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REC'D TN
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'01 MAR 13 PM 2 23
OFFICE OF
EXECUTIVE SECRETARY

March 13, 2001

VIA HAND DELIVERY

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

Re: *Complaint of Intermedia Communications, Inc. Against BellSouth Telecommunications, Inc. To Enforce The Reciprocal Compensation Requirement of the Parties' Interconnection Agreement*
Docket No. 00-00280

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of rebuttal testimony on behalf of BellSouth by the following witnesses:

Jerry Hendrix
Keith Milner

Copies of the enclosed are being provided to counsel of record.

Very truly yours,

Guy M. Hicks

GMH:ch
Enclosure

250649

CERTIFICATE OF SERVICE

I hereby certify that on March 13, 2001, a copy of the foregoing document was served on the parties of record, via the method indicated:

[ ] Hand
[X] Mail
[ ] Facsimile
[ ] Overnight

H. LaDon Baltimore, Esquire
Farrar & Bates
211 Seventh Ave. N, # 320
Nashville, TN 37219-1823

[ ] Hand
[X] Mail
[ ] Facsimile
[ ] Overnight

Scott Saperstein
Senior Policy Counsel
Intermedia Communications, Inc.
3625 Queen Palm Drive
Tampa, FL 33619



BELLSOUTH TELECOMMUNICATIONS, INC.

REBUTTAL TESTIMONY OF W. KEITH MILNER

BEFORE THE TENNESSEE REGULATORY AUTHORITY

DOCKET NO. 00-00280

March 13, 2001

Q. PLEASE STATE YOUR NAME, YOUR BUSINESS ADDRESS, AND YOUR POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC. (BELLSOUTH).

A. My name is W. Keith Milner. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375. I am Senior Director - Interconnection Services for BellSouth. I have served in my present role since February 1996, and have been involved with the management of certain issues related to local interconnection, resale, and unbundling.

Q. ARE YOU THE SAME W. KEITH MILNER WHO FILED DIRECT TESTIMONY IN THIS PROCEEDING ON DECEMBER 6, 2000?

A. Yes, I am.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. My rebuttal testimony responds to the direct testimony of Intermedia

Communications, Inc. (Intermedia) witness, Mr. Edward L. Thomas, as filed on January 4, 2001.

Q. ON PAGE 3 OF HIS TESTIMONY, MR. THOMAS STATES THAT TRANSIT TRAFFIC IS "TRAFFIC THAT ORIGINATES FROM OR TERMINATES TO A THIRD CARRIER, AND MERELY PASSES THROUGH THE INTERMEDIA OR BELLSOUTH NETWORK." DO YOU AGREE WITH HIS DEFINITION?

A. Not completely. Mr. Thomas's statement implies that BellSouth "transits" traffic through Intermedia's network to reach other CLECs or Independent LECs. BellSouth does not do so; rather, BellSouth has direct trunk groups to those companies.

Q. THROUGHOUT MR. THOMAS'S TESTIMONY, HE REFERS TO MULTIPLE TANDEM ACCESS ("MTA"). DO YOU AGREE WITH MR. THOMAS'S CHARACTERIZATION OF BELLSOUTH'S MTA OPTION AS FOUND ON PAGE 4 OF HIS TESTIMONY?

A. Yes. Mr. Thomas's description of the MTA option and what he refers to as the Single Tandem Access or "STA" option are suitable for our purposes here. My understanding of his term "Single Tandem Access" is applicable to a situation where a CLEC has chosen not to elect BellSouth's MTA option and instead has established

interconnection between each of its switch(es) and all BellSouth access tandems in a given LATA.

Q. ON PAGE 5, LINE 9 OF HIS TESTIMONY, MR. THOMAS STATES "INTERMEDIA PREFERS THIS KIND OF ARCHITECTURE [THAT IS, INTERCONNECTING AT EACH OF BELLSOUTH'S ACCESS TANDEMS INSTEAD OF ELECTING BELLSOUTH'S MULTIPLE TANDEM ACCESS OPTION] BECAUSE IT IS MORE EFFICIENT."] DO YOU AGREE THAT INTERCONNECTING AT EACH ACCESS TANDEM IS ALWAYS MORE EFFICIENT?

A. No. The determination of which form of interconnection is more efficient is situational and best made on a case-by-case basis. In some cases, where a CLEC has only a small amount of local traffic and the access tandems in the LATA are geographically far apart, it might be more economically efficient for the CLEC to elect the MTA option instead of establishing small, relatively inefficient trunk groups to each access tandem in the LATA. In other cases, where the CLEC has significant amounts of traffic, the CLEC may find it more economically efficient to establish trunk groups to each access tandem in the LATA rather than to pay BellSouth for the MTA option.

Q. ON PAGE 5, LINES 16-17, MR. THOMAS STATES "INTERMEDIA USES SINGLE TANDEM ARCHITECTURE IN ALL ITS INTERCONNECTION ARRANGEMENTS IN TENNESSEE..." DO YOU

AGREE?

A. Yes. Intermedia has not requested nor has BellSouth provided Multiple Tandem Access (MTA) in Tennessee.

Q. ON PAGE 6, LINES 1-2, IN EXPLAINING INTERMEDIA'S INTERCONNECTION ARRANGEMENTS IN MEMPHIS, MR. THOMAS STATES "AS OF MAY 1998, INTERMEDIA WAS DIRECT-TRUNKED TO FIVE BELLSOUTH ACCESS TANDEMS IN MEMPHIS." DO YOU AGREE?

A. Not entirely. BellSouth doesn't have five (5) access tandems in the Memphis LATA. BellSouth has two (2) access tandems in the Memphis LATA, one in Memphis and the second in Jackson. The other three (3) access tandems to which Mr. Thomas refers are actually in Kentucky.

Q. ON PAGE 6, LINES 13-14, IN EXPLAINING INTERMEDIA'S INTERCONNECTION ARRANGEMENTS IN NASHVILLE, MR. THOMAS STATES "AS OF MAY 1998, INTERMEDIA WAS DIRECT-TRUNKED TO FOUR BELLSOUTH ACCESS TANDEMS IN NASHVILLE." DO YOU AGREE?

A. Not entirely. BellSouth doesn't have four (4) access tandems in the Nashville LATA. BellSouth has two (2) access tandems in the

Nashville LATA. I believe the other two (2) access tandems to which Mr. Thomas refers are in the Knoxville LATA.

Q. ON PAGE 7, MR. THOMAS IMPLIES THAT BELLSOUTH OFFERED THE MTA OPTION AS A MEANS "TO ALLEVIATE TRAFFIC CONGESTION." IS HE CORRECT?

A. No. The MTA service offering was not designed to relieve congestion. While the CLEC can use MTA as a means to alternate route its originated traffic, provided the CLEC has trunk groups to other access tandems or end offices within the LATA, this is not the purpose for which MTA was designed. Instead, MTA allows a CLEC to minimize the points of interconnection between the CLEC's network and BellSouth's network.

That is, if a CLEC elects BellSouth's MTA option, then the CLEC can simplify its network architecture by interconnecting at some, but not all, of BellSouth's access tandems in a given LATA.

Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

A. Yes.

AFFIDAVIT

STATE OF: Georgia
COUNTY OF: Fulton

BEFORE ME, the undersigned authority, duly commissioned and qualified in and for the State and County aforesaid, personally came and appeared W. Keith Milner – Senior Director – Interconnection Services, BellSouth Telecommunications Inc., who, being by me first duly sworn deposed and said that:

He is appearing as a witness before the Tennessee Regulatory Authority in Docket No. 99-00280 on behalf of BellSouth Telecommunications, Inc., and if present before the Authority and duly sworn, his testimony would be set forth in the annexed testimony consisting of 5 pages and 0 exhibit(s).

W. Keith Milner

Sworn to and subscribed
before me on 3.13.01

NOTARY PUBLIC

CAROLYN HANESWORTH
NOTARY PUBLIC AT LARGE
DAVIDSON COUNTY, TENN.

My Commission

BELLSOUTH TELECOMMUNICATIONS, INC.

REBUTTAL TESTIMONY OF JERRY HENDRIX

BEFORE THE TENNESSEE REGULATORY AUTHORITY

DOCKET NO. 00-00280

MARCH 13, 2000

Q. PLEASE STATE YOUR NAME AND COMPANY NAME AND ADDRESS.

A. My name is Jerry Hendrix. I am employed by BellSouth Telecommunications, Inc. as Senior Director – Customer Markets Wholesale Pricing Operations. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. ARE YOU THE SAME JERRY HENDRIX WHO FILED DIRECT TESTIMONY IN THIS PROCEEDING?

A. Yes.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to rebut several assertions in the testimony of Intermedia's witnesses Julia Strow and Carl Jackson.

Q. DO YOU AGREE WITH MS. STROW'S CHARACTERIZATION ON PAGE 3 OF HER DIRECT TESTIMONY THAT BELLSOUTH IS ATTEMPTING TO "WITHHOLD PARTIAL PAYMENT"?

A. No. BellSouth is and has compensated Intermedia in accordance with the contract. BellSouth and Intermedia amended their Interconnection Agreement on June 3, 1998 to include elemental rates for local traffic. Intermedia is now attempting to claim, as I discussed in my direct testimony, that this amendment had a more narrow scope than it actually did in order to receive more compensation than it is rightfully owed. Ms. Cox will discuss the tandem switching rate issue.

Q. DO YOU AGREE WITH MS. STROW'S CHARACTERIZATION, ON PAGE 5, OF THE JUNE 3, 1998 AMENDMENT?

A. No. While Ms. Strow is correct that the June 3, 1998 Amendment ("the Amendment") provides that BellSouth will, upon request, provide Multiple Tandem Access ("MTA") to Intermedia, she failed to mention the second purpose of the Amendment. That is, the Amendment also provided for a new elemental rate structure for reciprocal compensation to replace the existing composite rate structure. Paragraphs 3 and 4, which outline this new elemental

rate structure, do not address MTA at all. Paragraphs 3 and 4 of the Amendment address separate issues and state:

3. The parties agree to bill Local traffic at the elemental rates specified in Attachment A.

4. This amendment will result in reciprocal compensation being paid between the Parties based on the elemental rates specified in Attachment A.

Ms. Strow seems to be making the assumption that an amendment cannot address multiple issues. This is simply not true. In fact, it is common practice for BellSouth and CLECs (Competitive Local Exchange Carriers) to execute amendments that cover multiple issues. For example, BellSouth executed for all nine states an amendment with Time Warner Communications on October 30, 1997, which made changes to the Parties' Interconnection Agreement. First, it incorporated the Bona Fide Request Process, as well as Compensation for Call Transport and Termination. Second, it incorporated a new provision for unbundled network elements. A copy of that amendment is attached as Exhibit JDH-1.

Q. PLEASE COMMENT ON MS. STROW'S STATEMENT, ON PAGE 5, THAT INTERMEDIA SIGNED THE AMENDMENT IN JUNE 1998, WITHOUT MAKING ANY CHANGES TO THE AMENDMENT.

A. Intermedia did sign the Amendment without making any changes to it. This is further indication that Intermedia was in full agreement with The Amendment and its provisions. If Intermedia had desired to change the language concerning the new elemental reciprocal compensation rates, Intermedia presumably would have proposed alternative language, which BellSouth would have reviewed and either accepted, rejected, or proposed alternative language. Intermedia did have a question on a Florida rate, as mentioned in the June 4, 1998 memo from Stu Hudnall to Ms. Strow, which is attached to her testimony. As such, it is apparent that Intermedia read and even researched the Amendment and presumably would have contacted BellSouth if Intermedia were not in full concurrence.

Q. MS. STROW STATES, ON PAGE 6, THAT SHE DID NOT UNDERSTAND THAT THE AMENDMENT WAS CHANGING THE RATES FOR RECIPROCAL COMPENSATION. PLEASE COMMENT.

A. While I cannot speak to what Ms. Strow may have understood, I assume Ms. Strow read the Amendment and saw the words incorporating cost-based reciprocal compensation rates that the parties agreed to charge and to pay for the transport and termination of local traffic.

The Amendment plainly states:

3. The parties agree to bill Local traffic at the elemental rates specified in Attachment A.

4. This amendment will result in reciprocal compensation being paid between the Parties based on the elemental rates specified in Attachment A.

Item Number 3 and Item Number 4 do not mention MTA. Item Number 3 does **not** state that the parties agree to bill Local traffic "routed using MTA" at the elemental rates in Attachment A. Likewise, Item Number 4 does **not** state that This Amendment will result in reciprocal compensation being paid between the Parties for "traffic routed using MTA" based on the elemental rates specified in Attachment A. Rather, the provisions in Item Number 3 and 4 are separate and distinct from the provisions which deal with MTA, which are Item Number 1 and 2.

Under Ms. Strow's view, the rates set forth in the June 3, 1998 Amendment only apply when Intermedia avails itself of MTA. However, in none of the State Commission Orders from which at least some of those rates were "imported" is there any indication that these Commission-approved rates applied only to MTA. Rather, these rates were established for reciprocal compensation for local interconnection.

Q. HAS ANY PREVIOUS INTERMEDIA WITNESS AGREED THAT THE WORDING IN THE AMENDMENT CAN BE INTERPRETED IN ACCORDANCE WITH BELLSOUTH'S POSITION?

A. Yes. Although Ms. Heather Gold is not a witness for Intermedia in this case, she did testify in Florida in a case involving the same dispute. Ms. Gold admits, on lines 2– 4 of page 8 of her direct testimony filed in Florida (attached as Exhibit JDH-2):

> It is true, I suppose, that if those paragraphs were interpreted in isolation, they arguably would support BellSouth's view that the amendment requires the Attachment A rates to be applied region-wide upon execution, without any other linkage.

Ms. Gold's statement directly supports BellSouth's position. The paragraphs are separately numbered paragraphs of the Amendment that were intended to accomplish a specific, separate purpose – namely the establishment of cost-based reciprocal compensation rates.

Q. HAVE OTHER COMMISSIONS REVIEWED AND REJECTED MRS. STROW'S INTERPRETATION?

A. Yes. The Florida Public Service Commission has already heard a complaint proceeding involving this same rate dispute between BellSouth and Intermedia. In the resulting Order, the Commission

ruled in favor of BellSouth's position (Order attached as Exhibit JDH-3).

Q. HOW HAS INTERMEDIA REPRESENTED ITS THEORY OF THE APPLICATION OF THE RATES IN THE JUNE 3, 1998 AMENDMENT IN PREVIOUS HEARINGS?

A. It seems that Intermedia is unsure of its own theory about how and when the elemental rates in the June 3, 1998 Amendment apply. In the Florida hearing, when Intermedia witness Heather Gold was asked about the MTA amendment, she answered quite clearly her understanding (Florida Transcript page 43, line 18 thru page 44, line 20. Attached as JDH-4):

> BY MR. EDENFIELD:
> Q Okay. Let's go back to the amendment for a second. Tell me your understanding of the circumstances under which the rates in Attachment A would apply.
>
> THE WITNESS:
> A If we were to order, implement, and use multi-tandem access in a given LATA.
>
> Q All right, Again, don't let me put words in your mouth, but I see two possibilities there. One is if you implement MTA, then all rates in a particular state will become those as in Attachment A or for any particular call routed over MTA those rates would apply. There may be other alternatives that I just can't see, but tell me which of those or another one apply, in your mind.

A I would agree those would be the circumstances. I would say it would be the latter, because MTA is, from my understanding of the agreement, MTA is elected in a particular LATA, not on a statewide basis.

Q Okay, So, you think the rates in the attachment would apply for a given call, as opposed to just generally?

A For service in a given LATA.

Q Okay. So, if you implement MTA in, say, the Atlanta LATA, then all – these rates would apply then for all local traffic in the LATA?

A Yes.

Q Would that be for BellSouth originated and Intermedia-originated traffic?

A My understanding is that the rates are reciprocal.

In contrast, when Ms. Strow was asked in a North Carolina proceeding about the application of the rates in The Amendment, she responded (page 90-line 10 thru page 91, line 3. Attached as JDH-5):

BY COMMISSIONER ERVIN:

Q You expect to pay less for multiple tandem access service or more?

THE WITNESS:

A I expected that the rate structure would reflect the fact that BellSouth was now performing additional functionality for us that they had not performed in the past. Quite frankly, I looked at these rates and thought they were additive.

Q And that was exactly where I was headed. So your expectation at the time that you reviewed this document was

that you would pay the composite rate that was set forth in the original interconnection agreement plus this set of rates that's shown on attachment A to the MTA agreement?

A Right, because they were doing extra things for us.

While Ms. Gold of Intermedia testified that the elemental rates would become effective (in lieu of the composite rate) in a LATA once MTA was requested, Ms. Strow actually testified that the elemental rates would be an incremental charge in addition to the composite rate. The arguments set forth by Intermedia in these two previous hearings are inconsistent on the same issue.

Q. MS. STROW STATES ON PAGE 5 THAT INTERMEDIA HAS NOT REQUESTED THAT BELLSOUTH DEPLOY MTA IN TENNESSEE. DOES THIS HAVE ANY IMPACT ON THIS CASE?

A. No. The Amendment was signed on June 3, 1998 and was approved by the Authority on September 1, 1998. The Amendment became effective as of June 3, 1998. The fact that Intermedia has not ordered MTA in Tennessee does not in any way negate the rates set forth in the Amendment for reciprocal compensation.

Q. MR. JACKSON CONTENDS ON PAGE 8 OF HIS TESTIMONY THAT THE AUTHORITY PREVIOUSLY CONCLUDED THAT ISP-BOUND TRAFFIC IS LOCAL TRAFFIC. HOW DO YOU RESPOND?

A. In the recent arbitration orders referenced by Mr. Jackson, the Authority has required the parties to pay reciprocal compensation for ISP-bound traffic on an "interim" basis until the FCC issues rules establishing an inter-carrier compensation mechanism for such traffic. Therefore, BellSouth believes that the Authority has simply established an interim mechanism for such traffic until the FCC rules.

BellSouth has requested that the Authority clarify that payments for ISP-bound traffic will be trued-up on a retroactive basis once the FCC establishes its mechanism. In any event, as I indicated in my direct testimony, BellSouth is willing to abide by the Authority's previous rulings concerning the treatment of ISP-bound traffic. Again, BellSouth makes this offer without waiving its right to appeal or to seek judicial review on this issue.

Q. WHAT DO YOU BELIEVE THIS AUTHORITY SHOULD DO TO RESOLVE THE PARTIES' DISPUTE?

A. Consistent with the clear language in the June 3, 1998, Amendment, the Tennessee Regulatory Authority should deny Intermedia's request for relief. The Authority should further confirm that the elemental reciprocal compensation rates set forth in the Amendment dated June 3, 1998 are the effective rates that

should be billed and paid by the Parties for local traffic exchanged after the Amendment became effective.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

AFFIDAVIT

STATE OF: Georgia
COUNTY OF: Fulton

BEFORE ME, the undersigned authority, duly commissioned and qualified in and for the State and County aforesaid, personally came and appeared Jerry D. Hendrix –Executive Director – Wholesale Pricing Operations, BellSouth Telecommunications Inc., who, being by me first duly sworn deposed and said that:

He is appearing as a witness before the Tennessee Regulatory Authority in Docket No. 00-00280 on behalf of BellSouth Telecommunications, Inc., and if present before the Authority and duly sworn, his testimony would be set forth in the annexed testimony consisting of 11 pages and 5 exhibit(s).

Jerry D. Hendrix

Sworn to and subscribed
before me on 3.13.01

NOTARY PUBLIC

CAROLYN HANESWORTH
NOTARY PUBLIC AT LARGE
DAVIDSON COUNTY, TENN.

My Commission Expires NOV. 27, 2004

TRA
Docket No. 00-00280

BellSouth Rebuttal Exhibit No. JDH – 1

Amendment to the Time Warner Agreement

AMENDMENT

TO

MASTER INTERCONNECTION AGREEMENT BETWEEN
TIME WARNER COMMUNICATIONS AND
BELLSOUTH TELECOMMUNICATIONS, INC DATED JUNE 1, 1996

Pursuant to this Agreement (the "Amendment"), Time Warner Communications ("Time Warner") and BellSouth Telecommunications, Inc. ("BellSouth") hereinafter referred to collectively as the "Parties" hereby agree to amend that certain Master Interconnection Agreement between the Parties dated June 1, 1996 ("Interconnection Agreement")

NOW THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Time Warner and BellSouth hereby covenant and agree as follows

1 The Parties agree to adopt the Bona Fide Request Process attached hereto as Exhibit F The Bona Fide Request Process applies only when Time Warner requests services and unbundled network elements that are not otherwise provided for in the Interconnection Agreement.

2. Article V, Section 5 02 is hereby deleted in its entirety and replaced with the a new Article V, Section 5 02 as follows

5 02 Compensation for Call Termination. The following compensation rates shall apply for traffic delivered between the Parties pursuant to this Agreement

a The delivery of Local Traffic between Companies and BellSouth shall be reciprocal and compensation shall be mutual. For terminating Local Traffic (other than Transit Calls constituting Local Traffic) on each other's networks the parties shall pay each other the rates set forth in Exhibit G (Florida, Mississippi, and North Carolina) for Call Transport and Termination on a per minute of use basis The reciprocal rate in Tennessee is $ 004 per minute of use for End Office termination and $ 0015 for Tandem Office termination (including transport) and $ 0055 (plus transport) for termination through the End Office and Tandem Office.

b. The Parties will compensate each other at the rate applicable to Tandem office termination for the provision of intermediary tandem switching and transport services with respect to Transit Calls constituting Local Traffic

c The delivery of intrastate toll traffic between the Company and BellSouth shall be reciprocal and compensation will be mutual Each Party shall pay each other identical rates for terminating the same type of traffic on each

other's network The Parties will pay each other BellSouth's intrastate Exchange Access rate elements on a per minute of use basis for originating and terminating intrastate toll traffic as appropriate

The following service elements shall apply to intraLATA toll calls (including Toll Free Service Calls whether the provider is a Company or BellSouth), except that certain elements may be inapplicable with collocation

- Tandem Switched Transport
  - Fixed - per minute of use
  - Variable - per minute per mile of use, provided, however that an average mileage of 5 miles shall apply to all intraLATA toll traffic regardless of the actual mileage between the access tandem and the BellSouth end office
- Tandem Switching - per minute of use
- Interconnection charge (IC) - per minute of use
- Local Switching - per minute of use
- Carrier Common Line - per minute of use
- 800 query charge - per query
- Record provision charge for intraLATA 800 records - per record

The applicable rates for the above elements can be found by reference to BellSouth access tariffs

3 The Parties further agree that effective as of April 24, 1997, Article VI, Section 6.14 (g) shall be amended as follows

The Parties shall provide RCF arrangements to each other at identical monthly rates Recurring charges shall not exceed the actual cost of providing the service There shall be no non-recurring charges Until otherwise verified by reliable cost studies, actual cost for recurring charges are as follows

1. Residential Services - $1.15 per line, including 6 call paths,
2. Business Service - $2.25 per line, including 10 call paths, and
3. Each additional path - $.50

In Florida the above listed rates shall not apply The parties agree that in Florida each party will be responsible for tracking its own costs relative to providing interim number

portability with the intent that once the FCC has made its final ruling on permanent number portability, each party would then be able to recover its costs pursuant to regulatory rules and orders

4 Article VI, Section 6 15 is hereby deleted in its entirety and replaced with a new Article VI, Section 6 15 as follows

BellSouth shall, upon request of Time Warner and to the extent technically feasible provide to Time Warner access to its unbundled network elements for the provision of Time Warner's telecommunications service at the rates set forth in Exhibit G attached hereto The Parties acknowledge that Time Warner's access to unbundled network elements in Tennessee is covered by Time Warner's letter to BellSouth dated July 1, 1997

Access to unbundled Network Elements provided pursuant to this Agreement may be connected to other Services and Elements provided by BellSouth or to any Services and Elements provided by Time Warner itself or by any other vendor Time Warner may purchase unbundled Network Elements for the purpose of combining Network Elements in any manner that is technically feasible In all states of BellSouth's operation if BellSouth combines unbundled Network Elements for Time Warner to create services identical to BellSouth's retail offerings, the requested service will be provided as resale and the prices charged to Time Warner for the combined services shall be computed at BellSouth's retail price less the wholesale discount established by the Commission and offered under the same terms and conditions as BellSouth offers the service

5 Article VI, Section 6 15 1 is added as part of the interconnection agreement to read as follows

BellSouth will provide the following Unbundled Sub-Loop Elements Loop Concentrator, Unbundled Sub-Loop, Network Interface Device (NID) and Unbundled Sub-Loop Feeder pursuant to the rates and conditions set forth in Table 1 below

Table 1*

State	Loop Concentrator per system	Unbundled Sub-Loop	NID Per line, per month	Unbundled Sub-Loop Feeder
Florida	BFR	$7 00	$0 76	BFR
Mississippi	BFR	BFR	$0 67	BFR
North Carolina	BFR	BFR	$0 52	BFR
Tennessee	$2.73	$9 23 excluding NID	$0 56	BFR

* The above stated rates are monthly rates and do not include non-recurring rates

The Parties agree that the prices reflected in Table I, except as noted in Florida's price table, shall be subject to true-up (up or down) based on final prices either determined by further agreement or by a final order (including any appeals) of the relevant public service commission or other body having jurisdiction over the subject matter of this Amendment. The prices shown for Florida in Table I are interim and subject to true-up. The true-up will consist of comparing the actual volumes and demand for each items, together with the price associated with such item by this Amendment, with the final prices determined for each item. Each party shall keep its own records upon which a true-up can be based and any final payment from one party from one party to the other shall be in an amount agreed upon by the Parties based on such records. In the event of any disagreement as between the records or the Parties regarding the amount of such "true-up", the Parties agree that the body having jurisdiction over the matter for the affected states shall be called upon to resolve such differences, or that they will submit the matter to commercial arbitration in accordance with the terms contained in Article XX of the Interconnection Agreement.

6. By making these elements available to Time Warner, the parties reserve the right to pursue any and all legal and/or equitable remedies, including appeals of any decisions. If such appeals or challenges result in changes in the discount rates or exclusions and limitations, the parties agree that appropriate modifications to this Agreement will be made promptly to make its terms consistent with the outcome of the appeal.

7. All references in the Interconnection Agreement to "this Agreement" or "the Agreement" shall be deemed to refer to the Interconnection Agreement as amended hereby. Exhibits F and G hereto shall be added as Exhibits F and G to the Interconnection Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed by their respective duly authorized representatives on the date indicated below

TIME WARNER COMMUNICATIONS OF NORTH CAROLINA, L.P., Raleigh Division
By: _____
DATE: 10.28.97

TIME WARNER COMMUNICATIONS OF NORTH CAROLINA, L.P., Greensboro Division
By: _____
DATE: 10.28.97

TIME WARNER COMMUNICATIONS OF NORTH CAROLINA, L.P., Charlotte Division
By: _____
DATE: 10.28.97

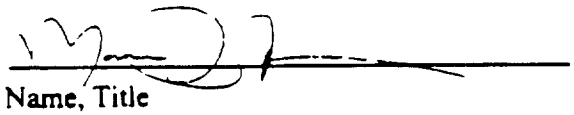
TIME WARNER AXS OF TENNESSEE, L.P.
By: _____
DATE: 10.28.97

DIGITAL MEDIA PARTNERS
By: _____
DATE: 10.28.97

TIME WARNER AXS OF FLORIDA, L.P.
By: _____
DATE: 10.28.97

BELLSOUTH TELECOMMUNICATIONS, INC.
By: _____
DATE 10/30/97

Digital Media Partners, a general partnership
By: Paragon Communications, a general partnership
Managing General Partner
By: American Television and Communication Corporation,
Managing General Partner

By: 
Name, Title

Marc Apfelbaum
Senior Vice President, General Counsel, Secretary

TRA
Docket No. 00-00280

BellSouth Rebuttal Exhibit No. JDH – 2

Pre-Filed Direct Testimony of Heather Gold in Florida Public Service Commission Docket No. 991534-TP

RECEIVED
MAR 17 2000
DIRECTOR - REG. RELATIONS
TALLAHASSEE, FL

INTERMEDIA COMMUNICATIONS INC.
DIRECT TESTIMONY OF HEATHER BURNETT GOLD
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 991534-TP

Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, TITLE, AND THE NATURE OF YOUR POSITION WITH INTERMEDIA COMMUNICATIONS INC. ("INTERMEDIA").

A. My name is Heather Burnett Gold. I serve Intermedia as Vice President-Industry Policy. My business address is 3625 Queen Palm Drive, Tampa, Florida 33619. I am responsible for Intermedia's regulatory, legislative and philanthropic activities. I was formerly President of the Association for Local Telecommunications Services, and before that, Vice President, Industry Affairs for the Competitive Telecommunications Association. I have also held regulatory positions with National Telephone Services, Allnet, GTE Sprint and SBS. I am a director of the Universal Service Administrative Company. I hold BA and MA degrees in economics from Tuft University and an MBA degree in finance and marketing from Washington University.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?

A. I am appearing before the Commission as a policy witness to present evidence describing Intermedia's contractual arrangements with BellSouth Telecommunications, Inc. ("BellSouth"), specifically those arrangements concerning intercarrier compensation for the transport and termination of local traffic. My testimony will support Intermedia's position that it bills BellSouth for the transport and termination of traffic on Intermedia's Florida networks that is originated by BellSouth end users using the correct rate under the parties' interconnection agreement.

Q. WHY HAS INTERMEDIA FILED THIS COMPLAINT AGAINST BELLSOUTH?

A. On October 8, 1999, Intermedia filed this complaint with the Commission when it became apparent that BellSouth was applying an inappropriate rate in making payments against Intermedia's invoices for local traffic transport and termination in Florida in breach of the interconnection agreement.

HQ REGULATORY-ATLA
MIAMI LEGAL
FAX ✓ FED X
HAND DELIVERY
DATE 3.17.2000
TIME 4:30p

Q. WHAT ARE INTERMEDIA'S CONTRACTUAL ARRANGEMENTS WITH BELLSOUTH IN RESPECT TO THIS COMPLAINT?

A. On July 1, 1996, Intermedia executed an interconnection agreement with BellSouth pursuant to section 252 of the Act. As required by section 251(b)(5) of the Act, Intermedia and BellSouth reciprocally compensate each other for the transport and termination of traffic originated on the network of the other within the same local calling area according to terms and conditions set forth in the interconnection agreement. The interconnection agreement sets a composite local interconnection rate of $0.01056 per MOU for DS-1 tandem switching. The provisions of the interconnection agreement controlling the treatment of local traffic are contained in Exhibit HBG-1.

Q. DID BELLSOUTH PERFORM AS IT WAS REQUIRED TO UNDER THE RECIPROCAL COMPENSATION PROVISIONS OF THE INTERCONNECTION AGREEMENT?

A. No. BellSouth soon began to completely withhold payments against Intermedia's invoices for local traffic compensation. BellSouth claimed that Intermedia was billing it for compensation for traffic terminated to internet service providers ("ISPs") and that such traffic is not eligible for reciprocal compensation under the interconnection agreement.

Q. HOW WAS THAT DISPUTE RESOLVED?

A. It became necessary for Intermedia to pursue a regulatory remedy. On April 6, 1998, Intermedia filed a complaint against BellSouth with this Commission, alleging that BellSouth was in breach of the interconnection agreement. On September 15, 1998, the Commission established BellSouth's liability in ruling that BellSouth was required under the interconnection agreement to pay reciprocal compensation to Intermedia for traffic originating from a BellSouth end user to ISPs on Intermedia's network in the same local calling area.[1] The Commission then denied BellSouth's motion to stay its Order pending appeal to the federal court.[2]

Q. WHAT DID BELLSOUTH DO WHEN ITS MOTIONS TO STAY THE COMMISSION'S ORDER WERE DENIED?

A. Recognizing its liability under the Commission's Order, which remained effective, BellSouth sent Intermedia a check on July 2, 1999, in the approximate amount of $12.7 million. The amount owed Intermedia at that time was, however, approximately $37.7 million. In discussions about this discrepancy, BellSouth revealed that it had determined that the rate to be applied to local traffic compensation was contained in an amendment to the interconnection agreement executed on June 3, 1998. This was surprising news to Intermedia, since nothing had occurred, including the amendment (which has become known as the "MTA Amendment") to supersede any of the provisions of the July 1, 1996, interconnection agreement controlling compensation for local traffic termination.

Q. WHAT IS THE "MTA AMENDMENT?"

A. The MTA Amendment modifies Intermedia's interconnection agreement with BellSouth for the purpose of making available at Intermedia's election a network architecture called "multiple tandem access," or "MTA." This architecture is typically deployed in order to minimize the number of trunk groups needed to complete traffic in metropolitan areas. It also is useful to alleviate conditions of persistent traffic congestion. Mr. Thomas explains this fully in relation to Intermedia's Florida operations in his direct testimony in this proceeding.

Q. YOU TESTIFY THAT THE MTA AMENDMENT MAKES MTA AVAILABLE TO INTERMEDIA UPON ITS ELECTION. WHAT IS YOUR BASIS FOR THIS?

A. I refer to the MTA Amendment, which is contained in Exhibit HBG-2. I am not a lawyer, but, from a business standpoint, I can state what the amendment provides and why it does so. First, the amendment begins by providing in numbered paragraph 1 that upon Intermedia's request, BellSouth will provide MTA.

> The Parties agree that BellSouth will, upon request, provide, and [Intermedia] will accept and pay for, Multiple Tandem Access, otherwise referred to as Single Point of Interconnection, as defined in 2, following.

In numbered paragraph 2, the amendment follows with a definition of MTA.

> This arrangement provides for ordering interconnection to a single access tandem, or, at a minimum, less than all access tandems within the LATA for [Intermedia]'s terminating local and intraLATA toll traffic and BellSouth's terminating local and intraLATA toll traffic along with transit traffic to and from ALECs, Interexchange Carriers, Independent companies and Wireless Carriers. This arrangement can be ordered in one way trunks and/or two way trunks or Super Group. One restriction to this arrangement is that all of [Intermedia]'s NXXs must be associated with these access tandems; otherwise, [Intermedia] must interconnect to each tandem where an NXX is homed for transit traffic switched to and from an Interexchange Carrier.

Next, in numbered paragraph 3, the amendment provides that when MTA is elected and provisioned that the elemental rates in Attachment A will be used to bill local traffic.

> The parties agree to bill Local traffic at the elemental rates specified in Attachment A.

Fourth, in numbered paragraph 4, the amendment provides that, when MTA is elected and provisioned, local traffic compensation will be reciprocal based on Attachment A.

> The amendment will result in reciprocal compensation being paid between the Parties based on the elemental rates specified in Attachment A.

Fifth, the amendment provides in numbered paragraph 5 that, otherwise, the provisions of the agreement remain in full force and effect, including, by fair inference, the provisions controlling local traffic compensation absent the election and provisioning of MTA.

> The Parties agree that all of the other provisions of the Interconnection Agreement, dated July 1, 1996, shall remain in full force and effect.

Finally, the rates in Attachment A are introduced by prefatory language designating them as rates to be applied where MTA is used (pursuant to the foregoing provisions) for terminating local traffic.

Multiple Tandem Access shall be available according to the following rates for local usage.

Intermedia's business plan incorporates this construction of the amendment.

Q. WHAT DOES INTERMEDIA UNDERSTAND BELLSOUTH'S VIEW OF THE AMENDMENT TO BE?

A. Based, among other things, on BellSouth's explanation of the payment it made on July 2, 1999,[3] testimony filed in another proceeding before this Commission[4], and BellSouth's discovery requests in this proceeding,[5] BellSouth apparently views the amendment as having two effects. The first effect is to make MTA available under certain terms and conditions. This, of course, is consistent with Intermedia's position. The second effect is to adopt as region-wide rates for reciprocal compensation the rates the Commission approved in Order No. PSC-96-1579-FOF-TP. According to BellSouth, these now region-wide rates are established by the amendment, independent of the deployment of MTA. This is an illogical and unsustainable view, one with which Intermedia takes strong exception, and one that must be repudiated by the Commission.

Q. WHAT IS WRONG WITH THE WAY BELLSOUTH APPARENTLY VIEWS THE EFFECT OF THE MTA AMENDMENT?

A. In the first place, in Order No. PSC-96-1579-FOF-TP ("AT&T Order"), the Commission set forth its rulings in the arbitration proceedings of AT&T and MCIMetro against BellSouth.[6] Those rulings without question had the limited effect of resolving the issues in dispute in AT&T's and MCIMetro's negotiations of their interconnection agreements with BellSouth. The rulings are in no way generic, as BellSouth now appears to suggest. The Commission has long maintained a policy of limiting arbitration proceedings to the negotiating parties. There is nothing to vindicate importing any provisions of the AT&T Order, on a wholesale or a piece part basis, to the Intermedia and BellSouth interconnection agreement. The Commission has taken no action that would permit that step. The parties themselves have taken no action that would permit that step.

While it is true that, in the AT&T Order, the Commission established rates for tandem switching and end office termination,[8] it established rates for a great number of other elements and resolved a great number of other issues. BellSouth gives no reason why it makes sense to import local switching and transport rates, but only those rates, from the AT&T Order to the Intermedia and BellSouth agreement. The question arises then, if the rates in the MTA Amendment are to be considered independent of MTA deployment, as appears to be BellSouth's position, what has happened to require that the rates for tandem switching and end office termination established in the July 1, 1996, agreement, and only those rates, be displaced? The answer is that nothing has happened to require or permit this--except the appearance of BellSouth's illogical construction of the amendment. This is simply another instance of BellSouth behavior that upsets and frustrates competition.

Q. IS THERE ANYTHING ELSE WRONG WITH BELLSOUTH'S VIEW OF THE MTA AMENDMENT?

A. Yes, there is. BellSouth would have the Commission believe that the effect of the amendment was to immediately and unconditionally throughout its entire nine-state region reduce by approximately three times the rates applicable to reciprocal compensation, and in Florida, to do so on the basis of the AT&T Order. According to BellSouth, this dramatic and region-wide reduction has nothing to do with the network architecture used in terminating the traffic. Rather, BellSouth claims, it is a recasting simply of the rate structure to be used going forward as the compensation mechanism for terminating local traffic for reciprocal compensation. If this were the purpose of the amendment, surely BellSouth would have been expected to announce it in a way consistent with its importance. In reality, having lost repeatedly on the issue of reciprocal compensation liability, BellSouth, by this contrivance, and quite transparently, is attempting damage control.

Similarly, if that had been Intermedia's purpose in executing the amendment, I can state without equivocation, and as one who is very experienced in negotiations with BellSouth, that very explicit language would have appeared in the amendment stating exactly that. I can emphasize that point still more by again noting that Intermedia would have been agreeing to end office termination and switching rates in Florida one-third, more or less, of the composite rate agreed to in the July 1, 1996, agreement for apparently only the consideration of enabling the election of MTA--an election that Intermedia has yet to make in Florida. That, of course, is absurd. In addition, state commissions in other BellSouth jurisdictions have made rulings comparable to the rulings in the Florida Commission's AT&T Order, making it all the more imperative to have included specific language in the amendment expressing an intent to import the rulings of the several state commissions. There is no language even remotely having that effect in the amendment. Intermedia engaged in no detailed discussions with BellSouth leading to the execution of the amendment. Given BellSouth's view of the amendment, it is not possible to make a rational case that evidence of a bargained for and proportional consideration appears in any way in the language of the agreement.

Therefore, not only is BellSouth's view internally inconsistent (some but not all of the AT&T Order must be imported), but it is externally inconsistent as well because there is nothing in the amendment that supports importing state commission rulings subsequent to the July 1, 1996, agreement into the amendment nor is there even a demarcation of some kind (as one might expect to find) to indicate where the amendment might be no longer speaking of the first effect and beginning to speak of the second effect.

Q. WHY DO NOT NUMBERED PARAGRAPHS 3 AND 4 OF THE AMENDMENT SUPPORT BELLSOUTH'S VIEW?

A. The answer is simple. Purely apart from the circumstances that gave rise to the amendment, it is true, I suppose, that if those paragraphs were interpreted in isolation, they arguably would support BellSouth's view that the amendment requires the Attachment A rates to be applied region-wide upon execution, without any other linkage. But these paragraphs are not isolated, or isolatable. They appear in a continuum requiring that they be construed in context. It is just that in-context construction that I have explained above.

Q. HAS INTERMEDIA REQUESTED MTA IN FLORIDA?

A. No. Intermedia has never requested that BellSouth deploy MTA in Florida. Mr. Thomas's testimony is quite useful to an understanding of the Intermedia and BellSouth network architectures in place in Jacksonville, Orlando and Miami.

Q. TO WHAT CONCLUSION DOES THE FOREGOING TESTIMONY LEAD YOU?

A. BellSouth is bound to compensate Intermedia for terminating local traffic according to the terms and conditions of the July 1, 1996 interconnection agreement as construed by this Commission in Docket No. 980945-TP. The MTA Amendment is conditional. It is not operative currently because Intermedia has not requested that BellSouth deploy MTA in Florida, which is necessary to establish a linkage to the rates in the amendment. In lawyer's language, the "condition precedent" has not occurred that would introduce the rates in Attachment A as the compensation mechanism for the exchange of local traffic in Florida. As a consequence, BellSouth is in breach of the interconnection agreement, and the Commission should so find.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, it does.

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[1] Order No. PSC-98-1216-FOF-TP, issued in consolidated dockets, 980495-TP, 971478-TP, 980184-TP, and 980499-TP, also resolving similar complaints of WorldCom, Teleport, and MCImetro against BellSouth in the same way.
[2] On June 1, 1999, the federal court denied BellSouth's motion to that court to stay the Commission's order, finding that BellSouth could not satisfy the test for injunctive relief.
[3] Nancy B. White letter to Scott Sapperstein, August 27, 1999. Exhibit HBG-3.
[4] Docket No. 990874-TP. J. Hendrix Rebuttal Testimony, excerpt. Exhibit HBG-4.
[5] Excerpts. Exhibit HBG-5.

[6]Consolidated Docket Nos. 960833-TP and 960846-TP.
[7]As recently as the Global NAPs enforcement proceeding against BellSouth, Docket No. 991267-TP, the Commission reaffirmed this policy. See Order No. PSC-99-2526-PCO-TP, December 23, 1999.
[8]The Commission-established rates in the AT&T Order are $0.00125 per MOU for tandem switching and $0.002 per MOU for end office termination (Order at 68); yet, the rates for those functions that appear in Attachment A are $0.00029 per MOU and $0.0175 per MOU, respectively.
[9] Order No. PSC-98-1216-FOF-TP, issued in consolidated dockets, 980495-TP, 971478-TP, 980184-TP and 980499-TP, also resolving similar complaints of WorldCom, Teleport, and MCImetro against BellSouth in the same way.
[10]On June 1, 1999, the federal court denied BellSouth's motion to that court to stay the Commission's order, finding that BellSouth could not satisfy the test for injunctive relief.
[11]Nancy B. White letter to Scott Sapperstein, August 27, 1999. Exhibit HBG-3.
[12]Docket No. 990874-TP. J. Hendrix Rebuttal Testimony, excerpt. Exhibit HBG-4.
[13]Excerpts. Exhibit HBG-5.
[14]Consolidated Docket Nos. 960833-TP and 960846-TP.
[15]As recently as the Global NAPs enforcement proceeding against BellSouth, Docket No. 991267-TP, the Commission reaffirmed this policy. See Order No. PSC-99-2526-PCO-TP, December 23, 1999.
[16]The Commission-established rates in the AT&T Order are $0.00125 per MOU for tandem switching and $0.002 per MOU for end office termination (Order at 68); yet, the rates for those functions that appear in Attachment A are $0.00029 per MOU and $0.0175 per MOU, respectively.

Service access provided by two or more LECs and/or ALECs or by one LEC in two or more states within a single LATA.

II. Purpose

The parties desire to enter into this Agreement consistent with all applicable federal, state and local statutes, rules and regulations in effect as of the date of its execution including, without limitation, the Act at Sections 251, 252 and 271 and to replace any and all other prior agreements, both written and oral, including, without limitation, that certain Stipulation and Agreement dated December 7, 1995, applicable to the state of Florida concerning the terms and conditions of interconnection. The access and interconnection obligations contained herein enable ICI to provide competing telephone exchange service and private line service within the nine state region of BellSouth.

III. Term of the Agreement

A. The term of this Agreement shall be two years, beginning July 1,, 1996.

B. The parties agree that by no later than July 1, 1997, they shall commence negotiations with regard to the terms, conditions and prices of local interconnection to be effective beginningJuly 1, 1998.

C. If, within 135 days of commencing the negotiation referred to in Section II (B) above, the parties are unable to satisfactorily negotiate new local interconnection terms, conditions and prices, either party may petition the commissions to establish appropriate local interconnection arrangements pursuant to 47 U.S.C. 252. The parties agree that, in such event, they shall encourage the commissions to issue its order regarding the appropriate local interconnection arrangements no later thanMarch 11997. The parties further agree that in the event the Commission does not issue its order prior to July 1,1998 or if the parties continue beyondJuly 1, 1998 to negotiate the local interconnection arrangements without Commission intervention, the terms, conditions and prices ultimately ordered by the Commission, or negotiated by the parties, will be effective retroactive to July 1, 1998. Until the revised local interconnection arrangements become effective, the parties shall continue to exchange traffic pursuant to the terms and conditions of this Agreement.

IV. Local Interconnection

A. The delivery of local traffic between the parties shall be reciprocal and compensation will be mutual according to the provisions of this Agreement. The parties agree that the exchange of traffic on BellSouth's EAS routes shall be considered as local traffic and compensation for the termination of such traffic shall be pursuant to the terms of this section. EAS routes are those exchanges within an exchange's Basic

Local Calling Area, as defined in Section A3 of BellSouth's General Subscriber Services Tariff.

B. Each party will pay the other for terminating its local traffic on the other's network the local interconnection rates as set forth in Attachment B-1, by this reference incorporated herein. The charges for local interconnection are to billed monthly and payable quarterly after appropriate adjustments pursuant to this Agreement are made. Late payment fees, not to exceed 1% per month after the due date may be assessed, if interconnection charges are not paid, within thirty (30) days of the due date of the quarterly bill.

C. The first six month period after the execution of this Agreement is a testing period in which the parties agree to exchange data and render billing. However, no compensation during this period will be exchanged. If, during the second six month period, the monthly net amount to be billed prior to the cap being applied pursuant to subsection (D) of this section is less than $40,000.00 on a state by state basis, the parties agree that no payment is due. This cap shall be reduced for each of the subsequent six month periods as follows: 2nd period--$40,000.00; 3rd period--$30,000.00; and 4th period--$20,000.00. The cap shall be $0.00 for any period after the expiration of this Agreement but prior to the execution of a new agreement.

D. The parties agree that neither party shall be required to compensate the other for more than 105% of the total billed local interconnection minutes of use of the party with the lower total billed local interconnection minutes of use in the same month on a statewide basis. This cap shall apply to the total billed local interconnection minutes of use measured by the local switching element calculated for each party and any affiliate of the party providing local exchange telecommunications services under the party's certificate of necessity issued by the Commission. Each party will report to the other a Percentage Local Usage ("PLU") and the application of the PLU will determine the amount of local minutes to be billed to the other party. Until such time as actual usage data is available or at the expiration of the first year after the execution of this Agreement, the parties agree to utilize a mutually acceptable surrogate for the PLU factor. The calculations , including examples of the calculation of the cap between the parties will be pursuant to the procedures set out in Attachment A, incorporated herein by this reference. For purposes of developing the PLU, each party shall consider every local call and every long distance call. Effective on the first of January, April, July and October of each year, the parties shall update their PLU.

E. The parties agree that there are three appropriate methods of interconnecting facilities: (1) virtual collocation where physical collocation is not practical for technical reasons or because of space limitations; (2) physical collocation; and (3) interconnection via purchase of facilities from either party by the other party. Rates and charges for collocation are set forth in Attachment C-13, incorporated herein by this reference. Facilities may be purchased at rates, terms and conditions set forth in BellSouth's intrastate Switched Access (Section E6) or Special Access (Section E7)

Attachment B-1

Local Interconnection Service

ervice: Local Interconnection*

Description: Provides for the use of BellSouth Switching and transport facilities and common subscriber plant for connecting calls between an ALEC's Point of Interface (POI) and a BellSouth end user.

It can also be used to connect calls between an ALEC and an Interexchange Carrier (IC), and Independent Exchange Telephone Company (ICO), or a Mobile Service Service Provider (MSP), or between two ALECs.

It is furnished on a per-trunk basis. Trunks are differentiated by traffic type and directionality. There are two major traffic types: (1) Local and (2) Intermediary. Local represents traffic from the ALEC's POI to a BellSouth tandem or end office and Intermediary represents traffic originated or terminated by an ALEC which is interconnected with an IC, ICO, MSP or another ALEC.

Rates and charges will be applied as indicated below.

State(s):	Alabama						Florida					
RATE ELEMENTS	Per MOU	Applied Per	Monthly Recur.	Applied Per	Non-Recur.	Applied Per	Per MOU	Applied Per	Monthly Recur.	Applied Per	Non-Recur.	Applied Per
DS1 Local Channel	–	–	$133.81	LC	$466.87	LC - First	–	–	$133.81	LC	$466.87	LC - First
					$486.83	LC - Add'l					$486.83	LC - Add'l
DS1 Dedicated Transport	–	–	$23.50	per mile	–	–			$16.75	per mile	–	–
			$90.00	fac.term.	$100.48	fac. term.	–	–	$58.75	fac.term.	$100.48	fac. term.
DS1 Common Transport	$0.00004	per mile	–	–	–	–	$0.00004	per mile	–	–	–	–
	$0.00036	fac. term.	–	–	–	–	$0.00036	fac. term.	–	–	–	–
Local Switching LS2 (FGD)	$0.00755	access mou	–	–	–	–	$0.00678	access mou	–	–	–	–
Tandem Switching	$0.00074	access mou	–	–	–	–	$0.00060	access mou	–	–	–	–
Information Surcharge	$0.03218	100 mou	–	–	–	–	–		–	–	–	–
Tandem Intermediary Charge**	$0.002	access mou	–	–	–	–	$0.002	access mou	–	–	–	–
Composite Rate-DS1 Dedicated	$0.00978						$0.01028					
Composite Rate-DS1 Tandem Sw	$0.00991						$0.01056					

State(s):	Georgia						Kentucky					
RATE ELEMENTS	Per MOU	Applied Per	Monthly Recur.	Applied Per	Non-Recur.	Applied Per	Per MOU	Applied Per	Monthly Recur.	Applied Per	Non-Recur.	Applied Per
DS1 Local Channel	–	–	$133.81	LC	$466.87	LC - First	–	–	$133.81	LC	$466.87	LC - First
			–	–	$486.83	LC - Add'l			–	–	$486.83	LC - Add'l
DS1 Dedicated Transport	–	–	$23.50	per mile	–	–	–	–	$23.50	per mile	–	–
			$90.00	fac.term.	$100.48	fac. term.	–	–	$90.00	fac.term.	$100.48	fac. term.
DS1 Common Transport	$0.00004	per mile	–	–	–	–	$0.00004	per mile	–	–	–	–
	$0.00036	fac. term.	–	–	–	–	$0.00036	fac. term.	–	–	–	–
Local Switching LS2 (FGD)	$0.00787	access mou	–	–	–	–	$0.00755	access mou	–	–	–	–
Tandem Switching	$0.00074	access mou	–	–	–	–	$0.00074	access mou	–	–	–	–
Information Surcharge	–	–	–	–	–	–	$0.03218	Prem/100 mou	–	–	–	–
							$0.01448	Trans/100 mou				
Tandem Intermediary Charge**	$0.002	access mou	–	–	–	–	$0.002	access mou	–	–	–	–
Composite Rate-DS1 Dedicated	$0.00978						$0.00978					
Composite Rate-DS1 Tandem Sw.	$0.00991						$0.00991					

*Rates are displayed at the DS1-1.544 Mbps. level. For rates and charges applicable to other arrangement levels, refer to Section E6 of BellSouth Telecommunication's, Inc.'s Intrastate Access Tariff.

**The Tandem Intermediary Charge applies only to Intermediary Traffic.

-DS1 Local Channel: denotes a DS1 dedicated transport facility between the ALEC's serving wire center and the ALEC's POI, also called an Entrance Facility. This element will apply when associated with services ordered by an ALEC which utilizes a BellSouth facilities. This element is not required when an ALEC is collocated.

-DS1 Dedicated Transport: provides transmission and facility termination. The facility termination applies for each DS1 Interoffice Channel terminated. Can be used from the ALEC's serving wire center to the end users end office or from the ALEC's serving wire center to the tandem.

-Common Transport: Composed of Common Transport facilities as determined by BellSouth and permits the transmission of calls terminated by BellSouth.

-Access Tandem Switching: provides function of switching traffic from or to the Access Tandem from or to the end office switch(es). The Access Tandem Switching charge is assessed on all terminating minutes of use switched at the access tandem.

-Compensation Credit (CAP): BellSouth and the ALECs will not be required to compensate each other for more than 105% of the total billed local interconnection minutes of use of the party with the lower total billed local interconnection minutes of use in the same month.

ATTACHMENT A

AMENDMENT
TO
MASTER INTERCONNECTION AGREEMENT BETWEEN
INTERMEDIA COMMUNICATIONS, INC. and
BELLSOUTH TELECOMMUNICATIONS, INC.
DATED JULY 1, 1996

Pursuant to this Agreement (the "Amendment"), Intermedia Communications, Inc. ("ICI") and BellSouth Telecommunications, Inc. ("BellSouth") hereinafter referred to collectively as the "Parties" hereby agree to amend that certain Master Interconnection Agreement between the Parties effective July 1, 1996 ("Interconnection Agreement").

NOW THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, ICI and BellSouth hereby covenant and agree as follows:

1. The Parties agree that BellSouth will, upon request, provide, and ICI will accept and pay for, Multiple Tandem Access, otherwise referred to as Single Point of Interconnection, as defined in 2. following:

2. This arrangement provides for ordering interconnection to a single access tandem, or, at a minimum, less than all access tandems within the LATA for ICI's terminating local and intraLATA toll traffic and BellSouth's terminating local and intraLATA toll traffic along with transit traffic to and from other ALECs, Interexchange Carriers, Independent Companies and Wireless Carriers. This arrangement can be ordered in one way trunks and/or two way trunks or Super Group. One restriction to this arrangement is that all of ICI's NXXs must be associated with these access tandems; otherwise, ICI must interconnect to each tandem where an NXX is "homed" for transit traffic switched to and from an Interexchange Carrier.

3. The Parties agree to bill Local traffic at the elemental rates specified in Attachment A.

4. This amendment will result in reciprocal compensation being paid between the Parties based on the elemental rates specified in Attachment A.

5. The Parties agree that all of the other provisions of the Interconnection Agreement, dated July 1, 1996, shall remain in full force and effect.

6. The Parties further agree that either or both of the Parties is authorized to submit this Amendment to the respective state regulatory authorities for approval subject to Section 252(e) of the Federal Telecommunications Act of 1996.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed by their respective duly authorized representatives on the date indicated below.

Intermedia Communications, Inc.	BellSouth Telecommunications, Inc.
Signature	Signature
Name	Jerry D. Hendrix Name
Title	Director-Interconnection Services Title
Date	6/3/98 Date

ATTACHMENT A

Multiple Tandem Access shall be available according to the following rates for local usage:

1. Each Party's local usage will be determined by the application of its reported Percent Local Usage ("PLU") to its intrastate terminating minutes of use as set forth in Paragraph I.D. in ICI's February 24, 1997, Amendment to its Interconnection Agreement.

2. The Parties agree to bill Local traffic at the elemental rates specified below:

ELEMENT	AL	FL	GA	KY	LA
Local Switching					
End Office Switching, per MOU	$0.0017	$0.0175	$0.0016333	$0.002562	$0.0021
End Office Switching, add'l MOU[1]	NA	$0.005	NA	NA	NA
End Office Interoffice Trunk Port - Shared, MOU	NA	NA	NA	NA	$0.0002
Tandem Switching, per MOU	$0.0015	$0.00029	$0.0006757	$0.001096	$0.0008
Tandem Interoffice Trunk Port - Shared	NA	NA	NA	NA	$0.0003
Tandem Intermediary Charge, per MOU[2]	$0.0015	NA	NA	$0.001096	NA
Local Transport					
Shared, per mile, per MOU	$0.00004	$0.000012	$0.000008	$0.0000049	$0.0000083
Facility Termination, per MOU	$0.00036	$0.0005	$0.0004152	$0.000426	$0.00047

ELEMENT	MS	NC	SC	TN
Local Switching				
End Office Switching, per MOU	$0.00221	$0.0040	$0.00221	$0.0019
End Office Switching, add'l MOU[1]	NA	NA	NA	NA
End Office Interoffice Trunk Port - Shared, MOU	NA	NA	NA	NA
Tandem Switching, per MOU	$0.003172	$0.0015	$0.003172	$0.000676
Tandem Interoffice Trunk Port - Shared	NA	NA	NA	NA
Tandem Intermediary Charge, per MOU[2]	NA	NA	NA	NA
Local Transport				
Shared, per mile, per MOU	$0.000012	$0.00004	$0.000012	$0.00004
Facility Termination, per MOU	$0.00036	$0.00036	$0.00036	$0.00036

(1) This rate element is for use in those states with a different rate for additional minutes of use.

(2) This charge is applicable only to intermediary traffic and is applied in addition to applicable switching and or interconnection charges.

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Legal Department

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August 27, 1999

Scott Sapperstein, Esq.
Senior Policy Counsel
Intermedia Communications, Inc.
3625 Queen Palm Drive
Tampa, FL 33619

Dear Mr. Sapperstein:

I am writing in response to Ms. Heather Burnett Gold's letter dated July 26, 1999, regarding the Florida Public Service Commission's Order No. PSC-98-1216-FIF-TP. Per her request, I am addressing this and all future correspondence regarding this matter to you.

According to Ms. Gold's letter and the attached spreadsheets, BellSouth owes Intermedia a total of $31,513,950.55 for reciprocal compensation payments through the end of June 1999. Based on the information contained in the spreadsheets, Intermedia is using an outdated rate of $0.01056 to compute reciprocal compensation payments.

The intent of the June 3, 1998 Amendment to the Interconnection Agreement between Intermedia and BellSouth, which was signed by both parties, was to establish elemental rates for local traffic. The Amendment specifically states in paragraph 3 that "The Parties agree to bill Local traffic at the elemental rates specified in Attachment A." [Emphasis added] Additionally, paragraph 4 provides for "...reciprocal compensation being paid between the Parties based on the elemental rates specified in Attachment A."

I am attaching the June 3rd Amendment, which details the elemental rates for Local traffic. The approved rates for End Office Switching and Tandem Switching/Transport are $0.002000 and $0.00125, respectively.

The correctly compute the reciprocal compensation amount owed by BellSouth, please adjust your reciprocal compensation calculations to reflect the appropriate rates as outlined in the June 3, 1998 Amendment.

Sincerely,

Nancy B. White

Attachments

cc: Mary Jo Peed, Esq. (w/attachments)
Jerry Hendrix, Sr. Dir.-Interconnection Svcs. (w/attachments)
Patrick Finlen, Mgr.-Interconnection Svcs. (w/attachments)

175175

AMENDMENT
TO
MASTER INTERCONNECTION AGREEMENT BETWEEN
INTERMEDIA COMMUNICATIONS, INC. and
BELLSOUTH TELECOMMUNICATIONS, INC.
DATED JULY 1, 1996

Pursuant to this Agreement (the "Amendment"), Intermedia Communications, Inc. ("ICI") and BellSouth Telecommunications, Inc. ("BellSouth") hereinafter referred to collectively as the "Parties" hereby agree to amend that certain Master Interconnection Agreement between the Parties effective July 1, 1996 ("Interconnection Agreement").

NOW THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, ICI and BellSouth hereby covenant and agree as follows:

1. The Parties agree that BellSouth will, upon request, provide, and ICI will accept and pay for, Multiple Tandem Access, otherwise referred to as Single Point of Interconnection, as defined in 2. following:

2. This arrangement provides for ordering interconnection to a single access tandem, or, at a minimum, less than all access tandems within the LATA for ICI's terminating local and intraLATA toll traffic and BellSouth's terminating local and intraLATA toll traffic along with transit traffic to and from other ALECs, Interexchange Carriers, Independent Companies and Wireless Carriers. This arrangement can be ordered in one way trunks and/or two way trunks or Super Group. One restriction to this arrangement is that all of ICI's NXXs must be associated with these access tandems; otherwise, ICI must interconnect to each tandem where an NXX is "homed" for transit traffic switched to and from an Interexchange Carrier.

3. The Parties agree to bill Local traffic at the elemental rates specified in Attachment A.

4. This amendment will result in reciprocal compensation being paid between the Parties based on the elemental rates specified in Attachment A.

5. The Parties agree that all of the other provisions of the Interconnection Agreement, dated July 1, 1996, shall remain in full force and effect.

6. The Parties further agree that either or both of the Parties is authorized to submit this Amendment to the respective state regulatory authorities for approval subject to Section 252(e) of the Federal Telecommunications Act of 1996.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed by their respective duly authorized representatives on the date indicated below.

Intermedia Communications, Inc.

Signature

Name

Title

Date

BellSouth Telecommunications, Inc.

Signature

Jerry D Hendrix
Name

Director-Interconnection Services
Title

6/3/98
Date

ATTACHMENT A

Multiple Tandem Access shall be available according to the following rates for local usage:

1. Each Party's local usage will be determined by the application of its reported Percent Local Usage ("PLU") to its intrastate terminating minutes of use as set forth in Paragraph I.D. in ICI's February 24, 1997, Amendment to its Interconnection Agreement.

2. The Parties agree to bill Local traffic at the elemental rates specified below:

ELEMENT	AL	FL	GA	KY	LA
Local Switching					
End Office Switching, per MOU	$0.0017	$0.0175	$0.0016333	$0.002562	$0.0021
End Office Switching, add'l MOU[1]	NA	$0.005	NA	NA	NA
End Office Interoffice Trunk Port - Shared, MOU	NA	NA	NA	NA	$0.0002
Tandem Switching, per MOU	$0.0015	$0.00029	$0.0006757	$0.001096	$0.0008
Tandem Interoffice Trunk Port - Shared	NA	NA	NA	NA	$0.0003
Tandem Intermediary Charge, per MOU[2]	$0.0015	NA	NA	$0.001096	NA
Local Transport					
Shared, per mile, per MOU	$0.00004	$0.000012	$0.000008	$0.0000049	$0.0000083
Facility Termination, per MOU	$0.00036	$0.0005	$0.0004152	$0.000426	$0.00047

ELEMENT	MS	NC	SC	TN
Local Switching				
End Office Switching, per MOU	$0.00221	$0.0040	$0.00221	$0.0019
End Office Switching, add'l MOU[1]	NA	NA	NA	NA
End Office Interoffice Trunk Port - Shared, MOU	NA	NA	NA	NA
Tandem Switching, per MOU	$0.003172	$0.0015	$0.003172	$0.000676
Tandem Interoffice Trunk Port - Shared	NA	NA	NA	NA
Tandem Intermediary Charge, per MOU[2]	NA	NA	NA	NA
Local Transport				
Shared, per mile, per MOU	$0.000012	$0.00004	$0.000012	$0.00004
Facility Termination, per MOU	$0.00036	$0.00036	$0.00036	$0.00036

(1) This rate element is for use in those states with a different rate for additional minutes of use.

(2) This charge is applicable only to intermediary traffic and is applied in addition to applicable switching and/or interconnection charges.

BELLSOUTH TELECOMMUNICATIONS, INC.

REBUTTAL TESTIMONY OF JERRY HENDRIX

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 990874-TP

FEBRUARY 18, 2000

Q. PLEASE STATE YOUR NAME AND COMPANY NAME AND ADDRESS.

A. My name is Jerry Hendrix. I am employed by BellSouth Telecommunications, Inc. as Senior Director - Interconnection Services Revenue Management, Network and Carrier Services. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. ARE YOU THE SAME JERRY HENDRIX WHO FILED DIRECT TESTIMONY IN THIS PROCEEDING?

A. Yes.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to rebut several assertions in the testimony of US LEC's witness Gary D. Grefrath.

such an exception specifically to exclude ISP-bound traffic from the definition of local traffic. US LEC was able to avoid BellSouth's proposal by opting into an existing interconnection agreement. While US LEC has the legal right to opt into existing agreements, BellSouth tried in its negotiations with US LEC to do precisely what this Commission held BellSouth should have done to avoid paying Intermedia reciprocal compensation for ISP-bound traffic – exclude such traffic from the definition of local traffic.

Q. IS THIS DISPUTE LIMITED TO WHETHER OR NOT RECIPROCAL COMPENSATION APPLIES TO ISP-BOUND TRAFFIC?

A. No. Mr. Grefrath erroneously attributes the differences between what US LEC has invoiced for reciprocal compensation and what BellSouth has paid to the parties' disagreement as to the applicability of reciprocal compensation to ISP-bound traffic. The fact of the matter is that in addition to ISP-bound traffic dispute, the parties disagree about the appropriate rates for reciprocal compensation for local traffic. US LEC has not billed BellSouth the correct reciprocal compensation rate since June of 1999. Mr. Grefrath's testimony makes it seem as if BellSouth is randomly refusing to pay US LEC for legitimate local traffic, which is not the case. BellSouth has paid and will continue to pay US LEC for the minutes of use attributable to local traffic as defined in the parties' interconnection agreements at the appropriate rates set forth in those agreements.

Q. PLEASE DESCRIBE THE DISPUTE YOU MENTIONED CONCERNING THE APPROPRIATE RATE FOR RECIPROCAL COMPENSATION FROM JUNE 1999 TO THE PRESENT.

A. This rate dispute arose out of the proper interpretation of the parties' third interconnection agreement, which was entered into by US LEC and BellSouth effective June 22, 1999. As Mr. Grefrath correctly notes on page 4 of his testimony, US LEC adopted an existing agreement between BellSouth and Intermedia, which included a June 3, 1998 amendment.

Q WHAT WAS THE PURPOSE OF THE JUNE 3, 1998, AMENDMENT?

A. The purpose of the June 3, 1998, amendment was twofold. First, it allowed Intermedia (as well as US LEC) to request Multiple Tandem Access ("MTA"), which allows an ALEC to interconnect at a single access tandem, or, at a minimum, less than all access tandems within the LATA for certain terminating and transit traffic. Second, the amendment was designed to incorporate the commission-approved reciprocal compensation rates into the parties' interconnection agreement, which the parties agreed to charge and to pay for the transport and termination of local traffic. For example, in Florida, the commission-approved reciprocal compensation rate was the $0.002 per

minute of use, with an additional charge for tandem switching, if appropriate.

Q DOES THE JUNE 3, 1998, AMENDMENT CONTAIN A MISTAKE ?

A. Yes. Shortly after executing the June 3, 1998 Amendment with Intermedia, BellSouth realized that the reciprocal compensation rate for Florida (as well as two other states) had been entered incorrectly. For example, the Florida reciprocal compensation rate had erroneously been entered as $.0175 for the first minute of use for end office switching, and $.005 for each additional minute of use for end office switching. The correct reciprocal compensation rate is the end office switching rate of $.002, as ordered by this Commission. When US LEC sought to adopt the Intermedia agreement, BellSouth notified US LEC of this mistake. US LEC acknowledged this and stated that they would amend the agreement once Intermedia amended its agreement (see letter attached as Exhibit JDH-1). Intermedia has to date refused to amend its agreement, and this issue is currently pending before this Commission in Docket No. 991534-TP.

Q HAS US LEC INVOICED BELLSOUTH THE RECIPROCAL COMPENSATION RATES SET FORTH IN THE JUNE 3, 1998, AMENDMENT?

A. No. Rather than billing BellSouth the commission-approved reciprocal compensation rates, US LEC has been billing BellSouth for reciprocal compensation at the old tandem-switched composite rate of $0.01056 per minute of use. Apparently, US LEC believes that the June 3, 1998, amendment only governs reciprocal compensation under an MTA arrangement, which is not the case.

Q. WERE THE RECIPROCAL COMPENSATION RATES SET FORTH IN THE JUNE 3, 1998, AMENDMENT INTENDED TO BE LIMITED TO CIRCUMSTANCES WHEN US LEC ELECTS MTA INTERCONNECTION?

A. No. Paragraph 3 of the amendment states as follows: " The Parties agree to bill Local Traffic at the elemental rates specified in Attachment A." Likewise,
Paragraph 4 of the amendment states as follows: "This amendment will result in reciprocal compensation being paid between the Parties based on the elemental rates specified in Attachment A." Attachment A contains or should contain commission-approved reciprocal compensation rates, and makes no reference to a composite rate of $0.01056 per minute of use, which is the rate US LEC has been erroneously billing BellSouth. Nothing in the June 3, 1998, amendment indicates that the elemental reciprocal compensation rates set forth in Attachment A are solely limited to circumstances when US

LEC elects MTA interconnection. Indeed, the plain language of the amendment indicates otherwise.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, it does. Thank you.

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In re:	)	
Request for Arbitration Concerning Complaint of Intermedia Communications, Inc. against BellSouth Telecommunications, Inc. for breach of terms of Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996, and Request for relief.	)	Docket No. 991534-TP
	)	Filed: March 6, 2000

BELLSOUTH TELECOMMUNICATIONS, INC.'S FIRST SET OF INTERROGATORIES TO INTERMEDIA COMMUNICATIONS, INC.

BellSouth Telecommunications, Inc. ("BellSouth") hereby requests Intermedia Communications, Inc. ("Intermedia") to furnish answers to the following Interrogatories by April 6, 2000.

INSTRUCTIONS

(a) If any response required by way of answer to these Interrogatories is considered to contain confidential or protected information, please furnish this information subject to a protective agreement.

(b) If any response required by way of answer to these Interrogatories is withheld under a claim of privilege, please identify the privilege asserted and describe the basis for such assertion.

(c) These Interrogatories are to be answered with reference to all information in your possession, custody or control or reasonably available to you.

(d) If any Interrogatory cannot be responded to in full, answer to the extent possible and specify the reason for your inability to respond fully. If you object to any part of an

10. Were there any internal meetings (including telephonic meetings) within Intermedia concerning the June 3, 1998 Amendment to the Interconnection Agreement, *prior* to the execution of the June 3, 1998 Amendment to the Interconnection Agreement. If so:

(A) Identify all employees, representatives, or agents of Intermedia involved in said meetings.

(B) Provide a synopsis of those meetings, including the date, time and place of said meetings.

(C) Identify all documents relating to, used in, or resulting from, those meetings.

11. Were there any internal meetings (including telephonic meetings) within Intermedia concerning the June 3, 1998 Amendment to the Interconnection Agreement, *subsequent* to the execution of the June 3, 1998 Amendment to the Interconnection Agreement. If so:

(A) Identify all employees, representatives, or agents of Intermedia involved in said meetings.

(B) Provide a synopsis of those meetings, including the date, time and place of said meetings.

(C) Identify all documents relating to, used in, or resulting from, those meetings.

12. In regard to Attachment A to the June 3, 1998 Amendment to the Interconnection Agreement, did Intermedia intend to include Florida Public Service Commission approved rates under the column labeled "FL"? If not, describe in detail how the rates under the "FL" column were developed.

13. Does Intermedia agree that, as of June 3, 1998, the Florida Public Service Commission had approved (Order No. PSC-96-1579-FOF-TP; Docket Nos. 960833-TP, 960846-TP, 960916-TP) a rate for End Office Switching, per Minute of Use (MOU) of $0.002. If Intermedia does not agree:

(A) What rate does Intermedia contend was the Florida Public Service Commission approved rate for End Office Switching, per Minute of Use (MOU) as of June 3, 1998?

(B) What is the basis for Intermedia's contention as to the rate expressed in response to Interrogatory 13(A) above?

14. In regard to Attachment A to the June 3, 1998 Amendment to the Interconnection Agreement, does Intermedia agree that the rate for End Office Switching, per MOU under the "FL" column should be $0.002 instead of $0.0175? If Intermedia does not agree:

(A) What rate does Intermedia contend that Attachment A should contain for End Office Switching, per MOU under the "FL" column?

(B) What is the basis for Intermedia's contention as to the rate expressed in response to Interrogatory 14(A) above?

15. At the time the June 3, 1998 Amendment to the Interconnection Agreement was executed, did Intermedia consider ISP-bound traffic to be Local traffic for which reciprocal compensation was due under the terms of the July 1, 1996 Interconnection Agreement?

Respectfully submitted this 6th day of March 2000.

BELLSOUTH TELECOMMUNICATIONS, INC.

CERTIFICATE OF SERVICE
Docket No. 991534-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by hand delivery* or by Federal Express overnight delivery** this 17th day of March, 2000 upon the following:

Marlene Stern*
Staff Counsel
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Nancy B. White
Michael P. Goggin
c/o Nancy H. Sims*
BellSouth Telecommunications, Inc.
150 So. Monroe Street, Suite 400
Tallahassee, FL 32301

R. Douglas Lackey**
Bennett L. Ross**
BellSouth Telecommunications, Inc.
Suite 4300
675 W. Peachtree St., NE
Atlanta, GA 30375

Charles J. Pellegrini

TRA
Docket No. 00-00280

BellSouth Rebuttal Exhibit No. JDH – 3

Florida Public Service Commission Order No. PSC-00-1641-FOF-TP

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for arbitration concerning complaint of Intermedia Communications, Inc. against BellSouth Telecommunications, Inc. for breach of terms of interconnection agreement under Sections 251 and 252 of the Telecommunications Act of 1996, and request for relief.	DOCKET NO. 991534-TP ORDER NO. PSC-00-1641-FOF-TP ISSUED: September 14, 2000

The following Commissioner participated in the disposition of this matter:

J. TERRY DEASON, Chairman

APPEARANCES:

CHARLIE PELLEGRINI, ESQUIRE, and PATRICK WIGGINS, ESQUIRE, Wiggins & Villacorta, P.A., Post Office Drawer 1657, 2145 Delta Boulevard, Tallahassee, FL 32302, and SCOTT SAPPERSTEIN appearing on behalf of Intermedia Communications, Inc.

JONATHAN CANIS, ESQUIRE, Kelley, Drye & Warren LLP, 1200 19th Street, N.W., Suite 500, Washington, DC 20036, appearing on behalf of Intermedia Communications, Inc.

KIP EDENFIELD, ESQUIRE, and NANCY B. WHITE, ESQUIRE, BellSouth Telecommunications, Inc., c/o Nancy Sims, 150 South Monroe Street, Suite 400, Tallahassee, FL 32301, appearing on behalf of BellSouth Telecommunications, Inc.

MARLENE STERN, ESQUIRE, and C. LEE FORDHAM, ESQUIRE, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, FL, appearing on behalf of the Commission Staff.

RECEIVED
SEP 14 2000
VIA FAX - REG. RELATIONS
TALLAHASSEE, FL

FINAL ORDER RESOLVING COMPLAINT

BY THE COMMISSION:

I. **Background**

On June 25, 1996, Intermedia Communications Inc. (Intermedia) and BellSouth Telecommunications, Inc. (BellSouth) negotiated a Master Interconnection Agreement (the Master Agreement) and filed it with this Commission pursuant to Section 252 of the Telecommunications Act of 1996 ("Act"). The Agreement was approved on October 7, 1996 in Order No. PSC-96-1236-FOF-TP. On June 3, 1998, Intermedia and BellSouth executed an Amendment to the Master Agreement (the "Amendment"). The Amendment was filed with this Commission on July 13, 1998, in accordance with Section 252 of the Act and approved in Order No. PSC-98-1347-FOF-TP, issued October 21, 1998.

On October 8, 1999, Intermedia filed a Complaint against BellSouth for breach of the terms of the Agreement and Amendment. On November 2, 1999, BellSouth filed its response to Intermedia's Complaint. An administrative hearing was held on June 13, 2000, regarding this matter.

The primary issue is the rate that should be used to bill for reciprocal compensation. Before the Amendment was signed, reciprocal compensation for all local traffic was billed at a composite rate of $0.01056 per minute of use (MOU). According to BellSouth, the Amendment requires that reciprocal compensation for all local traffic be billed at the new elemental rates established in the Amendment. According to Intermedia, the Amendment requires that reciprocal compensation for all local traffic be billed at the composite rate unless Intermedia orders multiple tandem access (MTA), in which case elemental rates apply.

Two additional issues arose during the course of the hearing and those issues are addressed in this Order. First, BellSouth made an oral motion to strike testimony of Intermedia witness Heather Gold. After Ms. Gold had summarized her prefiled rebuttal testimony, BellSouth claimed the summary exceeded the scope of that prefiled testimony. The presiding officer postponed ruling on the motion until the transcript was available so the testimony at issue could be clearly identified. The Commissioner stated that to the extent the summary exceeded the scope of the prefiled testimony, it would be stricken. BellSouth filed its written Motion to Strike on June 21, 2000, and Intermedia filed its Response on June 23, 2000.

Also during the hearing, Intermedia was granted leave to submit a late-filed exhibit, numbered 20, in which it was to

identify the tandems to which Intermedia was connected at the time the Amendment was signed. Exhibit 20 was to be filed before the post-hearing briefs were due. Although the exhibit was timely filed with the Commission, BellSouth claims it did not receive the exhibit within the specified time frame. Intermedia claims it timely delivered the exhibit to BellSouth. After BellSouth received the exhibit, it responded by letter dated July 7, 2000. The response contained additional arguments but also objections that the Forward to Exhibit 20 exceeded the scope granted at the hearing.

BellSouth's Motion to Strike and objections to Exhibit 20 will be addressed in Parts II and III of this Order, respectively. The principal issue of rates will be addressed in Part IV of this Order.

Two Commissioners were initially assigned to this panel. Both were present at the hearing, however Commissioner Clark left the Commission before the decision in this case was rendered. The parties were notified of her departure and agreed to allow the remaining Commissioner to complete the proceedings in this docket.

The Commission has jurisdiction to resolve this dispute pursuant to Sections 251 and 252 of the Telecommunications Act of 1996. See also Iowa Utilities Bd. V. FCC, 120 F. 3d 753, 804 (8th Cir. 1997) (state commissions' authority under the Act to approve agreements carries with it the authority to enforce the agreements).

II. BellSouth's Post-hearing Motion to Strike

At the hearing, Intermedia witness Heather Gold stated the following in summarizing her prefiled rebuttal testimony:

> BellSouth, in fact, told Intermedia personnel that we had to sign the amendment if we wanted BellSouth to stop blocking our traffic in the Norcross tandem in Georgia.

BellSouth argues that this statement should be stricken because Ms. Gold's prefiled rebuttal testimony made no mention of this problem.

Intermedia contends that the statement appropriately represents the substance of the prefiled rebuttal testimony. The prefiled testimony includes the following statement:

> As I explained in my direct testimony, the MTA Amendment was executed for the sole purpose of making multiple tandem access available to

> Intermedia upon our election for the alleviation of traffic congestion. There were no provisions in our then existing interconnection agreement that addressed multiple tandem access. Because of this, it was necessary to establish applicable rates when this different type of access is elected by Intermedia.

Intermedia contends that the purposes of this testimony were: 1) to rebut BellSouth's claim as to the purpose of the Amendment; and 2) to point out that if an MTA arrangement was needed to alleviate congestion, it would have to be incorporated into an agreement specifying the terms and conditions of that arrangement. Intermedia further contends that, in her summary at the hearing, Ms. Gold explains that Intermedia came to understand these two points when congestion occurred in early 1998 at the Norcross tandem. That is, the "traffic congestion" in the prefiled testimony refers to the blockage at Norcross. For this reason, Intermedia contends that Ms. Gold was furthering the explanation of the circumstances that gave rise to the MTA Amendment.

The prefiled rebuttal testimony of Ms. Gold addresses the issue of who initiated the request for MTA and makes reference to congestion problems. However, the prefiled testimony does not assign any special significance to the Norcross tandem and in fact does not mention that location. More importantly, the prefiled testimony does not suggest that the blockage at Norcross resulted from an intentional act of BellSouth. In light of these facts, I find that Ms. Gold's summary exceeded the scope of her prefiled rebuttal testimony. Lines 22-25 on page 282 of the hearing transcript, shall therefore be stricken.

III. Late-filed Exhibit 20

As described in the Section I, BellSouth claims it did not receive late-filed Exhibit 20 by the June 20, 2000, deadline. Intermedia filed the exhibit with the Commission on June 19, and claims to have delivered it to BellSouth on the same day. Intermedia was not aware of the problem until BellSouth stated, in its post-hearing brief, that it never received the exhibit. Intermedia immediately delivered the exhibit to BellSouth. BellSouth addressed the exhibit in a letter dated July 7, 2000, in which it asked that only the Foreword of the Exhibit be stricken.

As I specified at the hearing, the purpose of Exhibit 20 was to clarify the tandems to which Intermedia was connected when the

amendment was signed. The first two paragraphs of the Foreward describe the events that lead up to the presiding officer's request for the late-filed exhibit. Paragraph three describes the types of diagrams and the spreadsheet included in the exhibit. Paragraph four provides a brief summary of the information conveyed in the diagrams and spreadsheet. The last two paragraphs address alleged problems with BellSouth's ability to adequately track Intermedia's trunking arrangements. Only paragraphs three and four fall within the scope of the exhibit and shall not be stricken. Paragraphs one, two, five and six exceed the designated scope of the exhibit and shall be stricken.

IV. Determination of Rates at Which to Bill Reciprocal Compensation

The central issue in this case was stated as follows:

> What is the applicable rate(s) that Intermedia and BellSouth are obligated to use to compensate each other for transport and termination of local traffic in Florida pursuant to the terms of their Interconnection Agreement approved by the Commission?

To resolve the dispute, it must be determined whether the Amendment requires that elemental rates be used for reciprocal compensation for the transport and termination of all local traffic or just local traffic in those Local Access and Transport Areas (LATAs) where Intermedia requests and BellSouth provides MTA.

Intermedia claims that performance under the Amendment requires reciprocal compensation for the transport and termination of local traffic to be billed at the composite tandem switching rate of $0.01056 per MOU, unless it orders MTA. If MTA is ordered and provided, then reciprocal compensation for the transport and termination of local traffic is to be billed at the elemental rates specified in the Amendment.

BellSouth claims that performance under the amendment requires reciprocal compensation for transport and termination of local traffic to be billed at the elemental rates, whether or not it provides MTA to Intermedia.

BellSouth witness Milner describes MTA as one form of interconnection available to Intermedia.

> The MTA option provides for LATA wide transport and termination of a facility based Alternative Local Exchange Carrier's (ALEC's) originated intraLATA toll traffic and local

> traffic. Such traffic is transported by BellSouth on behalf of the ALEC. The ALEC establishes a Point of Interconnection (POI) at a single BellSouth access tandem with BellSouth providing additional transport and routing through other BellSouth access tandems in that same LATA as required. The facility-based ALEC must establish Points of Interconnection at each BellSouth access tandem where the facility-based ALEC's NXX'S are "homed". If the facility-based ALEC does not have NXX's homed at a given BellSouth access tandem within a LATA and elects not to establish Points of Interconnection at such a BellSouth access tandem, the facility-based ALEC can instead order MTA in each BellSouth access tandem within the LATA where the ALEC does have a Point of Interconnection and BellSouth shall terminate traffic to end-users served through those BellSouth access tandems where the facility-based ALEC does not have a Point of Interconnection.

He further explains that for a facility-based ALEC's originated local traffic and intraLATA toll traffic, transported by BellSouth but destined for termination by a third party network (transit traffic), MTA is available if the use of multiple BellSouth access tandems is necessary to deliver the call to the third party network.

Intermedia witness Thomas describes MTA as a means by which congested traffic may be "alternate routed." He continues that MTA is not, however, an efficient use of network facilities, since calls transported over MTA architectures are switched many more times than if they were to be transported over direct trunks to the called party's end office.

BellSouth witness Milner responds that with MTA, when an ALEC sends a call to a BellSouth Access Tandem that is destined for an end user served by an office subtending another BellSouth Access Tandem, only one additional switching function is required. He further argues that while MTA can be used to "alternate route" traffic, this is not the purpose for which MTA was designed. Instead, the witness contends that MTA allows an ALEC to minimize the points of interconnection between the ALEC's network and BellSouth's network.

As stated in the issue, the dispute in this complaint is whether the agreement calls for elemental rates or composite rates.

According to BellSouth witness Hendrix, elemental rates break down reciprocal compensation into several components that reflect various network functions. The customer is charged based on how much each function is used. Composite rates, explained Mr. Hendrix, are made up of averages.

In their briefs, Intermedia and BellSouth argue that the MTA Amendment is plain on its face. Intermedia witness Gold testified that the Amendment is a conditional contract. "If" Intermedia elects and BellSouth provides MTA, "then" the elemental rates in Attachment A will be used to bill and compensate each other for the transport and termination of all local traffic within the LATA in which MTA is provisioned. Intermedia maintains that all the paragraphs in the Amendment are interrelated and should be read collectively. In other words, the Amendment outlines the conditions under which Intermedia can obtain MTA from BellSouth. Therefore, according to Intermedia the elemental rates in the Amendment apply only if Intermedia orders, implements and uses multi-tandem access in a given LATA. Intermedia adds that it is Intermedia's preference to directly trunk to access tandems, rather than using MTA, so that Intermedia is not dependent upon anyone else.

In contrast, BellSouth witness Hendrix testified that the Amendment is a quid pro quo between the parties. In exchange for BellSouth agreeing to provide Intermedia multiple tandem access when requested, Intermedia would give BellSouth elemental rates for all local traffic in all of the BellSouth states. BellSouth witness Hendrix contends that the elemental rates are not tied to MTA. Instead, he states, the elemental rates in the Amendment entirely replace the composite rates in the Master Agreement. BellSouth clarifies that paragraphs three and four of the Amendment are to be interpreted independently because they are separately numbered paragraphs that were intended to accomplish a specific purpose -- namely, the establishment of cost-based reciprocal compensation rates.

Although both parties contend that the Amendment is clear on its face, I find the Amendment to be somewhat ambiguous. One part of the Amendment indicates that elemental rates apply only to MTA, while another part indicates elemental rates apply to local traffic in general. The statement at the top of Attachment A to the Amendment reads: "MTA shall be available according to the following rates for local usage:". In contrast, paragraph three of the Amendment specifies that "(t)he Parties agree to bill Local traffic at the elemental rates specified in Attachment A," with no mention of MTA. Paragraph three of the amendment thus, could be read to require elemental rates for all local traffic. Each statement refers to the same set of rates.

When the language of a contract is ambiguous or unclear, evidence extrinsic to the contract may be used to determine the intent of the parties at the time the contract was executed. See Gulf Cities Gas Corp. v. Tangelo Park Service Company, 253 So. 2d 744, 748 (Fla. 4th DCA 1971). The intent of the parties to a contract should govern interpretation of the contract. See Florida Power Corp. v. City of Tallahassee, 154 So. 2d 638, 643-4 (Fla. 1944); American Home Assurance Co. v. Larkin General Hospital, Ltd., 593 So. 2d 195, 197.

In determining the intent of the parties when they executed their contract, we may consider circumstances that existed at the time the contract was entered into, and the subsequent actions of the parties. In James v. Gulf Life Insur. Co., 66 So.2d 62, 63 (Fla. 1953) the Florida Supreme Court cited with favor Contracts, 12 Am.Jur. § 250, pages 791-93, as a general proposition concerning contract construction in pertinent part as follows:

> Agreements must receive a reasonable interpretation, according to the intention of the parties at the time of executing them, if that intention can be ascertained from their language. . . . Where the language of an agreement is contradictory, obscure, or ambiguous, or where its meaning is doubtful, so that it is susceptible of two constructions, one of which makes it fair, customary, and such as prudent men would naturally execute, while the other makes it inequitable, unusual, or such as reasonable men would not be likely to enter into, the interpretation which makes a rational and probable agreement must be preferred. . . . An interpretation which is just to both parties will be preferred to one which is unjust.

When interpreting a contract, the circumstances in existence at the time the contract was made should be considered in ascertaining the parties' intentions. Triple E Development Co. v. Floridagold Citrus Corp., 51 So.2d 435, 438, rhg. den. (Fla. 1951). What a party did or omitted to do after the contract was made may be properly considered. Vans Agnew v. Fort Myers Drainage Dist., 69 F.2d 244, 246 (Fla. 5CA 1934), rhg. den. 292 US 643, 78 L. Ed. 1494, 54 S. Ct. 776. Courts may look to the subsequent action of the parties to determine the interpretation that they themselves place on the contractual language. Brown v. Financial Service Corp., Intl., 489 F.2d 144, 151 (5th Cir.) citing LaLow v. Codomo, 101 So.2d 390 (Fla. 1958). Although recitals and titles are not operative components of a contract, they may be used to ascertain

intent when the operative components are ambiguous. See Johnson v. Johnson, 725 So. 2d 1209, 1213 (Fla. 3d DCA 1999). Ambiguous terms in a contract should be construed against the drafter. Vans Agnew v. Fort Myers Drainage Dist., 69 F.2d 244, 246 (Fla. 5CA 1934); Sol Walker & Co. v. Seaboard Coast Line Railroad Co., 362 So. 2d 45, 49; MacIntyre v. Green's Pool Service, 347 So. 2d 1081, 1084; City of Homestead v. Johnson, 760 So.2d 80 (Fla. 2000).

BellSouth claims that the language at the top of Attachment A is a title or recital and should not be considered when interpreting the Amendment. See Johnson v. Johnson, 725 So. 2d 1209, 1212 (Fla. 3d DCA 1999). Based on the record, however, I find that the language at the top of Attachment A provides instruction on how to apply the elemental rates and is therefore an operative part of the Agreement.

Intermedia and BellSouth disagree about the circumstances that led to the execution of the Amendment. According to Intermedia witness Gold, in early 1998, BellSouth stopped terminating local traffic from Intermedia end users to BellSouth end users that subtended BellSouth's Norcross, Georgia tandem. BellSouth informed Intermedia's engineering manager, that since Intermedia was not directly trunked to the Norcross tandem, the only way to alleviate the problem was to request MTA between the Buckhead and Norcross tandems. Such an arrangement would require an amendment to the Master Agreement.

Ms. Gold explained that in response to BellSouth's proposed resolution, Intermedia requested the MTA Amendment. Ms. Gold also explained that it ordered an outgoing trunk to Norcross so that it could trunk directly to the Norcross tandem. According to Intermedia witness Thomas, the plan was to go with whatever happened first. The trunk was completed before the Amendment.

Between the time BellSouth stopped connecting calls to end users subtending the Norcross tandem and the time Intermedia completed the direct trunk to Norcross, Intermedia witness Thomas explained that outgoing calls from its customers were completed by redirecting that traffic to the long distance side of the BellSouth switch at an access or long distance rate.

According to BellSouth witness Hendrix, Intermedia initially came to BellSouth wanting MTA. He stated that the reason Intermedia wanted MTA was to reduce trunking costs. Witness Hendrix alleges that Intermedia foresaw MTA as a vehicle that would give them lower tandem and trunking costs since Sprint won on this very same issue in Georgia.

Mr. Hendrix testified that of all the witnesses who testified at the hearing, only he was present during the negotiations for the Amendment. Mr. Hendrix noted that Intermedia witness Gold did not join the company until three months after the execution of the Amendment. Therefore, BellSouth contends that witness Gold's testimony is not credible because she cannot speak to the intent of the parties first hand.

Intermedia witness Gold stated that Ms. Julia Strow, who is no longer with the company, was the only person from Intermedia who participated in negotiating the Amendment. Ms. Gold explained that Ms. Strow's understanding of the Amendment's intent is reflected in her March 25, 1999, letter, a response to correspondence from BellSouth. BellSouth's letter to Ms. Strow indicated that it would be backbilling Intermedia at elemental rates, from June 1998, the month the Amendment became effective, to March 1999. Ms. Strow responded that she did not understand the need to backbill because BellSouth was not providing MTA to Intermedia and the elemental rates only applied to MTA. Thus, Intermedia witness Gold argues that Ms. Strow understood the Amendment to impose elemental rates only when MTA was ordered.

Ms. Gold also explained that she directly supervised Ms. Strow for 15 months. Therefore, Ms. Gold maintained that she was well aware of the circumstances and negotiations of the Amendment.

As evidence of BellSouth's intent, BellSouth witness Scollard testified that BellSouth's Carrier Access Billing System (CABS) was not capable of billing a given ALEC in a given state, at both composite and elemental rates. He explained that, in Florida, CABS could either bill an ALEC reciprocal compensation using a composite rate structure or using an elemental rate structure, but not both. Therefore, witness Scollard claims that BellSouth's intent was for only one rate structure to be in effect. Intermedia contends that the system can, at any time, be revised to provide that capability.

As additional evidence of its intent, BellSouth witness Hendrix explained that state commissions had begun ordering BellSouth to replace composite rates with elemental rates in its Standard Interconnection Agreement. In its brief, BellSouth noted that this Commission required BellSouth to implement elemental rates into its interconnection agreements with AT&T and MCIWorld. See Order No. PSC-96-1579-FOF-TP ("AT&T" Order). BellSouth explained that composite rates were the norm when Intermedia and BellSouth signed their Master Agreement. BellSouth further explained that when Intermedia requested MTA, BellSouth took that opportunity to incorporate elemental rates into the agreement.

In response, Intermedia witness Gold pointed out that BellSouth imported only the switching and transport rates into the Amendment, although the AT&T Order established rates for a number of other elements. Intermedia noted that BellSouth never explained the reason for importing only the two rates into the Amendment and not the others. Ms. Gold also noted that the rulings in the AT&T Order were specific to the litigants in that docket and were not intended to apply generically to all ALECs.

In a separate argument, Intermedia witness Gold described previous litigation between itself and BellSouth over the Master Agreement, and explained how that litigation illuminates Intermedia's intent with respect to the Amendment. The litigation was ongoing when the amendment negotiations were in progress and when the Amendment was signed. See Order No. PSC 98-1216-FOF-TP, issued in Docket No. 971478-TP, on September 15, 1998. The litigation resulted from BellSouth's refusal to pay Intermedia reciprocal compensation for traffic originating from a BellSouth customer and terminating to ISPs on Intermedia's network in the same local calling area. Over $7.5 million dollars was at issue. Intermedia witness Gold testified that it "is implausible" to believe, that Intermedia would modify the Master Agreement to receive a 60% reduction in reciprocal compensation, without settlement of the outstanding $7.5 million balance. In addition, witness Gold noted that at the time the Amendment was signed, Intermedia had already resolved the Norcross problem by directly trunking to that tandem.

As evidence that BellSouth's intent was the same as Intermedia's when they signed the Amendment, Intermedia's brief and witness Gold noted three facts. First, BellSouth continued to bill Intermedia at composite rates for several months after the Amendment was signed. Second, BellSouth was required to provide summaries of the Amendment upon filing in Georgia and North Carolina. The summaries said nothing about elemental rates replacing composite rates globally. The summaries only mentioned that MTA would be made available. The summary for North Carolina stated:

> On October 10, 1996, the Commission approved and interconnection agreement between BellSouth and ICI. I enclose an amendment to that agreement that provides for Multiple Tandem Access.

The summary for Georgia stated:

> This Amendment reflects that BellSouth will, upon request, provide and Intermedia will accept and pay for, Multiple Tandem Access, otherwise referred to as Single

> Point of Interconnection. . .All other provisions of the Interconnection Agreement, dated July 1, 1996, shall remain in full force and effect.

Intermedia contends that a global rate change is far more significant than provisioning MTA upon request, and if BellSouth's intent was, in fact, a global rate change, the filings would have reflected that.

Third, Intermedia's brief explained that in Georgia, under a federal court order to make deposits into the court's registry of the amounts invoiced by Intermedia for ISP traffic, BellSouth made deposits after the execution of the Amendment based on the composite rates. This conflicts with BellSouth's claim that the reduced elemental rates were in effect starting June 1998 for all local traffic in all other states.

BellSouth also makes arguments regarding billing inconsistencies. BellSouth ellicited testimony from Intermedia witness Gold that Intermedia never came to BellSouth after the Amendment questioning why BellSouth was billing Intermedia the elemental rates. BellSouth claims that as of June 1998, they billed Intermedia using the elemental rates, making the invoices to Intermedia 20 to 30% less than they had been prior to the Amendment.

The record demonstrates that after the execution of the Amendment there was some correspondence between the parties regarding rates and billing. The correspondence is contained in Exhibit 4 of the record and was proffered by BellSouth. On June 4, 1998, one day after the Amendment was signed, BellSouth sent Intermedia a letter responding to an inquiry about a possible error in an end office switching rate. BellSouth claims that the letter made it apparent that rates had, at least, been discussed during the negotiations of the Amendment. Intermedia witness Gold agreed, but made clear that the letter did not say or contemplate that MTA was ever implemented. Intermedia never responded to the letter.

On March 3, 1999, BellSouth sent Intermedia another letter noticing the mistake in the end office switching rate and indicating to Intermedia that the correct rate should be $0.002. BellSouth also indicated in the letter that it would be back billing this corrected rate to June 3, 1998, since that rate should have been in effect at the same time as the MTA Amendment.

In a letter dated March 25, 1999, Intermedia responded to BellSouth's March 3rd letter, stating that while Intermedia was open to the rate correction, Intermedia was confused by BellSouth's

statement about back billing Intermedia's invoices using the elemental rates since Intermedia had not implemented MTA.

On April 2, 1999, BellSouth explained to Intermedia, in a letter, that pursuant to the Amendment, the elemental rates in the Attachment apply to all local traffic, regardless of whether or not MTA had been provided. Intermedia filed this complaint with the Commission on October 9, 1999.

Upon consideration, I find that elemental rates should be applicable for transport and termination of all local traffic, in all LATAs, regardless of whether MTA was ordered and provided.

First, while witness Thomas testified that Intermedia was direct trunked to all applicable tandems in Florida prior to the signing of the amendment, the record shows that this was not the case in Georgia. Indeed, witness Thomas testified that Intermedia requested an MTA amendment to the Agreement which was regional, while also investigating other options to allow its customers to call exchanges subtending the Norcross, Georgia tandem. In addition, Intermedia witness Thomas and BellSouth witness Milner agree that MTA may be used to alternate route traffic. Thus, even with direct trunking to all applicable tandems, Intermedia might still have had an interest in MTA. Consequently, I find that Intermedia could have knowingly entered into an amendment which required elemental rates for all local traffic, even though this constituted a significant reduction in reciprocal compensation revenue.

Second, BellSouth witness Hendrix participated in negotiations and signed the agreement, while the Intermedia witnesses were not involved in the process. As a result, I believe that the testimony of witness Hendrix must be given more weight, particularly since his interpretation appears to be supported by the above mentioned circumstances in Georgia at the time and the possible use of MTA for alternate routing.

Third, I find that the language of the agreement, while somewhat ambiguous, is more consistent with BellSouth's interpretation. If the statement in the Amendment which reads "(t)he Parties agree to bill Local traffic at the elemental rates specified in Attachment A," was intended to apply only in the MTA context, this dependency should have been clearly stated; it was not. The same is true for the statement in the Amendment which reads "(t)his amendment will result in reciprocal compensation being paid between the Parties based on the elemental rates specified in Attachment A." I find that a more reasonable interpretation is that the statement was designed to show that the rates had generic applicability to all local traffic, not merely

for local traffic in those LATAs where MTA was requested and provided.

Finally, this conclusion is consistent with BellSouth witness Scollard's testimony regarding CABS. The witness alleges that CABS does not have the capability to bill based on the manner in which calls are routed. It would be awkward to bill local traffic in one LATA differently from local traffic in another LATA, since this would necessitate comparing originating and terminating telephone numbers (area code and prefix) to determine the LATA. In addition, local traffic can be interLATA, which raises the question of which rate(s) would apply if MTA has been provided in one LATA and not the other.

V. Conclusion

These proceedings have been conducted pursuant to the directives and criteria of Sections 251 and 252 of the Act. This decision is consistent with the terms of Section 251, the provisions of the FCC's implementing Rules that have not been vacated, and the applicable provisions of Chapter 364, Florida Statutes.

Based on the foregoing, it is therefore

ORDERED by the Florida Public Service Commission that elemental rates shall apply to transport and termination of all local traffic, in all LATAs, regardless of whether BellSouth Telecommunications, Inc. provisions multiple tandem access to Intermedia Communications, Inc. It is further

ORDERED that BellSouth's Post-Hearing Motion to Strike is granted. It is further

ORDERED that paragraphs one, two, five and six of the Foreward to Intermedia's late-filed Exhibit 20 are stricken from the record of this proceeding. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 14th day of September, 2000.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: s/ Kay Flynn

Kay Flynn, Chief
Bureau of Records

This is a facsimile copy. A signed copy of the order may be obtained by calling 1-850-413-6770.

(S E A L)

MKS

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review in Federal district court pursuant to the Federal Telecommunications Act of 1996, 47 U.S.C. § 252(e)(6).

TRA
Docket No. 00-00280

BellSouth Rebuttal Exhibit No. JDH – 4

Hearing Transcript from FPSC Docket No. 991534-TP

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of	:	DOCKET NO. 991534-TP
REQUEST FOR ARBITRATION CONCERNING COMPLAINT OF INTERMEDIA COMMUNICATIONS, INC. AGAINST BELLSOUTH TELECOMMUNICATIONS, INC. FOR BREACH OF TERMS OF INTERCONNECTION AGREEMENT UNDER SECTIONS 251 AND 252 OF THE TELECOMMUNICATIONS ACT OF 1996, AND REQUEST FOR RELIEF	:	

VOLUME 1
Pages 1 through 165

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* *
* ELECTRONIC VERSIONS OF THIS TRANSCRIPT *
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* AND DO NOT INCLUDE PREFILED TESTIMONY. *
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PROCEEDINGS:	HEARING
BEFORE:	COMMISSIONER J. TERRY DEASON COMMISSIONER SUSAN F. CLARK
DATE:	Tuesday, June 13, 2000
TIME:	Commenced at 9:30 a.m. Concluded at 1:15 p.m.
PLACE:	Betty Easley Conference Center Room 148 4075 Esplanade Way Tallahassee, Florida
REPORTED BY:	KORETTA E. STANFORD, RPR Official FPSC Reporter

APPEARANCES:

CHARLIE PELLEGRINI and PATRICK WIGGINS, Wiggins & Villacorta, P. A., Post Office Drawer 1657, 2145 Delta Boulevard, Tallahassee, Florida 32302, and SCOTT SAPPERSTEIN appearing on behalf of Intermedia Communications, Inc.

JONATHAN CANIS, Kelley Drye & Warren LLP, 1200 19th Street, N.W., Suite 500, Washington D.C 20036, appearing on behalf of Intermedia Communications, Inc.

KIP EDENFIELD AND NANCY B. WHITE, BellSouth Telecommunications, Inc., c/o Nancy Sims, 150 South Monroe Street, Suite 400, Tallahassee, Florida 32301, appearing on behalf of BellSouth Telecommunications, Inc.

MARLENE STERN AND C. LEE FORDHAM, Florida Public Service Commission, Division of Legal Services, 2540 Shumard Oak Boulevard, appearing on behalf of the Commission Staff.

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P R O C E E D I N G S

COMMISSIONER DEASON: Call the hearing to order. Can we have the notice read, please?

MS. STERN: By notice issued May 2nd, 2000, this time and place has been set for a hearing in docket 991534TP, the request for arbitration concerning the complaint of Intermedia Communications against BellSouth Telecommunications for breach of their interconnection agreement under sections 251 and 252 of the Telecommunications Act of 1996.

COMMISSIONER DEASON: Appearances.

MR. EDENFIELD: Kip Edenfield on behalf of BellSouth. I have with me also Nancy White, general counsel of Florida, on behalf of BellSouth.

MR. CANIS: Jonathan Canis from Kelley Drye & Warren, Washington D.C., on behalf of Intermedia Communications.

MR. PELLIGRINI: Charles Pelligrini, Wiggins & Villacorta, on behalf of Intermedia Communications. I would like to enter an appearance also for Scott Sapperstein, Intermedia Communications, Tampa, and for Patrick Wiggins, Wiggins & Villacorta, Tallahassee.

MS. STERN: I'm Marlene Stern for the Commission and Lee Fordham for the Commission.

COMMISSIONER DEASON: I'm sorry, could you

repeat that?

MS. STERN: Marlene Stern and Lee Fordham on behalf of the Commission.

COMMISSIONER DEASON: Okay. I'm sorry, sir, could you repeat your name?

MR. CANIS: John Canis, C-A-N-I-S.

COMMISSIONER DEASON: Thank you.

Do we have any preliminary matters.

MS. STERN: Yes, there are two preliminary matters. There's a stipulated recognition list that we'd like to enter into evidence, and Intermedia indicated they wanted to make an opening statement, which was not discussed at the prehearing conference.

COMMISSIONER DEASON: Okay. Let's take one item at a time. Where is the official recognition list?

MS. STERN: I have copies.

COMMISSIONER DEASON: Okay. Could you distribute those, please. Have all parties had the opportunity to review this prior to today?

MR. PELLIGRINI: Yes, Intermedia's in agreement with the list.

MR. EDENFIELD: BellSouth has had the opportunity to review it and is in agreement with it.

COMMISSIONER DEASON: Very well. Then this shall be identified as Exhibit Number 1 and without

objection shall be admitted.

(Exhibit 1 was marked for identification and admitted into evidence.)

COMMISSIONER DEASON: Okay, the second preliminary matter concerned opening statements; is that correct?

MS. STERN: Yes.

COMMISSIONER DEASON: Okay. Before we get to that, I have a question. I noticed in the appearing order there was a -- under pending motions there was a description of a motion to file surrebuttal testimony. What's the status of that at this point?

MS. STERN: That's been disposed of. An order has been issued on that motion.

COMMISSIONER DEASON: Okay, very well.

Okay. Question of opening statements; I did not -- in my review of the preliminary order, I did not see where that was discussed. Was it discussed at the prehearing --

MS. STERN: No, it was not.

COMMISSIONER DEASON: Okay. There's been a request to have opening statements?

MR. CANIS: Yes, there has, Your Honor. Mr. Pelligrini, in the discussions with BellSouth, indicated our interest in making an opening statement to clarify issues and to kind of set the stage for the

hearing.

And Mr. Pelligrini suggested that BellSouth and Intermedia cosponsor a motion. And BellSouth demurred on that, and that's why we're in the position of making this request ourselves.

COMMISSIONER DEASON: Okay. BellSouth?

MR. EDENFIELD: Actually, it was a little more than a deferral. I talked to Mr. Pelligrini and advised him that it was not in the prehearing order, that we did not think that opening statements would add anything to this proceeding, as far as providing clarity to the Commission, and that we objected to having opening statements, and we maintain that objection.

COMMISSIONER DEASON: Okay. Staff have a position?

MS. STERN: We think it should have been addressed at the prehearing.

COMMISSIONER DEASON: Okay. I agree. If there's to be opening statements, it should be discussed at the prehearing conference. It was not done in this case; therefore, the request for opening statements is denied. Any other preliminary matters?

MS. STERN: No.

COMMISSIONER DEASON: Okay.

MR. EDENFIELD: From BellSouth, Commissioner

Deason, I'm not sure if this is the appropriate time to take it up, but I was provided yesterday from Intermedia a number of corrections that Intermedia proposes to the depo-- I'm sorry, to the direct testimony of Edward Thomas. I'm not sure if that's better served when he takes the stand or if you would like to take that up now, but they provided me with a writing setting forth those proposed changes.

COMMISSIONER DEASON: Mr. Pelligrini?

MR. PELLIGRINI: Commissioner Deason, I'm not sure whether this is the appropriate time or when Mr. Thomas is on the stand, if that's the appropriate time.

We prepared this list of the changes that Mr. Thomas will make to his testimony in order to, in order to facilitate following Mr. Thomas as he makes those changes to his testimony. Some of them are fairly long and would be difficult to follow and to mark down as he went along. And that's simply the purpose of the materials that we've handed out to you and to BellSouth.

COMMISSIONER DEASON: I take it these changes are more than just minor corrections.

MR. PELLIGRINI: No. I wouldn't describe them as minor or major. They're changes to passages in his testimony. One of them is a change to a passage to his

testimony that's rather lengthy. The change itself is not.

COMMISSIONER DEASON: Mr. Edenfield, do you object to these changes?

MR. EDENFIELD: Well, I do not have an option to 1, 2, 3, 4 and 6. I don't know if the Commission has this sheet in front of them or not, this sheet that was passed out. Those are more typical corrections, but it appears to me what Mr. -- well, what Intermedia's trying to do here is -- let me back up a step.

They had filed a motion for surrebuttal, which was denied. It looks like to me what they're trying to do is these are more than just, you know, a word without a place. They're adding entire paragraphs and passages to direct testimony that I have not seen before and that my witness has not had a chance to review to provide rebuttal testimony on these changes.

Again, if it was just a, you know, "and," that should have been "the," is one thing, but these are multi-sentence paragraphs that are being added into the testimony, is what it appears to me.

And certainly, I would object to the extent that they're trying to come in on the day before the hearing and add supplemental direct testimony which is, again, with the exception of 1, 2, 3, 4 and 6, appears to be

exactly what they're trying to do.

In addition, there are -- they're trying to change out the exhibits that were attached to the direct testimony and supplement those or replace those with brand new exhibits.

Now, they look somewhat similar, but they are not the same. And again, my witnesses have not had a chance to look at these to see what the suttle distinctions are between the exhibits that were attached to the original direct and what they're trying to attach now. It seems like to me that we're kind of at the ninth hour to be modifying direct testimony.

COMMISSIONER DEASON: Well, Mr. Edenfield, I appreciate you bringing this to the attention of the Commissioners and the parties. We will take up this matter when witness Thomas takes the stand. And it will need to be clarified before we begin summary of testimony.

So, I suppose that we can do that at that time. Mr. Edenfield, to the extent that you can precisely identify changes or additions with which you object, and the reasons for that, please do so. And Mr. Pelligrini, you have been put on notice that you may likely have an objection, and we'll deal with it at that time.

MR. PELLIGRINI: Yes, sir.

COMMISSIONER CLARK: I only have one sheet. I

have a sheet that says 5, 7, and 8. Is there more?

COMMISSIONER DEASON: Apparently, those are the only --

MR. PELLIGRINI: Commissioner Clark, those are the only changes that I thought would require a handout. The other changes are rather brief in nature and you would have no difficulty in following Mr. Thomas as he makes them.

COMMISSIONER CLARK: Okay.

COMMISSIONER DEASON: Anything before we swear in witnesses?

MR. EDENFIELD: The last thing is, Commissioner Deason -- I'm sorry, I'm not trying to delay the start. We have a number of witnesses that are direct and rebuttal. We have some that are only rebuttal.

If it would be appropriate, I would like to let's just deal with all the witness's testimony at one time, if that's the Commission's pleasure. It might make it move a little faster.

COMMISSIONER DEASON: Mr. Pelligrini?

MR. PELLIGRINI: Commissioner Deason, we object to that. At the prehearing conference it was determined that direct testimony would be taken first, and then it would be followed by rebuttal testimony. We've prepared our case on that basis, and we object strongly to a change

at this point.

COMMISSIONER DEASON: Given that was discussed at the prehearing, we will follow the order as contained in the prehearing order, and that is direct followed by rebuttal.

Okay. Any other preliminary matters?

MR. EDENFIELD: That's it from BellSouth.

MR. PELLIGRINI: Intermedia has no preliminary matters.

COMMISSIONER DEASON: Very well. I will ask all witnesses that will be testifying today to please stand and raise your right hand.

In this matter before the Florida Public Service Commission, do you swear or affirm to tell truth, the whole truth and nothing about the truth?

ALL: I do.

COMMISSIONER DEASON: Thank you.

Intermedia, you may call your first witness.

MR. CANIS: Your Honor, Intermedia would like to call to the stand, Ms. Heather Gold.

HEATHER BURNETT GOLD

was called as a witness on behalf of Intermedia Communications, Inc., and, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CANIS:

Q Ms. Gold, would you state and spell your name for the record, please?

A Yes. My name is Heather Burnett Gold, G-O-L-D.

Q What is your position with Intermedia?

A I am Vice President of Industry Affairs.

Q And how long have you been in that position?

A Since September of '98.

Q Did you prepare or cause to be prepared a document entitled "Direct Testimony of Heather Burnett Gold" filed on March 17th with this Public Service Commission consisting of 9 pages and 5 exhibits?

A Yes, I did.

Q Do you have any changes to that document?

A No, I don't.

Q Are the statements in that document true and correct to the best of your knowledge and belief?

A Yes, they are.

Q And if I asked you those questions that appear in that document today, would your answers be the same?

A Yes, they would.

Q Have you prepared a summary of your direct testimony?

A Yes, I have.

Q May I ask you to present that summary at this time.

A Thank you.

Good morning, Commissioners. In my direct testimony, I explain why Intermedia has been compelled to file this, its second complaint against BellSouth seeking payment for reciprocal compensation.

The issues in this case evolve around an amendment that BellSouth and Intermedia have to their interconnection agreement, which offers a service entitled, "Multiple Tandem Access" or MTA.

The MTA service, if implemented, would allow Intermedia to interconnect with BellSouth in a single tandem office. And BellSouth would carry Intermedia's traffic to other tandems and end offices within a LATA.

If implemented, MTA would allow Intermedia to avoid the expense of establishing separate direct trunks through all of BellSouth's tandem offices. MTA, therefore, would provide Intermedia with access to multiple BellSouth tandems through interconnection with only one.

The MTA amendment is conditional in nature. It states that MTA is available to Intermedia upon request. The amendment also contains a list of rates for reciprocal compensation that will apply, if MTA is implemented.

These rates reflect rates approved in an arbitration proceeding brought by AT&T and MCIMetro and are set at level some 60% below those rates agreed to and negotiated by BellSouth and Intermedia in its initial interconnection agreement.

Intermedia signed the MTA amendment on June 3rd, 1998, at BellSouth's insistence that this was the only solution in response to a BellSouth unilateral and unannounced decision to block traffic to Intermedia customers served through the Norcross, Georgia tandem.

The complaint is about one issue. BellSouth now argues that on the date we signed the MTA amendment that the reciprocal compensation rates in our interconnection agreement were automatically reduced by 2/3 and all states throughout the nine-state BellSouth area.

As I discussed in my testimony, this BellSouth interpretation is absolutely wrong. This is demonstrated by the plain language of the agreement, the actions of the party, and by a common sense review of the circumstances surrounding the MTA amendment.

First, the plain language of the agreement states that the reduced reciprocal compensation rates in the MTA amendment are conditioned on the implementation of MTA trunking architecture. The amendment states, quote, "The parties agree that BellSouth will, upon request,

provide and Intermedia will accept and pay for multiple tandem access" end quote.

Attachment A to the amendment states that MTA shall be available, according to the following rates, for local usage, end quote. Absent proof that Intermedia, subsequently on its initiative, requested, accepted and paid for MTA, BellSouth cannot claim that the reciprocal compensation rates listed in the MTA amendment were put into effect.

Second, the actions of both BellSouth and Intermedia, both before and after the MTA amendment was signed, made clear that the MTA amendment was never implemented. There is no record of any negotiations between the parties on this issue and, indeed, no negotiations of a reciprocal compensation rate in return for MTA ever took place.

Moreover, MTA was never implemented. Intermedia bills its trunks out to every tandem office in the BellSouth service area. Indeed, BellSouth does not even attempt to show that, as required by the MTA amendment, Intermedia ever requested, accepted or paid for MTA. Such a showing would be impossible, because we never did those things.

Third, a common sense review of the circumstances surrounding the MTA amendment requires that

BellSouth's interpretation be rejected. MTA -- excuse me, Intermedia filed its first complaint for payment of reciprocal compensation against BellSouth with this Commission on April 6th, 1998. A hearing in that case was set for June 11th, 1998. Does it make any sense at all to argue, as BellSouth has, that with only -- that only two months after filing our complaint and less than eight days before a hearing that we would unilaterally sign a -- unilaterally agree to a 2/3 reduction in our reciprocal compensation rates without settlement of the complaint?

At that time, BellSouth owed Intermedia in excess of $7.5 million, $7 million of it here in Florida. Do you think that Intermedia would agree to massive rate reductions in reciprocal compensation rates going forward without settlement of this outstanding balance?

In light of these facts, Intermedia's -- in light of these facts, BellSouth's arguments simply do not hold water. In essence, BellSouth is arguing the MTA amendment is two separate mutually independent agreements; one offering MTA and the other effectively implementing a 2/3 rate reduction for reciprocal compensation. This argument cannot be sustained in light of the plain language of the amendment, the actions of the party, and basic common sense.

Ultimately, this dispute is simply the latest in

a long series of steps that BellSouth has taken to attempt to avoid paying reciprocal compensation to Intermedia. As I just stated, we filed our first complaint against BellSouth on this issue in April of '98. This was prompted by their refusal to pay us for any compensation at all for traffic terminated to internet service providers. The Commission ruled in our favor of September of '98 and ordered BellSouth to pay. BellSouth continued to withhold payment until it sought stay -- as it sought stay of the Commission's order.

After the Commission denied BellSouth's stay motion, BellSouth finally made payment to Intermedia on July 2nd, almost 2 1/2 years after we initiated our interconnection agreement that called for such payment.

Under the rates and terms of our interconnection agreement, we should have received a check for about $38 million. Instead, BellSouth sent us a check for $13 million, roughly 1/3 of what was outstanding.

It is only when we contested this payment that BellSouth came up with its argument that the MTA amendment applied. We were compelled to file yet another complaint and started this proceeding in October of '99.

So far, BellSouth's tactics have brought it almost another year of evading its obligation to pay reciprocal compensation to Intermedia in contravention of

both the interconnection agreement and the order of this Commission. It's time to put an end to these tactics and to compel BellSouth to live up to its obligations.

Thank you.

MR. CANIS: Your Honor, at this time, I would like to move the direct testimony of Heather Burnett Gold into the record of this proceeding subject to cross-examination.

COMMISSIONER DEASON: Without objection, it shall be so inserted.

INTERMEDIA COMMUNICATIONS INC.
DIRECT TESTIMONY OF HEATHER BURNETT GOLD
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 991534-TP

Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, TITLE, AND THE NATURE OF YOUR POSITION WITH INTERMEDIA COMMUNICATIONS INC. ("INTERMEDIA").

A. My name is Heather Burnett Gold. I serve Intermedia as Vice President-Industry Policy. My business address is 3625 Queen Palm Drive, Tampa, Florida 33619. I am responsible for Intermedia's regulatory, legislative and philanthropic activities. I was formerly President of the Association for Local Telecommunications Services, and before that, Vice President, Industry Affairs for the Competitive Telecommunications Association. I have also held regulatory positions with National Telephone Services, Allnet, GTE Sprint and SBS. I am a director of the Universal Service Administrative Company. I hold BA and MA degrees in economics from Tuft University and an MBA degree in finance and marketing from Washington University.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?

A. I am appearing before the Commission as a policy witness to present evidence describing Intermedia's contractual arrangements with BellSouth Telecommunications, Inc. ("BellSouth"), specifically those arrangements concerning intercarrier compensation for the transport and termination of local traffic. My testimony will support Intermedia's position that it bills BellSouth for the transport and termination of traffic on Intermedia's Florida networks that is originated by BellSouth end users using the correct rate under the parties' interconnection agreement.

Q. WHY HAS INTERMEDIA FILED THIS COMPLAINT AGAINST BELLSOUTH?

A. On October 8, 1999, Intermedia filed this complaint with the Commission when it became apparent that BellSouth was applying an inappropriate rate in making payments against Intermedia's invoices for local traffic transport and termination in Florida in breach of the interconnection agreement.

Q. WHAT ARE INTERMEDIA'S CONTRACTUAL ARRANGEMENTS WITH BELLSOUTH IN RESPECT TO THIS COMPLAINT?

A. On July 1, 1996, Intermedia executed an interconnection agreement with BellSouth pursuant to section 252 of the Act. As required by section 251(b)(5) of the Act, Intermedia and BellSouth reciprocally compensate each other for the transport and termination of traffic originated on the network of the other within the same local calling area according to terms and conditions set forth in the interconnection agreement. The interconnection agreement sets a composite local interconnection rate of $0.01056 per MOU for DS-1 tandem switching. The provisions of the interconnection agreement controlling the treatment of local traffic are contained in Exhibit HBG-1.

Q. DID BELLSOUTH PERFORM AS IT WAS REQUIRED TO UNDER THE RECIPROCAL COMPENSATION PROVISIONS OF THE INTERCONNECTION AGREEMENT?

A. No. BellSouth soon began to completely withhold payments against Intermedia's invoices for local traffic compensation. BellSouth claimed that Intermedia was billing it for compensation for traffic terminated to internet service providers ("ISPs") and that such traffic is not eligible for reciprocal compensation under the interconnection agreement.

Q. HOW WAS THAT DISPUTE RESOLVED?

A. It became necessary for Intermedia to pursue a regulatory remedy. On April 6, 1998, Intermedia filed a complaint against BellSouth with this Commission, alleging that BellSouth was in breach of the interconnection agreement. On September 15, 1998, the Commission established BellSouth's liability in ruling that BellSouth was required under the interconnection agreement to pay reciprocal compensation to Intermedia for traffic originating from a BellSouth end user to ISPs on Intermedia's network in the same local calling area.[1] The Commission then denied BellSouth's motion to stay its Order pending appeal to the federal court.[2]

Q. WHAT DID BELLSOUTH DO WHEN ITS MOTIONS TO STAY THE COMMISSION'S ORDER WERE DENIED?

A. Recognizing its liability under the Commission's Order, which remained effective, BellSouth sent Intermedia a check on July 2, 1999, in the approximate amount of $12.7 million. The amount owed Intermedia at that time was, however, approximately $37.7 million. In discussions about this discrepancy, BellSouth revealed that it had determined that the rate to be applied to local traffic compensation was contained in an amendment to the interconnection agreement executed on June 3, 1998. This was surprising news to Intermedia, since nothing had occurred, including the amendment (which has become known as the "MTA Amendment") to supersede any of the provisions of the July 1, 1996, interconnection agreement controlling compensation for local traffic termination.

Q. WHAT IS THE "MTA AMENDMENT?"

A. The MTA Amendment modifies Intermedia's interconnection agreement with BellSouth for the purpose of making available at Intermedia's election a network architecture called "multiple tandem access," or "MTA." This architecture is typically deployed in order to minimize the number of trunk groups needed to complete traffic in metropolitan areas. It also is useful to alleviate conditions of persistent traffic congestion. Mr. Thomas explains this fully in relation to Intermedia's Florida operations in his direct testimony in this proceeding.

Q. YOU TESTIFY THAT THE MTA AMENDMENT MAKES MTA AVAILABLE TO INTERMEDIA UPON ITS ELECTION. WHAT IS YOUR BASIS FOR THIS?

A. I refer to the MTA Amendment, which is contained in Exhibit HBG-2. I am not a lawyer, but, from a business standpoint, I can state what the amendment provides and why it does so. First, the amendment begins by providing in numbered paragraph 1 that upon Intermedia's request, BellSouth will provide MTA.

> The Parties agree that BellSouth will, upon request, provide, and [Intermedia] will accept and pay for, Multiple Tandem Access, otherwise referred to as Single Point of Interconnection, as defined in 2, following.

In numbered paragraph 2, the amendment follows with a definition of MTA.

> This arrangement provides for ordering interconnection to a single access tandem, or, at a minimum, less than all access tandems within the LATA for [Intermedia]'s terminating local and intraLATA toll traffic and BellSouth's terminating local and intraLATA toll traffic along with transit traffic to and from ALECs, Interexchange Carriers, Independent companies and Wireless Carriers. This arrangement can be ordered in one way trunks and/or two way trunks or Super Group. One restriction to this arrangement is that all of [Intermedia]'s NXXs must be associated with these access tandems; otherwise, [Intermedia] must interconnect to each tandem where an NXX is homed for transit traffic switched to and from an Interexchange Carrier.

Next, in numbered paragraph 3, the amendment provides that when MTA is elected and provisioned that the elemental rates in Attachment A will be used to bill local traffic.

> The parties agree to bill Local traffic at the elemental rates specified in Attachment A.

Fourth, in numbered paragraph 4, the amendment provides that, when MTA is elected and provisioned, local traffic compensation will be reciprocal based on Attachment A.

> The amendment will result in reciprocal compensation being paid between the Parties based on the elemental rates specified in Attachment A.

Fifth, the amendment provides in numbered paragraph 5 that, otherwise, the provisions of the agreement remain in full force and effect, including, by fair inference, the provisions controlling local traffic compensation absent the election and provisioning of MTA.

> The Parties agree that all of the other provisions of the Interconnection Agreement, dated July 1, 1996, shall remain in full force and effect.

Finally, the rates in Attachment A are introduced by prefatory language designating them as rates to be applied where MTA is used (pursuant to the foregoing provisions) for terminating local traffic.

> Multiple Tandem Access shall be available according to the following rates for local usage.

Intermedia's business plan incorporates this construction of the amendment.

Q. WHAT DOES INTERMEDIA UNDERSTAND BELLSOUTH'S VIEW OF THE AMENDMENT TO BE?

A. Based, among other things, on BellSouth's explanation of the payment it made on July 2, 1999,[3] testimony filed in another proceeding before this Commission[4], and BellSouth's discovery requests in this proceeding,[5] BellSouth apparently views the amendment as having two effects. The first effect is to make MTA available under certain terms and conditions. This, of course, is consistent with Intermedia's position. The second effect is to adopt as region-wide rates for reciprocal compensation the rates the Commission approved in Order No. PSC-96-1579-FOF-TP. According to BellSouth, these now region-wide rates are established by the amendment, independent of the deployment of MTA. This is an illogical and unsustainable view, one with which Intermedia takes strong exception, and one that must be repudiated by the Commission.

Q. WHAT IS WRONG WITH THE WAY BELLSOUTH APPARENTLY VIEWS THE EFFECT OF THE MTA AMENDMENT?

A. In the first place, in Order No. PSC-96-1579-FOF-TP ("AT&T Order"), the Commission set forth its rulings in the arbitration proceedings of AT&T and MCIMetro against BellSouth.[6] Those rulings without question had the limited effect of resolving the issues in dispute in AT&T's and MCIMetro's negotiations of their interconnection agreements with BellSouth. The rulings are in no way generic, as BellSouth now appears to suggest. The Commission has long maintained a policy of limiting arbitration proceedings to the negotiating parties.[7] There is nothing to vindicate importing any provisions of the AT&T Order, on a wholesale or a piece part basis, to the Intermedia and BellSouth interconnection agreement. The Commission has taken no action that would permit that step. The parties themselves have taken no action that would permit that step.

While it is true that, in the AT&T Order, the Commission established rates for tandem switching and end office termination,[8] it established rates for a great number of other elements and resolved a great number of other issues. BellSouth gives no reason why it makes sense to import local switching and transport rates, but only those rates, from the AT&T Order to the Intermedia and BellSouth agreement. The question arises then, if the rates in the MTA Amendment are to be considered independent of MTA deployment, as appears to be BellSouth's position, what has happened to require that the rates for tandem switching and end office termination established in the July 1, 1996, agreement, and only those rates, be displaced? The answer is that nothing has happened to require or permit this--except the appearance of BellSouth's illogical construction of the amendment. This is simply another instance of BellSouth behavior that upsets and frustrates competition.

Q. IS THERE ANYTHING ELSE WRONG WITH BELLSOUTH'S VIEW OF THE MTA AMENDMENT?

A. Yes, there is. BellSouth would have the Commission believe that the effect of the amendment was to immediately and unconditionally throughout its entire nine-state region reduce by approximately three times the rates applicable to reciprocal compensation, and in Florida, to do so on the basis of the AT&T Order. According to BellSouth, this dramatic and region-wide reduction has nothing to do with the network architecture used in terminating the traffic. Rather, BellSouth claims, it is a recasting simply of the rate structure to be used going forward as the compensation mechanism for terminating local traffic for reciprocal compensation. If this were the purpose of the amendment, surely BellSouth would have been expected to announce it in a way consistent with its importance. In reality, having lost repeatedly on the issue of reciprocal compensation liability, BellSouth, by this contrivance, and quite transparently, is attempting damage control.

Similarly, if that had been Intermedia's purpose in executing the amendment, I can state without equivocation, and as one who is very experienced in negotiations with BellSouth, that very explicit language would have appeared in the amendment stating exactly that. I can emphasize that point still more by again noting that Intermedia would have been agreeing to end office termination and switching rates in Florida one-third, more or less, of the composite rate agreed to in the July 1, 1996, agreement for apparently only the consideration of enabling the election of MTA--an election that Intermedia has yet to make in Florida. That, of course, is absurd. In addition, state commissions in other BellSouth jurisdictions have made rulings comparable to the rulings in the Florida Commission's AT&T Order, making it all the more imperative to have included specific language in the amendment expressing an intent to import the rulings of the several state commissions. There is no language even remotely having that effect in the amendment. Intermedia engaged in no detailed discussions with BellSouth leading to the execution of the amendment. Given BellSouth's view of the amendment, it is not possible to make a rational case that evidence of a bargained for and proportional consideration appears in any way in the language of the agreement.

Therefore, not only is BellSouth's view internally inconsistent (some but not all of the AT&T Order must be imported), but it is externally inconsistent as well because there is nothing in the amendment that supports importing state commission rulings subsequent to the July 1, 1996, agreement into the amendment nor is there even a demarcation of some kind (as one might expect to find) to indicate where the amendment might be no longer speaking of the first effect and beginning to speak of the second effect.

Q. WHY DO NOT NUMBERED PARAGRAPHS 3 AND 4 OF THE AMENDMENT SUPPORT BELLSOUTH'S VIEW?

A. The answer is simple. Purely apart from the circumstances that gave rise to the amendment, it is true, I suppose, that if those paragraphs were interpreted in isolation, they arguably would support BellSouth's view that the amendment requires the Attachment A rates to be applied region-wide upon execution, without any other linkage. But these paragraphs are not isolated, or isolatable. They appear in a continuum requiring that they be construed in context. It is just that in-context construction that I have explained above.

Q. HAS INTERMEDIA REQUESTED MTA IN FLORIDA?

A. No. Intermedia has never requested that BellSouth deploy MTA in Florida. Mr. Thomas's testimony is quite useful to an understanding of the Intermedia and BellSouth network architectures in place in Jacksonville, Orlando and Miami.

Q. TO WHAT CONCLUSION DOES THE FOREGOING TESTIMONY LEAD YOU?

A. BellSouth is bound to compensate Intermedia for terminating local traffic according to the terms and conditions of the July 1, 1996 interconnection agreement as construed by this Commission in Docket No. 980945-TP. The MTA Amendment is conditional. It is not operative currently because Intermedia has not requested that BellSouth deploy MTA in Florida, which is necessary to establish a linkage to the rates in the amendment. In lawyer's language, the "condition precedent" has not occurred that would introduce the rates in Attachment A as the compensation mechanism for the exchange of local traffic in Florida. As a consequence, BellSouth is in breach of the interconnection agreement, and the Commission should so find.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, it does.

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[1] Order No. PSC-98-1216-FOF-TP, issued in consolidated dockets, 980495-TP, 971478-TP, 980184-TP, and 980499-TP, also resolving similar complaints of WorldCom, Teleport, and MCImetro against BellSouth in the same way.
[2]On June 1, 1999, the federal court denied BellSouth's motion to that court to stay the Commission's order, finding that BellSouth could not satisfy the test for injunctive relief.
[3]Nancy B. White letter to Scott Sapperstein, August 27, 1999. Exhibit HBG-3.
[4]Docket No. 990874-TP. J. Hendrix Rebuttal Testimony, excerpt. Exhibit HBG-4.
[5]Excerpts. Exhibit HBG-5.

[6]Consolidated Docket Nos. 960833-TP and 960846-TP.
[7]As recently as the Global NAPs enforcement proceeding against BellSouth, Docket No. 991267-TP, the Commission reaffirmed this policy. See Order No. PSC-99-2526-PCO-TP, December 23, 1999.
[8]The Commission-established rates in the AT&T Order are $0.00125 per MOU for tandem switching and $0.002 per MOU for end office termination (Order at 68); yet, the rates for those functions that appear in Attachment A are $0.00029 per MOU and $0.0175 per MOU, respectively.
[8] Order No. PSC-98-1216-FOF-TP, issued in consolidated dockets, 980495-TP, 971478-TP, 980184-TP, and 980499-TP, also resolving similar complaints of WorldCom, Teleport, and MCImetro against BellSouth in the same way.
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[8]Nancy B. White letter to Scott Sapperstein, August 27, 1999. Exhibit HBG-3.
[8]Docket No. 990874-TP. J. Hendrix Rebuttal Testimony, excerpt. Exhibit HBG-4.
[8]Excerpts. Exhibit HBG-5.
[8]Consolidated Docket Nos. 960833-TP and 960846-TP.
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MR. CANIS: In addition, Your Honor, I would like to attach to Ms. Gold's direct testimony are five exhibits. I would like to mark those collectively as Intermedia collective Exhibit Number 1 and also enter them into the record of this proceeding.

COMMISSIONER DEASON: The prefiled exhibits, HBG-1 through 5 will be identified as a composite exhibit, and that will be composite Exhibit Number 2. And I will allow you to move those exhibits in the record at the conclusion of Ms. Gold's testimony.

(Exhibit 2 was marked for identification.)

MR. CANIS: Thank you, Your Honor.

With that, Ms. Gold is available for cross-examination.

COMMISSIONER DEASON: BellSouth?

MR. EDENFIELD: Thank you.

CROSS EXAMINATION

BY MR. EDENFIELD:

Q Ms. Gold, you indicated you started with Intermedia in September of 1998; is that correct?

A That's correct.

Q Is that September 1st?

A September 14th.

Q 14th, okay.

The amendment that we're here today about is

dated what?

A June 3rd, 1998.

Q So, that's six, seven, eight, nine, a little over three months before you began your employment with Intermedia that amendment was executed by Intermedia?

A That is correct.

Q Okay. Is it fair to assume, since you weren't employed there, that you had no involvement in the negotiation, drafting, reviewing or execution of either the original interconnection agreement or the June 3rd, 1998, amendment?

A Yes, that is true. But the purpose of having written agreements is so it doesn't matter who's in place; alive, dead, or working someplace else.

Q Again, my question to you is did you participate in that process?

A No, I did not.

Q Who was involved in that process on behalf of Intermedia?

A Ms. Julia Strow.

Q Is she the only person?

A To the best of my knowledge.

Q Who was Mike Reith or Reith?

A He was a manager in the department at the time.

Q Did he work for Ms. Strow?

A Yes, he did.

Q What were his responsibilities?

A I couldn't say, specifically. He's no longer with the company.

Q He's no longer with the company?

A In fact, he had left the company before I started.

Q How about Ms. Strow, is she with the company?

A No, she's no longer with the company, but she worked for me for 15 months.

Q All right. She is still in the Tampa area?

A Yes, she is.

Q Her husband's still employed with Intermedia?

A Last I checked.

Q I'm sure she'll be glad to hear that.

How about Mr. Geiger, the gentleman who signed the amendment?

A Mr. Geiger is no longer with the company.

Q He's gone as well?

A Yes.

Q How about Tammy Hunley?

A She's still employed in our department.

Q What does she do?

A She provides back-up analysis for Mr. Carl Jackson in the preparation of interconnection

negotiations. That's her job today.

Q Okay. How about back then when this amendment was signed?

A She had primarily more of an administrative role.

Q Okay. Is Intermedia planning on providing any testimony from Ms. Strow, Mr. Geiger, Ms. Hunley in this proceeding?

A Absolutely not. There's no need for it. We have -- I have spoken to these people, they reported directly to me. I am clearly aware of the circumstances, and there was no negotiation on this amendment.

Q The answer is no, they will not be --

A Right, they will not be.

Q All right, let me skip through some of your rebuttal, and I'll come back to that.

I take it you agree that the MTA amendment, the June 3rd amendment, has some benefit to Intermedia?

A It would have benefit, if that's the way we chose to engineer our network.

Q Tell me about some of those benefits that Intermedia gets from having the availability of MTA.

A If we were a small carrier and chose not to direct trunk, then we could avoid the expense of direct trunking by interconnecting only through one tandem in a

LATA.

Q How about traffic congestion?

A You'll have to ask Mr. Thomas about that.

Q You put it in your testimony. Take a look at your direct testimony on page 3, line 15, if you would.

I'm sorry, look at line 16. It says, "It is also useful to alleviate conditions of persistent traffic congestion." Is that your testimony?

A Yes. That was my understanding of how MTA was to be used, if we were to use it.

Q Okay. So, if I want to go any deeper than that sentence, I'm going to have to talk to Mr. Thomas?

A Exactly, which is what I said in the next sentence.

Q Okay. Let's take a look at the amendment. Do you have a copy of that?

A It's right here.

Q I'm going to distribute a copy just for ease of reference. Do you have a copy there, Ms. Gold?

A Yes, I do.

MR. EDENFIELD: Before I start asking questions, can I get this marked as BellSouth's -- for identification? I'm not sure what letter or number, three?

COMMISSIONER DEASON: It would be identified as

Exhibit Number 3.

(Exhibit 3 was marked for identification.)

BY MR. EDENFIELD:

Q Tell me what this is, Ms. Gold.

A This is an amendment to the master interconnection agreement between Intermedia and BellSouth.

Q Is it signed by both BellSouth and Intermedia?

A Yes, it is.

Q Do you have any reason to think that Mr. Geiger's signature is not his signature?

A No, that is Mr. Geiger's signature.

Q Was Mr. Geiger authorized to sign interconnection agreements on behalf of Intermedia on June 3rd, 1998?

A Yes, he was.

Q Okay. Let's take a look at the amendment itself, the two-page amendment. Look in the first two paragraphs, not the numbered paragraphs, but the first two paragraphs there that start "Pursuant to this agreement..."

Anywhere in those first two paragraphs is there a limitation that this amendment is only applying to Intermedia getting MTA arrangements?

A No, there are not.

Q Let's look at paragraph numbered one. It says the parties agree that BellSouth will upon request provide da, da, da, da, da, as defined in number two following. What is paragraph number one doing?

A Number one is stating the condition that upon our request BellSouth will provide the MTA.

Q Okay. So, this was a one-way agreement; in other words, this amendment gave Intermedia the right to request MTA from BellSouth, but not vice versa?

A That is correct.

Q Okay. Now, in paragraph numbered one, there is a reference to paragraph numbered two; is that correct?

A That is correct.

Q Is there a reference to any other numbered paragraph in the first numbered paragraph?

A No, there is not.

Q Okay. So, three and four are not mentioned in paragraph one?

A That is correct.

Q All right. What does paragraph number two do?

A Paragraph number two sets up the requirements for how you would order MTA, what MTA would provide for. It's LATA by LATA we could order single point of interconnection.

Q Anywhere in the numbered paragraph two is there

a reference to paragraphs three or four?

A No.

Q All right. Now, let's turn to your testimony for a minute. Turn to your direct testimony on page 4 starting with line number 18. Tell me when you're there, Ms. Gold.

A Yes.

Q Okay. This is your sworn testimony?

A Yes, it is.

Q It says, "Next, in numbered paragraph three, the amendment provides that when MTA is elected and provisioned that the elemental rates in Attachment A will be used to bill local traffic."

Take a look at the amendment and show me in paragraph three where the words, "when MTA is elected and provisioned."

A With the reference to Attachment A, which clearly states at the top, "Multiple Tandem Access --

Q Ms. Gold, again, maybe you didn't understand the question. The question is --

MR. CANIS: Excuse me. Your Honor, would you allow Ms. Gold to respond to that question?

COMMISSIONER DEASON: I don't think the answer was responsive to the question as it was phrased.

I ask the witness to respond to the question as

it was phrased. And then, after you answer the question, you may elaborate, but don't try to dodge the question in your first response. Thank you.

THE WITNESS: Okay.

BY MR. EDENFIELD:

Q Again, Ms. Gold, the question is show me in numbered paragraph three where the words, "when MTA is elected and provisioned."

A Those words are not there.

Q Okay. Let's look down on line -- I'm sorry; same page, page 4, line 23. And you say, "In numbered paragraph four, the amendment provides that when MTA is elected and provisioned, local traffic compensation will be reciprocal."

Again, take a look at the amendment and show me in numbered paragraph four where the words, "when MTA is elected and provisioned," where those appear in that numbered paragraph.

A Those words do not appear in the numbered paragraph. They appear in the attachment, which is referenced in number four.

Q And you agree that the paragraphs here are individually numbered?

A Yes, but they're all within the four corners of the amendment.

Q In fact, would you agree that if you look at each of these separately-numbered paragraphs in isolation that the amendment appears to support BellSouth's position?

A Absolutely not.

Q Okay. Turn --

A Because --

Q Go ahead, I'm sorry.

A Because in both three and four there is a reference to Attachment A. Three and four don't exist without reference to Attachment A.

Q Turn with me, if you would, to page 8 of your direct testimony looking starting at line 2. Tell me when you're there, Ms. Gold.

In your sworn testimony, did you not say that "It is true, I suppose, that if those paragraphs were interpreted in isolation, they arguably would support BellSouth's view that the amendment requires the Attachment A rates to be applied region-wide upon execution without any other linkage"? Is that your sworn testimony?

A It is, but the linkage occurs in Attachment A with the lead-in sentence to Attachment A.

Q I'm sorry, right now let's not worry about the attachment at the moment. Let's talk about the amendment

itself, the signed amendment, not what's attached to it.

What linkage is there for three, four -- I'm sorry, numbered paragraphs three and four that refer it to the MTA amendment or the MTA provisions in number one and number two?

A The fact that, in my mind, even though there's not direct language in three and four, the fact that three and four follow number two and reference Attachment A create the linkages.

Q Okay. So, if number three and four had been the first two numbered paragraphs, then you would agree that -- with BellSouth's position?

A Not given the language in Attachment A.

Q Okay. It's not the sequencing that's causing you the heartburn?

A It's not the sequencing. It's the fact that the rates are clearly specified in Attachment A to be applicable when MTA access is used.

Q Okay, but before we go to the amendment -- I'm sorry, to the attachment, which we'll do in just a second, show me anything in numbered paragraphs three or four that link it to MTA.

A Three and four wouldn't exist without Attachment A.

Q Why is that? Are you suggesting that BellSouth

and Intermedia could not enter into an amendment to the interconnection agreement to change the local traffic rates?

A Absolutely not, but we would not have entered into that kind of agreement without some sort of quid pro quo.

Q Aren't you getting MTA? Didn't you say that MTA has benefits to Intermedia?

Again, looking back at your testimony, it minimizes trunk groups needed to complete traffic and it alleviates traffic congestion. Weren't those two quid pro quos, as you say, in the MTA arrangement?

A But the question you asked me was don't three or four exist in separation without any connection to MTA.

Q Sure. And the question I asked you is are you suggesting that BellSouth and Intermedia could not enter into an amendment to change the local traffic rates in the interconnection agreement?

A And the answer to that is correct; that we would do so upon resolution of our outstanding complaint before -- that was before this Commission and receival of the outstanding balances due, but we wouldn't do it, and we didn't implement MTA, so there's no quid pro quo.

Q Again -- I'm sorry, if you're answering the question. I'm not trying to be obtuse. All I'm trying to

get to is, is it possible for Intermedia and BellSouth to sign an amendment to an interconnection agreement that only modifies local traffic rates?

A Yes, that would have been possible.

Q Okay. Is it also possible for BellSouth and Intermedia to enter into an agreement that solely results in reciprocal compensation being paid at rates different than what appeared in the original interconnection agreement?

A That would be possible also.

Q All right. Let's look at Attachment A. And let me back up for a little history before we get there.

Do you agree that the Commission, in its AT&T-MCI arbitration proceeding, established elemental rates for AT&T, MCI and whoever else, I think ACSI, that was in that proceeding?

A My understanding is that those rates have been determined to be an element at Telric levels.

Q Okay. So that the Commission did set elemental rates in that proceeding.

A Yes.

Q Okay. And the existing interconnection agreement between BellSouth and Intermedia had what's known as composite rates; do you agree with that?

A That is correct, yes.

Q Were you aware that as of the time of the signing of this amendment that a number of state Commissions in BellSouth's service territory had established elemental rates?

A To the best of my knowledge, that's true.

Q Are you aware that -- I will admit there are a couple of mistakes in the rates here that are set forth in Attachment A, but aside from a couple of mistakes, do you agree that the rates that are reflected here for Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee are the elemental rates that were established in those dockets?

A Subject to verification, I would agree with that.

Q Okay. And again, I don't want to put words in your mouth, but I was kind of left with the impression from your testimony that you had a problem with the concept of taking rates from another arbitration and putting them into another interconnection agreement. Have I misunderstood what you were saying?

A We have -- as was pointed -- if the two parties agree that those rates can be taken, I don't have a problem with that.

Q Okay. As long as Intermedia and BellSouth get together, sign an agreement together putting rates in,

then you're okay with the fact that they came from another arbitration?

A Yes, that they mutually agree.

Q And, in fact, Intermedia and BellSouth did that in the prior amendment to this one; isn't that right?

A That is correct. It was for a service that we didn't currently have; ISDN and cross-connects, we didn't have the rates for those in our interconnection -- original interconnection agreement.

Q Right, that would be the DS1 and the 2-wire ISDN, I believe?

A Those were new services and facilities that we needed.

Q Sure. And those rates were taken out of the AT&T arbitration and put into the, I think, February 24th, 1998 amendment?

A That is my understanding.

Q Okay. Let's go back to the amendment for a second. Tell me your understanding of the circumstances under which the rates in Attachment A would apply.

A If we were to order, implement, and use multi-tandem access in a given LATA.

Q All right. Again, don't let me put words in your mouth, but I see two possibilities there. One is if you implement MTA, then all the rates in a particular

state will become those as in Attachment A or for any particular call routed over MTA those rates would apply.

There may be other alternatives that I just can't see, but tell me which of those or another one apply, in your mind.

A I would agree those would be the circumstances. I would say it would be the latter, because MTA is, from my understanding of the agreement, MTA is elected in a particular LATA, not on a statewide basis.

Q Okay. So, you think the rates in the attachment would apply for a given call, as opposed to just generally?

A For service in a given LATA.

Q Okay. So, if you implement MTA in, say, the Atlanta LATA, then all -- these rates would apply then for all local traffic in the LATA?

A Yes.

Q Would that be for BellSouth originated and Intermedia-originated traffic?

A My understanding is the rates are reciprocal.

Q Okay. Well, let's talk about that for a minute.

On MTA, will you agree that MTA is in a network arrangement for Intermedia to originate traffic?

A That is -- I really don't know.

Q Let me say it a little bit differently.

MTA arrangements allow Intermedia to gather traffic and that its customers are originating and send that to BellSouth to either transit it or to terminate it.

A I would agree with that.

Q Okay. Now, you've told us earlier that this amendment was one way; in other words, it only gives Intermedia the right to set up an MTA arrangement. It does not give BellSouth that reciprocal right. Do you agree with that?

A That is correct.

Q Okay. Now, you say the rates are reciprocal, but if both parties are not going to be able to use MTA, how can they be reciprocal?

A I'm sure that BellSouth could set up an MTA arrangement with Intermedia, if it would like.

Q But do you agree with me that BellSouth does not have that right under this amendment?

A Not the way the language is stated here.

Q Okay. All right. You agree with me that the original interconnection agreement, and I think you just alluded to this, requires that reciprocal compensation be either symmetrical or mutual.

A That's correct.

Q And reciprocal compensation applies when a company is terminating the traffic of another. Do you

agree with that statement?

A That is correct.

Q If MTA is used for the origination of traffic, how do the MTA rates that you say apply only to MTA, how does that have anything to do with what Intermedia's doing with MTA?

A I'm not -- I understand that we were using MTA -- I don't understand. I have to say I don't understand the technical nature of the question.

Q Well, I'm not sure it was technical, but let me try it one more time and see.

We agree that reciprocal comp is paid for the termination of traffic, okay?

A That is correct.

Q We also agree that multiple tandem access arrangements are for the origination of traffic or deal with originated traffic. Do we agree with that?

A I'm not sure that's true. I think that's something you'll have to ask Mr. Thomas.

Q Okay. What's changed in the last two minutes?

A The way you explained it. I'm not sure that we don't use it for termination. If we were to use it, I'm not sure it can't be used for termination.

Q How can reciprocal compensation occur, being that it has to be symmetrical and mutual if, in fact, the

MTA arrangement is only one way?

A I really don't -- I don't understand your question.

Q Okay.

COMMISSIONER DEASON: Mr. Edenfield, I don't believe the witness has agreed with you that the traffic can only be one way. I think you need to lay that predicate.

MR. EDENFIELD: Oh, I'm sorry. I thought earlier that -- I'm sorry, did I say one-way traffic?

A Yes.

BY MR. EDENFIELD:

Q I'm sorry; that the MTA arrangement, the language in paragraph numbered one makes it a one-way ability on Intermedia to get MTA from BellSouth and not vice versa. When I said one-way traffic, that's what I meant.

A Oh, all right. Thank you very much, Commissioner.

Q I'm sorry. I wasn't clear. Does that help clarify my question? Let me ask it again.

Given that the rights to have MTA are one-sided; in other words, Intermedia has that right to ask of BellSouth, but not vice versa, how then can the rates in Attachment A ever be reciprocal or symmetrical?

A Well, for the same reason that rates were reciprocal when we negotiated our initial contract and took the rates that BellSouth gave us as constituting those for reciprocal compensation. We had no way of knowing if our costs were anywhere near yours, but we were willing to rely upon yours.

Q I'm sorry, Ms. Gold, I'm not talking about the cost of the service. What I'm talking about in the original agreement, you billed a rate to BellSouth and BellSouth billed that same rate to you, correct?

A But BellSouth receives benefit -- BellSouth receives benefit as well, if Intermedia takes MTA.

Q All right. Well, let's answer the question I asked first, and then we'll go to that.

Do you agree that under the original interconnection agreement that the rate being paid by BellSouth to Intermedia for terminating BellSouth's traffic was the same that Intermedia paid to BellSouth for BellSouth terminating Intermedia's traffic?

A That is correct.

Q Okay. Now, what I'm trying to get to is under this amendment how can that still be the same?

A Because in essence, you're getting some benefit out of this as well. And at the reciprocal compensation rates, then you'll be able to use the lower rates that are

contained in here as well. You're getting rates, because you get to decide on the traffic to the best of your ability rather than relying on us on how we want to route our traffic.

Q Okay. Let's talk about your direct testimony on page 3, line 8. You there, Ms. Gold?

A Yes, I am.

Q Is it fair to say that you were surprised when BellSouth sent you a check on July 2nd, 1999, for $12.7 million --

A Yes.

Q -- that it wasn't more?

A Yes.

Q By surprise, do you mean you had no idea this was coming or that BellSouth had taken the position it had taken?

A I had no idea BellSouth had taken that position in Florida.

Q Okay. Ms. White's going to pass out some correspondence that followed the execution of the amendment, and we'll talk about that.

Ms. Gold, if you would, take a look at the package I just handed out. I guess, before we get started, Commissioner Deason, could I have this marked for identification as, I think, BellSouth number four?

COMMISSIONER DEASON: Yes, it will be so identified.

(Exhibit 4 was marked for identification.)

BY MR. EDENFIELD:

Q And I apologize in advance for these not being in chronological order, Ms. Gold. Take a look, if you would, it's the third to last page. It's a letter dated June 4th from Stuart Hudnall of BellSouth to Ms. Julia Strow of Intermedia.

A The one dated June 24th?

Q Did I say 24? I'm sorry, June 4th, 1998. I think it's the third one from the back.

It starts off, "Attached per your request is an original..." Tell me when you get there.

A Mm-hmm.

Q You there?

A Yep.

Q You agree with me that this is a letter sent by BellSouth to Intermedia the day after the amendment was executed?

A I agree with that.

Q Okay. Look in the second paragraph there. The letter says, "I also sent an e-mail to Tammy about the rate for the Florida end-office switching element, which had been questioned by someone at Intermedia."

Do you agree with me that the import of that letter makes it obvious that Intermedia had at least discussed rates with BellSouth prior to the execution of the amendment?

A I agree it says somebody discussed the rates that were in the amendment. It does not say the amendment was ever implemented.

Q I'm sorry, I missed the last part of what you said.

A It does not say that MTA was ever implemented or contemplated being implemented in Florida.

Q That's fine. We'll get to that. What I'm getting at is does the letter show that someone at Intermedia had questioned the rate put into the amendment?

A It appears to, yes.

Q Okay. And, in fact, it also in the next sentence, a copy of the Florida order shows, does it also reference that the rates that were in the amendment came out of the Florida order when more than likely that's the AT&T-MCI arbitration order. Do you agree with that?

A Yes, that appears to be so.

Q And, ironically enough, Intermedia's concern about the wrong rate being there proved to be true. In fact, the rate should have been .002; do you agree with that?

A Yes.

Q Okay. Did Intermedia ever file a response to this June 4th letter?

A In this proceeding? The only --

Q Well, the proceeding was that ongoing this was -- let me put it this way.

I'm not aware that Intermedia ever filed a letter responding to this -- oh, I'm sorry, I keep saying filed, sorry -- ever responded to this letter, unless you can point to me something different.

A No, I have no record of any response.

Q Okay. All right. Let's move forward to March 3rd, 1999, still some -- if I can still count on my fingers -- April, May, June, July, some four months before you were surprised.

And in the first paragraph of that letter, as I've mentioned before, BellSouth noticed its mistake and indicated to Intermedia that the appropriate rate for the end-office switching per use should be .002. Do you agree with that?

A Yes.

COMMISSIONER CLARK: Mr. Edenfield, what page are you on?

MR. EDENFIELD: I am so sorry. I didn't identify this. I have moved to a March 3rd, 1999, letter.

It is the one before the one we were just looking at. Again, I'm sorry I didn't put these in chronological order.

COMMISSIONER CLARK: You mean, you're sorry you didn't number the pages at the bottom.

MR. EDENFIELD: Actually, generally, at the end of the day, I'm sorry about a lot of things, but I'll add it to the list.

BY MR. EDENFIELD:

Q Are you at the March 3rd letter, Ms. Strow.

A No, I'm Ms. Gold.

Q I'm sorry, Ms. Gold.

Do you agree that the first paragraph of this letter basically is clarifying that the rate should have been 002?

A Yes.

Q Okay. Look at the second paragraph there. Look at the second sentence. "Since this rate was ordered by the PSC in 1996 and should have been in effect since the MTA became effective, BellSouth will be billing this rate back to June 3rd, 1998."

Did that not give you some kind of a clue, since you're saying you did not have MTA arrangements in place, that something was amiss?

A I would agree it should have.

Q Okay. Let's find the March 25th, 1999, letter. It's the last letter in the package. This is a letter from Ms. Strow of Intermedia back to BellSouth. Now, we're about three months prior to the June -- July date.

A Right.

Q In the middle paragraph, right towards the middle, the sentence says, "While Intermedia is open to making the requested correction to the amendment..." Did Intermedia agree that 002 was the appropriate rate to go into the amendment at that point?

A My understanding is they were saying that if, in fact, we chose to implement the amendment then 002 would be the correct rate.

Q Sure, I understand that. At this point it was -- Intermedia was just making clear its position that it felt like the rates only applied when you had MTA?

A Exactly.

Q Okay. But that you agree that the rate should have been 002.

A Correct.

Q Okay. Then, we have an April 2nd letter, which is the next to the last letter in which BellSouth was making -- I'm sorry, are you at the letter, Ms. Gold? If I call you Ms. Strow again, just slap me or something.

Are you at the April 2nd letter, Ms. Gold?

A Yes, I see that.

Q Okay. And this was BellSouth making clear its position that the elemental rates in the attachment apply to all local traffic, regardless of whether you were using MTA?

A Yes, I see this.

Q Okay. So, it should have been pretty obvious at this point that there was a disagreement as to how this was going to be interpreted; will you agree with that?

A Yes, I would.

Q That as of early March, Intermedia knew there was a problem?

A I would agree that Ms. Strow would have known in early March there was a problem.

Q Okay. You said she worked for you?

A Yes, she did.

Q Did she not advise you that there was a problem?

A The first correspondence I was aware of was the one to which she responded in the March 25th.

Q So, you should have known as of March 25th, not July 2nd.

A No. The March 25th response stated that we were not intending to use MTA, so we didn't understand when they would need to correct the rate.

Q I'm sorry, I misunderstood what you had said. I

thought you were saying that you knew then, that that's when Intermedia should have known or actually took a position.

A Intermedia took its position on March 25th that we had not implemented MTA and, therefore, the rates did not apply.

Q Okay. And you didn't know that until July 2nd.

A That BellSouth's position was that MTA applied.

Q Okay. When did Intermedia actually file this complaint?

A In October.

Q Of '99?

A That's correct.

Q Do you think, Ms. Gold, that when BellSouth started sending bills to Intermedia immediately following the June 1998 amendment, which was probably anywhere from 1/4 to 1/5 what they had been, that Intermedia should have figured out then that something was amiss?

A And we did, but it took awhile to get this ready to file and deal with all the other pressing business. BellSouth had been withholding payment from us for 2 1/2 years. It didn't seem like we were going to move it up any quicker.

Q All right. So, it took you from, I guess, it would be July for the June bills in 1998, from July 1998

to October 1999 to get your paper together?

A Yes, it did.

Q Has Intermedia ever come to BellSouth and said, "BellSouth, you're billing me the wrong rate in Florida. You should be billing me more than what you're billing"?

A I believe there is correspondence to that effect when we received Nancy White's first letter.

Q And what is the date of that?

A Just let me look for a minute.

Q Sure.

A It would have been July 26th.

Q So, July 26th, you told BellSouth you need to be billing Intermedia for more money.

A Oh, when did Intermedia notify BellSouth? Oh, has Intermedia ever called BellSouth about what it bills?

Q Yeah. Let's back up a step.

A I'm sorry.

Q Maybe we weren't on the same page.

You understand that BellSouth sends bills to Intermedia every month that Intermedia pays, right, for local traffic?

A Yes, that's my understanding.

Q And that as of June 3rd the rate that BellSouth had in those bills was cut almost by 1/3 or 1/4 or 1/5 from what it had been previously?

A I do not -- I am not on the billing side of the house, so I could not -- I don't know the answer to that question.

Q Well, maybe you know the answer to this one.

Has Intermedia ever come back to BellSouth and said, "By the way, here's more money, because you didn't bill us enough"?

A I can't answer that question either, I really can't.

Q Do you think it's likely that Intermedia has come back to BellSouth and said, "Here's more money. You didn't bill me enough"?

A I am not familiar with bill auditing, and my understanding is it's very much a science. So I could not -- I couldn't even ascertain whether that was true or not.

Q Okay. I may be done. Just give me one second to go through my notes real quick.

Oh. You made a reference to the Commission's ISP decision in September of 1998?

A Yes.

Q I assume you would agree that that came out after -- that order was issued after the amendment was signed?

A Absolutely.

Q Did that decision determine entitlement as well

as amount or just entitlement on behalf of Intermedia?

A In other words, did it verify -- it verified the terms of the initial interconnection agreement was my understanding.

Q So, the Commission determined that Intermedia was entitled to reciprocal compensation for ISP traffic?

A That is correct.

Q Okay. And the $12.7 million check that BellSouth tendered to Intermedia, what happened to that?

A We deposited it. Is that what you mean?

Q You did? Okay.

MR. EDENFIELD: Okay. I have no further questions.

COMMISSIONER DEASON: Thank you, Ms. Gold. Staff?

MS. STERN: Staff has no questions.

COMMISSIONER DEASON: Redirect?

REDIRECT EXAMINATION

BY MR. CANIS:

Q Thank you, Your Honor.

Ms. Gold, I'd like to address some of Mr. Edenfield's questions kind of in reverse order. I'd like to start with the discussion that you just had with him, but first, Mr. Edenfield, I believe, just finished asking you if there was any communication between Intermedia and

BellSouth over the rate and any expression of concern on Intermedia's part that the -- we'll call them the lower, the MTA rates, the lower rates reflected in the MTA were, in fact, the applicable rates and that they would be back-billed to the date of the MTA amendment of June 3rd of '98. Do you recall that question?

A Yes, I do.

Q During this time, was Intermedia suing BellSouth over reciprocal compensation?

A In the June time period? Yes. We were coming to the Commission for a hearing on June 11th.

Q In fact, can you tell me just a little bit about that, about the type of suits that were pending, when those suits were pending, and what rates Intermedia was demanding in those suits?

A Intermedia was filing a complaint against BellSouth for reciprocal compensation at the rates that were contained in our negotiated interconnection agreement.

Q Now, when you say the rates that were contained in the negotiated interconnection agreement, do you mean something besides these MTA rates?

A Yes. They were the composite rates that we mutually agreed to at the time of signing our agreement in '96, I believe.

Q Do you think it was abundantly clear to BellSouth what Intermedia's position was on what rates applied and when they applied?

A Absolutely.

Q Now, Mr. Edenfield identified two letters, both directed to Ms. Julia Strow. Have these letters -- and I guess, I'm looking at the April 2nd letter in the attachment that Mr. Edenfield handed out and also on the March 3rd letter. Both of these were directed to Ms. Julia Strow. These letters are dated March 3rd, 1999 and April 2nd, 1999. The MTA amendment, however, was signed on June 3rd, 1998.

A That's correct.

Q Were these 1999 letters the first indication of any sort of BellSouth's position on what rates applied?

A They appear to be.

Q Are you aware of any discussion between Intermedia personnel, Ms. Strow, or otherwise and BellSouth that talked about back-billing these changed rates retroactive to June 3rd prior to these mid '99 letters?

A Absolutely not.

Q Did you discuss these letters with Ms. Julia Strow?

A No, I did not discuss the March or April letter

with her.

Q Is it your understanding that Ms. Strow agreed with and concurred in these letters that were sent to her?

A I think it's obvious from her response to Mr. Hudnall on March 25th that she did not.

Q Is it fair, in fact, to characterize Intermedia's response to BellSouth's position as one of surprise?

A Yes.

Q Now, there were earlier letters, and Mr. Edenfield also directed you to a letter dated June 4th, 1998, and that date, I understand, is a lot closer to the date of the signing of the MTA amendment; and, to my recollection, that he asked you isn't it true that this letter signed the day after the MTA agreement was signed is evidence that Intermedia personnel discussed those rates with BellSouth personnel. Do you recall that question?

A Yes, I do.

Q What rate is being discussed in this letter?

A It appears that for the MTA, on the MTA rate sheet, there was an error in the Florida rate.

Q And can you tell me the nature of this error?

A Let's see, it appears to be a typographical error. It's not clear what the nature of the error is in

this letter.

Q Well, I tell you what, let's look at Attachment A here, the blow-up of the rates. It's also in the attachment that Mr. Edenfield distributed. Let's look at the Alabama rate, it's the end-office switching rate right at the top of that column.

A Yes.

Q And that's .0017. What does that mean?

A For every minute of traffic terminated through an end-office switch the charge is .0017.

Q And that is one-tenth of a cent; is that correct?

A Yes, it is.

Q All right. What's the Florida rate?

A .0175.

Q And that's 1.75 cents, right?

A That's correct.

Q Is that the typo that he's talking about?

A That's what it appears to be from this letter.

Q By the way, who discovered that error; do you know?

A By reference, sounds like BellSouth discovered the error. We were not using these rates, so...

Q Was any other rate or any other application of rates discussed in this earlier correspondence?

A Not that I'm aware of.

Q Now, prior to that, Mr. Edenfield was discussing with you whether the MTA amendment was reciprocal.

A That is correct.

Q And I believe he asked something along the lines of, well, is this just a one-way deal or can BellSouth implement MTA. Is that your recollection of his line of questioning?

A Yes.

Q And could you just briefly state your answer on that?

A BellSouth could have elected to negotiate a similar arrangement of traffic with Intermedia, but the rates they do, upon the election of Intermedia for MTA, BellSouth would also get some benefit.

Q Let's talk a little bit -- and I know you're not the expert witness on this, I know Mr. Thomas is, but let's talk a little bit about the configuration of the network in MTA.

MR. EDENFIELD: I'm sorry to interrupt, Commissioner Deason, but when I asked Ms. Strow questions, she begged off to Mr. Thomas. I think it's improper for -- after she begged off on my questions, to now go forth and start answering network configuration questions for her own counsel.

MR. CANIS: Your Honor, when I pose the question, I think it may be appropriate for Mr. Edenfield to object, but not before.

COMMISSIONER DEASON: Yes, I will allow you to go ahead and conclude your question, and I will allow an objection after the question is finished.

MR. EDENFIELD: My apology, I thought he was done with the question.

BY MR. CANIS:

Q Ms. Gold, does the MTA amendment require Intermedia -- define where and how Intermedia establishes trunks to what BellSouth tandem office is?

A All it says is the single access tandem.

Q Is it safe to -- let me rephrase that.

Does the MTA amendment identify where Intermedia must interconnect with BellSouth so that Intermedia may deliver its traffic to BellSouth?

A Yes.

Q To your knowledge, when Intermedia delivers traffic and interconnects with BellSouth, does that point of interconnection take place at a BellSouth office or can Intermedia tell BellSouth, "I don't want to connect at your tandem, I want you to bring it to where I am"?

A No, Intermedia connects at BellSouth's tandems.

Q So, Intermedia builds its trunks and carries its

traffic to BellSouth's tandems switches?

A Yes.

Q Well, would BellSouth want to implement MTA if Intermedia is already interconnected at Bell -- is bringing its traffic to BellSouth's offices?

A I would not assume it was necessary for them.

Q What is the benefit of MTA, if it were to be implemented to Intermedia?

A That we would only have to interconnect in a single point rather than build out to all the access tandems.

Q And does that save, if Intermedia chose to do that, would that save Intermedia trunking costs?

A Yes, it would.

Q Does BellSouth save any trunking costs if Intermedia establishes points of interconnection at BellSouth's offices?

A My understanding of BellSouth's network is it's already ubiquitous.

Q Does the concept that BellSouth could implement MTA make any sense to you at all?

A Not really.

Q This only makes sense as a one-way agreement; isn't that the case?

A That is correct.

Q Prior to that, Mr. Edenfield asked a number of questions, and I take it that these were hypotheticals, I believe; and correct me if this is not your recollection, that he asked could Intermedia have adopted the rates from the AT&T-MCI arbitration proceeding? Is that his question?

A Yes.

Q And your response to that?

A Yes, we could have.

Q All right. I believe he also asked could Intermedia and BellSouth have agreed without reference to the MCI arbitration just to adopt those rates without any strings attached, just to assume that those rates were the effective rates?

A I don't believe so under the circumstances at the time.

Q I'm sorry, I'm not asking you to answer that question. Did Mr. Edenfield ask you --

A Oh, yes, yes.

Q -- if Intermedia and BellSouth could have?

A Yes.

Q And what was your response to that question?

A Yes, we could have, but not under the circumstances -- we wouldn't have under the circumstances at the time.

Q Let me ask you the relevant question. Intermedia and BellSouth could have done a lot of things. Did they agree to do any of these?

A No.

Q What does the MTA agreement do? What did Intermedia agree with BellSouth to do?

A That if we were to use -- if we were to order, request, implement and use MTA, which would result in our only having a single point of interconnection, then we would use the elemental rates.

Q At the beginning of his discussion with you, Mr. Edenfield repeatedly directed your attentions to paragraphs three and four of the amendment. Those are right in back of you. And it's my recollection that he asked you to read that paragraph and assume that Attachment A wasn't referenced?

A That is correct.

Q And I believe he made the point that if you read those two paragraphs without any reference to Attachment A, they may be interpreted as imposing an obligation for Intermedia to accept the rates --

MR. EDENFIELD: I'm sorry, were you done with the question? I have an objection. He is leading the witness and, basically, testifying at this point. So I have an objection to the question.

MR. CANIS: Your Honor, I'll be happy to rephrase that question.

COMMISSIONER DEASON: Please, do so.

BY MR. CANIS:

Q Let me ask you again. Did Mr. Edenfield ask you to interpret paragraphs three and four without reference to Attachment A?

A Yes, he did.

Q Why do you think he was telling you to ignore Attachment A?

A Because Attachment A clearly references multi-tandem access shall be available.

Q Can you point to the language in Attachment A and tell us where -- from what you draw that conclusion?

A Do you want me to get up?

Q If it's not too much of a problem.

A It's right here, multi-tandem access shall be available.

Q And could I ask you to read that again into the microphone so we make sure we have that?

A Yes. Attachment A clearly states, "multi-tandem access shall be available according to the following rates for local usage."

Q Is it reasonable for anybody to read paragraphs three and four and ignore the reference to Attachment A?

A Absolutely not.

Q Okay. I believe Mr. Edenfield also discussed with you some of the benefits that Intermedia could receive from MTA. Do you recall those questions?

A Yes, I do.

Q Do you recall some of the answers that you gave him, the kind of benefits that might be available?

A Yes.

Q Could you briefly summarize them?

A That if we chose to use MTA, we could avoid the direct trunking charges to every tandem as we prefer to configure our network.

Q Has Intermedia recognized any of those benefits?

A Absolutely not. We are direct trunked in our entire BellSouth region today. And, in fact, at the time the situation where we had our customers blocked by BellSouth, which required the MTA amendment, we -- during the period between BellSouth telling us the amendment was necessary, we found alternatives so that by the time the amendment was signed we already had direct trunks in place. So we never realized any benefit from the amendment.

Q Is that true in Florida as well as the three other states?

A Yes, in Florida we've never requested it.

Q So, again, I just want to make sure I understand you. At the time the MTA amendment was signed, did Intermedia need or want the benefits of MTA?

A Not to my understanding.

Q If that's the case, then why did Intermedia agree to sign the MTA amendment?

A We were in a crisis situation. We had service outages to customers. We had to find an emergency patch, if you will, because BellSouth had said we didn't have this arrangement, and they cut off service in the Norcross tandem, which is in Atlanta, Georgia.

Q Now, you said you had an emergency service situation. Could you elaborate on that?

A They were blocking calls to our customers.

Q Who was?

A BellSouth.

Q BellSouth was blocking traffic --

A To Intermedia customers served through the Norcross tandem.

Q And this is in Georgia?

A In Georgia, in Atlanta, Georgia.

Q To your knowledge, was this the only reason that Intermedia considered signing the MTA amendment?

A Absolutely.

Q To your knowledge, did Intermedia ever have any

other -- did Intermedia of its own volition and on its own accord ever approach BellSouth saying, "We want that MTA Amendment"?

A No, we wouldn't have any need for the service.

Q And that was true as of the date that you signed this agreement; is that true?

A Subject to verification of Mr. Thomas, I believe that to be true.

Q And is that true today?

A Yes.

MR. CANIS: Your Honor, I have no further redirect.

COMMISSIONER DEASON: Exhibits?

MR. CANIS: Yes, Your Honor, I would at this time. We have previously marked the attachments to Ms. Gold's testimony as consolidated Intermedia Exhibit Number 2?

COMMISSIONER DEASON: Yes.

MR. CANIS: And I would like at this time to move those exhibits into the record of this proceeding.

COMMISSIONER DEASON: Without objection, it shall be so admitted.

(Exhibit 2 was admitted into evidence.)

COMMISSIONER DEASON: Further exhibits?

MR. EDENFIELD: BellSouth has two. BellSouth

would move in cross-examination Exhibits 3 and 4.

COMMISSIONER DEASON: Without objection, Exhibits 3 and 4 are also admitted.

(Exhibits 3 and 4 were admitted into evidence.)

COMMISSIONER DEASON: Thank you, Ms. Gold.

THE WITNESS: Thank you.

(Witness excused.)

COMMISSIONER DEASON: And you will be coming back for rebuttal, correct?

We're going to take a recess at this time. I believe the next scheduled witness is Mr. Thomas. I believe there is some question about some changes to Mr. Thomas's testimony. I've asked the parties during the recess to discuss that and make your objections on point, and we'll deal with that at that time. We will recess until 11:15.

(Recess taken)

COMMISSIONER DEASON: Call the hearing back to order.

Mr. Pelligrini, you may call your next witness.

MR. PELLIGRINI: Thank you, Commissioner Deason. At this time, Intermedia calls its witness, Edward L. Thomas, to the stand.

MR. EDENFIELD: Commissioner Deason?

COMMISSIONER DEASON: Yes.

MR. EDENFIELD: Before we get started -- and I don't want this to come out accusatory. I just want to make sure there's no misunderstanding. Could I request that the Intermedia lawyers not nod and shake during the cross-examination of their witnesses. It's giving a bad impression; whether anything's going on, I'm not suggesting that it is, but it's giving a very bad impression.

COMMISSIONER DEASON: Mr. Pelligrini.

MR. PELLIGRINI: I have no comment, Commissioner Deason.

COMMISSIONER DEASON: Well, I just -- to the extent that you can just ask your questions without giving any type of indications as to what the answers should be verbally or by body movement that would be -- and I'm not saying that you are or anyone has --

MR. PELLIGRINI: I certainly will do everything in my power to avoid doing that, sir.

COMMISSIONER DEASON: Very well.

EDWARD L. THOMAS

was called as a witness or behalf of Intermedia Communications, Inc., and, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PELLIGRINI:

Q Mr. Thomas, would you state and spell your name, please.

A Edward L. Thomas, T-H-O-M-A-S.

Q And Mr. Thomas, what is your capacity with Intermedia Communications?

A I am the Senior Director for Voice Planning and Deployment.

Q How long have you held that position with Intermedia, Mr. Thomas?

A Since September of 1998.

Q Mr. Thomas, have you prepared prefiled direct testimony in this proceeding consisting of 9 pages and 7 exhibits, 4 of which are proprietary in nature?

A Yes, sir, I have.

Q Mr. Thomas, do you have changes to make to either your direct testimony or to your exhibits?

A Yes, sir I do.

Q Do you have changes to your direct testimony?

MR. EDENFIELD: At this point, Commissioner Deason, I think we're at the point where we need to take up the corrections that appear to be being requested by Intermedia.

COMMISSIONER DEASON: Okay. Let's go ahead and do -- apparently, there are some corrections to which BellSouth is not objecting.

MR. PELLIGRINI: Commissioner Deason, may I make a statement to begin with?

COMMISSIONER DEASON: Surely.

MR. PELLIGRINI: I want to state really at the outset that the changes that Mr. Thomas would make to his testimony does not represent a backdoor attempt to avoid the decision on Intermedia's motion to file the surrebuttal testimony of Mr. Thomas. The changes have absolutely nothing to do with the intended testimony in Mr. Thomas' surrebuttal testimony.

I advised Mr. Edenfield yesterday of our intent to offer these changes to Mr. Thomas' testimony. I believe that Mr. Thomas is entitled, as any witness is, to make corrections to testimony where he or she later discovers, or subsequent to filing, discovers errors or incompleteness or inaccuracies that either confuse or distort the record.

And I want to say that the additions or, rather, the changes to the testimony of Mr. Thomas are offered for the sole purpose of assuring that the purpose is both complete and accurate, and that is all that Mr. Thomas is attempting to accomplish with the changes that he would suggest to his testimony.

COMMISSIONER DEASON: Okay. BellSouth, you're objecting to what has been identified as changes number 5,

7 and 8; is that correct?

MR. EDENFIELD: I am objecting -- that's correct, but only part of number 8. I do not have an objection -- I think, on your copy it just has 5, 7 and 8 on it.

The first paragraph there in 8 that starts, "Although BellSouth has appealed..." those appear to be minor corrections in testimony when I went back and looked at it. I have no problem with that, changing words here and there, but I do have an objection to 5, 7 and the footnote.

COMMISSIONER DEASON: Okay. Let's go ahead and hear your objection, then.

MR. EDENFIELD: My objection is this: In discussing this with my subject matter experts, it appears that what is being said here would give rise to additional rebuttal testimony, but we are just seeing this for the first time today. These are not inconsequential changes. These are not a situation where someone wrote a word down in error or had a typo in their testimony.

This is a situation where someone is coming in and adding substantive testimony to what already exists in direct testimony. In short, it's an attempt to come in and change your direct, add new direct on the day before a hearing.

And if my people did not have a problem or this would not give rise to additional rebuttal testimony, I would not have a problem with it. Unfortunately, at this point, it's nothing more than pure surprise.

COMMISSIONER DEASON: Mr. Pelligrini.

MR. PELLIGRINI: Commissioner Deason, I don't think it is entirely fair to characterize the additional language on pages 6 as new testimony. The preceding sentence at the top of page 6 -- well, in the question to which the added sentence would be the concluding sentence, Mr. Thomas is simply describing the nature of the network arrangements in the Jacksonville-serving area.

And the sentence that he would propose to change -- he would propose to add, merely completes the description of the traffic arrangements in the Jacksonville and in Orlando-serving areas.

It's not new. If you will, it's supplementary. It offers a complete statement for one that is, to a small degree, incomplete. And it's for that purpose and that purpose alone that it's requested. I don't know whether it requires any rebuttal testimony or not. I don't think so. I think it fits entirely within the context of Mr. Thomas' testimony in both of the questions on page 5 and page 6.

COMMISSIONER DEASON: Mr. Pelligrini, the

difficulty I'm having is if it's just completing a thought, why wasn't it part of the testimony to begin with?

MR. PELLIGRINI: My answer to that, Commissioner Deason, is this; that after Mr. Thomas filed his testimony and after an opportunity to review it, and he's reviewed it with counsel a number of times, became apparent that his testimony, as it stood, while it was accurate to a large extent, accurate and complete to a large extent, it was not fully complete nor fully accurate. And it would be necessary, for the purposes of a clear record, for these statements to be -- the statements in 5 and 7, to be added for that purpose.

COMMISSIONER DEASON: I'm going to sustain the objection on the grounds that, to me, when I read this, it may be supplemental to what was filed previously, but it does carry it a step further, in my opinion, and is producing new information, which should have been filed with the original testimony to have given BellSouth the opportunity to have explored it, either in deposition or through some type of rebuttal testimony. So for that reason, I am sustaining the objection as it relates to changes 5 and 7.

Is the objection still the same for the footnote, which is identified as footnote number two or is

there a different objection?

MR. EDENFIELD: That is correct, Commissioner Deason.

COMMISSIONER DEASON: It's the same objection?

MR. EDENFIELD: And there are also exhibits attached. I'm not sure if those are associated with 5, 7 or footnote 2, but to the extent they're attempting to replace the numbered exhibits from the direct testimony with new exhibits, I assume they were associated with one of those numbers, but maybe they're not.

COMMISSIONER DEASON: Hold it just one second. Let's just deal with it step by step. We've dealt with addition 5 and addition 7. I'm on footnote 2 right now.

MR. EDENFIELD: I'm sorry.

COMMISSIONER DEASON: Okay?

MR. EDENFIELD: The answer to your question was yes, it's the same objection.

COMMISSIONER DEASON: The same objection, that this is new information, correct?

MR. EDENFIELD: That is correct.

COMMISSIONER DEASON: Okay. Mr. Pelligrini, explain to me why this is not new information that could have been provided at the time that the original testimony was filed.

MR. PELLIGRINI: Yes, sir. In the original

testimony, Commissioner Deason, the statement in the text lacked the word, "ISP traffic," and the phrase, "Florida ISP traffic." It was necessary to add ISP traffic to accurately describe what it was, the basis on which BellSouth had begun to make payments in July of 1999.

The footnote, then, became necessary to point out that, whereas BellSouth had taken that action in July of 1999; that is, had begun to pay Intermedia for ISP traffic on the basis of the rate and the composite rate in original interconnection agreement, it had, prior to that time, been paying BellSouth for nondisputed local traffic on the basis of the rate, the composite rate, and the original interconnection agreement.

With the addition of the word or the acronym, ISP, in the text it became necessary to explain -- the footnote, in our judgment, became necessary to explain why the word, "ISP," had been added to the text. If taken together, then, it's a full statement -- it's Mr. Thomas' complete statement regarding the bases on which both has rendered payment to Intermedia.

COMMISSIONER CLARK: Chairman Deason, can I ask BellSouth a question?

I have a question. Does -- I thought the exhibit, one of the exhibits you gave us indicated that BellSouth was going to back-bill for some traffic.

MR. EDENFIELD: You mean, clarifying the rate?

COMMISSIONER CLARK: Right.

MR. EDENFIELD: Go back and bill at the correct rate?

COMMISSIONER CLARK: Mm-hmm. Wasn't that in one of these letters?

MR. EDENFIELD: Well, I'm not sure whether -- that is one of the letters. I'm not sure of the date of it off the top of my head, but it is one of the letters.

COMMISSIONER CLARK: That's what I read this footnote as saying. It confirms the fact that you were paying them, but then you were going to go back and re-rate it, in effect.

MR. EDENFIELD: Can I have one second to talk to Mr. Scollard, and I'll find out the answer to that. I think it was billed correctly from the beginning.

COMMISSIONER CLARK: I guess, my question is how is this supplemental, then? How is the footnote then supplemental? I mean, it strikes me that, in fact, you've put this in the record.

MR. EDENFIELD: May I have a second to talk to Mr. Scollard?

Okay, I'll try not to botch this. The import of the letter is, you may recall the rate of 0175 was wrong. We were looking at -- it should have been 002. The import

of that letter is we sent an amendment to Intermedia to have them sign something saying the correct rate is actually 002, not 0175.

If they had signed that amendment, then we would have gone back, redone the bills and billed them at the 002 rate. Instead, we billed them at the 00175 rate. I'm not sure if that answers your questions, but that's the explanation.

COMMISSIONER CLARK: I guess, why are you saying that this is additional or supplemental?

MR. EDENFIELD: I guess, you could see it as being something that might be responsive to that letter that I put into evidence, but the problem is this statement, in and of itself, at least in BellSouth's view, is incorrect and would require some type of testimony from Mr. Hendrix to get it straightened out or Mr. Scollard.

If you think it's responsive, then I'm okay with that, so long as I would have the right to ask Mr. Hendrix what's wrong with it.

COMMISSIONER CLARK: Okay.

COMMISSIONER DEASON: So, you're withdrawing your objection or continuing it?

MR. EDENFIELD: Well, I'm maintaining the objection. But if you're inclined to overrule my objection, I would ask that Mr. Hendrix or Mr. Scollard be

given the leeway to address this as something they have not previously addressed.

MR. PELLIGRINI: Intermedia has no objection to that, Commissioner Deason.

COMMISSIONER DEASON: But I may have an objection to it. I want to know if anywhere, if this was a fact that was known at the time the testimony was filed, why was it not part of the testimony at the time it was filed?

MR. PELLIGRINI: Let me see if I can give you a good answer to that question, Commissioner Deason. The text -- the problem -- the problem that we discovered with this testimony following its filing was with the absence of the descriptive ISP. And so, we are proposing to add --

COMMISSIONER DEASON: Where do you find that? I see that they're in parentheticals there. In the footnote, there's a reference to ISP. Where else is there a reference to ISP?

MR. PELLIGRINI: There isn't, and that's the problem. Let me direct you to line 22 on page 8. And there Mr. Thomas' testimony, as it stands, is that it began, meaning BellSouth, "It began to pay reciprocal compensation to Intermedia for Florida traffic." And it's at that point that Mr. Thomas wishes to add a descriptor,

ISP, so that it reads, "to Intermedia for Florida ISP traffic." The statement, as it --

COMMISSIONER DEASON: Well, just one moment.

MR. PELLIGRINI: Okay.

COMMISSIONER DEASON: Is that a problem?

MR. EDENFIELD: That's not a problem.

MR. PELLIGRINI: That's --

MR. EDENFIELD: I'm sorry. As I indicated earlier, I don't have a problem with the amendments to the first part of that where he added the word, "ISP," he added the word "make," the phrase, "began to" and "then." He added those particular phrases in the first part of 8. I have no objection, whatsoever, to those changes. I think those are classic changes. It's the footnote that I have the problem with.

COMMISSIONER DEASON: Okay. All right. There's no problem with the reference to ISP. Now, explain to me why it's necessary to change the footnote because of the terminology ISP.

MR. PELLIGRINI: It became necessary or it becomes necessary once the descriptor ISP is in his testimony to fully set out -- and keep in mind, these are factual statements. And I understand that BellSouth has an opposite viewpoint, but the footnote now, I think, becomes necessary in order to point out that, in fact,

there were two payment streams from BellSouth to Intermedia. There was the payment stream that began in July of 1999 by which they rendered payment for ISP traffic, which had been in dispute.

There was also payment stream that began some time before that in which they were paying Intermedia for nondisputed local traffic and they were paying on the basis of Intermedia's invoices, which invoices were based on the interconnection, the composite rate, and the original interconnection agreement.

So in order to make this clear that, in fact, there were two payment streams, two independent payment streams, the footnote becomes necessary to supplement the use of the descriptor.

COMMISSIONER DEASON: Okay. I'm going to allow the footnote and BellSouth, you may -- who is the appropriate witness to rebut this, is it Mr. Hendrix?

MR. EDENFIELD: I think, it's Mr. Hendrix.

COMMISSIONER DEASON: Well, I'll give you the latitude to explore it at the time -- if it's Mr. Hendrix, when he takes the stand, to explore further on direct, if there needs to be response to footnote 2.

MR. EDENFIELD: The last portion of this --

MR. PELLIGRINI: Mr. Edenfield, before you -- may I just explain that the additional, the diagrams are

diagrams of demonstrative exhibits that Mr. Thomas intends to use in his testimony summary. We've not yet made the decision of whether we will offer them as exhibits, but assuming they are appropriate to use, I think, in the course of Mr. Thomas' summary.

MR. EDENFIELD: I'm not sure I follow that, Commissioner Deason. Is Mr. Pelligrini indicating that Intermedia is going to use this as some type of demonstrative aid?

COMMISSIONER DEASON: That's my understanding. They will be used during the summary of his prefiled testimony.

Mr. Pelligrini, you may continue with your witness.

BY MR. PELLIGRINI:

Q Mr. Thomas, do you understand the changes to your testimony which Commissioner Deason has allowed and those which he has disallowed?

A Let me verify; that would be number 1, 2, 3, 4, 6, and number 8.

Q That's correct. At this time, Mr. Thomas, would you proceed to make the changes to your prefiled direct testimony as allowed by Commissioner Deason.

A Yes, sir. I will reference page and line of my direct testimony. On page number 3, line 14, please

strike the phrase, "some serving areas." And on line 15, strike the word "largely." On page 5, line 8 --

COMMISSIONER CLARK: I'm sorry, I need that again.

A I'm sorry. On the very first one, ma'am? That would be page 3, line 14, strike the phrase, "some serving areas." And on line 15, strike the word "largely."

On page 5, line 8, substitute the word "alternate" for the word "alternative." On page 5, line 26, strike the word "put." On page 6 --

MR. EDENFIELD: I'm sorry, I missed that last one.

A I'm sorry?

MR. EDENFIELD: I'm sorry, I missed the last one. I missed the one after page 5, line 8.

A The last one was page 5, line 26, strike the word "put," please.

MR. EDENFIELD: Thank you.

A On page 6, change "San Marcos," plural, to "San Marco" at lines 7, 9, 11, 15, 21, 25, and in footnote number one.

On page 6, line 18, strike the word "put."

On page 8, and with reference to the handout, where the changes stated on page 8, strike lines 21 through 26.

And on page 9, the rest of the carried-over sentence, replace that language with the following language: "Although BellSouth has appealed the Commission's ruling, it began to pay reciprocal compensation to Intermedia for Florida ISP traffic when both the Commission and the federal court rejected its efforts to stay the Commission's order. However, it began to make those payments and continues to make them on the basis of the rate that it insisted had become effected by reason of the MTA amendment and not on the basis of the rate required for reciprocal compensation under the original agreement."

The text of the present footnote number 2 becomes the text of the new footnote number 3, which is inserted after the first full sentence on page 9, line 2.

The new text of footnote number 2 reads as follows: "Prior to this, and for several months following the MTA amendment, BellSouth paid Intermedia reciprocal compensation for local traffic, except for traffic terminated to ISPs on the basis of the composite tandem switching rate established in the interconnection agreement. This, of course, is and always has been the correct rate to be used for reciprocal compensation and the rate Intermedia has always applied in its bills to BellSouth."

BY MR. PELLIGRINI:

Q Mr. Thomas, with those changes to your testimony, is your testimony true and correct?

A I'm sorry, sir.

Q With those changes to your testimony, Mr. Thomas, is your testimony true and correct?

A Yes, sir.

Q If I were to ask you these same questions today, with those changes, would your answers be the same?

A Yes, sir.

Q Mr. Thomas, do you have a summary of your testimony?

A I do.

Q Would you offer it to the Commission at this time, please?

A Thank you for the opportunity.

My testimony in this proceeding shows that Intermedia has not requested and does not use multiple tandem access arrangements to send local traffic to BellSouth or to receive local traffic from BellSouth in Florida.

If Intermedia did use these access arrangements, then, the elemental rates in the MTA amendment would apply to these arrangements, but we do not use multiple tandem access arrangements. So, the elemental rates in the

amendment do not apply for reciprocal compensation anywhere in Florida.

Even though we are not using multiple tandem access arrangements, BellSouth pays Intermedia reciprocal compensation for terminating local, bell -- excuse me, Florida traffic on the basis of the elemental rates in the MTA amendment.

The amendment has but a single purpose. It makes available to Intermedia, upon Intermedia's election, a network architecture called multiple tandem access or MTA. That is all that it does. Because of that fact, BellSouth is misusing the amendment in at least four ways.

First, the amendment provides rates that become effective only when Intermedia elects a multiple tandem access arrangement under the amendment. Intermedia has never made any such election anywhere in south -- excuse me, BellSouth's region.

Therefore, BellSouth has no basis for applying the MTA amendment to make reciprocal compensation payments that are only a small fraction of the amounts Intermedia properly bills under the interconnection agreement.

The rate that is applicable to reciprocal compensation and the rate Intermedia has always applied in its bills to BellSouth is the composite tandem switching rate of 1.056 cents in Attachment B-1 of the

interconnection agreement.

It is worth pointing out that BellSouth has not been consistent in misusing the amendment. For several months following the amendment, BellSouth paid reciprocal compensation to Intermedia for undisputed local traffic; that is, non-ISP traffic on the basis of the amount billed by Intermedia.

Second, Intermedia's interconnection arrangements are not qualified for use of the amendment. Multiple tandem access may be used only when all of Intermedia's NNXs are home to a single access tandem. In fact, has NNXs home to each of BellSouth's local access tandems in its Jacksonville, Orlando, and Miami-serving areas.

Third, Intermedia does not use any tandem as required under the amendment. The amendment requires that multiple tandem access be used for terminating both Intermedia's and BellSouth's local and intraLATA traffic as well as for transit traffic to and from other ALECs, IXCs, independent LECs and wireless carriers.

Even in Jacksonville and Orlando, where BellSouth's network preexisting Intermedia's interconnection and the MTA amendment has some of the attributes of multiple tandem access, only transit traffic is carried in that manner. Regular telephone traffic, the

traffic for which Intermedia receives reciprocal compensation, is carried over direct trunks that are provisioned to each access tandem.

Finally, Intermedia does not want and does not, for any reason, need multiple tandem access arrangements anywhere, neither for network simplification nor for alleviating congestion, since even before the amendment Intermedia has had direct trunk connectivity to each of BellSouth's local access tandems in Jacksonville, Orlando, and Miami-serving areas. This is true now. It was true as well at and before the time of the amendment, and it is true as we see the future today.

I would like to use three charts in further explaining the topology of the network trunking configuration between BellSouth in Florida. I hope that it's working. Okay.

Chart number one, identifies the Jacksonville service area or market area, and the part at the top is the Intermedia switch. The two circles down below represent the BellSouth tandems, local access tandems, within the Jacksonville-serving area.

This chart is, as the network was in May of 1998, a full month before the MTA amendment. I'd like to point out that at that time Intermedia had from our Intermedia switch to the Bell access tandem on Clay Street

a one-way outgoing circuit group from Intermedia to the Bell access tandem at San Marco, a one-way outgoing trunk group; and also in reverse, from San Marco to Intermedia, a one-way incoming trunk group, and from Clay Street to Intermedia a one-way incoming trunk group. From Clay Street -- between Clay Street and the Intermedia switch, there is a two-way trunk group that is used for transit-type traffic.

Between San Marco -- excuse me, between San Marco and Intermedia, there is a trunk group. It is a dotted line. I'm not sure if it shows up in your example that way. The trunk group that's established has never been used; however, it is there.

Additionally, I add, intermachine trunks representative of how BellSouth would typically connect to their network internally and also trunk group between the subtending end offices for the BellSouth's tandems and their home tandems. I will point out that at this time on May 1998, Intermedia, indeed, had proper infrastructure in place to exchange normal telephone traffic.

On chart two, this chart will represent the market area for Orlando, Florida. Again, at the top is the Intermedia switch, and the two circles down below are the two BellSouth tandems; one being Magnolia and the other one being Colonial. This, again, is a snapshot of

May 1998, a month before the MTA amendment.

Pointing out, again, from Intermedia to BellSouth tandem at Magnolia, we have a one-way outgoing trunk group. From Intermedia to Colonial we have a one-way outgoing trunk group. In the reverse direction from Colonial BellSouth to Intermedia there's a one-way trunk group, and from BellSouth to Intermedia from the Magnolia tandem is also a one-way trunk group. There is but one two-way transit trunk groups. That transit trunk group is between the Magnolia tandem and the Intermedia switch.

At the time we entered the local market, BellSouth did not -- requested that we not put in a two-way transit group in Colonial. It was over our objections; however, it was the network topology that was imposed upon us. Intermedia, indeed, enjoys putting complete trunk connectivity between our switch and all access tandems so that we are not dependent upon anyone else.

On chart number three, represents the Miami-serving area. Again, the snapshot is for May of 1998, shows the Intermedia switch at the very top and the BellSouth tandems down below. There are three major tandems or local access tandems in the Miami-serving area, both being the north Dade 01, which is basically the Miami

metro area; the north Dade 04, which is for Fort Lauderdale, and the West Palm Beach tandem which is, of course, for West Palm Beach.

At that time, in May of 1998, Intermedia had connect connectivity to each of these tandems in the form of one-way outgoing directionalized trunks, one-way incoming directionalized trunks, and two-way trunks. Again, I represent intermachine trunks between the BellSouth tandems, and I also represent end offices with their connecting trunk groups to their homing tandem.

The three charts that I have shown you show that Intermedia does, indeed, have connect connectivity for normal telephone service in every BellSouth's tandem in the area that we serve.

It is clear, then, that Intermedia has not employed multiple tandem access arrangements in Florida; in fact, BellSouth admits as much. Therefore, since the rates specified in the MTA amendment are for rates to be applied only when multiple tandem access arrangements are employed at Intermedia's election, it is my testimony that BellSouth is wrong to apply them to the payment of reciprocal compensation in Florida.

MR. PELLIGRINI: At this time, Intermedia would offer the prefiled testimony of Mr. Thomas for entry into the record as though read.

COMMISSIONER DEASON: It will be admitted. It will be inserted into the record as amended.

INTERMEDIA COMMUNICATIONS INC.
DIRECT TESTIMONY OF EDWARD L. THOMAS
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 991534-TP

Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, TITLE, AND THE NATURE OF YOUR POSITION WITH INTERMEDIA COMMUNICATIONS INC. ("INTERMEDIA").

A. My name is Edward L. Thomas. I am employed by Intermedia as Director-Voice Planning and Deployment. My business address is 3625 Queen Palm Drive, Tampa, Florida 33619. I am responsible for engineering the moves, adds, and changes of the telecommunications switching requirements within the Intermedia voice network. This includes ordering and placing central office equipment, ordering and placing circuit groups between various exchanges, network capacity management and network traffic management. I have worked in the telecommunications industry for thirty-five years. Before employment with Intermedia, I worked for GTE for twenty-nine years in several management capacities.

I have attended Kent State University and Wooster (Ohio) College, and completed numerous technical training courses and seminars.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?

A. I am appearing before the Commission as a technical witness to present evidence describing the telecommunications networks that Intermedia deploys in the state of Florida. My testimony will support Intermedia's position that it bills BellSouth for the transport and termination of traffic on Intermedia's Florida networks that is originated by BellSouth end users using the correct rate under the parties' interconnection agreement.

Q. HOW DOES AN INTERCONNECTING CARRIER, SUCH AS INTERMEDIA, ESTABLISH INTERCONNECTION WITH AN INCUMBENT LOCAL EXCHANGE CARRIER ("ILEC"), SUCH AS BELLSOUTH?

A. In interconnection arrangements, since end users of the interconnecting carriers and end users of the ILECs in the same local calling area will call each other, the carriers exchange local traffic according to reciprocal compensation obligations as specified in federal law and as defined in interconnection agreements. To do this, interconnecting carriers, such as Intermedia, purchase "interconnection trunks" from ILECs, such as BellSouth, which are used to connect the interconnecting carriers' networks from their points-of-presence ("POPs") or switches to the ILECs' tandem switches or end offices in the same local calling area. Tandem switches are used to provide the initial interconnection to and from the interconnecting carrier. When traffic volumes warrant the establishment of direct end office trunk groups, the end office groups are established as "Primary High Usage" groups, with the tandem groups the "final routes" between the tandem switches and the interconnecting carrier under overflow conditions. End users are directly connected to end offices by means of loops. I illustrate this schematically in Exhibit ELT-1.

Q. IN AN ILEC"S NETWORK EMPLOYING TANDEM SWITCHES, HOW DOES AN INTERCONNECTING CARRIER, SUCH AS INTERMEDIA, ESTABLISH INTERCONNECTION?

A. Aside from direct trunking to the ILEC's end office, there are two network architectures commonly deployed to establish interconnection with an ILEC's network employing tandem switches. These enable interconnecting carriers to deliver traffic originating on their networks to end users served by ILEC end offices subtending tandem switches and to terminate traffic on their networks

originated by those same ILEC end users. The first of these is called "Single Tandem Access" or "STA," which I illustrate in Exhibit ELT-2. In this architecture, the interconnecting carriers route traffic to and from ILEC end users using direct trunks to each tandem switch within the local calling area. The second of these is called "Multiple Tandem Access" or "MTA," which I illustrate in Exhibit ELT-3. It is sometimes referred to as "Single Point of Interconnection." In this architecture, interconnecting carriers establish interconnection with the ILEC's tandem switches in the LATA, and the end offices subtending them, by means of direct connection only to one of the tandem switches typically, or, at minimum, to less than all of them.

Q. AS AN INTERCONNECTING CARRIER, WHAT INTERCONNECTION ARCHITECTURE IS INTERMEDIA'S PREFERENCE?

A. It is Intermedia's preference to direct trunk to the ILEC's end office where traffic volumes are sufficient. In fact, in most cases some serving areas, including Miami, Intermedia is interconnected with BellSouth largely in this way. Direct trunk groups are designed to operate efficiently during periods of peak load. Typically, however, they will become congested in these periods and overflow to the tandem switch trunk group, or "final route." When congestion occurs, the traffic overflow is "alternate routed" to the tandem switch to which the end office is homed. However, in the event that the tandem switch lacks capacity to accommodate the overflow, traffic blockage results.

Q. WHEN TRAFFIC BLOCKAGE RESULTS, WHAT RECOURSE DOES THE ORIGINATING CARRIER HAVE?

A. There is no immediate recourse, except that it is sometimes possible to reroute blocked calls over interLATA access trunks at higher cost. The overflowed calls otherwise simply are not completed. In these circumstances, new service orders may have to be held for an unreasonably long period of time until the blockage

can be alleviated, even though ILECs have the duty under federal law to provide interconnecting carriers access to their networks on a nondiscriminatory basis. In fact, Intermedia has experienced these problems persistently on some of BellSouth's networks

Q. WHAT IS EVENTUALLY DONE TO RELIEVE SUCH BLOCKAGES?

A. The interconnecting carrier experiencing the blockage may augment the direct trunk if the traffic overflow is great enough or it may request the ILEC to provide "alternate routing"by whatever means practicable and consistent with service quality standards. MTA, or, rather, what has come to be called MTA, is one such means by which congested traffic may be "alternate routed." STA is another; it is preferred where traffic volumes are sufficient. MTA especially is not, however, an efficient use of network facilities, since calls transported over MTA architectures are switched many more times than if they were to be transported over direct trunks to the called party's end office. It is worth noting that the implementation of"alternate routing" of traffic originating on the interconnecting carrier's network, such as MTA, requires a great deal of coordination between the ILEC and the interconnecting carrier. That is not a requirement where the ILEC deploys "alternate routing" to relieve congestion of traffic originating on its network that is destined to the interconnecting carrier's end users or traffic originating on the interconnecting carrier's network that has been successfully trunked to the ILEC's tandem switch. In fact, where the ILEC, on its initiative, resorts to alternative routing under those circumstances, it is transparent to the interconnecting carrier.

Q. PLEASE DESCRIBE INTERMEDIA'S NETWORK ARCHITECTURES THAT INTERCONNECT WITH BELLSOUTH'S NETWORK IN FLORIDA.

A. Intermedia is interconnected with BellSouth's networks in Jacksonville, Orlando and Miami. These interconnection arrangements are illustrated schematically in Exhibits ELT-4, 5 and 6, respectively.

Q. DO INTERMEDIA'S INTERCONNECTION ARRANGEMENTS WITH BELLSOUTH IN FLORIDA CONSIST OF ALTERNATIVE ROUTING INCLUDING MTA?

A. In Jacksonville and Orlando, Intermedia's interconnection arrangements with BellSouth consist of alternative routing, including trunking that bears the attributes of what we are here calling MTA.

Q. DESCRIBE INTERMEDIA'S INTERCONNECTION ARRANGEMENT IN ORLANDO AND ITS DEVELOPMENT.

A. Intermedia turned up its Orlando DMS-100 local switch in January 1997. It is interconnected to BellSouth's Magnolia and Colonial tandem switches by means of one-way reciprocal trunks for the exchange of local traffic. In addition, it is interconnected to the Magnolia tandem switch, but not the Colonial tandem switch, by means of a two-way transit, or transient, trunk. Transit trunks are used to carry traffic from other carriers than the interconnecting or incumbent carrier, outbound 800-type traffic not destined for either the interconnecting or incumbent carrier, and wireless traffic. BellSouth, apparently seeking to minimize disruptions to its network, required that a transit trunk not be provisioned to the Colonial tandem switch. Thus, when an end user who is a subscriber of another interconnecting carrier that is direct trunked to the Colonial tandem switch places a call to an Intermedia end user. the call is routed through the Colonial tandem switch to the Magnolia tandem switch and then on to Intermedia's switch. This routing arguably meets the characteristics of what we are referring to in this proceeding as MTA. It is important to see that this architecture was put in place at the very outset of Intermedia's local service presence in Orlando fully 18

months before the MTA amendment to the July 1996 Intermedia-BellSouth interconnection agreement that is in issue in this proceeding and at the insistence of BellSouth, not at the request of Intermedia.

Q. DESCRIBE INTERMEDIA'S INTERCONNECTION ARRANGEMENT IN JACKSONVILLE AND ITS DEVELOPMENT.

A. Intermedia turned up its DMS-100 switch in Jacksonville in January 1997. It is interconnected to BellSouth's Clay Street and San Marcos tandem switches by means of one-way reciprocal trunks for the exchange of local traffic. In addition, it is interconnected with the Clay Street, but not with the San Marcos, tandem switch by means of a two-way transit trunk. Intermedia interconnected initially with the Clay Street tandem switch and then, in April 1997, with the San Marcos tandem switch by means of a one-way outgoing (from Intermedia to BellSouth) trunk group in order to establish the expanded local calling area for Intermedia end users. As the case of the Colonial tandem switch in Orlando, BellSouth required that Intermedia not interconnect with the San Marcos tandem switch by means of a transit trunk, creating, therefore, here as well a traffic routing scheme arguably having MTA characteristics.[1] Once again, it is important to see that this architecture was put in place (before the MTA amendment and) at BellSouth's insistence.

Q. DID INTERMEDIA PREFER TO INTERCONNECT WITH THE COLONIAL AND SAN MARCOS TANDEM SWITCHES BY MEANS OF A TRANSIT TRUNK.

A. Everything considered, Intermedia was indifferent. The task of traffic management would have been made easier with transit trunks to the Colonial and San Marcos tandem switches. With no transit trunks to these switches, the

[1] On March 11, 1998, Intermedia ordered a two-way transit group to the San Marcos tandem switch as an insurance measure. This group has never carried traffic.

network is more efficient, which is to say that the risk of underutilizing trunk capacity is less.

Q. IS THERE A BENEFIT TO INTERMEDIA WHERE MTA IS DEPLOYED?

A. While it is not always to be preferred, MTA does heighten the probability of call completion in periods of high circuit usage. In addition, it reduces Intermedia's investment to some extent.

Q. HOW DOES ONE PROPERLY INTERPRET THE MTA AMENDMENT THAT BELLSOUTH EXECUTED WITH INTERMEDIA ON JUNE 3, 1998?

A. Ms. Gold discusses the interpretation of the MTA Amendment in detail in her testimony in this proceeding. From an operations perspective, however, I can say that Intermedia interprets the MTA Amendment as a contractual vehicle making MTA available to Intermedia under certain terms and conditions. The MTA issue was not addressed in the parties' 1996 interconnection agreement, nor in the July 1997 amendments that followed it. As time passed, BellSouth began experiencing acute congestion problems that it apparently determined would require resolution by means of MTA, while recognizing that it did not have a contractual basis for deployment. Thus, the MTA Amendment sets forth the terms and conditions under which Intermedia may elect deployment of MTA to alleviate traffic congestion. It first requires Intermedia to request MTA and then BellSouth to provide MTA in response to the request. I refer to numbered paragraph 1 of the Amendment. The rates set out in Attachment A of the Amendment accordingly are invoked, jurisdiction by jurisdiction, only upon Intermedia's request for MTA in a particular jurisdiction, BellSouth's provisioning of MTA in that jurisdiction, and Intermedia's acceptance of MTA in that jurisdiction. When one understands the history of Intermedia's interconnection with BellSouth, no rational case can be

made that the Amendment has some other purpose and that the Attachment A rates are otherwise effectuated to supersede the rates in Attachment B-1 of the parties' 1996 agreement.

Q. HAS INTERMEDIA REQUESTED THAT BELLSOUTH DEPLOY MTA IN FLORIDA?

A. No. There can be no question about that. In my capacity, I am charged with resolving traffic problems and I would have participated in any such decision to request MTA as a resolving mechanism. No circumstances have yet arisen in Florida to cause us to even consider such a request. As I have testified, even though in Jacksonville and Orlando the interconnection architectures in place would appear to have some of the attributes of MTA, that is the case because BellSouth imposed a network topology requirement that had that result, and not because Intermedia requested those arrangements. Furthermore, in Miami, there is not even a suggestion that MTA is deployed.

Q. WHAT IS YOUR UNDERSTANDING OF THIS DISPUTE BETWEEN INTERMEDIA AND BELLSOUTH?

A. It is very simple, as I understand it. The Florida Public Service Commission has determined that BellSouth must pay Intermedia reciprocal compensation for transporting and terminating local traffic originating on BellSouth's network, including traffic destined to ISPs, under the parties' interconnection agreement. Although BellSouth has appealed the Commission's ruling, it began to pay reciprocal compensation to Intermedia for Florida traffic when both the Commission and the federal court rejected its efforts to stay the Commission's order. However, it made payments (and continues to make payments) on the basis of the rate that it insisted had become effective by reason of the MTA Amendment, and not on the basis of the rate required for reciprocal compensation

under the original agreement.[2] The rate on the basis of which BellSouth has chosen to pay Intermedia is less than one-fifth of the correct rate. Intermedia has contested BellSouth's position on the matter of the correct reciprocal compensation rate from BellSouth's very first payment. BellSouth has invoked and applied to Florida traffic the rate for MTA even though the conditions that would be necessary for it to do so have not been met. Intermedia has not requested MTA deployment in Florida. Hence, it became necessary for Intermedia to bring a complaint to this Commission, seeking redress of BellSouth's breach of the agreement.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, it does.

[2]BellSouth claims that the effective rate for reciprocal compensation is $.002 per MOU, although the MTA Amendment specifies an end office switching rate (the rate BellSouth appears to believe is applicable to this traffic) of $.0175 per MOU. I understand that BellSouth explains this away as an "error" of some kind.

MR. PELLIGRINI: Thank you, Commissioner Deason.

Also, Intermedia would request that the exhibits to Mr. -- Exhibits 1 through 3 to Mr. Thomas' testimony be marked for identification as Exhibit 4, I think.

COMMISSIONER DEASON: Yes, composite Exhibit 5.

MR. PELLIGRINI: Composite Exhibit 5. And that the Exhibits 4 through 7 attached to Mr. Thomas' testimony, which are proprietary, be marked as a separate composite exhibit as number 6.

COMMISSIONER DEASON: Okay, let's make sure. ELT-1 through 3 constitute Exhibit 5.

MR. PELLIGRINI: Correct.

COMMISSIONER DEASON: And ELT-4 through 8 or 7.

MR. PELLIGRINI: 4 through 7, sir.

COMMISSIONER DEASON: 4 through 7. That will be identified as composite Exhibit 6.

(Exhibits 5 and 6 were marked for identification.)

MR. PELLIGRINI: At this time, Mr. Thomas is available for cross-examination.

COMMISSIONER DEASON: BellSouth?

MR. EDENFIELD: Thank you.

CROSS EXAMINATION

BY MR. EDENFIELD:

Q Mr. Thomas, how long have you been in your current position?

A In my current position since August, September 1998.

Q And prior to August, September '98, were you employed by Intermedia?

A Yes, sir, I was.

Q In what capacity?

A Prior to that I was senior manager in the engineering group.

Q And how long did you hold that position?

A Since 11-19-1996.

Q Are those the only jobs you've had at Intermedia or am I missing one still?

A Let me correct that. When I first came to Intermedia, I was hired as a senior engineer -- excuse me, yeah, senior engineer and was elevated to senior manager.

Q Okay. Did you have any participation in any form or fashion in the negotiation, drafting or execution of the interconnection agreement?

A No, sir.

Q How about the same question for any amendments to the interconnection agreement?

A I'm sorry, I did not hear that.

Q How about did you have any participation in the negotiation, drafting or execution of any amendments to the interconnection agreement?

A No, sir,

Q Did you review any orders of this Commission, orders of the FCC or district court opinions in preparing your testimony?

A I have reviewed a lot of information, yes, sir.

Q A lot of information. Does that information include orders of the Commission, FCC orders, or orders of the district courts of appeal?

A I don't recall.

Q What is your level of familiarity with the interconnection agreement?

A I am conversive with it. I have read the interconnect agreement, the original interconnect agreement of 1996.

Q How about the amendments, how familiar are you with those?

A We are speaking, I believe, of the MTA amendment?

Q Yes, sir. I'm sorry, I wasn't clear.

The June 3rd, 1998, amendment to the interconnection agreement, how familiar are you with that?

A I have read that amendment.

Q You have read it? Okay. Let's look on page 8 of your testimony --

A Yes, sir.

Q -- where you discuss your understanding of the dispute. You make reference in -- part of that was amended, but I don't think this part was. You make reference to Commission orders and federal court opinions. As you sit here today, you cannot recall whether you actually read those?

A Please, sir, tell me which line?

Q I'm sorry. I was trying to hurry, and I'm going too fast. I'm looking on page 8, line 22 of your testimony.

A All right. And that would be the new amended testimony, I believe.

Q Yes, sir.

A Okay.

Q And in those lines, 22 and 23, do you reference Commission decisions and federal court decisions? What I'm asking is, as you sit here today, do you recall reading the decisions that you referenced?

A I do recall reading them, yes, sir. There were decisions allowing the ISP billing and Commission decisions allowing the same, I believe.

Q Okay. In the same section dealing with your understanding of the dispute you also mention a few times the rates that were paid or not paid.

A Yes, I do.

Q Do any of your job functions make you familiar with the rates being billed between BellSouth and Intermedia?

A It is not my job function to be familiar with those rates, no, sir.

Q Okay. Let me ask you this, did you write this section of your testimony?

A I wrote -- yes, sir. I wrote quite a bit of it, yes, sir.

Q Did you write this section beginning on page 8, line 15 through page 9 line 9?

A I wrote the draft on that, yes, sir.

Q You wrote a draft of that?

A Yes, sir.

Q Okay. All right. You mentioned in your summary that Intermedia does not have an MTA arrangement anywhere in BellSouth's region. Did I understand that correctly?

A That is correct.

Q Okay. And that you are direct trunked to all BellSouth tandems?

A That is correct; in the market areas we are doing business in, yes, sir.

Q Okay. Before I go to the ASR, you mentioned in your summary what I believe was MTA topography?

A I used the term topology, but I'm not sure I put

it together with MTA. Did I say that?

Q I thought you did. If you did not, I'm sorry, I don't mean to misquote what you had said. The gist of what I'm asking is does Intermedia have an arrangement in Florida that technically qualifies as an MTA arrangement as defined in the amendment?

A Certainly not by our election.

Q All right, forget whether it's by your election. Does Intermedia in Florida have a network arrangement that would qualify as an MTA arrangement under this agreement?

A Not under the agreement, no, sir.

Q What is it about the agreement that keeps your network arrangement in Orlando and in Jacksonville from being an MTA arrangement?

A All right. Those arrangements were arrangements of the network imposed on Intermedia by BellSouth and were implemented long before the MTA amendment.

Q It's because of the lack of election is why you're saying that those particular network configurations don't qualify as MTA under the amendment?

A I believe, sir, what I have said is that they are MTA-like arrangements. They were not elected by Intermedia. Would they be complete MTA arrangements? No, sir, I don't believe they are.

Q Okay. Other than the lack of election, what is

it about those arrangements that keep them from qualifying as MTA arrangements?

A The arrangements in both Orlando and Jacksonville only provide for the MTA-like appearance for transit-type traffic.

Q I'm sorry. I'm not trying to be obtuse, I'm really not. Sometimes I can't help it, it's heredity.

When you say it's MTA-like, I mean, do you have a network configuration in Orlando and in Jacksonville, correct?

A Yes, sir.

Q Does that network configuration technically qualify as an MTA arrangement? Forget whether it's under the amendment, but does it qualify as an MTA arrangement?

A As the network has been imposed on us by BellSouth, I believe you could possibly say that.

Q Okay. So you do have a network arrangement that would qualify MTA, if Intermedia had actually requested it. Is that what you're saying?

A Yes.

COMMISSIONER CLARK: I'm a little confused. Are you saying that if Intermedia had requested it or if Intermedia used it as an MTA?

THE WITNESS: The arrangement that exists in Orlando and Jacksonville, which I identified on the charts

as us not having a two-way transit group between Intermedia and one tandem in each of those areas, would cause BellSouth to deliver any traffic of that type of traffic from tandem to tandem to deliver to us.

In that respect, ma'am, and in my direct testimony, I said that is a, what would look like, multiple tandem architecture or access, I'm sorry.

MR. EDENFIELD: I'm sorry, Commissioner Clark, were you done?

COMMISSIONER CLARK: Yes.

MR. EDENFIELD: I didn't want to interrupt you.

BY MR. EDENFIELD:

Q At anytime -- well, would that be true for both the Orlando and Jacksonville network configurations?

A In Orlando, for sure, until just recently when we ordered and installed a two-way transit trunk group. In Jacksonville, the trunk group has been there. It just has not had traffic applied to it by BellSouth.

Q Okay. How long does has that network configuration existed?

A Which one, please?

Q I'm sorry. Again, I'm not being specific; in Orlando first, then Jacksonville.

A In Orlando we established our switch in 1996. The configuration, as I showed on the charts, at least

prior to May 1998.

Q Okay. So, is it fair to say that these, what we call MTA-like arrangements existed prior to the amendment being executed?

A Yes, sir.

Q At anytime since the execution of that amendment, has Intermedia come to BellSouth and said we want you to change the configuration or we want you to somehow modify the configuration so that it is not MTA-like?

A The beginning of your question again, please.

Q At anytime since the execution of the amendment on June 3rd, 1998, has Intermedia come to BellSouth and said we want you to make some type of network configuration changes so that we do not have an MTA-like arrangement in Orlando or Jacksonville?

A We have ordered a two-way transit trunk group for the Orlando Colonial tandem, yes, sir.

Q Would that make the Orlando arrangement no longer MTA-like?

A Yes, it would.

Q Okay. And you have not made a similar order for Jacksonville?

A We have a trunk group there, sir.

Q Okay. Has Intermedia ever requested multiple

tandem access from BellSouth?

A Intermedia issued an ASR to BellSouth for multiple tandem access for the Buckhead 01 transit trunk group at the request of BellSouth.

Q Okay. So the answer is yes, you have requested MTA from BellSouth?

A We issued an ASR, yes, sir.

Q Okay. Give me a second to ask Ms. White -- I'm going to hand you what --

COMMISSIONER CLARK: I'm sorry, let me -- did you request that because Southern -- BellSouth asked you to request it?

THE WITNESS: Yes, ma'am.

BY MR. EDENFIELD:

Q Mr. Thomas, if you would take a second and look through this package and then identify it for me, please.

A The first two sheets, I'm not familiar with what they are. There are several sheets following with a date on them of 11-6-1998, which would be an original ASR transmitted by Intermedia to BellSouth requesting MTA.

Following that package group are some other sheets dated 11-7 and, I believe, other dates, 11-23, et cetera, that I believe are internally-generated BellSouth sheets associated with this ASR.

MR. EDENFIELD: Okay. At this point,

Commissioner Deason, I'd like to ask that this be marked as BellSouth -- for identification, BellSouth number 7?

COMMISSIONER DEASON: It will be so identified.

(Exhibit 7 was marked for identification.)

BY MR. EDENFIELD:

Q Now, an ASR is a method of ordering facilities, Mr. Thomas?

A Yes, sir. ASR is the acronym for Access Service Request, and it is used by interconnecting companies to establish network through moves, adds and changes.

Q Okay. And MTA is a type of facility that can be ordered through an ASR?

A Obviously, yes, sir.

Q Taking a look at the third page of what's been marked for identification as BellSouth Number 7 --

A Would that be at the top marked as P003/42 or P004?

Q It's just the third page in the group at the top in the upper right-hand corner as 11-06-98.

A Above that, sir.

Q It says number 908-P --

A Beside that, sir, to the right of that.

Q Yes, I'm sorry, P004/042.

A Thank you.

Q I'm having a senior moment.

A I understand.

Q This would be a copy, at least BellSouth's records, of the ASR that Intermedia submitted to BellSouth to request multiple tandem access?

A Yes, sir.

Q And, in fact, if you look at the remark section, which is, like, four lines up from the bottom, it says, this order is to change trunk group AC 198301 and the -- I assume that's Atlanta, Georgia, Buckhead tandem to a multi-tandem; see original order, da, da, da. What is trunk group AC 198301?

A The AC 198301 is a BellSouth identification code called the 26 code. And it identifies the Intermedia Buckhead two-way transit trunk group.

Q Okay. So you were changing the Intermedia two-way transit trunk group to a multiple tandem access trunk group? Would that be the correct designation?

A Trunk group would be fine. In answer to your question, we were responding to a request by BellSouth to issue an ASR for records correction.

Q And I'll get to that in just a minute, but right now I'm trying to figure out exactly what you were asking to be done. Forget the why for a second.

What I want to know is you were asking to change your two-way transit trunk group into the Buckhead tandem

from a multiple tandem access arrangement?

A Yes, sir.

Q All right. As I understand Intermedia's position, a gentleman by the name of Michael Lofton told you that Kasey Howard, a BellSouth employee, requested that Intermedia submit this ASR?

A That is correct, sir.

Q Who is Michael Lofton?

A Michael Lofton, at this time, was the manager for facilities design and provisioning on my staff.

Q I'm sorry, I didn't mean to cut you off. Is Mr. Lofton employed by Intermedia today?

A No, sir.

Q Has Intermedia made any attempt to bring Mr. Lofton to this proceeding?

A I don't believe so; no, sir,

Q Okay. Now, apparently, as I understand what you're telling me, about three months ago, you had what you call a casual conversation with Mr. Lofton over the telephone?

A Yes, sir.

Q And that Mr. Lofton -- this is -- let me back up a step. When did Mr. Lofton leave Intermedia?

A I don't exactly have the date. It was June, July, August of 1999.

Q Okay. So, he left in the summer of '99. So, let's say, six and three months ago would be three, nine months after he left you have this casual conversation with him; is that correct?

A As I spoke in deposition, Mr. Lofton called me approximately three months ago to ask about other people at the office and how things were going; yes, sir.

Q Okay. And in the course of his asking how other people were doing, this topic of the ASR came up.

A That is correct.

Q He bring it up or did you bring it up?

A I did.

Q How often was Mr. Lofton calling you to inquire about how his ex-coworkers were doing?

A I'm not sure if that was the first or second time he had called me, sir.

Q All right. So, in nine months, he calls you either once or twice and the topic of the ASR comes up. That's Intermedia's story?

A That's correct.

Q Okay. And according to you, Mr. Lofton said that Mr. Howard had requested for Intermedia to send an ASR to make a records correction. Is my understanding of that correct?

A That is totally correct; yes, sir.

Q Okay. He gave you no more detail than that?

A Not that I recall, sir, no.

Q Okay. Did Mr. Lofton tell you that it was actually a Mr. Dean Podzamsky that told him that he was the one who had received the request from BST?

A Not to my recall, sir; no, sir.

Q He didn't tell you that?

A No, sir.

Q Okay. Did Mr. Lofton tell you that Intermedia already had an MTA arrangement in place in Buckhead, and that was the purpose for the records change?

A I believe, as I recall the conversation, he mentioned that Mr. Howard had told him that there was, indeed, an MTA arrangement that had been effected by BellSouth in the Atlanta area.

Q Did Mr. Lofton tell you that one of the reasons for the request of the MTA was that it would relieve capacity limitations in the Buckhead tandem? Was that a reason given to you by Mr. Lofton?

A No, I don't believe Mr. Lofton said that. I believe my knowledge of the problems, the capacity problems we had in Buckhead, went back to information or -- excuse me, a time in mid 1998 when we were having severe service problems because of BellSouth's inability to provide adequate circuits between Intermedia and --

excuse me, between BellSouth and Intermedia. During this time, BellSouth was regrooming the Atlanta area, moving -- or excuse me, end offices between their local access tandems.

And in conversation that I personally had with folks at Intermedia which included, indeed, Mr. John Ray Sullivan, Mr. Kasey Howard, Bill Morrison, that they would take whatever was necessary -- excuse me, they would take and put into place whatever was necessary to assure that we would have better service than we had had for the better part of the first part of 1998.

Included in that would be the arrangement where BellSouth would, indeed, send traffic from tandem to tandem as they were regrooming end offices to get it to us. That, sir, is MTA.

Q Okay. The circuit problems that you're talking about and the traffic congestion that you allude to, is that a problem from Intermedia getting its originated traffic to BellSouth or vice versa?

A In the Buckhead arena, it was a problem with BellSouth's not having or not providing Intermedia with enough facilities for customers to call Intermedia. And during periods of that time, it was also a problem with outgoing trunking from Intermedia to BellSouth, because they did not have central office connections to add

additional trunks.

Q Okay. So, it was kind of a two-way street. The Buckhead tandem was basically full, so Intermedia did not have enough connections available to it in the Buckhead tandem for it to get all of its originated traffic to BellSouth customers that your customers were calling?

A Yes. The -- if I may add to that, BellSouth did not have the necessary connections to provide to Intermedia.

Q Correct. I'm sorry, I thought that was implicit of what I said. The Buckhead tandem was full, basically.

A That is correct, sir.

Q Okay. Now, the MTA arrangement, as we just discussed, allows Intermedia to send more traffic through that MTA arrangement than would normally go over a two-way transit trunk. Do you agree with that?

A Yes, sir.

Q So, if I understand this correctly, BellSouth's Buckhead tandem is full. There's no more connections. And BellSouth comes to Intermedia and asks for a network configuration that's going to require more traffic to come to the Buckhead tandem, and that's why we asked for the ASR. Is that Intermedia's story?

A No, sir, I don't believe I said that. I believe what happened at the time is that we had excess capacity

at that time was the East Point tandem. Additionally, during the same time, Intermedia was forced to connect to 84 BellSouth end offices in the Atlanta metropolitan area to allow for proper access to the network.

And because there was additional capacity between Norcross and East Point during this time frame, it is my understanding that BellSouth's effected MTA, lookalike MTA, if you will, not on the transit-type trunk, but on the regular directionalized trunk groups.

Q All right. Maybe I misunderstood how this whole MTA thing works. I thought you just told me that you submitted an ASR to BellSouth to have an MTA arrangement going into the Buckhead tandem. Did I understand that correctly?

A I believe I said, specifically, the Buckhead 01T two-way transit trunk group, yes.

Q All right, so the Buckhead tandem. I mean, is that what's commonly known as the Buckhead tandem?

A Yes.

Q Okay. Even in MTA arrangements, what MTA does, and correct me if I'm wrong, is it would take your originated traffic, send it to, in this instance, Buckhead, and since the person trying to be called is not homed or connected to the BellSouth tandem at Buckhead, BellSouth takes the traffic from Buckhead, sends it to

another tandem, in this example you gave, either East Point or Norcross, and then from that tandem sends it to the customer. Is that basically how the structure works?

A Yes, sir.

Q Okay. So still, the question is if MTA allows more traffic to come over, it still has to go to the Buckhead tandem first, right?

A No, sir. I'm sorry, if I wasn't clear in my explanation. At the time, as I was saying, we had spare capacity in East Point and/or Norcross. It changed during the times of the regrooming that BellSouth was doing, but I was not indicating that there would be traffic sent -- additional traffic sent to East Point or, excuse me, Norcross or East Point to Buckhead to make an already terrible situation worse.

Now, did they send traffic from possibly East Point to -- or, I'm sorry, Buckhead to East Point or Buckhead to Norcross? I believe they did, sir.

Q You lost me in some of that explanation.

The MTA actual connection is between the Intermedia switch and the Buckhead tandem. It's a trunk, it's called an MTA trunk, that goes from Intermedia switch to BellSouth's tandem at Buckhead. Is that how the configuration works?

A The ASR on 11-5 or 11-6, 11-6, requested MTA for

the Buckhead two-way transit trunk group, yes. The time frame I am talking about is prior to this.

Q Wait a minute. Forget what happened prior. What I'm talking about is you sent an ASR requesting multiple tandem access on November 6th, 1998, and I'm trying to figure out what you were requesting.

A Well --

Q Weren't you requesting that the two-way transit trunk be converted to an MTA trunk or an MTA arrangement, and that arrangement would go from the Intermedia switch to the Buckhead tandem?

A Okay. I wasn't requesting that at all, sir. We were responding to a request from BellSouth, if I may further example that.

After BellSouth made the request asking us to send in this ASR for record purposes, they also faxed us information on how to fill out an ASR for MTA, and then they followed-up with a phone call with a Mr. Tom Climer and also Mr. Lofton, on how to physically fill out the ASR. Additionally, a Mr. Jeffrey Noble, who was a provisioner and an employee of Intermedia at the time, was a part of that phone call.

Q I'm sorry. At some point, I don't know whether the question got answered. I'm going to try one more time, and then I'll stop, and that's what I get.

A All right.

Q The MTA arrangement requested in the November 6th, 1998 ASR, did it result -- was the MTA arrangement being requested going from the Intermedia switch in Atlanta to the Buckhead tandem?

A The ASR called for that, correct. Was the ASR ever completed? No, sir.

Q Okay.

COMMISSIONER CLARK: I have to ask a question. I thought you said that this -- BellSouth requested this as a records correction.

THE WITNESS: Yes, ma'am.

COMMISSIONER CLARK: And I guess, that would indicate to me that this arrangement, MTA arrangement, was already in effect.

THE WITNESS: I would have to assume that. If it was in effect, ma'am, it was not by our request.

COMMISSIONER CLARK: After you made this request, was it put in effect?

THE WITNESS: To the best of my knowledge, no, ma'am. The ASR was never completed and eventually cancelled.

COMMISSIONER CLARK: Okay. And does it seem likely that either you or BellSouth would have wanted to put in that kind of arrangement if the Buckhead switch was

already having trouble handling the traffic?

THE WITNESS: At the time, ma'am, of November 1998, we had complete connectivity to all of BellSouth's access tandems in Atlanta. There would be no reason for Intermedia to even want this in place.

COMMISSIONER CLARK: Okay.

BY MR. EDENFIELD:

Q Okay. Let's explore that for a second.

As I understand this, would you agree with me that in November 1998, that Intermedia was in the middle of a hot and heavy reciprocal compensation dispute with BellSouth?

A I believe that to be true.

Q Okay. So, you're sitting here telling me that in the middle of a hot and heavy reciprocal compensation dispute, BellSouth called Intermedia on the phone and says, "Hey, send me over an MTA arrangement ASR," which you knew, under the agreement, would then trigger the new rates in the amendment; that out of the goodness of Intermedia's heart, they said, "Sure, we'll just send over an ASR to help you out, BellSouth, so we can request MTA." Is that what you're saying?

A No, and let me explain that. I did not, had not, and could not have done that, because I did not know or had not read the MTA amendment until some time in 1999.

So, in November 1998 I could not have possibly have done that.

Q Now, as I understand it, if you're direct trunked to every tandem in the LATA; in this instance, since we're on the Buckhead ASR, why don't we use the Atlanta LATA. If you were direct trunked to every tandem in the LATA, why would you even remotely consider using an MTA arrangement?

A May I go back, sir?

Q Sure, if it helps you answer the question.

A In early 1998, BellSouth cut off terminating local traffic from Intermedia to exchanges subtending the Norcross tandem. They did this over a weekend. We came in on a Monday morning, our customers could not call those exchanges.

Mr. Craig Shandley, who was our engineer manager at the time, contacted BellSouth. BellSouth suggested that since we did not have a -- an outgoing from Intermedia to Norcross trunk group there was nothing they could do for us.

However, if we were to request an arrangement called multiple tandem access and get an amendment to the agreement, we could, indeed, -- they could, indeed, continue or, again, transmit that traffic.

What Intermedia did was three things. Number

one, we took that traffic that was destined to the end offices off of Norcross that BellSouth had denied completion on and sent it to the IXC side of the switch or the long-distance side of the switch at an access rate, long-distance rate, to Intermedia to take care of our customers.

Secondly, Mr. James Coke, who was at that time, the provisioning and design manager, ordered an outgoing trunk from Intermedia to Norcross so we could complete the arrangement properly.

Thirdly, Mr. Shandley talked with Julia Strow concerning getting an MTA agreement amendment or, excuse me, getting an MTA amendment to the agreement. And the understanding was whatever happened first would be what we would do to fix our customers.

Q Okay. I'm not sure I follow all that, but it seems like to me what you're telling me, Mr. Thomas, is that on one hand, Intermedia had absolutely no need for MTA whatsoever, because they're direct trunked to every tandem in BellSouth territory, and at the same time you came and asked for it because of congestion problems.

A Snapshot in time, sir. In October or, excuse me, November 1999, we did have that connectivity. In early 1998 -- I'm sorry, November 1998, we did have that connectivity. In early 1998, we did not have that

connectivity. BellSouth denied our customers completion within the metropolitan area of Tampa or, excuse me, Atlanta. And we had to take whatever measures were necessary to protect our customers.

Q Okay. So in 1998, you were not direct trunked to all of the tandems.

A Snapshot in time again, sir. In early 1998, we did not have trunks to the Norcross tandem. The East Point tandem did not exist.

Q All right. Well, if you didn't have direct, when did you get direct trunking in 1998 to all the tandems? And again, let's talk about the Atlanta LATA.

A We had direct trunking -- I may have to verify this, sir, but we had direct trunking to Norcross and East Point by May, June, July time frame of 1998.

Q Would that have been to -- is that all the access tandems in the Atlanta LATA?

A At the time where we were doing business, yes, sir.

Q Well, you say where you were doing business. I mean, you look at it LATA-wide, correct? In other words, if you have to be interconnected to all the tandems in the LATA, you have to look at all the tandems in the LATA, right?

A Okay. In '98, we continued access to

Gainesville; I do not know the dates. We direct trunked to Athens; I do not know the dates. In the year 2000, we direct trunked to the Buckhead 03 tandem, but it did not come active until in the year 2000.

Q Okay. Well, let me put it to you this way. Tell me if I'm right or wrong when I say this. If someone from Intermedia testified that Intermedia was direct trunked to all the access tandems in BellSouth territory as of the date of this execution of the June 3rd, 1998, amendment that would be incorrect, right?

A Of all the BellSouth access tandems?

Q Yes.

A Well, there are many BellSouth access tandems outside the areas we do business in. I guess, that would be incorrect then, yes, sir.

Q Okay.

COMMISSIONER DEASON: You're saying his statement was correct, counsel's statement was correct. You're agreeing with that statement.

THE WITNESS: Yes.

COMMISSIONER DEASON: Okay.

COMMISSIONER CLARK: Let me be clear. Are you agreeing with it on the basis that you wouldn't have been direct trunked to those offices where you don't provide service?

THE WITNESS: As I heard your question, ma'am, I think you said we would not have direct trunk to those areas where we do not provide service; that would be correct. As we build our network forward, we connect as required.

COMMISSIONER CLARK: Well, then, to all those areas where you do provide service, are you saying you would have been direct trunked.

THE WITNESS: Yes, ma'am.

BY MR. EDENFIELD:

Q Okay. Let's talk about the Atlanta LATA. And Commissioner Clark had asked you whether you have an MTA arrangement using Intermedia anywhere. Let's talk about the Atlanta LATA and whether you have MTA there, okay?

Do you agree with me that if you, being Intermedia, is direct trunked at less than all the access tandems in the LATA, then you're under an MTA arrangement?

A I would take them individually, but that sounds reasonable, yes, sir.

Q Okay. And it's Intermedia's contention that it has direct trunking carrying local and intraLATA toll traffic to each access tandem in the Atlanta LATA?

A Give me a date. When?

Q As of -- well, now.

A Yes, we do.

Q Okay. How many tandems are there in the Atlanta LATA?

A In the Atlanta service area where we do business, there are --

Q Nope, nope, nope. The Atlanta LATA, how many access tandems are in the Atlanta LATA?

A I would have to verify that, sir. I do not know.

Q Would you agree with me that there are six access tandems in the Atlanta LATA, being Buckhead, Norcross, East Point, Gainesville, Athens, Columbus?

A I would have to verify that, sir.

Q Would you accept that subject to check?

A Certainly.

Q Do you know who Carl Jackson is?

A I know Carl Jackson, yes, sir.

Q Who is he?

A He's an Intermedia employee who lives in Atlanta. I'm not sure of his business title.

Q Is he a policy witness for Intermedia?

A I'm sorry, sir. He turned away.

Q Is he a policy witness for Intermedia?

A I believe that's probably true, yes, sir.

Q Are you aware that Mr. Jackson has recently testified in the Intermedia arbitration proceedings in

Georgia and Florida, as well as some other states?

A I know he has testified in some proceedings, yes, sir.

Q Okay. Is Mr. Jackson authorized to establish and set policy for Intermedia?

A I don't know, sir.

Q What I'm handing you, Mr. Thomas, is a copy of the direct testimony of Carl Jackson that he filed on behalf of Intermedia in the Georgia arbitration proceeding, that's docket number 11644-U.

What I would like for you to do is --

MR. PELLIGRINI: Commissioner Deason, I would suggest this line of questioning is entirely inappropriate. I don't think Mr. Thomas is in a position to comment at all upon the responsibilities of Mr. Jackson or the testimony of Mr. Jackson in another proceeding. This simply has no relevancy. It's inappropriate. I suggest that Mr. Edenfield not be permitted to continue with this line of questioning.

COMMISSIONER DEASON: Mr. Edenfield.

MR. EDENFIELD: It's cross-examination. Mr. Thomas has just stated under oath that Intermedia is directly connected to all the tandems in the Atlanta LATA. I think Mr. Jackson, in his testimony in Georgia, has a little bit different opinion of that. So, you have an

inherent conflict between witnesses from Intermedia.

COMMISSIONER DEASON: I'll allow the question. Please, continue.

BY MR. EDENFIELD:

Q Take a look, if you would, Mr. Thomas, at page 21 of that testimony. I would direct you to line number 8.

A Line, please?

Q Line number 8.

A Yes, sir.

Q Is Mr. Jackson right or wrong?

A Well, sir, I know for sure we are in six tandem offices in Atlanta. I believe, and I would have to verify this, that we have either 82 or 84 end-office trunk groups in Atlanta.

Q Okay. This testimony appears to have been filed on April 21st, 2000. The most recent two direct-trunk groups that you've established in the Atlanta LATA, has that happened since April 21st, 2000?

A I'm not sure the exact date for the Buckhead 03 local-only tandem. It very well may have been prior to April 21st, it may have been after. I assume it was before.

COMMISSIONER CLARK: I have a question, Mr. Edenfield. This is prefiled testimony. Has it

actually been presented?

MR. EDENFIELD: It has. The Intermedia hearing has concluded in Georgia.

COMMISSIONER CLARK: Okay. And is --

MR. EDENFIELD: In other words, this testimony was filed and accepted by the Georgia Commission.

COMMISSIONER CLARK: Thank you.

Well, I guess it was prefiled on the 21st. When was the testimony actually given?

MR. EDENFIELD: The hearing -- I can't remember if it was in May. I think it was -- actually, I think it was a week before the Florida hearing. It's either one week or two weeks before the Florida hearing.

BY MR. EDENFIELD:

Q Look on page 20 of that same testimony, Mr. Thomas. Look at line 2. Mr. Jackson says -- again, I'm assuming he's referring to Intermedia, "is direct trunked to four BellSouth local tandems, namely, Buckhead, East Point, Gainesville and Norcross..."

Let me ask you this question. Is it Intermedia's contention that it has direct trunking carrying local and intraLATA toll traffic to each access tandem in the Atlanta LATA?

A Is it our contention?

Q Yes.

A Yes, sir. I believe the -- oh, I'm sorry, go ahead.

Q Are you familiar with BellSouth network information warehouse?

A Repeat that, please.

Q Are you familiar with what is called BellSouth's network information warehouse? It's where BellSouth keeps all its trunking information.

A I personally am not.

Q Are you familiar that ILECs have those?

A I know Bell Atlantic has extensive information they share with CLECs and other folks. I'm not familiar with the BellSouth address, sir.

MR. EDENFIELD: I just had a note handed to me, Commissioner Clark. The Georgia hearing was May 9, since I'm incapable of memory myself.

Before I move to the warehouse, let me, if I may, Commissioner Deason, have the direct testimony of Mr. Jackson that was submitted in Georgia, could I have that identified as an exhibit?

COMMISSIONER DEASON: It will be identified as Exhibit 8.

MR. EDENFIELD: 8.

(Exhibit 8 was marked for identification.)

BY MR. EDENFIELD:

Q What I'm going to hand to you, Mr. Thomas, is a copy of the network information warehouse printout from BellSouth. That was printed out yesterday.

MR. EDENFIELD: Commissioner Deason, if I could have this marked for identification as BellSouth Number 9.

COMMISSIONER DEASON: It will be so identified.

(Exhibit 9 was marked for identification.)

MR. PELLIGRINI: What is it called?

MR. EDENFIELD: This is called the network information warehouse printout.

BY MR. EDENFIELD:

Q Will you accept, subject to check, Mr. Thomas, that the information, network information warehouse printout, is accurate trunking information between Intermedia and BellSouth?

A Subject to check.

Q Okay. Take a look through there, if you will, and, I guess, we'll just do a real quick one. Why don't you look at the first shaded entry. And let's kind of go across the columns there and identify what that is. The first area is GA. That means Georgia, would you assume?

A I assume.

Q The acna BSO, would you assume that means BellSouth?

A That is true.

Q And the ccna for the Intermedia is ICF?
A Yes, sir.
Q That's correct?
A Yes, sir.
Q The next code there, the "A," I know they call it "A" to "Z," which is, what, originating and terminating?
A Yes, sir.
Q The "A" -- I guess, a jumble of letters and numbers, that's the Atlanta, Georgia Buckhead tandem?
A That is the CLLI code for the tandem, that is correct; CLLI code standing for Common Language Location Identifier.
Q Okay. What does the "Z" stand for? What is that one?
A Say again, please.
Q Under the "Z" column, is that the terminating switch or tandem? I guess, switch in this case, that's Intermedia switch identification number?
A That would be the Intermedia identification number, correct.
Q Okay. Look through here, if you will. And again, subject to check, I have shaded tandem interconnection arrangements, where you were connected to a tandem. Show me anywhere in here where Intermedia is

connected to the Columbus tandem.

A I do not see it on here.

Q Would you agree with me that at least, according to this document, that Intermedia does not have a direct trunking arrangement between its switches and the Columbus tandem through which Intermedia is carrying local and intraLATA traffic?

A I would have to go back, sir, and check. The one Columbus trunk group I do see on here that is not shaded, but I do not see a tandem group, that is correct.

Q The one trunk group you see there is not shaded to Columbus is feature group "D" arrangement, correct?

A Your definition, please, of a feature group "D." Would you call that an end-office trunk group on the local side or a feature group "D" on the long-distance access site?

Q I would call that is a trunk group going from your switch to the Columbus tandem that is used to transport interLATA traffic.

A I'm sorry, sir, I'm confused.

Q I'd define it, but I don't know the first thing about network engineering. How would you define it, feature group "D"?

A Well, typically, feature group "D," and again, depends on the person's perception or interpretation of

feature group "D," but typically feature group "D" is an equal access trunk that was borne out of the AT&T break-up and was used for one-plus dialing for equal access to the network, sir.

Q Okay. So, it's for interLATA toll traffic?

A It would be for toll traffic, interLATA or intraLATA, depends on the arrangement, sir.

Q How about yours, interLATA?

A Sir?

Q Do you have any familiarity at all with how you're connected to the Columbus tandem?

A No, sir, not from this.

Q How about outside of that?

A No, I do not.

Q You're just sure you're connected, you don't know how.

A I don't believe I said I was connected to the Columbus tandem.

Q I could have sworn you told me you were connected to every tandem in the Atlanta LATA. If I misunderstood that, I'm sorry.

A Then, I apologize to you, sir. I believe, what I intended to say, if I did not say it this way, is that we are, indeed, connected to all of the tandems where we do business within the Atlanta area.

Q Okay. So, that does not equal the same thing as being connected to all the access tandems in the Atlanta LATA?

COMMISSIONER CLARK: I heard him say that it was where they do business.

MR. EDENFIELD: I could have sworn I had asked him. And I apologize, if I did not. I could have sworn I asked him was he interconnected to all the access tandems in the LATA, and the answer was yes. If I misunderstood that, I'm sorry.

THE WITNESS: I may have misunderstood that myself.

BY MR. EDENFIELD:

Q And I'm sorry. Maybe I've been going under a bad assumption here.

Let me ask you straight out. Does Intermedia have direct trunking between its switches and each and every access tandem in the Atlanta LATA through which it is carrying local and intraLATA toll traffic?

A With the understanding that Columbus is considered part of the Atlanta LATA, then, no.

Q Okay. If Columbus is part of the Atlanta LATA, then you are connected to less than all of the access tandems in the Atlanta LATA, correct?

A If Columbus is part of the Atlanta LATA, that is

correct.

Q And didn't you tell me earlier under that scenario you now have classic MTA?

A Do that one, too, again, please. I'm sorry.

Q Didn't you tell me earlier that if you were not connected to each of the access tandems in a LATA that that was MTA?

A Yes, sir, that's true.

MR. EDENFIELD: I have no further questions for Mr. Thomas, thank you.

THE WITNESS: Thank you.

COMMISSIONER DEASON: Staff?

MS. STERN: No questions.

COMMISSIONER DEASON: Mr. Pelligrini, how long is your redirect?

MR. PELLIGRINI: I would estimate 15 minutes or so.

COMMISSIONER DEASON: 15? Go right ahead.

REDIRECT EXAMINATION

BY MR. PELLIGRINI:

Q Mr. Thomas, earlier in his questioning, Mr. Edenfield asked you a number of questions concerning your characterization of Intermedia's network arrangements in Jacksonville and Orlando as being MTA-like; do you recall that?

A Yes, sir.

Q Would you -- I want to be certain that -- I want to be certain of what your response was to Mr. Edenfield's questioning.

Describe -- tell me again. In what -- describe the connectivity arrangements in the Jacksonville-serving area as they existed at the time of Intermedia's original interconnection.

A At the time of the original interconnection, Intermedia in Jacksonville had a full complement of trunks to the Clay Street tandem; that being a one-way incoming, one-way outgoing, and two-way transit. At the time of interconnection, we -- I would have to verify this, that to San Marco there was directionalized trunk group, but no two-way group that turned up and used for service.

In the Orlando market area at the time of interconnection, there was a full complement of trunks from Intermedia to the BellSouth -- excuse me, Magnolia tandem. There were only directionalized trunks between Intermedia and the Colonial tandem.

Q Let's drop back to the Jacksonville-serving area, Mr. Thomas, for a moment. Tell me again, I think you made this response to Mr. Edenfield, but just to be sure, tell me what kinds of traffic and how -- what kinds of traffic are carried through the San Marco and Clay

Street tandems through the Intermedia switch.

A On the directionalized reciprocal trunks, it's normal local traffic. On the transit traffic, it would be such traffic as other CLEC, independent ALEC, if there were any, 800 traffic that is not responsible organization coded to Intermedia or BellSouth. And there's other kinds. I'm sorry, I'm drawing a blank right now.

Q Mr. Thomas, what have I displayed on the easel?

A That is the first page of the MTA amendment.

Q Let me direct your attention to the second paragraph.

A Yes, sir.

Q What does the second paragraph do?

A It talks about the arrangement that is in place for the ordering interconnection to a single access tandem and the different type of trunk groups.

Q Does it define the traffic requirements under a multiple tandem access arrangement?

A Yes, sir.

Q And what are those requirements?

A Repeat, please.

Q What are the traffic requirements to be carried in a multiple tandem access arrangement as defined in the second paragraph?

A Are you asking the traffic types?

Q Yes.

A Thank you.

As I shall read off the document, local and intraLATA toll, transit traffic to and from other ALECs, interexchange carriers, independent companies, and wireless carriers.

Q Now, Mr. Thomas, again, in Jacksonville, what types of traffic are carried through the San Marco tandem to the Clay Street tandem and then on to the Intermedia switch?

A It would be regular telephone traffic, regular local telephone traffic.

Q What traffic is carried through the two-way transit group that exists at the Clay Street tandem?

A That would be, as I have said before, other ALEC or CLEC traffic, 800 traffic that is not owned by -- is a company that has a responsible organization, it would be intraLATA toll, it would be other wireless and, I believe, it would be traffic destined to us that comes via an IXC.

Q Is it your understanding that under a multiple tandem access arrangement, according to the multiple tandem access -- the MTA amendment, that in order to qualify for multiple tandem access arrangements all traffic, including telephone traffic, plain old telephone traffic, as well as transit traffic, must be carried via

the multiple tandem access arrangement?

A I would assume within the structure of paragraph 2 that is true.

Q And that is not the case in Jacksonville, is it?

A No, sir.

Q And in Orlando, describe, again, the interconnection arrangements, Intermedia's interconnection arrangements, to BellSouth's local tandems.

A Again, at the time of establishment or -- snapshot in time, please.

Q Let's take the period of time of Intermedia's original interconnection.

A It would have been a full complement of trunks between Intermedia and the BellSouth tandem at Magnolia and directionalized trunk groups, or incoming and outgoing trunks, between Intermedia and the BellSouth local access tandem at Colonial.

Q And again, just as we discussed with reference to the Jacksonville traffic, tell me, what types of traffic are carried through the Colonial tandem on to the Magnolia tandem and then on to Intermedia's switch.

A I'm sorry. Do that again, please.

Q All right. As you did for Jacksonville, tell me what types of traffic are carried to the Intermedia switch through the Colonial tandem and then on to the Magnolia

tandem.

A That would be any of that transit type traffic or as it existed. Local telephone traffic would have come under the directionalized trunk groups directly from Colonial.

Q So, it's your testimony, as I understand it, that only transit traffic is carried by means of the tandem, the Colonial Magnolia tandem arrangement; is that correct?

A Yes.

Q And is that consistent with paragraph 2 of the MTA agreement?

A No. Paragraph 2 calls, again, for all traffic.

Q Mr. Thomas, Mr. Edenfield asked you a number of questions concerning the Buckhead and/or Norcross ASR; did he not?

A Yes, sir, he did.

Q I just want to be certain. It was your testimony, was it not, that Intermedia set up the ASR at the request of BellSouth?

A That is correct.

Q That's true; is it not?

A Yes, sir.

Q And I think in response to a question from Commissioner Clark, which was did Intermedia --

effectively was did Intermedia understand that multiple tandem access had been put in place prior to the request for the ASR. Was that your understanding?

MR. EDENFIELD: Commissioner Deason, I'm sorry to interrupt. Mr. Pelligrini is leading his witness. And I object to the question.

MR. PELLIGRINI: I'll try to rephrase the question.

BY MR. PELLIGRINI:

Q Again, it's your testimony that Intermedia supplied the ASR to BellSouth upon BellSouth's request that Intermedia do so; is that correct?

A Yes, sir.

COMMISSIONER DEASON: Mr. Pelligrini, that's still a leading question.

MR. PELLIGRINI: I'll try one more time. I'm sorry.

BY MR. PELLIGRINI:

Q What were the circumstances, as you understand them, Mr. Thomas, surrounding the submission of the Buckhead ASR in November of 1998?

A The circumstances, as I understand them, was BellSouth had called Mr. Michael Lofton -- Mr. Kasey Howard had called Mr. Michael Lofton and asked Intermedia to submit an ASR for multiple tandem access arrangement.

Q And what do you understand BellSouth's reason to have been for making that request?

A It's my understanding, sir, that they had asked for that ASR for our records correction.

Q Tell me, why would BellSouth, in your opinion, or to your knowledge, have requested an ASR for records correction?

A I would assume that their network topology was physically different than their design system showed.

COMMISSIONER CLARK: Mr. Thomas, just so I'm clear, you assume that they asked for that, because it was already in place, and they wanted to correct their records?

THE WITNESS: Yes, ma'am.

COMMISSIONER CLARK: And that was not necessarily what your records showed, that you had a tandem -- I mean, an MTA.

THE WITNESS: I'm sorry, do that again, please.

COMMISSIONER CLARK: Did your records show that you had an MTA in place?

THE WITNESS: Absolutely not. We would not have a record of such. That would be an implem-- that would be something that would be implemented in BellSouth. We would not be able to see how they would have done that. We, at the time, ma'am, had direct-trunk connectivity and

would have no need for MTA.

COMMISSIONER CLARK: So, your company did -- when you got a request for the ASC or whatever it is, ASR, you didn't check your records to see if you had previously requested that or that is the configuration?

THE WITNESS: Let me explain that.

The ASR that has been entered in as an exhibit clearly shows that that trunk group had not been coded for MTA. The original ASR for that trunk group did not have the code that BellSouth has provided to us of what MTA is. That would indicate, ma'am, that we did not have MTA in our records.

COMMISSIONER CLARK: Thank you.

MR. PELLIGRINI: Are you finished, Commissioner Clark?

BY MR. PELLIGRINI:

Q It was also your testimony in response to Mr. Edenfield's questioning that this ASR was never completed; is that correct?

A Yes, sir, that's true.

Q Mr. Thomas, I have given you -- I have laid in front of you a document which I distributed to BellSouth counsel and to Staff and to the Commissioners. Mr. Thomas, what is this document?

A This document is an e-mail from Michael Lofton

to Kasey Howard with a copy to myself dated February 18th, 1999. And the subject is "Closing ASR number 1998-21479.50593," which I believe, if I can find the number on the ASR, that BellSouth has provided in the same ASR. It is, indeed.

MR. PELLIGRINI: Commissioner Deason, I would ask that this document be identified as Exhibit 10.

COMMISSIONER DEASON: It will be so identified.

(Exhibit 10 was marked for identification.)

BY MR. PELLIGRINI:

Q Mr. Thomas, I would like you to read into the record the contents of that e-mail.

A Yes, sir.

"Kasey, per our conversation this morning, concerning the multiple tandem architecture, Intermedia concurs with your understanding that BellSouth requested this to be deployed to assist with the completion of traffic being blocked due to capacity limitations in the Buckhead tandem. We also understand that BellSouth has requested this arrangement be left in place until BellSouth has worked through the capacity problems in the Atlanta area and specifically the Buckhead tandem. We reiterate our preference to continue our direct interconnection to all the tandems in the Atlanta LATA. Thus, I am closing out ASR 1998-21479.50593 that you

requested Intermedia submit to BellSouth in November in order to keep your internal records consistent with BellSouth's circuit deployment. Thanks. Mike Lofton."

Q To summarize, Mr. Thomas, what is the effect of that e-mail?

A The effect of that e-mail, effectively cancels the ASR that was sent at the request of BellSouth to implement MTA on the Buckhead tandem.

Q I think it was also your testimony that this ASR was never completely processed; is that correct?

A That is correct, it was never processed by me.

Q Can you explain what you mean by that?

A Yes, sir. An ASR from the originator, typically, is sent to the other end, if you will. The other end will then do facilities design, records checks, et cetera, and return what is called a firm order commitment within, typically, five business days. The process on this ASR was it was sent to BellSouth on 11-6-1998, and then ultimately shelved and finally cancelled via this e-mail.

Q The e-mail was dated what? Tell me again.

A Repeat, please.

Q The e-mail date is what?

A The e-mail date is February 18th, 1999.

Q And you've just said that the ordinary practice

is for an FOC to be issued against an ASR within five business days; is that correct?

A That is correct.

Q And the ASR was submitted originally in November, 1998, correct?

A Yes, sir.

Q Do you know anything other than what you've testified so far about the history of this ASR.

Let me ask the question this way. To your knowledge, was the ASR ever rejected?

A From the BellSouth exhibit, if you will notice going back to the part or the pages on the BellSouth exhibit back to the ones that at the top have a date 11-7; and specifically, I will -- I just happened to flip over to page 21 of 42, and on that page there are what would be considered either as errors or discrepancies between Intermedia and BellSouth on certain entrees of the original ASR.

This -- at that point, the ASR would have been stopped in the BellSouth design and provisioning system until the discrepancies, if you will, were mediated or agreed upon and allowed to flow through.

I believe, further on in here, and I will try to find the page, there is a handwritten notation from BellSouth, an employee in their ICSC, which is an

Interconnection Carrier Service Center that says, "Hold for a response from Kasey."

So I would assume that somewhere along the line, Kasey Howard became involved with this and they had some kind of internal discussions concerning this ASR. It was never an FOC on the ASR. The ASR was never completed.

Q Mr. Thomas, is it commonplace at all for a carrier to request an ASR of another carrier with which it is interconnected in order to conform records?

A Yes, it happens.

Q This -- by the way, this -- I won't go there.

Mr. Edenfield also questioned you extensively concerning Intermedia's connections with -- trunk connections with BellSouth's tandems in the Atlanta LATA; do you recall that?

A Yes, sir.

Q Do you know how many BellSouth tandems there are in Georgia?

A No, sir, I don't. In Georgia? No, sir, I don't.

Q Do you understand the difference between local and access tandems?

A I understand what my perception is, the difference between what I consider to be local and access tandems, yes.

Q Tell me what that is.

A Well, when I spoke of a local tandem, I am talking about a tandem that switches local calls only. An access tandem may also be a local tandem or local access tandem. There's also another definition that is widely used and sometimes you have to really ask for a clear definition. An access tandem may be on the long-distance side of the network also. An access tandem is, basically, a tandem where you get access to the network.

Q So, clarify your testimony, if you will. When you say that Intermedia's direct trunked to all of BellSouth's tandems in the Atlanta LATA, what precisely do you mean?

A Well, if I may explain that more fully, Intermedia, on the long-distance side does, indeed, have feature group "D" tandems -- or excuse me, feature group "D" trunks to every tandem, be it BellSouth's or independent within Georgia. We cover all the LATAs within Georgia.

On the local access tandem side, if you will; again, we're talking in the metro Atlanta area, we do, indeed, connect to those tandems that I have testified to earlier.

Q Isn't multiple tandem access an arrangement designed for access to -- for purposes of carrying and

sending local traffic?

MR. EDENFIELD: Objection to the question. He's leading the witness again.

MR. PELLIGRINI: I'll try the question a little bit differently.

BY MR. PELLIGRINI:

Q What kind of traffic -- no, let's do it this way.

Assume, for a moment, that there are two types based on your response, that there are both local and access tandems; is that your understanding?

A Yes.

Q Does MTA provide a means for access to local tandems?

A Yes, sir.

Q Does it provide a means for access to access tandems?

A I don't believe so. We wouldn't use it, if it did.

Q Does multiple tandem access require direct trunking to local tandems?

A Yes.

Q Does it require direct trunking to access tandems?

A If you're talking local access tandem, yes, sir.

Q So, when you say -- when you testify that Intermedia is, in fact, interconnected directly; that is, to each of BellSouth's tandems in Atlanta, I'd like you to once again tell me exactly what it is you mean.

A All right. As we were going through this on the local side, we are connected to all of the local access tandems where we do business, those tandems being East Point, Athens, Norcross, the Buckhead -- or local-only tandem, Buckhead, and, I'm sorry, I'm having a -- there's one other -- oh, Gainesville; thank you, Gainesville.

Q Your testimony is that Intermedia is direct trunked -- let's go back in time.

At the time just prior to the MTA amendment; that is, in May of 1998, describe what Intermedia's trunking arrangements were at that time with BellSouth's tandems, local tandems.

A In 1997, we established connectivity with BellSouth as the Buckhead tandem. That would have been complete connectivity or arrangement connectivity with incoming, outgoing, and two-way transit type trunks. In 1998, we expanded outgoing trunks to Norcross, East Point, Athens, and Gainesville.

MR. PELLIGRINI: I have no further questions.

MR. EDENFIELD: Commissioner Deason, if I may, before we mark the exhibits, this new exhibit that

Intermedia has introduced as e-mail has given rise to a couple questions. I know it's a little unusual, but if I could have some latitude to ask a couple follow-up questions on that.

COMMISSIONER DEASON: Please, proceed.

RECROSS EXAMINATION

BY MR. EDENFIELD:

Q Mr. Thomas, what is the general procedure for cancelling an ASR?

A The general procedure, sir, would be to send a supplement to the original ASR asking for cancellation.

Q A supplement to the ASR would be something sent electronically through the databases, through the interfaces, similar to the way it was presented the first time?

A From Intermedia to BellSouth, we send electronically. From BellSouth back to Intermedia, you use facsimile.

Q Is an e-mail from Michael Lofton to Kasey Howard the same thing as a supplemental order sent through the interfaces?

A No, but the entire arrangement for this ASR was not normal either.

Q Okay. Would you expect that if Intermedia already had an MTA arrangement in place to have received

an FOC back for the ASR?

A I'm sorry, sir, I missed part of that question. Would you, please?

Q If Intermedia already had an MTA arrangement in place, would you have expected a firm order confirmation from the 11-6-99 or '98 ASR?

A Absolutely.

Q Do you have any document in your possession or Intermedia, for that matter, showing that you sent a supplemental order cancelling the ASR?

A No, sir.

MR. EDENFIELD: Thank you.

MR. PELLIGRINI: Commissioner Deason, may I have one question in response to Mr. Edenfield's questions?

COMMISSIONER DEASON: Yes.

REDIRECT EXAMINATION

BY MR. PELLIGRINI:

Q Mr. Thomas, did BellSouth respond to Mr. Lofton's e-mail, to your knowledge?

A Not to my knowledge.

MR. PELLIGRINI: That's all.

COMMISSIONER DEASON: Okay. Exhibits?

MR. PELLIGRINI: Intermedia would ask that exhibit marked 5 for identification be entered into the record.

COMMISSIONER DEASON: Without objection, it shall be admitted.

(Exhibit 5 was admitted into evidence.)

MR. PELLIGRINI: Intermedia also requests that the exhibit marked 6 for identification be entered into the record.

COMMISSIONER DEASON: This is --

MR. PELLIGRINI: This is the composite proprietary exhibits, yes.

COMMISSIONER DEASON: Okay, without objection.

MR. EDENFIELD: No objection.

MR. PELLIGRINI: And lastly, Intermedia would ask that Exhibit 10 be entered into the record.

COMMISSIONER DEASON: Without objection.

MR. EDENFIELD: No objection.

COMMISSIONER DEASON: Exhibit 10 is admitted.

(Exhibits 6 and 10 were admitted into evidence.)

COMMISSIONER DEASON: Further exhibits?

MR. EDENFIELD: From BellSouth, and if I could at this time, I'd like to identify the deposition of Edward L. Thomas taken on June 6th, 2000 in this docket. Ms. White's handing out a copy. I would like to get that identified, if I may, Commissioner Deason.

COMMISSIONER DEASON: Exhibit 11.

(Exhibit 11 was marked for identification.)

MR. EDENFIELD: At this point, I would move into evidence the documents identified as 7, 8, 9, and 11, unless you'd like me to do them individually.

COMMISSIONER DEASON: 7, 8, 9 and 11. Any objection?

MR. PELLIGRINI: No objection.

COMMISSIONER DEASON: Hearing no objection, Exhibit 7, 8, 9 and 11 are admitted.

(Exhibits 7, 8, 9, and 11 were admitted into evidence.)

COMMISSIONER DEASON: I have one question. As it relates to Exhibit 8, which is the testimony of Carl Jackson, which was filed in Georgia on April the 21st, what is the purpose of having that testimony entered into this record? Because I think it should be very limited.

MR. EDENFIELD: It certainly would be limited only to the pages I referenced and the lines I referenced. In fact, if the Commission would rather just take official notice of that, that would be fine as well, but I have moved it into evidence, but I would make that limited to the pages referenced.

COMMISSIONER DEASON: I will allow it into the record, but only for those specific pages to which you made reference and for the purposes of the questions which you asked.

MR. PELLIGRINI: Commissioner Deason, may I?

COMMISSIONER DEASON: Yes.

MR. PELLIGRINI: With reference to Exhibit 9, I would just simply note that that document is not one that Mr. Thomas had previously had a chance to look at nor was it identified by a title.

COMMISSIONER DEASON: Well, it was identified as network information warehouse printout.

MR. PELLIGRINI: I understand that.

COMMISSIONER DEASON: And, apparently, the witness did have some working knowledge of that.

Okay. I believe that concludes Intermedia's direct case. We will recess for lunch until 2:15.

- - - - -

STATE OF FLORIDA

: CERTIFICATE OF REPORTER

COUNTY OF LEON)

I, KORETTA E. STANFORD, RPR, Official Commission Reporter, do hereby certify that the Hearing in Docket No. 991534-TP was heard by the Florida Public Service Commission at the time and place herein stated.

It is further certified that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript, consisting of 164 pages, constitutes a true transcription of my notes of said proceedings and the insertion of the prescribed prefiled testimony of the witness(s).

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 16TH DAY OF JUNE, 2000.

KORETTA E. STANFORD, RPR
FPSC Official Commissioner Reporter
(850) 413-6734

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of: REQUEST FOR ARBITRATION CONCERNING COMPLAINT OF INTERMEDIA COMMUNICATIONS, INC. AGAINST BELLSOUTH TELECOMMUNICATIONS, INC. FOR BREACH OF TERMS OF INTERCONNECTION AGREEMENT UNDER SECTIONS 251 AND 252 OF THE TELECOMMUNICATIONS ACT OF 1996, AND REQUEST FOR RELIEF	DOCKET NO. 991534-TP

VOLUME 2
Pages 166 through 375

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*
* ELECTRONIC VERSIONS OF THIS TRANSCRIPT *
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* AND DO NOT INCLUDE PREFILED TESTIMONY. *
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PROCEEDINGS:	HEARING
BEFORE:	COMMISSIONER J. TERRY DEASON COMMISSIONER SUSAN F. CLARK
DATE:	Tuesday, June 13 2000
TIME:	Commenced at 2:15 p.m. Concluded at 6:36 p.m.
PLACE:	Betty Easley Conference Center Room 148 4075 Esplanade Way Tallahassee, Florida
REPORTED BY:	TRICIA DeMARTE Official FPSC Reporter (850) 413-6736
APPEARANCES:	(As heretofore noted.)

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PROCEEDINGS

(Transcript continues in sequence from Volume 1.)

COMMISSIONER DEASON: Call the hearing back to order. BellSouth, you may call your witness.

MR. EDENFIELD: BellSouth calls Jerry Hendrix.

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JERRY HENDRIX

was called as a witness on behalf of BellSouth Telecommunications, Inc. and, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. EDENFIELD:

Q Mr. Hendrix, would you confirm that you've previously been sworn, please.

A I'm sorry?

Q Will you confirm that you've previously been sworn?

A Yes. Thank you.

Q State your name and occupation.

A My name is Jerry Hendrix. I'm senior director-customer markets pricing.

Q Did you cause to be filed in this proceeding seven pages of direct testimony with one exhibit?

A Yes, I did.

Q Do you have any changes, corrections, or deletions to that testimony?

A No, I do not.

Q If asked the same questions today, would your answers be the same?

A Yes.

MR. EDENFIELD: At this point, I'd ask that the direct testimony of Jerry Hendrix be admitted into the record as if read.

COMMISSIONER DEASON: Without objection, it shall be so inserted.

MR. EDENFIELD: And could we mark the one exhibit as --

COMMISSIONER DEASON: Exhibit 12.

MR. EDENFIELD: BellSouth's identification Number 12.

(Exhibit 12 marked for identification.)

BELLSOUTH TELECOMMUNICATIONS, INC.

DIRECT TESTIMONY OF JERRY HENDRIX

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 991534-TP

MARCH 17, 2000

Q. PLEASE STATE YOUR NAME AND COMPANY NAME AND ADDRESS.

A. My name is Jerry Hendrix. I am employed by BellSouth Telecommunications, Inc. as Senior Director – Customer Markets Wholesale Pricing Operations. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.

A. I graduated from Morehouse College in Atlanta, Georgia, in 1975 with a Bachelor of Arts Degree. I began employment with Southern Bell in 1979 and have held various positions in the Network Distribution Department before joining the BellSouth Headquarters Regulatory organization in 1985. On January 1, 1996, my responsibilities moved to Interconnection Services Pricing in the Interconnection Customer Business Unit. In my current position as Senior Director, I oversee the negotiation of interconnection agreements between BellSouth and Alternative Local Exchange Carriers ("ALECs") in BellSouth's nine-state region.

Q. HAVE YOU TESTIFIED PREVIOUSLY?

A. Yes. I have testified in proceedings before the Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, South Carolina public service commissions, the North Carolina Utilities Commission, and the Tennessee Regulatory Authority.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to show that the June 3, 1998 Amendment to the Interconnection Agreement between BellSouth and Intermedia Communications, Inc. ("Intermedia") replaced the billing structure and rates for reciprocal compensation for all local traffic set forth in the original agreement (the applicability of reciprocal compensation for ISP-bound traffic is currently the subject of an appeal).

Q. WHAT WERE THE RECIPROCAL COMPENSATION TERMS FOR LOCAL TRAFFIC IN THE ORIGINAL INTERCONNECTION AGREEMENT BETWEEN BELLSOUTH AND INTERMEDIA?

A. Section IV.B, of the July 1, 1996, Interconnection Agreement between BellSouth and Intermedia states:

> Each party will pay the other for terminating its local traffic on the other's network the local interconnection rates as set forth in Attachment B-1, by this reference incorporated herein.

Attachment B-1 sets forth a Composite rate of $.01028 per minute of use for dedicated traffic and a Composite rate of $.01056 for tandem switched traffic.

Q. DID THE PARTIES AMEND THE AGREEMENT TO CHANGE THAT RECIPROCAL COMPENSATION ARRANGEMENT?

A. Yes. On June 3, 1998, the parties executed an Amendment to the original Interconnection Agreement which, among other things, changed the reciprocal compensation structure and rates for all local traffic. This Amendment states:

> 3. The Parties agree to bill Local traffic at the elemental rates specified in Attachment A.
> 4. This amendment will result in reciprocal compensation being paid between the Parties based on the elemental rates specified in Attachment A.

Q. DID THIS AMENDMENT INCLUDE PROVISIONS FOR ANY OTHER ARRANGEMENTS?

A. Yes. The purpose of the June 3, 1998, Amendment was twofold. First, it provided for Intermedia Multiple Tandem Access ("MTA"), which allows an ALEC to interconnect at a single access tandem, or, at a minimum, less than all access tandems within the LATA for certain terminating and transit traffic. Second, the Amendment incorporated new reciprocal compensation rates that the parties agreed to charge and to pay for the transport and termination of local traffic. These new reciprocal compensation rates for Florida were based

on the Florida Public Service Commission rates established in Order No. PSC-96-1579-FOF-TP.

Q. WHAT IS THE HISTORY BEHIND THE EXECUTION OF THE JUNE 3, 1998, AMENDMENT?

A. Intermedia requested that the parties amend the Interconnection Agreement to incorporate terms into the Interconnection Agreement whereby BellSouth would make available multiple access tandem arrangements as described above. Coincidentally, BellSouth was in the unrelated process of incorporating the final Commission approved rates of several State Commissions into the BellSouth Standard Interconnection Agreement. In 1996, when Intermedia and BellSouth entered into their Interconnection Agreement, the standard rate structure for reciprocal compensation was a composite rate. Subsequent to that time, State Commissions began ordering elemental rates, which BellSouth then incorporated into the BellSouth Standard Interconnection Agreement. Thus, when Intermedia requested an Amendment to the Interconnection Agreement to incorporate Multiple Tandem Access, BellSouth took the opportunity to request that Intermedia amend the Interconnection Agreement to also incorporate the new elemental rates and rate structure for reciprocal compensation for all local traffic established by the Florida Public Service Commission. The parties agreed to the two provisions, and as such, executed the Amendment.

Q. WERE THE RECIPROCAL COMPENSATION RATES IN ATTACHMENT A OF THE AMENDMENT EXCLUSIVELY RELATED TO THE MULTIPLE TANDEM ACCESS PROVISIONS?

A. No. The new reciprocal compensation structure and rates applied to all local traffic.

Q. DID BELLSOUTH INTEND, AS INTERMEDIA CLAIMS, FOR THE RECIPROCAL COMPENSATION ARRANGEMENT SET FORTH IN THE JUNE 3, 1998, AMENDMENT, TO ONLY APPLY TO MULTIPLE TANDEM ACCESS ARRANGEMENTS?

A. No. As I have explained above, the two provisions were not linked. The new reciprocal compensation rate structure and rates as set forth in the Amendment were not exclusively tied to the multiple tandem access, but rather replaced the rates set forth in Attachment B-1 of the original Interconnection Agreement.

Q. AT THE TIME THIS AMENDMENT WAS EXECUTED, WOULD BELLSOUTH HAVE ENTERED INTO AN ARRANGEMENT WHICH REQUIRED ONE RECIPROCAL COMPENSATION RATE FOR TRAFFIC ROUTED THROUGH A MULTIPLE TANDEM ACCESS ARRANGEMENT AND A DIFFERENT RECIPROCAL COMPENSATION RATE FOR TRAFFIC NOT ROUTED THROUGH A MULTIPLE TANDEM ACCESS ARRANGEMENT?

A. No. As I was the person who signed this Amendment, I can unequivocally state that BellSouth did not enter into an arrangement which required a different reciprocal compensation rate for traffic routed through a multiple tandem access arrangement than for traffic not routed through a multiple tandem access arrangement. Furthermore, BellSouth would not have entered into such an arrangement because BellSouth cannot bill a different reciprocal compensation end office switching rate when traffic is routed through a MTA arrangement. Mr. Scollard will address the billing system capabilities and limitations in more detail.

Q. DOES THE JUNE 3, 1998, AMENDMENT CONTAIN A MISTAKE ?

A. Yes. The reciprocal compensation rate for Florida was incorrectly typed as $.0175 for the first minute of use for end office switching, and $.005 for each additional minute of use for end office switching. This was obviously a mistake, as this is the final port usage charge as ordered by the Florida Public Service Commission. Instead, the correct rate is the end office switching rate of $.002, as ordered by the Florida Public Service Commission. Intermedia was notified of this mistake, and informed that the correct rate of $.002 would be put in effect. In a letter dated March 25, 1999, (attached as JDH-1) Intermedia acknowledged the mistake and stated that it was open to amending the rate to reflect the accurate rate. This was also the first time that Intermedia expressed to BellSouth any disagreement about the June 3, 1998 Amendment.

Q. WHAT DO YOU BELIEVE THIS COMMISSION SHOULD DO?

A. Based on the clear, unambiguous language in the June 3, 1998, Amendment, the Florida Public Service Commission should deny Intermedia's request for relief. The Commission should further rule that the rate structure set forth in the Amendment dated June 3, 1998, replaced the original rates for reciprocal compensation contained in Section IV.B of the July 1, 1996 Interconnection Agreement.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes. Thank you.

BY MR. EDENFIELD:

Q Did you prepare a summary of your testimony, Mr. Hendrix?

A Yes.

Q Would you give that, please.

A Yes, I will. Good afternoon. The June 3rd, 1998 modification to the interconnection agreement between BellSouth and Intermedia had two purposes. The first purpose was to accommodate Intermedia's request for multi-tandem access. The second purpose was to replace the billing structure and the rates for the compensation for all local traffic. These arbitrated rates were included in the agreement after Intermedia and BellSouth agreed to include them.

I was the person who signed the June 1998 agreement and understood BellSouth's intent in negotiating this agreement. There is no one else in this docket as a witness that can give this firsthand knowledge. The agreement is clear, and I urge you to find that the agreement is clear and that the rates do, in fact, replace those rates that existed in the agreement prior to June 1998. That concludes my summary.

MR. EDENFIELD: Mr. Hendrix is available for cross-examination.

COMMISSIONER DEASON: Intermedia?

MR. CANIS: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. CANIS:

Q Mr. Hendrix, my name and John Canis; I represent Intermedia. Now, I understand that you're not a lawyer, but you work a lot with contracts and, in fact, are a lead negotiator and overseer of contracts. Is that the case?

A Yes, I am.

Q So are you familiar with the general principles that decision makers, like ALJs and judges, use to interpret contracts and make decisions on what provisions mean?

A I suppose I need more clarity as to what the principle is, but my association with the various attorneys enables me to be enlightened quite often.

Q Okay. And we will talk about some specifics in a bit. Now, let me start just by characterizing what I think is the basic difference of opinion, basically why we're here. And please -- and then I'm going to ask you to comment, and tell me if you agree with me or not.

But I think you started out on your summary saying that the MTA agreement signed by BellSouth and Intermedia had two purposes. And I trust by that you meant the two purposes; on the one hand, making MTA single tandem trunking available to Intermedia, and then on the

other hand, the other purpose was to effect a roughly 60 or more percent discount or reduction in the reciprocal compensation rates that the carriers charge each other, but Intermedia is the net recipient of those. Is that a fair summary?

A No, I don't believe it is fair. Let me tell you what the real purposes were. The first purpose was to give Intermedia multi-tandem access. They asked for it. We did not generate it on our own and would not have if they had not asked.

The second purpose, in trade for giving them multi-tandem access, since we've just recently been awarded rulings in various states, was to include arbitrated rates, and I told Julia. I said, "Julia, if you want multi-tandem access, then I'm asking you to include elemental rates for all of the other states."

And that's what we did. That is the truth, and that is the whole truth. And there is no one else here. Julia would probably be the only person, but she's not here, that could validate that. But that is the truth, and that was the reason that I signed that agreement.

Further, it was our practice to move customers to elemental rates. We understood the ISP issue, and we wanted very much to move to the arbitrated rates. So, yes, the effective rate may be lower. It may not be lower

because the variable there is the transport. But we had a motive, and we were able to come to terms and include in that agreement the elemental rates in trade for giving them the MTA agreement.

Q Well, first, I'm not sure if what you said is really true. You said that you were the only person that was there and can talk about this thing. In effect, wasn't Stuart Hudnall there and wasn't Mary Jo Peed there, and couldn't they be here to talk about this as well?

A I believe I reference this room here today, and I do not -- I know for a fact that neither of them are here. Mr. Hudnall is in my group. He works for me. He was the one to draft the agreement, and he was the one that negotiated the bulk of the agreement, but I was involved along the way in giving them guidance and letting him know what BellSouth would and would not agree to. And we would not have agreed to MTA without elemental rates. It's just that simple.

Q Now, I want to make clear, though, it sounds to me from what you just said in your last two responses that you are acknowledging that there was, in fact, a quid pro quo, that there was, in fact, the trade-off, and that there was very consciously a decision by both parties that the trade-off would be, we'll give you MTA single tandem trunking, and in return for that, Intermedia, you will

accept the lower rates that are listed in the MTA. Isn't that what you just said?

A That's -- well, your phrasing is a little bit different, but let me just ensure that I'm very clear. Intermedia came to us wanting multi-tandem access. The reason Julia Strow gave for wanting multi-tandem access was that they wanted to reduce their trunking costs. And we had had rulings from Sprint in one of the other states wherein Sprint won on this issue in Georgia, and this was the vehicle that they saw that would give them lower tandem costs, lower trunking costs.

And so we agreed to amend it. And Julia had worked through the account team, and she had worked through whatever other groups she had to work through. So then she came to us and said we want a multi-tandem agreement. And since we had started moving customers to elemental rates in trade for them to be able to have a multi-tandem arrangement, we said we needed elemental rates for all local traffic. It was not tied to multi-tandem access; it's all local traffic. And the agreement is crystal clear that the rates would apply on all local traffic. And that was the agreement.

COMMISSIONER DEASON: Let me interrupt just -- what do you mean exactly by "elemental rates"?

THE WITNESS: Elemental rates at a very high

level simply means that you pay for what you actually use. In other words, if you use local switching and you have, let's say, 10 miles of transport, then you would pay for 10 miles of transport. If you have more than one tandem switch, then you would pay for each tandem switch as well as the transport between those tandems.

In the old agreement, you had a single rate, and that single rate was made up of averages. Then since we looked at the average common transport, which is a tandem switch arrangement, and the average distance -- the average miles on common transport, I believe, was around 21 miles. Wherein, if a customer wanted end office routed traffic, the average miles was 16 miles. And we just came up with averages and came up with one single rate for a tandem routed arrangement versus the end office routed arrangement.

But since we had gone through all of the arbitrations and we had -- we had gotten awards in the AT&T, MCI, and I believe e.spire was the other company. And since we had modified our billing systems -- see, we weren't able to bill but one rate for local, and then we're able to bill elemental rates after January 1998, but we were pushing to get everyone into this elemental rate. You pay for what you use because our billing system could actually accommodate it.

BY MR. CANIS:

Q Mr. Hendrix, were you here earlier to hear the testimony of Mrs. Gold and Mr. Thomas?

A I heard Mrs. -- Ms., Mrs. -- I'm sorry if I offend you -- Ms. Gold.

Q Mrs. Gold.

A Okay. Mrs., and I did hear most of Mr. Thomas'.

Q Did you hear both of them say that Intermedia is currently direct trunked to every tandem in the service areas that they serve?

A I heard Mr. Thomas say two different things. And I believe -- I'm not sure which one to actually believe. But, you know, from my standpoint on the negotiation side, that doesn't matter. The fact is, I did not hold a gun to anyone's head to ask them to sign it. The other factor is, they came to us and asked for it. The other fact is, in trade I wanted elemental rates, and that's what she agreed to. And she being Julia, and I believe it's Jim Geiger signed off on it.

Q Now, in fact, did you hear Mrs. Gold and Mr. Thomas testify that, in fact, BellSouth did have a gun to Intermedia's head? And it said, we're blocking your traffic out of the Buckhead tandem in Georgia, and all that traffic that's routed through the Buckhead tandem and that goes through the Norcross tandem, we're cutting you

off; it's existing traffic, we're cutting you off. We're terminating service to your end users unless you sign this MTA agreement. Didn't you hear them say that?

A No, I did not hear that. And clearly not the way -- what I heard was that there was some blocking issues. And I believe the Buckhead tandem was the issue, and there were options. And one option was the MTA arrangement, but definitely not did I hear that BellSouth held a gun to Intermedia's head to force them to sign.

And furthermore, I don't get involved in that part of it. I work with the customer. And the customer, Julia Strow, was insistent on having this MTA arrangement, and in trade we would pay elemental rates for all traffic. I mean, the story is very, very simple. It's only after Julia -- well, she's since left the company, but now, people that weren't even involved believe that they have a different story, but Julia is not here to tell you the story. I am and I was there. I signed it. And I'm sick and tired of people just coming in here and making up stories about this because it isn't true. It just isn't true.

Q Mr. Hendrix, did you hear Mrs. Gold testify that she had Julia Strow reporting to her for the better part of the year and questioned Julia extensively about the motivation for this, and that Julia's position is that

this was entirely a BellSouth initiative?

A No, I did not hear her say that. What I heard her say was that Julia did, in fact, report to her, but what I also heard her say was that she became aware of the issue much later than the June 1998 time frame. But the fact is, she didn't join the company until three months later. The agreement was signed in June. We negotiated that agreement throughout May. And there was -- there were negotiation sessions. Everyone would like you to think that there wasn't, but there was.

And my understanding is that there were several people in Intermedia that looked over that agreement. Mike Reith that was here at staff looked over that agreement. He was working for Julia. Julia looked over the agreement, and Jim Geiger signed it. I signed it for BellSouth. BellSouth did not hold a gun to Intermedia's head for them to sign it. We negotiated that agreement, and in trade for ICI or Intermedia wanting multi-tandem access, they agreed to elemental rates for all traffic.

COMMISSIONER DEASON: Mr. Hendrix, if there was blockage occurring at the Buckhead tandem, how would signing this agreement prevent that blockage?

THE WITNESS: I'm not sure that it actually would, because if they're homing off of the -- and this is from my limited knowledge. Mr. Milner is probably better

able to answer that question, but it appears to me that traffic would at least some way transverse that tandem which may cause further problems which would indicate that there was some other motive for wanting multi-tandem access. And I believe Mr. Jackson in his prefiled indicated that there is some trunking efficiencies that would be gained.

I didn't question as to why she wanted it. I didn't ask her to come to me and get it. We simply did what the customer asked, and in trade we got elemental rates for all traffic.

BY MR. CANIS:

Q Now, isn't it true that Heather Gold is recounting to the Commission and to other people here, reporting what the people under her supervision; i.e., Julia Strow and, at the time, other people at Intermedia and reported what they did and what they said and how they interacted with BellSouth just as you are here telling us how Stuart Hudnall and Mary Joe Peed interacted with Intermedia, what they said to Intermedia, and what they agreed to with Intermedia? Isn't that the case?

A No. It's totally, totally different, because I was the one to negotiate parts of this agreement, and I was the one that gave Mr. Hudnall guidance. I talked with Ms. Strow about the agreement. So it's not from a third

party.

What Mrs. Gold did not say here is that I told her of a conversation I had with Julia Strow, as well as with her, pointing out that they know that they are wrong, and what they're trying to do to gain this process is not appropriate. They knew the intent, and so she did not tell the whole story.

The whole story is, Julia knew what she was signing. She knew what she was signing. Heather Gold was not there. It was three months later coming. So she cannot speak to the intent. She can go back and talk with Julia, and she can talk with anyone else there, but no one forced Intermedia to sign this agreement. You know, I have been beat up a lot over the ISP agreements here, and the bottom line is, Jerry, you negotiated bad agreements. Well, the fact is, Intermedia negotiated a bad agreement, if that's the case. I gave them what they asked for, and in trade we got elemental rates for all traffic. It wasn't limited to MTA. It was for all traffic.

Q Mr. Hendrix, let me explore that a little bit. You said you have been beat up on negotiating bad ISP agreements. What do you mean by that, and who beat you up?

A I'm just looking at the rulings. The rulings have not been favorable from BellSouth's standpoint, and I

do not mean "beat up" in a literal sense, but I take it very personally when I've been involved since 1996 in these agreements, and I know what the intent of the parties are, or at least I can speak for BellSouth, and I believe I understood the intent of other parties. And it's not fair for the gaming that has taken place with these various agreements.

Q In terms of the people who were beating you up on these ISP agreements, do they include your supervisor at BellSouth, and was there internal pressure on you with BellSouth to get those rates in the Intermedia contract down any way you could?

A No, no. The internal policy within BellSouth was that, one, we weren't able to bill anything but a single rate prior to January 1998. In fact, if you were to go and look in the AT&T and MCI agreements, they will point out that BellSouth will bill a .002 until around January 1998. After January 1998, we were able to move to elemental billing, and that was when we moved to ask customers in trade for negotiating other terms that were favorable to them to include the arbitrated rates. And that's what we did.

It was not an edict given to me, because I will first not do that. I will simply leave the company, but I did understand the driver, which was to get elemental

rates, the new awarded arbitrated rates into the agreements. And that was what I did, and that was what my group did.

COMMISSIONER DEASON: When you say, "newly arbitrated rates," these are the elemental rates?

THE WITNESS: Yes.

BY MR. CANIS:

Q Now, when you talk -- and I hear the tone of indignation in your voice when you say you believe -- and tell me if I'm misconstruing your statement -- that you're offended, and that you believe that you have been, oh, I don't know what the word is, tricked maybe into accepting higher rates and you're distraught at what I perceive you to be saying as outright lying by the people of Intermedia on this issue.

Are you aware that Intermedia's position is that BellSouth concocted a strategy to terminate service and to force a customer crisis in Georgia, and said, I slipped a piece of paper to their engineers and said, hey, sign this and we'll relieve the blocking problem, and had ambiguous language in there that didn't appear to effect lower recip comp rates, and now, BellSouth is in a position of saying, absolutely? Intermedia at that time decided that they were going to cut the rates, and the rates that we paid them, the total amount of recip comp that we paid them, by

60, 70 percent and more.

Are you aware that Intermedia is also rightfully indignant about how they perceive BellSouth to have acted in this matter?

A No. I do not agree with how you view that, and that's not my reading of what Intermedia actually feels. I believe, and this is my personal belief, that Intermedia entered into an agreement and realized sometime later that probably that agreement was not beneficial. Now, let us try to find a way to get out of it. That's what I believe. And I believe that's their -- well, that's my personal assessment.

Q Now, I started out by saying -- by trying to identify what exactly is the dispute here. And I initially was going to say the dispute was whether the MTA -- and by the way, just by way of shorthand, when I say the MTA trunking arrangement, I mean the arrangement by which Intermedia does not have to trunk to multiple tandems but, in fact, can just trunk to a single tandem and distribute its traffic throughout a LATA thereby potentially saving a significant trunking expense.

When I started out, I said, you know, the way I perceive the big difference here was that we were arguing that the reductions in recip comp rates were tied to the MTA trunking and that BellSouth felt otherwise. You

disabuse me of that, and I think it's clear from your testimony now that BellSouth agrees that, in fact, the reduction in recip comp rates is absolutely tied to the cost savings with the benefits that Intermedia could get from MTA; is that correct?

A No. I think you've gone much further than I even thought about this agreement. The purpose of the agreement simply put is twofold; is to give Intermedia the multi-tandem access that they asked for and in trade to get BellSouth the elemental rates BellSouth wanted. And as a result, both parties signed on June 3rd. That is the purpose of the agreement, that these elemental rates would apply to all traffic. It's not limited to LATA. And I don't know where in the world that came from, to limit it to a LATA or to limit it to a state. The agreement is very clear. It's for all states, for all local traffic. Paragraphs 3 and 4 make it very clear as to how those rates would actually apply. And so that is the purpose of the agreement. I have not gone as far as you've gone because I was there, and I'm not trying to dream up any schemes.

Q Okay. Well, I'm trying to -- I'm still trying to shed some light on specifically what the nature of the dispute between us is, so stick with me here. And can we say now that it's not a dispute over whether reductions in

recip comp rates were tied to MTA? Because I think it's clear that they were. How about if the dispute is when the reductions in recip comp rates kicked in, and if they were triggered by implementation of MTA, or if they automatically took place without implementation of MTA. Is that a fair characterization of our dispute?

A No, it isn't. It's very simple. I don't know -- to be honest with you, I don't know why we're here wasting a whole lot of time because the agreement is clear. Intermedia would have you believe that the elemental rates would only apply on multi-tandem access. The truth is, they apply on all local traffic, and Intermedia gets MTA. So, I mean, the issue is really, you know, very simply put. Intermedia is trying to get out of an agreement where they view not to be favorable to them.

COMMISSIONER DEASON: Mr. Hendrix, why is it that Intermedia could not avail itself of MTA without this amendment?

THE WITNESS: Well, first, they did not have it in their agreement. MTA is a special arrangement that we include as part of the agreements. We had --

COMMISSIONER DEASON: You're under no obligation to provide it --

THE WITNESS: No.

COMMISSIONER DEASON: -- so it has to be somehow

agreed upon.

THE WITNESS: That's correct.

COMMISSIONER DEASON: And this is what allows them to request it, pay whatever rates apply and get the service.

THE WITNESS: That's correct.

COMMISSIONER DEASON: What rates do apply? I understand there's language in here that they can request it and that the rates would apply. Where are those rates found?

THE WITNESS: Yes. Those rates would be in Exhibit A, which is -- I'm sorry, Attachment A to the June 3rd agreement. And the same rates would actually apply if it's just regular local traffic. In other words, if they have local switching, then -- and I'm looking at the one with the rate that is really for the port, but in Florida the rate was .0175 for the initial minute and .005 for the additional minute.

And the reason that error was made, just thinking back, I believe that was the rate that was in the rate matrix, but the local switching rate itself of .002 was in the body of the order. And so we picked up the wrong rate. Wherein, if you look at -- and this rate here is the port rate. So if they have the end office switching, then you have the end office switching rate.

And then the tandem switching rate, which is .00029, would apply for each tandem that they are routed through on this multi-tandem access. And then you would have your transport, which is your shared transport, which is on a per minute of use per mile basis, and then your fixed rate which is to terminate that -- those ends of the transport. So those are the elements that would apply on all local traffic, but they will also apply if they choose to use multi-tandem access. It's just that you may have multiple of those rates.

COMMISSIONER DEASON: Well, how do you know how to bill for this?

THE WITNESS: We bill on an elemental basis, and I believe it's by USOC. And I believe Mr. Scollard can address that. But in our agreement we actually have in our database, our billing database, where we would go in and put in USOCs. And it is very similar, this structure is very similar to what we do currently for switched access. And truly, the elements are pretty much identical to the switched access tariff rates that you would find in Section E6.

COMMISSIONER DEASON: Okay.

BY MR. CANIS:

Q Mr. Hendrix, has Intermedia implemented MTA in Georgia?

A I believe that is -- to my knowledge, they had, but I believe that question is probably better asked for Mr. Milner. But even if they hadn't, it didn't matter because for any other local traffic, the elemental rates would actually apply.

Q Were you here for Mr. Edenfield's cross-examination of Mr. Thomas?

A As I mentioned before, I was here for most of it, but I did step out.

Q Did you hear Mr. Edenfield focus on Paragraph 2 of the MTA amendment and question Mr. Thomas as to whether Intermedia was, in fact, direct trunked to every tandem within the Georgia LATA, or whether they were only trunked to every tandem within the Intermedia service area within the Georgia LATA? Did you hear that line of discussion?

A I was here for part of it.

Q Okay. What is your interpretation of the relevance of that line of questioning? Suppose Intermedia is direct trunked to every tandem within its service area within the Buckhead tandem, has it implemented MTA or not?

A I don't know what all the other trunking arrangements are. I think Mr. Milner could better answer that question.

Q Well, let me give you a hypothetical. Let's

say -- and I'm making up numbers here. Let's say there are 12 tandems in the Atlanta LATA, and Intermedia's service area, let's just say it's a square thing like that, and let's say Intermedia's service area within the Atlanta LATA is just the bottom half, nothing on the top half, just the bottom half. Now, let's say there are six BellSouth tandems in the bottom half and six BellSouth tandems in the top half. Intermedia is direct trunked to every one of those six tandems in the southern half, the bottom half of the LATA where its service area is, but it is not direct trunked to any of the tandems in the top part of the LATA. Has -- is MTA in effect for Intermedia in that LATA or not?

A I believe you will have to ask Mr. Milner, but let me also say, I'm assuming that Intermedia's customers would probably want to call customers from the southern half up in the top half of the LATA, or whatever you called it. And since it is within the LATA, those customers would likely be making intraLATA toll calls, and MTA, you know, as indicated here would be for terminating local and intraLATA toll traffic. So while they may not be interconnected in those tandems up on the top half, somehow they need to get a call to those people that the Intermedia customer may be calling. And I believe in a situation like that, that would be multi-tandem access.

But then again, Mr. Milner will be better able to expand or clear up anything that I may have screwed up.

Q All right. Now, let's -- I started out by asking if you're familiar with the rules of contract construction that are applied by, you know, the lawyers and ALJs and such, and really they call them tenets, but they're really just kind of common sense. Let me walk you through a couple of them that I -- what I think they are. You can tell me if you agree that it's a good rule or not, and then let's apply them to the MTA amendment.

A general rule of contract construction is that you've got to read a contract in total. You can't just look at individual elements of it. You've got to read the whole contract. Does that make sense to you?

A In some cases it would. In some cases it may not. And I'm -- as you mentioned, that's a general rule, but it may or may not make sense.

Q Okay. Now --

A Depending on the customer, what the customer is asking for and the contract, the nature of the contract.

Q There's another contract rule that basically says, if you have two different interpretations of a contract and under one interpretation parts of the contract make no sense at all, but under the other interpretation of the contract, everything appears to make

sense, if that's the case, you adopt the interpretation of the contract where everything makes sense. Does that make sense to you?

A It depends on the contract. I, you know, can't simply agree to that.

Q Okay. Well, let's apply it to the MTA amendment then. Let me ask you to read the first sentence on the top of the page of Attachment A.

A The first sentence says, "Multi-tandem access shall be available according to the following rates for local usage."

Q And didn't you just answer Chairman Deason's question when -- by saying that the rates that are under here, under Attachment A are, in fact, the rates that apply to MTA?

A I said MTA as well as local, all local traffic. In other words, what I said was that whether a customer has MTA or not, the fact that you have elemental rates, those rates will apply. And if they -- they will apply for local traffic, and if they have MTA, there may be multiple of those rates that will actually apply.

Q I see. So are you telling me then that the traffic subject to multiple tandem access is just a subset of the entire load of traffic that might be carried back and forth by MTA and the traffic to which these rates

apply? Is that the case?

A No. What I'm telling you, to put it very, you know, to try to be as clear and concise as I can be, is that these are elemental rates. You pay for what you use, period.

Q Didn't you just tell me that these rates apply to all traffic whether it runs through MTA or not?

A Yes, I did. In other words, if you will look at Paragraph 3 at the very first of the agreement, it says, "The parties agree to bill local traffic at the elemental rates specified in Attachment A."

And then it goes on to say in a separate paragraph, Number 4, "This amendment will result in reciprocal compensation being paid between the parties based on the elemental rates specified in Attachment A."

Q Okay. And we'll get into Paragraphs 3 and 4 later on, but I want to keep you focussed here on the top sentence of Attachment A. "MTA shall be available according to the following rates for local usage."

Now, I think we have just implicated one of the rules of contract interpretation which is called eliminate redundancy or superfluousness. And my question to you is this: If it's your position that on the day Intermedia signed this amendment these rates took effect for all traffic on Intermedia's network regardless of whether it

was MTA or not, why would you have a separate sentence hanging out there that says multiple tandem access shall be made available according to these rates?

A Okay. And the reason is there. One is because that was what Intermedia had asked for, but if you look right under that in Paragraph Number 2 on Attachment A, it says that the parties agree to bill local traffic at the elemental rates specified below. And so BellSouth accomplished what it was seeking to accomplish in negotiating this agreement in that we would get elemental rates, and Intermedia would be able to put in place multi-tandem access.

Q Okay. So it is your position that the fact that under your interpretation of this contract all these rates immediately applied to all traffic. It does not render that top sentence superfluous at all, but it's entirely consistent with that sentence?

A Definitely.

Q Okay.

A And it's consistent with the first part of the agreement. And I'm sorry to be jumping back and forth, but the first part of the agreement, it talks about the purpose, and then you go into Items 1 through 6. One and 2 talks about MTA. One references Number 2, but if you look at 3, 4, and 5, those are standalone items that are

being addressed in this agreement. And that's what the parties agreed to.

Q Well, actually, I'm glad you're on that section. I was going to refer you back to those pages now. Let's look at these paragraphs. Paragraphs 1 and 2, I think you just kind of referred to them. Can you tell me briefly what they do?

A Yes. Paragraph 1 says that the parties agree that BellSouth will, upon request, provide, and ICI will accept and pay for, multi-tandem access, otherwise referred to as single point of interconnection, as defined in 2, following. And then 2 tells you a little bit about the multi-tandem access arrangement and the benefits that are gained from entering into such an arrangement.

Q So basically it says MTA is available to Intermedia under Paragraph 1. Paragraph 2 basically says this is how you go about getting it; right?

A Well, not how you get it, but it talks about the purpose and what is accomplished and put it into place a multi-tandem arrangement.

Q Now, these two paragraphs, they complement each other; right? I mean, they go together; right?

A Yes.

Q You wouldn't read those independently, would you?

A Well, one is talking about the purpose, but they're both talking about -- and the other one is talking, you know, what the parties agree to do, but they're both talking about MTA.

Q Okay. Now, Paragraphs 3 and 4, you already mentioned this, but let me ask you again. What do those do?

A Three and 4 talk about the rates that would actually apply. One, that the parties agree to apply elemental rates for local traffic. And two, will result in reciprocal compensation being paid between the parties based on the elemental rates.

Q Now, again --

COMMISSIONER DEASON: Excuse me, just a second. Let me go back to Paragraph 1. Mr. Hendrix, there is the terminology in Paragraph 1, "upon request." How do you interpret that? How is Intermedia supposed to make the request?

THE WITNESS: What they would do is actually work through their account team if they need a multi-tandem access arrangement, because BellSouth will not put in place a multi-tandem access arrangement. Multi-tandem access --

COMMISSIONER DEASON: Well, let me interrupt you. The scenario we talked about earlier where you had

six access tandems in the southern half and six in the -- if there were an Intermedia customer in the southern half who wanted to speak to someone in the northern half, and they made that telephone call, and there had a not been a request for a multiple tandem access, what would happen with that call?

THE WITNESS: I think they would get a reorder on the phone indicating this call cannot be completed as dialed. Mr. Milner could probably tell you that also, but that is my understanding as to what would happen. See, early on in the agreement, and this is in their 1996 agreement, I believe the obligation is for them to interconnect at each access tandem and local tandem.

And I would have to go back and find it, but what multi-tandem access will do is not obligate them to do that. They can go to a single point within the LATA and still get the benefit for areas that they do not serve for us to trunk that over to that other tandem to terminate that call to any end user customer that they may be calling. But they do not have to put in trunks to all of those tandems. They are using our backbone to make that happen. And so they pay on an elemental basis for what they actually use.

BY MR. CANIS:

Q Actually, I want to get back to what I was

asking before, but let me just do a quick departure on that. Did you just say -- going back to this example that that board is the Atlanta LATA -- Intermedia's direct trunk to the tandems on the bottom half, but not to any of the tandems on the top half, somebody on Intermedia's network in the bottom half wants to call somebody in the top of the LATA on BellSouth's network, what did you say was going to happen?

A What I said would happen is -- and I said first at the end of that, I believe I said you'd have to ask Mr. Milner, but what I said I believe would happen is that you would get a reorder if there is no service going to that other tandem.

But with multi-tandem access, while they may not interconnect with that other tandem in the northern half, they are servicing the area down in the southern half. If an Intermedia customer calls, then BellSouth, you know, through multi-tandem access, since this applies to intraLATA as well as local traffic, and that's what's stated in Number 2, we would move that traffic to terminate to that end user that may be called that may be outside the service area of Intermedia.

Q When did Intermedia first sign its interconnection agreement?

A I don't know the exact date.

Q It's right on top of the amendment.

A Okay. Thank you. July 1. Well, no, that was the effective date. It was signed on June 21st of 1998 -- 1996.

Q Oh, June. Okay. At the time Intermedia signed that, did it have direct trunking to every tandem in the Atlanta LATA?

A I do not know.

Q Well, does it have direct trunking to every tandem in the Atlanta LATA today?

A I do not know. Mr. Milner could probably answer that question. I believe that was a subject of the cross earlier. I do not know. I'm on the contract side of the business.

Q Well, let me ask you if you know of any LATA at the time this agreement was signed on June 23rd of 1996 where Intermedia was direct trunked to every BellSouth tandem in any given LATA?

A I do not know. I really don't. I'm just telling you, I do not know.

Q Do you think for a fairly new start-up CLEC that it would be unusual to be direct trunked to every BOC tandem in every LATA?

A I'm not certain. And the reason I'm not certain is Intermedia is also a carrier. And I'm not certain as

to what the interplay is between the carrier operations and the local side. So I do not know. I have no opinion. For someone that is not in the business, never been in the business, it could be a different story, but I do not know.

Q Well, you negotiate into agreements with all the LECs; right -- with all the ALECs; right?

A I negotiate agreements, and I oversee the negotiations of all the agreements, but I do not get into -- usually when we're negotiating agreements, we're dealing with business people. We're not dealing with engineers. We're dealing with operations folks, and I don't know if this is fortunate or unfortunate, usually attorneys. And so, you know, whether they have an interconnection arrangement at every tandem or every end office in the LATA, we usually do not get into that type of technical detail.

Q How long have you been working with ALECs in this interconnection business?

A Since 1996.

Q So you've had four years of being the head negotiator and the head of BellSouth policy on interconnection with ALECs. Do you know any ALEC that has direct trunked to every single BOC BellSouth end office in every single BellSouth LATA in any state in BellSouth's

territory?

A My answer that I gave you previously has not changed. I negotiate agreements. I do not install trunks. I do not go back and, you know, monitor what the customers have. I have over 1,300 agreements that I have to manage, and I have about 100 people. So I don't have time to chase those issues. So my answer has not changed. I do not know.

Q Yeah, but you establish BellSouth policy on trunking arrangements.

A No, I have not established BellSouth's policies on trunking arrangements.

MR. EDENFIELD: Excuse me. If I may interpose an objection. Obviously, Mr. Hendrix has told Mr. Canis that he cannot answer the question; it's for Mr. Milner. Mr. Canis, for whatever reason, is insisting on asking questions that are better served for Mr. Milner, and I would ask that -- to make an objection to his last question, and ask that Mr. Canis be instructed to move along to something else and save his questions for Mr. Milner instead of badgering Mr. Hendrix.

COMMISSIONER DEASON: There's been an objection.

MR. CANIS: I'll change the form of my question, Your Honor.

COMMISSIONER DEASON: I'm not so sure if the

form is the problem. The fact is that there's a question that keeps being asked that's been answered at least once or twice. That's the concern. Just go to your next question.

MR. CANIS: Yes, sir.

BY MR. CANIS:

Q Let me refer you back to Page 1 of the MTA agreement, and as I think we've discussed before, Paragraphs 1 and 2 dealt with the MTA, and I think we agreed that they were mutually related. We were just getting to Paragraphs 3 and 4, which deal with the rates in Attachment A, the reduced elemental rates. And I was just about to ask you if you believe that those two paragraphs go together?

A They speak of the -- they are individual paragraphs that speak of the same topic. The same topic is elemental rates that would actually apply. When we negotiated the agreement, we saw benefit in making the agreement clear. And for that reason, we broke them out separately.

Q Let me also direct your attention to Paragraphs 5 and 6. What are those paragraphs?

A Paragraph 5 states that the parties agree that all of the other provisions that have not been modified through other changes in the agreement for the agreement

dated January -- July 1st, 1996 will remain in.

And then Paragraph Number 6 is that the parties agree that either or both parties is authorized to file this agreement to the appropriate regulatory authority pursuant to Section 252E.

Q So those are procedural paragraphs. And I'm assuming that they relate to each other, but they also apply to everything in this agreement. Would you agree with that?

A Yes, it does. The other thing that I think is critical that may help shed some light is, you know, when it talks about all other parts of the agreement remaining in place in the agreement, I believe its Section 4 that talks about the rates being neutral and reciprocal, and if the rates were even applied the way Intermedia has argued today that they be applied, it would be in violation of the agreement. So BellSouth would not have entered into an agreement knowing that it violated other parts of the agreement.

Q All right. So as I hear your testimony now, you're saying that Paragraphs 1 and 2, the MTA paragraphs go together. They're consolidated whole. Paragraphs 3 and 4, the rate provisions, go together. They're consolidated whole. The procedural provisions of Paragraphs 5 and 6 apply to Paragraphs 1, 2, 3, and 4, as

well as 5 and 6.

However, Paragraphs 1 and 2 and Paragraphs 3 and 4 are completely separate, and were never meant to be part of an integrated document?

A No. I think you have a habit, I've noticed, of adding a lot to what I say and twisting the meaning. What I actually said is that Paragraphs 3 and 4, they both address elemental rates and the rates that would actually apply. What I also said is that the parties felt that it was, for the sake of clarity, important to have those two paragraphs separate. I also stated as to the purpose of Paragraphs 5 and 6, but I in no way indicated what you just indicated as to what I said.

Q Okay. But it is your position that the rate provisions of this page, Paragraphs 3 and 4, are separate and apart from any discussion of whether MTA is implemented or not?

A Oh, yes, definitely.

Q Okay. Did BellSouth submit this MTA agreement to state regulatory agencies for their approval?

A I believe we did. We certainly do. The process that we follow is, once we negotiate an agreement, we do, in fact, send it to our regulatory people for filing.

Q Did that include, do you know, the regulatory agencies of North Carolina and Georgia?

A We had every intention of filing -- I do not file them. I send them to our regulatory people to be filed.

Q Now, in those states, do you happen to know whether those commissions require a brief cover letter that summarizes what an amendment does?

A No, I do not know since I do not file them. We negotiate the agreement and come to terms with the customer.

MR. CANIS: All right. Your Honor, at this point I would like to distribute two documents. And these are filings with the North Carolina Utilities Commission and the Georgia Public Service Commission.

BY MR. CANIS:

Q Do you have those before you, Mr. Hendrix?

MR. PELLEGRINI: Wait a minute, John.

MR. CANIS: Okay.

BY MR. CANIS:

Q I'd first like to refer your attention to the one filed with the Georgia Public Service Commission, and it's -- and the little heading on top where it shows who the letter is sent to. It lists the Georgia PSC.

A Yes, I have that.

Q I'd like to turn your attention to Page 2, the second page of that document. And I would like to --

there you've got a header, a paragraph all in bold -- all caps, and then three paragraphs below that. I would like, Mr. Hendrix, to have you read into the record the second paragraph up from the bottom.

A Yes. This amendment reflects that BellSouth will, upon request, provide, and Intermedia will accept and pay for, multiple tandem access, otherwise referred to as single point of interconnection.

Q That kind of describes what this filing was intended to do, doesn't it?

A It is a cover letter with a summary prepared by Lisa Spooner of the agreement, which is really just Paragraph Number 1, but as you can see from the agreement that is attached to it, that that is not the total body of the agreement. And I suppose that's fortunate that the parties reached an agreement to the terms, and as such, we operate from the agreement, and not from the cover letters that are attached.

Q Don't you think it is safe to say that if one of the members of your staff had to draft a sentence to summarize what a filing was, and if the intent of that filing was to unilaterally reduce Intermedia's reciprocal compensation rates by 60 percent across the board, there would be at least a mention of that in the summary page accompanying the file?

A Well, you make one assumption that this person is on my staff, and as I said, this is the regulatory office in Georgia. And if you'll look at the address, it is out at a different address. It is not downtown, but it's out state Georgia, not out state Georgia. It's outside of the office, and I'm downtown, if you'll refer back to my prefiled. But this is not a member of my staff. It is what they do to get the agreement signed. But clearly the body of the agreement has not been altered, and if you look at Paragraphs 1, 2, 3, 4, 5, and 6 on the agreement, it points out what the parties actually agreed to.

Q I'd like to refer you to the North Carolina document, which was the larger of the two documents that we handed out. I'd also refer you to the second page of that document.

A Is that the second page after the cover -- the fax?

Q Yes, it is.

A Okay.

Q And the sentence under "Dear Ms. Thigpen," I'd like you to read that. The two sentences under that, I'd like you to read into the record, please.

A On October 10th, 1996, the Commission approved an interconnection agreement between BellSouth and ICI. I

enclose an amendment to that agreement to provide for multi-tandem access. BellSouth and ICI -- you said two sentences?

Q Yes.

A Yes. And the same here. This was prepared by Mr. Povall, and he's up in Charlotte. And he's not on my staff, but the agreement itself is intact and contains what the parties agreed to.

Q Does the legal department not talk to your staff?

A In fact, we have a lot of interaction, but these are state legal folks and my interaction with the headquarter's legal staff.

Q Do you think it likely that in filing -- in making these filings someone on the legal staff would have called up somebody who negotiated this agreement and said, give me a sentence to explain what this does, so I can tell the Commission when I file this?

A No, because the agreement will speak for itself. I don't know that I have a problem with what they filed. They simply pull, you know, the first sentence from the agreement.

Q Does that reflect a fairly cavalier attitude in the kinds of filings that you make with a state commission?

A No, I do not believe so. I believe it's people trying to get the agreements filed, what the parties had agreed to to be in the -- with a customer focus really, to get their agreements approved quickly to ensure that the customers are able to do business.

MR. CANIS: Your Honor, at this time I would like to mark these two filings. The one with the Georgia Public Service Commission, I would like to identify as Intermedia Exhibit 12.

COMMISSIONER DEASON: It will be identified as 14.

MR. CANIS: And if we can entitle that MTA filing with the Georgia PSC.

COMMISSIONER DEASON: Very well.

MR. CANIS: And the other, the North Carolina document, I would like to identify as Intermedia Exhibit 13.

COMMISSIONER DEASON: It will be so identified.

MR. CANIS: And also to entitle that MTA filing with MCUC.

MR. EDENFIELD: I'm sorry, Commissioner Deason. I got confused on the numbering. Was the first one 14?

COMMISSIONER DEASON: Georgia is 14; North Carolina is 13. That's just the way I wrote it down, so

that's just easier for me.

MR. EDENFIELD: I thought maybe I missed a number or something.

(Exhibits 13 and 14 marked for identification.)

BY MR. CANIS:

Q Mr. Hendrix, I'd like to turn your attention back to the MTA amendment, and I'd like you to read Paragraph 1 into the record of this proceeding.

A "The parties agree that BellSouth will, upon request, provide, and ICI will accept and pay for, multiple tandem access, otherwise referred to as single point of interconnection, as defined in 2, following."

Q To your knowledge, did Intermedia request MTA?

A Yes.

Q In what states?

A When I say they requested it, they requested the MTA agreement, and we modified the agreement consistent with their request. In our conversation, since we were going to elemental rates on a region-wide basis, it didn't really matter to us as to where they were going to do it from a contract standpoint because the trade off would be that we would have elemental rates. And so if they wanted MTA, they would get it in whatever state they want it in, and that would be done through the LCSC and through the account team and working that route. But for contract

purposes, we amended their agreement where they can get it in every state.

Q Did Intermedia accept MTA?

A They accepted the wording that the parties agreed to.

Q Did Intermedia accept MTA within the meaning of Paragraph 1 of that document?

A I don't know all the places that they may have ordered it. What I'm saying is that I do not get involved on the operational side. We negotiate the contract language, and the contract language gave them the authority to request it in all nine states.

Q So is your answer, you don't know?

A Yes, I suppose that would be a good answer.

Q Okay. And I take it, you also don't know if any evidence may exist that Intermedia requested MTA?

A Well, from what I heard this morning, I believe what is filed in this docket, and Mr. Milner can speak to this, but it is our understanding that they do, in fact, have it. I believe the Intermedia witness this morning indicated that they even had it. So --

Q I'm sorry, did you just testify that the Intermedia witness said they had MTA?

A I believe he did, yes. I believe Mr. Thomas mentioned since they do not have -- and I may have heard

wrong, but I believe what he said was that since they do not have dedicated trunking to the access tandem in one of the tandems for customers for intraLATA purposes, they were having an MTA arrangement for those customers to get to that foreign office where they do not have the trunking into that tandem. I believe he agreed to that.

Q Is that something I can follow up with you on, or is that something I need to ask Mr. Milner about? Because my next question is: Doesn't that go right back to our discussion of, they were collocated -- they're trunked to the tandems in the bottom of that LATA, not at the top, and are they -- or have they effected MTA? Isn't that exactly what we're talking about now?

A No. I'm simply trying to answer your question, and I believe, if you want to go further as to whether they have MTA arrangements in place, I believe Mr. Milner can address that. I stated that I believe Mr. Thomas mentioned this morning in the arrangement through the cross of Mr. Edenfield that they did, in fact, have an MTA arrangement.

Q Okay. We'll let the record speak for itself on that, and I'll refer us both back to that. Did Intermedia pay for MTA?

A If they have MTA in place, according to this agreement, they're obligated to pay. Whether they have

actually paid or not, that's on the billing side, but relative to the agreement, they have an obligation.

Q Within the context of -- within the meaning of Paragraph 1, to date has Intermedia paid for MTA?

A And my answer is the same. They have an obligation to pay. Since I'm not on the billing side, whether they paid or not, I do not know. But the elemental rates would be the rates that would apply depending on the arrangement that they choose to use.

Q So your answer is, you don't know?

A No, it's not my answer. My answer is that they have an obligation to pay. And if they avail themselves of MTA, then they have an obligation to pay. Whether they have actually paid, I do not know. They have an obligation.

Q Okay. Just so we're clear on the record, let me ask my question one more time, and then I'd ask you to answer it succinctly. Within the meaning of Paragraph 1, to your knowledge, to date has Intermedia paid for MTA?

A Within the meaning of Paragraph 1, this contract language, they have an obligation to pay. Whether they have actually paid or not, I do not know.

Q Mr. Hendrix, are you aware that Intermedia is suing BellSouth in federal district court in Georgia to enforce payment of state orders that BellSouth pay

reciprocal compensation?

A For ISP-bound traffic?

Q Yes.

A Yes, I am.

Q To your knowledge, has that court, federal district court in Georgia ordered BellSouth to place reciprocal compensation payments into a registry or an escrow account pending conclusion of the proceeding?

A To my knowledge, yes.

Q Is BellSouth doing so?

A To my knowledge, yes. BellSouth has also filed a complaint, I believe, relative to this issue, as well as in Georgia.

Q Do you know what rate BellSouth is paying into the registry?

A At one point -- and I believe this was up to, let me just look at my notes, if I may, I believe for about a five-month period, we paid the wrong rates. And I believe it was in August we realized that we were paying the wrong rates. We tried to resolve that issue, I believe, with ICI, and then in May of 2000, we filed a complaint to get the PSC in that state to determine what the appropriate rates are. But to my knowledge, we put the full amount in until we have some ruling determining what the appropriate rate is.

Q When you say, "the wrong rate," what do you mean by that?

A Intermedia had invoiced us at the composite rates that are in the agreement and not the elemental rates.

Q Now, just to make clear what we mean by that, when you say, "the composite rates," you mean the rates that were in effect in the Intermedia/BellSouth interconnection agreement prior, arguably, prior to the time the MTA amendment was signed; is that true?

A That's correct.

Q Okay. You say there was a period of time before -- up to which -- up through which BellSouth was making the payments at we'll call it the nonMTA rates, the rates under the interconnection agreement. Do you know what that period of time was?

A I'm going to guess here. I believe it may have been from early '99 to mid 1999, maybe August of 1999.

Q Actually, let me refer you to Page 19 of the document that I just gave you. The pages are all consecutively numbered.

A Yes, I'm there.

Q Let me refer you to the top right-hand corner. It's kind of a little spreadsheet. There's some boxes. On the third box down, there's a date. Well, actually,

it's a whole column. It says, "Summary of local access charges." The dates, could you read for the record what those dates are?

A Yes. Service through 4-1, 1999 through 4-30-1999.

Q So is that to say that for a period of ten months after execution of the MTA agreement, BellSouth -- or for that period, BellSouth paid into the federal court registry rates that were in effect in the interconnection agreement and not the MTA rates?

A BellSouth paid into the courts that rate, but what BellSouth also did was to ask the PSC as a result of Intermedia invoicing us the wrong rates to set a hearing to determine what the appropriate rates are under the agreement similar to why we're here now. Also, if you remember, Mr. Hudnall early on in 1999 sent a letter wanting to clarify the rates and ensure that the right rates for Florida were put in the agreement. And Intermedia agreed that those were the wrong rates. So, yes, in Georgia we paid, but we have complained, asking that a hearing be established to review what the appropriate rates are.

Q And when was that filing made?

A I believe it was in May.

Q Of what year?

A 2000, I'm sorry. And I may be wrong on the dates, but that's what comes to mind. I believe it was May of 2000. I do not have the filing here.

Q Okay. So we're talking about BellSouth making that filing a full two years after the MTA amendment was signed?

A That's correct. And that's because the invoices from Intermedia were for the wrong rates. Now, the rates that BellSouth -- I believe the rates that BellSouth billed to Intermedia were for the contract rates. And so we have a misunderstanding, or we're still yet trying to work through what the appropriate rates are. And BellSouth believes, I know for certain, that the appropriate rates are those contained in the attachment that was negotiated on June 3rd of 1998.

Q Now, you testified earlier that the MTA amendment was entirely -- and again correct me if I'm mischaracterizing your testimony -- was entirely Intermedia's idea, and they approached BellSouth and requested MTA in order to lower their trunking costs. Is that your testimony?

A No, I don't believe that's what I said. I believe what I stated was that Intermedia requested MTA, and one reason that Julia Strow gave for wanting MTA was to lessen their trunking costs. And again, you've added

some words to what you said I said, but I did not say it the way you stated it. I mean, that was the purpose of which they came us to get this MTA amendment.

MR. CANIS: I'm sorry, excuse me. Your Honor, a procedural point, I just realized that I didn't mark the order of the Georgia Public Service Commission that we just distributed.

COMMISSIONER DEASON: Is this on the recognition list, Staff?

MR. FORDHAM: No, it's not.

COMMISSIONER DEASON: It's not on the recognition list? Very well.

MR. CANIS: Yes. Your Honor, this is -- it's really, it's not just the Georgia PSC decision. It's also a court decision and other related materials.

COMMISSIONER DEASON: Okay. We'll mark it as Exhibit 15.

MR. CANIS: Thank you, Your Honor. Thank you.

(Exhibit 15 marked for identification.)

BY MR. CANIS:

Q So again, I don't want to mischaracterize your testimony, Mr. Hendrix. Just to keep things current, could you just summarize very, very quickly what you -- did Intermedia initiate this contact, and what was their motivation that you argue was -- what was Intermedia's

motivation in asking for MTA?

A In my conversation with Julia Strow -- and first, let me say this, usually as the point of contact -- and Julia and I, we were pretty good friends -- she would come to me and ask that we make some changes. And the same was with Tom Allen before he left ICI, we were pretty good friends, and we would work with them to make the changes.

And the purpose for making the changes is that they wanted to go to MTA. And the reason they wanted MTA was because it was more efficient from a trunking standpoint, and there would be some cost savings for them in putting in this MTA-type arrangement. And again, in trade for agreeing to put this MTA arrangement in, we wanted elemental rates on a state-by-state basis for all nine states. And those were the rates that had been awarded as a result of arbitration cases.

So it was two separate issues. They wanted MTA; we wanted elemental rates. And so we both agreed and included -- both agreed to terms in the June 3rd, 1998 agreement.

Q Do you have any written evidence to support these assertions?

A Which assertion?

Q What you just said.

A Well, I believe Mr. Hudnall's letter, what is it dated, I think there's a June 4th, 1998 letter. There is also a letter prior to that where he is corresponding. This is per your request. Attached is a copy of the MTA agreement. Let me see if I can find that for you.

In fact, on the June 4th letter, the first sentence, "Attached per your request is an original signed copy of the multi-tandem access agreement for Intermedia." There is also another letter. I believe it was an e-mail that was provided as part of the documents.

Yes, that is dated 5-15 of 1998, that says, attached per your request is the multi-tandem access amendment you requested. Please print out two copies, sign, and return for Jerry Hendrix to sign, which is me. And we will return an original for your files. Please call or e-mail if you have questions.

Q Now, you made two assertions. The first is that Julia Strow requested the MTA, and it sounds to me like the two letters that you've just identified go to that issue because they both reference a request by Julia. You also made the assertion that Julia was motivated by a desire to reduce Intermedia's trunking costs. Do you have any written evidence of that?

A I do not have anything written. It's simply Julia calling, asking us to create this. We created it.

We included the elemental rates. We sent it to them. They signed it; we signed it. Both parties agreed.

Q So we're going to have to take your word on that part?

A Well, I trust that you would because it is the truth.

Q Okay. Now, in terms of the two letters that refer -- and let me characterize it that included kind of "per your request" language. Let me ask you this. Let me give you a hypothetical scenario, and see if this could explain the language in those letters.

Traffic was blocked by BellSouth in the Buckhead tandem because BellSouth refused to route it through the Norcross tandem in Georgia. There was a circuit outage; engineers called BellSouth. BellSouth said, you want to fix this, sign our MTA agreement. The engineer goes to Julia Strow and says, Julia, the guys say that if we want to get this blockage fixed, we have to get MTA. Can you call Stuart Hudnall and see what this is about? Julia makes that call, and the letters that you referenced were the response. What about that scenario?

A What about it?

Q Is it plausible? Did it happen?

A Perhaps it could have. I'm just giving you what Julia shared with me. And Intermedia had every

opportunity to bring anybody here that they wanted to bring here to refute anything that I'm saying. They chose not to do so. And my facts are just as they happened. We did it because you asked for it. She gave me the reason as to why they were doing it. Granted, they may have been working with the account team. I believe there was a February 5th, 1998 meeting in Tampa where the account team went down, and they talked about various issues.

I'm just telling you what Julia shared with me in coming to us and wanting to get an MTA amendment, and that's what they did. Again, in trade we wanted elemental rates, which was something that we were pushing to get in all -- with our agreements as customers came to us for changes because we now have the billing system that would be able to accommodate it.

Q To your knowledge, was Julia or Jim Geiger or anyone that you or your team dealt with -- that you our team dealt with at Intermedia aware at the time of the signing of this amendment that by signing this amendment, Intermedia would effectively be agreeing to a 60 percent reduction in the reciprocal compensation rates that they collected from BellSouth?

A As far as I know, they all knew that we would be going to elemental rates. And let me just say one thing that I'm not sure is totally true. You know, we hear this

reduction in rates. And I'm not exactly sure that that would happen in every case, because when you pay on an elemental basis, you pay for what you actually use. And if you have a transport haul, that is a pretty long haul, you know, that adds up. So I'm not really sure that, you know, the factors that you are throwing out are actually right.

The other thing is, is that, you know, they signed the agreement. They understood that we were going to elemental rates, and that's what we did. As to whether they ran the numbers internally, I do not know. But I can tell you this, that when those elemental rates came out, you know, we understood what the pressures were with ISP traffic with the dockets that had been opened. And so in trade, I need to get the rates that are coming out in the arbitration. Julia wanted MTA, and so we negotiated the agreement. That's the whole purpose of negotiating.

No one went to Jim Geiger to ask him to -- no one from BellSouth went to Jim Geiger and put a gun to his head and said, you need to sign it. We negotiated the terms. And I would like to hope that what they did in going to Jim Geiger to get him to sign, that Mike Reith saw it, he read it, Julia okayed it, and Jim Geiger signed it, and I signed it. It's just that simple.

Q Are you aware that at the time the MTA amendment

was signed, Intermedia was prosecuting a complaint against BellSouth before this Commission for nonpayment of reciprocal compensation rates?

A Well, I don't think it was -- I think the issue was not exactly as you've couched it. I believe the issue was whether ISP-bound traffic should be compensated at local rates. And I believe that complaint may have been filed by Intermedia in April. And, you know, as I said in trade, I wanted elemental rates because I wanted to -- as a good person business person, I wanted to cut my losses if, in fact, it was found that this traffic should be viewed as local traffic. And they wanted MTA, and so they got it, and I got elemental rates for all nine states.

Q And actually, you are correct. It was filed in April of '98. Let's stipulate that it was April 16th of '98, about six weeks before the MTA amendment was signed. Also, are you aware that a hearing in that case was scheduled for June 11th, eight days after the amendment was signed? Are you aware of that?

A I can't remember. I think I was a witness in that case.

Q Okay. Can you accept that subject to check?

A That's reasonable, yes.

Q Did you hear Mrs. Gold's testimony this morning that at that time in the complaint filed with the Florida

Public Service Commission that the claim against BellSouth by Intermedia in Florida was for about $7 million? Did you hear her say that?

A Yes, I did.

Q So it's your position that Intermedia, in a desperate need to get MTA, signed an interconnection agreement that they knew would reduce the reciprocal compensation rates by 60 percent at the same time they had a pending litigation against BellSouth on this very issue and an outstanding unpaid balance of $7 million, and the only thing they got out of it was an ability to adopt MTA which two witnesses today showed they have never implemented. Is that what you want me to believe?

A I want you to believe the truth. That's the only thing I want you to believe. And the truth is, is that I believe the issue on the table in the ISP case was whether ISP-bound traffic should be compensated as local. I believe that was the issue. And I was a witness in that case. And all I'm asking you to take away from this docket is what the true and what the facts were.

Intermedia asked for MTA. I told them I had to have elemental rates, and I had to have elemental rates for all nine states. And I can tell you, if you look through all of the agreements, and we gave a copy in the stuff that you all had asked for, all of the agreements

that were filed -- all of the agreements that had been modified to include elemental rates that was a common practice. And BellSouth, once we had those arbitration rulings, was to move to these elemental rates. Now, that is the truth.

And Julia was willing to make that trade, and Jim Geiger agreed and he signed. Now, whether or not she ran the numbers, I do not know. But I can tell you for a fact that this agreement is very clear that we would get elemental rates in all states for all local traffic, period.

Q So is it your testimony that when you proposed in the MTA agreement, as you interpret it, to cut Intermedia's reciprocal compensation rates by 60 percent and more, you did not get any push-back from whoever it was you were negotiating, be it Julia Strow or Jim Geiger or anybody else?

A Well, let me tell you, I did not --

MR. EDENFIELD: Wait a minute, Jerry. Commissioner Deason, I have to interpose an objection. Mr. Canis keeps referring to this 60 percent reduction, but that is not a fact in evidence, and therefore, he has not laid the proper foundation for his question and I object to it.

MR. CANIS: Well, Your Honor, it's a little

late. I just -- it's on the record probably 50 times during the course of the last two hours.

COMMISSIONER DEASON: Well, I'm going -- I believe that Mr. Hendrix indicated in response earlier that he did not accept the 60 percent number. So I think the record is clear that it has not been substantiated by the witness, and just by the fact that the attorney refers to it as 60 percent does not mean that's evidence in the record.

A I forgot your question. I'm sorry.

Q Per your assertion, when you recommended the MTA rates that would have the effect -- Intermedia's assertion of effecting a 60 percent or more reduction in reciprocal compensation rates, did you get any complaint, any push-back, objection from Julia Strow or Jim Geiger or anybody else that you or your team negotiated with?

A No, there was no push-back. And I believe, you know, just in hindsight, perhaps the reason there wasn't any push-back, I'm not certain that Intermedia -- well, no one knew. No one knew how the ISP issue was going to play out. Okay? So, I mean, the fact that you had something filed, you did not have an order, and this was even three-plus months before the order would actually come out. No one knew what the ruling would actually be. And so, I mean, the parties agreed to these rates. They

agreed to elemental rates, and Intermedia was able to get multi-tandem access.

Q But by the same token, a fear of the unknown and a fear of the outcome of the upcoming decision didn't stop Intermedia from pursuing its litigation, did it?

A No. And it didn't stop BellSouth from pushing whenever there were changes to be made to the agreement to negotiate terms that would include elemental rates either.

Q So I hear your speculation as to why you didn't get any push-back from Julia or whomever at BellSouth. Let me raise --

A Excuse me. You said at BellSouth.

Q I'm sorry. At Intermedia, of course. Thank you. Let me raise an alternative speculation, and that is that the reason you didn't get any push-back is because the people who looked at this agreement thought that the rate reductions reflected in Attachment A would only take effect if, when, and where MTA was implemented. And Intermedia knowing full well that it had no plans and no technical desire ever to implement this unless where it was absolutely necessary, thought it was at no risk of a major loss of reciprocal compensation revenues when it signed this agreement. What do you think about that speculation?

A I think that's totally off the wall, and I think

it's something that's been dreamed up since Intermedia realized that it entered into that agreement. And in a meeting I had with Heather Gold about this very issue -- and I looked Heather right in the eyes and told Heather, I said, "Heather, you know the truth. And you know the truth is that Intermedia entered into this agreement, and you know that Julia knows the truth because I went to Julia once this issue surfaced. And I said, 'Julia, you know what you agreed to.'"

And what I believe has happened is, Julia and Heather are trying to save face and cut their losses because they believe they entered into a bad agreement. They did not know at that time but they know now that they probably entered into a bad agreement. I did not force them to enter into that agreement. I had no other motive other than to try to get something in trade for what they were asking for. I wanted elemental rates; they wanted MTA. And I negotiated an agreement to get what I want wanted, and they negotiated an agreement to get what they wanted.

It was give and take on both sides. That is the whole purpose. I do not accept that. I believe that is something that has been dreamed up lately to, you know, justify getting some money that you're clearly not due to actually get because you entered into this agreement

knowing why you entered into this agreement.

Q And speaking of money that's due, it's been four years since BellSouth first incurred an obligation to pay reciprocal compensation to Intermedia, and it still hasn't paid; isn't that right?

A No, I don't agree with that. I believe there has been some issue as to whether ISP-bound traffic should be compensated, but I believe BellSouth has paid -- has made payments for local traffic. We never refused to make payment for local traffic, what we viewed to be true local traffic. We never refused to actually do that. So, no, that is not true.

Q And then I suppose it's out of the question that the real nature of the debate between our two clients is that, in fact, BellSouth's position here is a post facto rationalization to explain to some people internally at BellSouth why Intermedia -- this agreement did not have the effect of reducing Intermedia's reciprocal compensation rates by 60 percent over the last two years, and this is done in an effort to try to get around what that is perceived of as a bad decision?

MR. EDENFIELD: Objection. I'm not sure there was ever a question in that speech.

COMMISSIONER DEASON: There was a question; it was a long one. If the witness understands it, he can

answer it. If not, I will ask for a rephrase.

A Okay. I think what you're asking is if BellSouth is of the opinion that it entered into a bad agreement since it's not seen any reduction in its costs over the last two years. And the truth is, is that BellSouth is very pleased with the agreement, and we've entered into similar agreements, if not identical, with other customers. And the truth is, is that we know what is right. Okay? And if other customers are willing to enter into these types of agreements, you know, through the give and take and other services and offerings when the parties negotiate an agreement, then BellSouth has no problem at all with this agreement.

I think it's a very good agreement because both parties won, and both parents got what they asked for. And so BellSouth is not doing anything to try to cut its losses on this issue. It is BellSouth's goal to go out and tell the truth and evangelize those that need to know what the truth is about this issue. And that's what we're doing. And I'm sorry, if I seem to take this stuff personally, I do because it isn't right, and it was not what the act intended. And I know what I agreed to, and I know what I signed. And the people that agreed to this with me are not here, and we have other people that have come on lately to interpret what was meant, to

second-guess. Well, I get second-guessed every day -- or I could get second-guessed every day on every single agreement I sign, but the fact is, it is the best agreement I could enter into at that time.

And I take it personally when someone tries to game us because that's not what this industry should be about. And that's what's happening here.

Q Last question and this is back to the tenets of contract interpretation. If two parties disagree on language in the tariff or a contract, maybe because the language is inherently ambiguous, a tenet of contract interpretation is if there is a genuine ambiguity in the language of a tariff that it is to be construed against the party that drafted the contract, it's to be construed against the party that drafted the contract on the grounds that that party had the pen, they were writing it, they had the obligation to make it clear. Do you think that's a good rule?

A I do not have an opinion. And any answer that I give -- since I'm just being asked this question, and it's a very detailed question, would probably not be a fair one. I just don't know. I just don't have an opinion.

MR. CANIS: Thank you, Mr. Hendrix. I have no further questions. But at this time, Your Honor, I would like to move in the deposition of Mr. Hendrix. It was

dated June 6, 2000. I would like to mark this as an exhibit and move it into the record of this proceeding.

COMMISSIONER DEASON: We will identify it as Exhibit 16, and we will move exhibits in at a later time for this witness.

(Exhibit 16 marked for identification.)

MR. CANIS: Okay. And, Your Honor, just out of an abundance of questions, I know we've marked Exhibits 12 through 15. I don't know if we've moved them into the record. If not, I would like to do so at this time.

COMMISSIONER DEASON: Okay. We'll do that at the conclusion of redirect.

MR. CANIS: Very good. Thank you.

COMMISSIONER DEASON: Does Staff have questions for this witness?

MS. STERN: Yes.

COMMISSIONER DEASON: How extensive are your --

MS. STERN: One short question.

COMMISSIONER DEASON: Okay. Please, proceed.

CROSS EXAMINATION

BY MS. STERN:

Q Exhibit 4 was handed out by BellSouth. It's some correspondence, and it has a draft of -- well, it has a letter from Stuart Hudnall to Julia Strow. You talked about it a little bit earlier.

A Is that the June 4th letter?

Q Yeah, June 4th, 1999.

A Yes.

Q It's got a proposed contract amendment attached to the letter.

A You said it was June 4th, 1999?

Q That's the date on the letter that I have. The date -- I just want to make sure we're talking about the same document. It's a contract revision. It says, "Amendment Number 5," at the stop.

A Okay. I do know what you're talking about. Maybe I can do it from memory, I'm sorry. Is there -- June 24th, 1999, yes, I do have it.

Q Okay. So we're talking about -- all right. I'll wait until you get to it.

A I have it.

Q All right. And do you see the amendment attached to it?

A Yes, ma'am. And it's got Amendment Number 5 at the top?

Q That's correct.

A Yes.

COMMISSIONER DEASON: Where is this document you're referring to?

MS. STERN: It's Exhibit 4. It's the very

first item of correspondence in Exhibit 4.

COMMISSIONER DEASON: Okay. I have it.

BY MS. STERN:

Q I just want to clarify that Intermedia never signed this.

A No, they never signed this amendment.

Q Okay. So there -- and there has not been any signed amendment to the contract after June 3rd, 1998; is that correct?

A That's correct.

Q Okay. Thank you.

A And let me clarify that. Not to modify any of the rates that were in error. They acknowledged that the rates were in error, but they did not sign anything to modify those rates.

Q They acknowledged that the rates were in error?

A Yes.

Q Okay. Where did they do that? Because -- okay.

A I believe there's a Julia Strow letter, and that letter is dated March 25th of 1999, in the second paragraph. We understand your concern that there may have been an error in the above-referenced amendment. The first sentence.

Q I see. All right. So you're saying that in this letter -- your interpretation of this letter is that

Julia Strow acknowledged --

A Yes. And also -- and I do not have a written copy, but also, in a conversation I had with Julia when she was in Georgia before leaving ICI just as a follow up -- because Mr. Hudnall sent this when we had been sending letters back and forth, asking them to sign, I followed up with a phone call to Julia, and then I saw her in person while she was visiting Georgia.

MS. STERN: Okay. Thanks. That's all.

COMMISSIONER DEASON: How much redirect do you have?

MR. EDENFIELD: Five, ten minutes minutes.

COMMISSIONER DEASON: Proceed.

REDIRECT EXAMINATION

BY MR. EDENFIELD:

Q Mr. Hendrix, it's been insinuated a number of times that there was some intentional blocking of traffic at the Buckhead tandem. Do you have any knowledge about that?

A No, I do not know of any intentions on BellSouth's part to block any traffic.

Q Are you aware of any complaint having been filed in Georgia about that?

A Intentional blocking of traffic?

Q Yes, sir.

A No, I'm not.

Q Would you know about it had one been filed?

A I usually would, yes.

Q Okay. Let's talk about elemental rates for a moment. Is the Intermedia agreement the only agreement that BellSouth was trying to get elemental rates inserted into at this time -- or back at the time of the June 3rd, 1998 amendment?

A No. It was really an effort to move as many customers as we could now that we had the billing system in place to put in these rates. In fact, I believe we went as far -- I think I had a note here. We went as far as to include it as part of our standard interconnection agreement to move away from these single rates into elemental rates since we had these arbitration awards. And I believe we may have included it. I made a notice to when we first started including it in our standard, and I believe it was the first part of 1998 that we started.

It was February 1998 that we started including it as part of our standard agreement. And by that I mean we put together a standard agreement to reflect what has been ordered in various states. And many customers come to us to use this standard, and we include elemental rates in our standard agreement.

Q Mr. Hendrix, Ms. White is passing out a

two-page -- actually a three-page document with a cover sheet that says, "Attachment 11, Exhibit 2-Florida," Page 10 and Page 12. Could you identify this document for me, please.

A Yes. The cover sheet says, "Interconnection Agreement Between BellSouth, Inc., and CLEC-1," which is our standard agreement. CLEC-1 is simply a placeholder, and then the second page is Attachment 11. And Attachment 11, back in February of 1998, was our rate attachment for our standard interconnection agreement. And it would include rates for various elements and services on the two pages following the cover page.

Q With the exception of the mistake, are the rates -- well, let me back up for a second.

MR. EDENFIELD: Let me identify this standard interconnection agreement as, I think, Number 17.

COMMISSIONER DEASON: Yes, 17.

(Exhibit 17 marked for identification.)

BY MR. EDENFIELD:

Q Are the rates found in Exhibit 17, with obviously the exception of the mistake that was made in the amendment, are they the same as the rates found in the amendment?

A Yes. And since you raised the mistake, the rate that is in error here is the end office switching rate per

minute of use. It's the .0175 that's on the first sheet following the cover sheet, and then each additional minute is at .005. Again, as I mentioned earlier, that's the port rate. Wherein, the end office rate would have been .002.

Q So it should have been the rate found on the second page --

A That's correct.

Q -- under "end office interconnection/switching per minute of use"?

A That's correct.

Q When was this put into the standard interconnection agreement?

A This copy is dated February 1998, February 1, 1998, which would have been the first quarter standard for 1998.

Q Okay. Can you give me an idea of how many other interconnection agreements we were attempting to amend to allow for elemental rates around the first quarter, second quarter of 1998?

A It was close to about 60 customers that we had targeted that had the single rate that we were trying to move to the new arbitrated awarded rates or elemental rates.

Q Were we picking on Intermedia, or were they just

one of many?

A We weren't picking on any of them. We were trying to negotiate agreements that were favorable from the standpoint of arbitrated rates, but also in trade, give the customer something that they were asking for.

Q Did any of those agreements contain provisions similar to the amendment found in this agreement dated June 3rd, 1998?

A Yes, there were a couple that come to mind. I mean the answer is, yes.

Q Who was that?

A A couple -- I believe WinStar may have been one. Orlando Business Systems may have been another one. Let me look on my list here. Those were the two that come to mind right off the bat.

Q To your knowledge, have either of those companies complained that the rates in their amendments did not apply to all local traffic?

A No.

Q In fact, has anyone else, to your knowledge, complained about that after the agreement was amended to add elemental rates?

A No, no. And I would have -- no. The answer is, no.

Q Did some of those companies also have ISP --

reciprocal comp for ISP moneys at stake?

A I'm certain they do.

Q All right. And this is in follow up to something Commissioner Deason had asked you. Is there a rate structure for multi-tandem access that's different from the rate structure for local traffic?

A No. It's on an elemental basis.

Q So they're both based on the same numbers?

A Yeah. In other words, for local traffic you would pay -- if you use -- I think the example I use is if you have two tandem switches to get through multiple tandems, then you pay two tandem rates. You pay to transport between the two tandems. You would pay to transport to get onto the tandem. So it's simply a multiple of the rate elements that would apply if it's multi-tandem or whether it's simply end office route or simply a single tandem route.

And that was the important reason for going to elemental rates, was because if you have a single rate, there could be greater costs, and you're not covering your costs. And the whole reason behind the arbitration dockets, you know, was the big push to get to more cost-based rates. And that's what we did, was to include those elemental rates as part of our agreement.

Q And I don't want to beat this thing to death,

but take a look at what was identified as Exhibit 14. This was the cover letter going to the Georgia Public Service Commission on June 9, 1998.

A Yes, I have that.

Q This is something that was not mentioned. Take a look at the paragraph that's in all caps. It starts off, "This synopsis was prepared." Will you read that?

A This synopsis was prepared at the request of the state of Georgia Public Service Commission, and is not intended to alter, interpret, amend or otherwise affect the subject agreement in any way. I didn't even see that either, I'm sorry.

Q Does that say "state" or "staff"?

A At the request of the -- the staff of the Georgia Public Service Commission. I believe that is "staff."

Q Okay. Any idea why that would be in all caps?

A Well, it draws clarity to the fact that you need to read the agreement to understand it. And this letter is not intended to alter the purposes for which the parties entered into the agreement.

Q Okay. I'm not sure what they call it, whether you'd call it a scenario or what, but Mr. Canis kept discussing some scenario about some network person being blackmailed to give a note to Julia to make the amendment.

I lost track of the conspiracy, but did Julia ever mention any conspiracy along these lines to you?

A No, she did not.

Q Is it something she would have mentioned to you?

A I think so. Julia and I were on a pretty good basis. And in fact, she made it a point to meet with me on a regular basis to ensure that we aired all of the issues and that we were effective in getting things done.

Q One other thing that was mentioned was this reference to an e-mail from Mr. Hudnall to Ms. Strow, dated, what would 5 be, May 15th, 1998.

A Yes.

Q Let me distribute a copy of that. And tell me if this is the e-mail to which you were referencing.

A Yes, it is.

MR. EDENFIELD: Could I have this marked for identification?

COMMISSIONER DEASON: Exhibit 18.

(Exhibit 18 marked for identification.)

BY MR. EDENFIELD:

Q What does this e-mail suggest to you as far as who requested multiple tandem access, Mr. Hendrix?

A Julia Strow was the one to request it.

Q Is that consistent with your dealings with her?

A Oh, yes, definitely.

MR. EDENFIELD: I have nothing further.

COMMISSIONER DEASON: Exhibits?

MR. EDENFIELD: BellSouth would move into evidence 12, 17, and 18.

COMMISSIONER DEASON: Without objection; hearing none, Exhibits 12, 17, and 18 are admitted.

(Exhibits 12, 17, and 18 admitted into evidence.)

MR. CANIS: Your Honor, Intermedia would move Exhibits 13, 14, 15, and 16.

COMMISSIONER DEASON: Without objection, Exhibits 13, 14, 15, and 16 are admitted.

(Exhibits 13, 14, 15, and 16 admitted into evidence.)

COMMISSIONER DEASON: Okay. Thank you, Mr. Hendrix.

THE WITNESS: Thank you.

(Witness excused.)

COMMISSIONER DEASON: We're going to take a recess until 4:30, and it's going to be a long recess. I want the parties to get together and make a determination as to where we stand on time requirements. And I want a report back when we get back on the record, and we'll make a decision as to how we're going to proceed. We'll reconvene at 4:30.

(Brief recess.)

COMMISSIONER DEASON: Call the hearing back to order. I need to inquire of the parties as to the anticipated time necessities.

MR. EDENFIELD: I spoke to Mr. Pellegrini outside, and obviously, the last -- most of the witnesses are mine that he will be crossing. The best estimate is 6:30 --

COMMISSIONER DEASON: That we can --

MR. EDENFIELD: -- at the outset, is what we're thinking.

COMMISSIONER DEASON: We can conclude all witnesses and conclude the hearing by 6:30?

MR. PELLEGRINI: We think that's quite possible, Commissioner Deason. And we may even --

COMMISSIONER DEASON: I'm looking for more than possible. I'm looking for likely.

MR. PELLEGRINI: It's likely, yes.

COMMISSIONER CLARK: Guarantee, forget likely.

MR. PELLEGRINI: I can't give you a guarantee, but I can give you a statement that we think it's likely we can wrap this up by 6:30.

MR. CANIS: Commissioner, we are going to forego cross-examination on rebuttal for at least a couple of the BellSouth witnesses, and I would be happy to agree to a

strick time limit on the rest.

COMMISSIONER DEASON: Okay. Six-thirty is certainly acceptable.

MR. EDENFIELD: Six-thirty sounds like a winner.

COMMISSIONER DEASON: Okay.

MR. EDENFIELD: It sounds like a promise, as much as I hate to do that.

COMMISSIONER DEASON: All right. Well, let's get started and we will be more likely to conclude by 6:30.

MR. EDENFIELD: I may have to stop in mid sentence. Before I call my next witness, Commissioner Deason, I was going to introduce the deposition of the corporate representative of Intermedia, a gentleman by the name of Dennis Berry. His deposition was taken on June 7th in this docket. If I could have that identified as BellSouth's next exhibit.

COMMISSIONER DEASON: Exhibit 19.

(Exhibit 19 marked for identification.)

MR. EDENFIELD: And at this point I would move into evidence the deposition of Dennis Berry.

COMMISSIONER DEASON: Without objection?

MR. CANIS: No objection.

COMMISSIONER DEASON: Hearing no objection, show then that the deposition of Dennis Berry will be admitted.

(Exhibit 19 admitted into evidence.)

MR. EDENFIELD: BellSouth calls its next witness, David Scollard.

- - - - -

DAVID SCOLLARD

was called as a witness on behalf of BellSouth Telecommunications, Inc. and, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. EDENFIELD:

Q Mr. Scollard, will you confirm that you've previously been sworn?

A I was.

Q State your name and position with BellSouth, please.

A David Scollard, manager-wholesale billing with BellSouth Billing, Incorporated.

Q Did you cause to be filed in this proceeding four pages of direct testimony with no exhibits?

A I did.

Q Do you have any changes or corrections to that testimony?

A I do not.

Q If asked the same questions today, would your answers be the same?

A Yes.

MR. EDENFIELD: At this point I would ask that the testimony of David Scollard be admitted into the record as if read.

COMMISSIONER DEASON: Without objection, it shall be so inserted.

MR. EDENFIELD: We have no exhibits to mark.

BELLSOUTH TELECOMMUNICATIONS, INC.

DIRECT TESTIMONY OF DAVID P. SCOLLARD

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 991534-TP

MARCH 17, 2000

Q. PLEASE STATE YOUR NAME, ADDRESS, AND POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC.

A. I am David P. Scollard, Room 26D3, 600 N. 19th St., Birmingham, AL 35203. My current position is Manager, Wholesale Billing at BellSouth Billing, Inc., a wholly owned subsidiary of BellSouth Telecommunications, Inc. In that role, I am responsible for overseeing the implementation of various changes to BellSouth's Customer Records Information System ("CRIS") and Carrier Access Billing System ("CABS").

Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.

A. I graduated from Auburn University with a Bachelor of Science Degree in Mathematics in 1983. I began my career at BellSouth as a Systems Analyst within the Information Technology Department with responsibility for developing applications supporting the Finance organization. I have served in a number of billing system design and billing operations roles within the billing organization. Since I assumed my present responsibilities, I have overseen the progress of a number of billing system revision projects such as the

implementation of the 1997 Federal Communications Commission ("FCC") access reform provisions, billing of unbundled network elements ("UNEs"), as well as the development of billing solutions in support of new products offered to end user customers. I am familiar with the billing services provided by BellSouth Telecommunications to local competitors, interexchange carriers and retail end user customers.

Q. HAVE YOU TESTIFIED PREVIOUSLY BEFORE ANY STATE PUBLIC SERVICE COMMISSION? IF SO, BRIEFLY DESCRIBE THE SUBJECT OF YOUR TESTIMONY.

A. I have testified before the state Public Service Commissions in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, South Carolina, the Tennessee Regulatory Authority, and the Utilities Commission in North Carolina on issues regarding the capabilities of the systems used by BellSouth to bill for services provided to retail customers, Interexchange Carriers (IXCs) as well as Alternative Local Exchange Carriers (ALECs).

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?

The purpose of my testimony is to explain the capabilities (and limits to those capabilities) of the systems BellSouth employs to bill Alternative Local Exchange Carriers (ALECs) for reciprocal compensation.

Q. HOW DOES BELLSOUTH BILL ALECs FOR RECIPROCAL COMPENSATION?

A. BellSouth uses a system called the Carrier Access Billing System (CABS) to accumulate, rate and bill all usage charges for calls originated by an ALEC end user terminated by BellSouth. Several times each day usage records for call events that have occurred in the BellSouth network are transmitted to the BellSouth data centers for processing. Records for calls to be billed to BellSouth's retail customers are sent to the retail billing systems while records for billing reciprocal compensation are sent to CABS. Once in CABS, these records are edited to ensure that the data is valid and updated to a data base to await the close of the bill cycle for the ALEC being billed. At the end of the bill cycle, the minutes of use for each type of call being billed are rated using the rate structure from the ALEC's contract and the resultant charges are formatted into the appropriate invoice records (or printed) and sent to the ALEC.

Q. IN ITS COMPLAINT, INTERMEDIA HAS CLAIMED THAT THE INTENT OF THE CONTRACT AMENDMENT EXECUTED ON JUNE 3, 1998 WAS FOR BELLSOUTH TO BILL RECIPROCAL COMPENSATION USING ONE SET OF RATE STRUCTURES FOR CALLS ROUTED THROUGH A MULTIPLE TANDEM ACCESS ARRANGEMENT AND ANOTHER SET OF RATE STRUCTURES FOR CALLS ROUTED THROUGH OTHER ARRANGEMENTS. HAS CABS EVER HAD THE CAPABILITY TO SUPPORT THIS TYPE OF BILLING?

A. No. In 1996 and 1997, when CABS was being changed to support the billing of ALECs, the business requirements that were developed to describe the needed software revisions called for the system to support a single set of reciprocal compensation rates for each ALEC operating in a given state. This requirement was developed to match the manner in which ALECs would be negotiating interconnection agreements. Therefore, in the state of Florida, for example, CABS could either bill an ALEC reciprocal compensation using a composite rate structure or using an elemental rate structure, but not both. At no time has CABS had the capability to base billing on differing structures to the same ALEC based on the manner in which individual calls are routed through the network.

Q. HOW HAS BELLSOUTH BEEN BILLING INTERMEDIA SINCE THE JUNE 3, 1998 AMENDMENT?

A. BellSouth has been billing Intermedia in accordance with the terms of the June 3, 1998 Amendment effective with the execution of that Amendment. As the Amendment sets forth, BellSouth has billed the new elemental rates for reciprocal compensation for all local traffic.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

BY MR. EDENFIELD:

Q Did you prepare a summary of your testimony?

A Yes, I have.

Q Please, give that.

A Good afternoon, Commissioners. My testimony today briefly gives some description as to the billing capabilities that BellSouth has to bill for local interconnection rates, either Intermedia or other ALECs, as well as to give a brief summary of how we had implemented the amendment signed in June of 1998. BellSouth uses the carrier access billing system or CABS to bill for -- to bill ALECs for local interconnection, as well as intrastate access, if they order those services from BellSouth.

The system was created based on requirements gathered from all the products that we offer. And in the area of local interconnection, the system was designed to bill a single set of rates to a given customer in a given state. So, for example, Intermedia in Florida, the system can be set up to either bill a composite rate, if that's what the contract calls for, or it could be set up to bill the elemental rates that have been discussed here today, if the contract so dictates.

What the system cannot do, however, is for a given customer in Florida, provide a different or multiple

rate structures, composite and elemental, whether that be for different types of traffic that goes between the networks or whether it's in a subset geographical area such as a LATA for a given customer.

The system was never asked to be changed to allow that capability, and so it does not support that type of billing today. As the amendment was concluded with Intermedia in June of 1998, the process on how rates get updated to ALECs in general was used in our office, added the elemental rates for Intermedia's use, and we began billing effective June 3rd of 1998. And that concludes my summary.

MR. EDENFIELD: Mr. Scollard is tendered for cross.

COMMISSIONER DEASON: Intermedia?

CROSS EXAMINATION

BY MR. PELLEGRINI:

Q Good afternoon, Mr. Scollard.

A Good afternoon.

Q Mr. Scollard, it's your testimony, as I understand it, that CABS, which is the system, the billing system that BellSouth uses to bill reciprocal compensation, does not have the capability to support an elemental rate structure as well as a composite rate structure; is that correct?

A That's not quite entirely true. It can support both rate structures, just not for the same customer in the same state. For example, we do have customers in Florida that have composite rates, and we have customers in Florida that have elemental rates. We just can't mix that for the same customer.

Q In your testimony, I believe that you stated that BellSouth modified CABS in 1996 and 1997 in order to accommodate reciprocal compensation billing; is that correct?

A That's true, yes.

Q At that time, Mr. Scollard, were elemental rates applicable to reciprocal compensation under any of BellSouth's interconnection agreements?

A I don't know specifically which -- if there were any contracts where it applied. I do know, however, that during late '97 is when we completed the capability in CABS to actually apply those rates. So as of the fall of '97, if a customer had those type of rates in their contract, we could support those.

Q I'm not sure I understand your response. Are you telling me that for certain customers in 1997, as early as 1997, an elemental rate structure could have been used for billing purposes for reciprocal compensation?

A Yes, in late 1997.

Q So if I understand what you -- what you're saying is that for Customer A, for example, hypothetically, a composite rate structure could be used, and for Customer B, an elemental rate structure could be used, but that for any one customer neither -- only one of those billings -- rate structures could be used; is that correct?

A That's correct.

Q All right. At the time that the modification for CABS occurred, was it -- was the possibility that dual or multi-rate structures for a particular customer, was that considered in designing the modification program of CABS at that time?

A No. A requirement to do multiple types of rates per a given customer was never added to the wish list, if you will, for CABS capabilities.

Q CABS was developed initially to provide a system for billing access charges as determined by the FCC; isn't that true?

A Yes, the FCC and the PSC.

Q CABS was not then -- reciprocal compensation billing was not in the picture at the time that CABS was developed?

A Not early on. I believe we started billing access at the time of divestiture, and our reciprocal comp

came in, of course, the mid to late '90s.

Q And it's your testimony that BellSouth began under CABS to apply elemental rates to reciprocal compensation in late 1997?

A Yes, that's true.

Q Mr. Scollard, do you have before you BellSouth's response to Intermedia's first set of interrogatories, specifically Item Number 16?

A Yes, I do.

Q In that interrogatory, Intermedia asked the question whether -- well, Intermedia accepted the assumption that CABS as presently configured has only the capability to bill Intermedia or any other ALEC for reciprocal compensation using only a composite rate structure. And my question is this, my question was this: Can it be -- can CABS be -- could CABS have been revised to acquire the capability for a single carrier to utilize both a composite rate structure and an elemental rate structure for purposes of billing reciprocal compensation? Do you recall that question?

A Yes, I do.

Q And if I understand your response correctly, it was, yes, it could be; is that correct?

A Yes, that's true.

Q And you identified, I think, three areas that

would have to be addressed in order to accomplish that purpose; is that correct?

A Yes, it is. However, after listening to I believe it was Mrs. Gold this morning, the reply was based on our understanding of what it is that Intermedia proposed in this docket, which was basically when the usage went through a multi-tandem arrangement you would bill elemental -- all other usage would be composite.

However, what I understood from this morning was, there was an addition requirement that I would glean from the testimony, and that was it's on a LATA-by-LATA basis, which would add additional complexity getting CABS to change to, you know, to match that requirement.

Q Well, I want to keep your attention focussed on the Interrogatory 16. And the question there was, could CABS be modified to accommodate both the composite rate structure and an elemental rate structure? And the question was asked, I think understood within the context of a single carrier such as Intermedia or some other CLEC. Is that --

A Yes.

Q And within that context your answer was, yes, as I understand it, that the modification could be made?

A That's true.

Q As I started to ask you, you set out three areas

that would need to be addressed in order to accomplish that modification; is that correct?

A Three with the caveat of hearing an additional one this morning.

Q Could you identify for me what those three areas are that would need to be addressed?

A Yes. Today, as we bill local interconnection in the ALEC, what happens is all of the usage is pooled for the bill period, basically. And at the time the bill is created then the appropriate factors, percent interstate usage and percent local usage factors, are applied against that pool of usage. And from that application, you get the basic, here's the minutes of local traffic for each tandem office for each end office.

At that point that usage is sent down to the rating process to rate, based on the customer's contract. And that rating process only really has one path and that is -- or two paths based on what the CLEC contract states. It's either the composite rate path or the elemental rate path. So that rating engine would have to be designed to take the usage and send piece parts of that usage both directions, which it can't do today. So that's the first change.

The second change is that the actual product catalogue that we use to actually store the rates would

have to be revised to have two different rates for that individual customer. And the last would be as the bills were being put together, all that information then would have to come back together in two different streams to say, okay, here's the part that's elemental, and here's the part that's composite. So it's basically breaking that local rating process into two streams and shoving it back together when the bill is produced.

Q All right. I think in your testimony you make the point -- you make the statement, that is, at Page 4, "Therefore, in the state of Florida, for example, CABS could either bill an ALEC reciprocal compensation using a composite rate structure or using an elemental rate structure but not both." Is that true?

A Yes.

Q Now, did you offer that statement as evidence that under the MTA amendment the linkage that is Intermedia's theory is incorrect; that is, that the rates that appear in the MTA amendment are not linked to the request and access -- the request and acceptance of multiple tandem access?

A Well, no, I really didn't have that in mind when I put that there. All I was trying to say was that BellSouth as a business has never come up with a requirement to need to support a customer in both of those

billing structures.

Q We've established, I think, that CABS could be modified to accommodate for a single carrier more than one billing rate structure; is that correct?

A Yes, they could. We just have never had a contract that called for us to have to do that.

Q So it doesn't necessarily follow from your testimony, does it, that the fact that CABS does not or did not at the time of the MTA amendment support more than one billing rate structure, it doesn't follow from that that in order for the rates in the MTA amendment to apply, Intermedia would have to elect and to accept multiple tandem access architecture. Is that a fair statement?

A No. I really did not link this with the acceptance or not of MTA. All I was trying to say was, we got an amendment to the contract that said put elemental rates in for Intermedia, and we had to do that for the entire state as directed by the contracts and so we did. And it doesn't have the capability to do both, and we've never had a contract that required us to. So --

Q Well, my point is, it seemed to me in reading your testimony and, for that matter, reading Mr. Hendrix's testimony on the same subject that what you were saying is, look, it's rather obvious that BellSouth at the time had executed the MTA amendment with Intermedia didn't

intend for there to be a linkage between the election of MTA and the application of the rates in the amendment because the billing system, CABS, doesn't have the capability of supporting more than one rate structure for a given carrier. Is that an unreasonable conclusion to draw from your testimony and that of Mr. Hendrix on that same subject?

A Well, I can't speak for Mr. Hendrix, but for mine all I was really trying to say was, we didn't have the intent to support a customer in both rate structures. And the reason that I can say that is, no one in the business had asked BellSouth billing to change CABS in any way to support a single customer with both. So I guess to that extent, you could say the intent of CABS would be just to either/or. And so each contract they were supporting is an either/or for the entire state.

Q Mr. Scollard, in your testimony, you estimated the cost of modifying CABS in the manner that we're talking about, I think, to be $1 million on the outside or something less, and conceivably I think you said as little as several hundred thousand dollars; is that correct?

A Yes.

Q Can you put that in the context of -- well, you're responsible for the subsidiary known as BellSouth Telecommunications, Inc.; is that correct?

A I work in that subsidiary, yes.

Q Can you put that sum of money, that is, $1 million or as little as several hundred thousand dollars in the context of your annual expenditures budget?

A No, I really can't. I can put it in the context of, we have around three CABS releases per year where we make similar types of changes, and each release runs around $1 million I believe is the last figure I heard.

Q Can you address my question in terms of what percentage of your annual budget might be consumed to make the modification to CABS that we're talking about?

A No, I can't. I don't have responsibility for our budgets.

Q Can you give me an idea of how many manhours might have to be devoted to a project of this kind?

A Generally, you can estimate around $100 an hour or so. Doing the math, it would be around -- anywhere from 3,000 to 10,000 hours.

Q So we've established that CABS is capable of modification to deal with more than one rate structure for a given carrier, haven't we?

A Yes, it can be.

Q I'm sorry?

A It can be revised.

Q Let me ask you this: Are you familiar with AMA

or automatic message accounting records?

A Yes, I have some understanding of it.

Q Can you give me an idea of what you understand AMA records to contain?

A Yes. AMA records contain information concerning the usage events that are occurring in our network. We use those records as an input to CABS to bill the usage base rates to ALECs or IXCs, or other customers using CABS are also using our retail billing operations.

Q Let me ask you this, Mr. Scollard: Do you know whether an AMA record contains the trunk group identification?

A Yes, I believe some of them do.

Q And do you know whether AMA records contain a trunk group member identification?

A No, I don't know that.

Q Do you understand that from AMA records, a complete trace, it is possible to determine a complete trace of the circuit used to make any particular call?

A I don't believe I understand that. There are certain pieces of information that you can make some assumptions and deductions as far as how calls route through our network, but I don't believe the records have all the information to tell us everything about how calls are routed.

Q Well, let me ask you this, Mr. Scollard: Accepting your answer, even if the records, excuse me, even if AMA records as they presently exist do not contain complete information in order to identify the circuit used by a particular call, are AMA records capable of being modified or expanded in order to contain information which would provide circuit identification to that extent?

A I don't know how to answer that. I don't have that depth of knowledge of the switch recording fabric and what pieces of information are available at each points of the call. So I can't answer that.

Q Do you understand AMA to be a modular system?

A Yes, it is.

Q Are you familiar with the -- are you familiar with the fact that AMA has been modified in a modular fashion to accommodate LNP?

A Yes, I have.

Q So wouldn't it follow that if there were information lacking to provide complete -- to provide a complete call trace that by reason of the modularity of AMA that information could be provided?

A The fact that you can apply modules to the individual base records in an AMA record doesn't really say the switches could put every piece of information about every call in a module. So again, I just don't know

AMA, you know, to the depth of the switching fabric to know what is possible.

I do know that, for example, on calls that are routing through our network, it only records generally in one place, and that's the first point of switching. So what happens to that call downstream from that first point of switching generally has -- we have limited information about how it got to the terminating point.

Q Did I understand you correctly to say that with the information in the AMA record and with certain inferences, a call trace could be established?

A Some types, yes.

Q What do you mean by sometimes (sic)?

A Well, for example, we know where a call records. There's an indicator called a sensor ID that says, okay, this call recorded in this switch. We also know from that same record that the call terminated at a given telephone number which tells you the central office it terminated to. Based on some reference files you could access, you could say, okay, well, the end office that it terminated to is not homed on the same tandem that the call recorded in. So therefore, you could deduce from that that it went from tandem to tandem prior to getting to the end office.

So what you are doing is, you're taking reference files of how our network is hooked together to

make some inferences about how that call routed. The actual AMA record does not record for you the fact that it went to a second tandem prior to being terminated. That's just one example.

Q Would it be fair for me to conclude that if in 1996 and '97 when CABS modifications were -- the CABS modification was accomplished to include -- to address reciprocal compensation payments if at that time the software, the software modifications had been such as to provide for a multi-rate structure, that it then would have been possible for BellSouth to bill reciprocal compensation sometimes under the conditions of multiple tandem access circuitry and sometimes under conditions of circuitry other than multiple tandem access?

A Well, yes, the system could do a lot of things. What we try to do is much match what it is the system needs to do based on the contracts and the rate elements and the tariffs that we have in place. So we built it to the requirements of the customer and their contracts.

Q Given the question that I posed and your response to that, if a call were to be placed and completed using multiple tandem access circuitry, and keep in mind, I'm asking this question within the hypothetical that billing system now has the capability of dealing with more than one rate structure, all right? Do you

understand that?

A Yes.

Q Okay. So then how would you identify a call for which the multiple tandem access -- or the elemental rate would be applicable?

A The elemental rates would be applicable in all cases. However, to identify a multi-tandem access call, you would just basically what I had described a minute ago, is you figure out where it recorded, which would be the first point of switching, where it was headed. And you determine is the end office and the tandem where it recorded, are they subtending each other, generally? Is that end office generally connected to that tandem in a tandem end office arrangement and based on reference files? If it's not, then you know it had to go somewhere else first before it went to the end office, which means two tandems were involved in the call.

Q Okay. I want to be sure I understand your answer, and I'm nearly finished. I want you to assume for purposes of my question that Intermedia, for example, would be entitled to compensation under the composite rates for traffic routed through nonMTA circuitry and that it would be entitled to payments on the basis of elemental rates for traffic routed through MTA circuitry. Do you follow me?

A No. You're talking about our payments to Intermedia, I think you heard you say.

Q No. I'm sorry. I'm raising a hypothetical.

A Okay.

Q And I'm saying that Intermedia would be entitled to payment on the basis of elemental rates for calls completed on an MTA circuit and that it would be entitled to payment based on the composite rate for traffic completed on other than MTA circuitry. I'm asking you, do you accept those conditions as in the assumption?

A And just so I'm clear, that means the traffic that BellSouth originated bound for Intermedia over an MTA arrangement?

Q No, no, no.

A Okay. I'm sorry. I'm confused with your hypothetical then.

Q What I'm trying to get at with you is this: We now -- I've posited the situation in which we now have a CABS system that has been modified to have the capability by which BellSouth can bill Intermedia for reciprocal compensation on the basis of more than one rate structure, an elemental rate structure and a composite rate structure.

A Okay.

Q Okay. Now, I'm asking you, how would you

identify the traffic that would be -- for which the elemental rate structure would be applicable in order to apply the correct rate for billing purposes?

A Okay. I guess I was trying to make it clear. I thought that's what I answered before is this: What you have to do is identify those calls that use more than one tandem. That would be, to me, the definition of multi-tandem access. And so the way that we probably would do it is that you find the first point of switching, which would be where your call recorded. You determine where that call was headed, the end office that it was bound for, and then you determine, based on reference tables that are maintained within the system, is there a tandem in between those two points, is there another BellSouth tandem in between those two points.

At that point, based on that single switch recording, you would have an indication that multi-tandem arrangement was used because it went through two -- a single call went through two tandems. And at that point you could apply whatever elements or whatever rates were set up in the contract, again, given that CABS was changed to apply both.

MR. PELLEGRINI: I have no further questions, Mr. Scollard. Thank you.

COMMISSIONER DEASON: Staff?

MS. STERN: No questions.

COMMISSIONER DEASON: Redirect?

MR. EDENFIELD: Very, very briefly.

REDIRECT EXAMINATION

BY MR. EDENFIELD:

Q Mr. Scollard, when BellSouth makes a release of the CABS system, a new release, is there more than one upgrade for lack of a better term accomplished in the new release?

A Sometimes there's thousands of different requirements that we've put into a release.

Q And I'm sorry, the budget for that is about what?

A Somewhere around $1 million on an average. It's higher sometimes, less sometimes depending on the requirements.

Q Okay. And that's similar to what you're estimating it would cost to do just this one single upgrade?

A Yes.

Q All right. Was the calculation you made based on a LATA basis?

A No. That -- when I talked to the individual who serves as a support person for our local interconnection team, the LATA distinction was not ever in what we were

discussing as kind of off-the-hand comments. It was basically if you had usage that was in -- used multiple tandems doing one thing, there wasn't multi-tandem doing another, and that's what we came up with.

Q Do you think it would cost more or less and take more or less manhours to do this same analysis on a LATA basis?

A I think it would take more because we do not generally bill usage based on LATA distinctions.

Q Do you have enough knowledge to give me an estimate of how much more you think it would be?

A No, I don't.

MR. EDENFIELD: Okay. I have nothing else. Thank you.

COMMISSIONER DEASON: There were no exhibits for this witness, and you may be excused.

THE WITNESS: Thank you.

(Witness excused.)

COMMISSIONER DEASON: Intermedia, you may call your first rebuttal witness.

MR. CANIS: Your Honor, I'd like to call Mrs. Heather Gold to the stand.

- - - - -

HEATHER BURNETT GOLD

was called as a rebuttal witness on behalf of Intermedia

Communications, Inc. and, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CANIS:

Q Mrs. Gold, could you affirm that you have already been sworn in previously today?

A Yes, I have. Yes, I have, sorry.

Q And that also you have entered your name and position into the record of this proceeding?

A Yes, I have.

Q Have you prepared or caused to be prepared a document entitled, "Rebuttal Testimony of Heather Burnett Gold," dated April 21st of this year?

A Yes, I have.

Q And does it consist of ten pages?

A Yes, it is.

Q Is it true and correct -- do you have any changes to that document?

A No, I do not.

Q Is it true and correct, to the best of your knowledge and belief?

A Yes, it is.

Q And if I asked you those questions today, would you give me the same answers?

A Yes, I would.

Q Have you prepared a summary of that document?

A Yes, I have.

Q May I ask you to present it at this time?

A Okay. Good morning. The purpose of my testimony is to respond to the direct testimony of Mr. Hendrix. Mr. Hendrix makes the following arguments. First, that the reductions in reciprocal compensation rates listed in the MTA amendment are not linked to the implementation of MTA. Rather, Mr. Hendrix states that the rate reductions are standalone provisions that became effective throughout all nine BellSouth states as soon as the amendment was signed.

Second, that MTA requested the MTA amendment and the terms were actively negotiated between BellSouth and Intermedia and that Intermedia agreed to the rate reductions. I believe Mr. Hendrix is mistaken on both of these counts.

First, as I discussed this morning, Mr. Hendrix's assertion that the MTA amendment is actually two independent agreements is ridiculous. In fact, the reciprocal compensation rates listed in the MTA amendment are expressly tied to the implementation of multi-tandem architecture provided for in the amendment.

As explained in my direct testimony, the multi-tandem access option allows Intermedia to bill

trunks to a single BellSouth tandem, and if implemented would save Intermedia the cost of direct trunking to each BellSouth access tandem in a given LATA. The fact that the reciprocal compensation rate reductions are a quid pro quo for the implementation of the MTA trunking arrangements is supported by the expressed language of the amendment, the actions of both BellSouth and Intermedia, and a common sense review of the circumstances existing at the time the amendment was signed. It is also supported by language from BellSouth's current model interconnection agreement. That language expressly links the implementation of MTA trunking with the acceptance of the listed reciprocal compensation rates.

Second, despite Mr. Hendrix's assertion, I can state unequivocally that Intermedia never initiated the discussions that resulted in this amendment. This is not a service that Intermedia believed it needed or even wanted to use. While I was not at Intermedia at the time the amendment was signed, I have spoken to the key current and former Intermedia personnel familiar with the amendment. All have assured me that the MTA amendment was first proposed to Intermedia by BellSouth. BellSouth, in fact, told Intermedia personnel that we had to sign the amendment if we wanted BellSouth to stop blocking our traffic in the Norcross tandem in Georgia. There were no

preceding negotiations with BellSouth, and the agreement was signed as drafted by BellSouth. It appears now that Mr. Hendrix is unfortunately reweaving the facts in an attempt to continue to evade BellSouth's obligation to pay reciprocal compensation to Intermedia.

Third, Intermedia has never implemented MTA in Florida or anywhere else. It is, in fact, the preference of Intermedia's network engineers to establish direct trunks to all BellSouth access tandems in the areas served by Intermedia. That was true when the MTA amendment was signed and remains true today. Intermedia is currently direct trunked to all BellSouth access tandems in the Intermedia service area and was at the time the MTA amendment was signed.

Moreover, the issue of reciprocal compensation is perhaps the most contentious and heavily litigated issue between ILECs and ALECs. Indeed, Intermedia had a complaint against BellSouth for the payment of reciprocal compensation charges pending before this Commission at the time the MTA amendment was signed. And other commissions in the BellSouth region have already ruled in favor of other ALECs' complaints against BellSouth for the payment of the reciprocal compensation.

It is inconceivable that Intermedia would have implemented a two-thirds reduction in recip comp rates

without implementing the MTA trunking option and without a high level documented negotiations and expressed language to that, including the settlement of our then outstanding $7.6 million in receivables.

The fact that there was simply no record of these negotiations, no spreadsheets detailing the impact of such serious revisions to Intermedia's and BellSouth's relationship and, most importantly, no clear contract language to that effect makes it obvious that no reduction in reciprocal compensation rates was intended.

Mr. Hendrix's position that Intermedia accepted a two-thirds reduction in reciprocal compensation rates in return for nothing and did so without an expressed quid pro quo is completely implausible. It appears to me that BellSouth's position is an after-the-fact rationalization intended solely to further evade BellSouth's obligation under our interconnection agreement and direct Commission order to pay for reciprocal compensation to Intermedia. This appears to violate BellSouth's obligation under the Communications Act to negotiate in good faith.

Commissioners, we are troubled by BellSouth's ongoing refusal to recognize the anticompetitive effects of its attempt to dodge its reciprocal compensation obligations under our interconnection agreement.

Despite our negotiated agreement, BellSouth

first refused to pay us reciprocal compensation on traffic bound to Internet service providers. We were forced to file a complaint with this Commission in the summer of 1998 and we prevailed. Two years later to the month, we are back before you having to again litigate a complaint in order to enforce our right to be paid as called for in our interconnection agreement.

BellSouth is again misinterpreting a contractual provision to evade its obligations under the agreement. This time, however, its position is so farfetched and so lacking in evidentiary support that it would be comical but for the severe economic harm it is imposing on Intermedia. We urge you to repudiate BellSouth's position forcefully and expeditiously. Thank you.

MR. CANIS: Your Honor, I would like to move Mrs. Gold's testimony into the record of this proceeding subject to cross-examination.

COMMISSIONER DEASON: Without objection, it shall be so inserted.

INTERMEDIA COMMUNICATIONS INC.
REBUTTAL TESTIMONY OF HEATHER BURNETT GOLD
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 991534-TP

Q. ~~PLEASE~~ STATE YOUR NAME, BUSINESS ADDRESS, TITLE, AND THE NATURE OF YOUR POSITION WITH INTERMEDIA COMMUNICATIONS INC. ("INTERMEDIA").

A. My name is Heather Burnett Gold. I serve Intermedia as Vice President-Industry Policy. My business address is 3625 Queen Palm Drive, Tampa, Florida 33619. I am responsible for Intermedia's regulatory, legislative and philanthropic activities. I was formerly President of the Association for Local Telecommunications Services, and before that, Vice President, Industry Affairs for the Competitive Telecommunications Association. I have also held regulatory positions with National Telephone Services, Allnet, GTE Sprint and SBS. I am a director of the Universal Service Administrative Company. I hold BA and MA degrees in economics from Tuft University and an MBA degree in finance and marketing from Washington University.

Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS PROCEEDING?

A Yes, I filed direct testimony in this proceeding on March 17, 2000.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?

A. I am appearing before the Commission as a policy and fact witness to present evidence describing Intermedia's contractual arrangements with BellSouth Telecommunications, Inc. ("BellSouth"), specifically those arrangements concerning intercarrier compensation for the transport and termination of local traffic. The purpose of my rebuttal testimony is to respond to the assertion's made by BellSouth witness, Jerry Hendrix, in his direct testimony.

Q. WHAT IS YOUR UNDERSTANDING OF MR. HENDRIX'S TESTIMONY?

A. Simply put, Mr. Hendrix's fundamental testimony is that Intermedia, for some inexplicable and unrelated reasons, willingly and knowingly requested and negotiated to replace the billing structure and rates for local traffic (including traffic terminated to ISPs) throughout the nine states in the BellSouth region when Intermedia executed BellSouth's June 3, 1998, Amendment (the "MTA Amendment").

Q. WHAT IS THE RATIONALE MR. HENDRIX USES?

A. As I understand Mr. Hendrix's rationale, he makes two basic allegations. The first allegation is that the MTA Amendment is the result of an Intermedia request to amend the Interconnection Agreement "whereby BellSouth would make available multiple access tandem arrangements." The second allegation is that the supposed monumental reduction in the rate for reciprocal compensation included in the MTA amendment is not linked to network architecture, but rather became instantaneously applicable throughout BellSouth's nine-state territory irrespective of how traffic is being transported between the companies, and that that is something to which Intermedia agreed. Thus, as I understand his testimony, Mr. Hendrix says that paragraphs 3 and 4 of the MTA Amendment are stand-alone provisions not linked to either the multiple tandem access language in the amendment or to whether Intermedia is in fact interconnected to BellSouth's network by means of multiple tandem access arrangements pursuant to its request or otherwise.

Q. WHAT WERE THE CIRCUMSTANCES IN WHICH YOU BECAME AWARE OF THE MTA AMENDMENT?

A. I first became aware of the MTA Amendment in February 1999 when Intermedia was negotiating a new interconnection agreement with BellSouth. With still a large number of issues in dispute, the negotiations turned in the direction of extending the Agreement, which was to expire in July 1999, to the end of the year. It was then that I saw the MTA Amendment for the first time. In examining the Amendment, I questioned Intermedia personnel who were themselves familiar with the circumstances existing at the time the Amendment was signed and with the purposes the Amendment was designed to serve.

Q. DO YOU AGREE WITH MR. HENDRIX'S ASSERTION REGARDING THE PURPOSE OF THE MTA AMENDMENT?

A. Absolutely not.

Q. WHAT THEN IS THE PURPOSE AND EFFECT OF THE MTA AMENDMENT?

A. As I explained in my direct testimony, the MTA Amendment was executed for the sole purpose of making multiple tandem access available to Intermedia upon our election for the alleviation of traffic congestion. There were no provisions in our then existing interconnection agreement that addressed multiple tandem access. Because of this, it was necessary to establish applicable rates when this different type of access is elected by Intermedia. That is the purpose and effect of the rate provisions of the MTA amendment.

Q. WHAT IS YOUR BASIC RESPONSE TO MR. HENDRIX'S TESTIMONY ABOUT THE MTA AMENDMENT?

A. The MTA Amendment does not provide for, and Intermedia did not agree to, a reduction of the rate for reciprocal compensation throughout Florida, much less the nine-state region. Mr. Hendrix's testimony ignores the structure and language of the Amendment, as well as the economic and regulatory context of reciprocal

compensation. Moreover, in attempting to establish paragraphs 3 and 4 as stand-alone provisions not linked to network architecture, Mr. Hendrix misstates the facts. Specifically, he testifies that Intermedia asked for the Amendment in order to request multiple tandem access arrangements and that Intermedia agreed to include radical reductions in reciprocal compensation rates in the Amendment as apparently a matter of convenience. These allegations are simply not true. Thus, Mr. Hendrix's testimony fundamentally distorts both the purpose and effect of the MTA Amendment. And in view of this Commission's ruling on BellSouth's liability to pay Intermedia reciprocal compensation for BellSouth-originated traffic terminated to ISPs on Intermedia's Florida network, Mr. Hendrix's testimony must be another attempt by BellSouth to avoid its obligation to pay Intermedia under the terms of the Interconnection Agreement.

Q. AS YOU HAVE NOTED, MR. HENDRIX NOT ONLY ALLEGES THAT INTERMEDIA REQUESTED AN AMENDMENT WITH RESPECT TO MULTIPLE TANDEM ACCESS ARRANGEMENTS, BUT ALSO THAT BELLSOUTH PROPOSED, AND INTERMEDIA AGREED, THAT THE "NEW ELEMENTAL RATES AND STRUCTURE" BE INCORPORATED INTO THE AMENDMENT FOR RECIPROCAL COMPENSATION FOR ALL LOCAL TRAFFIC. EXPLAIN WHY THESE ALLEGATIONS ARE UNTRUE.

A. These allegations are not supported by facts and the surrounding circumstances. First, BellSouth approached Intermedia with a multiple tandem access amendment proposal in the form of a draft amendment, which we signed as drafted (the MTA Amendment). It categorically was not the result of Intermedia's initiative. As I have testified, there were no preceding negotiations and Intermedia made no request for an amendment making multiple tandem access arrangements available. Moreover, Intermedia has a strong operations preference for direct trunk groups. Except for the BellSouth-imposed arrangements described by Mr. Thomas in his

direct testimony in this proceeding, Intermedia is directly trunked to BellSouth's local tandems in Florida. Second, Intermedia has no recollection of a BellSouth request to incorporate the "new elemental rates and rate structure for reciprocal compensation for all local traffic" into our agreement by means of the MTA Amendment, or any other means for that matter. And third, it is inconceivable to think that if BellSouth had made such a request, Intermedia would have agreed given the then-existing regulatory and economic context.

Q. WHY WOULD INTERMEDIA'S AGREEMENT TO THE RATE CHANGE BE INCONCEIVABLE "GIVEN THE THEN-EXISTING REGULATORY AND ECONOMIC CONTEXT?"

A. Let me begin with the regulatory context. Mr. Hendrix testifies that it was the purpose of the MTA Amendment to "incorporate the new elemental rates and rate structure for reciprocal compensation for all local traffic established by the Florida Public Service Commission." In my direct testimony, I explain why this is wrong. To reiterate briefly, the Commission's Order No. PSC-96-1579-FOF-TP addressed and decided a large number of issues that were unresolved in the interconnection agreement negotiations between AT&T and BellSouth and MCI Metro and BellSouth. As is well known, the Florida Commission's decisions in arbitration proceedings, without exception, are limited in applicability to the parties to the negotiations. The Commission did not in that Order nor has it taken action since to apply those or any arbitration decisions to the industry generally or to BellSouth's interconnection relationship with other competitive carriers specifically.

From a regulatory perspective, I am advised that there was not and is not a Commission expectation that BellSouth would take decisions established in an individual arbitration to revise existing agreements to conform. It is my understanding that where uniformity under the Act is needed throughout the industry, some sort of generic proceeding is required. For example, the

Commission opened such a proceeding for the first time on May 20, 1999, (Docket No. 990649-TP), and on February 22, 2000, approved an industry stipulation on interim deaveraged rates, to which Intermedia and BellSouth were signatories. Intermedia's interconnection agreement with BellSouth as presently amended has been fully negotiated. Contrary to Mr. Hendrix's allegation, Intermedia has at no time participated in negotiations with BellSouth that might have produced an outcome consistent with the supposed second purpose of the Amendment.

Moreover, given the regulatory attention and sensitivity to the issue of reciprocal compensation -- particularly for ISP traffic, an agreement to import new rates into an existing interconnection agreement from a later arbitration decision would have been spelled out in the recitals. There are no such recitals in the MTA Amendment. Indeed, if the two issues had been considered independently of one another and if there is no linking relationship between them, as Mr. Hendrix testifies, the far better practice would have been to treat them in separate amendments.

Q. WHY THEN WOULD INTERMEDIA'S AGREEMENT TO THE RATE CHANGE BE INCONCEIVABLE "GIVEN THE . . . ECONOMIC CONTEXT?"

A. In the history of ILEC-ALEC relations, there has been no greater point of conflict than the argument over reciprocal compensation for a subset of local traffic. I am speaking, of course, of the disputes nearly everywhere over reciprocal compensation for local ISP traffic. It is difficult to overstate the tension between ILECs and ALECs over this issue. Thus, in general, any proposed revision of reciprocal compensation rates, particularly wholesale revisions as Mr. Hendrix alleges is the case here, would be carefully considered and highlighted for substantial, high-level negotiations.

Q. WHAT IS THAT TENSION?

A. We remain distressed at BellSouth's continuing refusal to recognize the anti-competitive effects of its attempts to repudiate its reciprocal compensation obligations under the Interconnection Agreement. We agreed to pay each other for terminating local traffic, which, as defined in the Interconnection Agreement, includes local ISP traffic, and then they attempted to substantially reduce our compensation by claiming that traffic bound to ISPs is not qualifying local traffic. Intermedia was forced to arbitrate this issue with BellSouth before this Commission, and this Commission's decision does not need to be revisited here. I emphasize, however, that having spent considerable resources enforcing its contract rights for ISP reciprocal compensation against BellSouth, Intermedia would not be apt to surrender its revenues through a drastic rate reduction. And in the MTA Amendment, Intermedia has done no such thing. As a general proposition, it simply makes no sense.

Q. WHY DOES IT NOT MAKE SENSE THAT INTERMEDIA AGREED TO A RATE REDUCTION?

A. Let me first be clear about one thing. In the context of this dispute, it would not have made sense for Intermedia to have agreed to a rate reduction at the time the MTA Amendment was proposed. There was no material question that we were entitled to reciprocal compensation for traffic terminated to ISPs. Although the Florida Commission had not yet ruled on our liability complaint against BellSouth, at that time the same issue under similar interconnection agreements had been successfully litigated by various other competitive carriers in at least eighteen other state jurisdictions, including a litigation against BellSouth in North Carolina, without even a single setback.

With that said, as a business person, it does not make sense to me for someone to suggest that we negotiated and agreed to reduce our compensation by as much as two-thirds in exchange for nothing. That is not what the MTA

Amendment means. Simply, under the MTA Amendment, we would agree to the reduced "elemental" rates if we elected to use a multiple tandem access arrangement in a particular serving area. Under those circumstances, we would evaluate whether the benefit from using that form of access was worth the reduction in compensation we might experience.

After all, the rates in the MTA Amendment are several times less than the rates negotiated in the July 1, 1996, agreement, which had remained (and remain) in effect. There is nothing in the language of the MTA Amendment that describes any consideration for an Intermedia agreement to reduced reciprocal compensation rates for all local traffic. It seems self-evident that such a radical departure from practice would have been preceded by negotiations.

Q. SO, IS IT MR. HENDRIX'S POSITION THAT THE RECIPROCAL COMPENSATION RATES IN THE MTA AMENDMENT ARE NOT LIMITED TO ONLY WHEN MULTIPLE TANDEM ACCESS ARRANGEMENTS ARE REQUESTED?

A. Yes, that appears to be his position, and, again, Mr. Hendrix is wrong. This and other positions that Mr. Hendrix takes in this dispute are simply one more illustration of the difficulty that Intermedia experiences in negotiating agreements with BellSouth and then in trying to operate under those agreements. In my direct testimony, at pages 3 through 5, I explain in detail how the MTA Amendment is properly interpreted, provision by provision. The result is that there is indeed a linkage between Intermedia's election of multiple tandem access (and BellSouth's provisioning of it in response) and the activation of the rates in Attachment A of the MTA Amendment. This is the only rational way in which the MTA Amendment can be understood.

Q. IS THERE ANYTHING ELSE YOU WISH TO SAY CONCERNING MR. HENDRIX'S ALLEGATIONS?

A. Yes, there is. In Intermedia's present negotiations of a successor agreement with BellSouth (which is the subject matter of a pending arbitration proceeding before this Commission), BellSouth has offered in its proposed interconnection agreement multiple tandem access language which is remarkably in support of Intermedia's view that the "linkage" I describe above is the correct construction of the MTA Amendment. First, BellSouth's proposed language makes clear that multiple tandem access is an optional network arrangement for Intermedia (and CLECs generally) and the conditions under which it must be deployed.

> Within each LATA, [Intermedia] must interconnect at all BellSouth access tandems where [Intermedia's] NXX's are "homed." However, if [Intermedia] does not have NXX's homed at each BellSouth access tandem within a LATA and elects not to interconnect at such BellSouth access tandems where no NXX's are homed, [Intermedia] must order MTA in each BellSouth access tandem within the LATA where it interconnects to the extent it desires to terminate traffic to customers served through BellSouth access tandems in the LATA to which [Intermedia] has not interconnected ....

In fact, Intermedia has NXX's homed at all of BellSouth's access tandems within the Florida LATAs in which it provides local services and is directly interconnected with them, apart from the BellSouth-imposed exceptions I mentioned earlier. Therefore, the conditions that would require Intermedia to order multiple tandem access are not satisfied.

Second, BellSouth's proposed interconnection agreement sets out what Intermedia would be required to do prior to ordering multiple tandem access.

> Prior to ordering MTA, [Intermedia] must execute an MTA amendment to its contract if its contract does not address MTA, and agree that mutual and reciprocal

> compensation will be billed on an elemental basis at the Local Interconnection (Call Transport and Termination) rates specified in the BellSouth CLEC Standard Agreement on a minimum statewide basis.

This means, quite clearly, that under the MTA Amendment, if Intermedia orders multiple tandem access, as it would be required to under the conditions above, then the elemental rates in Attachment A would obtain. So, BellSouth is caught up in its own web. It cannot contend that the Attachment A rates are a wholesale replacement of reciprocal compensation rates for all local traffic that is effectuated with the Amendment and at the same time acknowledge that multiple tandem access is an optional network arrangement that when elected invokes the rates in Attachment A for reciprocal compensation.

As a final point, the position Mr. Hendrix takes in his direct testimony appears to Intermedia to be an after-the-fact rationalization. Even more than that, we suspect that BellSouth's real intent with the MTA Amendment may have been to impose upon Intermedia a general reduction in reciprocal compensation by bootstrapping elemental rate provisions into the Amendment with the help of imprecise language. While these rate provisions as expressed certainly appear to be linked to the election of multiple tandem access, once the ink was dry, BellSouth claimed that they have nothing to do with network deployment and apply rather to all traffic however carried. This implicates section 251(c)(1) of the Act as well as section 51.301(b)(5) of the FCC's rules, which impose a duty on the parties to negotiate in good faith.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, it does.

COMMISSIONER DEASON: BellSouth?

CROSS EXAMINATION

BY MR. EDENFIELD:

Q Mrs. Gold, take your rebuttal testimony, look at it carefully, and show me anywhere in there where you mention anything about this conspiracy at the Buckhead tandem, I'm sorry, Norcross tandem.

A At the time this testimony was filed, we had not -- I had spoken to engineering about why we had negotiated the MTA arrangement.

Q I'm sorry, Mrs. Gold. The question is: Show me in your rebuttal testimony where you mention this conspiracy that you claim at the Norcross tandem.

A I did not refer directly to the Norcross tandem in my testimony.

MR. EDENFIELD: At this point, Commissioner Deason, I would move to strike that portion of the summary where Mrs. Gold references some conspiracy on the part of BellSouth or intentional act to create blocking at the Norcross tandem as it is not part of her rebuttal.

COMMISSIONER DEASON: There's been an objection, or actually, a request to strike.

MR. CANIS: Well, Your Honor, that issue has been discussed broadly throughout the day today. I think

it is entirely appropriate for Mrs. Gold to address this in her rebuttal testimony.

COMMISSIONER DEASON: At the Norcross tandem?

MR. CANIS: The blockage in Norcross and Buckhead. They were the two tandems or, you know, they were discussed throughout the day today, and there are repeated references in the record of this proceeding. I think, no, there is no surprise to BellSouth, and no purpose would be served by stripping the record of this statement.

COMMISSIONER DEASON: Excuse me. Why didn't you make your objection before?

MR. EDENFIELD: Well, I didn't want to interrupt her in the middle of her summary and figured I would just confirm to make sure I had not missed the fact that it was not in there.

And if I may respond briefly to Mr. Canis's argument, the only person who has mentioned conspiracy today are the lawyers for Intermedia. Certainly no witness before right now has brought the issue up.

COMMISSIONER DEASON: Well, I'll tell you what I'm going to do. To the extent there is anything in summary that was not contained in the prefiled rebuttal testimony, it will be stricken. But it is incumbent upon you to get this transcript of this proceeding, since it

has already been stated in the record, and make a request and specifically identify what portions of the summary need to be stricken, and it shall be stricken.

MR. EDENFIELD: Can I do that as a late-filed exhibit?

COMMISSIONER DEASON: Yes, you may.

MR. EDENFIELD: Thank you.

COMMISSIONER DEASON: And Intermedia can respond to that request. And it will be handled in that manner.

BY MR. EDENFIELD:

Q Mrs. Gold, throughout the day I have not really been able to get my arms around Intermedia's story as far as this trunking issue is concerned. Is Intermedia -- or at the time of this amendment, was Intermedia directly trunked to all of BellSouth's tandems or not?

A On the date this amendment was signed, it is my understanding that we were directly trunked to all the tandems where we had -- within our service area.

Q Is that kind of like saying you were trunked to all the tandems to which you were trunked? I mean, were you trunked to all of them or not?

A To the best of my knowledge, given that I am not the traffic engineer, yes.

Q Now, as I understand your testimony --

COMMISSIONER CLARK: Mr. Edenfield, what tandems

are you referring to? All?

MR. EDENFIELD: Actually, at some point today the witness has testified that they were connected to every tandem in BellSouth's territory.

COMMISSIONER CLARK: I understood them to say they were connected to every tandem in the territory they served.

MR. EDENFIELD: At one point during the day they said that as well. That's what I'm trying to figure out. The story keeps changing, it appears to me.

BY MR. EDENFIELD:

Q I'm just trying to figure out where exactly are you interconnected, and where were you interconnected at the time of the amendment.

A But I believe that's Mr. -- did I say that in my testimony?

COMMISSIONER DEASON: Why don't we do this. Let's just get a late-filed exhibit from Mr. Thomas. We'll identify at the time that this agreement was entered into, the amendment, as to exactly what tandems where were connected and in what manner. And I think that should clarify the record. Is that --

MR. EDENFIELD: That would be completely satisfactory to BellSouth.

COMMISSIONER DEASON: Any objection from

Intermedia for providing that information?

MR. CANIS: None, Your Honor.

COMMISSIONER DEASON: Okay. That would be late-filed Exhibit Number 20.

(Late-Filed Exhibit 20 identified.)

COMMISSIONER DEASON: Is Mr. Taylor coming back on rebuttal?

MR. PELLEGRINI: No, sir.

COMMISSIONER DEASON: He's not. That's correct. I'm sorry, not Taylor, but Thomas. Yes, Mr. Thomas does have rebuttal.

MR. PELLEGRINI: Mr. Thomas, no, Commissioner Deason --

COMMISSIONER DEASON: It's listed in the prehearing order. I'm looking at Page --

MR. PELLEGRINI: There is an error in the prehearing order then because he does not have rebuttal testimony.

MR. EDENFIELD: I'm not exactly sure what had happened, but I know around that same time as the prehearing conference there was a motion by Intermedia for the surrebuttal, and I don't know if somehow all of that got confused.

COMMISSIONER DEASON: Okay. So what has been referred to as rebuttal is actually the surrebuttal which

was not allowed?

MR. EDENFIELD: That's correct. That is my understanding. Now, Mr. Pellegrini may have a different one, but I think that would explain the error.

COMMISSIONER DEASON: Well, the only reason I asked is, normally we ask the witness if he is knowledgeable in the area and can provide the late-filed exhibit. I'd hate to obligate a witness to provide a late-filed exhibit that he's not comfortable in providing. So that needs to be acknowledged in some manner. And so at an appropriate time, if counsel could confirm with their witness that that information can be provided, then late-filed Exhibit 20 will stand. If there's a problem, we need to know before we adjourn today.

MR. PELLEGRINI: I can confirm, Commissioner Deason, that Mr. Thomas is competent to provide that late-filed exhibit.

COMMISSIONER DEASON: Okay. Very well. That will be late-filed 20.

BY MR. EDENFIELD:

Q Mrs. Gold, turn with me very quickly to Page 3, Line 16 of your rebuttal.

A All right.

Q It's your position that the purpose that Intermedia had was to make MTA available upon your

election to alleviate congestion?

A That was my understanding from the engineers.

Q Okay. And so it's your testimony then that at that point in time, Intermedia was experiencing traffic congestion with BellSouth?

A They were experiencing congestion and blocking problems prior to the amendment.

Q I'm handing out, Mrs. Gold, a copy of the posthearing brief of Intermedia Communications, Inc., filed in Docket 991854-TP, which is the recent Intermedia arbitration with BellSouth. The date of this pleading is May 2nd, 2000. If you would, take a second and turn to Page 34 of that brief. Tell me when you get there.

I would direct you to the second full paragraph. The one that starts, "BellSouth's requirement is unnecessary." Tell me when you get there.

A Okay.

Q Go down to where you see the cite that says, "Transcript at 440." Do you see that on the right-hand side down one, two, three, four, five lines? Do you see that?

A Okay.

Q See where the sentence starts, "At the hearing"? I want you to read that sentence into the record, please.

A "At the hearing, however, Witness Jackson

testified that Intermedia has been interconnecting with BellSouth since 1996, but has yet to experience any call completion problems notwithstanding the absence of these requirements in the currently effective" -- how far do you want me to read?

Q Until the end of that sentence.

A "Currently effective Intermedia-BellSouth interconnection agreement."

Q So Intermedia on May 2nd, 2000, in a brief filed in front of this Commission noted that your policy witness, Carl Jackson, testified that Intermedia has yet to experience any call completion problems since 1996?

A I would note that this was filed in reference to our Florida arbitration. We were experiencing the problems in Georgia.

Q Oh, so you didn't experience any call congestion problems in Florida?

A Subject to confirmation from the engineering -- not relative to -- we were not -- my understanding to the best of my knowledge, and I am not the engineering technical witness here, is that we were -- the impetus for MTA came from problems in Georgia, not Florida, at that time.

Q Okay. And again, it's your understanding that you were directly trunked at the time of the amendment?

A By the time the amendment was signed.

Q And if you were directly trunked, then you don't really need MTA?

A That's correct.

Q All right. Turn back in that same document to Page 33, under "Issue I," the second paragraph. Read the second sentence of that paragraph into the record, please.

A "Intermedia believes that any such requirement would defeat the purpose of MTA."

Q No, I'm sorry. The second sentence of the second paragraph under "I." It starts, "The requirement that Intermedia establish."

A "The requirement that Intermedia establish interconnections to each and every tandem, as proposed by BellSouth, is antithetical to the concept of MTA."

Q And read the last sentence.

A "Accordingly, the Commission should reject BellSouth's proposal."

Q So BellSouth had proposed that Intermedia interconnect directly, and Intermedia has asked the Commission to reject that position as it is, I can't even pronounce the word, antithetical to MTA?

A I understand that this -- first of all, there's a new proposal with respect to the MTA definition in the ongoing interconnection agreement.

Q We'll get to that in just a minute.

A So you're asking me to testify to something that is not under discussion here. You're asking me questions about something that -- about a --

Q I'm asking you to explain, Mrs. Gold, why your policy witness, Carl Jackson, seems to be indicating that it doesn't want to interconnect --

MR. CANIS: Your Honor, at this point let me interpose an objection. This is beyond the scope of Mrs. Gold's rebuttal testimony. She has already indicated that the document at issue here is not the MTA amendment. It's a different initiative by BellSouth, and she is not prepared to discuss it.

MR. EDENFIELD: It's cross-examination. It's a policy witness for Intermedia, is making statements which appear on their face to be the opposite of what the position that the policy witness is taking in this proceeding.

COMMISSIONER DEASON: I'll allow the question to the extent the witness has knowledge; she's able to express an opinion on it.

A If I can take a few minutes and read the whole section. Okay. What is your question again, Mr. Edenfield?

Q The question is: Can you explain why

Mr. Jackson, a policy witness for Intermedia, appears to be taking the position that it does not want to direct trunk to BellSouth's tandems because such an arrangement would be antithetical to MTA?

A I think what Mr. Jackson is saying here, subject to verification with him, is that MTA is an option which allows you not to have to direct trunk. Therefore, to have an MTA proposal made that required you to direct trunk seems contradictory, and that's why the Commission should reject it.

Q All right. Moving along in your testimony.

MR. EDENFIELD: Oh, yeah, I'm sorry. Could I mark that for identification, Commissioner Deason?

COMMISSIONER DEASON: Exhibit 21.

(Exhibit 21 marked for identification.)

BY MR. EDENFIELD:

Q Moving along here so we can get this thing wrapped up, look on Page 4, Line 24 of your rebuttal testimony.

A Yes.

Q Is it your position that it was categorically not the result of Intermedia's initiative to request an MTA amendment?

A That is correct.

Q How do you square that with your testimony

earlier this morning where you said that it was an emergency patch that you needed?

A That's right. It was an emergency patch told to us by BellSouth. As Mr. Thomas testified, we went three routes on this. At BellSouth's insistence that the MTA was the only way to fix it, we did as the BellSouth carrier account team required us and requested the MTA amendment. We also rerouted our traffic via our interexchange trunks, and at the same time ordered direct trunking. So we were on a three-prong approach here.

Q All right. Look real quickly at your rebuttal, Page 5, Line 2, and I think this may be the second prong or one of the prongs of your summary. It's Intermedia's position that it has no recollection of a BellSouth request to incorporate the new elemental rates and rate structure for reciprocal compensation for all local traffic into our agreement. So you --

A That is -- go ahead.

Q So in other words, you have no recollection of Mr. Hendrix's position?

A That is correct. That is not what was recounted to me.

Q Now, when you say you have no recollection, since you obviously were not there at the time, is it possible that you just don't remember and that it actually

happened?

A I would find that highly improbable given the situation that was surrounding Intermedia and BellSouth with regard to reciprocal compensation at that time.

Q Since you weren't there, why do you find that so hard to believe?

A Because Intermedia had an outstanding complaint on this very issue.

Q Intermedia had an outstanding complaint on MTA?

A No, on reciprocal compensation. This says that we would not -- what this says is, "no recollection of a BellSouth request incorporate the new elemental" --

COMMISSIONER DEASON: Excuse me, excuse me. You need to slow down.

THE WITNESS: Okay. I'm sorry.

A Why don't you ask your question again, so I'm clear about what I'm answering.

Q How about if just withdraw it, and we'll move on to something else. Irrespective of the differences of opinion as to what it says, will you agree with me that Intermedia signed that agreement --

A Yes.

Q -- by a representative authorized to sign it?

A Yes, I would agree with that.

Q Take a second. Ms. White, my handy assistant,

is going to pass out a copy of your responses to interrogatories that were propounded on you in this proceeding.

Mrs. Gold, when you get a copy of that, if you will turn to Page 6, your response to Interrogatory Number 8. I'm looking at the second sentence of your response. It says, "BellSouth simply presented the amendment to Intermedia for signature without comment."

Are you suggesting that multimillion dollar companies such as BellSouth and Intermedia, that BellSouth just through an amendment in the mail, you picked it up out of the mail and signed it, and it was as simple as that?

A My understanding of why this was asked for and how it was signed is pretty close to that.

Q So Intermedia, a sophisticated, what, $900 million company, picked an agreement up out of the mail that could possibly have ramifications to, at least under your theory, have ramifications to another multimillion dollar proceeding that was going on, did not ask one single solitary question, took that amendment, signed it and forgot about it?

A Mr. Edenfield, you've actually pointed directly to what I was going to say. The company never anticipated that this would have the reading that you all have given

it. They looked at the amendment; it gave them the MTA option. If they elected the MTA option, they would use the elemental rates.

Q So you're telling me that Intermedia took an amendment during the middle of a highly contested multimillion dollar reciprocal compensation lawsuit, took an agreement that said, "The parties agree to bill local traffic at the elemental rates specified in Attachment A," and in the next paragraph says, "This amendment will result in reciprocal compensation being paid between the parties," and that did not raise one single solitary red flag?

A As I've already testified this morning, Attachment A specifically says multiple tandem access is available under these rates.

Q And it was that clear to you even with the phrase, reciprocal compensation is going to be billed consistent with the rates in Attachment A, in the middle of a multimillion dollar lawsuit, you didn't ask a single question?

A That is my understanding of the situation at the time.

Q Of course, you weren't there to know whether there was a question asked or not; right?

A That is correct.

Q And the last thing I want to talk about is what you alluded to just a second ago, and I believe this is found on your rebuttal, Page 3, Line 20. It says, "Because of this, it was necessary to establish applicable," I can't speak anymore, "rates when this different type of access is elected by Intermedia."

Is there anything about MTA that requires it to have a different rate structure than elemental rates?

A I think I testified this morning that if Intermedia wanted or needed to use MTA, it would be able to avoid -- my understanding of the network architecture is, it would enable us to avoid the cost of building direct trunks. So there is a quid pro quo with that.

Q I'm sorry. I wasn't asking you about the benefits to Intermedia. What I'm asking you about, is there some reason that MTA cannot be billed at the same elemental rates as local traffic?

A That MTA --

Q In other words, did MTA rates have to be different than rates for local traffic, that would be elemental rates for local traffic?

A I presume not. I mean, it's what it's -- you mean the rates that we existed in our contract at that time?

Q No. What I'm asking you is: The rates that

appear in Attachment A --

A Right.

Q -- is there some particular reason why those rates cannot apply to both local traffic and to MTA traffic? Is there something inherent in MTA that presents that?

A Not that I'm aware of.

Q Okay. And I'm sorry, this is what I thought I was referencing a second ago. You mentioned something about the current agreement, and I believe I can find that in your rebuttal on Page 9, Line 8. And in the middle of that page, beginning at Line 8, you start talking about some proposal that has been made apparently by BellSouth. Can you tell me where you found that?

A Yes. This goes to what you just asked me to reference in Mr. Jackson's testimony, which I clarified for you, appears that this is an optional network arrangement that you are proposing for MTA today.

Q This was proposed during the course of the Intermedia-BellSouth arbitration? Is that what you're suggesting in Florida?

A I believe this is what Mr. Jackson was commenting on.

Q Okay. So he would have been commenting on proposed language. Since he was commenting in the context

of the Florida arbitration proceeding --

A Right.

Q -- it would have been commented on the position BellSouth has taken in that proceeding?

A Right. That would be my understanding.

MR. EDENFIELD: I'm sorry. Commissioner Deason, did I get the interrogatories identified?

COMMISSIONER DEASON: No.

MR. EDENFIELD: If I did not, I would like to.

COMMISSIONER DEASON: Exhibit 22.

MR. EDENFIELD: I'm sorry.

(Exhibit 22 marked for identification.)

BY MR. EDENFIELD:

Q What Ms. White is handing out, Mrs. Gold, is a copy of the local interconnection call transport and termination section of the proposed interconnection agreement attached to the petition for arbitration in the Intermedia proceeding, which presumably has both Intermedia's and BellSouth's positions stated.

MR. EDENFIELD: If I could have this marked for identification.

COMMISSIONER DEASON: 23.

(Exhibit 23 marked for identification.)

BY MR. EDENFIELD:

Q Show me where the quotes you have in your

testimony is in this attachment. And if it helps you, I will point you to Section 1.9 on Attachment 3, Page 5, which deals with multiple tandem access. And it may be that I just missed it, but if you would, show me in Attachment 3 where you got that language.

A I do not see the language in this attachment.

Q Okay.

A But it may be that this language was given to me as a prior --

Q You wouldn't have put something in your testimony, would you, that you didn't confirm personally?

A No. So I will have to find out -- I'll have to get an exact cite for that.

Q All right. While you have that document out, turn to 1.9.3.

A Okay.

Q Does the agreement reflect -- and since there's no shading on it, I assume this is an agreed provision. With MTA, compensation for the termination of Intermedia's local traffic will be billed on an elemental basis at the rates specified in Attachment A on a statewide basis. In it's going-forward arbitration, is Intermedia agreeing to elemental rates that are the same as the elemental rates for local traffic?

A Yes, we are in a going-forward basis.

Q And if you look at the rate sheet on the back, which should be the second to last page, are those the same rates with the exception of the .002 mistake that was reflected as .00175, are those the same rates that are found in the amendment dated June 3, 1998?

A Yes, they are, Mr. Edenfield, but those are rates that we have discussed on a prospective basis. Those were not the rates we negotiated in our interconnection agreement that is currently under renewal discussion.

MR. EDENFIELD: I have nothing else.

COMMISSIONER DEASON: Staff?

MS. STERN: We have no questions.

COMMISSIONER DEASON: Okay. Exhibits? I'm sorry. Redirect?

MR. EDENFIELD: I'm sorry. Was there redirect, or are we doing exhibits? I'm sorry.

COMMISSIONER DEASON: I'm sorry. There is going to be redirect.

MR. EDENFIELD: Oh, sorry.

MR. CANIS: Thank you, Your Honor, just briefly.

REDIRECT EXAMINATION

BY MR. CANIS:

Q Mrs. Gold, to address some confusion about the MTA under the MTA agreement and MTA that Intermedia

witness Carl Jackson has been discussing in the context of the arbitration proceedings, can you briefly put those two proceedings in context with this Commission, and let them know Intermedia's position on the two?

A Briefly, my understanding -- well, first, the MTA that we signed in 1998, as I have stated several times today, was in response to a crisis situation where we felt we had to do something quickly to accommodate our customers.

Going forward, we have the luxury of, you know, looking at alternative routing arrangements and deciding what is the best option for Intermedia. My understanding just from reading this section that Mr. Jackson's concern about the MTA that's proposed going forward is that it will not help reduce necessarily our trunking costs.

Q So is the MTA in the -- well, the MTA that Carl Jackson discussed, was it in the BellSouth model interconnection agreement?

A The one that's been proposed for this round of negotiations?

Q In the current arbitrations, yes.

A I believe so.

Q So was this entirely a BellSouth initiative in this current round of arbitrations or was --

A Yes, to the best of my knowledge. Again, we

have not requested MTA.

Q Okay. Do we see -- is there some language in the way MTA is defined by BellSouth in its current arbitrations that differs from the language governing MTA in the amendment, and was that a source of some concern to Intermedia in the pending arbitration proceeding?

A My understanding is that it did not give -- oh, boy, you're really pushing my memory here. I really -- I don't feel confident commenting.

Q But is it safe -- is it your testimony -- well, I won't ask that. Thank you.

Has Intermedia in its current negotiations and now arbitrations over a new revised interconnection agreement with Bell Atlantic -- with BellSouth, has Intermedia requested MTA in that new amendment?

A Have we requested that MTA be part of the new amendment?

Q Uh-huh.

A Not to the best of my knowledge.

Q And is it your belief then that MTA is entirely a BellSouth initiative that was included in their new arbitrations as their initiative that they want to impose upon CLECs?

MR. EDENFIELD: Objection. He's leading his witness.

MR. CANIS: Let me just ask the first part of that question there.

BY MR. CANIS:

Q Is it your understanding that the MTA is entirely a BellSouth initiative?

A Yes.

COMMISSIONER DEASON: I believe that's a leading question, but I will let to stand, but be mindful. The hour is late.

MR. CANIS: I have no further questions. Thank you.

COMMISSIONER DEASON: Very good. Exhibits?

MR. EDENFIELD: BellSouth would move into evidence the exhibits marked for identification as 21, 22, and 23.

COMMISSIONER DEASON: Without objection, and hearing none. Show that Exhibits 21, 22, and 23 are admitted.

(Exhibits 21, 22, 23 admitted into evidence.)

COMMISSIONER DEASON: Mrs. Gold, you may be excused.

THE WITNESS: Thank you.

(Witness excused.)

COMMISSIONER DEASON: And Mr. Thomas is not coming back for any type of rebuttal or surrebuttal

testimony; therefore, BellSouth you may call your first rebuttal witness.

MR. EDENFIELD: BellSouth calls Jerry Hendrix.

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JERRY HENDRIX

was called as a rebuttal witness on behalf of BellSouth Telecommunications, Inc. and, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. EDENFIELD:

Q Will you confirm that you were previously sworn, Mr. Hendrix?

A Yes, I was.

Q Are you the same Jerry Hendrix that gave direct testimony earlier today?

A Yes, I am.

Q Did you cause to be filed in this proceeding seven pages of rebuttal testimony with no exhibits?

A Yes, I did.

Q Do you have any changes, corrections, or deletions to that testimony?

A No, I do not.

Q If asked the questions today, would your answers be the same?

A Yes.

MR. EDENFIELD: At this point, I ask that the rebuttal testimony of Jerry Hendrix be admitted into the record as if read.

COMMISSIONER DEASON: Without objection, it shall be so inserted.

MR. EDENFIELD: There are no exhibits.

BELLSOUTH TELECOMMUNICATIONS, INC.

REBUTTAL TESTIMONY OF JERRY HENDRIX

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 991534-TP

APRIL 21, 2000

Q. PLEASE STATE YOUR NAME AND COMPANY NAME AND ADDRESS.

A. My name is Jerry Hendrix. I am employed by BellSouth Telecommunications, Inc. as Senior Director – Customer Markets Wholesale Pricing Operations. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. ARE YOU THE SAME JERRY HENDRIX WHO FILED DIRECT TESTIMONY IN THIS PROCEEDING?

A. Yes.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to rebut several assertions in the testimony of Intermedia's witness Heather Gold.

Q. DO YOU AGREE WITH MS. GOLD'S ASSERTIONS, ON PAGES 3 AND 4, THAT PARAGRAPHS 3 AND 4 OF THE JUNE 3, 1998, AMENDMENT ("THE AMENDMENT") PROVIDE THAT "WHEN MTA IS ELECTED

AND PROVISIONED THAT THE ELEMENTAL RATES IN ATTACHMENT A WILL BE USED TO BILL LOCAL TRAFFIC" AND "WHEN MTA IS ELECTED AND PROVISIONED, LOCAL TRAFFIC COMPENSATION WILL BE RECIPROCAL BASED ON ATTACHMENT A?"

A. Absolutely not. Paragraphs 3 and 4 do not address MTA at all. Paragraphs 3 and 4 of the Amendment address separate issues and simply state:

3. The parties agree to bill Local traffic at the element rates specified in Attachment A.
4. The amendment will result in reciprocal compensation being paid between the Parties based on the elemental rates specified in Attachment A.

Ms. Gold seems to be making the assumption that an amendment cannot address multiple issues. This is simply not true. In fact, it is common practice for BellSouth and ALECs to execute amendments that cover multiple issues. Just as an example, BellSouth executed an amendment with ACCESS Integrated Networks, Inc on October 4, 1999. This particular amendment did two things. First, it incorporated Trunk Termination with E&M Signaling. Second, it incorporated a new provision for resale. This amendment was filed with the Florida Commission for approval.

Q. DO YOU AGREE WITH MS. GOLD'S ASSERTION, ON PAGE 4, THAT PARAGRAPH 5 OF THE AMENDMENT PROVIDED THAT "THE

PROVISIONS CONTROLLING LOCAL TRAFFIC COMPENSATION ABSENT THE ELECTION AND PROVISIONING OF MTA" REMAINED IN FULL FORCE AND EFFECT?

A. Absolutely not. Paragraph 5 states that "all of the other provisions of the Interconnection Agreement" remain in full force and effect. The use of the word "other" makes clear that all provisions not addressed in this Amendment remain in effect. Since local traffic compensation was explicitly addressed in this Amendment, the provisions in the original Agreement dealing with compensation for local traffic did not "remain in full force and effect" under Paragraph 5.

Q. PLEASE COMMENT ON MS. GOLD'S TESTIMONY ON PAGE 5 ABOUT THE IMPACT OF THE AT&T ORDER.

A. BellSouth agrees that the ruling in Order No. PSC-96-1579-FOF-TP ("AT&T Order") is not generic. However, the AT&T Order did include rates for many elements, which the Commission established as being cost-based under the Telecommunications Act of 1996. These rates were then incorporated into interconnection agreements between BellSouth and other carriers as the appropriate cost-based rates for use in Florida, and these rates were incorporated into BellSouth's standard interconnection agreement that is sent to carriers requesting to negotiate an interconnection agreement. In fact, BellSouth and Intermedia executed an amendment on February 24, 1997 that incorporates some rates from the AT&T Order into the existing Intermedia

agreement. For example, the recurring and nonrecurring rates for a 2-wire ISDN loop and DS1 dedicated transport in that February 24, 1997 amendment are rates that were established in the 1996 AT&T Order. Thus, Ms. Gold's claim on page 6 of her direct testimony that it would make no sense "to import local switching and transport rates, but only those rates, from the AT&T Order to the Intermedia and BellSouth agreement" ignores that other rates were imported from the AT&T Order as well.

Q. DO YOU AGREE WITH MS. GOLD'S TESTIMONY ON PAGE 6 THAT BELLSOUTH "IS ATTEMPTING DAMAGE CONTROL" BY ARGUING FOR LOWER RECIPROCAL COMPENSATION RATES"?

A. No. Ms. Gold's claim that BellSouth is "attempting damage control" on the issue of reciprocal compensation for ISP traffic by proposing lower reciprocal compensation rates is absurd. What BellSouth is attempting to do is to get Intermedia to live up to its agreement to bill reciprocal compensation at the rates set forth in the June 3, 1998 Amendment. As I have stated before, BellSouth's purpose in executing the June 3, 1998 Amendment was simply to incorporate cost-based rates for reciprocal compensation into the Intermedia agreement. Ms. Gold's "damage control" theory conveniently ignores that BellSouth has been billing Intermedia the reciprocal compensation rates set forth in the June 3, 1998 Amendment since it was executed. There was not even an order in Florida finding that BellSouth must pay reciprocal compensation for ISP bound traffic as of June 1998.

Q. DO YOU AGREE WITH MS. GOLD'S TESTIMONY ON PAGE 7 THAT IT WAS "IMPERATIVE TO HAVE INCLUDED SPECIFIC LANGUAGE IN THE AMENDMENT EXPRESSING AN INTENT TO IMPORT THE RULINGS OF THE SEVERAL STATE COMMISSIONS"?

A. No. First, I find it interesting that Ms. Gold speaks so assertively about Intermedia's "purpose" in executing the Amendment since, as I understand it, Ms. Gold was not even employed by Intermedia at the time this Amendment was negotiated and signed. I was directly involved in and signed this Amendment for BellSouth. As I stated in my direct testimony, the purpose of the June 3, 1998, Amendment was provide Intermedia with Multiple Tandem Access ("MTA") interconnection and to incorporate cost-based reciprocal compensation rates that the parties agreed to charge and to pay for the transport and termination of local traffic.

Second, there was no need to include "specific language in the amendment expressing an intent to import the rulings of the several state commissions" since such intent was evident from the reciprocal compensation rates to which Intermedia and BellSouth agreed in the June 3, 1998 Amendment. These rates were the reciprocal compensation rates approved by the Public Service Commissions in Florida, Georgia, Kentucky, Louisiana, and Mississippi. These rates were established in Order No. PSC-96-1579-FOF-TP in Florida; Order in Docket No. 7061-U in Georgia; Order in Cases 96-431 and 96-482 in Kentucky; Order No. U-22022/22093-A in Louisiana; and Order in Docket No. 96-AD-0559 in Mississippi.

The rates used in the June 3, 1998 Amendment for the states which had not yet established rates (Alabama, North Carolina, and Tennessee) were the interim elemental rates proposed by BellSouth. Additionally, the interim rates for South Carolina that were used as the final rates were not in effect at the time the amendment was prepared (the rates were effective as of June 1, 1998).

Third, under Ms. Gold's view, the rates set forth in the June 3, 1998 Amendment only apply when Intermedia avails itself of MTA. However, in none of the State Commission Orders from which at least some of those rates were "imported" is there any indication that these commission-approved rates applied to MTA. Rather, these rates were established for reciprocal compensation for local interconnection.

Q. PLEASE COMMENT ON MS. GOLD'S STATEMENT ON PAGE 8 ABOUT PARAGRAPHS 3 AND 4 OF THE AMENDMENT.

A. Ms. Gold admits, on lines 2– 4 of page 8:

> It is true, I suppose, that if those paragraphs were interpreted in isolation, they arguably would support BellSouth's view that the amendment requires the Attachment A rates to be applied region-wide upon execution, without any other linkage.

This is exactly BellSouth's point. The paragraphs are to be interpreted in isolation due to the fact that they are separately number paragraphs of the Amendment that were intended to accomplish a specific purpose – namely the establishment of cost-based reciprocal compensation rates.

Q. MS. GOLD STATES ON PAGE 8, LINE 17, THAT THE JUNE 3, 1998 AMENDMENT IS "NOT OPERATIVE" CURRENTLY BECAUSE INTERMEDIA HAS NOT REQUESTED THAT BELLSOUTH DEPLOY MTA IN FLORIDA. DO YOU AGREE?

A. No. The Amendment is effective once it is signed by both parties. This Amendment was signed by both parties, and thus, effective, on June 3, 1998. The fact that Intermedia has not ordered MTA in Florida does not in any way negate the rates set forth in the Amendment for reciprocal compensation.

Q. WHAT DO YOU BELIEVE THIS COMMISSION SHOULD DO?

A. Consistent with the clear language in the June 3, 1998, Amendment, the Florida Public Service Commission should deny Intermedia's request for relief. The Commission should further confirm that the reciprocal compensation rates set forth in the Amendment dated June 3, 1998 are the effective rates that should be billed and paid by the parties for traffic exchanged after that Amendment became effective.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes. Thank you.

BY MR. EDENFIELD:

Q Did you prepare an additional summary of your testimony?

A No, I did not. I will allow the summary I gave earlier to stand.

MR. EDENFIELD: With that, we tender Mr. Hendrix for cross-examination.

COMMISSIONER DEASON: Intermedia?

MR. CANIS: No cross, Your Honor.

COMMISSIONER DEASON: Okay. Staff?

MS. STERN: No questions.

COMMISSIONER DEASON: And no redirect?

MR. CANIS: No, sir.

COMMISSIONER DEASON: Thank you, Mr. Hendrix.

(Witness excused.)

COMMISSIONER DEASON: BellSouth, you may call your last witness.

MR. EDENFIELD: We call Keith Milner.

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W. KEITH MILNER

was called as a rebuttal witness on behalf of BellSouth Telecommunications, Inc. and, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. EDENFIELD:

Q Mr. Milner, will you confirm that you have previously been sworn in this proceeding?

A Yes, I have been.

Q State your name and position with BellSouth, please.

A My name is W. Keith Milner, and my position at BellSouth Telecommunications, Incorporated is senior director-interconnection services.

Q Did you cause to be filed in this proceeding nine pages of rebuttal testimony with no exhibits?

A Yes, sir.

Q Do you have any changes, deletions, or corrections to that testimony?

A No, sir.

Q If asked the same questions today, would your answers be the same?

A Yes, they would.

MR. EDENFIELD: At this point I ask that the rebuttal testimony of Keith Milner be admitted into the record as if read.

COMMISSIONER DEASON: Without objection, it shall be so inserted.

MR. EDENFIELD: There are no exhibits.

BELLSOUTH TELECOMMUNICATIONS, INC.

REBUTTAL TESTIMONY OF W. KEITH MILNER

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 991534-TP

APRIL 21, 2000

Q. PLEASE STATE YOUR NAME, YOUR BUSINESS ADDRESS AND YOUR POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC. ("BELLSOUTH").

A. My name is W. Keith Milner. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375. I am Senior Director - Interconnection Services for BellSouth. I have served in my present role since February 1996, and have been involved with the management of certain issues related to local interconnection, resale, and unbundling.

Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.

A. My business career spans over 29 years and includes responsibilities in the areas of network planning, engineering, training, administration, and operations. I have held positions of responsibility with a local exchange telephone company, a long distance company, and a research and development company. I have extensive experience in all phases of telecommunications network planning, deployment, and operations (including research and development) in both the domestic and

international arenas.

I graduated from Fayetteville Technical Institute in Fayetteville, North Carolina, in 1970, with an Associate of Applied Science in Business Administration degree. I later graduated from Georgia State University in 1992 with a Master of Business Administration degree.

Q. HAVE YOU TESTIFIED PREVIOUSLY BEFORE ANY STATE PUBLIC SERVICE COMMISSION, AND IF SO, BRIEFLY DESCRIBE THE SUBJECT OF YOUR TESTIMONY?

A. I have previously testified before the state public service commissions in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, and South Carolina, the Tennessee Regulatory Authority, and the Utilities Commission in North Carolina on the issues of technical capabilities of the switching and facilities network regarding the introduction of new service offerings, expanded calling areas, unbundling, and network interconnection.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY BEING FILED TODAY?

A. In my testimony, I will address the technical aspects of certain network-related issues raised in the complaint filed against BellSouth by Intermedia Communications, Inc. ("Intermedia"). Specifically, I will rebut a number of

network-related issues addressed in the direct testimony of Intermedia witness Edward L. Thomas.

Q. THROUGH OUT MR. THOMAS'S TESTIMONY, HE REFERS TO MULTIPLE TANDEM ACCESS ("MTA"). PLEASE PROVIDE A DESCRIPTION OF MTA?

A. BellSouth Multiple Tandem Access ("MTA") is one form of interconnection available to Intermedia. The MTA option provides for LATA wide transport and termination of a facility based Alternative Local Exchange Carrier's ("ALEC's") originated IntraLATA toll traffic and local traffic. Such traffic is transported by BellSouth on behalf of the ALEC. The ALEC establishes a Point of Interconnection ("POI") at a single BellSouth access tandem with BellSouth providing additional transport and routing through other BellSouth access tandems in that same LATA as required. The facility-based ALEC must establish Points of Interconnection at each BellSouth access tandem where the facility-based ALEC's NXX'S are "homed". If the facility-based ALEC does not have NXX'S homed at a given BellSouth access tandem within a LATA and elects not to establish Points of Interconnection at such a BellSouth access tandem, the facility-based ALEC can instead order MTA in each BellSouth access tandem within the LATA where the ALEC does have a Point of Interconnection and BellSouth shall terminate traffic to end-users served through those BellSouth access tandems where the facility-based ALEC does not have a Point of Interconnection.

MTA does not provide for handling switched access traffic that transits the BellSouth network to an Interexchange Carrier ("IXC"). Switched access traffic shall be delivered to and from IXCs based on the facility-based ALEC's NPA/NXX code access tandem homing arrangement as specified by the facility-based ALEC in the national Local Exchange Routing Guide ("LERG"). For facility-based ALEC 's originated local traffic and intraLATA toll traffic that BellSouth transports but is destined for termination by a third party network (transit traffic), MTA is available if the use of multiple BellSouth access tandems is necessary to deliver the call to the third party network.

Q. BEGINNING AT THE BOTTOM OF PAGE 3 OF HIS TESTIMONY, MR. THOMAS IMPLIES THAT "THERE IS NO IMMEDIATE RECOURSE" IF INTERMEDIA ENCOUNTERS TRAFFIC BLOCKAGE. PLEASE RESPOND.

A. I disagree. The prevention or minimization of traffic blockages to acceptable levels is a mutual responsibility of both BellSouth and any ALEC who wishes to interconnect with BellSouth. Both parties bear a responsibility to accurately forecast traffic and then to engineer and install appropriate quantities of interconnection trunks. The parties are also free to implement measures such as alternate routing to minimize any adverse effects of trunk blockages.

Q. WHAT IS BELLSOUTH'S PERFORMANCE IN PROVIDING INTERCONNECTION TRUNKING AT ACCEPTABLE LEVELS?

A. For the months of January and February 2000 in Florida, ALECs had only 1.7% of their terminating interconnection trunk groups exceeding the 3% blocking standard. By comparison, 1.9% and 1.6% of BellSouth's terminating interoffice trunk groups experienced blocking above 3%. Clearly, BellSouth is treating ALECs' traffic at least as effectively as it treats its own traffic.

Q. ON PAGE 4 OF HIS TESTIMONY, MR. THOMAS STATES "..CALLS TRANSPORTED OVER MTA ARCHITECTURES ARE SWITCHED MANY MORE TIMES THAN IF THEY WERE TO BE TRANSPORTED OVER DIRECT TRUNKS TO THE CALLED PARTY'S END OFFICE." IS HE CORRECT?

A. No. With MTA, when an ALEC sends a call to a BellSouth Access Tandem that is destined for an end user customer served by an office subtending another BellSouth Access Tandem, only one additional switching function is required. That, obviously, is not "many more times". In many cases, however, BellSouth access tandems have trunk groups to all BellSouth end offices within the local calling area. In those cases there would be no more switching functions than if the ALEC interconnected to the BellSouth access tandem that the BellSouth end office homes on. If a call is destined for termination to a third party network (that is, transit

traffic), MTA is required if multiple BellSouth access tandems are used to deliver the call to the third party's network. Here again, this adds only one additional switching function, hardly "many more times" as Mr. Thomas suggests.

Q. FURTHER ON PAGE 4 OF HIS TESTIMONY, MR. THOMAS DISCUSSES "ALTERNATE ROUTING" AND THEN STATES: "THAT [THAT IS, MTA] IS NOT A REQUIREMENT WHERE THE ILEC DEPLOYS 'ALTERNATE ROUTING' TO RELIEVE CONGESTION OF TRAFFIC ORIGINATING ON ITS NETWORK THAT IS DESTINED TO THE INTERCONNECTING CARRIER'S END USERS OR TRAFFIC ORIGINATING ON THE INTERCONNECTING CARRIER'S NETWORK THAT HAS BEEN SUCCESSFULLY TRUNKED TO THE ILEC'S TANDEM SWITCH." DO YOU AGREE?

A. No. The MTA service offering was not designed to relieve congestion, or as a means of providing alternate routing for traffic originated by BellSouth's end user customers. While the ALEC can use MTA as a means to alternate route its originated traffic, provided the ALEC has trunk groups to other access tandems or end offices within the LATA, this is not the purpose for which MTA was designed. Instead, MTA allows an ALEC to minimize the points of interconnection between the ALEC's network and BellSouth's network.

Q. ON PAGE 5 OF HIS TESTIMONY, MR. THOMAS STATES "BELLSOUTH, APPARENTLY SEEKING TO MINIMIZE DISRUPTIONS TO ITS NETWORK, REQUIRED THAT A TRANSIT TRUNK NOT BE PROVISIONED TO THE COLONIAL TANDEM SWITCH." IS HE CORRECT?

A. No. At the time Intermedia deployed its switch in January 1997, there was no need for Intermedia to order a transit group to BellSouth's Colonial tandem switch. The trunk group was not necessary because at the time of Intermedia's switch deployment, Intermedia had no NPA-NXX codes homing on the Colonial tandem nor were there any other interconnecting carriers (that is, ALECs or independent telephone companies) accessed via BellSouth's Colonial tandem.

Q. ON PAGE 6 OF HIS TESTIMONY, MR. THOMAS STATES "...BELLSOUTH REQUIRED THAT INTERMEDIA NOT INTERCONNECT WITH THE SAN MARCOS [SIC] TANDEM SWITCH BY MEANS OF A TRANSIT TRUNK.." PLEASE RESPOND.

A. Here again, at the time of Intermedia's switch deployment in Jacksonville, Intermedia did not have any NPA-NXX's codes homing on BellSouth's San Marco tandem nor were there any other interconnecting carriers (that is ALECs or independent telephone companies) accessed via the San Marco tandem.

Q. ON PAGE 5 AND AGAIN ON PAGE 6 MR. THOMAS INDICATED THAT THE TRUNKING ARRANGEMENTS IN BOTH JACKSONVILLE AND ORLANDO HAD "MTA CHARACTERISTICS". IS HE CORRECT?

A. No. Mr. Thomas states first on page 5 and then again on page 6 that Intermedia had connected to both the BellSouth Colonial and San Marco tandems by means of one-way trunk groups. At the time of Intermedia's switch deployments, this would have been all that was needed for Intermedia to terminate calls to the BellSouth end offices accessed via those tandems. While this is no longer the case, it is Intermedia's responsibility (as well as that of all other facilities-based local service providers) to revisit trunking requirements as new NPA-NXX's codes are assigned in the Local Exchange Routing Guide ("LERG").

Q. ON PAGE 7 OF HIS TESTIMONY, MR. THOMAS STATES THAT BELLSOUTH APPARENTLY DETERMINED THAT MTA WAS REQUIRED BECAUSE OF ACUTE CONGESTION PROBLEMS. IS HE CORRECT?

A. No. An ALEC would request MTAs in order to simplify that ALEC's (but not BellSouth's) network topology. Such an election is not influenced by the level of call blocking being experienced, if any.

Q. ON PAGE 8 OF HIS TESTIMONY, MR. THOMAS STATES THAT "BELLSOUTH IMPOSED A NETWORK TOPOLOGY REQUIREMENT.." DO YOU AGREE?

A. No. BellSouth imposes no such network topology on ALECs. ALECs are free to design their own network topology to meet the needs of their own business plans. BellSouth offers ALECs a number of different interconnection topologies including, but not limited to, MTA.

Q. FURTHER ON PAGE 8, MR. THOMAS STATES "..IN MIAMI, THERE IS NOT EVEN A SUGGESTION THAT MTA IS DEPLOYED." PLEASE RESPOND.

A. Intermedia has chosen to interconnect at each BellSouth Access Tandem within the LATA with transit trunk groups. Therefore, there has been no need for Intermedia to establish MTA connectivity in Miami. However, I am aware that several other ALECs have established MTA trunking arrangements in Miami.

Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

A. Yes.

BY MR. EDENFIELD:

Q Did you prepare a summary of your testimony?

A I did.

Q Would you please give that summary.

A Yes. Thank you. And good afternoon, Commissioners. I filed rebuttal testimony in this proceeding to the testimony of Intermedia's witness Mr. Thomas regarding the technical capabilities of BellSouth's multiple tandem access or MTA offering.

This offering, as we've talked about at length today, provides for LATA-wide transport and termination of a facility-based ALEC such as Intermedia's originated local traffic and intraLATA toll traffic. That traffic is then transported by BellSouth on behalf of the ALEC. The MTA service was not designed to relieve network congestion, nor was MTA a means of providing alternate routing for traffic originated by BellSouth's customers.

What MTA does do is to allow an ALEC to minimize the points of interconnection between its network and BellSouth's network. In his testimony, Mr. Thomas discusses the topic of trunk blockage and implies that there is no immediate recourse to Intermedia, for example, if it encounters trunk blockage. I disagree with that statement. The prevention or minimization of traffic blockages or congestion to acceptable levels is a

responsibility of both BellSouth and Intermedia on behalf of its customers.

Further in this regard, BellSouth is treating ALECs at least as well as it treats itself. For the months of January and February of this year in Florida, ALECs had only 1.7 percent of their terminating interconnection trunk groups exceeding a 3 percent blockage standard. By comparison, for that same period, 1.9 percent in January and 1.6 of BellSouth's terminating interoffice trunk groups experienced blockage above that same level of 3 percent. So clearly, I believe this data shows that BellSouth is treating ALECs' traffic at least as effectively as it treats its own.

Next, Mr. Thomas states, quote, calls transported over MTA architectures are switched many more times than if they were to be transported over direct trunks to the called party's end office, end of quote. I believe he is mistaken, and let me explain why.

ALECs create program instructions for their switches called translations, and those translations instruct the switch based on the number, the digits dialed, and the class of service assigned to a given customer; for example, how the switch is to route a given call. The switch then determines the right trunk group to send that call over, or in some cases, sends that call to

an announcement such as, your call cannot be completed as dialed.

With MTA, when the ALEC translates its switch to send those calls to an end user served by an office subtending a different BellSouth access tandem than the one the Intermedia switch is assigned to, then only one additional switching function is performed; that is, there is a switching function in the first access tandem, and then there's one additional switching function at the second. So I don't agree with his statement that one is many more.

In the other case, if the caller's destination for termination to a third-party network such as an independent company or another ALEC, what we sometimes refer to as transit traffic, MTA can be used if multiple BellSouth access tandems are used to deliver that call. Here again, this adds only one additional switching function, hardly the many more times that Mr. Thomas suggests.

Next, Mr. Thomas states his belief that, quote, BellSouth imposed a network topology requirement, end of quote, upon Intermedia. I do not agree with that statement. BellSouth does not impose network topology decisions on ALECs. Instead, BellSouth provides various alternatives for how traffic can be switched and how

networks can be interconnected. ALECs are free to design their own network topology to meet the needs of their own business plans. And BellSouth offers ALECs a number of different interconnection topologies included but not limited to MTA.

And then finally, Mr. Thomas states, and again I quote, in Miami there is not even a suggestion that MTA is deployed, end of quote. Here again, he is mistaken. Now, I agree that Intermedia has chosen to interconnect its switches at all BellSouth access tandems in the Miami LATA, and therefore, Intermedia has no need for MTA connectivity in Miami. However, I'm aware that several other ALECs have established MTA trunking arrangements in the Miami LATA and are using that option today.

My analysis of information housed in BellSouth's network information warehouse indicates to me that Intermedia is, however, making use of the MTA option in the Atlanta LATA. Thank you, Commissioners. That concludes my summary.

MR. EDENFIELD: We tender Mr. Milner for cross-examination.

COMMISSIONER DEASON: Intermedia?

CROSS EXAMINATION

BY MR. CANIS:

Q Hi, Mr. Milner. I'm John Canis for Intermedia.

A Good afternoon, sir.

Q Can you define MTA for me?

A Yes. I provide a fairly extensive description of that in my testimony, but let me say simply that what MTA is meant to do is to simplify an ALEC's network topology so that in cases where there is more than one access tandem in a given LATA, the ALEC such as Intermedia can choose to interconnect at only one of those or some number less than all of them. And then BellSouth transports that traffic through whatever tandems are necessary to complete the call to the intended destination.

Q Is there a difference between trunking requirements to access tandems and local tandems?

A Are there -- I'm sorry. I'm not sure if I know what you mean by requirements. There are different tandems. There are tandems that -- there are switches, let me say it this way, that serve as both access tandems and as local tandems. And by that I mean that there are switches that provide access to interexchange carriers, interLATA carriers, and also other end offices. And I call those access tandems.

There is also a category of switches that are only local tandems; that is, they only switch local traffic and are not used to transport traffic to an

interexchange carrier. So that's the distinction I draw.

Now, there are some technical differences based generally on the transmission requirements of the trunks that will be used, but, you know, substantially there's no difference in the trunking requirements.

Q Now, when we talk about MTA as eliminating the requirement for an ALEC to trunk out to offices, I believe you initially testified that it relieved the ALEC of the obligation to trunk out to all access tandems in a given area; is that true?

A Yes, that's correct.

Q Okay. So if I have a scenario where -- a hypothetical. I have a LATA. I'm an ALEC. I'm providing service throughout the entire LATA. There are five access tandems and two local tandems. I am direct trunked to all the access tandems, but not to the two local tandems. Am I implementing MTA, or am I not?

A You are. And you are because of the reason that all of the end offices in the LATA home on some access tandem to get access to interexchange carriers. So there's not a need for you to also establish interconnection with each and every local tandem if there are such in a given LATA so long as you have interconnected at each and every one of the access tandems in that LATA.

Q So am I reading your answer to state that if I don't want to implement MTA, I have to be trunked to all access tandems and all local tandems?

A No, sir. You have to be trunked to all the access tandems.

Q But I do not have to direct trunk to all the local tandems?

A That's correct.

Q There was a discussion earlier on that -- about -- is MTA relevant only on a LATA basis? Do you look at whether an ALEC provides service throughout the LATA, or do you just look at where an ALEC is trunked within the area it serves within the LATA?

A I'm sorry?

Q First off, am I -- are you generally familiar with that -- that we had that kind of discussion earlier today?

A Yes, I heard that. And I believe that the notion for multiple tandem access is to give an ALEC access to all the access tandems in the given LATA, not only in the local calling area within which the ALEC may be doing business. And the reason for that is that the ALEC's customer, let's say Intermedia's customers, are free to call any other end user customer in the LATA, whether it is Intermedia's customer or BellSouth's or

another ALEC's. And those customers are scattered throughout the end offices that are served by all of the access tandems in the LATA.

So, for example, if Intermedia -- well, let me state this that if there are two access tandems in a given LATA, one serves the northern half of the LATA and the other access tandem serves the southern half of the LATA, then Intermedia's choices are either to direct a trunk to both of those such that any Intermedia customer can reach any other customer in that LATA, or Intermedia can come to BellSouth and say, I'd like to use your MTA option. I'll interconnect only at one access tandem, but for my intraLATA toll traffic, you figure out how to get it to that other access tandem or any other access tandem within that LATA that I'm not directly connected such that my Intermedia's end user customer can reach any other customer in the LATA.

So in answer to your question, you either have to connect to each and every one of the access tandems directly, or you can come to BellSouth and say, I will take your MTA option and let you get me to that other access tandem or to all the access tandems for completion of those calls. So it's not only the calling -- the local calling within a given local calling area, but we also have to consider the intraLATA toll traffic that's been

transferred.

Q Now, I was asking Mr. Hendrix earlier and he ultimately referred me to you on this issue, but a situation where an ALEC was in a LATA but its service area was only in the southern half of the LATA and not the northern half of the LATA, and it was direct trunked to all of the tandems, all of the access tandems in the southern half of the LATA but not the northern half of the LATA, and I think what I heard from Mr. Hendrix was, if I had a customer down in my service area in the southern part of the LATA and they wanted to call somebody served at that the tandem by BellSouth in the northern part of the LATA, if they made that call, basically they would get a, I don't know, busy/no answer, or you can't complete your call as dialed, or something like that announcement. Is that the case?

A That's what I would expect to see, and that could happen in one or two or three places.

Q Okay.

A Let's say that Intermedia is in the south, the southern part of the LATA, and that's where it serves end user customers, and one of its customers, I happen to live in the northern half of the LATA and an Intermedia customer calls me. If Intermedia has no connectivity to the access tandem that my end office switch is served by,

then Intermedia has no way to get that call from its switch in the south to my switch in the north unless it's also connected to the access tandem in the north, which we said in this case it is not.

So Intermedia can do one or two or three things. It can say to its own customer, you can only call customers in the southern half of the LATA. I don't think that would be a very popular decision by Intermedia on behalf of its customers who could not reach other customers within that same LATA. So Intermedia could block that call within its own switch; that is, it knows what NPA/NXX codes are served by the access tandem in the south, and it can block any traffic that it doesn't want handled.

Now, instead of getting a reorder signal, as Mr. Hendrix suggested, I think more likely that call would be routed to an announcement that said, your call cannot be completed as dialed. If on the other hand, Intermedia sends that call anyway to the BellSouth access tandem in the south and Intermedia has no MTA arrangement with BellSouth, then BellSouth has no obligation to get that call from the southern access tandem to the northern access tandem, and likely BellSouth would apply that same announcement. It would not transport that call for free, you know, within the LATA except the MTA arrangement.

So if Intermedia sent that call to BellSouth's southern access tandem and BellSouth had no obligation; that is, Intermedia had not ordered and been provided MTA, then BellSouth would likely send that call to that same sort of announcement, your call cannot be completed as dialed.

Q Well --

COMMISSIONER DEASON: Excuse me just a second. Has that happened -- did that happen before this agreement was signed, this amendment?

THE WITNESS: Yes. In that case if, for example, Intermedia chose not to or any ALEC chose not to interconnect at all the access tandems in a given LATA, then BellSouth, if it received those calls, nonetheless would send those calls to an intercept message.

BY MR. CANIS:

Q In fact, Mr. Milner, isn't that what happened with Intermedia out of the Buckhead and Norcross tandems?

A Is what not the issue?

Q Isn't it true that Intermedia was direct trunked to Buckhead but was not direct trunked to Norcross, that BellSouth had been completing traffic to end user customers served out of the Norcross tandem, but at some point determined that it was not going to do that anymore, referred all of those calls transiting the Buckhead tandem

inbound for Norcross to an announcement service saying, your call cannot be completed as dialed? Isn't that what happened in Buckhead and Norcross in 1986?

A I don't know for sure since I was not directly involved in that. That's certainly possible, but let me dispel a myth about this conspiracy --

COMMISSIONER CLARK: Just a minute, Mr. Milner.

THE WITNESS: Yes, ma'am.

COMMISSIONER CLARK: What was the date you gave on that happening? You said 1986.

MR. CANIS: Sorry. 1996.

COMMISSIONER CLARK: Okay.

MR. CANIS: Thank you.

A So, yes, that is possible. I was not directly involved in that. But in essence, here's what happened. BellSouth created a new access tandem in northeast Atlanta called Norcross. Intermedia's obligation is to interconnect at each access tandem in the LATA or negotiate with BellSouth for multiple tandem access. BellSouth is not obligated to carry that traffic for free. Now, how and if Intermedia's traffic was sent to intercept, I have no direct knowledge of.

Q Do you know when BellSouth first introduced MTA as, I don't know what you want to call it, a service, an option, an interconnection, a form of interconnection? Do

you know when that was first introduced?

A Not with any specificity. No, I can't recall exactly.

Q And if you don't know, do you know within a ballpark, within five years? Like, for instance, was it before 1996 or after 1996?

A It was after 1996. I'm going to guess, late 1997 is when we started envisioning a need by ALECs for something like MTA.

Q Now, prior to the time that BellSouth established MTA as an option, did BellSouth route traffic for ALECs to tandems in which to which the ALEC was not directly trunked?

A No. We had translations, that I referred to earlier, that are the instructions to the switch that tell the switch how to dispose of a call, what trunk group to send it to, or whether to send it to an announcement. And we used what we call screening translations, and those translations say, if you get this combination of digits, here's what you do with it.

If you get some other combination of digits that are not named in this table and the combination of digits is the NPA/NXX, then send those calls that are not specifically routed; that is, that you don't have instructions for, send those to intercept.

Q Did you testify a little bit earlier that you did not have any direct knowledge of Intermedia's experience in routing traffic between the Buckhead and Norcross tandems in Georgia in 1996?

A That's right. But let me point this out, that what I've heard today thrown about is some conspiracy theory that suggests that BellSouth sought to bring Intermedia to the bargaining table by threatening to block its traffic. I've been in network operations and design for over 30 years now, and let me dispel that myth by pointing out the number of people that would have to be involved in sustaining that conspiracy.

It would have to be the negotiator that was dealing with Intermedia. The negotiator's boss, because I don't think anybody would undertake such a conspiracy singlehandedly. The translations engineers that work for BellSouth that would have to change translations to block those calls and not route them forward. We have people that keep an inventory of the facilities that we use, and suddenly facilities would not be used, so that person would have to be in on the conspiracy. We have entire groups of people that surveil the performance of our network and monitor blockage. They would have to be in on the conspiracy and know not to take some action in response to that blockage.

Our network planners who also respond to encountered blockage would have to be in on the scheme to intentionally route Intermedia's traffic to blockage and not do anything to relieve that situation. If Intermedia filed a complaint, then I and a number of other people would likewise of necessity be in on that conspiracy I think is just ludicrous to suggest; (A), that BellSouth would even entertain such an idea as a bargaining strategy, but from a network operations' standpoint, the secrecy of such a scheme could never be maintained. There are just too many people involved.

Q Mr. Milner, and I hasten to add, the term "conspiracy," I think, was introduced by Mr. Edenfield. Is it possible that in 1998 -- I'm sorry, I was saying 1996 before -- in 1998 at the time or around the time that MTA discussions where the MTA amendment were circulating to Intermedia, is it possible that prior to that time, for whatever reason, BellSouth was terminating traffic from Buckhead to Norcross for Intermedia, and then at some point determined, you know, this is against our policies, we're going to start blocking this traffic?

A That is possible theoretically. You know, again, I was not directly involved in making decisions about how calls would be routed for Intermedia. I can tell you this, though, from firsthand knowledge that I was

involved in a case in Georgia, a complaint case, that dealt with another ALEC ICG, and the subject was the exhaust of termination capacity in the Buckhead tandem. So I am very familiar with the circumstances as to how termination capacity was exhausted in the Buckhead 4-ESS.

There was not a way -- it had reached its ultimate capacity. There was not a way to add capacity to that, and I helped develop a plan to move traffic from the Buckhead tandem to the Norcross and the East Point tandem as a means of relieving the termination capacity exhaust in the Buckhead tandem.

Q Did you hear Mr. Hendrix testify earlier that he did not, and again correct me if you don't like my categorization of his testimony, was that Intermedia had the MTA amendment before it. It was at a time when BellSouth was trying to get all ALECs to adopt the incremental rates that had recently been established by this Commission, and isn't it -- well, first of all, do you agree that that's a fair characterization of Mr. Hendrix's testimony?

A Yeah. I think that's fair that in a very broad scope those were things that were going on. What I don't agree with is that there is a direct relationship between all those events and what we're talking about here.

Yes, there were lots of other things going on in

1998 as well that were unrelated to what we're talking about. But, yes, in the broadest scheme that you can think of all those forces were in the works.

Q And again, putting the skulduggery and any really nefarious motivations by either party aside, isn't it possible that through the course of the change in policy in Buckhead by BellSouth, Intermedia was notified of the need to establish MTA if it did not want to direct trunk to Norcross, and at the same time the people who were in charge of negotiating interconnection agreements said, well, let's put this -- we also want to put the elemental rates in this agreement at the same time. Is that possible?

A That's not possible at all. And here's why. The entire planning process of which I was a part for relieving the Buckhead tandem had nothing at all to do with negotiation of interconnection agreements in general or more specifically negotiation of any interconnection agreement rate. There was a situation where a switch was at exhaust. You could not add capacity to that switch and relief plans were devised. I was directly involved in those plans. They had nothing to do with interconnection agreement negotiations. They had nothing at all to do with reciprocal compensation payments. They had nothing at all with trying to bring any party to the bargaining

table and take a set of rates.

I was directly involved in that process, and none of that was discussed in any planning meeting that had to do with relief of the Buckhead tandem.

Q But by the same -- well, do you agree or do you not agree that the MTA amendment was brought to Intermedia's attention as a means of solving call blocking that BellSouth was performing in the Buckhead tandem?

A Absolutely not. And here's why. The Buckhead tandem was at exhaust. There's a finite number of trunk terminations that a 4-ESS can accommodate and Buckhead had all of those. To try to bring -- to try to force on Intermedia this MTA requirement would bring more traffic to the Buckhead tandem, not less. So, I mean, it's just absolutely contraindicated that BellSouth would try to force MTA on Intermedia in a switch that it already knew was out of capacity.

Q Well, do you think that that is why Intermedia ultimately established its own direct trunks to the Norcross tandem at the time the MTA agreement was signed?

A I have no idea of Intermedia's motivation for why it establishes any of its trunk groups, but I can tell you as a traffic engineering that those choices are made looking at the distance between switches, the amount of traffic that's carried. I know that both of Intermedia's

switches are generally in the northwest part of Atlanta, or that's what I've been told of by Mr. Jackson. The Norcross tandem is in the northeast part of Atlanta. Geographically, they are closer together than they are to the Buckhead tandem. There are a number of factors that come into play when you're deciding how many trunk groups, you know, the architecture of whether you use alternate routing, whether you send it all to one tandem or not. All of those things are considered.

Intermedia had its own reasons for its entire network topology, but I can assure you that BellSouth's motivation was not to offer MTA as anything other than a means to simplify an ALEC's interconnection plans for its interconnection with BellSouth's network.

Q You mention in your testimony that MTA was not designed to alleviate congestion. Has it been used to alleviate congestion?

A Only ALECs would know whether they have used it for that or not. It's possible. In other words, if the ALEC says, I'm going to have some direct trunk groups, but they will be very small, and I will overflow any traffic that can't be carried over those small groups to an MTA arrangement, then the answer is, yes, but that's entirely the choice of the ALEC. It certainly did not relieve a congestion situation on BellSouth's part. So if ALECs use

it in that manner, and they could conceivably, that's fine, but it was not designed for that.

It was designed -- because I was part of the design team that came up with this idea in the first place. It was designed to simplify an ALEC's entry into a market, and especially a large market like the southeast Florida LATA where there are multiple tandems or the Atlanta market where there are, I think, about eight different access tandems.

Q Let me ask a definitional question, and again, let me go back to my hypothetical and make it a little more extreme. You've got a LATA. There are ten access tandems in it. You have an ALEC. That service area is only the bottom half of that tandem. It is interconnected with all, let's just say there are nine of the tandems in its service area within that LATA. There is one tandem outside of its service area, but its within the BellSouth tandem, will BellSouth take the position that this ALEC is not direct trunked to every access tandem in the LATA, therefore, it has implemented MTA?

A Will we take the position? I think that's the conclusion you can reach. We don't mandate that an ALEC use this MTA option. However, your traffic is being delivered somehow to the offices that subtend that tenth access tandem. If you are not getting there yourself and

you are delivering traffic through that access tandem, there's only one other party and that's BellSouth. So BellSouth must be delivering that traffic on your behalf.

Q Or as the alternative, that traffic could be blocked; is that true?

A That's possible. If that were happening, I think I would have read about it in the newspaper because that would say that Intermedia's customers in Norcross, Georgia cannot call any customer in Columbus, Georgia, which is in the same LATA. I think I would read about that. I think that would be headline news that said Intermedia is offering a service that doesn't even provide something as simple as intraLATA toll completions. I think I'd read about that in the newspaper.

So I know for sure that Intermedia does not have trunk groups to the Columbus tandem, the access tandem in Columbus. Also, there is a local tandem in Columbus, and there is not a trunk group to that tandem either. That traffic is being completed. I can only conclude from that that it's BellSouth that's transporting that traffic through the Columbus access tandem to the end office for completion.

Q Would BellSouth ever take the position that an ALEC that had not executed an MTA amendment and did not have an expressed MTA provision in its interconnection

agreement, nevertheless, implemented MTA by failing to trunk out to every tandem in the LATA?

A I don't understand your question. MTA is pretty straightforward. If an ALEC wants MTA, then it's -- and I'm no lawyer. The ALEC signs this amendment. BellSouth changes the translations in its switch to provide for proper carriage of that traffic.

Q Okay. But I don't get MTA by default if I don't trunk out to a LATA but I don't sign the agreement?

A I would think not. I mean, the translations are intentional. Either you're transporting the traffic, you know, on your own facilities, or BellSouth is transporting that for you. In the case we're talking about here, Intermedia has signed such an agreement.

Q I just have a few more questions here. You mentioned that both parties -- and I'm characterizing your testimony; tell me if I'm mischaracterizing it -- have an obligation to forecast their traffic requirements and to build their networks in a way to be responsive to those forecasts. Is that a fair characterization?

A Yes, to build our own respective networks. And by that I mean, BellSouth is not obligated to design its network in a way that's most conducive to Intermedia, nor is Intermedia required to build its network that suits BellSouth best.

Q Okay.

A But we both have end user customers who pay us money for service, and we have an obligation to them to provide good service. We have an obligation to other carriers to provide for proper interconnection. And I think we do that quite well.

Q Okay. Well, on Page 4 of your rebuttal testimony, and I'm looking at Lines 20, 21, and 22, I believe you state, quote, both parties bear a responsibility to accurately forecast traffic and then to engineer and install appropriate quantities of interconnection trunks. Are you aware that Intermedia has provided traffic forecasts to BellSouth?

A I'm aware of that, yes.

Q Has BellSouth responded by engineering and installing appropriate quantities of interconnection trunks to meet the demand forecast by Intermedia?

A I believe we have.

Q Has BellSouth ever submitted its own traffic forecast to Intermedia?

A I did some checking last week after this question was raised in my deposition and found the answer to be, no. And the reason for that is that BellSouth has asked of Intermedia for it to share information about its business plans, to the extent that it can, about where

traffic is going to be, you know, how many customers, how much traffic Intermedia expects to flow over interconnection trunk groups from BellSouth's customers to Intermedia's customers. For its own reasons, Intermedia has apparently refused to do that. BellSouth cannot do an adequate job of forecasting the future without input from Intermedia.

Q Are you aware of any complaints filed by Intermedia to BellSouth that its forecast demands were not met, and that BellSouth had not provisioned adequate trunking?

A Any complaint cases, did you say?

Q Not formal complaints, but, you know, letters from Intermedia saying, we gave you this traffic projection, and you guys didn't deliver the trunking that we needed.

A I mean, I'm not aware of any personally, and that may happen. I mean, forecasting traffic is a very dynamic situation. There are dozens, hundreds of individual trunk groups that are being monitored. Have any of those encountered blockage? I'm sure over time they have. That's certainly not our goal. To the extent that we can adequately forecast based on information we receive from ALECs as well as information we gather ourselves, we forecast our trunk needs, and we share those

needs through the orders that we place, for example, with Intermedia to acquire terminations in Intermedia's switch. Forecasting is not a perfect science. We do the best we can with the information we are given. Intermedia has not provided sufficient information to BellSouth, I don't believe, with which BellSouth can do anything other than react to actual experienced loads.

Q I believe you said you weren't aware that Intermedia filed any, I won't say made a complaint, you know, in an informal way to BellSouth. Are you necessarily the person who would know that, or is there someone else, or some other department who would know that?

A Well, short of a formal complaint before a Commission, I would expect a letter like that to go to the account team. I see letters to and from our account teams from ALECs to our account teams, and from our account teams back to ALECs. I read those routinely. There's usually about a four- or five-inch stack on my desk daily. So I do my best to keep up with all of the correspondence between BellSouth and all of its ALEC customers, but I won't submit to you that I can say it with precision that there's never been a letter that complained about an individual trunk group that was in overload.

Q I'm looking on Page 5, Lines 4 through 7, when

you talk about the different percentages of blocking experience on the BellSouth network and by ALECs. Are these aggregated numbers?

A You will have to explain to me what you mean by aggregated.

Q When you refer to the blocking that ALECs experience, is that an aggregate of all ALECs in a given area?

A Yes, it is. That is the experience of all ALECs in Florida for those two months.

Q Do you happen to know the specific call blocking percentage that applies to Intermedia's experience?

A I don't have that before me. It's made available to Intermedia on BellSouth's Website as it is to all ALECs. I don't have that information before me.

Q Do you have that information available? Is it reported, and can you get your hands on it?

A It's available, yes. Again, I don't have it before me. ALECs consider this proprietary information. I don't think you would appreciate my reading into the record what our performance for you happens to be.

Q But Intermedia would have its access to its own proprietary information?

A Yes.

Q Final question. Where does BellSouth, to your

knowledge, allege that Intermedia has put MTA in play?

A In Georgia, in the Atlanta LATA.

Q Atlanta LATA in Georgia. Is that the only location?

A There may be others. That's -- during the course of the deposition that I gave in this case, Mr. Pellegrini asked me if my understanding was whether Intermedia had requested and provided MTA anywhere. I responded that my understanding was that Intermedia had requested it in Georgia. Subsequently, I asked my team to pull significant information out of what we call the network information warehouse that shows what trunk groups have been established between BellSouth's network and Intermedia's network.

We saw this printout earlier. And it is clear to me there's not a single trunk group between Intermedia's two switches in Georgia and either the access tandem or the local tandem in Columbus, Georgia, which is part of the Atlanta LATA. Therefore, the execution of the MTA agreement, the presence in -- I know it's disputed, but the presence of an access service request or ASR that Intermedia prepared and sent to BellSouth and the result that I see in the inventory of the trunk groups that have been provisioned leads me to the conclusion that BellSouth provided MTA on behalf of Intermedia, and it is doing so

today.

Q And I'm sorry, I just have to clarify one thing on that. Is there currently any access tandem to which Intermedia is not direct trunked that you point to in the Atlanta LATA and say, a-ha, that's the one where they're not trunked to, therefore, they have implemented MTA?

A Yes, sir.

Q And what is that?

A There are two tandems. One is an access tandem, and one is a local tandem. That could effect interconnection at either one, but my research says that they're not connected either. One is -- I'll give you the common language location identifier. It's CLMBGA; that is, Columbus, Georgia, MT, main toll, 01T. Nor is Intermedia connected at CLMBGAMT12T, which is the local-only tandem.

MR. CANIS: Very good. That concludes my questions. Thank you very much.

THE WITNESS: Thank you, sir.

COMMISSIONER DEASON: Staff?

MS. STERN: We have no questions.

COMMISSIONER DEASON: Redirect?

MR. EDENFIELD: Just one real quick question.

REDIRECT EXAMINATION

BY MR. EDENFIELD:

Q Mr. Milner, without direct trunking to the Columbus tandem, how in the world does Intermedia get its traffic from those persons homed behind the other tandems down to Columbus?

A It can't. It either does it itself, or it has BellSouth do it. And I've represented that there is not a trunk group that I have been able to find, at least through our search of our own records, that shows that Intermedia has a connection to the access tandem in Columbus. So therefore, the call cannot be completed except via an MTA arrangement.

Q So at this point is it safe to assume that one of two things has happened, either Intermedia has no customers calling anyone around Columbus, or either BellSouth is delivering that traffic through an MTA arrangement?

A Well, I think it's extremely unlikely that somewhere somebody in the Atlanta LATA that is a customer of Intermedia has not called somebody somewhere in Columbus, Georgia. I think that's extremely unlikely.

Q To effectuate an MTA arrangement, does Intermedia have to do something affirmatively to make that happen?

A Yes. They would have to send an access service request to BellSouth.

Q Do they have to do anything in their switches?

A Oh, certainly. They would have to make their own translations in their switch to direct certain calls on to that MTA-equipped trunk group. That is, let's say that Buckhead is the access tandem that will be the first switch that Intermedia sends its traffic to. First of all, Intermedia has to translate its own switch to send calls that are bound for Columbus, Georgia to Buckhead, and then BellSouth would have to translate its switch in Buckhead to send that to the Columbus tandem, and the Columbus tandem would have to be translated to send that call on to the end office in Columbus.

Q Given the translations that have to take place, is it possible for BellSouth to force MTA upon Intermedia?

A No. Even if BellSouth were to translate its own switches for MTA, there -- if Intermedia did not likewise translate its switch to send that traffic on the trunk group, again in my example to Buckhead, there is nothing to have MTA for. In other words, if Intermedia were only to send traffic over the Buckhead trunk group; that is, to the end office that subtends the Buckhead tandem, then BellSouth could translate MTA all day long. It would have no effect until Intermedia translates its own switch to put that traffic on there in the first place for subsequent handling.

Q Is it safe to assume that Intermedia has made such translations to get traffic down to Columbus?

A Well, there's no other way for the traffic to get onto the trunk group in the first place except by translating it to do so.

MR. EDENFIELD: Okay. I have nothing further.

COMMISSIONER DEASON: You have no exhibits?

MR. CANIS: Yes. I would like to mark Mr. Milner's deposition as Intermedia Exhibit Number 24.

COMMISSIONER DEASON: It will be so identified.

(Exhibit 24 marked for identification.)

COMMISSIONER DEASON: And you're moving this into the record?

MR. CANIS: Yes, Your Honor. Thank you.

COMMISSIONER DEASON: Without objection?

MR. EDENFIELD: No objection from BellSouth.

COMMISSIONER DEASON: I show then that Exhibit Number 24 admitted.

(Exhibit 24 admitted into evidence.)

MR. EDENFIELD: And, Commissioner Deason, BellSouth, to make the record complete, would like to have marked for identification Number 25 a complete copy of the interconnection agreement together with the various amendments. And once that is marked, we would move it into evidence.

COMMISSIONER DEASON: It would be identified as Exhibit Number 25.

(Exhibit 25 marked for identification.)

COMMISSIONER DEASON: And this is the complete interconnection agreement?

MR. EDENFIELD: Yes, sir.

COMMISSIONER DEASON: And you are moving it without objection? Hearing no objection, I show then Exhibit 25 is admitted.

(Exhibit 25 admitted into evidence.)

MR. EDENFIELD: And that concludes BellSouth's case.

COMMISSIONER DEASON: Any other final matters? We need to set a date for a filing of a late-filed exhibit, and then I suppose we need to review the schedule for transcripts and briefs.

MR. EDENFIELD: Do we have a date yet that we know that the transcripts will be done? Because I will need that before I can do my late-filed exhibit to look at what needs to be struck.

COMMISSIONER DEASON: Well, that's not the late-filed exhibit I was talking about, even though you do need to do that. There's a late-filed exhibit from Witness Thomas concerning the tandem connections. When can that exhibit be provided?

MR. CANIS: Can we have -- Your Honor, could we have until next Monday on that?

COMMISSIONER DEASON: That would be the 19th?

MR. CANIS: I believe that's correct.

COMMISSIONER DEASON: Any objection to the 19th?

MR. EDENFIELD: None from BellSouth.

COMMISSIONER DEASON: Okay. Show then that late-filed will be due on the 19th of June.

MR. EDENFIELD: Thank you, Your Honor.

COMMISSIONER DEASON: Does the CASR show a date for transcripts?

MS. STERN: Yes, June 20th.

COMMISSIONER DEASON: June 20th for transcripts. Okay. Mr. Edenfield, when do you -- transcripts are going to be filed the 20th. When will you be filing your motion to strike?

MR. EDENFIELD: I'm not sure what day that is, but I'll file it just that same week. What day is that?

COMMISSIONER DEASON: That's a Tuesday, the 20th.

MR. EDENFIELD: I'll file it Friday.

COMMISSIONER DEASON: Okay. That will be due Friday the 23rd. And I would need a response to that if one is to be filed. Mr. Pellegrini, when can you file your response?

MR. PELLEGRINI: Well, we're running really right up tight against the date on which briefs are due.

COMMISSIONER DEASON: When are briefs due?

MS. STERN: Briefs are due the 27th of June.

COMMISSIONER DEASON: 27th of June. Okay. We need to move that up then. Mr. Edenfield, you need to file -- the transcript is due the 20th. You're probably going to need to file whatever you're going to file by the close of business on the 21st.

MR. EDENFIELD: That's fine.

COMMISSIONER DEASON: And, Mr. Pellegrini, you need to file your response by the 23rd, which is a Friday.

MR. PELLEGRINI: We will do so.

MS. STERN: Commissioner?

COMMISSIONER DEASON: Yes.

MS. STERN: Do you want to give that -- mark that with a number, the --

MR. EDENFIELD: I guess --

MS. STERN: -- late-filed exhibit?

MR. EDENFIELD: I'm sorry, Marlene. Am I going to file that in the form of a late-filed exhibit or file it in the form of a motion?

COMMISSIONER DEASON: You need to file it in the form of a motion.

MR. EDENFIELD: Okay.

COMMISSIONER DEASON: And there will be a response. It's all going to be on an expedited time schedule though. And I suppose that needs to go to the Prehearing Officer. Do I get a volunteer? Commissioner Clark is gracious enough to accept that and make a ruling so that everyone --

COMMISSIONER CLARK: Since you may be otherwise more busy.

COMMISSIONER DEASON: Yeah, maybe. Actually, you know, we're going to be in New orleans.

COMMISSIONER CLARK: Busier.

COMMISSIONER DEASON: We're going to be in New Orleans when all that is going on.

COMMISSIONER CLARK: I feel certain we can handle it.

COMMISSIONER DEASON: Very well. Any other matters to come before the Commission at this time?

MS. STERN: Just one clarification. I have that BellSouth wanted to move in as exhibits prefiled rebuttal testimony of Mr. Hendrix and prefiled rebuttal testimony of Mr. Milner, and I have those numbered as 24 and 25.

MS. WHITE: I don't think we put numbers on them.

MS. STERN: Okay. And just now we numbered Mr. Milner's deposition as 24 and the interconnection

agreement as 25.

MS. WHITE: I don't think we listed the testimony as -- with a number, with an exhibit number.

MS. STERN: Oh, okay. I'm sorry.

COMMISSIONER DEASON: Okay. Anything else? Hearing nothing, we're only five or six minutes past schedule, which is sufficient. Thank you all for expediting it after the hour got so late. This hearing is adjourned.

(Hearing concluded at 6:36 p.m.)

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STATE OF FLORIDA)

: CERTIFICATE OF REPORTER

COUNTY OF LEON)

I, TRICIA DeMARTE, Official FPSC Commission Reporter, do hereby certify that the hearing in Docket No. 991534-TP was heard by the Florida Public Service Commission at the time and place herein stated.

It is further certified that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript, consisting of 375 pages, Volume 2, constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED this 19th day of June, 2000.

TRICIA DeMARTE
FPSC Official Commission Reporter
(850) 413-6736

TRA
Docket No. 00-00280

BellSouth Rebuttal Exhibit No. JDH – 5

Hearing Transcript from NCUC Docket No. P-55, SUB 1210

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COMMISSION ERVIN: I'm Commissioner Sam Ervin, the IV, of the North Carolina Utilities Commission. I've been assigned to conduct this hearing as a hearing commissioner pursuant to G.S. 62-76(c). I now call for Hearing Docket Number P-55, Sub 1210, in which Intermedia Communications, Inc. has petitioned the Commission to enforce certain provisions of its interconnection agreement with BellSouth by ordering BellSouth to make additional reciprocal compensation payments.

On May 15, 2000, Intermedia filed Intermedia's Further Petition to Enforce Interconnection Agreement Concerning Reciprocal Compensation in which Intermedia alleged that BellSouth and Intermedia had entered into an interconnection agreement under which Intermedia was entitled to collect reciprocal compensation for terminating ISP-bound traffic originating on BellSouth's network. The Commission had previously ordered BellSouth to pay reciprocal compensation relating to such traffic to Intermedia, but BellSouth had failed to pay the amount claimed by Intermedia on the grounds that an amendment to the original

interconnection agreement between the parties had reduced the reciprocal compensation rates which the parties were obligated to pay each other. And that Intermedia was not entitled to collect reciprocal compensation at the tandem switching rate. That both of BellSouth's contentions lacked merit, and that the Commission should order BellSouth to pay the full reciprocal compensation amount claimed by Intermedia.

On May 17, 2000, the Commission ordered that Intermedia's complaint be served on BellSouth in accordance with Commission Rule R1-9C. On June 5, 2000, BellSouth filed an answer of BellSouth Telecommunications, Inc. in which BellSouth alleged that the parties had amended their interconnection agreement in such a way as to reduce the reciprocal compensation rates specified in the original agreement with reciprocal compensation rates set out in the amendment to the parties' interconnection agreement applied to the traffic at issue in this proceeding. And Intermedia was not entitled to collect reciprocal compensation from BellSouth at the tandem switching rate, and that

Intermedia was not entitled to any relief.

On June 7, 2000, the Commission ordered that BellSouth's answer be served on Intermedia in accordance with Commission Rule R1-9D. On June 9, 2000, Intermedia filed Intermedia's reply to answer in which Intermedia indicated that BellSouth's answer to its complaint was not satisfactory and requested that this matter be set for hearing.

On June 12, 2000, Intermedia filed a request for procedural schedule. On July 21, 2000, Chair of the Commission entered an order setting hearing which set this matter for hearing at this time and place, established a schedule for the prefiling of testimony, made provision for the conduct of discovery, and required the filing of the list of witnesses and estimated cross examination times.

On October 3, 2000, the parties filed the requested list of witnesses and cross examination estimates, and there has been some supplement to those estimates filed at a later time. No other party has requested leave to intervene and participate in this proceeding. The Commission has jurisdiction over the parties and the subject

matter of this proceeding. Proper notice of the time and place of this hearing has been provided by the parties.

I now call for counsel to identify themselves for the record, beginning with Intermedia.

MR. MEEKER: Thank you, Mr. Chairman. My name is Charles Meeker. I'm with the law firm of Parker, Poe, Adams & Bernstein here in Raleigh. With me today is Layth Elhassani, who's sitting at my left, and also is Jon Canis of the Kelley Drye firm. We have filed a motion pursuant to Chapter 84 to have Mr. Canis admitted just for the purpose of this proceeding.

COMMISSION ERVIN: And I believe that has been allowed by written order, or it has been entered already. So glad to have you, Mr. Canis.

MR. CANIS: Thank you.

MR. MEEKER: Thank you, Mr. Chairman.

MR. SHORE: Good morning. I'm Andrew Shore, BellSouth's North Carolina counsel. Appearing with me today is Kip Edenfield from Atlanta. I understand Mr. Edenfield has been admitted to practice in this proceeding.

COMMISSION ERVIN: That's correct, and welcome, Mr. Edenfield.

MR. EDENFIELD: Thank you.

COMMISSION ERVIN: I'm aware of at least one preliminary matter that we need to address prior to the beginning of the hearing which is the motion to strike. Are there any others beside that that we ought to take up before we begin the argument on the motion to strike?

MR. MEEKER: No, sir.

MR. SHORE: Just one, by way of clarification. Intermedia made a filing last week. To this point, I think it's--we've got something to say about it if now is the appropriate time.

COMMISSION ERVIN: All right.

MR. SHORE: The parties--about a week or two ago, BellSouth proposed to Intermedia--well, first off, as you know, there are two issues in this proceeding: the tandem switching issue and the proper rate issue.

COMMISSION ERVIN: Right.

MR. SHORE: The tandem switching issue has been previously decided in prior proceedings by

this Commission. In light of that--in light of the fact that the Commission has heard, essentially, our cross examination about that and has heard theirs, we propose to Intermedia that we agree not to cross examine each other's witnesses with respect to that issue.

BellSouth respectfully disagreed with the Commission's prior determinations, but we can make those arguments in briefs and proposed orders. Intermedia made a filing which referenced that last week. In my mind, it wasn't totally accurate, but I don't--I think that may, form over substance, I just wanted to make the stipulation from our point of view clear.

MR. MEEKER: Yes, Mr. Chairman, that is correct--

COMMISSION ERVIN: Well, let's get straight what we've done. My understanding was that the testimony of both parties with respect to the tandem switching issue would be copied into the record. That the exhibits related to it would be admitted. That the parties would brief the issue, would, of course, reserve any rights that they

might have to seek any review--seek review of any decision that we might make in an appropriate form, but that there would be no cross examination or oral testimony concerning that question. And I'm perfectly prepared to proceed on that basis. Have I stated correctly what we are proposing to do here?

MR. MEEKER: Yes, sir.

MR. SHORE: You have from our perspective as well.

COMMISSION ERVIN: Okay. All right. Well, we'll certainly proceed on that basis. I don't have any objection to it. Is there any other preliminary matter, other than the motion to strike? I have read the motion and have my copy of it here. If there's been any written response filed to it, I'm not aware of that. And I'm--has there been, Mr. Shore?

MR. SHORE: There has not. We are prepared to respond to it today.

COMMISSION ERVIN: Well, given that Intermedia has filed this motion, I'll hear from Mr. Meeker, or one of his colleagues, at this point, and then

hear from BellSouth.

MR. MEEKER: Thank you, Mr. Chairman. This is a fairly minor point, but we thought we ought to have the record correct on this. BellSouth, in its testimony, makes the point that an amendment to an interconnection agreement can cover more than one subject if the amendment so provides, and we don't--we don't dispute that. However, to illustrate that, they've included an amendment with Time Warner. It has nothing to do with Intermedia, and that just seems entirely irrelevant to this proceeding. I guess it could be some illustration of that point, but it's got nothing to do with the merits of this proceeding. So we thought it would make sense to just have that amendment stricken, and they can make their statement that an amendment could cover more than one subject, if the amendment does so, and just leave it at that. We thought this was an extraneous matter that ought to come out of this record.

COMMISSION ERVIN: I thought we had given up railroad regulation around here.

MR. EDENFIELD: Do we have the train schedule?

COMMISSION ERVIN: I don't know. I heard the same noise upstairs earlier.

MR. EDENFIELD: They're following you.

COMMISSION ERVIN: All right. BellSouth, do you have a response you'd like to make?

MR. EDENFIELD: Yes, sir, Commissioner Ervin, two points. In this instance, Intermedia has raised two issues that they feel like is relevant. One of those is that the cover letter that accompanied BellSouth's June 3rd amendment in this case mentions MTA and doesn't mention anything about rates; thereby, I assume, what they're trying to do is make the point that the cover letter is somehow indicative of the entire content. The other point they are trying to make, at least they've raised in their testimony, is that the language in the amendment does not actually say that it's replacing some other provision in the agreement. And those are two points they've raised in their direct testimony.

The reason Mr. Hendrix has attached the Time Warner is it is responsive to both of those claims that have been made by Intermedia. One, the cover

letter--there's five different items that were amended in Time Warner via the amendment that's attached, and the cover letter only mentions two of them. And neither does it mention that a particular section is being replaced, and that's why it's being offered. I mean, certainly, Time Warner, in and of itself, is not relevant to this proceeding, but this is directly responsive to two issues they have raised and goes to rebut those issues.

COMMISSION ERVIN: Mr. Meeker, you have anything further before I rule?

MR. MEEKER: No, I do not.

COMMISSION ERVIN: All right. At this point, I'm going to deny the motion. It appears to me that the evidence that's the subject of the motion to strike is relevant to the weight to be given to certain of Mr. Hendrix's claims; and therefore, I will deny the motion to strike, finding it is relevant for those reasons. All right. Does anyone wish to make an opening statement?

MR. MEEKER: Yes, sir, we do.

COMMISSION ERVIN: All right.

MR. MEEKER: Mr. Chairman, I've prepared a brief outline so we can follow that. And if I can, I'd like to give a copy to the court reporter and to BellSouth and also to you. Mr. Chairman, this case, as you read in the opening remarks, is a case involving two matters: the tandem switching rate and the MTA amendment. And the multiple tandem access amendment issue is whether that amendment changes rates not just for multiple tandem access, but for all other service, including single tandem access. Despite orders from this Commission to pay reciprocal compensation for local traffic terminated to ISPs, BellSouth has only made partial payment. BellSouth has two defenses: One, that it need not pay the tandem switch rate; and secondly, that this amendment dated June 3rd, 1998, changed and reduced reciprocal compensation rates for all local service, not just providing rates for our new service, multiple tandem access. We believe these arguments are without merit and are just part of this continuing effort not to pay reciprocal compensation.

As mentioned just a moment ago, the parties

have agreed to have the tandem switch issue heard on the record without additional testimony, because the Commission just heard that recently. Since Intermedia prevailed before and because nothing has changed, we view that BellSouth simply is incorrect on this issue, and there really isn't anything to--much more to talk about.

Turning to the MTA amendment, this amendment provides for a new service called multiple tandem access or MTA--you'll hear those letters. MTA is a single point of interconnection through a single access tandem for more than one tandem switch and a local access and transport area. The MTA does not contain an independent additional provision changing and substantially reducing the reciprocal compensation rate for all local service. The MTA amendment--this may seem obvious--applies to MTA service and not to any other service.

The evidence which we intend to show this morning, Mr. Commissioner, is the following, and we summarize that on page two. The first, of course, is we'll show the MTA amendment. That by its written terms, and by Attachment A to the

amendment, adds multiple tandem access as a new service. The MTA amendment does not change and reduce the reciprocal compensation rate, generally, for other service, which, in this case, is the single tandem access service.

Secondly, our evidence will show--and this will come from Ms. Strow, who's here in the audience--the parties did not discuss a change or reduction in the reciprocal compensation rate for all local service at the time the MTA amendment was signed. That subject simply was not raised either through the written amendment or through conversations with Intermedia personnel.

In addition, though, Mr. Chairman, we will show that the BellSouth transmittal memorandum about the MTA amendment to Intermedia refers only to the multiple tandem access and says nothing about a general change in reciprocal compensation rate. This is a memorandum from Stuart Hudnall, a BellSouth employee, to Ms. Strow. And you will see that when this--the amendment was sent to her, it refers to only one subject, and that is the subject of that amendment.

Next, Mr. Chairman, we will show that the BellSouth transmittal letter to this Commission from Mr. Al Povall refers only to the MTA amendment and says nothing about a general change in reciprocal compensation rates. Mr. Povall, as you may recall, was a BellSouth lawyer here in North Carolina for years, and he was the one who transmitted that amendment to the Commission for approval.

Next, Mr. Chairman, we will show that the Public Staff, which made a recommendation in this case to approve the amendment, referred only to multiple tandem access and the rates for multiple tandem access and said nothing to this Commission about a change in rates for reciprocal compensation generally. So that the Public Staff, when it made a recommendation to your group, didn't understand that this had any possibility of a broader implication. And I think by--by sense, we can understand the Commission didn't have any idea of that either.

Next, we'll show, Mr. Chairman, that when drafting amendments that involve a change term,

rather than adding a new service, it is BellSouth's and Intermedia's practice, first, to delete the provision that is being changed and then to put in the new provision. Here, however, the multiple tandem access amendment does not delete the former reciprocal compensation rates; rather, it simply provides new rates for new service so that the old rates, that is, the rates that are in the existing contract, the B1 rates, have not been deleted from that contract. And they're there, and they're there in force.

Next, Mr. Chairman, we will show that by an admission in discovery that BellSouth was the sole drafter of the MTA amendment as there were no changes made by Intermedia. And to the extent that there's any ambiguity--we think there is not--but if there is any ambiguity at all in this document, it must be construed against BellSouth under typical contract construction principles.

And finally--and this, again, is not disputed--Intermedia has not requested, nor has BellSouth provided, multiple tandem access service to Intermedia here in North Carolina. Intermedia's service

is single tandem access, both in the Charlotte area and in the Raleigh where Intermedia operates. So there is no multiple tandem access service in North Carolina, and there's no reason for the amendment involving multiple tandem access to have any effect on the rates for Intermedia service here in North Carolina.

I think where we--where we come out, and I think the Commission--or the evidence will show, is that while BellSouth, at the senior director level, may have wanted to change the reciprocal compensation rate, generally, in North Carolina, that desire was not understood or acted upon by the BellSouth employee who drafted the MTA amendment, by the BellSouth employees who transmitted that amendment to Intermedia or to this Commission. It was not understood that way by Intermedia and was not understood that way by the Public Staff when it made its recommendation to the Commission. So not only does the text of the MTA amendment squarely shows that it doesn't apply here, all the conduct around it shows that no one understood that it had any other implication. And it is only now, later on, that BellSouth has come back and said, "Oh, we

think this changed rates generally, as opposed to changing it just for the--or just adding this new service.

In summary, then, Mr. Chairman, we think the evidence will show that the MTA amendment provides for multiple tandem access service at the rates set forth in Attachment A to that amendment. The MTA amendment does not change and reduce reciprocal compensation rates generally, and specifically, does not change rates for single tandem access service.

That's our case. So we hope we will begin shortly this morning. We have two witnesses. I'm going to call Julia Strow, who was directly involved in the--of the signing of this amendment and knows why it came about. And we're also going to call Ed Thomas, who is here to make a very brief comment just to confirm for the record that Intermedia's service in North Carolina is single tandem access service and not multiple tandem access service. We also will have some cross examination for the witness from BellSouth, Mr. Hendrix. Thank you.

COMMISSION ERVIN: Mr. Edenfield or Mr. Shore?

MR. SHORE: I concede the mike to Mr. Edenfield.

MR. EDENFIELD: Once I get it, it's hard to get it away. I didn't really prepare a formal opening, but let me see if I can give you some-- some general perspective that may help you when we are trying to look at the facts of the case.

You need to go back to July 1st of 1996. That was when we first entered into a interconnection agreement with Intermedia. And in that interconnection agreement, the rates for the transport and termination of local traffic were what were called composite rates. They were not broken out into individual elements. In other words, if you did provide an end office switching function, then you got everything that was combined. I mean, it was just one rate for everything.

In December of '96, December 23rd, I believe, this Commission rendered an order in the AT&T arbitration. And in that arbitration, the Commission set forth elemental rates for the first

time in--in North Carolina. While they had set those rates, BellSouth did not have the ability to actually bill those rates in its CABS system until the end of 1997 and going into the early part of 1998. Once we had that capability, Mr. Hendrix, as you're going to hear, was charged with getting all of the interconnection agreements on elemental rates consistent with the rates, especially here in North Carolina, that had been set in the AT&T arbitration.

In the early part of 1998 or somewhere around the spring, Mrs. Strow approached BellSouth and said we're having some blockage problems in Atlanta. We'd like to get those resolved. One of the suggestions made to her was something that was called a multiple tandem access, which is basically a method where you just have to connect to one tandem, route all your traffic to BellSouth's tandem there, and then we will switch it for you to get it to where it needs to go, obviously, at an additional cost.

We proposed some language to her. It was sent to her at her request. She looked at it. She

never called us back. She never asked us to make a change. All she did was sign it and send it back. That is your June 3rd, 1998 amendment to the interconnection agreement.

Subsequent to that, the parties began billing, ultimately led to this dispute. What this dispute is really about is whether composite rates are going to apply to local traffic or whether elemental rates are going to apply to local traffic.

This exact same case was brought by Intermedia in Florida a couple of months ago. The exact same arguments you're going to hear today were made in Florida a few months ago. And the Florida Commission determined that the intent of the agreement was two-fold: MTA and to change all the local rates to elemental rates for all local traffic. That is what we asked the Commission to decide in this case. And that concludes my summary.

COMMISSION ERVIN: All right. Mr. Meeker, if you'd call your first witness?

MR. MEEKER: Mr. Chairman, as a preliminary

matter, we filed some of BellSouth's discovery responses, and we'd like to pass out a copy of that and ask that it be admitted into evidence as our Exhibit 1.

MR. SHORE: No objection.

COMMISSION ERVIN: Let it be so admitted.

(THEREUPON, INTERMEDIA DIRECT EXAMINATION EXHIBIT NO. 1 WAS MARKED FOR IDENTIFICATION.)

COMMISSIONER ERVIN: Mr. Meeker, just to make sure that I have, in fact, read this previously, this was filed last week?

MR. MEEKER: Let's see, it was filed, actually, yesterday, on October 9th--

COMMISSION ERVIN: All right. I--

MR. MEEKER: --and I don't know if it got to your office or not. But what it is, Mr. Chairman, are items 5 through 10 of their discovery responses dealing with certain issues.

COMMISSION ERVIN: Okay.

MR. MEEKER: And Mr. Chairman, we will call as our first witness Julia Strow. And while she is coming to the stand, I'd like, if I may, to hand

out a short summary of her testimony that she will read in just a minute.

THEREUPON,

JULIA STROW,

Having first been duly sworn, was Examined and testified as follows:

DIRECT EXAMINATION BY MR. MEEKER:

Q. Ms. Strow, will you please state your name and business address for the record?

A. My name is Julia Strow, I am currently employed by Cbeyond Communications, C-b-e-y-o-n-d. My business address is 320 Interstate North Parkway, Atlanta, Georgia 30339.

Q. When were you employed by Intermedia Communications?

A. I was employed by Intermedia Communications from April 1996 until January of 2000.

Q. What was your position with Intermedia?

A. I was Assistant Vice President of Regulatory Industry Policy.

Q. And what did your responsibilities include?

A. My responsibilities included the setting of regulatory policy; they did evolve over my tenure

at Intermedia. But when I left, and at the time I was dealing with the issue here today, I was responsible for the setting of Intermedia's regulatory policy, negotiation of interconnection agreements with various ILECs, and basically, regulatory compliance for the company.

Q. Ms. Strow, did you have both direct and rebuttal testimony, as well as certain exhibits, prepared on your behalf and submitted to this Commission in accordance with the Commissioner's procedural schedule?

A. Yes, I did.

Q. And is that testimony true and correct to the best of your knowledge?

A. Yes, it is.

MR. MEEKER: Mr. Chairman, we'd request that that testimony be entered into the record, both the direct and the rebuttal.

COMMISSION ERVIN: All right. I'll let that testimony be admitted and the exhibits identified as marked.

(THEREUPON, THE PREFILED DIRECT AND REBUTTAL TESTIMONY OF JULIA STROW WILL BE

COPIED INTO THE RECORD AS IF GIVEN ORALLY FROM THE WITNESS STAND.)

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

FILED
JUL 28 2000
Clerk's Office
N.C. Utilities Commission

DOCKET NO. P-55, SUB 1210

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of:	)	
	)	
Enforcement of Interconnection	)	DIRECT TESTIMONY
Agreement Between Intermedia	)	OF JULIA STROW
Communications Inc., and BellSouth	)	
Telecommunications, Inc.	)	

Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND POSITION FOR THE RECORD?

A. My name is Julia Strow. I am presently employed as Vice President of Regulatory and Industry Relations with Cbeyond Communications at 320 Interstate North Parkway, Suite 300, Atlanta, Georgia 30339.

Q. WHEN WERE YOU EMPLOYED BY INTERMEDIA COMMUNICATIONS INC.?

A. I was employed by Intermedia from April, 1996 until January, 2000. My position was Assistant Vice President of Industry Policy. I was responsible, among other matters, for development of regulatory policy and negotiation of interconnection agreements. My responsibilities included communications with representatives of BellSouth Telecommunications, Inc., including discussions related to the State of North Carolina.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. Although I am no longer employed by Intermedia, I am providing testimony as to the purpose and signing of the Multiple Tandem Access ("MTA") Amendment.

Q. PLEASE DESCRIBE INTERMEDIA'S CONTRACT WITH BELLSOUTH CONCERNING LOCAL TRAFFIC.

A. On July 1, 1996, Intermedia signed an Interconnection Agreement with BellSouth pursuant to Section 252 of the Telecommunications Act of 1996. This Agreement provides that Intermedia and BellSouth will reciprocally compensate each other for the transport and termination of traffic originated on the network of the other within the same local calling area according to the terms and conditions set forth in the Interconnection Agreement. The Interconnection Agreement sets forth a composite local interconnection rate of $0.01344 per minute of use for DS1 tandem switching. The provisions of the Interconnection Agreement controlling the treatment of local traffic are attached to Intermedia's complaint in this proceeding. The entire Interconnection Agreement was previously filed with this Commission by BellSouth.

Q. DID BELLSOUTH PERFORM ITS RECIPROCAL COMPENSATION OBLIGATIONS UNDER THE INTERCONNECTION AGREEMENT?

A. No. BellSouth withheld payments against Intermedia's invoices for local traffic compensation. BellSouth claimed that Intermedia was billing it for compensation for traffic terminated to Internet Service Providers ("ISPs") and that such traffic was not eligible for reciprocal compensation under the Interconnection Agreement.

Q. HOW WAS THAT DISPUTE RESOLVED?

A. Because BellSouth and Intermedia were unable to resolve the dispute, it became necessary to pursue a regulatory remedy. On June 10, 1998, Intermedia filed a complaint against BellSouth with the North Carolina Utilities Commission, alleging that BellSouth was in breach of the Interconnection Agreement. On November 4, 1998, this Commission established BellSouth's liability in ruling that BellSouth is required under the Interconnection Agreement to pay reciprocal compensation to Intermedia for traffic originating to BellSouth end users of ISPs on Intermedia's network in the same local calling area. BellSouth subsequently appealed the Commission's Order to Federal court, and such appeal is still pending in the Federal system.

Q. HAS RECIPROCAL COMPENSATION FOR ISP TRAFFIC BEEN IMPORTANT TO INTERMEDIA?

A. In the history of relations between incumbents and competing local providers, there has been no greater point of conflict than the dispute over reciprocal compensation for ISP traffic. It is difficult to overstate the tension between the incumbents and the competitors on this issue. This issue was particularly important to Intermedia in 1998 because of the increasing amounts of ISP traffic that Intermedia was terminating for BellSouth's customers.

Q. HAS BELLSOUTH MADE FULL PAYMENT PURSUANT TO THE COMMISSION'S NOVEMBER 4, 1998 ORDER?

A. No. It is my understanding that as resolution of a lawsuit, BellSouth made partial payment, and the parties agreed that the two remaining issues would be

submitted to this Commission. Those issues are (1) the MTA Amendment and (2) the tandem switching rate. My testimony addresses the MTA Amendment.

Q. WHAT IS THE MTA AMENDMENT?

A. The MTA Amendment modifies Intermedia's Interconnection Agreement with BellSouth for the purpose of making available, at Intermedia's request, a network architecture called "multiple tandem access." This architecture is typically deployed in order to minimize the number of trunk groups needed to complete traffic in metropolitan areas. It is also useful to alleviate conditions of persistent traffic congestion.

Q. HOW DID THE MTA AMENDMENT COME ABOUT?

A. In the spring of 1998, Intermedia's customers were experiencing traffic blockage in the Atlanta area. Upon inquiring as to what was needed to resolve this issue, Bill Morrison, who is Intermedia's account manager for BellSouth, advised me that MTA was needed. I was also told by Mr. Morrison that in order for BellSouth to provide MTA service to Intermedia, Intermedia's Interconnection Agreement would need to be amended.

Q. WHAT HAPPENED NEXT?

A. At my request, Stuart Hudnall of BellSouth forwarded to me the MTA Amendment for review and signature. A copy of Mr. Hudnall's June 4, 1998 memorandum forwarding the MTA Amendment is attached as Exhibit A.

Q. WHAT IS THE BACKGROUND OF THE REFERENCE IN MR. HUDNALL'S MEMORANDUM TO A "REQUEST" FOR THE MTA AMENDMENT?

A. Mr. Morrison said on the telephone that Intermedia would need to request the MTA Amendment for BellSouth to provide it, so I requested the Amendment verbally.

Q. WHO DRAFTED THE MTA AMENDMENT?

A. BellSouth drafted the proposed amendment language.

Q. DID INTERMEDIA EXECUTE THE MTA AMENDMENT?

A. Yes.

Q. DID INTERMEDIA MAKE ANY CHANGES TO THE AMENDMENT?

A. No. Intermedia signed the Amendment in June, 1998 without making any changes.

Q. WHAT DOES THE MTA AMENDMENT PROVIDE?

A. This Amendment provides that BellSouth will, upon request, provide the MTA architecture to Intermedia. The rates for MTA are set forth in Attachment A to the amendment. A signed copy of the MTA Amendment is attached hereto as Exhibit B.

Q. DID INTERMEDIA REQUEST MTA IN NORTH CAROLINA?

A. No. No such request was made while I was employed by Intermedia and, as far as I know, MTA has not been requested or provided in North Carolina.

Q. DID BELLSOUTH INDICATE IN ANY WAY THAT THE MTA AMENDMENT HAD THE ADDITIONAL EFFECT OF CHANGING RECIPROCAL COMPENSATION RATES EVEN WHEN MTA WAS NOT REQUESTED OR PROVISIONED?

A. No. When I reviewed the MTA Amendment, I understood that Amendment as providing charges for the MTA architecture, not changing rates for reciprocal compensation.

Q. HOW DOES THE BELLSOUTH LETTER TRANSMITTING THIS AMENDMENT TO THE NORTH CAROLINA UTILITIES COMMISSION REFER TO THE AMENDMENT?

A. The transmittal letter dated June 9, 1998 is attached hereto as Exhibit C. This letter, in part, states:

> On October 10, 1996, the Commission approved an interconnection agreement between BellSouth and [Intermedia]. I enclose an amendment to that agreement that provides for Multiple Tandem Access.

The transmittal letter says nothing about this Amendment independently changing rates for reciprocal compensation.

Q. DID THE PUBLIC STAFF RECOMMEND APPROVAL OF THE MTA AMENDMENT?

A. Yes. The Public Staff's recommendation for the August 3, 1998 Commission conference states, in part, the following:

> With this amendment BellSouth agrees to provide, upon request, and [Intermedia] agrees to accept and pay for Multiple Tandem Access, at the rates contained in Attachment A of this same amendment.

A copy of this recommendation is attached hereto as Exhibit D. This recommendation says nothing about an independent change of reciprocal compensation rates. Based on this it would appear that the Public Staff's understanding is consistent with my understanding of the MTA Amendment.

Q. IF BELLSOUTH HAD TOLD INTERMEDIA THAT IT WANTED TO REDUCE ITS RECIPROCAL COMPENSATION RATE BY MORE THAN HALF IN NORTH CAROLINA, REGARDLESS OF WHETHER MTA WAS REQUESTED AND PROVISIONED IN NORTH CAROLINA, WOULD INTERMEDIA HAVE ACCEPTED SUCH A PROPOSAL?

A. No. If BellSouth had made such a proposal, Intermedia would have rejected it immediately.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

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N.C. Utilities Commission

DOCKET NO. P-55, SUB 1210

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of:	)	
	)	
Enforcement of Interconnection	)	REBUTTAL TESTIMONY
Agreement Between Intermedia	)	OF JULIA STROW
Communications Inc., and BellSouth	)	
Telecommunications, Inc.	)	

Q. PLEASE IDENTIFY YOURSELF.

A. My name is Julia Strow. My current position with Cbeyond Communications and former position with Intermedia Communications Inc. are set out in my Direct Testimony filed July 28, 2000.

Q. WHAT IS THE PURPOSE OF THIS REBUTTAL TESTIMONY?

A. My purpose is to respond to certain statements made in the Direct Testimony of Jerry Hendrix, a BellSouth witness.

Q. AT PAGE 5 OF HIS TESTIMONY, MR. HENDRIX STATES THAT WHEN MULTIPLE TANDEM ACCESS WAS DISCUSSED, "BELLSOUTH TOOK THE OPPORTUNITY TO REQUEST THAT INTERMEDIA AMEND THE INTERCONNECTION AGREEMENT TO ALSO INCORPORATE THE 'COST-BASED' RATES WITH THE ELEMENTAL RATE STRUCTURE FOR RECIPROCAL COMPENSATION FOR ALL LOCAL TRAFFIC ESTABLISHED BY STATE COMMISSIONS IN BELLSOUTH'S REGION,

INCLUDING THE NORTH CAROLINA UTILITIES COMMISSION." DID YOU RECEIVE SUCH A REQUEST?

A. No. I never received a request, orally or in writing, to change reciprocal compensation rates for all local traffic, including traffic to Internet service providers. I did not understand the draft of the MTA Amendment to constitute such a request. I am not aware of anyone else at Intermedia receiving such a request.

Q. **AT PAGE 2 OF MR. HENDRIX'S TESTIMONY, MR. HENDRIX STATES THAT "BELLSOUTH CONTENDS THAT THE RATES SET FORTH IN THE JUNE 3, 1998 AMENDMENT REPLACED THE RATES CONTAINED IN INTERMEDIA'S ORIGINAL INTERCONNECTION AGREEMENT, AND THEREFORE APPLIED AFTER JUNE 3, 1998." IS THAT CORRECT?**

A. While that may be BellSouth's contention, the June 3, 1998 Amendment does not replace rates contained in the original Interconnection Agreement. Rather, the June 3, 1998 Amendment sets out rates for a new service, i.e., Multiple Tandem Access, as set forth in Attachment A to the Amendment.

Moreover, the form of the June 3, 1998 Amendment is significant. That is, the June 3, 1998 Amendment does not state anything about removing or deleting sections of the previously approved Interconnection Agreement. Rather, this amendment adds a new interconnection service by which BellSouth would incur additional costs in providing more functionality.

It is important to point out that when Intermedia and BellSouth amended their Interconnection Agreement to replace a former term with a new term, they typically would first set forth the specific section that was to be deleted and then set forth the language of the new section to be inserted. Attached hereto as Strow Exhibits E and F are copies of amendments dated February 24, 1997 and February 16, 1999 which follow this approach. That is, both amendments first delete the section that is being replaced and then add the new language of the new provision which has been agreed to.

The June 3, 1998 Amendment does not follow the approach of deleting an existing section. Thus, the June 3, 1998 Amendment does not replace rates for an existing service but rather adds a service with rates for that service.

Q. IF, AS BELLSOUTH CONTENDS, THE MTA AMENDMENT REDUCED RECIPROCAL COMPENSATION RATES FOR ISP TRAFFIC EVEN THOUGH IN STATES SUCH AS NORTH CAROLINA INTERMEDIA DID NOT ORDER MTA SERVICE, WHAT BENEFIT WOULD INTERMEDIA WOULD HAVE RECEIVED FROM THE MTA AMENDMENT?

A. There would have been no benefit at all. I would have never agreed to give up a large part of the compensation for ISP-bound traffic for all the BellSouth territory in return for MTA service which was only potentially an issue in one State. Such an agreement would have been one-sided and most unfair.

Q. FINALLY, IN THE RESPONSE TO A DATA REQUEST SERVED SEPTEMBER 14, 2000, BELLSOUTH ASSERTS THAT MR. HENDRIX TALKED WITH YOU ABOUT THE MTA AMENDMENT PRIOR TO ITS EXECUTION. IS THAT CORRECT?

A. No. I did not talk with Mr. Hendrix about the MTA Amendment before it was signed. Specifically, Mr. Hendrix did not say anything to me about a reduction in the reciprocal compensation rates at that time.

Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

A. Yes.

(THEREUPON, INTERMEDIA STROW DIRECT EXHIBITS A, B, C, D, E AND F WERE MARKED FOR IDENTIFICATION.)

Q. Now, Ms. Strow, do you have in front of you a summary of your direct and rebuttal testimony?

A. Yes, I do.

Q. Now, I've already asked you questions about your name and position. Could you present that summary to the Commission starting with the bottom two lines on the first page and just going from there?

A. Yes, I will. Good morning. On July 1st, 1996, Intermedia signed an interconnection agreement with BellSouth pursuant to Section 252 of the Telecommunications Act of 1996. This agreement provides that Intermedia and BellSouth will reciprocally bill--excuse me, reciprocally compensate each other for the transport and termination of traffic originated on the network of the other within the same local calling area according to the terms and conditions set forth in the interconnection agreement.

BellSouth withheld payments against Intermedia's invoices for local traffic

compensation. BellSouth claimed that Intermedia was billing it for compensation for traffic terminated to internet service providers, and that such traffic was not eligible for reciprocal compensation under the interconnection agreement.

Because BellSouth and Intermedia were unable to resolve the dispute, it became necessary to pursue a regulatory remedy. On June 10th, 1998, Intermedia filed a complaint against BellSouth with the North Carolina Utilities Commission alleging that BellSouth was in breach of the interconnection agreement. On November 4th, 1998, this Commission established BellSouth's liability in ruling that BellSouth is required under the interconnection agreement to pay reciprocal compensation to Intermedia for traffic originating from BellSouth end users and terminating to ISPs on Intermedia's network in the same local calling area. BellSouth subsequently appealed the Commission's order to the federal court, and the appeal is still pending in the federal system.

In the history of the relations between incumbents and competing local providers, there has

been no greater point of conflict than the dispute over reciprocal compensation for ISP traffic. It is difficult to overstate the tension between the incumbents and the competitors on this issue. This issue was particularly important to Intermedia in 1998 because of the increasing amounts of ISP traffic that Intermedia was terminating for BellSouth's customers.

It is my understanding that as resolution of a penalty lawsuit, BellSouth made partial payment, and the parties agree--agreed that the two remaining issues would be submitted to this Commission. Those issues are, one, the June 3rd, MTA amendment, and two, the tandem switching rate.

The MTA amendment modifies Intermedia's interconnection agreement with BellSouth for the purpose of making available, at Intermedia's request, a network architecture called multiple tandem access or MTA. This architecture is typically deployed in order to minimize the number of trunk groups needed to complete traffic in metropolitan areas. It is also useful to alleviate conditions of persistent traffic congestion.

In the spring of 1998, Intermedia's customers were experiencing traffic blockage in the Atlanta area. Upon inquiring as to what was needed to resolve this issue, Bill Morrison, who is Intermedia's account manager for BellSouth, advised me that MTA was needed. I was also told by Mr. Morrison that in order for BellSouth to provide MTA service to Intermedia, Intermedia's interconnection agreement would need to be amended.

At my request, Stuart Hudnall of BellSouth forwarded to me the MTA amendment for review and signature. Mr. Morrison said on the telephone that Intermedia would need to request the MTA amendment for BellSouth to provide it. So I requested the amendment verbally. BellSouth drafted the proposed amendment language. Intermedia signed the amendment in June 1998 without making any changes.

This amendment provides that BellSouth will, upon request, provide MTA architecture to Intermedia. The rates for multiple tandem access are set forth in Attachment A of the amendment.

MTA has not been requested by Intermedia or provided to Intermedia in North Carolina.

When I reviewed the MTA amendment, I understood that amendment as providing charges for the MTA architecture, not changing rates for reciprocal compensation for all local service. The transmittal letter to the North Carolina Utilities Commission dated June 9th, 1998, in part, states: "On October 10th, the Commission approved an interconnection agreement between BellSouth and Intermedia. I enclose an amendment to that agreement that provides for multiple tandem access." The transmittal letter says nothing about this amendment independently changing rates for reciprocal compensation for all services.

The Public Service Staff--excuse me, the Public Staff's recommendation for the August 3rd, 1998 Commission conference states, in part, the following: "With this amendment, BellSouth agrees to provide, upon request, and Intermedia agrees to accept and pay for multiple tandem access at the rates contained in Attachment A of this amendment."

This recommendation says nothing about an independent change of reciprocal compensation rates for all local service. Based on this

recommendation, the Public Staff's understanding is consistent with my understanding of the MTA amendment. If BellSouth had told Intermedia that it wanted to reduce its reciprocal compensation rate by more than half in North Carolina for all service, regardless of whether MTA was requested and provisioned in North Carolina, Intermedia would have rejected such a proposal immediately.

I never received a request orally or in writing from BellSouth to change reciprocal compensation rates for all local traffic, including traffic to internet service providers. I did not understand the draft of the MTA amendment to constitute such a request. I am not aware of anyone else at Intermedia receiving such a request.

The June 3rd amendment does not change or replace rates contained in the original interconnection agreement. Rather, the June 3rd amendment sets out rates for a new service, multiple tandem access, as set forth in Attachment A to that amendment. Moreover, the form of the June 3rd, 1998 MTA amendment is significant; that is, the June 3rd, 1998 amendment does not state

anything about removing or deleting sections of previous--of the previously approved interconnection agreement. Rather, this amendment adds a new interconnection service by which BellSouth would incur additional costs in providing more functionality.

It is important to point out that when Intermedia and BellSouth amended their interconnection agreement to replace a former term with a new term, typically, we would first set out the specified--the specific section that was to be deleted and then set forth the language of the new section to be inserted. This approach was followed in amendments dated February 24th, 1997 and February 16th, 1999.

The MTA amendment does not follow the approach of deleting an existing section; thus, the MTA amendment does not replace rates for an existing service, but rather adds a service with rates for that service.

I would never have agreed to give up a large part of the compensation for ISP-bound traffic for all of the BellSouth territory in return for MTA

service, which was only potentially an issue in one state. Such an agreement would have been one-sided and most unfair. And at no time did I talk with Mr. Hendrix about the MTA amendment before it was signed. Thank you.

MR. MEEKER: Mr. Chairman, that completes Ms. Strow's summary. She's available for cross examination.

COMMISSION ERVIN: BellSouth?

MR. EDENFIELD: I told you once I get the microphone, that's it.

CROSS EXAMINATION BY MR. EDENFIELD:

Q. Ms. Strow, good morning.

A. Good morning.

Q. My name is Kip Edenfield. I'm going to be asking you a few questions today. We'll try to move through this as quickly as we can.

A. Okay.

Q. As I understand it, since January of 2000, this year, you've been employed by a company called Cbeyond Communications?

A. Yes. That's correct.

Q. Does Intermedia have any financial interest in

Cbeyond?

A. Not to my knowledge, no.

Q. How about does Cbeyond have any financial interest in Intermedia?

A. Not to my interest--I mean, not to my understanding, no.

Q. Is it just coincidence that your offices are located in the same building as Intermedia's in Atlanta?

A. Absolute coincidence. It's not the same building though. They're--it's the same office park, two or three buildings away.

Q. When were you first approached about testifying in this docket?

A. It was in the last couple of months. Although, I will have to say that, you know, upon leaving Intermedia, I had left the door open that if they needed me to come back for this case, I thought it was my, you know, ethical duty to at least offer to do that since I was the one responsible for the amendment at the time.

Q. Who approached you?

A. My initial conversation was with Pat Curlin,

general counsel for Intermedia.

Q. What did she tell you?

A. She asked me if I would be able to testify for Intermedia in the MTA case.

Q. Was this before or after the Florida proceeding?

A. I don't recall. I--I don't know, because I wasn't following it at the time.

Q. Were you ever asked to testify in the Florida proceeding?

A. No, I was not.

Q. Is Intermedia paying for your expenses in being here today?

A. They paid for my flight and my hotel room, yes.

Q. Do you have any other financial arrangement with them for your time here today?

A. No, I do not.

Q. Who wrote the testimony that you filed?

A. Parker Poe & Adams. Mr. Meeker, I believe, at my direction--I gave input.

Q. Did you make the first draft, or did they make the first draft and send it to you?

A. I'm trying to recall. I have a lot of things going on right now. I believe we had a verbal

conversation about the content, and then Mr. Meeker drafted it, sent me a draft to review, I reviewed it, gave comments and--basically, a normal process.

Q. Is your husband still employed with Intermedia?

A. Yes, he is.

Q. What is his position?

A. He is Senior Director of Training.

Q. Is he still down in Tampa?

A. Yes, he is.

Q. And who do you currently report to at Cbeyond?

A. I report to Jim Geiger.

Q. He's the gentleman who signed on behalf of Intermedia the June 3rd amendment?

A. Yes, he is.

Q. When did he leave Intermedia?

A. I believe, although I'm not certain, he left in November of 1999.

Q. Who was Heather Gold?

A. Heather Gold is Vice President of Regulatory for Intermedia, and when I was employed there, was my supervisor.

Q. Why is it that you're testifying in this proceeding instead of Heather?

A. My understanding of why I'm testifying in this proceeding is because I am the person who had first-hand knowledge of what actually occurred with this amendment. I was the one that reviewed it and, therefore, the only one that can give a first hand account of actually what occurred.

Q. I'm going to hand you a document, Ms. Strow, and this is a copy of the transcript from the Florida proceeding.

COMMISSION ERVIN: It looks like some good bedtime reading.

MR. EDENFIELD: It's a definite cure for insomnia.

COMMISSION ERVIN: I don't know. I spent most of the morning reading things filed with the SEC under the Utility Holding Company Act. It would be hard to beat that.

MR. EDENFIELD: I hope you had a lot of coffee.

COMMISSION ERVIN: Mr. Edenfield, do you want to mark this in some way?

MR. EDENFIELD: That was my next request. If I could have this marked as Cross Examination

Exhibit Number 1. I'm not sure of the order you like to do these in, Commissioner Ervin.

COMMISSION ERVIN: I don't really care. As long as it's clear on the record, I'm satisfied. We will mark this as BellSouth Cross Examination Exhibit Number 1.

(THEREUPON, BELLSOUTH STROW CROSS EXAMINATION EXHIBIT NO. 1 WAS MARKED FOR IDENTIFICATION.)

COURT REPORTER: I need to have a copy of that.

MR. EDENFIELD: Here's one. One thing we have is paper.

COMMISSION ERVIN: I've got some friends at home that run a chip mill. They're going to be very happy.

Q. If I could get you to turn to page 32 of the transcript. And if you'd take one second, once you get there, and read lines 6 through 12.

A. (Witness reviews document.) Okay.

Q. Will you agree with me that, at least as of the time of the Florida hearing, that Ms. Gold's position was that she did not need you to testify

because it was not necessary?

MR. MEEKER: Objection as--whether it's a question that relates to the Florida proceeding or whether it relates to North Carolina. It's not clear in the question.

COMMISSION ERVIN: I interpret the question as applying to the Florida proceeding since that's the proceeding in which the testimony was taken in; is that right, Mr. Edenfield?

MR. EDENFIELD: That's correct.

COMMISSION ERVIN: Right. Overruled. And you can answer it on that basis, recognizing that you're not in the mind-reading business.

A. Which was exactly what my answer was going to be. I have no way of knowing what was in Ms. Gold's mind. I would agree that this transcript says what it says, from line 6 through 12.

Q. Okay. And that says that absolutely not, they were not planning to call you, because there's no need for it; is that what it says?

A. That is what it says, yes.

Q. And as you sit here today, you cannot recall whether you were first approached before or after

the Florida hearing?

A. I really can't. Because in my new position, I'm dealing with other things and not tracking Intermedia cases as part of my job, other than maybe their interconnection agreement.

Q. You didn't take that job responsibility with you?

A. No, I did not.

Q. Can you point to any argument that's being made on behalf of Intermedia in this proceeding that was not made on behalf of Intermedia in the Florida proceeding?

A. I cannot answer that, because I was not a part of the Florida proceeding. And I did not have anything to do with that case.

Q. Have you not read the Florida transcript or any of the testimony that was filed in Florida?

A. I read some of Mr. Hendrix's deposition in Florida. I'm trying to recall what I read from Florida--and it was only yesterday. I may have read some excerpts to the cross examination of Ms. Gold, but I don't remember. It was very quickly skimming it, because it was clear to me that there was nothing really pertinent. I mean, my testimony will have

to stand on its own today.

Q. Sure. Did you ever read her direct or rebuttal testimony, do you recall, from the Florida proceeding?

A. No, I did not read that.

Q. All right. Let's talk about the events leading up to the June 3rd amendment. As I understand your testimony, you approached Bill Morrison at some type of--under some circumstance, and indicated you all were having blockage problems in Atlanta?

A. Yes. I had received a phone all from Intermedia--an employee at Intermedia stating that there were some significant problems in the Atlanta area with traffic congestion. That employee basically told me that they had been told by the account team that we needed an amendment to our interconnection agreement. I then turned around, called Bill Morrison, who is the account team representative that we dealt with in most cases, asking him to clarify (a) what the situation was, and, you know, what was needed to remedy it.

And in that conversation, he basically told me that in order to address the traffic congestion

problem in Atlanta, we needed an amendment to our existing interconnection agreement for something called multiple tandem access.

Q. That was one of the solutions he indicated you might need to resolve the problem?

A. That was the only solution he gave me to the problem.

Q. Would you agree with me that, as of the time he had made that suggestion to you, that your interconnection agreement did not provide for multiple tandem access?

A. Yes, I would agree with that.

Q. And I take it that was the purpose for having the amendment, at least one of them, in our view, was to have MTA?

A. Yes. I looked at it as an additional service that BellSouth would provide for those situations where we might need it.

Q. Would you agree, then, since it was not part of the interconnection agreement, at least at the time you were talking to Bill Morrison, that that was not something--and by "something," I mean providing MTA--was not something that BellSouth was obligated

to provide for Intermedia?

A. I really don't know the answer to that because of the traffic congestion problem. That's partly--you know, they have an obligation there for us to be able to pass our traffic back and forth. We also have an obligation to give them proper forecast to permit that. So I think there is an obligation to make sure we exchange traffic on both sides. So I have a hard time agreeing with that statement--

Q. Well, let me back up.

A. --on a purely, you know, the way we operationally do business.

Q. I'm sorry. I didn't mean to talk over you. I'm sorry.

A. That's okay.

Q. Let me back up a step then. Would you agree that the responsibilities and obligations that Intermedia and BellSouth have towards each other are encompassed in a document called the interconnection agreement?

A. That is correct, yes. I would agree with that.

Q. And you will agree with me that, as of the time you talked to Bill Morrison, there was no provision in

that interconnection agreement obligating BellSouth to provide MTA to Intermedia?

A. That is correct. And in fact, the way we were doing business with BellSouth was we were directly trunked to every tandem where we were providing service and, therefore, had no need for it.

Q. You're not suggesting that was the case in every state and every LATA, are you?

A. No, I mean, that was my understanding of, generally, how we did business with them. And I'm not an engineer. I've got to tell you all that now.

Q. You had then contacted a gentleman by the name of Stuart Hudnall who works for Mr. Hendrix?

A. That is correct, yes.

Q. And you would ask him to, I guess, to prepare some type of amendment for you to look at?

A. I called him and said that I had been told by the--and I can't remember if I talked directly to him or if I left a voice mail. But I know it was a telephonic conversation, because I was traveling--because I remember when I got the phone call from Mr.--from internal and called Mr. Morrison, I was

in the Dallas Airport. For some reason I remember that. But, anyway, I left a message for him, which is basically the normal course. He was the primary negotiator from BellSouth assigned to us. Said he--what I'd been told by Mr. Morrison, that we needed an MTA amendment, and would he please send me a draft to review.

Q. Okay. And in fact, he did that on May 15th?

A. That is correct.

Q. What did you do with the proposed language that was sent to you?

A. I was not in the office, but I did get an electronic copy where I was traveling. I had asked Mr. Hudnall to also copy Tammy Hunley on the amendment so that she could distribute it for review, which is the normal course within the company.

It was sent to engineering for them to review it from an engineering perspective, and then I reviewed it from a policy, you know, agreement perspective.

Q. I'm going to pass out real quickly, Ms. Strow, a copy of at least what I believe to be an email from

Mr. Hudnall directed to you and to Ms. Hunley dated May 15th. Will you look at that and confirm that that is, in fact, what that is?

A. Yes, that appears to be my--consistent with what I just said.

MR. EDENFIELD: Commissioner, if I could, could I have that marked as BellSouth's Exhibit Number 2 for identification

COMMISSION ERVIN: Let it be so identified as BellSouth Cross Examination Exhibit Number 2.

(THEREUPON, BELLSOUTH STROW CROSS EXAMINATION EXHIBIT NO. 2 WAS MARKED FOR IDENTIFICATION.)

Q. Okay. Now, I'm sorry. Where we left off in the story was Ms. Hunley--we sent it to Ms. Hunley and to you, and it had gone to engineering?

A. Yes.

Q. What happened next?

A. I called Ms. Hunley--this whole thing happened within a two-week period, which is evident from the dates, because I--Mr. Hudnall was very quick to respond with the amendment from the time I requested it. So I think the request had to have

been done no more than a day or two before the 15th when he sent it to us. It was reviewed by engineering. I called Tammy Hunley to confirm that she had gotten feedback. She basically said she had. They said it was okay. I reviewed it. It looked in order to me. I recommended it for approval. It's that simple.

Q. Recommended to whom?

A. The person who signs it. I was not an officer of the company at the time; therefore, I did not have the authority to sign anything that had a binding agreement on the company.

Q. That would be Mr. Geiger in this instance?

A. That is correct, yes.

Q. Did you actually speak to Mr. Geiger about the amendment before he signed it?

A. I took the amendment to Mr. Geiger. He said, "Is this amendment okay? Is it something we need?" It was very informal. And I said "yes," and he signed it.

Q. Did you all have any discussion about what it could mean or the ramifications of the language?

A. No, none whatsoever.

Q. Did he ever express to you what he thought it meant?

A. No, he did not.

Q. Prior to getting the email that has been marked as Defendants' Number 2 for identification, how many conversations did you have with Mr. Hudnall or anyone else from BellSouth about this particular amendment?

A. Other than the conversation with Bill Morrison and the verbal request to Mr. Hudnall, I had no other discussions, nor was there ever a negotiation about this amendment. I reviewed it, thought I understood it, and signed it--had Mr. Geiger sign it.

Q. Okay. How many--from the time that you first spoke to Mr. Hudnall until the time the amendment was executed, how many conversations did you have with Mr. Hudnall or anyone from BellSouth about it?

A. I don't recall having any conversations with anyone from BellSouth about the amendment.

Q. I mean, other than the initial one with Mr. Hudnall?

A. And Mr. Morrison, that's correct.

Q. And it's your position that you never spoke to Mr. Hendrix about this amendment at all?

A. My first recollection of speaking with Mr. Hendrix about this amendment was in the early part of 1999 at the Georgia Public Service Commission.

Q. And given the facts as you just relayed them, is it safe for me to assume that you never proposed any alternative language to BellSouth or in any way questioned what BellSouth meant by the language?

A. That is correct.

Q. And other than the amendment itself--the signed amendment--and this email, is there any other correspondence that you're aware of, whether it be a letter, an email, a transcription of a telephone call, that exists concerning the events leading up to the execution of the amendment?

A. None whatsoever. As I said, it was a very straightforward process. I read the construct of the agreement. It appeared to be an MTA amendment. I recommended it for signature, and it was signed.

Q. Back during that time, which is in the early to middle part of 1998, was it Intermedia's practice when negotiating with ILECs to just accept language

without proposing changes back, or was this more of an anomaly?

A. I have to say it's neither. Sometimes we do; sometimes we don't. It just depends on the circumstance of the amendment.

Q. Do you have a copy of the interconnection agreement with the amendments with you? If not, I'm going to hand one out, and I'm trying to figure out who needs a copy.

COMMISSION ERVIN: Do we want to make this Number 3, Mr. Edenfield?

MR. EDENFIELD: Yes, sir. That would be my request.

COMMISSION ERVIN: All right. It will be identified as BellSouth Cross Examination Exhibit Number 3.

(THEREUPON, BELLSOUTH STROW CROSS EXAMINATION EXHIBIT NO. 3 WAS MARKED FOR IDENTIFICATION.)

Q. As I have been accused of my entire life, I've made this more difficult, probably, than it has to be. I have not marked exactly where the amendment is in here. If you will turn back from the back of that

package, 11 pages, I believe.

COMMISSION ERVIN: The 11th page from the end?

MR. EDENFIELD: Yes, the 11th page from the end.

Q. I'm sure there was an easier way to do this. I don't know, just--

COMMISSION ERVIN: And is that a page--this is just for my edification, Mr. Edenfield, does that page have at the top, quote, "Rates for physical interconnection," close quote, or have I got the wrong page?

MR. EDENFIELD: Huh-uh (no).

MR. MEEKER: Mr. Chairman, it's back about 14 or 15 in mine.

MR. EDENFIELD: That's not a good sign.

A. "Rates for physical interconnection"?

Q. No. Let's go back a few more pages.

COMMISSION ERVIN: Back toward the front?

MR. EDENFIELD: It starts with "Amendment to Master Interconnection Agreement."

A. Oh, back.

MR. EDENFIELD: And the first paragraph says, "Pursuant to this agreement, Intermedia and

BellSouth."

MR. MEEKER: Just for the record, I think that there is a cover letter from Mr. Povall of June 9th, and it immediately follows that cover letter.

THE WITNESS: Is there a whole agreement in front of it?

MR. MEEKER: Again, I think the amendments are on the front of the document not the back. So if you go in 14 pages from the front, you'll find the amendment.

THE WITNESS: Oh.

MR. EDENFIELD: My copy is different from yours.

COMMISSION ERVIN: All right. I have a document that is labeled, "Amendment to Master Interconnection Agreement Between Intermedia Communications, Inc. and BellSouth Telecommunications, Inc." dated July 1, '96; is that the page I'm looking for, Mr. Edenfield?

MR. EDENFIELD: If you will look on the--I'm sorry. I had a different copy. My copy was different than what I handed you. I'm sorry.

COMMISSIONER ERVIN: That's fine.

MR. EDENFIELD: It's actually--should have been easier to start from the front. If you look on the second page of that, Commissioner Ervin, if it has the date of 6/3/98?

COMMISSION ERVIN: Underneath Mr. Hendrix's signature?

MR. EDENFIELD: Yes, sir.

COMMISSION ERVIN: All right. I have that.

MR. EDENFIELD: Okay. I'm sorry.

THE WITNESS: I'm lost.

Q. Start from the beginning--

COMMISSION ERVIN: Mr. Meeker, are you with us, too?

MR. MEEKER: I am, but Ms. Strow is not.

COMMISSION ERVIN: All right. Well, here she is--

THE WITNESS: I mean, I went back several--

MR. EDENFIELD: My apologies.

COMMISSION ERVIN: Don't worry about it. I've done it myself.

MR. EDENFIELD: I'm sorry.

A. I did see the MTA in there, but I just didn't know that's the one you were talking about.

COMMISSION ERVIN: Well, I've got my copy of the MTA. I just--

MR. EDENFIELD: I told you I was going to do it the hard way. Nobody believed me until we got 20 minutes into it.

Q. All right. Take a look, if you would, this--the MTA amendment is, basically, a three-page document, if you account the attachment; do you agree with that?

A. That's correct.

Q. The first two pages are the amendment, and then the third page is labeled "Attachment A," which has the rates?

A. Yes, that is correct.

Q. Is there any reason why the rates in Attachment A cannot apply to both MTA traffic and local traffic?

A. Based on the construct of our agreement, yes, because there was clearly general provisions in the agreement in Attachment B-1 that dealt with the exchange of traffic in normal situations, and Attachment A, here, ties it to multiple tandem access.

Q. Okay. Take it a second. Do you still have the

Florida transcript in front of you?

A. Do I need to keep this out?

Q. I would say--

A. I don't want to lose it.

Q. Take a look, if you would, at page 312. The good news is this one is actually in the right order.

COMMISSION ERVIN: And it's also numbered.

MR. EDENFIELD: I need all the help I can get.

Q. Take a look, if you would, at lines 3 through 7.

A. (Witness reviews document.)

Q. If you need to flip back a page--will you agree with me that, at least according to this transcript, when I asked Ms. Gold, referring to the rates in Attachment A, is there some particular reason why those rates cannot apply to both local traffic and MTA traffic, she said there was no reason that she was aware of why the rates couldn't apply to both?

A. I would agree that the transcript, for the few lines that I've read out of the context--I have no idea what the context and the line of questioning was--does say that. I would disagree, based on our interconnection agreement, that that is the case.

Q. Is there something inherent about the service of MTA that makes it have to have rates that are different from local traffic?

A. Yes.

Q. What is it?

A. My understanding of the way it works is that BellSouth, for lack of--and I'm not a technical engineer--does extra things for us that we do not do for ourself in the MTA arrangement. And they were doing that, basically--or the reason that I thought Mr. Povall did, is because there were extreme situations of traffic congestion in the Atlanta area, and that they were having to off-load traffic to other tandems because of blockage situations; therefore, they were providing additional stuff.

And even though it's kind of a convoluted way of looking at it, the rates we would pay them under that circumstance would be less--excuse me, the rates they would have to pay us, under those circumstances, would be less, because they were performing certain functions that we had not performed previously--I mean, that we had performed

previously. I apologize.

Q. I'm not sure I follow that. Let me back up a step. When you have MTA, there's switching involved, and there's transport involved; would you agree with that?

A. I would agree with that, but there's also multiple tandems involved.

Q. Sure, so they're--they're switching--the switching happens twice--

A. Right.

Q. --at least?

A. So they're incurring more cost.

Q. Right, hence the term "multiple"?

A. Yes.

Q. Is there any reason why the switching rate--the tandem switching rate found in Attachment A, for the State of North Carolina, cannot apply to both tandem switching that is not in the context of MTA and tandem switching that is outside of the context of MTA. Is there any reason why that rate can't apply to both?

A. Under our interconnection agreement, yes, there is a reason. Because MTA was specific to a

circumstance when requested, and the general provisions applied for all other circumstances where we were directly trunking--we had direct trunks into the tandems, and there were not situations where we had to do that.

Q. Would you agree with me that the rates found in the column in Attachment A under the initials "NC"--you there?

A. Yes.

Q. That those are the exact same rates that the Commission established in the AT&T arbitration via order December 23rd, 1996?

A. I would agree subject to check. I don't have any first-hand knowledge of the AT&T arbitration, because I wasn't a party to it. But I have no reason to dispute that.

Q. Will you also accept, subject to check, that those rates that were established in the AT&T arbitration, which are reflected here, were for the transport and termination of local traffic?

A. That could possibly be. We, however, had a negotiated agreement with negotiated rates.

Q. And you negotiated--and would you agree that you

negotiated into this agreement, again, subject to check, that the rates that are found here under the column "NC"?

A. I will agree that I negotiated an amendment for multiple tandem access that reflected the rates in these columns here.

Q. Okay. And what I'm asking you is under the column "North Carolina," are those the same rates that came out of the AT&T arbitration?

A. Subject to check, they could have been.

Q. Will you accept that multiple tandem access was not an issue in the AT&T arbitration?

A. I will accept that.

Q. Will you accept, subject to check, that the rates found under the North Carolina column were the rates this Commission established for the transport and termination of local traffic?

MR. MEEKER: Objection, Mr. Chairman. This witness wasn't involved in the AT&T proceeding and just doesn't know, and we're getting just hypothetical answers that this could or could not be true. And there is just no point in this.

COMMISSION ERVIN: I think that I'm going to

overrule the objection. She's been asked. If she doesn't know an answer, she's certainly entitled to say that. And I'm going to leave the answering function to her. Overruled.

Q. Will you accept that subject to check?

A. Could you restate the question, please?

Q. Yes, ma'am. That the rates found under the column "NC" in attachment A to the June 3rd amendment, that those rates were established by the Commission as the rates for the transport and termination of local traffic in the AT&T arbitration?

A. I will--yes, I will accept, subject to check, that those were the rates in the AT&T arbitration, which have absolutely nothing to do with Intermedia's interconnection agreement, which was negotiated.

Q. You're not suggesting that this June 3rd amendment is not part of your interconnection agreement, are you?

A. No, I am not suggesting that.

Q. In fact, you would agree that it is part of your interconnection agreement?

A. It is an amendment to our existing interconnection agreement that provides for a service called

multiple tandem access and sets forth the rates specific to that arrangement.

Q. Will you agree, subject--well, you may even know this. This may be before your departure. Will you agree that in its most recent arbitration--Section 252 arbitration--that Intermedia has requested elemental rates that would apply to both MTA traffic and to local traffic, and that those rates are the same?

A. I have no knowledge of that. That arbitration was being filed, basically, around the time I left, and I don't recall offhand.

Q. Subject to check, will you accept that?

A. Yes, subject to check. But I don't have any first-hand knowledge presently.

Q. Okay. I know this is kind of a preliminary thing. I think it's pretty much accepted. But while I'm on the topic, Mr. Geiger's signature--that is his signature; right?

A. Yes, I saw him sign it.

Q. Even better. Let's take a look at the particular provisions of the June 3rd amendment. After you get through the heading there, the first paragraph

that starts, "Pursuant to," read the first two paragraphs. And then the question I'm going to ask you is, is there any mention in those first two paragraphs that this particular amendment is limited solely to MTA?

A. You are talking about the two opening paragraphs?

Q. Yes, ma'am.

COMMISSION ERVIN: Are you to--for my clarification, Mr. Edenfield, are you talking about the two preliminary paragraphs with which the document begins or the first two numbered paragraphs?

MR. EDENFIELD: I'm talking about the first two paragraphs which start the document, "Pursuant to disagreement," and the next one is "Now, therefore--

COMMISSION ERVIN: Okay. Thank you.

MR. EDENFIELD: --those two paragraphs.

A. And I apologize. Would you restate your question again?

Q. Yes, ma'am. I'm sorry. I shouldn't have been asking you a question while you were reading. The question is, do you see anywhere in those first two

paragraphs that I mentioned any language limiting this particular amendment solely to MTA situations--in those two paragraphs?

A. No, I do not. But by the same token, I don't see anything expanding it either. And what I had requested was an MTA amendment, not a change in our reciprocal compensation rates.

Q. So it's your position if it's silent on it, then it should be read to be more restrictive?

A. I--I can't say that. What I'm saying is is this says what it says. And the entire context of this amendment was multiple tandem access, a specific arrangement service to be provided by BellSouth.

Q. I have to tell you I'm having a reciprocal comp flashback with the language that didn't mention anything about ISP traffic. And it was you all's interpretation that that meant it was therefore included, because it wasn't mentioned. So in this instance, MTA is not mentioned, so therefore it's included?

MR. MEEKER: Objection. I think he's misphrased his question.

COMMISSION ERVIN: Sustained--sustained.

Q. Take a look at the paragraph that's numbered one--do you see where I'm talking about, "The parties agree that BellSouth"? Read that real quickly if you would.

A. (Witness reviews document.) Okay.

Q. Will you agree with me that the purpose of paragraph number one is to set forth the condition upon which Intermedia will request BellSouth to provide MTA?

A. I will agree, yes, that this first numeric one paragraph basically says this is what this is, multiple tandem access.

Q. Will you agree with me that paragraph numbered one makes this a--what I call a one-way agreement; in other words, Intermedia has the right to request MTA from BellSouth, but that is not a reciprocal obligation given to BellSouth to ask of Intermedia?

A. I've never thought about that, but I would agree that, yes, it appears to be one way that BellSouth is going to do something for us, yes.

Q. And in that first numbered paragraph, there is a specific reference to paragraph number two; will you agree with that?

A. That is correct, yes.
Q. Is there any other numbered paragraph referenced in paragraph numbered one?
A. No, there is not.
Q. Take a look and read paragraph number two.
A. (Witness reviews document.) Okay.
Q. Will you agree with me that, in general, what paragraph two is doing is setting up the requirements of how BellSouth will actually provide MTA to Intermedia when Intermedia requests it?
A. Basically, the way I looked at this was here is what we're doing, here is a description of what we're doing, and then, after that, here are the rates that apply to that when we do it.
Q. Well, let's stick to my questions. Paragraph numbered two, will you agree that what that is doing is setting up the requirements of how BellSouth is going to provision MTA to Intermedia?
A. I would agree that is a description of the service MTA, yes.
Q. Is there any other paragraph mentioned by number in paragraph number two?
A. No, there's not.

Q. Will you agree with me, as a general premise, that it's possible for an amendment to an interconnection agreement to cover more than one topic?

A. Yes, they can.

Q. In fact, there are amendments to this very agreement that cover more than one topic?

A. Yes, I would believe that would be the case. I don't exactly recall.

Q. Will you agree with me, then, that it would have been possible for BellSouth and Intermedia to sign an amendment that modified only the local traffic rates, that's possible?

A. That would be a possibility, but that was not my understanding of what was happening here.

Q. What I'm asking you is that a possibility?

A. Yes. If we both agreed globally that that's what we're going to do, that could occur, yes.

Q. Would you also agree with me--

A. That's what happened in the original agreement. We agreed what the rates would be for all traffic.

Q. I'm sorry. Your pause got me. I didn't mean to interrupt you.

A. I'm sorry. And I paused and added.
Q. Would you also agree with me that it's possible for BellSouth and Intermedia to sign an amendment that modifies reciprocal compensation rates?
A. Yes. We did that, I believe, on a couple of occasions. Not the rates, we did not amend, but the threshold, the original conditions were amended in one of the previous amendments before this one.
Q. Will you agree with me that if paragraphs one and two did not exist, that you would be looking here at an amendment that had modified all the local traffic rates and had changed the reciprocal compensation rates for the agreement?
A. I would agree with that. But the agreement doesn't do that. And therefore, when I read it, I read it in the context of what's on here, numerically sequenced paragraphs that build upon one another. That was my reading of it. And what I know about contract construct, typically, if you move to another subject, it's clearly identified or if they're, you know, not related. But they're--this was never--and I guess that's what's giving me trouble with your line of questioning here. There

seems to be--and I can't speak to what BellSouth's intent was or what they were thinking. I can speak to I read an amendment that seemed to very logically flow as to here's to what the service is, here's the name, here's what it is, here are the rates that apply. The Attachment A clearly says these are the rates for MTA. And therefore, the way I had requested the amendment, what was presented to me, and what I signed, appeared to be a service, that upon request, I could get, or the company could get, and here are your rates that apply for it. I never interpreted this to be anything broader.

Q. Did you ever ask BellSouth for clarification as to whether it meant something broader?

A. I didn't need to, I didn't think, because it was specific--I did not ask for new reciprocal compensation rates. I asked for MTA service, and that's what I had been told by BellSouth I needed. I didn't make this up on my own.

Q. What, your testimony now, or the--

A. No. What I'm saying is I did not create the need for the amendment, and BellSouth is who told me I

needed this particular MTA amendment.

Q. So if BellSouth told you you needed an amendment to your agreement that basically said you would pay us $4 billion a year, you would just sign it and not ask us any questions about it?

A. No. What I'm saying is what I received appeared to track with what I had asked for. And, you know, I don't read documents and only read piece-parts of them. I read them as an amendment that said, "Here's what you're getting. Here's a description of it. Here are the rates." And then the rates are clearly tied, in the Attachment A, to multiple tandem access, because that's the very first sentence that's under Attachment A.

I'm basically just trying to tell you the way I looked at this when I reviewed it based on what I had requested.

Q. It never crossed your mind, because the paragraphs have separate numbers, that each individually numbered paragraph would stand on its own?

A. Not in this instance, it did not, no, because I-- they appeared to build upon one another.

Q. So if they had been in the order of 3, 4, 1, and 2,

then you would say, oh, this is an amendment that basically is modifying local rates and modifying reciprocal comp rates?

A. I can't say what I would have thought if it would have come in sequentially numbered in that order; I mean, I don't know.

Q. So it's the number--it's the order in which you found the paragraphs is what's drawing you to the conclusion that this is all addressing one topic?

A. It is the context in which I requested it, which was an MTA amendment based on a traffic congestion problem in Atlanta. I asked for and I received an amendment for MTA. Clearly, that's in Stuart Hudnall's correspondence to me, "Here is your MTA amendment." I read the agreement, you know, based on logical, sequential thinking, and the read of it. This is what it says I asked for. This is what it is. These are the rates that apply. Look at attachment A. Here are the rates for this service that we will provide to you in those instances you request it. It's as simple as that.

Q. So in the middle of a reciprocal compensation dispute, you took a look at a sentence in an

interconnection agreement amendment that said, "The parties agree to bill local traffic at the elemental rates specified in Attachment A," and that did not give you pause to ask a single question to BellSouth about what that meant?

A. No, it did not, because I was looking at it in the context of MTA.

Q. Did it ever--

A. It was something additive, not something replacing anything.

Q. Did it ever dawn on you or occur to you that BellSouth might have been taking the opportunity in giving you what you had requested to get something that they, in fact, wanted as well, and that was elemental rates?

A. It did not, no. I could not know what they were thinking. I know what I asked for, and it appeared that that was what I got. Well, and also--I mean, one of my exhibits clearly shows--I mean, it doesn't always happen this way. But in most cases, and prior to this amendment, what I had seen was if we were changing something in the existing interconnection agreement, and it specifically--it

was one that had to do with the exchange of local traffic, it deleted the paragraph--it showed what was going to be deleted, and then it showed what was being replaced. And then, if there was anything additional, it laid that out. I don't have it right in front of me, but it's in my testimony. I mean, that's what we had seen the previous time that we had dealt with this in, I think, the only amendment we had had to that point with BellSouth. So, based upon my experience with them, that's usually how they constructed, at least the amendment I had seen. And there had only been one previous to this one--

Q. Have you actually--

A. --if I recall correctly.

Q. --have you actually looked through the amendments, the number of amendments here?

A. Well, what I'm talking about is what occurred before the MTA amendment.

Q. Had you never seen an amendment in your experience to an interconnection agreement that did not have the words "deleted and replaced" in it?

A. At that point, I had not done any other amendments

to any other interconnection agreement to the best of my knowledge. So the only instances I had to deal with--even though I dealt with other ILECs--was BellSouth. And even if I had, that's really kind of irrelevant, because I have to look at how BellSouth does things. And that was what I had seen in the past.

At that time, because there were no--all the Opt-in and the MFN issues were before the Supreme Court, we weren't even looking at other people's agreements. Because we didn't have any ability to, you know, get into the provisions, because the MFN stuff was all up in the air.

Q. Would you agree with the following statement I'm about to make, that if you--if you look at this outside of the circumstances you're talking about--forget all the circumstances surrounding how the amendment came into being for a minute--that if you looked at the paragraphs three and four, and interpreted them in isolation, that they would support BellSouth's view that the amendment requires the Attachment A rates to be applied region-wide upon execution?

A. I can't say that. Because when I looked at them, I did not look at them in isolation. I looked at them in the context in which I had requested it in, the amendment that was presented to me. So I can't say what I would think, you know, if circumstances were different.

Q. Will you accept, subject to check, that that is precisely what Ms. Gold said in her testimony in Florida?

A. I can't say what Ms. Gold was thinking or what Ms. Gold said. I have no knowledge of that.

Q. She was your boss, right?

A. Not at the time this amendment was signed.

Q. Subsequent to that?

A. Yes.

MR. EDENFIELD: I've got nothing further.

COMMISSION ERVIN: Redirect?

MR. MEEKER: Mr. Chairman, we have no redirect.

COMMISSION ERVIN: All right. Well, I'm afraid I've got a few questions just to perhaps put my ignorance on display.

COMMISSIONER ERVIN: Ms. Strow, you indicated

that the draft amendment that you received from BellSouth was circulated through the company, and you mentioned that you sent it to a number of different people. Does your--I'm not sufficiently familiar with Intermedia's corporate structure. Do you have in-house counsel?

THE WITNESS: Yes, we do. But I typically--they did not deal with regulatory issues, so they typically were not on the distribution.

COMMISSIONER ERVIN: So to the best of your recollection, this document was not distributed to any attorney acting on behalf of the company, either in-house or outside of the company?

THE WITNESS: No, it was not. In fact, my only direction was that it go to the engineering people and people in my group.

COMMISSIONER ERVIN: Now, when you had the discussions with the BellSouth personnel that you have described, prior to the time that the draft amendment was sent to you, did you explicitly talk about what Intermedia was going to be required to pay for multiple tandem access service?

THE WITNESS: There were no discussions. I

basically called Stuart Hudnall and said the account team has told me that because of the problem we're having in Atlanta, we need an amendment to our interconnection agreement. They said it's something called "multiple tandem access." Could you send me a draft of that amendment? And this is what was produced, and Stuart Hudnall's email confirms that.

COMMISSIONER ERVIN: What type of rates did you expect to be charged for multiple tandem access service, or did you even have any expectations?

THE WITNESS: I had no expectation, quite frankly.

COMMISSIONER ERVIN: Did you talk with anybody in the company--with Intermedia about what rates were typically charged for something like multiple tandem access service?

THE WITNESS: No, I did not. As I mentioned, I think our--our typical mode of operation was not this kind of architecture; therefore, I really had no--

COMMISSIONER ERVIN: Sorry, when you say, "this type of architecture," are you referring to

multiple tandem access?

THE WITNESS: Right.

COMMISSIONER ERVIN: Okay.

THE WITNESS: We typically trunk to the tandems ourselves. We did not have other people--I'm not saying--it does vary from ILEC to ILEC. But I had no preconceived notion at all about what the rates could or would be, and I did not ask engineering, which was the only other group that really reviewed it other than mine, about the rates.

COMMISSIONER ERVIN: Were you expecting--I mean, you were, I assume, expecting to pay something in addition to or different from your existing rates for the opportunity to take advantage of multiple tandem access service?

THE WITNESS: Right. And it made--as I'd mentioned--and I don't think I said it very clearly at the time--it made sense to me that because BellSouth was actually performing functionality that we had previously performed ourself in the MTA instance, that they would not have to pay us as much--that the rate structure would be different,

and they would not have to pay as much, because they were incurring more costs when traffic was terminated to us.

COMMISSIONER ERVIN: And I was confused when you said that earlier, and I'm still somewhat confused.

THE WITNESS: Okay.

COMMISSIONER ERVIN: You expected to pay less for multiple tandem access service or more?

THE WITNESS: I expected that the rate structure would reflect the fact that BellSouth was now performing additional functionality for us that they had not performed in the past. Quite frankly, I looked at these rates and thought they were additive.

COMMISSIONER ERVIN: And that was exactly where I was headed. So your expectation at the time that you reviewed this document was that you would pay the composite rate that was set forth in the original interconnection agreement plus this set of rates that's shown on attachment A to the MTA agreement?

THE WITNESS: Right, because they were doing

extra things for us.

COMMISSIONER ERVIN: Now, let's look at the language of this thing a second. And I'm working-- I marked up a copy that was attached to, I think, your testimony, if my memory is not failing me, as Exhibit 3. Paragraph three, which is the first billing paragraph, says that the parties agree to bill "Local," which is capitalized and "traffic," which is not capitalized, "at the elemental rates specified in attachment A." Now, is "Local traffic," to the best of your recollection, a defined term in the original interconnection agreement?

THE WITNESS: Yes, there is a definition of Local traffic in the interconnection agreement, the one that has been very much disputed in the past between the parties.

COMMISSIONER ERVIN: All right. Now, let's also look at Attachment A. And I venture to ask you this question with some trepidation, because I'm probably going to mostly expose my own ignorance. In looking at numbered paragraph one on attachment A, it talks about each party's local

usage, right?

THE WITNESS: That is correct.

COMMISSIONER ERVIN: Now, I would assume that "each party," that that term would include both BellSouth and Intermedia, correct?

THE WITNESS: Yes, I would agree with that.

COMMISSIONER ERVIN: And again, that's a defined term in the original interconnection agreement, isn't it?

THE WITNESS: Right.

COMMISSIONER ERVIN: I mean, isn't it true, generally, that when I start seeing a capitalized word that in ordinary English usage wouldn't be capitalized in this agreement, that that's likely to be a defined term?

THE WITNESS: It usually is. But I can't--some people just capitalize things for no reason at all sometimes, I find. I can't really answer that.

COMMISSIONER ERVIN: I had a law partner who did that, I know.

THE WITNESS: Just to give it more emphasis sometimes.

COMMISSIONER ERVIN: But at any rate, it--as I

understand the way reciprocal compensation operates, there are occasions on which traffic would result in the payment of reciprocal compensation from BellSouth to Intermedia, and there are occasions in which the reverse of that would be true; is that right?

THE WITNESS: That is correct.

COMMISSIONER ERVIN: Now, in looking at this document in preparation for the hearing, one of the things that occurred to me in looking at this particular language--and I'm just going to say what might have occurred to me, or one of the thoughts that occurred to me, and ask you to comment on it--the multiple tandem access agreement would not have affected any service that Intermedia provided to BellSouth, would it?

THE WITNESS: I think when you look back at what we're doing here, it wouldn't. What I presume, though, is in these situations where we requested this arrangement, that these are the rates that apply. And based on this language, I would have assumed it would be reciprocal in those situations.

COMMISSIONER ERVIN: Well, and what I'm--in assuming that you make the--adopt that interpretation, describe for me a circumstance under which there would be traffic flowing from both parties. Do it for me both ways so that you would have multiple tandem access involved. I may not understand the architecture of the service sufficiently. So if could help me in those respects, I would appreciate it. I am just--I was a little bit confused as to how, assuming your interpretation was correct--

THE WITNESS: Okay.

COMMISSIONER ERVIN: --you could wind up with payments made both ways.

THE WITNESS: Okay. I'm not an engineer.

COMMISSIONER ERVIN: And I'm just a lawyer, so I'm worse off than you are.

THE WITNESS: And if Mr. Thomas speaks, he might be better able to give you a better schematic of this--

COMMISSIONER ERVIN: And I'll probably take you up on your invitation to ask him that, too.

THE WITNESS: But I will give you my

understanding.

COMMISSIONER ERVIN: All right.

THE WITNESS: In either event, whether the traffic is flowing to the BellSouth customer from our network or from our network to the BellSouth customer, if there's congestion at a tandem that that traffic has to traverse, the congestion is a problem, potentially, both ways. Now, I don't know that that's completely true, but that could be the case. If there's blockage, there's blockage. But then again, because of separate trunk groups, that might not be correct. But all I can say is when I looked at this Attachment A, the very first sentence said, "multiple tandem access." And I accepted the fact that it could be the same rate between both parties when these situations occurred.

COMMISSIONER ERVIN: But it would be fair for me to assume, I take it, that you never had any explicit discussions with anybody from BellSouth about the rates. That you looked at them, and nobody said that there was anything unusual about them. And that was about the level of attention

that was paid to the issue?

THE WITNESS: There was one rate that was questioned. It was a Florida rate, having nothing to do with North Carolina; that was the--and that wasn't even initiated, or the response did not come back to me. I didn't even know about it until long after the fact. But other than that, no, there was no discussion. I looked at this straight on its face and took it as the MTA amendment.

COMMISSION ERVIN: That's all I have. Does anybody have any questions on the questions that I've posed?

MR. MEEKER: No, sir.

COMMISSION ERVIN: All right. In that case, Ms. Strow, you may be excused, and I thank you for coming to join us.

THE WITNESS: Okay.

(THEREUPON, THE WITNESS WAS DISMISSED.)

COMMISSION ERVIN: And let's take our morning recess at this point. We will reconvene as close to 10 after 11:00 as I can get back downstairs.

(THEREUPON, THERE WAS A BRIEF RECESS.)

COMMISSIONER ERVIN: Mr. Meeker?

MR. SHORE: Commissioner Ervin?

COMMISSIONER ERVIN: Yes.

MR. SHORE: Before we get started, we've got one sort of clean-up item from the prior session.

COMMISSIONER ERVIN: Okay.

MR. EDENFIELD: We had marked a number of exhibits for identification. If we could, BellSouth would now move those into evidence.

MR. MEEKER: Typically, that would be done as part of BellSouth's case.

MR. EDENFIELD: I'm happy to put form over substance. I'm happy to wait until my case to do that.

COMMISSIONER ERVIN: I don't really care. I mean, very technically, I guess your objection is well taken, but, I mean, is there serious objections to--

MR. MEEKER: No, that would be fine, Mr. Chairman, if that's the way you prefer to do it.

COMMISSIONER ERVIN: I mean, I tend to think if we do that now, we save less confusion later. Let them be received.

(THEREUPON, BELLSOUTH STROW CROSS EXAMINATION EXHIBIT NOS. 1, 2 AND 3 WERE ADMITTED INTO EVIDENCE.)

MR. EDENFIELD: Thank you.

MR. MEEKER: Mr. Chairman, we call as our second and concluding witness, Edward Thomas. And I have a summary for him, as he's coming to--

COMMISSIONER ERVIN: Hello, Mr. Thomas. Since I seem to have held you here longer than BellSouth planned to.

MR. EDENFIELD: I take full blame for this.

COMMISSIONER ERVIN: No, I'm afraid I'm guilty.

THEREUPON,

EDWARD THOMAS,

Having first been duly sworn, was Examined and testified as follows:

COMMISSIONER ERVIN: All right. I hope I didn't cause you to miss a plane or something.

MR. EDENFIELD: He wants to get back to Florida where its warm.

COMMISSIONER ERVIN: Well, speaking as a resident of the mountains, I'll let him do that.

DIRECT EXAMINATION BY MR. MEEKER:

Q. Mr. Thomas, will you please state your name and business address for the record?

A. Yes. My name is Edward L. Thomas, 3625 Queen Palm Drive, Tampa, Florida 33619.

Q. How are you employed at the present time, Mr. Thomas?

A. I am employed as the Senior Director for Voice Engineering for Intermedia Communications.

Q. Mr. Thomas, did you have occasion to have direct and rebuttal testimony filed on your behalf?

A. Yes, sir.

Q. Is there one correction that you would like to make to a small piece of that testimony?

A. Yes, sir. It's trivial, but on the direct testimony that has been prefiled, my middle initial at the top is entered as "J." It is actually "L." In the body or the content of the testimony, it is correct.

Q. Other than that one correction, Mr. Thomas, is the direct and rebuttal testimony filed on your behalf correct to the best of your knowledge?

A. Yes, sir, it is.

MR. MEEKER: I request that that be entered into the record, Mr. Chairman.

COMMISSIONER ERVIN: The testimony of Mr. Thomas, direct and rebuttal, will be copied into the record, and his identified exhibits will be identified as marked.

(THEREUPON, THE PREFILED DIRECT AND REBUTTAL TESTIMONY OF EDWARD THOMAS, AS CORRECTED, WILL BE COPIED INTO THE RECORD AS IF GIVEN ORALLY FROM THE WITNESS STAND.)

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

FILED

JUL 28 2000

Clerk's Office
N.C. Utilities Commission

DOCKET NO.: P-55, SUB 1210

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of :	)	
	)	
Enforcement of Interconnection	)	DIRECT TESTIMONY OF
Agreement Between Intermedia	)	EDWARD L. THOMAS
Communications Inc., and BellSouth	)	
Telecommunications, Inc.	)	

Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, TITLE, AND THE NATURE OF YOUR POSITION WITH INTERMEDIA COMMUNICATIONS INC. ("INTERMEDIA").

A. My name is Edward L. Thomas. I am employed by Intermedia as Senior Director-Voice Planning and Deployment. My business address is 3625 Queen Palm Drive, Tampa, Florida 33619. I am responsible for engineering the moves, adds, and changes of the telecommunications switching requirements within the Intermedia voice network. This includes ordering and placing central office equipment, ordering and placing circuit groups between various exchanges, network capacity management and network traffic management. I have worked in the telecommunications industry for thirty-five years. Before employment with Intermedia, I worked for GTE for twenty-nine years in several management capacities.

I have attended Kent State University and Wooster (Ohio) College, and completed numerous technical training courses and seminars.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?

A. I am appearing before the Commission as a technical witness to present evidence describing the telecommunications networks that Intermedia deploys in the State of North Carolina. My testimony will support Intermedia's position that the rates that Intermedia bills BellSouth for reciprocal compensation are the correct rates, consistent with the Intermedia/BellSouth Interconnection Agreement.

Q. HOW DOES AN INTERCONNECTING CARRIER, SUCH AS INTERMEDIA, TYPICALLY ESTABLISH INTERCONNECTION WITH AN INCUMBENT LOCAL EXCHANGE CARRIER ("ILEC"), SUCH AS BELLSOUTH?

A. When Intermedia and BellSouth interconnect their networks, they establish different methods of transporting traffic between their networks, depending on the kind of traffic it is. For the transport of intrastate and interstate long distance calls, Intermedia purchases two-way Feature Group D trunks between its switches and the BellSouth access tandems that carry the traffic to or from interexchange carriers. Intermedia purchases these "FGD trunks" from BellSouth out of BellSouth's tariffs.

Local service is transported differently between the Intermedia and BellSouth networks. Under the Intermedia/BellSouth Interconnection agreement, and consistent with standard industry practice, three types of transport facilities, or "trunks" are established between Intermedia and BellSouth. For local traffic originating on Intermedia's network, and bound for end users on BellSouth's network, Intermedia establishes one way trunks between its switch and

BellSouth's central office, which is typically an access or local tandem, although it may also be an end office. Intermedia may build its own facility or purchase a BellSouth transport unbundled network element to establish this connection, but in most cases, it purchases a transport trunk from BellSouth out of a BellSouth tariff. Conversely, for local traffic originating on BellSouth's network, and bound for end users on Intermedia's network, BellSouth has the obligation to establish its own trunks between its switch and Intermedia's switch.

Finally, for a few kinds of traffic, such as 800 traffic and transit traffic (which is traffic that originates from or terminates to a third carrier, and merely passes through the Intermedia or BellSouth network), Intermedia and BellSouth establish two-way trunks between their switches. These trunks are typically required by BellSouth, and BellSouth and Intermedia share the cost of providing these facilities.

Q. ARE THERE DIFFERENT TYPES OF NETWORK CONFIGURATIONS THAT AN INTERCONNECTING CARRIER, SUCH AS INTERMEDIA, CAN USE TO ESTABLISH INTERCONNECTION TO AN ILEC's TANDEM SWITCHES?

A. Yes. There are two network architectures commonly deployed to establish interconnection with an ILEC's tandem switches. These enable interconnecting carriers to deliver traffic originating on their networks to end users served by ILEC end offices subtending tandem switches and to terminate traffic on their networks originated by those same ILEC end users.

The first of these network architectures is called "Single Tandem Access" or "STA." In this architecture, the interconnecting carriers build or lease a trunk line directly to every ILEC access tandem throughout the area that the competitive carrier serves. From each of these tandems, the ILEC takes the competitive carrier's traffic and delivers it to the end users that are served out of those access tandem offices. This architecture is called Single Tandem Access because the CLEC is obligated to trunk out to every single access tandem, and the CLEC's traffic is routed through only one ILEC access tandem before it is delivered to the ILEC's end office, and ultimately to the customer served out of that end office.

The second of these is called "Multiple Tandem Access" or "MTA." It is sometimes referred to as "Single Point of Interconnection." In this architecture, CLECs and other interconnecting carriers are only required to build or lease a trunk to one ILEC access tandem in a LATA. From there, the ILEC takes the CLEC's traffic, and transports it to other access tandems, as necessary to deliver the traffic to the ILEC's end users. This arrangement is called Multiple Tandem Access because it eliminates the need for a CLEC to trunk to every single access tandem, and because the ILEC will route the CLEC's traffic through multiple access tandems before delivering it to end users.

Q. AS AN INTERCONNECTING CARRIER, WHAT INTERCONNECTION ARCHITECTURE IS INTERMEDIA'S PREFERENCE?

A. It is Intermedia's preference to direct trunk to all of the ILEC's tandem offices – that is, to use the Single Tandem Access model. In fact, in many cases,

Intermedia goes beyond this and establishes direct trunks to ILEC end offices, if enough traffic flows to those offices. Intermedia prefers this kind of architecture because it is more efficient.

Q. PLEASE DESCRIBE THE NETWORK ARCHITECTURE THAT INTERMEDIA USES TO INTERCONNECT WITH BELLSOUTH'S NETWORK IN NORTH CAROLINA.

A. Intermedia is interconnected with BellSouth's networks in Raleigh and Charlotte, which are the two North Carolina cities where Intermedia has deployed its switches. Intermedia uses Single Tandem Architecture in all its interconnection arrangements in North Carolina – that is, Intermedia is direct trunked to every BellSouth access tandem in the areas where Intermedia provides service. These interconnection arrangements are illustrated schematically in Exhibit ELT-1.

Q. PLEASE DESCRIBE INTERMEDIA'S INTERCONNECTION ARRANGEMENTS IN RALEIGH.

A. Intermedia trades local traffic with BellSouth in one local tandem in Raleigh, and has provided its own direct trunks to carry its local traffic to that office. Intermedia has also established two way trunks to carry transit traffic in that office. In addition, Intermedia has established FGD trunks directly to every access tandem where it trades access traffic with BellSouth. As of May 1998, Intermedia was direct-trunked to four BellSouth access tandems in Raleigh, and Intermedia has maintained that configuration through today. At all times, Intermedia direct trunked to every BellSouth access and local tandem where Intermedia provided service. As a result, at no time did Intermedia's network

architecture require BellSouth to carry Intermedia's traffic across multiple tandems.

Q. PLEASE DESCRIBE INTERMEDIA'S INTERCONNECTION ARRANGEMENTS IN CHARLOTTE.

A. Intermedia trades local traffic with BellSouth in two local tandems in Charlotte, and has provided its own direct trunks to carry its local traffic to those two offices. Intermedia has also established two way trunks to carry transit traffic in those offices. In addition, Intermedia has established FGD trunks directly to every access tandem where it trades access traffic with BellSouth. As of May 1998, Intermedia was direct-trunked to five BellSouth access tandems in Charlotte. By June of this year, Intermedia trunked out to an additional three BellSouth access tandems. At all times, Intermedia direct trunked to every BellSouth access and local tandem where Intermedia provided service. As a result, at no time did Intermedia's network architecture require BellSouth to carry Intermedia's traffic across multiple tandems.

Q. DOES INTERMEDIA USE MULTIPLE TANDEM ACCESS ANYWHERE IN NORTH CAROLINA?

A. No.

Q. HAS INTERMEDIA EVER REQUESTED OR SUBMITTED AN ORDER FOR MTA IN NORTH CAROLINA?

A. No.

Q. FROM AN OPERATIONS PERSPECTIVE, WHAT IS THE MTA AMENDMENT?

A. The MTA Amendment is a contractual vehicle making MTA available to Intermedia under certain terms and conditions. The MTA issue was not addressed in the parties' 1996 interconnection agreement, nor in the July 1997 amendments that followed it. As time passed, BellSouth began experiencing acute congestion problems in Georgia that it apparently determined would require resolution by means of MTA, while recognizing that it did not have a contractual basis for deployment. Thus, the MTA Amendment sets forth the terms and conditions under which Intermedia may elect deployment of MTA to alleviate traffic congestion. It first requires Intermedia to request MTA and then BellSouth to provide MTA in response to the request. I refer to numbered paragraph 1 of the Amendment. The rates set out in Attachment A of the Amendment accordingly are put in place, jurisdiction by jurisdiction, only upon Intermedia's request for MTA in a particular jurisdiction, BellSouth's provisioning of MTA in that jurisdiction, and Intermedia's acceptance of MTA in that jurisdiction.

Q. WHAT IS YOUR UNDERSTANDING OF THIS DISPUTE BETWEEN INTERMEDIA AND BELLSOUTH?

A. It is very simple, as I understand it. The North Carolina Utilities Commission, like other regulators throughout the BellSouth service territory, has determined that BellSouth must pay Intermedia reciprocal compensation for transporting and terminating local traffic originating on BellSouth's network, including traffic destined to Internet Service Providers, under the parties' Interconnection Agreement.

BellSouth has now challenged the rates that it is required to pay under the Interconnection Agreement.

Q: PLEASE DESCRIBE INTERMEDIA'S OPERATIONS AND GEOGRAPHIC COVERAGE IN NORTH CAROLINA.

A: Intermedia has two (2) Nortel DMS-500 switches deployed in North Carolina, one in Raleigh and one in Charlotte. These switches provide service to a sizeable number of customers in a widely dispersed area in and around Charlotte and Raleigh.

Q: DOES INTERMEDIA BELIEVE THAT IT IS ENTITLED TO RECEIVE RECIPROCAL COMPENSATION AT THE COMPOSITE TANDEM INTERCONNECTION RATE BECAUSE OF THE GEOGRAPHIC COVERAGE OF ITS SWITCHES?

A: Yes. Intermedia's position is that it is entitled to reciprocal compensation at BellSouth's tandem interconnection rate if Intermedia's switch serves a geographic area comparable to the area served by a BellSouth tandem. Intermedia's switches do serve areas comparable to the area served by a BellSouth tandem.

While I am not a lawyer, I understand that this position required by Section 51.711(a)(3) of the Federal Communications Commission's ("FCC") rules, which states that the incumbent local exchange carrier's tandem interconnection rate is the appropriate rate to employ where a competing local carrier's switch "serves a geographic area comparable to the area served by the incumbent LEC's tandem switch."

Q: WHAT STANDARD SHOULD THIS COMMISSION APPLY IN DETERMINING WHETHER INTERMEDIA SHOULD BE ENTITLED TO THE TANDEM INTERCONNECTION RATE?

A: This Commission should apply one — and only one — criterion: geographic coverage. This criterion is explicitly set forth in Rule 51.711(a)(3) of the FCC's regulations. 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.*

The language of the rule could not be any more plain. It says what it says: if the competing carrier's switch serves a geographic area comparable to that served by the ILEC's tandem, then the CLEC must be compensated at the tandem interconnection rate.

Q: HAS THIS COMMISSION FOUND THAT INTERMEDIA IS ENTITLED TO RECIPROCAL COMPENSATION AT THE TANDEM INTERCONNECTION RATE?

A: Yes. In the recent Intermedia-BellSouth arbitration, a Commission panel reaffirmed prior decisions and recommended that the tandem rate is the appropriate reciprocal compensation rate under the Intermedia/BellSouth Interconnection Agreement. The Commission panel stated:

> Based on the exhibits filed by Intermedia on March 6, 2000, including the maps, the description of Intermedia's Nortel DMS 500 switches and associated technology, and the current listing of Intermedia's customers in North Carolina by location and type of service, the Commission believes that Intermedia has met its burden of proof that its switches cover a comparable geographic area to that

> covered by BellSouth's switches, and that, for reciprocal compensation purposes, Intermedia is entitled to compensation at BellSouth's tandem interconnection rate.

Recommended Arbitration Order (issued June 13, 2000).

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, it does.

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO.: P-55, SUB 1210

FILED

SEP 29 2000

Clerk's Office
N.C. Utilities Commission

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of :	)	
	)	
Enforcement of Interconnection	)	**REBUTTAL TESTIMONY**
Agreement Between Intermedia	)	**OF EDWARD THOMAS**
Communications Inc. and BellSouth	)	
Telecommunications, Inc.	)	

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?

A. I am appearing before the North Carolina Utilities Commission ("Commission") as a technical witness to present evidence describing the telecommunications networks that Intermedia Communications Inc. ("Intermedia") deploys in the State of North Carolina. My testimony shows that Intermedia's two Nortel DMS-500 North Carolina switches serve areas that are comparable in size to BellSouth Telecommunications, Inc.'s ("BellSouth") tandem switches, and thus for purposes of reciprocal compensation Intermedia should be compensated at BellSouth's tandem interconnection rate. My testimony will also show that Intermedia's two North Carolina switches perform functions equivalent to BellSouth's tandem switches.

Q. PLEASE DESCRIBE INTERMEDIA'S TWO NORTH CAROLINA SWITCHES AND THE ASSOCIATED TECHNOLOGY WHICH PROVIDE SERVICE?

A. Intermedia's business plan focuses on providing state of the art voice and data services to businesses in North Carolina. Since early 1997, Intermedia has concentrated its efforts on serving businesses located throughout the metropolitan areas of North Carolina.

To serve North Carolina, Intermedia has installed two large Northern Telecom DMS-500 switches. Exhibit 1(a) contains materials from Northern Telecom's web site which describe these switches. These materials show that the switches are a total switching solution for competing local providers, and that they incorporate both end office and tandem switch features.

I have also attached as Exhibits 1(b) and 1(c) diagrams setting forth the trunk design for Intermedia's Triangle Area and Mecklenburg County Area DMS-500 Switches. These diagrams illustrate how Intermedia's DMS-500 Switches have the capability to, and actually perform tandem functions in addition to other functions. Finally, Exhibit 1(d) is a diagram showing that the tandem functions performed by Intermedia's switch are the same as, or similar to, functions performed by BellSouth's corresponding tandems.

Intermedia's switches serve areas comparable to those served by BellSouth's tandem switches. Furthermore, Intermedia's North Carolina switches function equivalently to BellSouth's corresponding switches.

Q. WHERE DOES INTERMEDIA HAVE CUSTOMERS IN NORTH CAROLINA?

A. Exhibit 2 details the location of Intermedia's customers and the types of services that Intermedia is providing such customers. Exhibit 2 shows that Intermedia's switches enable Intermedia to provide service to customers located in Apex, Charlotte, Cary, Morrisville, Durham, Garner, Chapel Hill, Wilson, Raleigh and the Research Triangle Park. This wide geographic reach shows that Intermedia's two switches are providing services to areas comparable to BellSouth's tandems.

Q. WHAT COLLOCATIONS DOES INTERMEDIA HAVE IN NORTH CAROLINA?

A. I have attached to my testimony as Exhibit 3(a) a list of such collocations. Exhibit 3(a) demonstrates that Intermedia has also collocated with GTE in Durham. This material establishes that Intermedia has a significant presence in the State of North Carolina, and its presence even extends into areas where BellSouth does not have a presence.

Q. HAVE INTERMEDIA'S SWITCHES SERVED AREAS THAT ARE GEOGRAPHICALLY COMPARABLE TO BELLSOUTH'S TANDEMS SINCE EARLY 1997?

A. Yes. Intermedia's two North Carolina switches have been serving geographically comparable areas to BellSouth's corresponding tandem switches since Intermedia commenced business operations in North Carolina. I have attached to my testimony as Exhibits 3(b) and 3(c) charts and diagrams for Intermedia's Triangle Area Switch and its Mecklenburg County

Area Switch, respectively, as they relate to BellSouth's corresponding tandems.

Q. DID INTERMEDIA'S SWITCHES COVER SIMILAR AREAS WHEN THEY WERE FIRST INSTALLED?

A. Yes. Intermedia's Triangle Area Switch was installed in January 1997, upon Intermedia's arrival in North Carolina. Intermedia's Triangle Area Switch covers an area that is geographically comparable to the area served by BellSouth's triangle area tandems. Indeed, Intermedia's switch covers Durham, which BellSouth's tandems do not cover. Likewise, the Mecklenburg County Area Switch has covered an area that is geographically comparable to BellSouth's Mecklenburg County tandems since it was first installed.

Q. HAVE INTERMEDIA AND BELLSOUTH EVER BROUGHT THE TANDEM SWITCH ISSUE TO THE COMMISSION BEFORE?

A. Yes. Intermedia and BellSouth arbitrated an interconnection agreement before the Commission earlier this year. One of the issues which was resolved by the Commission in that arbitration was the tandem switch issue. The Commission decided this issue in Intermedia's favor, and nothing has changed since then.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

(THEREUPON, INTERMEDIA THOMAS DIRECT EXHIBIT NOS. ELT-1, 1A, 1B, 1C, 1D, 2, 3A, 3B, AND 3C WERE MARKED FOR IDENTIFICATION.)

Q. Mr. Thomas, has there been a summary of your testimony prepared?

A. Yes, sir.

Q. Could you give that to the Commission?

A. I will. Thank you for the opportunity.

(THEREUPON, THE SUMMARY OF THE PREFILED TESTIMONY OF EDWARD THOMAS, AS CORRECTED, WILL BE COPIED INTO THE RECORD AS IF GIVEN ORALLY FROM THE WITNESS STAND.)

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO.: P-55, SUB 1210

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of:	)	
	)	
Enforcement of Interconnection	)	SUMMARY OF TESTIMONY
Agreement Between Intermedia	)	OF EDWARD THOMAS
Communications Inc., and BellSouth	)	
Telecommunications, Inc.	)	

My name is Edward Thomas, and I have worked in the telecommunications industry for 35 years. Before employment with Intermedia, I worked for GTE for 29 years in several management capacities. My prefiled testimony addresses the tandem switch issue and Intermedia's network architecture in North Carolina.

Since the parties in this proceeding have agreed to hear the tandem switch issue on the written record, I will not speak ~~on~~ to that issue.

My testimony also covers the fact that Intermedia employs ~~the~~ a Single Tandem Access network architecture in North Carolina. Intermedia and BellSouth, through the testimony of Keith Milner ~~at~~ on page 6, agree that Multiple Tandem Access neither has been requested by Intermedia, nor has it been provided by BellSouth to Intermedia, in North Carolina.

This concludes my summary.

MR. MEEKER: Thank you.

CROSS EXAMINATION BY MR. SHORE:

Q. Mr. Thomas, my name's Andrew Shore. I'm an attorney with BellSouth. And I literally just have a couple of questions for you, and I mean it this time. First question, and you covered it in your summary. It's true, is it not, that BellSouth has not provided multiple tandem access to Intermedia in the State of North Carolina?

A. They have not.

Q. And it's also true, is it not, that BellSouth has not provided multiple tandem access to Intermedia in the State of Florida?

A. That is correct.

MR. SHORE: That's all my questions.

COMMISSIONER ERVIN: I'm impressed. Redirect?

MR. MEEKER: None, Mr. Chairman.

COMMISSIONER ERVIN: Mr. Thomas, I'm not sure I could ask the questions that I asked of Ms. Strow as badly a second time. What I was trying to get at, and would appreciate any enlightenment that you could give me on this subject, what type of rates would--reciprocal compensation rates or other types

of rates, would you normally expect to be associated with the provision of multiple tandem access service, and where would those rates come from?

THE WITNESS: I'm--I'm very sorry, sir. I'm an engineer and working on the rate structure is something I'm not very in tune with.

COMMISSIONER ERVIN: Okay. So you don't know?

THE WITNESS: Sir?

COMMISSIONER ERVIN: So you don't know?

THE WITNESS: No.

COMMISSIONER ERVIN: And I don't either, so that's not an--you know, don't feel bad. All right. That's all. Thank you.

MR. MEEKER: Mr. Chairman, just one question.

REDIRECT EXAMINATION BY MR. MEEKER:

Q. Mr. Thomas, just so the record's clear, local traffic can be carried either on a single tandem access or on a multiple tandem access; is that right?

A. Yes, it can.

Q. And in North Carolina, all the local traffic is carried on a single tandem access; is that right?

first witness, Jerry Hendrix.

COMMISSIONER ERVIN: Mr. Hendrix, come up and join us.

THEREUPON,

JERRY HENDRIX,

Having first been duly sworn, was Examined and testified as follows:

DIRECT EXAMINATION BY MR. EDENFIELD:

Q. State your name for the record, please.

A. My name is Jerry D. Hendrix.

Q. And what's your position with BellSouth?

A. Senior Director, Customer Markets.

Q. Are you the same Jerry Hendrix that caused to be filed in this proceeding both direct and rebuttal testimony?

A. Yes, I am.

Q. Were there exhibits attached to that testimony?

A. Yes, there were.

Q. If I asked you the same questions that appear in your direct and rebuttal testimony today, would your answers be the same?

A. Yes.

Q. Do you have any corrections or changes to make to

that testimony?

A. No, I do not.

Q. Did you prepare a summary of the testimony?

A. Yes, I do have a brief summary.

Q. Proceed, please.

A. Good morning. I actually negotiated the BellSouth Intermedia agreement in 1996. In this agreement, we have single rates, which are also known as composite rates. In June 1998, the parties amended this initial agreement. This June 3rd, 1998 change to this interconnection agreement had two purposes. The first purpose was to accommodate Intermedia's request for multiple tandem access. The second purpose was to replace the billing structure and the rates for the compensation of all local traffic. Arbitrator rates were included as part of this agreement.

I was the person who signed the June 1998 change in the interconnection agreement. The agreement is very clear, and I urge that--that you find that it is, in fact, clear and that the rates do--do, in fact, apply to all local traffic that existed in the prior agreement prior to June 1998.

Intermedia brought this very same case in Florida, and there's nothing new here. On September 4--14th of this year, the Florida PS--PSE ruled in BellSouth's favor stating that the elemental rates do, in fact, apply for all local traffic. That concludes my summary.

MR. EDENFIELD: At this point, I would ask that Mr. Hendrix's direct and rebuttal testimony be put into the record as if read, and that his exhibits be identified.

COMMISSIONER ERVIN: It is so ordered.

(THEREUPON, THE PREFILED DIRECT AND REBUTTAL TESTIMONY OF JERRY HENDRIX WILL BE COPIED INTO THE RECORD AS IF GIVEN ORALLY FROM THE WITNESS STAND.)

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JUL 28 2000

BELLSOUTH TELECOMMUNICATIONS, INC.

DIRECT TESTIMONY OF JERRY HENDRIX

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. P-55, SUB 1210

JULY 28, 2000

Q. PLEASE STATE YOUR NAME AND COMPANY NAME AND ADDRESS.

A. My name is Jerry Hendrix. I am employed by BellSouth Telecommunications, Inc. as Senior Director – Customer Markets Wholesale Pricing Operations. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.

A. I graduated from Morehouse College in Atlanta, Georgia, in 1975 with a Bachelor of Arts Degree. I began employment with Southern Bell in 1979 and have held various positions in the Network Distribution Department before joining the BellSouth Headquarters Regulatory organization in 1985. On January 1, 1996, my responsibilities moved to Interconnection Services Pricing in the Interconnection Customer Business Unit. In my current position as Senior Director, I oversee the negotiation of interconnection agreements between BellSouth and Competing Local Providers ("CLPs") in BellSouth's nine-state region.

Q. HAVE YOU TESTIFIED PREVIOUSLY?

A. Yes. I have testified in proceedings before the Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, South Carolina Public Service Commissions, the North Carolina Utilities Commission, and the Tennessee Regulatory Authority.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to show that the June 3, 1998 Amendment to the Interconnection Agreement between BellSouth and Intermedia Communications, Inc. ("Intermedia") replaced the billing structure and rates for reciprocal compensation for all local traffic set forth in the original agreement (the applicability of reciprocal compensation for ISP-bound traffic is not an issue in this case, and is currently the subject of an appeal).

Q. WHAT IS THE DISPUTE BETWEEN THE PARTIES?

A. There are actually two disputes between the Parties that are at issue in this case. The first dispute involves the rates for the transport and termination of local traffic after June 3, 1998. Intermedia contends that the rates set forth in table B-1 of the original agreement effective July 1, 1996 are the rates which apply. BellSouth contends that the rates set forth in the June 3, 1998 Amendment replaced the rates contained in Intermedia's original interconnection agreement, and therefore apply after June 3, 1998. The second dispute involves whether Intermedia was entitled to reciprocal compensation

for the tandem switching rate element under its now expired interconnection agreement, regardless of whether or not a tandem switch was involved in transporting and terminating the call. BellSouth's witness Ms. Cindy Cox will address the second issue.

Q. WHAT WERE THE RECIPROCAL COMPENSATION TERMS FOR LOCAL TRAFFIC IN THE ORIGINAL INTERCONNECTION AGREEMENT BETWEEN BELLSOUTH AND INTERMEDIA?

A. Section IV.B, of the July 1, 1996, Interconnection Agreement between BellSouth and Intermedia states:

> Each party will pay the other for terminating its local traffic on the other's network the local interconnection rates as set forth in Attachment B-1, by this reference incorporated herein.

Attachment B-1 sets forth a Composite rate of $.01331 per minute of use for dedicated traffic and a Composite rate of $.01344 for tandem switched traffic.

Q. DID THE PARTIES AMEND THE AGREEMENT TO CHANGE THAT RECIPROCAL COMPENSATION ARRANGEMENT?

A. Yes. On June 3, 1998, the parties executed an Amendment to the original Interconnection Agreement which, among other things, changed the reciprocal compensation structure and rates for all local traffic. This Amendment states:

3. The Parties agree to bill Local traffic at the elemental rates specified in Attachment A.
4. This amendment will result in reciprocal compensation being paid between the Parties based on the elemental rates specified in Attachment A.

Q. WHAT WAS THE PURPOSE OF THE JUNE 3, 1998 AMENDMENT?

A. The purpose of the June 3, 1998, Amendment was twofold. First, it enabled Intermedia to avail itself of Multiple Tandem Access ("MTA"), which allows a CLP to interconnect at a single access tandem, or, at a minimum, less than all access tandems within the LATA for certain terminating and transit traffic. Second, the Amendment incorporated new reciprocal compensation rates that the parties agreed to charge and to pay for the transport and termination of local traffic. These new reciprocal compensation rates for North Carolina were based on the rates approved by this Commission in its December 23, 1996 Orders in Dockets No. P-140, Sub 50 and No. P-141, Sub 29.

Q. WHAT IS THE HISTORY BEHIND THE EXECUTION OF THE JUNE 3, 1998, AMENDMENT?

A. Intermedia requested that the parties amend the Interconnection Agreement to incorporate terms whereby BellSouth would make available MTA arrangements as described above. Coincidentally, BellSouth was in the unrelated process of incorporating commission-approved rates of several State

Commissions into the BellSouth Standard Interconnection Agreement. These commission-approved rates were either the Product of generic proceedings or arbitrations, as was the case in North Carolina. In 1996, when Intermedia and BellSouth entered into their Interconnection Agreement, the standard rate structure for reciprocal compensation was a composite rate, which had been negotiated by the Parties and was not a "cost-based" rate approved by a state commission. Subsequent to that time, state commissions began approving "cost-based" elemental rates, which BellSouth then incorporated into its Standard Interconnection Agreement. Thus, when Intermedia requested an Amendment to the Interconnection Agreement to incorporate Multiple Tandem Access, BellSouth took the opportunity to request that Intermedia amend the Interconnection Agreement to also incorporate the "cost-based" rates with the elemental rate structure for reciprocal compensation for all local traffic established by state commissions in BellSouth's region, including the North Carolina Utilities Commission. The parties agreed to the two provisions, and as such, executed the Amendment.

Q. WERE THE RECIPROCAL COMPENSATION RATES IN ATTACHMENT A OF THE AMENDMENT EXCLUSIVELY RELATED TO THE MULTIPLE TANDEM ACCESS PROVISIONS?

A. No. The new reciprocal compensation structure and rates applied to <u>all</u> local traffic, regardless of whether or not Intermedia availed itself of MTA.

Q. DID BELLSOUTH INTEND, AS INTERMEDIA CLAIMS, FOR THE RECIPROCAL COMPENSATION ARRANGEMENT SET FORTH IN THE JUNE 3, 1998, AMENDMENT, TO ONLY APPLY TO MULTIPLE TANDEM ACCESS ARRANGEMENTS?

A. No. As I have explained above, the two provisions were not linked. The new reciprocal compensation rate structure and rates as set forth in the Amendment were not exclusively tied to the multiple tandem access, but rather replaced the rates set forth in Attachment B-1 of the original Interconnection Agreement.

Q. AT THE TIME THIS AMENDMENT WAS EXECUTED, WOULD BELLSOUTH HAVE ENTERED INTO AN ARRANGEMENT WHICH REQUIRED ONE RECIPROCAL COMPENSATION RATE FOR TRAFFIC ROUTED THROUGH A MULTIPLE TANDEM ACCESS ARRANGEMENT AND A DIFFERENT RECIPROCAL COMPENSATION RATE FOR TRAFFIC NOT ROUTED THROUGH A MULTIPLE TANDEM ACCESS ARRANGEMENT?

A. No. As I was the person who signed this Amendment, I can unequivocally state that BellSouth did not enter into an arrangement which required a different reciprocal compensation rate for traffic routed through a multiple tandem access arrangement than for traffic not routed through a multiple tandem access arrangement. BellSouth would not have entered into such an arrangement, particularly when BellSouth cannot bill a different reciprocal compensation end office switching rate when traffic is routed through a MTA

arrangement. BellSouth witness David Scollard will address the billing system capabilities and limitations in more detail.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

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FILED
SEP 29 2000
Clerk's Office
N.C. Utilities Commission

BELLSOUTH TELECOMMUNICATIONS, INC.

REBUTTAL TESTIMONY OF JERRY HENDRIX

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. P-55, SUB 1210

SEPTEMBER 29, 2000

Q. PLEASE STATE YOUR NAME AND COMPANY NAME AND ADDRESS.

A. My name is Jerry Hendrix. I am employed by BellSouth Telecommunications, Inc. as Senior Director – Customer Markets Wholesale Pricing Operations. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. ARE YOU THE SAME JERRY HENDRIX WHO FILED DIRECT TESTIMONY IN THIS PROCEEDING?

A. Yes.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to rebut several assertions in the testimony of Intermedia's witness Julia Strow.

Q. DO YOU AGREE WITH MS. STROW'S CHARACTERIZATION, ON PAGE 5, OF THE JUNE 3, 1998 AMENDMENT?

A. No. While Ms. Strow is correct that the June 3, 1998 Amendment ("The Amendment") provides that BellSouth will, upon request, provide Multiple Tandem Access ("MTA") to Intermedia, she failed to mention the second purpose of the Amendment. That is, The Amendment also provided for a new elemental rate structure for reciprocal compensation to replace the existing composite rate structure. Paragraphs 3 and 4, which outline this new elemental rate structure, do not address MTA at all. Paragraphs 3 and 4 of The Amendment address separate issues and state:

> 3. The parties agree to bill Local traffic at the elemental rates specified in Attachment A.
>
> 4. This amendment will result in reciprocal compensation being paid between the Parties based on the elemental rates specified in Attachment A.

Ms. Strow seems to be making the assumption that an amendment cannot address multiple issues. This is simply not true. In fact, it is common practice for BellSouth and CLPs (Competing Local Providers) to execute amendments that cover multiple issues. For example, BellSouth executed an amendment with Time Warner Communications on October 30, 1997, which made changes to the Parties' Interconnection Agreement. First, it incorporated the Bona Fide Request Process, as well as Compensation for Call Transport and Termination. Second, it incorporated a new provision for unbundled network elements. A copy of that amendment is attached as Exhibit JDH-1.

Q. PLEASE COMMENT ON MS. STROW'S STATEMENT, ON PAGE 5, THAT INTERMEDIA SIGNED THE AMENDMENT IN JUNE 1998, WITHOUT MAKING ANY CHANGES TO THE AMENDMENT.

A. Intermedia did sign The Amendment without making any changes to it. This is further indication that Intermedia was in full agreement with The Amendment and its provisions. If Intermedia had desired to change the language concerning the new elemental reciprocal compensation rates, Intermedia presumably would have proposed alternative language, which BellSouth would have reviewed and either accepted, rejected, or proposed alternative language. Intermedia did have a question on a Florida rate, as mentioned in the June 4, 1998 memo from Stu Hudnall to Ms. Strow, which is attached to her testimony. As such, it is apparent that Intermedia read and even researched The Amendment and presumably would have contacted BellSouth if Intermedia were not in full concurrence.

Q. MS. STROW STATES, ON PAGE 6, THAT SHE DID NOT UNDERSTAND THAT THE AMENDMENT WAS CHANGING THE RATES FOR RECIPROCAL COMPENSATION. PLEASE COMMENT.

A. While I cannot speak to what Ms. Strow may have understood, I assume Ms. Strow read The Amendment and saw the words incorporating cost-based reciprocal compensation rates that the parties agreed to charge and to pay for the transport and termination of local traffic.

The Amendment plainly states:

> 3. The parties agree to bill Local traffic at the elemental rates specified in Attachment A.
>
> 4. This amendment will result in reciprocal compensation being paid between the Parties based on the elemental rates specified in Attachment A.

Item Number 3 and Item Number 4 do not mention MTA. Item Number 3 does not state that the parties agree to bill Local traffic "routed using MTA" at the elemental rates in Attachment A. Likewise, Item Number 4 does not state that This Amendment will result in reciprocal compensation being paid between the Parties for "traffic routed using MTA" based on the elemental rates specified in Attachment A. Rather, the provisions in Item Number 3 and 4 are separate and distinct from the provisions which deal with MTA, which are Item Number 1 and 2.

Under Ms. Strow's view, the rates set forth in the June 3, 1998 Amendment only apply when Intermedia avails itself of MTA. However, in none of the State Commission Orders from which at least some of those rates were "imported" is there any indication that these commission-approved rates applied only to MTA. Rather, these rates were established for reciprocal compensation for local interconnection.

Q. HAS ANY PREVIOUS INTERMEDIA WITNESS AGREED THAT THE WORDING IN THE AMENDMENT CAN BE INTERPRETED IN ACCORDANCE WITH BELLSOUTH'S POSITION?

A. Yes. Although Ms. Heather Gold is not a witness for Intermedia in this case, she did testify in Florida in a case involving the same dispute. Ms. Gold admits, on lines 2– 4 of page 8 of her direct testimony filed in Florida (attached as Exhibit JDH-2):

> It is true, I suppose, that if those paragraphs were interpreted in isolation, they arguably would support BellSouth's view that the amendment requires the Attachment A rates to be applied region-wide upon execution, without any other linkage.

Ms. Gold's statement directly supports BellSouth's position. The paragraphs are to be interpreted in isolation due to the fact that they are separately numbered paragraphs of the Amendment that were intended to accomplish a specific, separate purpose – namely the establishment of cost-based reciprocal compensation rates.

Q. HAVE OTHER COMMISSIONS REVIEWED AND REJECTED MRS. STROW'S INTERPRETATION?

A. Yes. Although Ms. Strow was not a witness, the Florida Public Service Commission has already heard a complaint proceeding involving this same rate dispute between BellSouth and Intermedia. In the resulting Order, the Commission ruled in favor of BellSouth's position (which is attached as Exhibit JDH-3).

Q. MS. STROW STATES ON PAGE 5 THAT INTERMEDIA HAS NOT REQUESTED THAT BELLSOUTH DEPLOY MTA IN NORTH CAROLINA. DOES THIS HAVE ANY IMPACT ON THIS CASE?

A. No. The Amendment is effective once it is signed by both parties. The Amendment became effective on June 3, 1998 when it was signed by both Parties. The fact that Intermedia has not ordered MTA in North Carolina does not in any way negate the rates set forth in the Amendment for reciprocal compensation.

Q. WHAT DO YOU BELIEVE THIS COMMISSION SHOULD DO TO RESOLVE THE PARTIES' DIPUTE?

A. Consistent with the clear language in the June 3, 1998, Amendment, the North Carolina Utilities Commission should deny Intermedia's request for relief. The Commission should further confirm that the elemental reciprocal compensation rates set forth in the Amendment dated June 3, 1998 are the effective rates that should be billed and paid by the Parties for local traffic exchanged after that Amendment became effective.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

(THEREUPON, BELLSOUTH HENDRIX DIRECT EXAMINATION EXHIBIT NOS. JDH-1, JDH-2 AND JDH-3 WERE MARKED FOR IDENTIFICATION.)

MR. EDENFIELD: And with that, I tender Mr. Hendrix for cross.

COMMISSIONER ERVIN: Mr. Meeker?

MR. MEEKER: Thank you, Mr. Chairman.

CROSS EXAMINATION BY MR. MEEKER:

Q. Mr. Hendrix, my name is Charles Meeker. I'm with the law firm of Parker Poe Adams & Bernstein, and I'm here this morning representing Intermedia Communications. So good morning.

A. Good morning.

MR. MEEKER: We have prepared a booklet of cross examination exhibits which I'll request to be marked as Intermedia Cross Examination Exhibit Booklet 1--and there are some eight or nine enclosures. Let me give you a copy and also give one to the court reporter, closing counsel, and the Chair.

COMMISSIONER ERVIN: Just for purposes of keeping it straight, Mr. Meeker, wouldn't it be easier to just treat them as Cross Exhibits 1, 2,

3, and 4 instead of marking the book?

MR. MEEKER: That would be fine. Let's just do it that way.

COMMISSIONER ERVIN: Otherwise, we're going to be talking about sub-exhibits and things of that nature.

MR. MEEKER: Okay. Well, let's just do that. We will do Exhibit 1 through 8.

COMMISSIONER ERVIN: All right. Let the documents contained in the booklet Mr. Meeker passed out be identified as Intermedia Cross Exhibits 1 through 8.

(INTERMEDIA CROSS EXHIBIT NOS. 1, 2, 3, 4, 5, 6, 7, AND 8 WERE MARKED FOR IDENTIFICATION.)

Q. Now, Mr. Hendrix, let me ask you, first, about Exhibit 1, which is an order from this Commission dated November 4th, 1998. Do you recognize that Exhibit 1?

A. (Witness reviews document.) Yes, I've seen this even prior to this.

Q. And on the first page of that, the first paragraph, it says, "By the Commission on June 10, 1998,

Intermedia Communications, Inc. filed a Petition to Enforce Interconnection Agreement"; is that how it starts?

A. Yes, it does.

Q. Okay. Let me ask that you turn to page 4 and look at finding and conclusions item number four. And that states that, "BellSouth should be directed to immediately forward to Intermedia all sums currently due, with required late payment charges pursuant to their interconnection agreement, together with all sums coming due in the future for such traffic pursuant to the terms of their interconnection agreement"; do you see that?

A. Yes, I do.

Q. And that's the direction from this Commission to pay reciprocal compensation for ISP traffic; is that correct?

A. That is correct.

Q. Now, the next document, Mr. Hendrix, is Number 2, and it's entitled, "Ordered Denying Motion for Stay," and that's dated March 2nd, 1999. Have you seen that document before?

A. Yes, I have.

Q. Okay. And let me ask you to turn to page 3 of that. Under "Conclusions," the first sentence reads, "After careful consideration, the Commission concludes that good cause exists to deny BellSouth's February 11, 1999 Motion for Additional Limited Stay"; do you see that?

A. Yes, I do.

Q. And that's where the Commission denied the motion at the time; is that right?

A. That is correct.

Q. And then shortly thereafter, the federal court entered a stay. Then the federal court dissolved the stay, and then Exhibit 3 is next; is that right?

A. I will take, subject to check, everything that you said. I would allow my counsel to indicate if there's anything wrong, but I'll accept it, subject to check, unless being told otherwise.

Q. Okay. And then, looking at Exhibit Number 3, that's a document entitled, "Order Denying Motion For Stay," dated June 22, 1999; is that correct?

A. Yes, that is correct.

Q. And the clause toward the end that starts,

"Whereupon," reads, "Whereupon, after carefully considering the pleadings filed by the parties regarding this matter, the Commission finds good cause to deny BellSouth's Motion for Stay"; do you see that?

A. Yes, I do.

Q. Okay. So at this point, on June 22nd, 1999, the November 4th order, that is, November 4th, 1998 order from this Commission about paying reciprocal compensation was no longer stayed by anybody; is that correct?

A. Since I'm not an attorney, and when you say it's no longer stayed by anyone, I would agree that everything that you asked and the questions that you've asked and what you've exhibited here appears to be in line. Whether it's no longer stayed by anyone, I cannot speak to that.

Q. Okay. Despite Exhibits 1, 2, and 3, that is, the order and the stay now being denied, BellSouth did not pay Intermedia reciprocal compensation, did it?

A. I believe there was some payments made. As to how much, I can assure you that BellSouth did not pay what Intermedia invoiced BellSouth to pay, and

that's part of the reason that we're here currently.

Q. But nothing was paid in the summer of 1999; is that correct?

A. Subject to check, I think that may be right, but I'm not certain.

Q. Okay. Let me ask that you look next to Exhibit 4. Do you identify that as a complaint for penalties that was filed in state court to attempt to penalize BellSouth for failing to comply with the Commission order?

A. I do see that, yes.

Q. And that was filed in early 1999, about seven months later; is that correct?

A. January, 1999, that's the date.

Q. And then, Mr. Hendrix, turning to Exhibit 5, as this case approached trial, BellSouth agreed to pay--make what Intermedia thought was a partial payment, that is, pay amounts BellSouth didn't dispute but didn't pay disputed amounts; is that correct?

A. I believe that's correct.

Q. And indeed, Exhibit 5 is a document entitled,

"Letter Agreement Concerning Reciprocal Compensation North Carolina," and that's dated February 11, 2000"; is that right?

A. That is correct. And I actually signed it.

Q. And paragraph one says, first sentence, "BellSouth will pay Intermedia reciprocal compensation for service in North Carolina in the amount BellSouth believes is properly due under the parties' interconnection agreement and the amendments thereto"; do you see that?

A. Yes, I do.

Q. And that's what BellSouth has paid, that is, the undisputed amount; is that right?

A. That is correct.

Q. And on paragraph six, on the second page, it says, "The payments made to Intermedia, in accordance with paragraphs numbered one and five above, are without prejudice to Intermedia to seek what it considers to be full payment of reciprocal compensation either through a motion in the existing proceeding before the NCUC or commencement of a new proceeding before the NCUC"; do you see that?

A. Yes, I do.

Q. And that's why we're here today, to deal with those disputed issues; is that right?

A. Yes, that is correct.

Q. And the payment of the undisputed amount was made on or about this February of 2000; is that right?

A. That is close, yes--that is close to the date.

Q. And that payment thus occurred some seven or eight months after the last stay expired; is that correct?

A. Subject to check on the dates, that would appear to be close, yes.

Q. Now, let me ask that you next turn to Exhibit Number 6, Mr. Hendrix. This is a document that has a few pages from the parties' interconnection agreement, of which I believe Mr. Edenfield provided the full interconnection agreement. Can you identify the front page as being the first page of interconnection agreement that was negotiated--was negotiated in July of 1996?

A. It does appear to be that agreement, yes.

Q. And let me ask that you turn to the last two pages of this Exhibit 6. And does that give the

attachment B-1, which sets forth rates for local interconnection service in the original interconnection agreement?

A. Yes, it does.

Q. And that's where those rates are is in B-1; is that right?

A. Attachment and B-1, yes, that is correct.

Q. Okay. Let me ask that you next turn to Exhibit Number 7, and I'll first ask you about Exhibit 7A. Can you identify that as a memorandum that Stu Hudnall sent to Julia Strow?

A. Yes. It is dated June 4th from Stuart Hudnall. It was sent to Ms. Strow concerning the modification that was requested by Intermedia to the interconnection agreement.

Q. Who is Stuart Hudnall?

A. He was a manager working in my group at the time. He has since left BellSouth, and he is building a log cabin in the mountains.

Q. Now, Mr. Hendrix, the first paragraph states, "Attached, per your request, is the original signed copy of the multiple tandem access agreement for Intermedia. I have sent a copy to Bill Morrison

for his information and use in allowing orders to flow"; do you see that?

A. Yes, I do.

Q. Who is Bill Morrison?

A. Bill Morrison is a member of the Intermedia account team; he is on the sales account side.

Q. Okay. Now, the multiple tandem access agreement is the one that was ultimately signed and is the amendment that is at issue this morning; is that correct?

A. That was one purpose of the amendment signed. That was not the sole purpose, as I'm certain we'll get into later.

Q. Okay. Let me just get right into that. Does this cover memorandum, in any way, alert Ms. Strow that there's more than one purpose other--does it say anything at all about a change, generally, in reciprocal compensation rates for all service as opposed to just a rate for multiple tandem access?

A. Well, it does not use the word "all," but if you read the second paragraph and even get into the third paragraph, which is somewhat in conflict with what Mrs. Strow said this morning, there were

conversations about the rates. And if you look at the rate of .0175, that was a rate that would take it--that was taken in error and included as part of the change in the agreement; wherein, the appropriate rate would have been the end office rate of .002. And then if tandem switching was actually being used on an elemental basis, then the tandem switching rate, which I believe would have been .00115. So the agreement, even in this letter, demonstrates that it went further than simply allowing them to have multiple tandem access.

Q. Mr. Hendrix, does this memorandum say anywhere that there are--there's a second purpose to change reciprocal compensation rates generally and do something more than just have rates for multiple tandem access?

A. From my standpoint, it does in paragraph two, because that was the intent. And the reason it speaks very clearly to me that it does is because MTA means nothing to BellSouth. BellSouth will not use MTA. MTA was what Intermedia had asked for. And I told Julia the only way you're going to get

it, since I--I am not obligated to do it, is that you would have to amend the agreement, and I have to have elemental rates. I would have been stupid to simply give them MTA at a single rate and not ask for elemental rates on all of the other traffic with the issue of IS--IS--ISP and other local traffic issues being addressed throughout the industry. So as a trade for MTA, we agreed to elemental rates that would apply on all local traffic and not just when Intermedia is using multiple tandem access.

Q. Mr. Hendrix, which language in paragraph two do you rely on to refer to a change in all reciprocal compensation rates; could you give me the precise phrasing?

A. Well, the reference is in paragraph two. Let's go to the first sentence where Tammy--her name is actually mentioned--and we talk about the Florida end office switching element. And then, in the second sentence, we talk about the rate of .0175. And I mean, it is getting at the crux of why we are--we are--we are actually here, because we wanted elemental rates to apply in every case.

Because MTA meant nothing to us, and that was something that Intermedia was asking. So paragraph two addresses the rates that would actually apply on an elemental basis and points to the error that was made in those rates.

Q. Mr. Hendrix, let me ask that you next turn to Exhibit B. And this is the amendment in question; is it not?

A. Yes, it is.

Q. Okay. On paragraph three, it says, "The parties agree to bill local traffic at the elemental rates specified in Attachment A"; is that correct?

A. Yes, they do. And early on, the word Local--

THE WITNESS: Commissioner, you had asked whether that was a defined term in the agreement. And the fact of the matter is, it is, in fact, a term, and I believe it's in this exhibit. If you would go to Exhibit 6 and look at--let's see, which page is it here? If you look at page two, Exhibit 6, Local Traffic, and it tells exactly what is local traffic. So there is a reason that "Local" was in caps, or at least the first letter, because it is a defined term.

A. And to us, it meant that it would apply to all local traffic. And for that reason, paragraphs three and four of this modification to the agreement was very critical to BellSouth.

Q. Mr. Hendrix, it's true that local traffic can be carried either by single tandem access, such as Intermedia has in North Carolina, as well as by multiple tandem access, as they exist elsewhere; isn't that right?

A. Yes, you can do both.

Q. So local traffic can go over either one, couldn't it?

A. It can, in fact, be through a single tandem or through a multiple tandem, which is a very good reason as to why Intermedia asked us to modify the agreement. They were not only interested in the fact that they had some blockage. They were also interested in the fact that there were cost savings associated with the trunking. There would be less trunking. And by "multiple tandem," if I were to have these cups and each of these cups is an access tandem or end office, we are telling them you do not have to go to each end office or a tandem. You

can go to a single point, and your trunking costs are--are actually less. And so they had a trunk cost savings. And Mr. Milner can address the MTA and the networking piece, you know, if there are questions. But there was a trunking savings.

It was--it would actually allow them to realize less blockage, because it did not have adequate trunking in place. But in trade, BellSouth said, fine, we will give you that. We will amend your agreement. We are not obligated to do it, but you must have elemental rates for all your local traffic, period, and that's it.

Q. Now, Mr. Hendrix, paragraph three refers to rates specified in Attachment A; is that correct?

A. Yes, it does.

Q. Let me ask you to turn to Attachment A, which the first sentence reads, "Multiple tandem access shall be available according to the following rates for local usage"; do you see that?

A. Yes, I do.

Q. And then rates are set forth below there; is that right?

A. Yes, they are.

Q. There are no rates on Attachment A for single tandem access, are there?

A. Yes, there are.

Q. Where do the words "single tandem access" appear?

A. Single tandem access is simply what most carriers would actually use to transport any traffic. Single tandem access is nothing more than what you do on a day-in and day-out basis. The whole purpose of this agreement was to pay for what you actually--actually use. If you use an end office switching, you use transport, you use a single tandem, then you pay the single tandem rate. If you use an end office, you pay the end office rate. If you use more than one tandem, then you pay two tandem rates. It was just that simple. It was an elemental basis.

I had nothing to gain by agreeing to MTA without getting something in trade. And Intermedia, in trade, got trunk savings cost. They got MTA, and BellSouth got elemental rates. So there is single tandem access rate. It is on a--on an elemental basis, and that's why you have your tandem switching. And if you look down, that rate

is--for the tandem switching, is .0015. That is the tandem switching rate. If you have more than one tandem, you pay twice .0015.

And I was shocked for Mrs. Strow to get up here and say that this was an additive. It was never viewed as an additive. These are elemental rates. You pay for what you use. It's just that simple.

And when we have the opportunity to bill elemental rates, that's what we bill. And we filed in this state, even, you know, the elemental rates that came out of the AT&T docket. And that's what these rates are. And we included those as part of the change to the AT&T agreement, and then we stated that come January 1998, we will bill elemental rates. And that's what we did, and that's what we did in this agreement here. It was in elemental rates. You pay for what you use, period.

Q. Mr. Hendrix, you would agree the words "single tandem access" do not appear on Attachment A, wouldn't you?

A. It is not appropriate to appear, because single

tandem is what you do each and every day. Multi-tandem is something special that they wanted for certain arrangements. They may not have asked for it in this state. This is--this is not an issue of whether you apply elemental rates or a single rate when they ask for multi-tandem. The issue is if you ask for multiple tandem, I'm going to give it to you. But you have to agree for all your local traffic, whether you ask for it or not, will be at the elemental rates, period.

Q. Mr. Hendrix, let me ask that you turn to Exhibit 6--excuse me, I mean, 8C. Can you identify it--

MR. EDENFIELD: Sorry, Charles?

Q. Excuse me, is it 6--I'm sorry, 7C.

MR. MEEKER: Thank you, Mr. Edenfield.

Q. --7C, which is the next exhibit. Can you identify that as a letter that Mr. Povall sent to the Commission to submit the June 3rd, 1998 amendment?

A. It appears to be that letter, yes. And all it is saying is that, you know, contrary to what people think, we try to be a customer-focused-type company. Intermedia wanted multi-tandem access, and that's what they got. We got elemental rates

in trade for it on a region-wide basis whether they have multi-tandems or not. Elemental rates was the way to--to actually go.

And all this letter's saying, we're trans-- trans--transmitting the agreement that the parties have entered into. That's all this letter is doing. It's nothing more. It only mentions multiple tandem access because if I'm looking at this agreement, I'm going to probably pick the first thing I see. And that's it. It is simply transmitting what the parties agreed to. And what the parties agreed to was if you want multi-tandem, you can have it. But in trade for your wanting multi-tandem, I must have elemental rates on every--in every state, on every minute, whether it's multi-tandem minutes or not, period. And that's it. That's what we agreed to, and that's what Mr. Povall is doing here, is transmitting the agreement.

Q. Mr. Hendrix, I think you've anticipated my question. The second sentence of the first paragraph says, "I enclose an amendment to that agreement that provides for multiple tandem

access," and it says nothing about a general change of the reciprocal compensation rates, does it?

A. No, it does not, and I'm not certain that there was a need to say anything. Because he is simply picking up an agreement to get the agreement filed and get it filed in a very timely fashion. There wasn't any purpose in saying anything else. I negotiated the agreement. I signed the agreement. I had conversations with Mrs. Strow. She said I didn't. I did. Okay? Because I was not going to agree, with all of the ISP stuff happening throughout the industry, to go with a single rate. Elemental rates was the only way to go.

In fact, throughout the company, there was a push to go to elemental rates. Since we lost the issue of single point of interconnection in Georgia, it was my job to ensure that whenever there was an opportunity to move customers to elemental rates. And we did the same for AT&T. When we filed their agreement after we got the arbitration ruling, we included elemental rates. And that's what we did.

We are on an elemental rate basis throughout

this region, because now we're able to bill them. We have never been able to bill a tandem switch rate as different from elemental. But elemental rates, we can bill--I'm sorry, we were never able to bill a multi-tandem access rate aside from elemental. But elemental, we can actually bill, because we can't bill multi-tandem based on a route. We simply cannot do that. And Mr. Scollard spoke to that.

So this letter is simply transmitting what the parties agreed to.

Q. Mr. Hendrix, let me ask that you next turn to Exhibit D, which is two pages from a Public Staff agenda for the Commission conference dated August 3rd, 1998, and ask that you turn to the second page of the exhibit, which has the number five at the top. Do you see that, Mr. Hendrix?

A. Yes, I do.

Q. Okay. And the second paragraph of the Public Staff recommendation says the following, "With this amendment, BellSouth agrees to provide, upon request, and ICI or Intermedia agrees to accept and pay for multiple tandem access at the rates

contained in Attachment A of this same amendment"; do you see that?

A. Yes, I do.

Q. And there is no reference to a general change in reciprocal compensation rates, is there?

A. No, there isn't a reference. But the same would hold true for the previous answer I gave that transmitted this agreement. You know, we file agreements all the time that will focus probably just on one item that's in the agreement. It may not list the whole thing. Our purpose is to get the agreement filed. Intermedia could have filed the agreement. Would they have included multi-tandem as well as elemental rates, I do not know. But our purpose was simply to get the agreement filed and to get the agreement approved. But the agreement will stand on its own.

The parties knew what they agreed to. I knew what I agreed to. I knew what my marching orders were, and that is what we agreed to. Because MTA buys me nothing. I had no reason to simply give ICI MTA. It meant nothing to me. But if I got something in trade that would benefit Bell--

BellSouth and at the same time allow Intermedia to accomplish what they were wanting to accomplish, then, yes, I would do it. And that's what I did.

Q. Mr. Hendrix, let me ask that you next turn to Exhibit E and ask if you can identify this as a prior amendment to the interconnection agreement between BellSouth and Intermedia dated February 24th, 1997. Can you identify this?

A. Yes, it does appear to be that.

Q. On the first page of that, paragraph number one, it says the parties agree to eliminate and to strike out of the interconnection agreement all of paragraphs 4C and 4D on page four; do you see that?

A. Yes, I do.

Q. So it deletes a provision that's being replaced and then puts in a new provision after that; is that correct?

A. Yes, it does.

Q. Let me ask you that you next return to Exhibit 7F and ask if you can identify this as an amendment to the interconnection agreement just after the amendment at issue today dated February of 1999; are you familiar with that?

A. Yes, I am.

Q. And looking at the bottom of the first page of that agreement, in paragraph one, it says, "The parties agree to delete section three in its entirety and replace the section with the following"; is that correct?

A. Yes. It does. And that language does not appear in the June 3rd, 1998. And the reason is is that I have a total, probably, of 20 to 25 negotiators. And each negotiator's style may well be different. But it was clear in looking at that agreement, if you look at paragraphs three and four on the front page of that agreement, it does not tie it back to MTA. Paragraphs one and two may talk about MTA, but three and four is very clear. This will apply for local traffic, period. These elemental rates in Attachment A will apply.

So the styles are actually different. And the parties understood at the signing of that agreement that these rates will apply to all local traffic. So while the context and the structure may be different, it's not unlike what we've done with other companies. We have other companies that have

signed this MTA agreement, but you did not see ICI bringing those agreements in showing that the language has--has--has not been struck. They do not bring those in, but we have other companies--companies that have signed the MTA, and it does not show that language as being struck. But what it's showing is that these are the rates that the parties agreed to. In trade for MTA, you get these elemental rates. So the styles are different.

Q. Mr. Hendrix, I think you've already anticipated my question. The June 3rd, 1998 amendment does not delete the B-1 reciprocal compensation rates, does it?

A. No, it does not. It does not say that in the terms, but the fact of the matter is it does, because those are the new rates. Otherwise, I would not have agreed to MTA. If I couldn't get something in trade for it, and elemental rates was what I was after, then I'm not going to agree to it, because I have no obligation to give you MTA.

Q. Finally, Mr. Hendrix, let me ask that you turn to Exhibit Number 8. Your Counsel made some references to the Florida proceedings; is that

correct?

A. Yes, he did.

Q. And you appeared there, didn't you?

A. Yes, I did.

Q. And there were actually two Commissioners who were hearing the case at the time of the hearing; is that correct?

A. Yes.

Q. And the staff made a recommendation in August of which there was a primary recommendation supported by two staff members that favor Intermedia and then an alternative recommendation that favored BellSouth; is that right?

A. Yes.

Q. And the staff recommendation is contained here as Exhibit 8; is that right?

A. Yes. But there was also an order that was issued on the 14th of last month wherein they found in BellSouth's favor as I indicated in my summary. And let me also say the recommendation that was actually picked in BellSouth's favor, I believe was from a staff member that has been there for a while that is very much aware of what has taken place in

the industry. And I'm not certain, but I believe the two on the primary staff rec are somewhat junior to this member. Now, whether that means anything or not, the only thing I'm saying is that what was actually accepted is from a seasoned staff member that has seen the gaming that has taken place in this industry and is not unlike what is attempted here and what was attempted in a previous case here.

Q. Again, Mr. Hendrix, you seem to be anticipating where I'm going. Of the two Commissioners who heard the case, one actually ended up resigning before the case was decided; is that correct?

A. She's no longer there. I'm not certain what the process was for her leaving.

Q. In any event, at the time that the Commission--the Florida Commission made its decision, only one member was still involved; is that correct?

A. Commissioner Deason ruled, if that's what you're asking me. And Commissioner Clark, who heard the case, was not there at the time of the ruling, if that's what you're asking.

Q. And the times to either reconsider or appeal the

Florida ruling still have not run; is that correct?

A. No, I don't know that I agree with you. I believe to ask for recon--a recon of that order may have. I think the appeal may be different.

Q. Okay. So that the Florida proceedings, then, may well not be complete; is that correct?

A. It may not be, so.

Q. And you would agree that there have been at least one different witness and some different exhibits presented here, wouldn't you?

A. Yes. And I think it's interesting that the witness that was up here before that is supposed to understand the agreement does not understand the application of the rates and what the rates actually meant. And to say that the rates are additive, that's ludicrous. It is on an elemental basis. You pay for what you use, and you pay for all minutes, be it local, tandem switch, or multi-tandem switch, period. It's on an elemental basis.

Q. Mr. Hendrix--

A. When we--

Q. Excuse me. Go ahead.

A. --and when we presented those rates, we made clear

that these rates were on an elemental basis to incorporate the various orders that have been issued in the states. And if you look at the AT&T arbitration order, the end office rate of .004 and the tandem switch rate of .0015 are the identical rates that are included as part of that agreement, and that's on an elemental basis.

Q. Now, Mr. Hendrix, let me ask that you turn to your direct testimony in this case; do you have a copy there?

A. Yes, I do.

Q. This is the testimony filed July 28th, 2000, and ask that you turn to page five of that testimony.

A. I'm there.

Q. Okay. On page five, toward the middle, there's the following sentence which appears: "Thus, when Intermedia requested an amendment to the interconnection agreement to incorporate multiple tandem access, BellSouth took the opportunity to request that Intermedia amend the interconnection agreement to also incorporate the cost base rates, the elemental structure," and so on. Now, as to that request, we asked you in discovery, you know,

was that request made in writing; do you remember that?

A. Yes, I do.

Q. And you responded that it was made in writing through the MTA--or excuse me--through the June 3rd, 1998 amendment when that was submitted. But there was no other writing other than Mr. Hudnall's memorandum and the draft amendment; is that correct?

A. That's correct.

Q. So the only request that you can identify about changing the reciprocal compensation rates is the Hudnall memorandum and the attached amendment; is that correct?

A. And you mentioned "in writing," and I believe that was the operative word. And what we did, contrary to what Mrs. Strow said, we did, in fact, talk. I talked with her, and I made it very clear that we would not accept or would not agree to amend the agreement for multi-tandem without elemental rates. So that was a verbal conversation. And the written part is the June 3rd, 1998 draft that Mr. Hudnall sent over to Mrs. Strow.

Q. Let me ask that you next, Mr. Hendrix, turn to your rebuttal testimony; do you have a copy of that?

A. Yes, I do.

Q. And let me ask that you turn to page three.

A. I'm there.

Q. And the first line of your answer reads--this is on line five--"Intermedia did sign the amendment," that's the June 3rd, 1998 amendment, "without making any changes to it"; do you see that?

A. Yes, I do.

Q. And that's true to the best of your knowledge, isn't it?

A. It's true. But the fact is is that if they wanted changes, they had to ask for changes. And contrary to, you know, what is trying--what--what Intermedia has tried to say here, that they did not negotiate that agreement, well, you know, as a business person, I'm going to look out for the welfare of--of my company. And if there is a problem with the agreement or there is something that I do not understand, I'm going to make sure that it is clear. And so whether they made changes or not, it doesn't really matter. They signed it.

She understood. She understood that we needed elemental rates before they could get MTA. She understood that. So the fact that she didn't make changes would indicate that we did a doggone good job through the phone conversations that were had to bring this to closure. That's all that means.

Q. Mr. Hendrix, let me ask that you turn next to page five of your rebuttal examination. And lines five through eight are a quote from Ms. Gold and the Florida proceeding that I believe your counsel referred to. And it says, "It is true"--let me start over, "It is true, I suppose, that if those paragraphs were interpreted in isolation, they arguably would support BellSouth's view that the amendment requires the Attachment A rates to be applied region-wide upon execution without any other linkage." You would agree, would you not, Mr. Hendrix, that Ms. Gold's testimony, generally, was to the effect that these paragraphs should not be interpreted in isolation but should be read as a whole; isn't that correct?

Q. She may have said that. She also said some other things that are not totally in sync. She waffled

back--back and forth on different issues. But clearly, the intent of the parties in drafting this agreement was that paragraph three and four spoke to local traffic, and that we would, in fact, pay each other on an--on an elemental basis.

The other thing to keep in mind that has not been surfaced in this case--and this is another benefit to ICI in signing this agreement on--on an elemental rates basis. You know, we're talking traffic going both--both ways. We do have some of Intermedia customers that are calling BellSouth customers. So when that traffic is going from their customer to our customer, they pay us at a much lower rate, also. Granted, I mean, it may be a lower rate, but they pay on an elemental basis for what is actually used. Likewise, for every minute, in every state, we will pay them on an elemental basis for what is used. And that was the purpose of the MTA. Both parties benefitted. I got elemental rates. They got elemental rates coming back the other way. They save costs on trunking, and they got multi-tandem access, wherein they did not have to interconnect at every end

office and/or tandem.

Q. Mr. Hendrix, let me ask that you look next at a document that's entitled Exhibit 1 that's in front of you just on the other side of the microphone. And it's entitled, "Intermedia's Notice of Filing of Responses to Data Requests"; do you see that?

A. Yes, I do.

Q. Let me ask that you turn to the--what is the fifth page, and it's a response to data request item number five; do you see that?

A. Yes, I do.

Q. And this is response is in discovery that BellSouth has given to Intermedia; is that correct?

A. Yes, it is.

Q. And the first request says, "Please state whether BellSouth drafted the amendment. If your answer is in the negative, please state who did draft the amendment."

A. Yes, we did.

Q. You did draft it?

A. Yes, definitely.

Q. So there's no dispute about that. Let me ask--

A. We drafted it, and we sent it them to approve it.

COMMISSIONER ERVIN: Let's go one at a time here, okay. I'm losing both of you as a result of that. Finish your answer, Mr. Hendrix, please.

A. Yes, thank you. We drafted it and we sent it for them for approval and review. No one held a gun to anybody's head to actually sign it.

Q. Let me ask that you turn to Number 6, which is the next page. And the request there says, "Please state whether IMI requested any revisions to the amendment; if so, please state who requested the revision once such revision was." And the answer, in substance, is, "Intermedia did not request any revisions"; is that correct?

A. Okay. I was looking at item--

Q. Number 6.

A. (Witness reviews document.) Okay. There are two sentences here. Intermedia did, in fact, question the rate in the June 4th letter. And then the second sentence stated that Intermedia did not request any revisions to the agreement.

Q. To the language of the agreement; is that correct?

A. That's correct.

Q. Now, the next one deals with the question of

whether Intermedia has requested multiple tandem access in the State of North Carolina. And you would agree that BellSouth has not received such a request, wouldn't you?

A. That's correct, but that's not the relevant issue. I mean, whether you ask for multi-tandem in this state, you didn't ask for it in Florida, it doesn't matter. The fact is is that you wanted the opportunity to have multi-tandem access. You had a need for it in Georgia. We had a nine-state agreement. This is not an individual state agreement. And in trade, when you get it in a single state, it doesn't really matter. If you ask for it in trade, I want elemental rates on all traffic not just MTA traffic. So the fact that you didn't ask--ask for it here, that's not the issue. And it shouldn't be viewed as the issue here. The issue is the parties agreed to this change in the contract. It is for elemental rates on all traffic whether it is MTA or not. And ICI or Intermedia can ask for multi-tandem access, and we would give it to them.

MR. MEEKER: That completes my cross

examination, Mr. Chairman.

COMMISSIONER ERVIN: Redirect?

MR. EDENFIELD: Just a couple.

REDIRECT EXAMINATION BY MR. EDENFIELD:

Q. Take a sip of water and--I know you're passionate about this. Counsel referred you to the June 4th letter?

A. Yes.

Q. What is--you don't need to go to the letter. The question is this: What is the effective date of the amendment?

A. June 3rd, 1998.

Q. So this letter is written after the amendment was executed by both parties?

A. That's correct.

Q. Is Intermedia the only CLP that is using elemental rates?

A. No. In fact, during--during this time, and, you know, I can--during this time, we were targeting a whole bunch of CLPs in other states. They're either called CLECs, or they're called ILECs--not ILECs--CLECs or some other name. But we were targeting a whole number of CLPs to go to elemental

rates. And the reason is is because we had arbitrated rulings and rates that were coming out. And in trying to minimize the impact on the billing system, as well as the impact on the company, we went to elemental rates. And we were encouraging people when they come and asked for changes--you know, we're not out there seeking changes to agreement--but when you come and ask, I want something in trade. That's the whole purpose of the process is to negotiate those changes. And so we were targeting at least I think around 60 plus companies to go to elemental rates.

Q. Intermedia was just one of those companies?

A. Yes, definitely. In fact, we had one company that had multi-tandem access, I think, back in 1997, and once we were able to bill elemental rates, we modified their agreement to go to elemental rates on a region-wide basis. So it wasn't a single company being targeted. It was our push to go to elemental rates, because that was the way the arbitration orders were actually being issued.

Q. This may be the same company you just referred to, but my next question is is Intermedia's the only

interconnection agreement with this particular amendment to it?

A. No. In fact, I think--I think it's Windstar--Windstar--yes, it is them. Windstar, they have pretty much the identical agreement. They have not questioned it. And I believe--I'm not sure if they are certified to operate here, but there were multiple companies that were asking for multi-tandem access agreements. And in trade we got elemental rates for the whole region for all traffic.

Q. Okay. Let's talk about the cover letter for just a second that accompanied the amendment. Does the cover letter amend the agreement in any way?

A. No. Quite often, the people that are sending the cover letters in--I don't know exactly who sent those in, but, you know, I'm in Atlanta, Georgia. While I'm from this state, you know, I'm from Atlanta now. And when we send them out to the states, it's up to the states as to how they want to draft it and get them filed. The bottom line is we want to get them filed. It's in the best interest of BellSouth, as well as our CLEC

customers, to get those agreements filed and to get them filed timely.

Q. So if Mr. Povall had put in that letter this amendment hereby--we're filing an amendment where Intermedia waived all of its rights to reciprocal compensation, would that, in fact, have happened?

A. No, I mean, it does not amend what the parties have agreed to.

Q. You have attached to your testimony the Time Warner amendment?

A. Yes, I do.

Q. What we did not attach--and let me pass this out now and mark it--I inadvertently forgot to put on there the cover letter that accompanied that. And if you could identify this for me, Mr. Hendrix, then I'll get Commissioner Ervin to mark this as the next exhibit.

A. Yes, this is a transmittal letter transmitting the agreement between BellSouth and Time Warner.

MR. EDENFIELD: I would ask that this be marked as BellSouth's next exhibit. I forgot what number we're on.

COMMISSIONER ERVIN: Do you want to mark it as

a Hendrix Exhibit, or do you want to mark it just as--

MR. EDENFIELD: A Hendrix Exhibit is fine.

COMMISSIONER ERVIN: Why don't we mark it as Exhibit--

MR. EDENFIELD: The easiest thing would be to do--would be to amend--well, no, that probably wouldn't be the easiest thing to do.

COMMISSIONER ERVIN: Why don't we make it--why don't we make it, for purposes of identification, Exhibit JDH-4?

MR. MEEKER: And Your Honor, we have just the same objection on relevance.

COMMISSIONER ERVIN: Do you have any additional objection other than that?

MR. MEEKER: No.

COMMISSIONER ERVIN: All right. For the reasons stated earlier, that objection is overruled.

(THEREUPON, BELLSOUTH HENDRIX DIRECT EXAMINATION EXHIBIT NO. JDH-4 WAS MARKED FOR IDENTIFICATION.)

Q. Take a look at this Mr. Hendrix, if you would. And

in conjunction with the Time Warner amendment that's actually attached to your testimony, and explain the significance of this.

A. What it does is--moving from the letter to what I have attached, is that the agreement as modified accomplishes probably five different things. One is the BFR process where we agreed to the bonafide process for carriers to request services that are not currently in their agreement. It also talks about the compensation for call termination, which would be for local traffic. It addresses remote call forwarding. It addresses additional unbundled network elements, various loop rates for--for four states. But the bottom line is that it points out that there is more than one thing that will usually take place in any agreement.

The interesting thing is in this letter not all of those changes that are being made in this agreement are highlighted in this letter. And the reason is is that the--the purpose and our motivation is to just get the agreement filed. We don't go through and restate everything in the agreement; otherwise, you wouldn't need a

transmittal letter. You would simply file the agreement and just say, "Here it is."

Q. Does that mean that the issues that were covered in the amendment that are not referenced in the cover letter are now null and void?

A. No.

MR. EDENFIELD: That's all I have, thank you.

COMMISSIONER ERVIN: Mr. Hendrix, let me--I've got several questions I want to ask you, too. You said, I think, early in your testimony that you drafted the MTA agreement that's before us; did you say something like that?

THE WITNESS: No. I--I--Stuart Hudnall, who's in my group, my manager--but I worked--I personally worked with Stuart on that. In fact, Mrs. Strow has not said that, and I believe she was, in fact, out of town. But she called me to let me know how much she was going to get--

COMMISSIONER ERVIN: I'm going to get to that in a second. But if I don't keep my train of thought fairly simple here, I may get lost.

THE WITNESS: Okay. I'm sorry.

COMMISSIONER ERVIN: So Mr. Hudnall actually

drafted this document?

THE WITNESS: Under my super--supervision. That's correct.

COMMISSIONER ERVIN: So, basically, he put--in the old days we would have said "pen to paper," but I assume he put his fingers to some keyboard and actually physically created it; is that right?

THE WITNESS: Yes, sir. That is correct.

COMMISSIONER ERVIN: Now, after he created it, I take it he then showed it to you?

THE WITNESS: Yes. In fact, we talked several times through the drafting process about that agreement.

COMMISSIONER ERVIN: All right. Now, you've mentioned several times a conversation or conversations that you had with Ms. Strow, and I haven't got clear in my own mind what you're saying about that. So let me ask you a few things about that particular subject. How many times, prior to the execution of this agreement, did you talk to Ms. Strow?

THE WITNESS: About this subject and about this agreement, at least twice.

COMMISSIONER ERVIN: All right. Now, tell me about the first of those two conversations, as you remember them.

THE WITNESS: The first, as I remember, was by telephone. And I believe she was, in fact, traveling. And the purpose of the conversation--Julia and I had met previous--previous--previously for lunch, and she was informing me that she was taking over the new job. That Tom Allen had moved on to IC--ICG, a different company. And that she would be coming to me, and I would be her key point to bring issues and to bring changes that were actually needed. And so we met and talked, and she just gave me heads up that she would be asking for it. And she knew to call Mr. Hudnall, who was assigned to her account, to do the agreement.

COMMISSIONER ERVIN: So had she talked to somebody else within BellSouth before the first of the two conversations that you're telling me about?

THE WITNESS: She may have talked to the account team. That I'm not certain of.

COMMISSIONER ERVIN: But at any rate, you got a call from her or heard from her and spoke with

her by phone?

THE WITNESS: Yes, sir, definitely.

COMMISSIONER ERVIN: Tell me, as best you can, what happened during that first conversation as you recall it.

THE WITNESS: What I remember doing after talking with her--and the conversation is pretty much as short as what I just mentioned--what I did then was to go out and talk with Mr. Hudnall. Because I get a lot of customer calls, and I'll go out--

COMMISSIONER ERVIN: Let me--let's kind of keep in order here. Tell me, as best you can--and I realize you can't do it verbatim--but summarize for me the first conversation that you had with her--

THE WITNESS: Okay.

COMMISSIONER ERVIN: --and stop when you get through describing the conversation.

THE WITNESS: All right. I'm sorry. What she said was, as best that I can recall, is, "Jerry, we need a multi-tandem access agreement. I met with the account team, and we need to amend our

agreement."

COMMISSIONER ERVIN: And what, if anything, did you say in response to that?

THE WITNESS: If I--what I would typically say--and I don't know that it's any different on this one--is that I'll get with Mr. Hudnall, and we'll get moving on it to work on it.

COMMISSIONER ERVIN: All right. So is that the end of the first conversation as you recall it?

THE WITNESS: Yes, sir.

COMMISSIONER ERVIN: In the first conversation, was there any discussion--explicit discussion about the introduction of elemental rates into the agreement as a whole?

THE WITNESS: In the very first one, I honestly cannot recall.

COMMISSIONER ERVIN: Okay. How much later--well, let me back up a second. We've got a date on which this agreement was executed. Do you recall or can you even estimate how much in advance of the execution of the agreement the first of these two conversations occurred?

THE WITNESS: I would say it was probably no

more than just a little bit over two weeks.

COMMISSIONER ERVIN: Now, did you talk to Mr. Hudnall after this first conversation with Ms. Strow?

THE WITNESS: Yes, I did.

COMMISSIONER ERVIN: And what did you tell Mr. Hudnall?

THE WITNESS: That ICI would be calling looking to amend their agreement to include multiple tandem access, and, you know, we talked about the things that we had to have in that agreement.

COMMISSIONER ERVIN: So you talked to him, I assume, about the elemental rates--

THE WITNESS: Yes, sir.

COMMISSIONER ERVIN: --and you did so for the reason that you've previously given me?

THE WITNESS: Yes, sir.

COMMISSIONER ERVIN: All right. Now, did you then get a document back from Mr. Hudnall before your second conversation with Ms. Strow?

THE WITNESS: Yes, I did.

COMMISSIONER ERVIN: And that's when you

reviewed the document?

THE WITNESS: Yes, sir.

COMMISSIONER ERVIN: All right. Did you then transmit it--did that document then get transmitted to Intermedia before your second conversation with Mr.--with Ms. Strow or after?

THE WITNESS: It was after the document went, because I laid out for Mr. Hudnall--

COMMISSIONER ERVIN: The conversation was after the document went?

THE WITNESS: Yes. And that was around May 15th. We have this email here.

COMMISSIONER ERVIN: All right. So the date--you're relying on the email that we've--

THE WITNESS: Yes, sir.

COMMISSIONER ERVIN: --already looked at for the date?

THE WITNESS: Yes, sir.

COMMISSIONER ERVIN: So some time after May the 15th, you had a second conversation with Ms. Strow?

THE WITNESS: Yes, sir.

COMMISSIONER ERVIN: Tell me about that in the

way that you told me about the first one, who said what to whom and in what order, as best you can recall it?

THE WITNESS: As best as I can recall, we had a second conversation, and we talked through the key parts of the agreement. And the key parts was, one, the need for multi-tandem. I remember talking about the trunk cost savings that Intermedia would actually get, and I remember talking about the need to go to elemental rates. If you want MTA, we have to have elemental rates. We are amending the agreements to include elemental rates.

COMMISSIONER ERVIN: Now, what, if anything, did she say in this conversation, if you recall it?

THE WITNESS: I do not recall her having a problem with anything that I said.

COMMISSIONER ERVIN: Do you recall anything that she explicitly said?

THE WITNESS: No, sir, I honestly do not. I think what I do recall is, you know, let me circulate this to my folks and then we'll get back with you.

COMMISSIONER ERVIN: All right. So,

basically, the reason that you assume or that you believe that she didn't have any problem with the agreement as you had proposed it was the fact that she didn't object to it?

THE WITNESS: Yes, sir. And if she had--

COMMISSIONER ERVIN: Is that why you're saying that?

THE WITNESS: Yes, sir.

COMMISSIONER ERVIN: Okay.

THE WITNESS: And if she had, just as we do day in and day out, you know, whether it's with Intermedia or other customers, come back and tell me you've got a problem, and we'll try to work through the problems.

COMMISSIONER ERVIN: Now, let's look at the agreement itself for a second, because I've got a couple of questions about that. And specifically, let's look at Attachment A to start with. If I can find my copy. I've got Mr. Edenfield's--

MR. EDENFIELD: Don't look at mine. You'll never find it.

COMMISSIONER ERVIN: Well, I've got a copy that I actually made notes on, so that's what I'm

looking for. All right. I've got mine now. Do you have one, Mr. Hendrix?

THE WITNESS: I have several of them up here. Let me see which one I can find first.

COMMISSIONER ERVIN: Pick one and use it.

THE WITNESS: Thank you. The problem is trying to remember where I put it. Yes, sir, I have it.

COMMISSIONER ERVIN: And let me ask you one preliminary question going back to the drafting of this document. As I recall, you are not an attorney by background?

THE WITNESS: That's correct.

COMMISSIONER ERVIN: Did anybody from the company's legal staff review this document before it was transmitted to Intermedia?

THE WITNESS: I don't know. I cannot honestly sit here and recall the exact timing. What I--what I have in my group is a--and they're not in my group. They're in legal. There's a group of attorneys that are assigned to us to work with us on various agreements. And so I honestly cannot recall right now whether we did or not.

COMMISSIONER ERVIN: So you don't know one way or the other?

THE WITNESS: No, sir.

COMMISSIONER ERVIN: It might have been reviewed; it might not have been?

THE WITNESS: That's correct.

COMMISSIONER ERVIN: Now, we start off with the top of Attachment A, and it says, "Multiple tandem access shall be available according to the following rates for local usage." Why is there a reference--if this attachment is intended to change all rates for reciprocal compensation region-wide, why is there a reference to multiple tandem access in the first sentence on Attachment A?

THE WITNESS: And the reason is that that was just a header. That was what the customer had asked--asked for, being multi-tandem access, and that was a header. But in the body of the agreement, just going back to paragraphs three and four on the preceding pages, it made it clear in three and four that we were changing rates for all. Because one and two address multi-tandem access, and then we say in three and--three and four that

for local traffic, you would bill the rates in Attachment A. And the first sentence--

COMMISSIONER ERVIN: I mean, I can assure you that I've read this thing a number of times. And is there any reason that the words or that the reference to multiple tandem access appears in the first line of Attachment A other than it's a, quote, "header," close quote?

THE WITNESS: No, sir. I mean, the colons--

COMMISSIONER ERVIN: Wouldn't this document do more clearly what you claim that it does if that reference hadn't been there looking back on it?

THE WITNESS: If I had to do it again, you know, to avoid having to come here and be in a hearing, yes, I would attempt to make it more clear. But at the time when the parties agreed to it, we thought it was very clear. And--and it definitely accomplished the purpose for which the parties amended the agreement.

COMMISSIONER ERVIN: All right. Now, let's look at--let's go to where you were trying to get me a minute ago, which is to the first page of this document. In paragraph one, it says, as we can

see, "that the parties agree that BellSouth will, upon request, provide and ICI will accept and pay for multiple tandem access." Now, I take it, then, that the company's construction of this document is that the way that this service is going to be paid for is--well, let me just ask you, how is the provision of this service going to be paid for under this agreement?

THE WITNESS: The way that this would work is, first, multi-tandem access will only apply to ICI.

COMMISSIONER ERVIN: It wouldn't apply to BellSouth?

THE WITNESS: No. And the reason is--

COMMISSIONER ERVIN: I'm going to let you divert. I'm going to go off with you on that subject a second. Why not?

THE WITNESS: And the reason is is because we're the incumbent LEC. We have interconnection at every end office and tandem.

COMMISSIONER ERVIN: Okay.

THE WITNESS: So for our traffic, it just doesn't matter. So it would only apply to ICI for its originating traffic, who--who is a new entrant

coming into the market wanting to serve various customers and to be able to allow those customers to make calls and have some assurance that those calls would terminate at the distant end.

COMMISSIONER ERVIN: So to go back to the question that I probably didn't ask Ms. Strow very well, there would really be no payment from BellSouth to Intermedia associated with the provision of MTA service?

THE WITNESS: Yes, there would be.

COMMISSIONER ERVIN: There would be?

THE WITNESS: Yes, sir.

COMMISSIONER ERVIN: All right. I'm not following you then. Try again.

THE WITNESS: All right. Well, I was about to ask if I could go to the board and draw it, but that may not help. Let me see if I can do it. For calls originating from BellSouth--and let's say it's an ISP customer that's using BellSouth, a BellSouth end user, for a call destined--destined to travel through ICI's office to terminate out on the World Wide Web. That will be elemental rates going from BellSouth to Intermedia then terminating

out on the World Wide Web. Okay? So BellSouth will pay Intermedia for the network services that it will use to get that call to the World Wide Web, be it the end office, if Intermedia has an end office, and any transport that they may have, that's what BellSouth would compensate Intermedia for at these rates.

COMMISSIONER ERVIN: So if it--

THE WITNESS: Likewise--

COMMISSIONER ERVIN: Okay. Go ahead, I'm sorry. I thought you were through.

THE WITNESS: That's for a call coming from a BellSouth end user to Intermedia. Likewise, for a call coming back from an Intermedia end user to a BellSouth customer, Intermedia may not be interconnected at every tandem--and I'm just speaking as to how MTA would actually work--

COMMISSIONER ERVIN: And that's what I'm asking you.

THE WITNESS: --then they would pay the end office switching, and if it goes through two tandems, two tandem switching plus transport to BellSouth to terminate that call. But for that

call, in the originating sense, BellSouth would not use multiple tandem, and it was for that reason, in trade, we were willing to agree to provide multi-tandem for Intermedia with the understanding that they would pay elemental rates for the services that they used, not only if it's multi-tandem, but for all local traffic, whether they have multi-tandem or not.

COMMISSIONER ERVIN: That's all I have. Does either party have any questions on the questions that I asked.

MR. MEEKER: We do not, Mr. Chairman.

COMMISSIONER ERVIN: All right. Mr. Hendrix, I believe you and I finished them off here. Okay. Thank you for coming and--

THE WITNESS: Thank you.

COMMISSIONER ERVIN: --you may be excused.

(THEREUPON, THE WITNESS WAS DISMISSED.)

MR. EDENFIELD: The good news is we actually have the network guy here so we may get to the bottom of this yet.

COMMISSIONER ERVIN: Well, Mr. Hendrix and I have had conversations in the past, and I'm sure he

probably found them baffling so--

THE WITNESS: Not at all.

MR. EDENFIELD: Now, you knew he would never say that to your face.

COMMISSIONER ERVIN: You know, I am not commenting on what he may have said to my face; it's what he may have said to your equivalents afterwards.

MR. SHORE: As I understand it, Intermedia does not intend to cross examine our other witnesses. That being the case--I've just been advised by co-counsel that we intend to call Mr. Milner.

COMMISSIONER ERVIN: I assumed he was not here for fun.

MR. SHORE: He's a Tarheel. He likes to get home.

MR. EDENFIELD: He just likes to--he's from Fayetteville right down the road there.

COMMISSIONER ERVIN: So the next order of business is to call Mr. Milner?

MR. SHORE: That explains for our not calling the other folks.

COMMISSIONER ERVIN: Well, while he's coming to the stand and his summary is being passed out, I assume under the prior agreement of the parties the testimony of Mr. Scollard and Mr.--and Ms. Cox would be introduced into the evidence?

MR. SHORE: That was--my purpose here was to officially have that introduced and--

COMMISSIONER ERVIN: Without objection the testimony of Ms. Cox and Mr. Scollard is received into evidence as are their exhibits.

(THEREUPON, THE PREFILED AND DIRECT TESTIMONY OF CYNTHIA K. COX WILL BE COPIED INTO THE RECORD AS IF GIVEN ORALLY FROM THE WITNESS STAND.)

FILED
JUL 28 2000
Clerk's Office
Utilities Commission

BELLSOUTH TELECOMMUNICATIONS, INC.

DIRECT TESTIMONY OF CYNTHIA K. COX

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. P-55, SUB 1210

JULY 28, 2000

Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC. ("BELLSOUTH") AND YOUR BUSINESS ADDRESS.

A. My name is Cynthia K. Cox. I am employed by BellSouth as Senior Director for State Regulatory for the nine-state BellSouth region. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR BACKGROUND AND EXPERIENCE.

A. I graduated from the University of Cincinnati in 1981 with a Bachelor of Business Administration degree in Finance. I graduated from the Georgia Institute of Technology in 1984 with a Master of Science degree in Quantitative Economics. I immediately joined Southern Bell in the Rates and Tariffs organization with the responsibility for demand analysis. In 1985 my responsibilities expanded to include administration of selected rates and tariffs including preparation of tariff filings. In 1989, I accepted an assignment in the North Carolina regulatory office where I was BellSouth's primary liaison with the North Carolina Utilities Commission Staff and

the Public Staff. In 1993, I accepted an assignment in the Governmental Affairs department in Washington D.C. While in this office, I worked with national organizations of state and local legislators, NARUC, the FCC and selected House delegations from the BellSouth region. In February 2000, I was appointed Senior Director of State Regulatory.

Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?

A. The purpose of my direct testimony is to respond to an issue raised in the complaint filed by Intermedia Communications, Inc. ("Intermedia") on May 15, 2000, with the North Carolina Utilities Commission ("Commission"). Specifically, I will respond to Intermedia's contention that it is due the tandem switching rate element for reciprocal compensation based on its claim that its switches covered a geographic area comparable to that covered by BellSouth's tandem switches from July 1, 1996 to December 31, 1999, irrespective of whether Intermedia's switches actually performed a tandem switching function for local traffic during that same time period.

Q. PLEASE ADDRESS THE SPECIFIC DISPUTE BETWEEN THE PARTIES CONCERNING RECIPROCAL COMPENSATION AT THE TANDEM SWITCHING RATE.

A. As Mr. Hendrix explains in his testimony, there is a dispute between the parties concerning the appropriate rates to be charged for reciprocal compensation under the parties' Interconnection Agreement. One aspect of the dispute, which I address,

is whether Intermedia was entitled to reciprocal compensation at the tandem switching rate. BellSouth and Intermedia disagree on the criteria that must be met in order for the tandem switching rate element to apply.

The Telecommunications Act of 1996 ("Act") and the FCC's rules established that, when two carriers are involved in delivery of local traffic, the originating carrier will reimburse the terminating carrier for the additional costs associated with the parts of the terminating carrier's network that are used to deliver that local traffic. The Act established reciprocal compensation as the mechanism for such reimbursement.

The elements potentially involved in the transport and termination of local traffic are end office switching, common interoffice transport and tandem switching. However, all three elements are not involved in every local call. BellSouth is entitled to reciprocal compensation at the tandem switching rate only when BellSouth performs the tandem switching function and, therefore, incurs the cost of tandem switching. Further, Intermedia is entitled to reciprocal compensation at the tandem switching rate only when its switches cover a comparable geographic area and perform the functions of a tandem switch, as opposed to an end office switch. However, Intermedia wants BellSouth to pay for tandem switching on every local call, regardless of whether Intermedia actually performed the function and incurred the cost of tandem switching.

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. In order for Intermedia to appropriately charge for tandem switching under the expired Interconnection Agreement, Intermedia must demonstrate to the Commission that, from July 1, 1996 through December 31, 1999, any switch of Intermedia's actually: 1) served a comparable geographic area to that served by BellSouth's tandem switch and 2) performed local tandem functions. Intermedia should only be compensated for the functions that it actually provided.

Intermedia contends that the composite rate in the expired Interconnection Agreement which includes the tandem switching component should be applied to every call, regardless of which elements were actually used to terminate and transport the local traffic. The result of this application would be that BellSouth would pay Intermedia for all functions on all calls, regardless of what functions Intermedia actually performed on a given local call. However, BellSouth's position is that Intermedia was not due the tandem switching component because its switches did not perform the tandem function for local traffic, nor did Intermedia's switches cover a geographic area comparable to BellSouth's tandem switches.

Q. WHAT IS THE BASIS FOR BELLSOUTH'S POSITION ON THIS ISSUE?

A. Under Section 251(b)(5) of the Act, all local exchange carriers are required to establish reciprocal compensation arrangements for the transport and termination of telecommunications. 47 U.S.C. § 251(b)(5). The Act and the FCC's rules limited this obligation to local traffic. The terms and conditions for reciprocal compensation must be "just and reasonable," which requires the recovery of a reasonable approximation of the "additional cost" of terminating calls that originate

on the network of another carrier. 47 U.S.C. § 252(d)(2)(A). In its Local Competition Order, the FCC stated that the "additional costs" of transporting and terminating traffic vary depending on whether or not a tandem switch is involved. (¶ 1090) As a result, the FCC determined that state commissions may establish transport and termination rates that vary depending on whether the traffic is routed through a tandem switch or directly to a carrier's end-office switch. *Id.* To that end, in several proceedings, the Commission has established separate (elemental) rates for local switching, transport and tandem switching.[1]

The FCC, of course, recognized that a CLP might not configure its network precisely like BellSouth or any other incumbent carrier. In order to insure that a CLP would receive the equivalent of a tandem switching rate if it were warranted, the FCC directed state commissions to do two things. First, 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." (Local Competition Order ¶ 1090) (emphasis added). Further, the FCC stated that "[w]here the interconnecting carrier's switch serves a geographic area comparable to that served by the incumbent LEC's tandem switch, the appropriate proxy for the interconnecting carrier's additional costs is the LEC tandem interconnection rate." *Id.*

[1] BellSouth/AT&T Recommended Arbitration Order dated 12/23/96 and Final Order dated 4/11/97 in Docket No. P-140, Sub 50, BellSouth/MCI Arbitration Recommended Arbitration Order dated 12/23/96 and Final Order dated 4/11/97 in Docket P-141, Sub 29 and General Proceeding to Determine Permanent Pricing for Unbundled Network Elements Order dated 12/10/98 in Docket P-100, Sub 133d.

Therefore the FCC posed two requirements that must be met before a CLP would be entitled to compensation at both the end office and the tandem switching rates, as opposed to only the end office rate, for any particular local call. The switch involved has to serve a comparable geographic area, and it has to perform tandem switching functions for local calls. BellSouth notes that Section 51.711(a)(1) of the FCC's rules states that "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) Again, in Section 51.711(a)(3), the FCC states that "[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."

Q. HAS THE FCC DEFINED WHAT FUNCTIONS A TANDEM SWITCH MUST PROVIDE?

A. Yes, it has. In its recently released Order No. FCC 99-238, the FCC's rules at 51.319(c)(3) state:

Local Tandem Switching Capability. The tandem switching capability network element is defined as:

(i) Trunk-connect facilities, which include, but are not limited to, the connection between trunk termination at a cross connect panel and switch trunk card;

(ii) The basic switch trunk function of connecting trunks to trunks; and

(iii) The functions that are centralized in tandem switches (as distinguished from separate end office switches), including but not limited, to call recording, the routing of calls to operator services, and signaling conversion features.

Of course, this definition of tandem switching capability has long been accepted and applied within the telecommunications industry. The introduction of local competition has no effect on the definition of tandem switching capability.

Q. HOW DOES SECTION 251(b)(5) OF THE ACT AND THE FCC'S RULES RELATE TO THE DISPUTE IN THIS CASE?

A. In resolving this dispute, the Commission must consider the parties' intent under the expired Interconnection Agreement. That agreement explicitly provided that the parties entered into the agreement "for the purposes of fulfilling their obligation pursuant to sections 251, 252 and 271 of the Telecommunications Act of 1996...". Therefore, in resolving this case, the Commission must consider the Act and applicable FCC rules in determining whether Intermedia was due reciprocal compensation at the tandem switching rate.

Q. HASN'T THIS COMMISSION PREVIOUSLY ADDRESSED, IN DOCKET NO. P-582, SUB 6, WHETHER INTERMEDIA IS ENTITLED TO RECIPROCAL COMPENSATION AT THE TANDEM SWITCHING RATE?

A. Yes. However, the finding in the Commission's Recommended Arbitration Order dated June 13, 2000, even if ultimately adopted by the Commission, is not

determinative of the issue in dispute in this case. In the Intermedia arbitration, the question before the Commission addressed to what extent Intermedia is entitled to the tandem switching rate under its new agreement. The showing Intermedia was required to make in that proceeding concerned the function and geographic coverage of its switches on a going-forward basis. Here, by contrast, Intermedia is seeking to recover reciprocal compensation at the tandem switching rate for the period from July 1, 1996 to December 31, 1999. Therefore, any showing concerning Intermedia's network in the year 2000 and going forward is not dispositive of Intermedia's network functions or coverage areas in 1996, 1997, 1998 or even 1999.

Q. WHAT DOES BELLSOUTH REQUEST OF THIS COMMISSION?

A. BellSouth contends that Intermedia must satisfy the burden of proving that its switches actually performed the tandem switching function for local traffic and, further, that its switches actually served a geographic area comparable to BellSouth's tandem switches for the period from July 1, 1996 through December 31, 1999. Absent such proof, BellSouth requests the Commission find that Intermedia was not entitled to reciprocal compensation at the tandem switching rate under the parties' expired agreement.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

(#221435)

FILED
SEP 29 2000
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N.C. Utilities Commission

BELLSOUTH TELECOMMUNICATIONS, INC.

REBUTTAL TESTIMONY OF CYNTHIA K. COX

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. P-55, SUB 1210

SEPTEMBER 29, 2000

Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC. ("BELLSOUTH") AND YOUR BUSINESS ADDRESS.

A. My name is Cynthia ("Cindy") K. Cox. I am employed by BellSouth as a Senior Director for State Regulatory for the nine-state BellSouth region. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS PROCEEDING?

A. Yes. I filed direct testimony in this proceeding on July 28, 2000.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. The purpose of my rebuttal testimony is to respond to the direct testimony filed by Mr. Edward Thomas of Intermedia Communications, Inc. ("Intermedia") on July 28, 2000 with the North Carolina Utilities Commission ("Commission"). Specifically, I will respond to Intermedia's claim that it is entitled to reciprocal

compensation at BellSouth's tandem interconnection switching rate for local traffic on a retroactive basis.

Q. PLEASE ADDRESS MR. THOMAS' CLAIM ON PAGE 9 THAT THE STANDARD FOR DETERMINING ELIGIBILITY FOR THE TANDEM INTERCONNECTION SWITCHING RATE IS GEOGRAPHIC COVERAGE.

A. Mr. Thomas is incorrect. As I discussed in my direct testimony, the FCC has a two-part test to determine if a competing local provider ("CLP") is eligible for tandem switching. One, the CLP's switch must actually serve a comparable geographic area to that served by the ILEC's tandem switch and two, the CLP's switch must perform local tandem switching functions. This is not just BellSouth's view of the CLP's obligation. In a case involving MCI (MCI Telecommunication Corp. v. Illinois Bell Telephone, 1999 U.S. Dist. LEXIS 11418 (N.D. Ill. June 22, 1999)), the U.S. District Court specifically determined that the test required by the FCC's rule is a two-part functionality/geography test. In its Order, the Court stated:

> 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.[9] (emphasis added)

[9]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. 119 S. Ct. at 733. MCI admits that the ICC used this test. (Pl. Br. at 24.) Nevertheless, in its supplemental brief, MCI recharacterizes its attack on the ICC decision, contending the ICC applied the wrong test. (Pl. Supp. Br. at 7-8.) 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. (emphasis added)

Indeed, in its order filed on October 8, 1999, the Ninth Circuit Court of Appeals viewed the rule in the same way, finding that:

> [t]he Commission properly considered whether MFS's switch performs similar functions and serves a geographic area comparable to US West's tandem switch." (U.S. West Communications v. MFS Intelenet, Inc., et al., 193 F. 3d 1112, 1124)

Q. WHAT WAS THE STATUS OF THE FCC'S RULE 51.711 AT THE TIME OF THESE RULINGS?

A. At the time of both rulings, the Eighth Circuit had reinstated Rule 51.711. Also, the FCC's Rule 51.711 was in effect at the time that the Illinois Commerce Commission and the Washington Utilities and Transportation Commission made their original rulings in these cases.

Q. ON PAGE 9, MR. THOMAS QUOTES FCC RULE 51.711(a), PLACING EMPHASIS ON SUBPART (3) OF THE RULE AND IGNORING SUBPART (1). IN YOUR OPINION, HAS MR. THOMAS ACCURATELY INTERPRETED THIS RULE?

A. Absolutely not. Mr. Thomas self-servingly ignores subpart (1) of this rule. Subpart (1) clearly states that symmetrical rates assessed by a CLP upon an ILEC for transport and termination of local traffic are equal to the rates "that the incumbent LEC assesses upon the other carrier for the ***same services.***" (emphasis added) "Same services" equates to the same functions that the ILEC performs to transport and terminate the CLP's originating local traffic. Intermedia is only entitled to assess tandem switching charges upon BellSouth when Intermedia actually performs the tandem switching function for local calls and actually serves an area geographically comparable to the area served by BellSouth's tandem switch to terminate a local call originating from a BellSouth end user. Similarly, BellSouth may only seek recovery of tandem switching charges from Intermedia when BellSouth performs the tandem switching function to terminate a local call originating from an Intermedia end user.

Q. HOW DOES THE FCC'S DEFINITION OF TANDEM SWITCHING APPLY TO THIS ISSUE?

A. I included the FCC's definition of tandem switching in my direct testimony. To receive reciprocal compensation for tandem switching, a carrier must be performing the functions described in the FCC's definition of tandem switching. It is not

enough that the switch is capable of providing the function of a tandem switch, it has to actually be providing those functions for local calls. This is true if for no other reason than because the reciprocal compensation rate for tandem switching is the same as the UNE rate for tandem switching. That rate recovers the cost of performing, for local calls, the functions described in the FCC's definition. When the CLP is not performing the tandem function for local traffic, receipt of reciprocal compensation at the tandem switching rate is not justified but is simply a windfall for the CLP.

The 1996 Act and the FCC's rules provide that each carrier is to be compensated for the functions it provides in transporting and terminating local traffic. When two carriers are involved in completing a local call, each carrier bears a portion of the costs. As I will discuss in more detail below, during the term of the expired interconnection agreement between BellSouth and Intermedia, BellSouth, not Intermedia, clearly performed the tandem function for all local calls that BellSouth's end users originated to Intermedia's end users. Further, BellSouth performed the tandem function for all local calls that Intermedia's end users originated to BellSouth's end users. Although not related to the issue at hand, BellSouth, in fact, performed the tandem function for all of Intermedia's local calls that were transported to end users served by any other local provider. This traffic is sometimes referred to as "transit traffic."

Clearly, Intermedia's two North Carolina switches were not providing a tandem function for local calls, but were only switching traffic through Intermedia's end office switches for delivery of that traffic from those switches to the called party's

premises. As stated in the FCC's definition, to provide tandem switching, Intermedia's switch must connect trunks terminated in one end office switch to trunks terminated in another end office switch. Intermedia's switch is not providing that function. Instead, Intermedia's switch is connecting trunks to end users' lines, an end office switching function rather than a tandem switching function. The local end office switching rate fully compensates Intermedia for performing this end office switching function.

Q. WHAT EVIDENCE HAS INTERMEDIA PROVIDED TO THE COMMISSION IN ORDER TO PROVE THAT IT ACTUALLY SERVES A GEOGRAPHIC AREA COMPARABLE TO THE AREA SERVED BY ANY ONE OF BELLSOUTH'S TANDEM SWITCHES DURING THE TERM OF THE EXPIRED AGREEMENT?

A. Intermedia has provided no evidence to the Commission to support its claim of comparable geographic coverage. Its entire case rests on Mr. Thomas' statement that "Intermedia has two (2) Nortel DMS-500 switches in North Carolina, one in Raleigh and one in Charlotte. These switches provide service to a sizeable number of customers in a widely dispersed area in and around Charlotte and Raleigh." (page 8, lines 6-9)

Indeed, Mr. Thomas' unsupported claim is not proof of the area that Intermedia actually served during the term of its expired agreement. Further, Mr. Thomas' Exhibit ELT-1 and his discussion of that exhibit clearly show that, in all cases, Intermedia uses BellSouth's tandem switches for routing local traffic through the

state of North Carolina. Mr. Thomas explains that "Intermedia uses Single Tandem Architecture in all its interconnection arrangements in North Carolina – that is, Intermedia is direct trunked to every BellSouth access tandem in the areas where Intermedia provides service." (page 5, lines 10-13)

Mr. Thomas' four-page exhibit, ELT-1, demonstrates the interconnection of BellSouth's and Intermedia's networks. Mr. Thomas indicates on pages 1 and 3 of this exhibit that the network arrangement is as of 5-31-98, and he indicates on pages 2 and 4 that the network arrangement is as of 6-1-00. Of course, Intermedia's interconnection agreement with BellSouth expired on 7-1-98[1]. Therefore, Mr. Thomas' exhibit provides the Commission with no information about Intermedia's network in North Carolina during the first twenty-three months of its interconnection agreement.

Pages 1 and 2 of Exhibit ELT-1 show that Intermedia's voice switch in Raleigh is direct trunked to BellSouth's tandem located at its Raleigh-New Hope Central Office. Further, Intermedia's voice switch in Raleigh is direct trunked to BellSouth's access tandems in Greensboro, Laurinburg, Raleigh and Wilmington, obviously for handling Intermedia's interLATA traffic. When a BellSouth end user in the Raleigh local calling area originates a local call to an Intermedia end user in Raleigh, that call must be trunked by BellSouth to BellSouth's Raleigh-New Hope tandem for delivery to Intermedia's end office switch. Intermedia then delivers the local call to its end user over local loop facilities. For this call, BellSouth owes

[1] On February 22, 1998, the Commission approved an amendment to the original agreement, extending the agreement until December 31, 1999. BellSouth filed its Petition for Arbitration with this Commission for its new agreement with Intermedia on December 7, 1999.

Intermedia reciprocal compensation at the end office switching rate. However, Intermedia inappropriately contends that, for this local call, it is due reciprocal compensation at both the end office switching rate and the tandem switching rate.

Pages 3 and 4 of Exhibit ELT-1 show that Intermedia's voice switch in Charlotte is direct trunked to BellSouth's tandems located at its Charlotte-Boulevard and Charlotte-Caldwell Street Central Offices. Further, as of 5-31-98, Intermedia's voice switch in Charlotte is direct trunked to BellSouth's access tandems in Asheville, Charlotte, Florence, South Carolina and Columbia, South Carolina. On page 4, which is as of 6-1-00, Intermedia shows having added direct trunks to BellSouth's access tandems in Charleston, South Carolina and Greenville, South Carolina. Obviously, the trunks to BellSouth's access tandems handle Intermedia's interLATA traffic. When a BellSouth end user in the Charlotte local calling area originates a local call to an Intermedia end user in Charlotte, that call must be trunked by BellSouth either to BellSouth's Charlotte-Boulevard tandem or to BellSouth's Charlotte-Caldwell Street tandem for delivery to Intermedia's end office switch. Intermedia then delivers the local call to its end user over local loop facilities. Again, for this call, BellSouth owes Intermedia reciprocal compensation at the end office switching rate. Again, however, Intermedia inappropriately contends that, for this local call, it is due reciprocal compensation at both the end office switching rate and the tandem switching rate.

Clearly, reciprocal compensation is the mechanism that Congress established for carriers to recover the costs of the network functionality that each carrier provides when two or more carriers are involved in transmitting local traffic. Prior to local

competition. BellSouth incurred 100% of the costs to originate, transport and terminate local calls between its end users. With local competition, when two carriers are involved in handling the call, the terminating carrier is owed reciprocal compensation from the originating carrier for the functions the terminating carrier provides. Said another way, when BellSouth originates a call from its end user, and the call terminates to an Intermedia end user, any functions that Intermedia provides presumably results in a cost savings for BellSouth since BellSouth does not have to perform that function. BellSouth pays Intermedia for the specific functionality that Intermedia provides. It is clear from Mr. Thomas' exhibit and from his pre-filed testimony that Intermedia's network design depends on BellSouth's tandems performing the tandem switching function. Therefore, the only function that Intermedia provides to complete BellSouth-originated calls is the end office switching function.

Intermedia rests its entire case on its claim of "geographic comparability." As I have explained, however, the FCC's two-part test requires that the CLP be performing the tandem switching function as well as actually serving a geographically comparable area. Clearly, Intermedia's end office switch is not performing a tandem function for local traffic. Further, Intermedia has provided absolutely no evidence concerning the areas of Raleigh and Charlotte that it actually serves.

Q. WHAT PROOF MUST INTERMEDIA PROVIDE TO THE COMMISSION CONCERNING THE AREA IT ACTUALLY SERVED DURING THE TERM OF THE EXPIRED AGREEMENT?

A. In order to make a showing that Intermedia's switches served a geographic area equal to or greater than that served by BellSouth's tandem switches, Intermedia must provide information showing the location of its customers and give some indication as to how its customers were actually served by Intermedia's switches. (MCI Telecommunications Corp. v. Illinois Bell Telephone, 1999 U.S. Dist. LEXIS 11418 (N.D. Ill. June 22, 1999)).

To illustrate the importance of this point, assume Intermedia had one hundred customers in Raleigh, all of which were located in three office buildings in the heart of downtown Raleigh. Under no set of circumstances could Intermedia seriously argue that, in such a case, its switch served a comparable geographic area to BellSouth's switch. See Decision 99-09-069, In re: Petition of Pacific Bell for Arbitration of an Interconnection Agreement with MFS/WorldCom, Application 99-03-047, 9/16/99, at 15-16 (finding "unpersuasive" MFS's showing that its switch served a comparable geographic area when many of MFS's ISP customers were actually collocated with MFS's switch).

Intermedia has offered no information to the Commission to demonstrate that, during the term of the expired interconnection agreement, its switches served areas comparable to BellSouth's tandem. Intermedia has not provided the Commission with the location of its customers in North Carolina, information which would be essential for the Commission to determine whether Intermedia's switches actually served areas comparable to BellSouth's tandem switches. Absent such evidence,

and failing to show that its switches perform the tandem function for local traffic, Intermedia has clearly failed to satisfy its burden of proof on this issue.

Q. PLEASE ADDRESS MR. THOMAS' REFERENCE TO THE COMMISSION'S JUNE 13, 2000 ORDER (PAGE 9, LINE 19 THROUGH PAGE 10, LINE 6).

A. As I explained in my direct testimony, the fact that the Commission has recently addressed this same issue in the Intermedia arbitration is not dispositive of the issue in dispute in this instant proceeding. While BellSouth respectfully disagrees with the Commission that Intermedia satisfied its burden of proof during the arbitration proceeding, that proceeding addressed application of reciprocal compensation at the tandem switching rate on a going-forward basis. The Commission's finding that Intermedia is due the tandem switching rate under the parties' new interconnection agreement does not automatically decide that Intermedia has satisfied the requirements for this rate during the term of the parties' expired agreement.

Intermedia's unsupported claim that its switches served a comparable geographic area as BellSouth's switches is simply not enough. BellSouth urges the Commission to find that Intermedia has not met its burden of proof in this case, and that Intermedia was not due reciprocal compensation at the tandem switching rate during the term of its expired agreement.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

(THEREUPON, THE PREFILED TESTIMONY OF DAVID P. SCOLLARD WILL BE COPIED INTO THE RECORD AS IF GIVEN ORALLY FROM THE WITNESS STAND.)

FILED

JUL 28 2000

Clerk's Office
N.C. Utilities Commission

BELLSOUTH TELECOMMUNICATIONS, INC.

DIRECT TESTIMONY OF DAVID P. SCOLLARD

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. P-55, SUB 1210

JULY 28, 2000

Q. PLEASE STATE YOUR NAME, ADDRESS, AND POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC.

A. I am David P. Scollard, Room 26D3, 600 N. 19th St., Birmingham, AL 35203. My current position is Manager, Wholesale Billing at BellSouth Billing, Inc., a wholly owned subsidiary of BellSouth Telecommunications, Inc. In that role, I am responsible for overseeing the implementation of various changes to BellSouth's Customer Records Information System ("CRIS") and Carrier Access Billing System ("CABS").

Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.

A. I graduated from Auburn University with a Bachelor of Science Degree in Mathematics in 1983. I began my career at BellSouth as a Systems Analyst within the Information Technology Department with responsibility for developing applications supporting the Finance organization. I have served in a number of billing system design and billing operations roles within the billing organization. Since I assumed my present responsibilities, I have overseen the progress of a number of billing system revision projects such as the

implementation of the 1997 Federal Communications Commission ("FCC") access reform provisions, billing of unbundled network elements ("UNEs"), as well as the development of billing solutions in support of new products offered to end user customers. I am familiar with the billing services provided by BellSouth Telecommunications to local competitors, interexchange carriers and retail end user customers.

Q. HAVE YOU TESTIFIED PREVIOUSLY BEFORE ANY STATE PUBLIC SERVICE COMMISSION? IF SO, BRIEFLY DESCRIBE THE SUBJECT OF YOUR TESTIMONY.

A. I have testified before the state Public Service Commissions in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, South Carolina, the Tennessee Regulatory Authority, and the Utilities Commission in North Carolina on issues regarding the capabilities of the systems used by BellSouth to bill for services provided to retail customers, Interexchange Carriers (IXCs) as well as Competing Local Providers (CLPs).

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?

The purpose of my testimony is to explain the capabilities and limitations of the systems BellSouth employs to bill Competing Local Providers (CLPs) for reciprocal compensation.

Q. HOW DOES BELLSOUTH BILL CLPs FOR RECIPROCAL COMPENSATION?

A. BellSouth uses a system called the Carrier Access Billing System (CABS) to accumulate, rate and bill all usage charges for calls originated by a CLP end user terminated by BellSouth. Several times each day usage records for call events that have occurred in the BellSouth network are transmitted to the BellSouth data centers for processing. Records for calls to be billed to BellSouth's retail customers are sent to the retail billing systems while records for billing reciprocal compensation are sent to CABS. Once in CABS, these records are edited to ensure that the data is valid and updated to a data base to await the close of the bill period for the CLP being billed. At the end of the bill period, the minutes of use for each type of call being billed are rated using the rate structure from the CLP's contract and the resultant charges are formatted into the appropriate invoice records (or printed) and sent to the CLP.

Q. INTERMEDIA HAS CLAIMED THAT THE INTENT OF THE CONTRACT AMENDMENT EXECUTED ON JUNE 3, 1998 WAS FOR BELLSOUTH TO BILL RECIPROCAL COMPENSATION USING ONE SET OF RATE STRUCTURES FOR CALLS ROUTED THROUGH A MULTIPLE TANDEM ACCESS ARRANGEMENT AND ANOTHER SET OF RATE STRUCTURES FOR CALLS ROUTED THROUGH OTHER ARRANGEMENTS. HAS CABS EVER HAD THE CAPABILITY TO SUPPORT THIS TYPE OF BILLING?

A. No. In 1996 and 1997, when CABS was being changed to support the billing of CLPs, the business requirements that were developed to describe the needed software revisions called for the system to support a single set of reciprocal compensation rates for each CLP operating in a given state. This requirement was developed to match the manner in which CLPs would be negotiating interconnection agreements. Therefore, in the state of North Carolina, for example, CABS could either bill a CLP reciprocal compensation using a composite rate structure or using an elemental rate structure, but not both. At no time has CABS had the capability to choose between differing rate structures for the same CLP based on the manner in which individual calls are routed through the network.

Q. HOW HAS BELLSOUTH BEEN BILLING INTERMEDIA SINCE THE JUNE 3, 1998 AMENDMENT?

A. BellSouth has been billing Intermedia in accordance with the terms of the June 3, 1998 Amendment effective with the execution of that Amendment. BellSouth has billed the elemental rates for reciprocal compensation for all local traffic as set forth in the June 3, 1998 Amendment.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

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BELLSOUTH TELECOMMUNICATIONS, INC.

DIRECT TESTIMONY OF DAVID P. SCOLLARD

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. P-55, Sub-1210

OCTOBER 6, 2000

ERRATA SHEET

Please delete page 4, line 13 through line 19 of my direct testimony dated July 28, 2000.

David P. Scollard

David P. Scollard

MR. SHORE: Thank you.

COMMISSIONER ERVIN: All right, Mr. Milner.

THEREUPON,

W. KEITH MILNER,

Having first been duly sworn, was

Examined and testified as follows:

DIRECT EXAMINATION BY MR. EDENFIELD:

Q. State your name for the record, please, sir.

A. Yes. My name is W. Keith Milner.

Q. What's your position with BellSouth?

A. I am Senior Director, Interconnection Services for BellSouth Telecommunications, Incorporated.

Q. Are you the same Keith Milner that filed rebuttal testimony in this proceeding?

A. Yes, that's correct.

Q. Do you have any changes or corrections to that testimony?

A. No, I don't.

Q. If I ask you the same questions today that appear in your testimony, would your answers be the same?

A. Yes, they would.

MR. EDENFIELD: At this time we would tender Mr. Milner's rebuttal testimony into the record as

if read.

COMMISSIONER ERVIN: Mr. Milner's testimony will be incorporated into the record.

(THEREUPON, THE PREFILED TESTIMONY OF W. KEITH MILNER WILL BE COPIED INTO THE RECORD AS IF GIVEN ORALLY FROM THE WITNESS STAND.)

FILED
SEP 29 2000
Clerk's Office
N.C. Utilities Commission

BELLSOUTH TELECOMMUNICATIONS, INC.

REBUTTAL TESTIMONY OF W. KEITH MILNER

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. P-55, SUB 1210

SEPTEMBER 29, 2000

Q. PLEASE STATE YOUR NAME, ADDRESS, AND POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC.

A. My name is W. Keith Milner. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375. I am Senior Director - Interconnection Services for BellSouth Telecommunications, Inc. ("BellSouth"). I have served in my present role, which involves the management of certain issues related to local interconnection, resale, and unbundling, since February 1996.

Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.

A. My career in telecommunications spans over 30 years and includes responsibilities in the areas of network planning, engineering, training, administration, and operations. I have held positions of responsibility with a local exchange telephone company, a long distance company, and a research and development company. I have extensive experience in all phases of telecommunications network planning, deployment, and operation in both the domestic and international

arenas.

I graduated from Fayetteville Technical Institute in Fayetteville, North Carolina in 1970, with an Associate of Applied Science in Business Administration degree. I obtained a Master of Business Administration degree from Georgia State University in 1992.

Q. HAVE YOU TESTIFIED PREVIOUSLY BEFORE ANY STATE PUBLIC SERVICE COMMISSION? IF SO, BRIEFLY DESCRIBE THE SUBJECT OF YOUR TESTIMONY.

A. I testified before the state Public Service Commissions in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, South Carolina, the Tennessee Regulatory Authority, and the Utilities Commission in North Carolina on the issues of technical capabilities of the switching and facilities network, the introduction of new service offerings, expanded calling areas, unbundling, and network interconnection.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY BEING FILED TODAY?

A. My testimony addresses certain technical matters raised by Mr. Edward J. Thomas in his direct testimony on behalf of Intermedia Communications, Inc. ("Intermedia").

Q. ON PAGE 3 OF HIS TESTIMONY, MR. THOMAS DISCUSSES TRUNK GROUPS CARRYING TRANSIT TRAFFIC AND STATES THAT "THESE TRUNKS ARE TYPICALLY REQUIRED BY BELLSOUTH, AND BELLSOUTH AND INTERMEDIA SHARE THE COST OF PROVIDING THESE FACILITIES." DO YOU AGREE?

A. No. BellSouth does not "require" Intermedia to send its local traffic bound for independent telephone companies and other Competing Local Providers ("CLPs") (that is, Intermedia's "transit traffic") via BellSouth's network. BellSouth offers to handle this traffic on a tandem basis for CLPs, and it does so for a fee. Intermedia is free, however, to interconnect its network directly to the networks of those third parties if Intermedia so elects. To ensure proper billing, BellSouth does require that transit traffic not be intermingled on the same trunk group as trunk groups carrying traffic to and from BellSouth's end users. To accomplish this, a separate trunk group is established between BellSouth's tandem switch and Intermedia's switch for Intermedia's transit traffic. BellSouth does not send the traffic originated by its own end users and bound for local service providers other than Intermedia through Intermedia's switch. Instead, BellSouth establishes interconnection directly with these third parties. Thus, Intermedia does not in any way perform "transit traffic" switching function for BellSouth.

Q. THROUGHOUT MR. THOMAS' TESTIMONY, HE REFERS TO MULTIPLE TANDEM ACCESS ("MTA"). DO YOU AGREE WITH MR.

THOMAS' CHARACTERIZATION OF BELLSOUTH'S MTA OPTION AS FOUND ON PAGE 4 OF HIS TESTIMONY?

A. Yes. Mr. Thomas' description of the MTA option and what he refers to as the Single Tandem Access or "STA" option are suitable for our purposes here. My understanding of his term "Single Tandem Access" is applicable to a situation where a CLP has chosen not to elect BellSouth's MTA option and instead has established interconnection between each of its switch(es) and all BellSouth access tandems in a given LATA.

Q. ON PAGE 5 OF HIS TESTIMONY, MR. THOMAS STATES THAT "INTERMEDIA PREFERS THIS KIND OF ARCHITECTURE [THAT IS, INTERCONNECTING AT EACH OF BELLSOUTH'S ACCESS TANDEMS INSTEAD OF ELECTING BELLSOUTH'S MULTIPLE TANDEM ACCESS OPTION] BECAUSE IT IS MORE EFFICIENT." DO YOU AGREE THAT INTERCONNECTING AT EACH ACCESS TANDEM IS ALWAYS MORE EFFICIENT?

A. No. The determination of which form of interconnection is more efficient is situational and best made on a case-by-case basis. In some cases, where a CLP has only a small amount of local traffic and the access tandems in the LATA are geographically far apart, it might be more economically efficient for the CLP to elect the MTA option instead of establishing small, relatively inefficient trunk groups to each access

tandem in the LATA. In other cases, where the CLP has significant amounts of traffic, the CLP may find it more economically efficient to establish trunk groups to each access tandem in the LATA rather than to pay BellSouth for the MTA option.

Q. PLEASE ADDRESS MR. THOMAS' CONTENTION THAT "AS OF MAY 1998, INTERMEDIA WAS DIRECT-TRUNKED TO FOUR BELLSOUTH ACCESS TANDEMS IN RALEIGH." (Page 5, lines 22-24)

A. BellSouth has only one access tandem in Raleigh, which is located in BellSouth's Raleigh New Hope central office. Of the four access tandems shown on the first page of Mr. Thomas' Exhibit ELT-1, only one of these access tandems is in the Raleigh LATA (that is, LATA 426). The remaining three BellSouth access tandems he shows as interconnected to Intermedia's switch in Raleigh are not even in the Raleigh LATA. Instead they are in the Greensboro and Wilmington LATAs. Mr. Thomas' exhibit shows interconnection with BellSouth's access tandems in Greensboro, NC, Laurinburg, NC, and Wilmington, NC. Since Intermedia is an interexchange carrier (IXC), I am not surprised that Intermedia's switch is connected to these other access tandems. However, such interconnection is not relevant to the issue at hand, which is how Intermedia's network is interconnected to BellSouth's network for the exchange of local traffic, not interLATA traffic.

Q. PLEASE RESPOND TO MR. THOMAS' CONTENTION THAT "AS OF MAY 1998, INTERMEDIA WAS DIRECT-TRUNKED TO FIVE BELLSOUTH ACCESS TANDEMS IN CHARLOTTE." (PAGE 6, LINES 11-12)

A. In the Charlotte LATA, BellSouth has only two local access tandems, located in BellSouth's Caldwell Street and Boulevard central offices. As in the case of Mr. Thomas' diagrams for Intermedia's switch located in Raleigh, Mr. Thomas has shown interconnection between Intermedia's switch in Charlotte with access tandems in LATAs other than the Charlotte LATA (that is, LATA 422). These include BellSouth's access tandems in Asheville, NC, Charleston, SC, Columbia, SC, Florence, SC and Greenville, SC. Here again, such interconnection is not relevant to the issue of interconnection for the purpose of exchanging local traffic.

Q. ON PAGE 6 OF HIS TESTIMONY, MR. THOMAS STATES THAT INTERMEDIA DOES NOT USE, NOR HAS IT EVER ORDERED, THE MTA OPTION IN NORTH CAROLINA. IS HE CORRECT?

A. Yes, as his statement pertains only to North Carolina. However, the June 3, 1998, amendment to its interconnection agreement with BellSouth allows Intermedia to request such an arrangement and for BellSouth to provide it.

Q. TO WHAT PURPOSE WAS THE MTA OPTION DESIGNED?

A. The MTA option was not designed as a means of relieving traffic congestion, but rather, as a means to enable a CLP to simplify its network architecture by interconnecting at some, but not all, of BellSouth's access tandems in a given LATA. Neither was the MTA option designed to provide alternate routing for traffic originated by BellSouth's end user customers. While the CLP can use MTA as a means to alternately route its originated traffic, provided the CLP has trunk groups to other access tandems or end offices within the LATA, this is not the purpose for which MTA was designed. Instead, MTA enables a CLP to minimize the points of interconnection between the CLP's network and BellSouth's network. That is, if a CLP elects BellSouth's MTA option, then the CLP can simplify its network architecture by interconnecting at some, but not all, of BellSouth's access tandems in a given LATA.

Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

A. Yes.

Q. And if my book is correct, you did not have an exhibit?

A. That's correct.

Q. Do you have a summary of your testimony?

A. Yes, I do.

Q. Would you give that now, please?

A. Yes. Thank you. Good morning, Commissioner. In this proceeding I filed rebuttal testimony that addressed certain technical matters raised by Mr. Edward Thomas in his direct testimony on behalf of Intermedia.

Upon request, BellSouth provides a tandem switching function to Intermedia to handle what we call Intermedia's transit traffic. Transit traffic is traffic originated by Intermedia's end user that's bound for the end users of local service providers other than BellSouth. These could be other CLPs or independent telephone companies. BellSouth does not require Intermedia to send its transit traffic via BellSouth's tandem--BellSouth's network as Mr. Thomas suggest. Of course, Intermedia may elect to interconnect its network directly to those other--those other third-party

local service providers. To ensure proper billing, BellSouth does require that transit traffic not be intermingled on the same trunk group that's carrying local traffic to and from BellSouth's end users. And to accomplish this, a separate trunk group is established between BellSouth's tandem switch and Intermedia's switch for Intermedia's transit traffic. Further, Intermedia does not provide a transit traffic tandem switching function to BellSouth. Instead, BellSouth establishes trunk groups directly between its switches and those of other local service providers.

Second, Mr. Thomas suggests that interconnecting at each of BellSouth's access tandems in a given LATA is always more efficient than electing BellSouth's multiple tandem access or MTA option. I disagree with that statement. The determination of which form of interconnection is more efficient is situational and is best made on a case-by-case basis. In some cases, where a CLP has only a small amount of local traffic and the access tandems in a given LATA are geographically far apart, it might be more economically efficient for

the CLP to elect the MTA option instead of establishing small, relatively inefficient trunk groups to access each access tandem in the LATA. In other cases, where the CLP has significant amounts of local traffic, the CLP may find it more economically efficient to establish trunk groups to each access tandem in the LATA rather than to pay BellSouth for the MTA option.

Third, Mr. Thomas suggests that BellSouth's motivation in creating its MTA option was to relieve traffic congestion in BellSouth's network. I disagree. The MTA option was not designed as a means of relieving traffic congestion but rather as a means to enable a CLP to simplify its network architecture by interconnecting at some, but not all, of the tandems in a given LATA. Neither was the MTA option designed to provide alternate routing for traffic originated by BellSouth's end user customers. While the CLP can use MTA as a means to alternately route its originated traffic, provided the CLP has trunk groups to the other access tandems or end offices within the LATA, this is not the purpose to which MTA was designed.

Instead, MTA enables the CLP to minimize the points of interconnection between the CLP's network and BellSouth's network. But if the CLP elects BellSouth's MTA option, then the CLP can simplify its network architecture by interconnecting at some, but not all, of BellSouth's access tandems in a given LATA.

Thank you. That's the end of my summary.

MR. EDENFIELD: Mr. Milner is tendered for cross or to answer any questions and hopefully clear up the MTA question.

COMMISSIONER ERVIN: Mr. Meeker?

MR. MEEKER: Thank you, Mr. Chairman.

CROSS EXAMINATION BY MR. MEEKER:

Q. Mr. Milner, just two quick questions. First, you weren't involved with the drafting of the June 3rd, 1998 amendment that's at issue here, were you?

A. No, sir.

Q. And secondly, as indicated on page six of your testimony, you agree that Intermedia has not ordered multiple tandem access or MTA service here in North Carolina; would you not?

A. I agree with that, yes.

MR. MEEKER: No further questions.

COMMISSIONER ERVIN: And I think I'm about satiated with questions myself at this point. So I have none.

(THEREUPON, THE WITNESS WAS DISMISSED.)

MR. EDENFIELD: That's it for BellSouth's case.

MR. MEEKER: Mr. Chairman, we have just two additional matters overall.

COMMISSIONER ERVIN: Okay.

MR. MEEKER: First, if we could offer into evidence the cross examination exhibits that were discussed with Mr. Hendrix.

COMMISSIONER ERVIN: And they are received.

(THEREUPON, INTERMEDIA HENDRIX CROSS EXAMINATION EXHIBIT NOS. 1, 2, 3, 4, 5, 6, 7, AND 8 WERE ADMITTED INTO EVIDENCE.)

MR. MEEKER: And secondly, we'll call Ms. Strow back to the stand.

MR. SHORE: We would object to that request. Consistent with the practice and procedure for this Commission all the time, they put Ms. Strow up to talk about her direct and rebuttal testimony at the

time they presented their case. In fact, her summary that she passed out and the summary she gave says right at the top in its title, "Summary of Direct and Rebuttal Testimony." In short, consistent with the practice and procedure for this Commission, Ms. Strow had her chance, and we would object on that basis.

COMMISSIONER ERVIN: Mr. Meeker, what is it that you would--it is certainly--I'll say two things to sort of give you some indication of my thinking. One is I agree that the normal practice is as Mr. Shore has indicated. I would also recognize that unlike probably any case that I've sat on since I've came on the Commission, we've got a flat out factual dispute between two witnesses. And so, in that context, tell me why we should depart from our normal procedure.

MR. MEEKER: Well, Mr. Chairman, the point would be just to respond directly to two or three points made by Mr. Hendrix during his testimony. It would not be to go back over the direct rebuttal that's been filed.

COMMISSIONER ERVIN: What would be those two

points?

MR. MEEKER: One would be the conversations that are alleged by Mr. Hendrix that are denied by Ms. Strow, just get that crystal clear on the record.

COMMISSIONER ERVIN: Right. And the reason I did not ask her questions similar to the questions that I asked Mr. Hendrix was that it was clear to me from her earlier testimony that she denied that any such conversations had taken place. And it's a little hard to ask anybody additional questions about something that the witness contends never occurred. And I recognize that probably one of the issues I've got to resolve here is, as a matter of credibility, giving the appropriate weight to the burden of proof rules in the Public Utilities Act, do I find Ms. Strow's testimony that these conversations never occurred to be credible or do I find Mr. Hendrix's testimony that these conversations did, in fact, occur and had the context--contents that he elucidated to be credible.

MR. MEEKER: And her testimony, in a sense,

any further evidence.

COMMISSIONER ERVIN: I mean, if there's something else, other than to make sure I understand that, I think I do understand that. And any question that I asked Mr. Hendrix--one of the things that I learned in trying to examine witnesses is that if you start trying to say the conversation that you say you had, then you get into all--you get into additional discussions of, yes, in fact, I did have that conversation, and that that was clear to me that he contended that. And I just was trying to get to the substance of his testimony without eliciting further statements to the effect that, yes, indeed, what I say happened is, in fact, what I--what happened. But those two points are very clear to me, Mr. Meeker.

MR. MEEKER: Okay. Then we have no further evidence, Your Honor.

COMMISSIONER ERVIN: That, of course, leaves me in the quandary of having to resolve what I

exactly the credibility issue and why you say that that issue ought to be resolved in your respective favors. Because that is a very serious issue, and I recognize it as such. All right. Is there anything else other than setting a date for briefs or proposed orders or both, depending on how energetic you feel?

MR. SHORE: Nothing from BellSouth.

COMMISSIONER ERVIN: All right. Well, let's--unless there's some reason to depart from the ordinary practice, I would request that you file briefs and/or proposed orders 30 days from the mailing of the last--well, there won't be but one volume of the transcript, so from the mailing of the transcript. All right? If there's nothing further, we stand adjourned, and I appreciate your patience with me as I expressed ignorance. And I appreciate your participation.

(THEREUPON, THE HEARING WAS ADJOURNED.)

State of North Carolina

County of Wake

C E R T I F I C A T E

I, Peggy F. Barbee, Notary Public/court reporter, do hereby certify that the foregoing Hearing before the North Carolina Utilities Commission in the matter of Docket No. P-55, Sub 1210 was taken and transcribed under my supervision; and that the foregoing pages 3 through 239 constitute a true and accurate transcript of said Hearing.

I do further certify that the persons were present as stated and all witnesses testified under oath.

I do further certify that I am not of counsel for or in the employment of either of the parties to this action, nor am I interested in the results of this action.

In witness whereof, I have hereunto subscribed my name this 18th day of October, 2000.

Peggy F. Barbee

Peggy F. Barbee
Notary Public for the State of North Carolina

My commission expires:
November 19, 2000