
[132] *See* Ronald M. Pate, Pre-Filed Direct Testimony, p. 20 (Dec. 20, 2000).
[133] *See id.* at 20-21.
[134] *See id.* at 69.
[135] *See* Jay M. Bradbury, Pre-Filed Direct Testimony, p. 49 (Dec. 20, 2000).
[136] *Id.* at 49-50.
[137] *See id.* at 50.
[138] *Id.* at 52.

avers that BellSouth's circumvention of the requirements of the CCP stems from the lack of a "binding commitment."[139] AT&T requests that the Arbitrators place such a commitment upon BellSouth by placing the CCP document under its supervision and adopting the changes suggested by AT&T.[140]

B. DELIBERATIONS AND CONCLUSIONS

In the *First Report and Order*, the FCC found that "an incumbent LEC must provide nondiscriminatory access to their [OSS] functions for pre-ordering, ordering, provisioning, maintenance and repair, and billing available to the LEC itself."[141] In the *Third Report and Order*, the FCC further clarified the scope of OSS to include "manual, computerized, and automated systems, together with associated business processes and the up-to-date data maintained in those systems."[142] Generally, the FCC has maintained that access to OSS is a prerequisite for the development of local competition, noting that a CLEC without access to the processes, systems, and data that comprise an ILEC's OSS will be greatly disadvantaged relative to the ILEC in its ability to perform all necessary functions required to provide local services.[143]

The CCP is used to manage changes to the systems, processes, and documentation that comprise BellSouth's OSS. The CCP is important to AT&T and other CLECs, as they need time to modify their OSS systems and processes in response to changes implemented by BellSouth to BellSouth's OSS.[144] AT&T claims that its ability to perform the day-to-day tasks necessary to

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[139] *Id.* at 62.
[140] *See id.* at 62.
[141] *First Report and Order*, para. 523.
[142] *Third Report and Order*, para. 425.
[143] *See In re: Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, FCC 99-404, CC Docket No, 99-295, 15 FCC Rcd. 3953, para. 83 (Dec. 22, 1999) (Memorandum Opinion and Order).
[144] *See* Jay M. Bradbury, Pre-Filed Direct Testimony, p. 45 (Dec. 20, 2000).

provide adequate service would be disrupted if it were not provided sufficient notice to adjust its OSS.[145] In sum, the CCP is a necessary companion to OSS access as it allows both CLECs and ILECs to maintain and improve OSS functionality without imposing an undue burden or delay on either party.

At the time the Arbitrators conducted the hearing in this arbitration four sub-issues remained unresolved. AT&T did not submit any evidence demonstrating that the language in the current CCP is unreasonable and failed to establish that the existing CCP documents are inadequate. Further, AT&T failed to present sufficient testimony to support its contention that BellSouth has deviated from the requirements of the CCP. Based on the foregoing, the Arbitrators voted unanimously to reject AT&T's positions on the open sub-issues due to lack of evidentiary support.

[145] *See id.*

XIV. ISSUE 18 - WHAT SHOULD BE THE RESOLUTION OF THE FOLLOWING OSS ISSUES CURRENTLY PENDING IN THE CHANGE CONTROL PROCESS BUT NOT YET PROVIDED: a) PARSED CUSTOMER SERVICE RECORDS FOR PRE-ORDERING; b) ABILITY TO SUBMIT ORDERS ELECTRONICALLY FOR ALL SERVICES AND ELEMENTS; AND c) ELECTRONIC PROCESSING AFTER ELECTRONIC ORDERING, WITHOUT SUBSEQUENT MANUAL PROCESSING BY BELLSOUTH PERSONNEL?

A. POSITIONS OF THE PARTIES ON SUB-ISSUE (a) – PARSED CUSTOMER SERVICE RECORDS FOR PRE-ORDERING

BellSouth claims that this issue is pending before the CCP and is hence inappropriate for arbitration.[146] BellSouth claims that AT&T wants "sub-line" parsing of customer service record ("CSR") data, which goes beyond the parsing that BellSouth provides to itself.[147] BellSouth avers that it provides AT&T data that is compliant with the Common Object Request Broker Architecture industry standard and in the same manner that is provided to BellSouth's retail units.[148] BellSouth further claims that it provides CLECs the functionality to parse CSR information via the TAG pre-ordering interface.[149]

AT&T claims that it needs parsed CSRs in order to fully integrate its ordering systems with BellSouth's and, thereby, obtain the functionality currently available to BellSouth.[150] AT&T asserts that BellSouth's internal systems parse the sections and fields of the CSR preventing the need for BellSouth service representatives to re-enter information already contained in the CSR when processing orders.[151] AT&T avers that "[p]arsing rules for CSRs have been included in industry standards since the publication of the LSOG3/TCIF9 guidelines July 1998."[152]

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[146] *See* Ronald M. Pate, Pre-Filed Direct Testimony, p. 70 (Dec. 20, 2000).
[147] *See id.* at 72.
[148] *See id.*
[149] *See id.* at 77-78.
[150] *See* Jay M. Bradbury, Pre-Filed Direct Testimony, p. 81 (Dec. 20, 2000).
[151] *See id.*
[152] *Id.*

B. POSITIONS OF THE PARTIES ON SUB-ISSUE (b) - ABILITY TO SUBMIT ORDERS ELECTRONICALLY FOR ALL SERVICES AND ELEMENTS

BellSouth maintains that "non-discriminatory access does not require that all LSRs be submitted electronically and involve no manual processes."[153] BellSouth avers that its own retail processes often involve manual processes.[154] BellSouth states that requests for changes or revisions to BellSouth's electronic interfaces should be submitted through the CCP and claims that OSS issues subject to the CCP are not subject to arbitration.[155]

AT&T asserts that BellSouth can electronically order each and every service and product that it provides to its own customers.[156] AT&T avers that the manual processes BellSouth uses are pre-ordering processes rather than ordering processes; hence, BellSouth does not offer equivalent functionality.[157] AT&T avers that BellSouth will maintain a competitive advantage relative to CLECs without equivalent electronic ordering functionality, because electronic ordering is faster, less expensive, and less prone to errors.[158]

C. POSITION OF THE PARTIES ON SUB-ISSUE (c) - ELECTRONIC PROCESSING AFTER ELECTRONIC ORDERING, WITHOUT SUBSEQUENT MANUAL PROCESSING BY BELLSOUTH PERSONNEL

BellSouth claims that no CLEC has submitted a request with the CCP related to this sub-issue.[159] BellSouth asserts that that this sub-issue is not appropriate for arbitration and that AT&T is simply trying to avoid the CCP.[160] BellSouth maintains that "[c]omplex variable processes are difficult to mechanize, and BellSouth has concluded that mechanizing many lower-volume complex

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[153] Ronald M. Pate, Pre-Filed Direct Testimony, p. 79 (Dec. 20, 2000).
[154] *See id.*
[155] *See id.*
[156] *See* Jay M. Bradbury, Pre-Filed Direct Testimony, p. 82 (Dec. 20, 2000).
[157] *See id.* at 83.
[158] *See id.* at 83-84.
[159] *See* Ronald M. Pate, Pre-Filed Direct Testimony, p. 85 (Dec. 20, 2000).
[160] *See id.*

retail services would be imprudent for its own retail operations, in that the benefits of mechanization would not justify the cost."[161] As the same manual processes are in place for both CLECs and BellSouth, BellSouth contends that the processes are competitively neutral in accordance with the Act and FCC requirements.[162] BellSouth claims that the FCC has acknowledged that all electronically submitted orders do not have to flow-through without manual intervention.[163]

AT&T asserts that, barring error, all BellSouth services can be "requested and ordered as the result of the typed input of a single employee."[164] This is known as flow-through ordering. AT&T avers that BellSouth's current ordering interfaces do not provide AT&T the flow-through ordering capabilities equal to that available to BellSouth's retail operations.[165] In sum, AT&T requests that BellSouth should be required to "provide both electronic LSR submission capability and a fully automated process for handling electronically submitted requests for all services and elements available to CLECs equal to that which exists for BellSouth's retail operations."[166]

D. DELIBERATIONS AND CONCLUSIONS

BellSouth's contention that the Arbitrators should not resolve these issues can not be sustained. These issues are properly before the Arbitrators. Each sub-issue requires a determination of whether BellSouth has met its obligation under Section 251(c)(3) to provide nondiscriminatory access to its OSS, a matter clearly within the scope of an interconnection agreement and arbitration thereof.[167]

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[161] *Id.* at 86.
[162] *See id.*
[163] *See id.* at 87.
[164] Jay M. Bradbury, Pre-Filed Direct Testimony, p. 86 (Dec. 20, 2000).
[165] *See id.* at 102.
[166] *Id.* at 103.
[167] *See* 47 U.S.C § 251(c)(3) (Supp. 2000).

Sub-issue (a) is whether BellSouth must provide AT&T with parsed CSRs for pre-ordering. The FCC recognized in the *First Report and Order* that ILECs' OSS might require modification to facilitate nondiscriminatory access by competitors.[168] The FCC further required that ILECs provide access to the functionality of any internal gateway system.[169] Because the FCC requires equality of functionality, ILECs must provide access in a manner that allows CLECs to achieve comparable results to ILECs' OSS. Therefore, BellSouth has the duty to modify its OSS to allow CLECs to enjoy nondiscriminatory functionality.

In an order on Southwestern Bell Telephone Company, Inc.'s Section 271 application, the FCC found that nondiscriminatory access requires an ILEC to "enable competing carriers to transfer pre-ordering information (such as a customer's address or existing features) electronically into the carrier's own back office systems and back into the [Bell Operating Company's] ordering interface."[170] However, the FCC has yet to mandate that ILEC's must provide parsed CSRs. Rather, the FCC only required a showing that "integration has been shown to be possible (or has actually been achieved)."[171] Accordingly, the Arbitrators voted unanimously that BellSouth provide data to AT&T in a format that allows AT&T to transfer pre-ordering information into its own back-office systems and back to BellSouth's ordering interface.

Sub-issues (b) and (c) involve the obligation of BellSouth to provide electronic ordering. In the *First Report and Order*, the FCC found that if an ILEC provisions network resources electronically, then, pursuant to the nondiscriminatory access requirement of Section 251(c)(3),

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[168] *See First Report and Order*, para. 524.
[169] *See id.* at para. 523.
[170] *In re: Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance*, FCC 00-238, CC Docket No. 00-65, 15 FCC Rcd. 18,354, para. 152 (Jun. 30, 2000) (Memorandum Opinion and Order).
[171] *Id.* para. 153 n.413.

equivalent functionality must be provided to requesting carriers.[172] In the *Third Report and Order*, the FCC likened processing orders without manual intervention to "interface and gateway issues . . . already captured in the nondiscriminatory access requirements of the *Local Competition First Report and Order*."[173] Based on the guidance of the FCC, the Arbitrators concluded unanimously that BellSouth must provide electronic ordering, without manual intervention, for all network facilities which BellSouth or its retail affiliates are capable of ordering electronically without manual intervention.

[172] *See First Report and Order*, para. 523.
[173] *Third Report and Order*, para. 426.

XV. 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?

A. POSITIONS OF THE PARTIES

BellSouth claims that it currently provides CLECs with nondiscriminatory access to its maintenance and repair OSS functions through its Trouble Analysis Facilitation Interface ("TAFI") and Electronic Communication Trouble Administration ("ECTA") gateways.[174] BellSouth claims that the FCC does not require that an interface be integratable with CLEC back-office systems in order to provide nondiscriminatory access.[175]

AT&T avers that BellSouth does not provide nondiscriminatory access to its OSS for maintenance and repair functions.[176] AT&T notes that TAFI has extensive functionality, but requires manual input of data into AT&T's OSS. ECTA, AT&T claims, does not have the full range of functions found in TAFI, but can be integrated into AT&T's OSS.[177] AT&T maintains that allowing CLECs access to TAFI does not provide the same functionality that BellSouth enjoys because CLECs cannot integrate TAFI into CLEC back-office systems.[178] AT&T asks the Arbitrators to order BellSouth to provide full TAFI functionality via the ECTA interface or another integratable machine-to-machine interface.[179]

B. DELIBERATIONS AND CONCLUSIONS

As explained under Issue 18, AT&T is entitled to nondiscriminatory functionality. The FCC does not require integratable interfaces to ensure nondiscriminatory access. In the *Louisiana II*

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[174] *See* Ronald M. Pate, Pre-Filed Direct Testimony, p. 89 (Dec. 20, 2000).
[175] *See id.* at 90-91.
[176] *See* Jay M. Bradbury, Pre-Filed Direct Testimony, p. 104-5 (Dec. 20, 2000).
[177] *See id.*
[178] *See id.*
[179] *See id.* at 117-118.

Order, the FCC noted that TAFI's lack of integration alone does not constitute a failure to provide nondiscriminatory access.[180] Likewise in an order on Bell Atlantic New York's Section 271 application, the FCC specifically disagreed with AT&T's claim that an integratable machine-to-machine interface is necessary for nondiscriminatory repair and maintenance OSS access.[181] However, in the same paragraph, the FCC includes the caveat that "the lack of integration does not necessarily constitute discriminatory access, **provided that the BOC otherwise demonstrates that it provides equivalent access to its maintenance and repair functions.**"[182] Thus, while not required, integratable interfaces demonstrate a lack of discrimination.

In this case, BellSouth enjoys functionality in its repair and maintenance OSS that it does not offer CLECs. Thus, BellSouth does not provided nondiscriminatory access to the full functionality of its maintenance and repair OSS. The barrier which prevents BellSouth's OSS from providing nondiscriminatory access is the lack of integrability of the TAFI interface. Thus, despite the FCC's more lenient standard, the only solution in this case to ensure nondiscriminatory access is for BellSouth to provide an integratable interface that incorporates the functionality of TAFI. Accordingly, the Arbitrators voted unanimously to require BellSouth to provide an integratable system that incorporates all functionality present in the TAFI interface for CLEC usage. Such interface shall provide access using existing industry standards at the time of production.

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[180] *See Louisiana II Order*, para. 152.

[181] *See In re: Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, FCC 99-404, CC Docket No. 99-295, 15 FCC Rcd. 3953, para. 215 (Dec. 22, 1999) (Memorandum Opinion and Order).

[182] *Id.* (emphasis added).

XVI. ORDERED

The foregoing *Final Order of Arbitration Award* reflects the Arbitrators resolution of Issues 1, 2, 3, 4, 7, 10, 12, 13, 14, 15, 16, 17(e), 17(g), 17(h), 17(i), 18(a) through (c), and 19. All resolutions contained herein comply with the provisions of the Telecommunications Act of 1996 and are supported by the record in this proceeding. BellSouth Telecommunications, Inc, AT&T Telecommunications, Inc., and TCG Mid-South, Inc. shall file their interconnection agreement no later than thirty days following the issuance of this Order.

TENNESSEE REGULATORY AUTHORITY,
BY ITS DIRECTORS ACTING AS
ARBITRATORS

Sara Kyle, Chairman

H. Lynn Greer, Jr., Director

Melvin Malone, Director

ATTEST:

K. David Waddell, Executive Secretary