00·00 309

BOULT ▪ CUMMINGS
CONNERS ▪ BERRY PLC

July 6, 2001

REC'D TN
REGULATORY AUTH.
'01 JUL 6 PM 1 53
OFFICE OF THE
EXECUTIVE SECRETARY

Mr. David Waddell
Executive Director
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243

Re: In Re: Petition of MCImetro Access Transmission Services, LLC and Brooks Fiber Communications of Tennessee, Inc. for Arbitration of Certain Terms and Conditions of Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996

Dear Mr. Waddell:

Enclosed please find the original plus thirteen (13) copies of the Post Hearing Brief of WorldCom in the above-referenced docket. A copy has been served on BellSouth Telecommunications, Inc.

Should you have questions, please do not hesitate to contact me at the above-listed direct dial number.

Sincerely yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

Jon Hastings

Jon E. Hastings

JEH/sja

733209 v1
058100-034 07/06/01

LAW OFFICES
414 UNION STREET · SUITE 1600 · P.O. BOX 198062 · NASHVILLE · TN · 37219
TELEPHONE 615.244.2582 FACSIMILE 615.252.6380 www.boultcummings.com

BEFORE THE
TENNESSEE REGULATORY AUTHORITY

In Re: Petition of MCImetro Access Transmission Services, LLC and Brooks Fiber Communications of Tennessee, Inc. for Arbitration of Certain Terms and Conditions of Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996	}	DOCKET NO. 00-00309

POST-HEARING BRIEF OF WORLDCOM

I. INTRODUCTION

This case presents the Authority with issues of critical importance to the future of competition in Tennessee's local exchange markets. MCImetro Access Transmission Services, LLC ("MCImetro") and Brooks Fiber Communications of Tennessee, Inc. ("WorldCom") have sought to negotiate with BellSouth Telecommunications, Inc. ("BellSouth") to resolve as many of these issues as possible without arbitration. Since the hearing in this docket, the parties have resolved seven additional issues – Issues 1, 5, 15, 19, 23, 29 and 101. Of the 112 issues originally presented by the parties in their pleadings, only 28 remain to be resolved. Those remaining issues present the Authority with an opportunity to continue to its efforts to establish conditions in Tennessee that will foster local competition. WorldCom respectfully submits that the language it has proposed for each of these issues represents a fair and pro-competitive resolution that should be adopted by the Authority.

II. DISCUSSION AND CITATION TO AUTHORITY

ISSUE 6: **For purposes of the interconnection agreement between WorldCom and BellSouth, should BellSouth be directed to perform, upon**

request, the functions necessary to combine unbundled network elements that are ordinarily combined in its network?

The parties agree that BellSouth is required to offer UNE combinations to WorldCom at UNE rates when those elements are in fact combined today to serve a particular customer. The parties disagree as to whether BellSouth is required to offer such combinations when the elements involved are "typically" combined in BellSouth's network, but are not today physically combined to serve the particular customer that WorldCom wishes to serve. WorldCom has proposed the following language in Attachment 3:

> 2.4 … At MCIm's request, BellSouth shall provide Typical Combinations of Network Elements to MCIm. Typical Combinations are those that are ordinarily combined within the BellSouth network, in the manner which they are typically combined. Thus, MCIm may order Typical Combinations of Network Elements, even if the particular Network Elements being ordered are not actually physically connected at the time the order is placed.

FCC Rule 51.315(b) requires that "[e]xcept upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently ***combines***." (Emphasis added). There can be no dispute that BellSouth currently ***combines*** UNEs such as local loops and switch ports (creating a loop-port switch combination). Because BellSouth currently combines those elements of its network, pursuant to Rule 51.315(b), it must make those elements available to CLECs on a combined basis and at prices that reflect the cost that would be incurred to provide these network elements in combination (pursuant to Rules 51.501 through 51.513). The U.S. Supreme Court affirmed Rule 51.315(b) and that rule remains in effect today. *AT&T Corp. v. Iowa Utils. Bd.*, 119 S. Ct. 721 at 736-37 (1999).

In its UNE Remand Order, the FCC cited back to its intentions when drafting Rule 315(b), stating that in the First Report and Order, "the Commission [FCC] concluded that the proper reading of 'currently combines' in Rule 51.315(b) means 'ordinarily combined within their network, in the manner in which they are typically combined.'" *In re: Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking ¶ 4479 (rel. Nov. 5, 1999) ("UNE Remand Order"). Rule 51.315(b) uses the phrase "currently combines." Thus, the Authority should require BellSouth to provide UNEs to WorldCom in combined form when those UNEs are ordinarily combined within BellSouth's network, and in the manner in which they are typically combined. In addition to citing back to its intentions when drafting Rule 51.315(b), the FCC went on expressly to decline to address the arguments put forward by incumbent LECs like BellSouth urging a new, more restrictive interpretation of Rule 51.315(b).

In accordance with the FCC's interpretation of Rule 51.315(b), the Authority has ruled in the UNE cost case that Bellsouth is required to combine UNEs that BellSouth ordinarily combines in its own network. BellSouth witness Cox acknowledged that ruling and conceded that application of the ruling would resolve Issue 6 in this case. T.297. Accordingly, Issue 6 should be resolved in favor of WorldCom. T.297.

ISSUE 8: **For purposes of the interconnection agreement between WorldCom and BellSouth, should UNE specifications include non-industry standard, BellSouth proprietary specifications?**

The purpose of technical specifications is to provide parameters about a facility (such as a loop) so that people using the facility can design their products and networks knowing its capabilities. The parties have agreed to industry standard specifications for loops in Appendix 1 to Attachment 3. On top of these, BellSouth wants to incorporate its own proprietary "specification" for loops for the stated purpose of informing CLECs of the loops' capabilities. Milner Direct at 8. BellSouth witness Milner acknowledged, however, that if a CLEC's loop has its demarcation point at the main distribution frame, there is no difference between an unbundled loop and a loop in BellSouth's network. T.491-492. Because there are no technical differences between unbundled loops and "ordinary" loops, WorldCom submits that there is no need for additional, proprietary specifications. Different services BellSouth offers in conjunction with its loops can be, and in fact are, described in the body of the parties' interconnection agreement. Price Direct at 17-18.

Although TR 73600 is called "Unbundled Local Loop – Technical Specifications," the document goes beyond providing loop specifications. T.493-494. For example, TR 73600 contains restrictions on WorldCom's use of loops and on access to the main distribution frame that are not part of the interconnection agreement itself and are, in fact, inconsistent with provisions in the interconnection agreement. T.492- 493. Additionally, TR 73600 purports to give BellSouth unilateral rights to disconnect WorldCom's loop for failure to comply with the TR 73600. T.493-494. If, for example, in BellSouth's judgment there were too much noise on a WorldCom loop, it could, pursuant to TR 73600, disconnect WorldCom's loop either after consulting with WorldCom or without any consultation. *Id.*

TR 73600 plainly contains more than just specifications to inform WorldCom about BellSouth's network. BellSouth is attempting to impose terms and conditions on WorldCom in the guise of specifications. BellSouth's tactics are inappropriate and its "specification" should not be referenced by or incorporated in the parties' agreement.

<u>ISSUE 18</u>: **Is BellSouth required to provide all technically feasible unbundled dedicated transport between locations and equipment designated by WorldCom so long as the facilities are used to provide telecommunications services, including interoffice transmission**

facilities to network nodes connected to WorldCom switches and to the switches or wire centers of other requesting carriers?

FCC rules require BellSouth to provide nondiscriminatory access to interoffice transmission facilities on an unbundled basis to any requesting telecommunications carrier for the provision of a telecommunications service. 47 C.F.R. § 51.319(d). Dedicated transport is defined as

> incumbent LEC transmission facilities, including all technically feasible capacity-related services including, but not limited to, DS1, DS3 and OCn levels, dedicated to a particular customer or carrier, that provide telecommunications between wire centers owned by incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers.

47 C.F.R. § 51.319(d)(1)(A). BellSouth is required to "[p]rovide all technically feasible transmission facilities, features, functions, and capabilities that the requesting telecommunications carrier could use to provide telecommunications services." 47 C.F.R. § 51.319(d)(2)(B). BellSouth's unbundling obligation "extends ***throughout*** its ubiquitous transport network." Rule 319 Remand Order, ¶ 324 (emphasis added).

The parties' dispute has been clarified somewhat since WorldCom filed its petition. WorldCom has proposed revised language making it clear that BellSouth would not be required to build facilities for WorldCom where no facilities exist already. T.298; Price Direct at 19. And BellSouth has clarified that it is willing to provide dedicated transport to or from nodes on WorldCom's network, provided that BellSouth has transport facilities in place to do so. T.300-01. The remaining areas of dispute concern (i) whether BellSouth must provide dedicated transport as a UNE when more than one transport link is involved; and (ii) whether BellSouth must provide dedicated transport from a point on WorldCom's network to the switch or other facilities of a third-party carrier.

Because BellSouth's unbundling obligation extends throughout its ubiquitous transport network, WorldCom is entitled to existing dedicated transport from a point on WorldCom's network to any technically feasible point on BellSouth's network. But BellSouth contends it only should be required to unbundle single dedicated transport segments, such as between a WorldCom end office and a BellSouth serving wire center or between two BellSouth serving wire centers. T.301. BellSouth concedes that it is technically feasible to link segments together to create a longer dedicated transmission path. T.302. BellSouth's contention that each segment constitutes a separate UNE is unsupported by the law and would contravene sound policy by undermining the utility of dedicated transport. Unless a CLEC's need for dedicated transport fit within BellSouth's narrow requirements, the CLEC seeking dedicated transport as a UNE would be forced to build collocation spaces (or, alternatively, use what BellSouth terms "assembly points") at each BellSouth end office in question in order to interconnect the various legs of the transport facility. T.301. Each dedicated transport link is not a separate UNE. Just as BellSouth connects its feeder facilities to its distribution facilities and provides CLECs with UNE loops, so BellSouth must provide CLECs with the transport segments necessary to provide a single point-to-point UNE.

In any case, BellSouth ordinarily combines dedicated transport channels in its network, for example in the provision of MegaLink private line service. T.301. WorldCom is not asking BellSouth to provide anything that BellSouth does not ordinarily do for itself. Thus, even if the Authority were to consider dedicated transport that includes more than one transport segment in BellSouth's network to be a UNE combination rather than a single UNE, WorldCom still would be entitled to obtain such dedicated transport at UNE pricing. Ms. Cox acknowledged that under the Authority's decision in the UNE cost case concerning ordinarily combined UNEs, BellSouth would be required to combine such dedicated transport UNEs. T.302.[1]

WorldCom also is entitled to obtain existing dedicated transport from its network to a third party's switch or to a meet point between BellSouth's network and the third-party's network. Again, BellSouth is required to provide dedicated transport throughout its ubiquitous network, which would include facilities that extend to third party carriers. Moreover, the definition of dedicated transport includes facilities between wire centers or switches owned by ILECs or requesting telecommunications carriers. 47 C.F.R. § 51.319(d)(1)(A). Obviously, "requesting telecommunications carriers" can include third party carriers and is not just limited to WorldCom. This analysis is confirmed by the Local Competition Order, which notes a number of locations to which BellSouth must provide unbundled transport, including interexchange points of presence. *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order ¶ 440 (rel. Aug. 8, 1996) ("Local Competition Order"). If BellSouth is required to provide dedicated transport to a third party interexchange carrier, it is equally required to provide dedicated transport to a third party CLEC or independent telephone company.

The absurdity of BellSouth's position is shown by Ms. Cox' testimony that BellSouth would not provide dedicated transport facilities to connect a WorldCom switch to an AT&T switch, but would provide such facilities to connect a WorldCom switch to a WorldCom collocation cage located adjacent to the AT&T switch. T.302-04. There clearly is no practical difference to BellSouth between these two scenarios. Instead, BellSouth's restrictive

[1] Ms. Cox qualified her statement, saying that BellSouth only would be required to combine dedicated transport segments if they were ordinarily combined in BellSouth's network, but she could not give an example of two

position is based on its interpretation that the Telecommunications Act of 1996 ("Act") requires it to provide transport only between two locations of the same "requesting carrier," not between locations of two different "requesting carriers." WorldCom submits that BellSouth's interpretation of the Act is incorrect. The FCC's definition of dedicated transport does not purport to limit the use of dedicated transport to connect two locations of the same carrier, and there is no policy ground for such a limitation. If WorldCom elects to use dedicated trunking to exchange traffic with a third party carrier, and BellSouth has facilities available to transport that traffic, WorldCom is entitled to lease that portion of BellSouth's network. Otherwise, WorldCom would be required to build duplicative facilities or lease them from BellSouth (provided it is willing to do so) at "market pricing," BellSouth's euphemism for any price it can command. Ms. Cox's overly narrow reading of the Act should be rejected.

Even if the Authority were to accept that narrow interpretation of federal law, however, sound public policy would justify the Authority in requiring BellSouth to provide such dedicated transport between two carriers as a matter of state law. The failure to do so would only impose unnecessary costs on new entrants and hinder the development of local competition.

In short, WorldCom's proposed language on dedicated transport conforms to the applicable law and sound public policy, and it should be adopted.

ISSUE 28: **For purposes of the interconnection agreement between WorldCom and BellSouth, should BellSouth provide the calling name database via electronic download, magnetic tape, or via similar convenient media?**

---

dedicated transport segments that are not ordinarily combined in BellSouth's network. T.302.

The calling name (CNAM) database is needed to provide a number of services to MCI WorldCom's customers, including Caller ID with Name service. Price Direct at 29. WorldCom has proposed language in Attachment 3, Section 13.7 that would require BellSouth to provide a download of the CNAM database. The FCC has ruled that ILECs also must offer unbundled access to call-related databases, "including, but not limited to, the . . . Calling Name database . . ." UNE Remand Order ¶ 402. Issue 28 concerns whether BellSouth must provide such access on a "dip-by-dip" basis (BellSouth's position) or via a download (WorldCom's position).

The database should be provided via electronic download or on magnetic tape, which are the most efficient means of providing it. Electronic download is the most efficient, least costly means of providing the database. It is technically feasible to provide the information in this form, and indeed, the directory assistance database is provided via electronic download. Price Direct, pp. 29-30. For WorldCom to provide CNAM information on a call, it must first dip into its database in search of the information. If the calling party is not a WorldCom customer, WorldCom must do a table look-up, based on the calling party's NPA-NXX, and determine the database that must be searched and then query that database. That is both time consuming, in that the call in progress must be held while this activity is going on, and costly because WorldCom is required to establish facilities that duplicate BellSouth's facilities in addition to the facilities and circuitry necessary for its own database access. BellSouth, on the other hand, knows that an NPA-NXX outside of the NPA-NXX's assigned to it must route to a foreign database and can take the appropriate action without needlessly querying its own database. Price Rebuttal at 13. WorldCom is willing to compensate BellSouth for the work involved in arranging the database download.

Because the FCC requires unbundled access to the calling name database, because WorldCom believes it will require the information in database format in order to use it effectively, and because it is technically feasible to provide, the Authority should order BellSouth to make the CNAM database available to WorldCom via electronic download or on magnetic tape.

<u>ISSUE 34</u>: For purposes of the interconnection agreement between WorldCom and BellSouth, is BellSouth obligated to provide and use two-way trunks that carry each party's traffic?

Issue 34 concerns whether BellSouth must provision and use two-way trunks upon request. Generally, two-way trunks are more efficient than one-way trunks for traffic that flows in both directions, such as local, intraLATA interexchange and transit traffic. Olson Direct at 3. BellSouth Witness Cox acknowledged that from a technical perspective two-way trunking involves the fewest possible number of trunks and trunk ports. T.313-14. As a practical matter, engineers working for WorldCom and BellSouth will attempt to work out the best trunking arrangement in each case. But in the event the engineers cannot agree, WorldCom should have the right to require two-way trunking. Olson Direct at 3. WorldCom thus has proposed in section 2.1.2 of Attachment 4 that "[t]he parties shall use either one-way or two-way trunking or a combination, as specified by WorldCom."

WorldCom's proposed language simply incorporates the FCC's requirements on two-way trunking. The applicable FCC rule provides that "[i]f technically feasible, an incumbent LEC shall provide two-way trunking upon request." 47 C.F.R. § 51.305(f). BellSouth witness Cox acknowledged that providing two-way trunks is technically feasible, and that BellSouth is willing to provide two-way trunks upon request, but stated that BellSouth is not necessarily willing to use those trunks.[2] T.311-13. If WorldCom orders a two-way trunk and BellSouth refuses to use that trunk for its traffic, the efficiencies of two-way trunking will be lost. Olson Direct at 4. Thus, if BellSouth's position were accepted, the FCC's two-way trunking rule would become meaningless.

The FCC's Local Competition Order sheds further light on this issue. Paragraph 219 states:

> We identify below specific terms and conditions for interconnection in discussing physical or virtual collocation (i.e., two methods of interconnection). We conclude here, however, that where a carrier requesting interconnection pursuant to section 251 (c)(2) does not carry a sufficient amount of traffic to justify separate one-way trunks, an incumbent LEC must accommodate two-way trunking upon request where technically feasible. Refusing to provide two-way trunking would raise costs for new entrants and create a barrier to entry. Thus, we conclude that if two-way trunking is technically feasible, it would not be just, reasonable, and nondiscriminatory for the incumbent LEC to refuse to provide it.

One concern identified by the FCC (the one BellSouth emphasizes) was that a CLEC might not carry a sufficient amount of traffic to justify separate one-way trunks. But another concern the FCC expressed was that refusing to provide two-way trunking would raise barriers to competitive entry by CLECs. The FCC did not give BellSouth the right to second guess a CLEC concerning whether two-way trunks ought to be used. Rather, the FCC concluded unequivocally that "if two-way trunking is technically feasible, it would not be just, reasonable, and nondiscriminatory for the incumbent LEC to refuse to provide it." BellSouth thus does not have the right, as it contends, to limit its use of two-way trunks to those circumstances in which BellSouth agrees that there is insufficient traffic to justify separate one-way trunks. The FCC hammered this point home in its final rule, which without

[2] One issue BellSouth has raised concerns a situation in which BellSouth wants to use direct trunking from a BellSouth end office to the WorldCom switch rather than transporting that traffic via the BellSouth tandem. Cox

qualification requires BellSouth to "provide two-way trunking upon request." 47 C.F.R. § 51.305(f).

The Authority should adopt the contract language proposed by WorldCom because it is consistent with WorldCom's right to choose either a one-way or two-way trunk set forth in the FCC's regulations. The Georgia and Florida commissions have reached this conclusion, ruling in favor of WorldCom on this issue. T. 315.

ISSUE 36: For purposes of the interconnection agreement between WorldCom and BellSouth, does WorldCom, as the requesting carrier, have the right pursuant to the Act, the FCC's Local Competition Order, and FCC regulations, to designate the network point (or points) of interconnection at any technically feasible point?

Issue 36 concerns whether WorldCom should have the right to choose the point of interconnection for the exchange of local traffic between WorldCom and BellSouth. WorldCom's position is that it has that right both for its originating traffic and for BellSouth's originating traffic. WorldCom has proposed section 1.3 of Attachment 4, the key provision in question, which provides that "WorldCom will designate the point or points of interconnection and determine the method or methods by which the parties interconnect." BellSouth's position is that each party should have the right to choose the point of interconnection for its originating traffic. The parties' dispute on this issue can be broken into two subparts: (i) whether WorldCom has the right to choose the POI for its own and BellSouth's originating traffic; and (ii) whether WorldCom must arrange transport from a BellSouth local calling area to the POI, when the POI is located in another local calling area. T.258-59. In both cases, the law is clear and well established: WorldCom, not BellSouth, has

Direct, p. 27. The parties, however, have agreed upon language that would accommodate this concern. Olson Rebuttal, p. 4.

the right to choose the POI, and BellSouth may not circumvent that right by requiring WorldCom to transport BellSouth's originating traffic from its network to the POI.

A. WORLDCOM HAS THE RIGHT TO CHOOSE THE POI

Federal law establishes that CLECs have the right to choose the POI for local traffic exchanged by CLECs and BellSouth. The Telecommunications Act of 1996 ("Act") provides that BellSouth has the "duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network . . . at any technically feasible point within the carrier's network." 47 U.S.C. § 251(c)(2). The Act does not impose on CLECs a reciprocal duty to provide interconnection to BellSouth at any technically feasible point. T.260. Thus, the Act does not give BellSouth a choice as to where the interconnection point will be; BellSouth must allow the requesting carrier to interconnect at the technically feasible point it chooses. In implementing the Act, the FCC emphasized this fact, stating:

> The interconnection obligation of section 251(c)(2) . . . allows competing carriers to choose the most efficient points at which to ***exchange traffic*** with incumbent LECs, thereby lowering the competing carrier's costs of, among other things, transport and termination of traffic.

Local Competition Order ¶ 172 (emphasis added). The FCC also stated that "[o]f course, requesting carriers have the right to select points of interconnection at which to exchange traffic with an incumbent LEC under section 251(c)(2)." Local Competition Order ¶ 220, n.464. These rulings make clear not only that CLECs have the right to select the point of interconnection, but also that the point of interconnection is the point where the parties ***exchange*** traffic. Exchanging traffic necessarily involves each party sending traffic to the other.[3] Thus, CLECs are entitled to select the point of interconnection for both parties' originating traffic.

The FCC has ruled that a CLEC may choose to interconnect with an ILEC at a single point. The FCC explained that:

> Section 251, and our implementing rules, require an incumbent LEC to allow a competitive LEC to interconnect at any technically feasible point. This means that a competitive LEC has the option to interconnect at only one technically feasible point in each LATA.

Application by SBC Communications Inc. et. al Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas, CC Docket No. 00-65, Memorandum Opinion and Order at ¶ 77 (rel. June 30, 2000) ("Texas 271 Order") (footnotes omitted). The FCC reaffirmed the requirement that an RBOC give CLECS the option of a single point of interconnection in each LATA in *Joint Application by SBC Communications Inc., et al. for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, Memorandum Opinion and Order at ¶ 232 (rel. Jan. 22, 2001) ("Kansas/Oklahoma 271 Order"). If a CLEC has the right to interconnect with the ILEC's network at only one point, clearly the ILEC does not have the right to designate additional points for its own originating traffic. BellSouth's position that it does have such a right cannot be squared with the Texas 271 Order and the Kansas/Oklahoma 271 Order.[4]

---

[3] BellSouth witness Cox attempted to shed some doubt on this interpretation, pointing to, among other things, Paragraph 209 of the Local Competition Order, which states that CLECs have the right to deliver traffic terminating on an ILEC's network at any technically feasible point. T.261. But there is nothing inconsistent between the right to deliver traffic and the right to exchange traffic. Nothing in Paragraph 209 states that BellSouth has the right to designate the point of interconnection for its originating traffic. T.261. The other authorities cited by Ms. Cox likewise do not afford BellSouth that right. T. 261-62.

[4] CLECs' right under the Act to choose a single point of interconnection (and thus the point of interconnection for both parties' traffic) also has been affirmed in court decisions. Olson Direct, pp. 6-7. In addition, the FCC stated in its recent Notice of Proposed Rulemaking that "[u]nder our current rules, interconnecting CLECs are obligated to provide one POI per LATA." *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Notice of Proposed Rulemaking* at ¶ 72 and n.91 (rel. April 27, 2001).

BellSouth offers virtually no authority for the proposition that it should be able to choose the POI for its originating traffic. BellSouth witness Cox testified that to her knowledge the distinction she draws between the "point of interconnection" (by which she means the physical demarcation between networks) and "interconnection point" (by which she means the financial demarcation between networks) is not found in the Act and has not been used by the FCC. T.271-72. BellSouth's theory that it has several local networks with which CLECs must interconnect likewise finds no support in the Act. To the contrary, Section 251(c)(2) of the Act requires BellSouth to permit interconnection with its "network," not "networks." These attempts to concoct some basis for a separate POI that BellSouth can establish simply have no support in the Act or the FCC's rules and orders. To the contrary, as noted above, the FCC has in clear terms ***precluded*** BellSouth from requiring additional POIs. BellSouth's contention that it may establish what it terms a "billing point of interconnection" is without merit and should be rejected.

B. CLECs MAY NOT BE REQUIRED TO TRANSPORT BELLSOUTH ORIGINATING LOCAL TRAFFIC FROM A BELLSOUTH LOCAL CALLING AREA TO THE POI

BellSouth's proposal that it be able to require CLECs to transport BellSouth's originating through BellSouth's network to CLECs' networks ignores the law prohibiting such a requirement. FCC Rule 51.703(b) provides that "[a] LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network." Likewise, FCC Rule 51.709(b) states:

> The rate of a carrier providing transmission facilities dedicated to the transmission of traffic between two carriers' networks shall recover only the cost of the proportion of that trunk capacity used by an interconnecting carrier to send traffic that will terminate on the providing carrier's network.

In other words, the rate charged for dedicated trunking must be pro-rated so the providing carrier doesn't recover costs associated with its originating traffic.

In the Kansas/Oklahoma 271 Order, the FCC confronted the same position being taken by BellSouth in this case. T.278. In that connection, the FCC cautioned SWBT "from taking what appears to be an expansive and out of context interpretation of findings we made in [the Texas 271 Order] concerning its obligation to deliver traffic to a competitive LEC's point of interconnection." Kansas/Oklahoma 271 Order at ¶ 235. The FCC further stated that its decision to allow a single point of interconnection in the Texas 271 Order did not "change an incumbent LEC's reciprocal compensation obligations under our current rules." The FCC noted, for example, that "these rules preclude an incumbent LEC from charging carriers for local traffic that originates on the incumbent LEC's network." *Id.* Thus, it follows that not only may a CLEC establish a single POI in each LATA, it may do so without being required to build or lease facilities on BellSouth's side of the POI.

The principle that costs associated with originating traffic (including the facilities necessary to deliver the call to a co-carrier's network) shall be borne by the carrier that originates the call was again confirmed by the FCC in *In re: TSR Wireless, LLC, et al v. U.S. West, et. al.*, Memorandum Opinion and Order, File Nos. E-98-13, E-98-15, E-98-16, E-98-17, E-98-18, (rel. June 21, 2000) ("TSR Wireless Order"). The TSR Wireless Order sets forth the framework by which carriers recover costs incurred in carrying both originating and terminating traffic. The FCC describes the obligations of a carrier when its customers originate traffic as follows:

> The Local Competition Order requires a carrier to pay the cost of facilities used to deliver traffic originated by that carrier to the network of its co-carrier, who then terminates that traffic and bills the originating carrier for termination compensation. In essence, the originating carrier holds itself out as being

> capable of transmitting a telephone call to any end-user, and is responsible for paying the cost of delivering the call to the network of the co-carrier who will then terminate the call. Under the Commission's regulations, the cost of the facilities used to deliver this traffic is the originating carrier's responsibility, because these facilities are part of the originating carrier's network. The originating carrier recovers the costs of these facilities through the rates it charges its own customers for making calls. This regime represents "rules of the road" under which all carriers operate, and which make it possible for one company's customer to call any other customer even if that customer is served by another telephone company.

TSR Wireless Order ¶ 34.

In its recent Notice of Proposed Rulemaking, the FCC begins "a fundamental reexamination of all currently regulated forms of intercarrier compensation" and seeks comment on "the feasibility of a bill-and-keep approach for such a unified regime." *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Notice of Proposed Rulemaking* at ¶ 1 (rel. April 27, 2001) ("Intercarrier Compensation NPRM"). While the FCC seeks comments on whether the single POI per LATA rule and the current division of financial responsibility should continue to apply under a future bill-and-keep regime, the FCC actually reaffirms BellSouth's obligation, under current rules, to deliver traffic to the POI at its own cost, in stating as follows: "Our current reciprocal compensation rules preclude an ILEC from charging carriers for local traffic that originates on the ILEC's network." Intercarrier Compensation NPRM at ¶ 112 and n.80.

WorldCom's position on the POI issue not only complies with applicable law, but also is consistent with sound policy and is fair to both parties. Under WorldCom's position, CLECs would be entitled to choose a point of interconnection, but of course would be required to do so at a point on BellSouth's network. CLECs would establish at least one interconnection point in each LATA in which it originates traffic. Each party would be responsible for bringing its originating traffic to the POI and each party would be responsible for transporting and terminating the other party's traffic from the point of interconnection. Under this approach, CLECs would not be required to arrange transport on BellSouth's side of the point of interconnection before they could serve customers in another local calling area, but could expand its network as traffic volumes warranted. That approach, unlike BellSouth's, would promote local competition. Olson Direct, pp. 10-11.

In sum, WorldCom's position conforms to the applicable law, is consistent with good public policy, and is fair to both parties. WorldCom's proposed language therefore should be adopted.

<u>ISSUE 37</u>: Should BellSouth be permitted to require WorldCom to fragment its traffic by traffic type so it can interconnect with BellSouth's network?

Issue 37 concerns trunk fragmentation, which is the separation of different types of traffic onto different trunk groups. Specifically, WorldCom has requested that local, intraLATA toll and transit traffic be carried over the same interconnection trunk groups, for network efficiency reasons. (Olson Direct at p. 14.) WorldCom has proposed section 2.2.7 of Attachment 4, which would prohibit trunk group fragmentation by traffic types except as specified in the Agreement. BellSouth acknowledges that its supergroup trunks can accommodate this request. T.498.

The four reasons BellSouth has given for opposing WorldCom's proposed language all are readily addressed. First, BellSouth witness Milner asserted that WorldCom's proposal would prevent BellSouth from using direct end office trunks. Milner Direct at 15. At his deposition, Mr. Milner acknowledged that other language in the parties' draft interconnection agreement addressed that concern. WorldCom Exh. 6, Milner Dep. at 198. Second, Mr. Milner raised the issue of one-way traffic such as 911 traffic (Milner Direct at 16), but agreed that concern could be dealt with by the parties. WorldCom Exh. 6, Milner Dep. at 201-02.) That point is not in dispute, because WorldCom witness Olson acknowledged that special purpose traffic such as 911 traffic and OS/DA traffic would not be included in WorldCom's request that interconnection traffic not be fragmented. Olson Direct at 13. Third, Mr. Milner argues that WorldCom should not be able to require BellSouth to provide and use two-way trunks. Milner Direct at 17-18. If WorldCom prevails on Issue 34, that argument will be rendered moot. Fourth, BellSouth contended at the hearing that putting local, intraLATA and transit traffic on supergroup trunks would result in billing problems, T.433, 498, but the technology is available for BellSouth to bill for this traffic, T.167. Also, as Mr. Price noted in connection with Issue 42, WorldCom is willing to provide BellSouth with call records to resolve such billing problems. Price Rebuttal at 16. Because all of BellSouth's concerns can be addressed, assuming Issue 34 is resolved in WorldCom's favor, WorldCom submits that its proposed language should be adopted.

<u>ISSUE 39:</u> For purposes of the interconnection agreement between WorldCom and BellSouth, how should Wireless Type 1 and Type 2A traffic be treated under the Interconnection Agreements?

Issue 39 concerns Wireless Type 1 and Type 2A traffic that transits BellSouth's network on its way to or from WorldCom's network. For Type 1 traffic, and for Type 2 traffic when there is no meet point billing arrangement between BellSouth and the wireless carrier, BellSouth treats the traffic as its own, meaning that it pays WorldCom for traffic that it terminates and bills WorldCom reciprocal compensation for traffic that transits BellSouth's network to the Wireless Type 1 or Type 2A carrier. Price Direct at 33; T. 322. WorldCom's concern about this arrangement is that BellSouth does not pass on WorldCom's reciprocal compensation payments to the wireless carriers, but instead pockets the money. *Id.* For that reason, WorldCom opposes BellSouth's proposed language on this issue. BellSouth's language should be modified to require BellSouth to pass on reciprocal compensation payments to the wireless carrier, or, at the least, indemnify WorldCom as to any claim the wireless carriers may raise concerning those reciprocal compensation payments. BellSouth witness Cox agreed that since BellSouth received the payment, BellSouth should protect WorldCom from any liability to the wireless carrier in this situation. T.322-23. Considering that WorldCom is making the reciprocal compensation payments to BellSouth, and that the wireless carriers are entitled to the payments, this point is beyond dispute.

<u>ISSUE 40</u>: For purposes of the interconnection agreement between WorldCom and BellSouth, what is the appropriate definition of internet protocol (IP) and how should outbound voice calls over IP telephony be treated for purposes of reciprocal compensation?

Issue 40 deals primarily with how IP telephony calls should be treated with respect to reciprocal compensation and access charges. The FCC has defined IP telephony as "services [that] enable real-time voice transmission using Internet protocols." Federal-State Joint Board on Universal Service, Report to Congress, CC Docket No. 96-45, FCC 98-67 at ¶ 83 (April 10, 1998). Because this issue concerns whether IP telephony calls should be classified as switched exchange access traffic, it is within the FCC's, and not this Authority's, jurisdiction. Price Direct at 38. To date, the FCC has declined to impose access charges on IP telephony. *Id.* Because federal law currently does not allow access charges to be imposed on IP Telephony, it would be contrary to federal law and this Authority's jurisdiction for it to impose access charges on interstate long distance calls utilizing Phone-to-Phone IP

Telephony. *Id.* In any event, the FCC plans to address the issue of IP telephony soon, so the Authority should wait until the FCC's decision before addressing the issue. *Id.*

If the Authority were to address Issue 40 in this arbitration, it should not adopt the language advanced by BellSouth. BellSouth has proposed the following language as section 9.3.3 of attachment 4: "Switched Access Traffic is as defined in the BellSouth Access Tariff. Additionally, IP Telephony traffic will be considered switched access traffic." This language would require that that all IP telephony calls be treated as long distance calls, even though it is possible for an IP telephony call to be local. Thus, even if the Authority were to consider this issue, BellSouth's proposed language should be rejected.

<u>ISSUE 42</u>: Should WorldCom be permitted to route access traffic directly to BellSouth end offices or must it route such traffic to BellSouth's access tandem?

Issue 42 concerns WorldCom's ability to provide exchange access service. "Exchange access" is defined by the Act as "the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services." 47 U.S.C. § 153(40). Under the Act, a "Local Exchange Carrier" is someone "that is engaged in the provision of telephone exchange service or exchange access." 47 U.S.C. § 153(44). Based on this definition, the FCC has concluded that "Congress intended to facilitate entry by carriers offering either service" (that is, telephone exchange service or exchange access service). Local Competition Order ¶ 184.

The question here is whether WorldCom, as a local exchange carrier, may provide exchange access using interconnection trunks (or UNE facilities) from BellSouth, such as by providing a competitive access tandem service that would route IXCs' long distance calls to BellSouth end offices. The answer is clearly "yes." The Act imposes on BellSouth a duty to provide interconnection "for the transmission and routing of telephone exchange service and exchange access." 47 U.S.C. § 251(c)(2)(A). Thus, if WorldCom wishes to provide exchange access service to IXCs, it is entitled to use interconnection trunks (or UNEs) to do so. This point was underscored by the FCC in its Local Competition Order when it concluded that even IXCs can be entitled to obtain interconnection under Section 251(c)(2) if they wish provide a competitive exchange access service:

> We conclude that a carrier may not obtain interconnection pursuant to section 251(c)(2) for the purpose of terminating interexchange traffic, even if that traffic was originated by a local exchange customer in a different telephone exchange of the same carrier providing the interexchange service, if it does not offer exchange access services to others. As we stated above, however, providers of competitive access services are eligible to receive interconnection pursuant to section 251(c)(2). Thus, traditional IXCs that offer access services in competition with an incumbent LEC (*i.e.*, IXCs that offer access services to other carriers as well as to themselves) are also eligible to obtain interconnection pursuant to section 251(c)(2). For example, when an IXC interconnects at a local switch, bypassing the incumbent LECs' transport network, that IXC may offer access to the local switch in competition with the incumbent. In such a situation, the interconnection point may be considered a section 251(c)(2) interconnection point.

Local Competition Order ¶ 191. If an IXC can provide this service, obviously so can a company like WorldCom that provides local exchange services.

To understand how provision of competitive exchange access would work, assume that a CLEC (such as WorldCom) wants to compete with BellSouth for providing terminating access service to interexchange carriers (IXCs). In this situation, an IXC could route its terminating traffic to a WorldCom tandem switch, from which WorldCom could terminate the call directly (if the called party were a WorldCom local customer) or could deliver the call to BellSouth's end office switch for termination (if the called party were a BellSouth local customer). In the case of a call to a BellSouth customer, BellSouth would be entitled to bill the IXC for the end office switching component of access charges, and WorldCom would be entitled to bill the IXC for the tandem switching and transport components. T.326-27.

BellSouth has not advanced any authority for the proposition that WorldCom may not use interconnection trunks to provide an exchange access service. BellSouth may contend (as it has elsewhere) that WorldCom's use of dedicated transport to provide exchange access service is limited to cases in which WorldCom is providing local service to a customer. This contention does not address the use of interconnection trunks, and, moreover, is wrong with respect to the use of dedicated transport. BellSouth's argument is based on the FCC's *Third Order on Reconsideration and Further Notice of Proposed Rulemaking*, CC Docket No. 96-98 and CC Docket 95-185 (Aug. 18, 1997) ("Third Order"). The question in the Third Order (as it relates to Issue 42 here) was whether a CLEC using an unbundled local loop and unbundled local switching to provide local exchange service is entitled to bill the IXC for the access services associated with those UNEs, and whether in that circumstance the CLEC could offer exchange access using dedicated transport. Third Order ¶ 17. The FCC answered in the affirmative, ruling that a CLEC may use dedicated transport to provide exchange access service to a customer to whom it also provides local exchange service, and that the CLEC in that case is entitled to assess originating and terminating access charges to IXCs. Third Order ¶ 38. The FCC's ruling thus did not purport to limit CLECs' use of dedicated transport, but rather clarified that CLECs could use dedicated transport to provide exchange access in the manner requested by CLECs in that proceeding.

The FCC made clear in its Local Competition Order and in the UNE Remand Order that generally there are no limitations on a CLEC's ability to use dedicated transport to provide exchange access. As the FCC stated in the UNE Remand Order:

> In the *Local Competition First Report and Order*, the Commission found that section 251(c)(3) "permits interexchange carriers and all

> other requesting carriers, to purchase unbundled elements for the purpose of offering exchange access services, or for the purpose of providing exchange access services to themselves in order to provide interexchange services to consumers." In particular, the Commission found that its conclusion not to impose restrictions on the use of unbundled network elements was "compelled by the plain language of the 1996 Act" because exchange access and interexchange services are "telecommunications services." Moreover, in the *Local Competition First Report and Order,* the Commission found that "the language of section 251(c)(3), which provides that telecommunications carriers may purchase unbundled elements in order to provide a telecommunications service, is not ambiguous." This conclusion that the Act does not permit usage restrictions was codified in Rule 51.309(a), which provides that "[a]n incumbent LEC shall not impose limitations, restrictions, or requirements on request for, or the use of, unbundled network elements that would impair the ability of a requesting telecommunications carrier to offer a telecommunications service in the manner the requesting carrier intends." That rule was not challenged in court by any party.

UNE Remand Order ¶ 484. The only limitation on the use of UNEs to provide exchange access provided in the UNE Remand Order, as modified by the November 24, 1999 Supplemental Order ("Supplemental Order") in the same docket, concerns the use of loop-transport combinations in lieu of special access circuits. UNE Remand Order ¶¶ 485-89; Supplemental Order ¶ 4. Since WorldCom would be using interconnection trunks (or UNEs) to provide switched access service, not special access service, this limitation is inapplicable.

BellSouth has proposed the following language in Attachment 4, Section 2.3.8: "MCIm agrees not to deliver switched access traffic to BellSouth for termination except over MCIm ordered switched access trunks and facilities." As a legal matter, this language should be rejected because if adopted it would allow BellSouth to violate its duty to provide interconnection for the purpose of enabling WorldCom to provide exchange access. As a practical matter, if BellSouth were permitted to charge its higher tariffed rates for switched access trunks, WorldCom's ability to compete would be impaired.

BellSouth has misconstrued this issue by suggesting that WorldCom's opposition to the language proposed by BellSouth is an attempt to disguise switched access traffic as local traffic over local interconnection trunks. Cox Direct at 50. BellSouth's main complaint appears to be that it will be unable to bill for switched access if WorldCom delivers toll calls to a BellSouth end office via UNE facilities. This concern is misplaced. WorldCom is willing to provide BellSouth with appropriate call records for this traffic. Price Rebuttal at 16. The real problem is that BellSouth is not willing to accept call records from WorldCom that would provide the information needed to bill the IXC for the part of the access service BellSouth provided. T.441-44. That is true even though when the roles are reversed, and BellSouth is providing exchange access for a WorldCom local customer, WorldCom must rely on BellSouth's call records. T.442-43. BellSouth should not be allowed to use this excuse to avoid its duty to permit WorldCom to provide exchange access services via interconnection trunks and UNEs. Accordingly, BellSouth's proposed language should be rejected.

<u>ISSUE 45</u>: For purposes of the interconnection agreement between WorldCom and BellSouth, how should third party transit traffic be routed and billed by the parties?

Issue 45 deals with the routing and billing of local transit traffic. WorldCom's proposed language appears in Attachment 4, Section 9.7.1 and 10.7.1.1. The issue with respect to routing concerns whether BellSouth must put transit traffic over the same interconnection trunk groups as local and intraLATA toll traffic. BellSouth is capable of routing traffic in this manner on its supergroup trunks. T.498. For the same reasons stated above in Issue 37, BellSouth should be required to route transit traffic using such trunk groups as WorldCom has requested.

WorldCom has raised the billing issue in an attempt to streamline the billing process for local transit calls. Examples of such calls include a WorldCom customer placing a local call that transits BellSouth's network and is terminated to another CLEC's customer or to the customer of an independent telephone company. Under WorldCom's proposal, BellSouth would send a bill to the originating carrier for reciprocal compensation and the transit fee, the originating carrier would pay BellSouth, and BellSouth would pass along the reciprocal compensation to the terminating carrier and retain the transit fee. Price Direct at 42. This practice is consistent with the Ordering and Billing Forum (OBF) Meet Point Billing Guidelines (single bill/single tariff option). *Id.* This approach reduces the number of trunk groups, record exchange, and number of bills (to render and to audit) for all carriers. *Id.* Perhaps for this reason the approach WorldCom is recommending is used in more than half the country today. Price Rebuttal at 18.

It is not in the public interest for BellSouth to impose uneconomic or inefficient business practices on everyone in the industry, such as a requirement that all carriers must render bills to one another for small volumes of transit traffic. Moreover, having BellSouth render these bills makes sense in that BellSouth is interconnected with all other carriers and the transit traffic represents a small portion of the total traffic between BellSouth and the other carriers. *See* Price Rebuttal, pp. 17-18. BellSouth plays a similar role today with wireless Type 1 and Type 2A wireless traffic. Price Rebuttal at 18.

WorldCom acknowledges that the originating and terminating carriers would need to have an interconnection agreement, and that BellSouth would not be expected to render payment to the terminating carrier when the originating carrier failed to pay. WorldCom also acknowledges that BellSouth would be entitled to be paid for providing this service. But WorldCom disputes BellSouth's contention that it is simply incapable of billing for traffic transported in this manner. After all, as noted above, BellSouth has designed trunk groups that are capable of carrying local, intraLATA and transit traffic, and the approach WorldCom is advocating is used in more than half the country today. BellSouth's contention that this approach is not technically feasible is dubious at best.

In short, WorldCom submits that its proposed language will improve the billing process for local transit traffic, and therefore should be adopted.

<u>ISSUE 46</u>: For purposes of the interconnection agreement between WorldCom and BellSouth, under what conditions, if any, should the parties be permitted to assign an NPA/NXX code to end users outside the rate center in which the NPA/NXX is homed?

Foreign exchange ("FX") service involves providing service to a customer physically located outside the rate center for which his or her NPA/NXX is assigned. Price Direct at 45. An example of foreign exchange service would be company in Copper Basin that is assigned an NPA/NXX from the Chattanooga rate center. Customers located in Chattanooga may call the company's FX number and those calls will be treated as local calls. Thus, FX service enables a customer to establish a local presence where it did not have one before. T.288.[5] Issue 46 concerns language proposed by BellSouth that would treat foreign exchange traffic in some respects as if it were intraLATA toll traffic. Specifically, when a BellSouth customer called a WorldCom foreign exchange customer, BellSouth would not be required to pay reciprocal compensation, but instead would be entitled to be paid access charges for originating and transporting the traffic to WorldCom. WorldCom's position is that it is entitled to receive reciprocal compensation for local calls originated by BellSouth and terminated to such (non-ISP) end users and should not have to pay access charges for such calls.[6] BellSouth's proposed language should be rejected.

A. THE MARKET FOR FX SERVICES

Both CLECs and ILECs have made FX service offerings available and compete for customers for FX service. Price Direct at 48. Of course ILECs, as the monopoly local providers, were first to offer FX service. BellSouth's traditional FX offering is described in its General Subscriber Service Tariff for Tennessee at A9.1.1.A, which specifies that "[f]oreign exchange service is exchange service furnished to a subscriber from an exchange other than the one from which the subscriber would normally be served."

Just as with the CLECs' FX offerings, when BellSouth provides retail FX service, NPA/NXXs are assigned to end users located outside the local calling area of the rate center with which the NPA/NXX has been associated, and the jurisdiction (i.e., local vs. toll) of traffic delivered from the foreign exchange to the end user is determined as if the end user were physically located in the foreign exchange. Price Direct at 48. Competition exists between BellSouth and CLECs to meet the demands of customers for FX services. The

---

[5] FX service should be distinguished from 800 service. First, FX service creates a perception as to the local nature of the service being offered, unlike 800 service. Second, 800 service involves a considerably greater coverage area than FX service. Price Rebuttal, pp. 24-25.

[6] WorldCom's position is limited to "non-ISP end users" because FCC recently ruled that calls to ISPs are "information access services" which are not subject to the reciprocal compensation provisions of the Act and has established an interim compensation mechanism for such calls. That compensation mechanism became effective on June 14, 2001, and will continue for thirty-six months, or until further FCC action, whichever is later. *In the Matters of Implementation of the Local Competition Provisions in the Telecommunications Act of 1999 and Intercarrier Compensation for ISP-Bound Traffic,* CC Docket Nos. 96-98 and 99-68, *Order on Remand and Report and Order*, FCC 01-131, ¶¶ 3-8. The issue of a permanent compensation mechanism for such ISP-bound traffic will be considered as part of the rulemaking the FCC initiated on April 27, 2001 regarding development of a unified intercarrier compensation regime. *See*, Intercarrier Compensation NPRM.

availability of these services is the result of a market responding to demand. Without the competitive pressures of the market working, it is unlikely that the new demands for FX services, both from a technical perspective and pricing, would have been met. Any effort to disrupt this market by eliminating the ability of CLECs (the only competitive alternative to the BellSouth offerings described above) to offer FX service is really an effort to eliminate technological innovation, limit availability, and put upward pressure on the prices for services offered by companies that utilize FX service.

B. FX TRAFFIC SHOULD CONTINUE TO BE TREATED AS LOCAL

BellSouth proposes to classify CLECs' FX services as toll service and to impose access charges. T.289. Adoption of this position effectively would prohibit CLECs from offering FX service in competition with BellSouth. Because this proposal is anti-competitive, limits choices available to consumers, and is inconsistent with the notion of parity, the benefits of competition would be eliminated. These negative consequences would take place because adoption of BellSouth's position would raise the CLECs cost of providing a competitive service to a level that would effectively eliminate the CLEC's ability to offer a competing FX service. Price Direct at 48. BellSouth witness Cox confirmed that BellSouth offers flat-rated FX service to its retail customers. T.293. Under BellSouth's proposal, a CLEC attempting to compete would have to develop a pricing plan that takes into account the per-minute access cost that it would have to pay BellSouth. T.293-94.

If BellSouth were permitted to apply switched access charges to CLECs' FX traffic, such above-cost pricing ultimately would make the offering of competitive alternatives by CLECs infeasible. This would limit BellSouth's end users to BellSouth's FX service. Price

Direct at 48. The California Commission has recognized the anti-competitive effects of applying access charges to a CLEC's FX service:

> The rating of a call, therefore, should be consistently determined based upon the designated NXX prefix. Abandoning the linkage between NXX prefix and rate center designation could undermine the ability of customers to discern whether a given NXX prefix will result in toll charges or not. Likewise, the service expectations of the called party (i.e., ISPs) would be undermined by imposing toll charges on such calls since customers of the ISPs would be precluded from reaching them through a local call. Consequently, the billing of toll charges for Internet access, which is designed to be local, could render an ISP's service prohibitively expensive, thus limiting the competitive choices for Internet access, particularly in rural areas.

Order Instituting Rulemaking on the Commission's Own Motion Into Competition for Local Exchange Service, Rulemaking 95-04-043 at 26 (California PUC, Sept. 2, 1999) ("California Order"). As the California Commission recognized, the retail offering of FX service and its associated rating (as a local call) based on the rate centers associated with the assigned NXXs must be applied to FX offerings from CLECs. Failure to do so distorts the way in which a CLEC can make a competitive FX offering available and, as described above, would in fact eliminate competition for this increasingly important service.

For CLECs to be able to offer a competitive alternative to the BellSouth FX service offerings, the traffic associated with FX service must be classified as "local" just as BellSouth classifies its own FX traffic as local. Whether a call is local or not depends on the NPA/NXX dialed, not the physical location of the customer. Jurisdiction of traffic is properly determined by comparing the rate centers associated with the originating and terminating NPA/NXXs for any given call, not the physical location of the end-users. Comparison of the rate centers associated with the calling and called NPA/NXXs is consistent with how the jurisdiction of traffic and the applicability of toll charges are determined within the industry today. Price Direct, pp. 45-46.

The standard industry practice of rating calls based upon the NPA-NXXs, rather than upon the physical location of the customer, is illustrated by a decision of the California PUC:

> As discussed below, we conclude that the rating of calls as toll or local should be based upon the designated rate center of the NXX prefix of the calling and called parties' numbers. Even if the called party may be physically located in a different exchange from where the call is rated, the relevant rating point is the rate center of the NXX prefix.
>
> We conclude that under a foreign exchange service arrangement, it is consistent with the applicable tariffs to rate calls in reference to the rate center of the assigned NXX prefix even though it is in a different exchange from where the called party is located.
>
> Thus, foreign exchange service provides for a called party to reside in one exchange, but still have a telephone number rated as local served from a foreign exchange.
>
> For purposes of considering the issue of call rating, it is not necessary to deliberate at length over whether Pac-West's service conforms to some particular definition of "foreign exchange service" based upon specific provisioning arrangements. Although the Pac-West form of service differs from certain other forms of foreign exchange service in how it is provisioned, the ultimate end-user expectation remains the same, namely to achieve a local presence within an exchange other than where the customer resides. From the end-use customer's perspective, Pac-West's service is a competitive alternative to other form of foreign exchange service.

California Order at 21, 23, 24. The California Commission thus held that it is the applicable rate center as identified by telephone number prefix, not the physical location of the calling or called party, that is used to rate calls. FX calls are local calls based upon the designated rate center of the assigned NXX prefix even if the customer is not physically located within the rate center.[7]

---

[7] The California Commission also stated that a carrier providing FX service has an obligation to negotiate reasonable intercarrier compensation for routing FX calls. The commission did not determine what such

The Michigan Public Service Commission has also recognized the applicability of this industry standard for determining jurisdiction of traffic in its recent Order addressing the nature of FX traffic. While Ameritech Michigan argued that FX service was a form of interexchange service, the Commission found that:

> As a matter of historical convention, the routing of that call, i.e., whether or not it crosses exchange boundaries, has not been equated with its rating, i.e., whether local or toll.

In the matter of the application of Ameritech Michigan to revise its reciprocal compensation rates and rate structure and to exempt foreign exchange service from payment of reciprocal compensation, Case No. U-12696, Opinion and Order, pp. 10-11 (Michigan PSC, January 23, 2001) ("Michigan Order").

Classification of CLEC FX traffic as toll when BellSouth FX traffic is classified as local gives BellSouth an unfair advantage and precipitates the elimination of competition discussed above. Accordingly, it is appropriate to apply the traditional jurisdictional test (i.e., comparison of the originating and terminating NPA/NXXs without regard to the physical routing of the call) equally to both CLECs and ILECs. Because FX traffic is appropriately classified as local, reciprocal compensation should be applicable. This approach is consistent with the purpose of reciprocal compensation, to compensate the terminating carrier for the costs associated with the termination of local traffic that originates on another carrier's network. On this point the Michigan Public Service Commission in its Order on the application of reciprocal compensation to foreign exchange service made this finding:

> The Commission rejects the proposal to reclassify FX calls as non-local for reciprocal compensation purposes. Ameritech Michigan has not explained whether, or how, the means of routing a call placed by one

---

reasonable compensation would entail. WorldCom submits that it is reasonable for a carrier to charge reciprocal compensation for terminating FX traffic.

> LEC's customer to another LEC's point of interconnection affects the costs that the second LEC necessarily incurs to terminate the call.

Michigan Order at 10. Just as the method for determining the jurisdiction of FX traffic must be applied equally and consistently between ILECs and CLECs, so too must the obligation remain with the originating carrier to compensate the terminating carrier for the termination of FX traffic[8].

C. SUMMARY

The Authority should resist BellSouth's efforts to treat CLECs' FX service as a toll service. Such a determination would be detrimental to the market as it would provide significant competitive advantages to BellSouth: it would allow BellSouth to avoid paying reciprocal compensation, it would allow BellSouth to assess access charges on local calls, and it would shield BellSouth's local FX service from competition. The Authority should further reject toll classification for FX service because FX calls are rated as local industry-wide and because BellSouth treats its own FX service as a local service. The Authority should affirm that the proper method for determination of traffic jurisdiction is to compare the rate centers associated with the originating and terminating NPA/NXXs. The Authority also should permit CLECs to offer competitive FX service to their customers on non-discriminatory terms and require BellSouth to pay reciprocal compensation to CLECs for this local traffic. For all of these reasons, the Authority should reject classification of CLEC's FX service as toll service. In the final analysis, WorldCom's position on FX is consistent with its position on the POI issue. The parties are required to transport their originating local traffic to the POI

---

[8] The North Carolina Utilities Commission ruled in favor of WorldCom on this issue in its recommended Arbitration Order in Docket No. P-474, SUB 10, holding that WorldCom is entitled to reciprocal compensation as long as it provides FX service to its customer using a dedicated line between the FX customer and the WorldCom switch. The Georgia and Florida commissions have decided to address this issue in generic dockets.

designated by the CLEC. The offering of FX by the CLEC does not burden BellSouth with any additional responsibilities beyond those already required.

<u>ISSUE 47</u>: For purposes of the interconnection agreement between WorldCom and BellSouth, should reciprocal compensation payments be made for ISP bound traffic?

On May 15, 2001, in response to the D.C. Circuit Court of Appeals decision in *Bell Atlantic Tel. Cos. v FCC*, 206 F.3d 1 (D.C. Cir. 2000), the FCC issued its Order on Remand in which it found that ISP-bound traffic was excluded from the provisions of Section 251(b)(5) of the Telecommunications Act of 1996 as traffic subject to reciprocal compensation, but rather was Section 251(g) interstate "information access" traffic, subject to rates established by the FCC pursuant to Section 201 of the Act. *See, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Inter-Carrier Compensation for ISP-Bound Traffic*, Order on Remand and Report and Order, FCC 01-131, CC Docket Nos. 96-98 & 99-68 (rel. Apr. 27, 2001) ("ISP Order on Remand"). The ISP Order on Remand became effective on June 14, 2001. In announcing this completely new and prospective federal rule for addressing how local carriers are to be compensated when they exchange ISP-bound traffic, the FCC also exercised its authority under section 201 of the Act, to establish an interim compensation scheme that imposes prospective "information access" rates and growth caps to govern the exchange of calls to ISPs.

As a result of its finding that local calls to ISPs were 251(g) "information access" traffic subject to its Section 201 jurisdiction, the FCC concluded that state commissions will no longer have jurisdiction under Section 252(d) to establish a prospective compensation mechanism for this ISP-bound traffic. The Authority, therefore, no longer has the jurisdiction to address Issue 47.

The FCC acknowledged that its previous February 1999 Declaratory Ruling had permitted state commissions to continue to determine "how interconnecting carriers should be compensated for carrying ISP-bound traffic" (Paragraph 15) and that, "[i]n most states, reciprocal compensation governs the exchange of ISP-bound traffic between local carriers." (Paragraph 68.) As a result, the FCC emphasized that its new rule does not preempt these past state commission decisions that ISP-bound traffic is local traffic under Section 251(b)(5) and subject to the payment of reciprocal compensation. In Paragraph 82 of the ISP Order on Remand, the FCC stated:

> The interim compensation regime we establish here applies as carriers re-negotiate expired or expiring agreements. It does not alter existing contractual obligations, except to the extent that parties are entitled to invoke contractual change of law provisions. This Order does not preempt any state commission decision regarding compensation for ISP-bound traffic for the period prior to the effective date of the interim regime we adopt here. Because we now exercise our authority under Section 201 to determine the appropriate inter-carrier compensation for ISP-bound traffic, however, state commissions will no longer have authority to address this issue.

The ISP Order on Remand is currently the subject of numerous appeals by WorldCom and others in the D.C. Circuit Court of Appeals, which has placed the matter on an expedited schedule for resolution. However, the ISP Order on Remand has not been stayed.

As a result, the Authority should issue an Arbitration Order and Award on Issue 47 that states as follows:

(1) As of the date of the Arbitration Award and Order, the Authority is without jurisdiction to determine that local calls to ISPs are properly Section 251(b)(5) traffic and subject to reciprocal compensation;

(2) The Authority affirms its past decisions that calls to ISPs that do terminate within the local calling area are properly classified as 251(b)(5) and that reciprocal compensation is due for those calls; and

(3) The parties should include a provision in the interconnection agreement that states that, if the ISP Order on Remand is reversed, vacated or remanded by the DC Circuit Court of Appeals, then the parties should then begin exchanging ISP-bound traffic as 251(b)(5) traffic pursuant to the interconnection contract being formed by the Authority's Arbitration Award and Order.

<u>ISSUE 51</u>: Under what circumstances is BellSouth required to pay tandem charges when WorldCom terminates BellSouth local traffic?

Issue 51 concerns whether WorldCom is entitled to receive reciprocal compensation at the tandem rate when its switch covers a geographic area that is comparable to the area covered by a BellSouth tandem. WorldCom has proposed the following language in Attachment 4:

> 10.4.2 Where MCIm's switch serves a geographic area comparable to the area served by BellSouth's tandem switch, MCIm shall charge BellSouth the same rates BellSouth would charge MCIm for transport and termination of Local Traffic from BellSouth's tandem switch to BellSouth's End Users.
>
> 10.4.2.1 Transport (where used) – compensation for the transmission and any necessary tandem switching of Local Traffic.
>
> 10.4.2.2 The rate for common transport is set forth in Table 1 of Attachment I under the heading "Local Interconnection (Call Transport

> and Termination)." For the purposes of this Section, both Parties shall bill each other the average mileage of all End Offices subtending the applicable BellSouth Tandem Office.
>
> 10.4.2.3 The rate for tandem switching is set forth in Table 1 of Attachment I under the heading "Local Interconnection (Call Transport and Termination)." The tandem switching rate includes any switching by subtending Tandem Offices. Where MCIm's Switch serves a geographic area comparable to the area served by BellSouth's Tandem Switch, MCIm shall charge BellSouth for transport in accordance with this Section.

Section 251(b)(5) of the Act imposes on each local exchange carrier "[t]he duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications." Section 252(d)(2)(A) of the Act further provides as follows:

> For the purposes of compliance by an incumbent local exchange carrier with section 251(b)(5), a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless –
>
> (i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and
>
> (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.

The FCC addressed the question of the rate to be applied to reciprocal compensation in the Local Competition Order. After establishing how reciprocal compensation rates would be determined for ILECs, the FCC turned to the question of what rates should apply to CLECs. The FCC concluded in Paragraph 1085 of the Local Competition Order that the ILECs' reciprocal compensation rates should be adopted as the "presumptive proxy" for the CLEC's rates -- in other words, the rates were required to be the same. The only exception to this rule arises when a CLEC establishes that its transport and termination costs are higher than those of the ILEC. Local Competition Order, ¶ 1089; FCC Rule 51.711(b).

The FCC provided a number of reasons for ordering symmetrical treatment, including the following:

- Typically the ILEC and CLEC will be providing service in the same geographic area, so their forward-looking costs should be the same in most cases. Local Competition Order, ¶ 1085.
- Imposing symmetrical rates would not reduce carriers' incentives to minimize their internal costs. CLECs would have the correct incentives to minimize their costs because their termination revenues would not vary directly with changes in their costs. At the same time, ILECs would have the incentive to reduce their costs because they could be expected to transport and terminate much more traffic originating on their own networks than on CLEC's networks. Thus, even assuming ILEC cost reductions were immediately translated into lower transport and termination rates, any reduction in reciprocal compensation revenues would be more than offset by having a more cost-effective network. Local Competition Order, ¶ 1086.
- Symmetrical rates might reduce ILEC's ability to use their bargaining power to negotiate high termination rates for themselves and low termination rates for CLECs. Local Competition Order, ¶ 1087.

The FCC stated the following in paragraph 1090 of the Local Competition Order:

> We find that the "additional costs" incurred by a LEC when transporting and terminating a call that originated on a competing carrier's network are likely to vary depending on whether tandem switching is involved. We, therefore, conclude that states may establish transport and termination rates in the arbitration process that vary according to whether the traffic is routed through a tandem switch or directly to the end-office switch. In such event, states shall also consider whether new technologies (e.g., fiber ring or wireless networks) perform 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. *Where 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.*

(Emphasis added)

In practical terms, the FCC reached three conclusions. First, it is appropriate to establish an additional rate for ILECs when they use a tandem switch in the transport and termination of CLECs' local traffic. Second, states may consider whether some or all calls terminated by a CLEC may be priced at that higher rate if the CLEC uses alternative technologies or architectures to perform functions similar to those performed by the ILEC's tandem switch. Third, the higher rate *must* be applied when the CLEC's switch serves a geographic comparable to that served by the ILEC's tandem switch.

FCC Rule 51.711(a) confirms this analysis. It provides as follows:

> Rates for transport and termination of local telecommunications traffic shall be symmetrical, except as provided in paragraphs (b) and (c) of this section. [These exceptions do not apply here.]
>
> (1) For purposes of this subpart, symmetrical rates are rates that a carrier other than an incumbent LEC assesses upon an incumbent LEC for transport and termination of local telecommunications traffic equal to those that the incumbent LEC assesses upon the other carrier for the same services.
>
> (2) In cases where both parties are incumbent LECs, or neither party is an incumbent LEC, a state commission shall establish the symmetrical rates for transport and termination based on the larger carrier's forward-looking costs.
>
> (3) *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.*

(Emphasis added.) The FCC could not have been more clear. The geographic comparability rule was adopted without exception or qualification.

BellSouth has argued that the FCC did not establish a one-prong "either-or" test for determining entitlement to compensation at the tandem interconnection rate (the tandem switching, transport and end office switching rate elements), but instead established a two-prong "both-and" test." Under BellSouth's view, a CLEC must prove both geographic comparability and similar functionality in order to be entitled to compensation at the tandem interconnection rate. T.331-32. This position is based on BellSouth's interpretation of certain language in Paragraph 1090 of the Local Competition Order which permits the ILEC's rates for transport and termination to vary based on whether a tandem switch is involved and permits the state commissions in certain cases to consider whether new technologies deployed by CLECs provide similar functionality.

The FCC recently has put to rest any possibility that BellSouth's argument could have merit. In Paragraph 105 of the Intercarrier Compensation NPRM released on April 24, 2001, the FCC put to rest claims by carriers such as BellSouth that Rule 51.711 applies a two-prong "both-and" test for entitlement to compensation at the tandem interconnection rate:

> In addition, section 51.711(a)(3) of the Commission's rules requires only that the comparable geographic area test be met before carriers are entitled to the tandem interconnection rate for local call termination. *Although there has been some confusion stemming from additional language in the text of the Local Competition Order regarding functional equivalency* [¶1090], section 51.711(3) is clear in requiring only a geographic area test. Therefore we confirm that a carrier demonstrating that its switch serves "a geographic area comparable to that served by the incumbent LEC's tandem switch" is entitled to the tandem interconnection rate to terminate local telecommunications traffic on its network.

In the Matter of Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, Notice of Proposed Rulemaking at ¶ 105 (rel. April 27, 2001) ("Intercarrier Compensation NPRM").

As a factual matter, the evidence shows that WorldCom's existing Tennessee switches do cover geographic areas comparable to BellSouth's local tandems, and that WorldCom is therefore entitled to the tandem interconnection rate under this test. Price Rebuttal, pp. 34-36 and Price Exhs. 6 and 7. With respect to geographic comparability, the North Carolina Utilities Commission has rejected the argument advanced by BellSouth that the CLEC's switch must *actually* be serving customers in the relevant geographic area instead of being *capable* of serving them. *In the Matter of Petition by ITC^DeltaCom Communications, Inc. for Arbitration of Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996,* Docket No. P-500, SUB, Order Ruling on Objections, Request for Reconsideration and Composite Agreement (July 25, 2000). The North Carolina Commission correctly found that such reasoning would make the availability of the tandem switching rate contingent upon the level of market penetration achieved by the CLEC. Such an outcome finds no support in either Rule 51.711 or Paragraph 1090. Consequently, BellSouth should be required to pay reciprocal compensation to WorldCom at the tandem rate.

<u>ISSUE 52</u>: Should BellSouth be required to pay access charges to WorldCom for non-presubscribed intraLATA toll calls handled by BellSouth?

WorldCom's position regarding the payment of access charges for intraLATA traffic is simple. When BellSouth terminates a non-presubscribed intraLATA call and BellSouth is the intraLATA carrier, BellSouth must pay WorldCom terminating access. BellSouth requires the MCI long-distance company to pay originating access when a BellSouth customer uses WorldCom to make an intraLATA call to an independent telephone company's customer. Price Direct at 64. Similarly, WorldCom must pay terminating access to the independent telephone company when the independent's customer uses MCI to make an intraLATA call to a BellSouth customer. *Id.* When BellSouth acts as the intraLATA carrier, the same rules should apply. As the intraLATA carrier, BellSouth should be responsible for paying applicable terminating and originating access charges.

BellSouth's proposed language in Attachment 4, Sections 9.5.2 and 9.5.3 violates these principles because it would require WorldCom to recover from a third party carrier the terminating access charges for intraLATA toll calls originated on the third-party carrier's network, handed off to BellSouth (which would be the intraLATA toll carrier) and then carried to WorldCom for termination. Conversely, for an intraLATA toll call originated by a WorldCom customer and carried by BellSouth to a third party carrier, BellSouth's proposed language would require WorldCom to pay termination charges to the third party carrier. In these situations, BellSouth should be required to pay access charges to WorldCom, just as WorldCom must pay access charges to BellSouth when the roles are reversed. Accordingly, BellSouth's proposed language should be rejected.

ISSUE 55: Should BellSouth be required to provide a response, including a firm cost quote, within fifteen days of receiving a collocation application?

CLECs require a complete response, including a firm cost quote, to prepare and submit a firm order for collocation space. The Authority should establish a firm interval within which BellSouth must supply a complete response to a collocation application. The response that BellSouth gives to collocation applications in part determines the period in which provisioning of collocation requests is completed, and, ultimately, when BellSouth will be subject to competition. Bomer Direct at 16. Minor changes that do not cause BellSouth to make available more space than has been initially requested, or that do not cause BellSouth to change its provisioning of power, should not restart the ordering process. WorldCom's position is that BellSouth should be required to provide a complete response, including a firm price quote, within fifteen days of receiving a collocation application. (*Id.*)

BellSouth's position, however, is that the interval for providing information as to space availability (and as to whether the application submitted to it is complete and accurate) should be ten business days from BellSouth's receipt of the collocation application. BellSouth proposes to provide the price quote in a separate interval. BellSouth states that it will provide a "complete response" to the application, i.e., a price quote and the configuration of the space, within thirty business days of receiving the application. Milner Direct at 19-20.

BellSouth concludes that it needs this additional time to consider the existing building configuration, space usage and forecasted demand, building code and regulatory requirements, and certain "design practices." Milner Direct at 20-22. Without knowing precisely how BellSouth "considers" requests for collocation, WorldCom does not disagree that the existing building configuration, space usage and forecasted demand must be taken into account by an ILEC. WorldCom strongly disagrees, however, with any implication that space occupied or "reserved" by BellSouth can be invariably and unilaterally removed by it from further consideration, or that local "building codes and regulatory requirements" can or should be used to unilaterally justify a denial of collocation, or to preempt the requirements of the Telecommunications Act. Moreover, BellSouth does not identify what "design practices" it would employ; nor does it provide assurance that such practices would not be used to deny or severely constrain collocation. This omission, when taken with BellSouth's broad reference to "building codes and regulatory requirements," suggests that BellSouth would use any long interval it enjoys or any regulatory ambiguity to find ways to deny or limit collocation, rather than to attempt to meet the requirements of the Act. *See* Local Competition Order, ¶558.

There is no evidence that BellSouth needs additional response times for these situations or, for that matter, how much additional time BellSouth needs in a given situation. Although BellSouth categorically maintains that it cannot "reasonably" complete the work necessary to reply to a collocation request within fifteen days, BellSouth never states, let alone demonstrates, that it needs thirty business days[9] – which amounts to a month and a half – to provide the requested information. Instead, BellSouth merely concludes that such a long interval is "appropriate," while it dismisses WorldCom's proposed interval as "unreasonable." BellSouth also condemns WorldCom's proposal as not based on "any historical experience." It is precisely the "historical experience" of CLECs that justifies a predictable, expedited period for furnishing information necessary to commence the process of collocation. ILECs have long delayed acting on collocation requests based on the same kinds of "considerations" that BellSouth cites here as ostensibly justifying a long interval before "complete" information can be furnished CLECs.

Moreover, nothing in the Advanced Services Order or other FCC precedent construes "days" as "business days." Bomer Rebuttal at 6. Indeed, the FCC has clarified its rules as a result of the *Order on Reconsideration and Second Further Notice of Proposed Rulemaking in CC Docket No. 98-147 and Fifth Further Notice of Proposed Rulemaking in CC Docket No. 96-98* ("Order on Reconsideration"), FCC 00-297, *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Dockets Nos. 98-147 and

[9] Throughout Attachment 5, BellSouth construes "days" as "business days."

96-98, released August 10, 2000, to state that "days" means calendar days. Id. at footnote 58; see 47 C.F.R. §51.5, as amended.

As discussed below with reference to Issue 62, the Order on Reconsideration, unless a state commission decides upon a different interval, requires ILECs to complete any technically feasible physical collocation arrangement, no later than ninety calendar days after receiving a collocation application. Moreover, the Order on Reconsideration, consistently with paragraph 55 of the Advanced Services Order, sets a national maximum standard, to the extent a state commission does not otherwise set its own deadlines based on specific facts, of ten days for an ILEC to accept or deny a collocation application. Order on Reconsideration, at ¶¶ 24, 37.[10] This involves informing a CLEC of "any deficiency" in its application, and is more than a notification of space availability. Not only, then, is WorldCom's proposal entirely reasonable when compared with these national standards, it is difficult to understand how BellSouth could meet the national standard on provisioning if BellSouth's position is adopted as to the interval in which a firm price quote must be conferred.

---

[10] 47 C.F.R. 51.323 (l) has been amended to read:

An incumbent LEC must offer to provide and provide all forms of physical collocation (i.e., caged, cageless, shared, and adjacent) within the following deadlines, except to the extent a state sets its own deadlines or the incumbent LEC has demonstrated to the state commission that physical collocation is not practical for technical reasons or because of space limitations.

(1) Within ten days after receiving an application for physical collocation, an incumbent LEC must inform the requesting carrier whether the application meets each of the incumbent LEC's established collocation standards. A requesting carrier that resubmits a revised application curing any deficiencies in an application for physical collocation within ten days after being informed of them retains its position within any collocation queue that the incumbent LEC maintains pursuant to paragraph (f)(1) of this section.

(2) Except as stated in paragraphs (l)(3) and (l)(4) of this section, an incumbent LEC must complete provisioning of a requested physical collocation arrangement within 90 days after receiving an application that meets the incumbent LEC's established collocation application standards.

State commissions have an important role in defining and resolving collocation issues, such as intervals, in the context of an arbitration proceeding. Advanced Services Order, at ¶¶ 8, 45, 54-55. In this context, there is compelling state commission precedent which establishes a presumption that fifteen days is adequate for BellSouth to provide a complete response to a collocation application, including providing a firm quote and configuration. The Florida Order, in Section II, states the following:

> Upon consideration, we are persuaded . . . that the initial response to an application for collocation should contain sufficient information for the CLEC to place a firm order. We are also persuaded . . . that price quotes must be included in the response because they are essential to placing a firm order.
>
> We have also considered the evidence regarding the intervals in which such information should be provided to the CLEC. While BellSouth argues that it will only provide acceptance or denial due to space availability within the 15 calendar day interval, two other ILECs have provided testimony in this proceeding that supports that price quotes can also be provided within an interval of 15 calendar days . . .
>
> Upon consideration, we find that 15 calendar days is an appropriate interval to provide the information needed to place a firm order, i.e., information regarding space availability and a price quote.

(Order No. PSC-00-0941-FOF-TP, issued May 11, 2000 by the Florida Public Service Commission in Docket Nos. 981834-TP and 990321-TP.)[11]

Requiring BellSouth to provide a response, including a firm cost quote, within 15 calendar days of receiving a collocation application has been required in other states and WorldCom believes it is also the most appropriate resolution of this issue in Tennessee.

[11] Also, the Texas PUC, in both *Order No. 52* and *Order No. 54*, Investigation of Southwestern Bell Telephone Company's Entry into the Texas InterLATA Telecommunications Market, Public Utility Commission of Texas, Project No. 16251, established an interval for SWBT for providing price quotes, specifically for cageless collocation, within a definite period that is less than fifteen days. The SWBT "Interconnector's Collocation Services Handbook for Physical Collocation" provides for price quote intervals for caged as well as cageless collocation within ten business days, which amounts to less than fifteen days. Although nothing in the Advanced Services Order or other FCC precedent construes "days" as "business days", and WorldCom does not support BellSouth's general position that "days" means "business days", the interval ordered by the Texas PUC is reasonable.

ISSUE 56: **For purposes of the interconnection agreement between WorldCom and BellSouth, should BellSouth be required to provide DC power to adjacent collocation space?**

The parties have agreed to the following language in Attachment 5, with the exception of the language in bold:

> WorldCom shall provide a concrete pad, the structure housing the arrangement, HVAC, lighting, and all facilities that connect the structure (i.e. racking, conduits, etc.) to the BellSouth demarcation point. At WorldCom's option, BellSouth shall provide a**n AC or DC** power source and access to physical collocation services and facilities subject to the same nondiscriminatory requirements as applicable to any other physical collocation arrangement.

Bomer Direct at 19. WorldCom's position is that BellSouth should be required to provide DC power to adjacent collocation space. WorldCom will provide the cabling to BellSouth's power distribution board. BellSouth would provide the conduit to the adjacent collocation space. The pricing would be calculated pursuant to Attachment I of the interconnection agreement. Bomer Rebuttal at 13.

BellSouth responds is that it should not be required to provide DC power to adjacent collocation space. BellSouth is not generally opposed to providing DC power to collocators; the issue has arisen with respect to adjacent collocation space, not with respect to collocating within the central office of BellSouth. BellSouth maintains that it provides AC to its remote spaces for its own purposes and, consequently, it would not discriminate against CLECs were it not to supply DC power to the adjacent collocation site. Milner Rebuttal at 30-31.

BellSouth supplies AC power to its adjacent facilities, which it then converts to DC power. Milner Rebuttal at 28; WorldCom Exh. 6, Milner Dep. at 43. BellSouth proposes to require WorldCom to either provide its own power or convert AC power provided by

BellSouth at the adjacent site. Milner Direct at 23; WorldCom Exh. 6, Milner Dep. at 50-51. BellSouth, however, has offered to provide DC power in other collocation arrangements outside the central office; namely, with respect to collocation at the remote terminal. Indeed, BellSouth recently offered the following to CLECs in North Carolina in the context of a proposal for remote terminal collocation:

> Section 7.3 Power. BellSouth shall make available –48 Volt (-48V) DC power for CLEC-1's Remote Collocation Space at a BellSouth Power Board (Fuse and Alarm Panel) or BellSouth Battery Distribution Fuse Bay ("BDFB") at CLEC-1's option within the Remote Site Location. The charge for power shall be assessed as part of the recurring charge for rack/bay space. If the power requirements for CLEC-1's equipment exceeds the capacity for the rack/bay, then such power requirements shall be assessed on a recurring per amp basis for the individual case.

(Emphasis added.) There is no reason that DC power cannot be similarly provided by BellSouth to adjacent collocation space.

It is important to remember both that adjacent collocation space does not have to be employed for collocation unless space in BellSouth's central office is legitimately exhausted, and that *collocated equipment runs on DC power*. Bomer Direct at 19-20. Thus if BellSouth categorically refuses to provide DC power, CLECs will incur significant costs to accommodate AC power, provided by BellSouth or from some other source, and to convert that power to DC. These costs will be incurred, moreover, as a result of being relegated to collocate equipment *outside* of a BellSouth central office. BellSouth has the motive and the opportunity to discriminate against CLECs in this situation.

BellSouth categorically states that the cabling used to house DC power is not "rated for outside use." Milner Direct at 23. BellSouth evidently purports to have some safety concerns about the use of DC power; yet the national electric codes mention no problem with its provision. BellSouth never cites the specific provision(s) of the code upon which it relies.

The National Electrical Safety Code mentions no problem with the provision of DC power to an adjacent location. Bomer Rebuttal at 12-13. Moreover, BellSouth does not define what would constitute "outside use," while apparently assuming that all cabling would be "outside". Nor is BellSouth unconditionally willing to provide AC power to the adjacent location, since it also cites the unnamed "code" provision as a potential obstacle. CLECs apparently would have to use batteries in an enclosed space to provide their own power. This would seemingly rebut BellSouth's alleged safety concerns, since that result itself would introduce safety issues. Bomer Direct at 21; WorldCom Exh. 6, Milner Dep. at 53-54.

Although unacknowledged by BellSouth, the Florida Order, Texas PUC decision, and a recent Georgia decision all support WorldCom's position. In the Florida Order, in Section IV, the Florida Commission held that:

> When space legitimately exhausts within an ILEC's premises, the ILEC shall be obligated to provide physical collocation services to a CLEC who collocates in a CEV or adjacent structure located on the ILEC's property to the extent technically feasible, based on the FCC's Advanced Services Order.

These services would include DC power, to the extent that its provision is technically feasible. The Texas PUC has ordered that DC power must be made available to adjacent collocation space.[12] The FCC has cited with approval the Texas PUC, in particular, for its efforts with regard to collocation. Advanced Services Order, at ¶ 55.

---

[12] In Order No. 54, Investigation of Southwestern Bell Telephone Company's Entry into the Texas InterLATA Telecommunications Market, Public Utility Commission of Texas, Project No. 16251, the Texas PUC ordered the following to be incorporated in SWBT's tariff:

> Sec. 6.1.1 Types of Available Physical Collocation Arrangements
>
> 6.1.1(E) Adjacent Space Collocation-
>
> (originally 6.1.1(D)) The Commission finds that SWBT should provide power in multiples of the following DC power increments: 20, 40, 50, 100, 200, and 400 AMPS. SWBT should provide reference to the definition of the term "Legitimately Exhausted." The Commission notes that provision of DC power to adjacent on-site collocation facility may include increments of 600 and 800 Amps; however, the feasibility and rates for providing 600, and 800

The Georgia Commission, in Docket No. 11901-U, *In Re: Petition of MCImetro Access Transmission Services, LLC and MCI WorldCom Communications, Inc. for Arbitration of Certain Terms and Conditions of Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996* ("Georgia MCIm-BellSouth Arbitration Order") found in WorldCom's favor on this issue:

> This issue concerns whether BellSouth can meet its obligations under the law by providing AC power to adjacent collocation arrangements, or whether BellSouth is required to provide DC power. BellSouth must provide power and physical collocation services and facilities to MCIW on a nondiscriminatory basis. 47 C.F.R. § 51.323(k)(3). BellSouth argues that 47 C.F.R. 51.323(k)(3) does not specify what type of power ILECs must provide to an adjacent arrangement. (BellSouth Post-Hearing Brief at 47). The costs, however, that CLECs will incur in converting AC power will result from having to collocate equipment outside of a BellSouth central office. This arrangement would provide BellSouth with inappropriate leverage to discriminate against CLECs. The [Georgia] Commission finds that BellSouth shall be required to provide DC power to adjacent collocation space at MCIW's request where technically feasible.

What BellSouth really is telling the Authority is that, as a practical matter, adjacent collocation for the most part will not be provisioned – despite the FCC's mandate to provide

---

Amps service will be finalized during the permanent cost proceeding. The Commission finds that SWBT and the collocators shall mutually agree upon the location of the "adjacent structure. . .

The Commission therefore finds that 6.1.1(E) should be modified as follows:

6.1.1(E) Adjacent Space Collocation – Where Physical Collocation space within a SWBT Eligible Structure is Legitimately Exhausted, as that term is defined in Section 2 of this Tariff, SWBT will permit Collocators to physically collocate in adjacent controlled environmental vaults or similar structures that SWBT uses to house equipment, to the extent technically feasible. SWBT and CLEC will mutually agree on the location of the designated space on SWBT premises where the adjacent structure will be placed. SWBT will not withhold agreement as to the site desired by Collocator, subject only to reasonable safety and maintenance requirements. . . . At its option, the Collocator may choose to provide its own AC and DC power to the adjacent structure. SWBT will provide physical collocation services to such adjacent structures, subject to the same requirements as other collocation arrangements in this tariff.

"power and physical collocation services and facilities [to the adjacent collocation space], subject to the same nondiscrimination requirements as applicable to any other physical collocation arrangement." 47 C.F.R § 51.323(k)(3) (emphasis added). See Advanced Services Order, at ¶ 44. Even if BellSouth's contentions regarding safety were generally valid (which they are not), the principle of "technical feasibility," by which requests for physical collocation are considered, strongly suggests that BellSouth cannot categorically deny DC power. Bomer Direct at 21.

ISSUE 61: For purposes of the interconnection agreement between WorldCom and BellSouth, should the per ampere rate for the provision of DC power to WorldCom's collocation space apply to amps used or to fused capacity?

WorldCom's proposal, simply stated, is based on the fact that the parties original interconnection agreement, which was approved by the Authority, contemplates pricing power on a per used ampere basis. Bomer Direct at 31. The Authority approved the parties' negotiated pricing terms when it approved that agreement. Thus the rate proposed by WorldCom in Attachment 1 should apply on a per used ampere basis, taking into account the rated capacity of the equipment actually installed in the collocation space. Bomer Direct at 31-32. It is clear from the previous agreement that BellSouth would measure how much power each CLEC was using and would bill the CLEC accordingly. Consequently, the Authority should order that the rate proposed by WorldCom in Attachment 1 be applicable as between the parties.

Additionally, and importantly, there was no evidence presented in Docket Number 97-01262 regarding the establishment of the rate for power that it was to be evaluated on a per-

---

There are other sections of the SWBT tariff that also concern the provision of DC power by the incumbent.

fused-amp basis. The plain meaning of "per amp" is clearly "per <u>used</u> amp" and it seems evident that the rates established by the Authority for power in Docket Number 97-01262 applied to amps on an actually-used basis.

BellSouth proposes to charge a large up-front non-recurring charge for construction of power supply plus a recurring rate that also will reflect the cost of the power supply. This method represents a double recovery of the costs by BellSouth, is obviously inconsistent with the approach taken by the Authority in establishing rates, and would allow BellSouth to recover from WorldCom far more than WorldCom's share of power costs. Bomer Rebuttal at 17. WorldCom's proposal permits BellSouth to recover WorldCom's pro-rata share of the cost of power supply over the life of the power supply equipment. Bomer Direct at 31-32. A recurring rate equal to the forward-looking cost of power supply per amp times the amps consumed by WorldCom fully compensates BellSouth. BellSouth should bill WorldCom a recurring rate per amp equal to the forward-looking cost of power supply times the number of amps consumed by WorldCom. Alternately, in order to avoid having to meter power usage, BellSouth could bill WorldCom based upon the manufacturer's rated "steady-state load." T.79. Using the "steady-state load" will approximate WorldCom's actual usage reasonably closely. In this manner, BellSouth will be able to bill WorldCom for power in a manner that closely approximates actual usage without having to meter. T.79, 103-04.

Should BellSouth prevail on this issue and be permitted to charge for power based upon the peak load or "fused amperage," WorldCom would have to pay BellSouth for power grossly in excess of the actual power it consumes. T.79. The Authority should not permit this and should find that payment based upon amps actually used (or the approximation found in the manufacturer's "steady state" figure) is the appropriate method for compensating for power usage.

ISSUE 62: Should BellSouth be required to provision caged collocation space (including provision of the cage itself) within 90 days and virtual and cageless collocation within 45 days?

The issue of intervals in which collocation requests will be provisioned is a key issue, in terms of importance, for collocators and ILECs. Firm intervals are needed within which BellSouth must provision caged, virtual and cageless collocation, as is the case with respect to providing a response to a collocation application. Bomer Direct at 34. "(T)imely provisioning of collocation space is essential to telecommunications carriers' ability to compete effectively in the markets for advanced services and other telecommunications service." Order on Reconsideration, at ¶ 17. *See* ¶ 22 (timely provisioning is "critically important").

This Authority has already ruled on appropriate collocation intervals for BellSouth. In *In re Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996*, Second Interim Order of Arbitration Award, Docket No. 99-00430, at p. 5 (Aug. 31, 2000) the Authority ordered a thirty (30) day interval for the provisioning of cageless collocation, with a sixty (60) business day maximum, "thus, allowing additional time for extraordinary circumstances."

WorldCom has advocated a provisioning period of forty-five days for cageless, as well as for virtual, collocation, with a provisioning period of ninety days for caged collocation. Bomer Direct at 32-33. It is reasonable to expect that BellSouth should be required to provision caged collocation space within those periods. Given the Order on Reconsideration, as discussed below, WorldCom advocates for purposes of this arbitration 1) a provisioning period of ninety days for caged collocation, commencing with the collocation application; and 2) a provisioning period of sixty days for cageless and virtual collocation, again commencing with the application (which is equivalent to WorldCom's initial proposal, of fifteen days for a firm price quote, followed upon acceptance by a forty-five day provisioning period).

BellSouth's position is that the collocation provisioning intervals should be no greater than ninety business days for caged and cageless collocations under ordinary conditions and fifty business days for virtual collocation under "ordinary" conditions. Bomer Direct at 33-34; WorldCom Exh. 6, Milner Dep. at 84. An interval that is ninety business days is about four and a half months long. BellSouth has not provided justification for such a long period. As stated above, the Order on Reconsideration has rejected the notion that "days" means "business days." Likewise, BellSouth cannot - and has made no attempt to - justify an interval of fifty business days for virtual collocation. Bomer Direct at 35.

According to the Order on Reconsideration, the ILEC should complete any technically feasible physical collocation arrangement, whether caged or cageless, no later than ninety calendar days after receiving a collocation application, where space, whether conditioned or unconditioned, is available in the ILEC's premises and the state commission does not set a different interval or the incumbent and the requesting carrier have not agreed to a different interval. (Order on Reconsideration at ¶ 27.) The FCC's ninety day interval is a national maximum standard that the FCC presumes ILECs are capable of meeting. *See id.* at ¶ 37. Thus the FCC's provisioning interval is in effect shorter than what WorldCom initially proposed for caged collocation. The FCC's interval, at least as it affects caged collocation, should be adopted by the Authority for the parties' interconnection agreement.

The Order on Reconsideration took into account what other state commissions have done with regard to physical collocation provisioning intervals. *See id.* at ¶¶ 18-19. The Texas PUC, in *Order No. 54*, Investigation of Southwestern Bell Telephone Company's Entry into the Texas InterLATA Telecommunications Market, Public Utility Commission of Texas, Project No. 16251, has decided that SWBT must provision caged collocation for "active collocation space" within ninety days by SWBT. [13] It is important to recognize that state commissions, as permitted pursuant to the Advanced Services Order, have set intervals for provisioning collocation that can be met by RBOCs.[14]

Moreover, cageless collocation, by definition, should be much easier to provision than caged collocation, and BellSouth has given no justification as to why cageless collocation cannot be accomplished in less than ninety days. Because certain considerations, as related, for example, to space availability and configuration, as well as not having to construct a cage, are different for cageless collocation than for caged collocation, cageless collocation should be subject to a shorter interval. The Georgia Commission's Order in Docket No. 10854-U, *Petition for Arbitration of ITC^DeltaCom Communications, Inc.*, on June 29, 2000, agreed when it recognized that a "significantly shorter period is practical" for cageless collocation, when compared with caged collocation, and adopted a sixty calendar day interval for provisioning of cageless collocation. (Id. at p 8-9; Bomer Direct at p. 37.)

---

[13] Active collocation space" is defined in *Order No. 59*, in the same docket, as "space within an Eligible Structure that can be designated for physical collocation, which has sufficient telecommunications infrastructure systems". Eligible structures include central offices, space within CEVs, huts and cabinets.

[14] For example, Alabama requires cageless collocation to be provisioned in sixty calendar days of "a request for cageless collocation" , Final Order on Arbitration, In the Matter of Petition by ITC^DeltaCom Communications, Inc. Arbitration of Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252 (b) of the Telecommunications Act of 1996, Docket 27091, p. 32.

Since the interval decreed in the ITC^DeltaCom Order commences upon the firm order confirmation, not with the collocation application, the interval for provisioning cageless space under the ITC^DeltaCom Order is effectively seventy-five to ninety or more days (depending on how long BellSouth has to submit a firm price quote) from the date of the application to the completion of the cageless space. Given that this Authority has already recognized in the ITC^DeltaCom Order that cageless collocation may be provisioned in fewer days than caged collocation, a sixty day period, commencing upon the collocation application, would be appropriate in this arbitration, and consistent with WorldCom's initial proposal. See Order on Reconsideration, at ¶ 37.

ISSUE 63: For purposes of the interconnection agreement between WorldCom and BellSouth, is WorldCom entitled to use any technically feasible entrance cable, including copper facilities?

WorldCom's position is that it is entitled to use any technically feasible entrance cable, including copper facilities. Bomer Direct at 38-40. As the Authority is aware, copper enables xDSL service to be provided by the ILECs' competitors, which will greatly benefit consumers. There should, therefore, be a presumption that copper entrance facilities should be allowed. If BellSouth alleges space exhaustion, it may request the Authority to find that copper should not be placed. WorldCom Exh. 6, Milner Dep. at 94 -95. The parties agree that the FCC's regulations specifically permit collocators to use copper cable if such interconnection is approved by the state commission. Milner Direct at 29. BellSouth concedes that "some" copper cables enter BellSouth's central offices and, therefore, that copper entrance facility is technically feasible, (*see* Milner Direct at 29) and that it has no plans to replace all the remaining copper facility. WorldCom Exh. 6, Milner Dep. at 94.

Nonetheless, BellSouth insists that WorldCom should be restricted to the use of fiber entrance facilities only, except with respect to adjacent space collocation arrangements. Milner Direct at 29-30; WorldCom Exh. 6, Milner Dep. at 87.

As a matter of parity and nondiscriminatory treatment, WorldCom is clearly entitled to bring copper cable into the central office. Bomer Direct at 39. The FCC's regulations specifically permit collocators to use copper cable, and authorize the Authority to act to permit that use: "When an incumbent LEC provides physical collocation, virtual collocation, or both, the incumbent LEC shall: ... (3) permit interconnection of copper or coaxial cable if such interconnection is first approved by the state commission." 47 C.F.R. § 51.323(d)(3).

Copper entrance ducts merely present another factor in considering what space and facilities are available for collocation. Although ILECs should be allowed to reserve some space (central office or entrance ducts) for future needs, any such reservation should be supported on a competitively neutral basis, with forecasts and growth projections, and the CLEC should have the right to review what space exists and what future requirements an ILEC has when the latter contends there is a "near exhaust" situation. Bomer Direct at 39-40.

Mr. Milner noted in his testimony the Florida Staff's (and ultimately, Commission's) agreement with BellSouth on this issue. Milner Rebuttal at 43-44. It is worth noting that the Georgia Commission has ruled on this issue as well and determined that WorldCom "is entitled to use any technically feasible entrance cable, including copper facilities." (Georgia MCIm-BellSouth Arbitration Order at p. 20.)

ISSUE 64: Is MCI WorldCom entitled to verify BellSouth's assertion, when made, that dual entrance facilities are not available? Should BellSouth maintain

a waiting list for entrance space and notify MCI WorldCom when space becomes available?

The parties have agreed upon the following language in Attachment 5, except for the bold language proposed by WorldCom:

> 7.21.2 Dual Entrance. BellSouth will provide at least two interconnection points at each central office premises where there are at least two such interconnection points available and where capacity exists. Upon receipt of a request for physical collocation under this Attachment, BellSouth shall provide WorldCom with information regarding BellSouth's capacity to accommodate dual entrance facilities. If conduit in the serving manhole(s) is available and is not reserved for another purpose for utilization within 12 months of the receipt of an application for collocation, BellSouth will make the requested conduit space available for installing a second entrance facility to WorldCom's arrangement. The location of the serving manhole(s) will be determined at the sole discretion of BellSouth. Where dual entrance is not available due to lack of capacity, BellSouth will so state in the Application Response. **If BellSouth states in the Application Response that dual entrance is not available due to lack of capacity, BellSouth will allow WorldCom, upon request, to inspect the entrance locations within ten (10) business days of such notification. In order to schedule said inspection within ten (10) business days, the request for an inspection must be received by BellSouth within five (5) business days of the notification of lack of capacity. Any request received by BellSouth later than five (5) business days after WorldCom's receipt of BellSouth's Application Response will be fulfilled within five (5) business days of the request. In addition, BellSouth shall notify WorldCom when capacity is available for a dual entrance, and such capacity shall be made available on a first come, first served basis.**

Bomer Direct at 41-42. "Dual entrances" are physically diverse entrances into a wire center; i.e., having dual entrances provides an opportunity to design "redundancy" and "survivability" into the network, thereby preventing some network failures (e.g., if there is a cable cut at one entrance facility, the overall service is not affected).

WorldCom's position is that it should be permitted to verify, through an inspection inside of the central office if necessary, BellSouth's assertion that dual entrance facilities are not available. Bomer Direct at 41. BellSouth's position prior to the hearing seemed to be that WorldCom does not have the right to verify, through an inspection inside BellSouth's facilities, BellSouth's assertion that dual entrance facilities are not available. Milner Direct at 30-31. At the hearing, it appeared that Mr. Milner agreed with WorldCom that a limited "tour" to simply permit WorldCom to verify the number and remaining capacity of entrance facilities would be acceptable. T.516-517. Since the FCC has declared that a denial of space triggers a requirement that an inspection be permitted, it is a reasonable conclusion that a denial of dual entrances, which permit the necessary diversity that a CLEC needs, trigger the requirement of permitting verification of that claim. Bomer Direct at 43; 47 C.F.R. §51.323(f), Advanced Services Order, ¶57.) This Authority can require ILECs to engage in practices that are in addition to and consistent with the minimum standards that the federal rules require. Bomer Direct at 44.

In many instances a physical inspection would not be necessary because WorldCom could look at architectural drawings. Bomer Direct at 42. A visual inspection from the street may be acceptable in many situations, and in those situations WorldCom would not request a "tour"; however, it is quite possible that what would need to be inspected is underground and, thus, undetectable from the street. In some situations only a visual inspection will suffice, given the lack of other sources of information. Bomer Direct at 42-43. When a physical inspection is necessary, WorldCom is not seeking a "formal tour' of the entire central office. Bomer Direct at 43; *see* WorldCom Exh. 6, Milner Dep. at. 99-101. WorldCom is simply seeking an inspection of the ducts entering the cable vaults. Bomer Direct at 43. It appears that BellSouth no longer contends that WorldCom cannot have this sort of limited inspection. T.516-517.

The portion of this issue that still appears to be contested is whether BellSouth should maintain a waiting list for entrance space and notify WorldCom when space becomes available. WorldCom believes that this is a reasonable requirement, particularly in light of the FCC's similar, but even more expansive rule, of allowing new entrants to tour an incumbent's premises in order to verify an assertion that physical collocation space is not available. (47 C.F.R. § 51.323(f); Advanced Services Order ¶ 57.) Just as BellSouth must indicate those of its premises that are full, 47 C.F.R. 51.321(h), and should maintain a waiting list with respect to collocation space generally at a central office (see 2.2.3 of Attachment 5), it is reasonable to expect BellSouth to maintain a waiting list for dual entrance facilities. Bomer Direct at 43-44. BellSouth should also offer space to the new entrants when it becomes available, based upon their position on the waiting list.

BellSouth maintains that, should the fact that there is no entrance space available be the reason for denying a request for collocation, BellSouth will include that office on its space exhaust list, as required. BellSouth, however, states that it should not be required to incur the time and expense of maintaining a waiting list merely because dual entrance facilities may not be available. Milner Rebuttal at 45-46. Yet BellSouth has not attempted to quantify the "considerable" costs that allegedly would be involved, and has not asked CLECs to contribute to such costs. Bomer Rebuttal at 23. BellSouth's position appears to be simply that FCC rules do not require it to keep a waiting list. Bomer Rebuttal at 23. WorldCom Exh. 6, Milner Dep. at 105-06.

The parties' Agreement should provide predictability and a clear expression of BellSouth's and WorldCom's respective rights, or risk delay and litigation. Moreover, since the lack of dual entrances, as a practical matter, will determine whether collocation is advisable at a given location, a waiting list is a reasonable and not overly burdensome requirement for the ILEC to maintain under the circumstances.

ISSUE 67: When WorldCom has a license to use BellSouth rights-of-way, and BellSouth wishes to convey the property to a third party, should BellSouth be required to convey the property subject to WorldCom's license?

Issue 67 concerns whether, when WorldCom has a license to use BellSouth's property, and BellSouth wishes to convey the property to a third party, BellSouth must convey the property subject to WorldCom's license. This issue would be crucial in a case where WorldCom has built facilities on BellSouth's property and BellSouth wishes to sell the property and leave WorldCom's facilities stranded. Price Direct at 66; T.334. All WorldCom requests (in Attachment 6, Section 3.6) is that BellSouth give it reasonable advance written notice of BellSouth's intent to convey the right of way, and that BellSouth convey the property subject to WorldCom's license. BellSouth proposes that it be able to convey such property free and clear of any WorldCom license, regardless of whether WorldCom has built facilities on the property. Thus, the Authority is being requested to decide exactly what rights WorldCom has when it obtains a license to use BellSouth's rights of way. WorldCom submits that this issue should be resolved in light of the pro-competitive policies of the Act.

BellSouth's proposal would allow it to discriminate against WorldCom by, for example, selling property, but retaining the right to keep its own facilities on the property, without reserving any such right for WorldCom. Price Direct at 66. Such a result would create a dangerous opportunity and incentive for anticompetitive behavior. At best, WorldCom would be forced to negotiate a right of way agreement with the new owner of the property when WorldCom's facilities are already present on the property. WorldCom would be put in the position of either paying whatever price was demanded by the new property owner or by removing the WorldCom facilities. The only real protection that can be afforded WorldCom is to require that any BellSouth conveyance be made subject to WorldCom's license rights. WorldCom's proposed language would provide such protection and that language should be adopted.

ISSUE 68: For purposes of the interconnection agreement between WorldCom and BellSouth, should BellSouth require that payments for make-ready work be made in advance?

Issue 68 centers on whether BellSouth will begin work on WorldCom pre-license surveys and make-ready work prior to receipt of payment from WorldCom. There is no dispute that WorldCom is responsible for paying for such work. Rather, the issue is the timing of the payment. BellSouth insists that payment be received in full prior to the initiation of any work. This will result in unnecessary delays in construction and installation. Moreover, it is contrary to the position BellSouth takes with regard to every other service WorldCom receives from BellSouth. Price Rebuttal at 38. Put simply, BellSouth has selectively adopted this payment in full in advance policy.

BellSouth does not even suggest WorldCom has anything other than an excellent payment history and WorldCom has committed to contract language that requires it make payments within fourteen days of the date an order is placed. Price Rebuttal at 38. Any claims BellSouth may make that it is concerned there will be a dispute regarding whether the work was authorized by WorldCom are unfounded. To address that concern, WorldCom has agreed to fax to BellSouth written confirmation that BellSouth shall begin work at WorldCom's expense. *Id.* The parties have agreed to deposit and creditworthiness language already. (WorldCom Exh. 6, Milner Dep. at pp. 206-07.) BellSouth has failed to explain why of all the services WorldCom takes from BellSouth that pre-license surveys should carry with it a payment in full in advance requirement. The only conclusion one can draw from BellSouth's position is that BellSouth purposefully wants to delay construction and installation activities associated with WorldCom orders. The Authority should reject BellSouth's strategy and accept the language proposed by WorldCom that requires the commercially reasonable payment within fourteen days for pre-license survey work and provides that WorldCom shall fax to BellSouth written confirmation that work may begin at WorldCom's expense.

ISSUE 80: For purposes of the interconnection agreement between WorldCom and BellSouth, should BellSouth be required to provide an application-to-application access service order inquiry process?

Many of the local facilities WorldCom orders from BellSouth in Tennessee today to supply dial tone to its customers are DS1 combos, which until recently could be ordered using an ASR. Lichtenberg Direct at 14. WorldCom is seeking the ability to obtain pre-ordering information, such as address validation, service availability inquiry and cable facilities inquiry, for ASRs on an application-to-application basis. Lichtenberg Direct at 14. (See also WorldCom's proposed language in Attachment 8, Sections 2.1.1.2 and 2.2.3.) As Mr. Pate acknowledged during cross-examination, however, obtaining an application-to-application service inquiry process is of no use unless WorldCom can use the ASR process to order a local product like the DS1 combo. T.401-02. Issue 80 thus involves two interrelated subjects: (i) whether BellSouth must permit WorldCom to submit orders for DS1 combos using an ASR; and (ii) whether BellSouth must provide an application-to-application service order inquiry process.

Before May 2000, the only way for a CLEC to order a DS1 combo was via the ASR process, by which CLECs could submit DS1 combo orders electronically. T.380. In May 2000, BellSouth made available a manual LSR process that CLECs could use to order DS1 combos. *Id.* CLECs were permitted to submit DS1 combos via the electronic ASR process until September 2000. *Id.* BellSouth's refusal to permit CLECs to continue to use the ASR process for DS1 combo orders is unlawful because BellSouth provides itself an electronic capability to order MegaLink circuits, which are functionally equivalent to DS1 combos. T.373-74; WorldCom Exh. 4, Pate Dep. at 51. By preventing WorldCom from using a proven electronic interface and requiring it to shift to a manual interface, while BellSouth representatives are able to use an electronic interface, BellSouth violates the parity requirements of the Act.[15] As a practical matter, purporting to require WorldCom to use a manual process is a major step backward that would lead to delays, errors and customer dissatisfaction. Lichtenberg Direct at 15. BellSouth should be required to permit WorldCom to use the ASR process for DS1 combos at least until BellSouth has made available a tested electronic LSR process for such orders, just as the Georgia Public Service Commission ordered BellSouth to do. T.399.

WorldCom should be able to obtain pre-order information through an interface that can be integrated with the ASR interface. When BellSouth representatives order MegaLink circuits, for instance, they are able to obtain pre-order information electronically and have that

[15] BellSouth has attempted to excuse its actions on the ground that it must treat all CLECs alike. But the ASR interface is available to all CLECs and therefore enabling CLECs to use the ASR process to order DS1 combos does treat all CLECs alike. The problem here is not treating all CLECs alike, but rather BellSouth treating itself better than it treats all CLECs.

information transmitted electronically into their service orders. T.378-80; Exh. 5, Pate Dep. at 24-25. WorldCom should be able to develop the same capability. Initially BellSouth contended that it did not have a pre-order interface that could be integrated with the ASR interface. Exh. 5, Pate Dep. at 67. Mr. Pate stated in his rebuttal testimony and at the hearing that BellSouth's TAG pre-order interface could be integrated with the ASR ordering interface. Pate Rebuttal at 7; T.400-01. Assuming that TAG can provide address validation, service availability inquiry and cable facilities inquiry, as WorldCom has requested, BellSouth would appear to have no reason to object to WorldCom's proposed language.

ISSUE 95: Should BellSouth be required to provide WorldCom with billing records with all EMI standard fields?

Issue 95 centers on whether BellSouth should be required to provide Exchange Message Interface ("EMI") standard fields on the bills it sends to WorldCom. BellSouth should be contractually obligated to provide EMI billing records; otherwise, it could deviate from industry standards and develop proprietary standards. EMI is the industry standard. Price Direct at 71. BellSouth proposes to provide billing records using its tariffed services known as access daily usage file ("ADUF") and optional daily usage file ("ODUF"), which apparently contain a subset of the fields contained in an EMI record. *Id.* The current interconnection agreement, that was previously approved by the Authority as consistent with the public interest, requires that EMI records be used. Price Rebuttal at 41. BellSouth wants to change that requirement. EMI is used by all other Bell companies (Price Direct at 71), and WorldCom should be allowed to receive complete billing records with all EMI fields.

WorldCom's language is clear and unequivocal. (*See* Attachment 8, Section 5.2.17 of WorldCom's proposed interconnection agreement). The language proposed by WorldCom is nearly identical to that previously approved by the Authority and clearly requires that BellSouth provide specific EMI records to WorldCom and that it do so in the EMI format. BellSouth's language merely requires that it provide billing information to WorldCom "consistent with EMI guidelines." BellSouth's language falls far short of the clarity its purports to seek. WorldCom's language is clear and certain. Accordingly, the Authority should adopt the language proposed by WorldCom that was previously approved by this Authority in the first interconnection agreement between the parties.

ISSUE 100: For purposes of the interconnection agreement between WorldCom and BellSouth, should BellSouth operators be required to ask callers for their carrier of choice when such callers request a rate quote or time and charges?

To clarify the scope of this issue, WorldCom is requesting that, when BellSouth provides operator services to WorldCom ***local*** customers, BellSouth inquire as to that customer's carrier of choice rather than simply providing the customer with BellSouth's rates. Price Direct at 73. For interLATA inquiries today, BellSouth operators ask the caller for his or her carrier of choice, and then forward the caller to that carrier. WorldCom is requesting that BellSouth do the same for all interexchange inquiries for WorldCom local customers for which BellSouth provides operator services.

Many of BellSouth's arguments pertain to BellSouth's "OTS" service – a service in which BellSouth transfers callers seeking interLATA rate information to the caller's carrier of choice for accurate information. Price Direct at 75. It appears to be BellSouth's belief that WorldCom wishes to require BellSouth to inquire of every customer (BellSouth's end user customers, too) who that customer's carrier of choice is for intraLATA calls. BellSouth argues that WorldCom's proposal would obviate the

OTS service and give all interexchange carriers free access to a service for which BellSouth charges them today. Milner Rebuttal at 23. This is not the case, however. OTS service is relevant only when *BellSouth* local customers call the BellSouth operator to request rate information. WorldCom merely wishes BellSouth to inquire of WorldCom's local customers for whom BellSouth provides operator services, which carrier is their carrier of choice. WorldCom would be compensating BellSouth for providing operator service to its customer and, under the agreement, BellSouth would not have to inquire of its own end user customers who their carrier of choice is.

The Authority should adopt WorldCom's proposed language proposed in Attachment 9, Section 2.2.2.12, because it would ensure that customers receive accurate rate quote information and because WorldCom will compensate BellSouth for the work done on its behalf.

<u>ISSUE 108</u>: For purposes of the interconnection agreement between WorldCom and BellSouth, should WorldCom be able to obtain specific performance as a remedy for BellSouth's breach of contract?

The interconnection agreement resulting from this arbitration is nothing more than a commercial agreement obligating BellSouth and WorldCom to fulfill certain obligations created in contract. Specific performance by BellSouth of its obligations in the interconnection agreement is needed to ensure that BellSouth provides services that are necessary for WorldCom to conduct business. WorldCom has proposed standard specific performance language in its proposed interconnection agreement. (*See* Part A, Section 14.1 of WorldCom's proposed Interconnection Agreement.) BellSouth has not offered any proposed language. Rather, BellSouth proposes a case-by-case resolution in every instance about whether specific performance should occur. There should be no *ex post facto* determination of whether BellSouth should fulfill its obligations under the Act.

<u>ISSUE 110</u>: Should BellSouth be required to take all actions necessary to ensure that WorldCom confidential information does not fall into the hands of BellSouth's retail operations, and should BellSouth bear the burden of proving that such disclosure falls within enumerated exceptions?

Issue 110 relates to the treatment by BellSouth of confidential information provided to it by WorldCom. This issue is of great importance because WorldCom is both a customer (in the wholesale markets) and a competitor (in the retail markets) of BellSouth. BellSouth's wholesale and retail divisions have the same goal – to increase the value of BellSouth shares. It is only natural that BellSouth's divisions would want to share all valuable information in a joint effort to achieve their common goal. Of course, employees of BellSouth's wholesale divisions and retail divisions likely know each other and may often interact. For these reasons, it is entirely appropriate for WorldCom to insist that BellSouth take all actions necessary to secure WorldCom's confidential information.

The central dispute between the parties is what is the appropriate presumption if WorldCom's confidential information falls into the wrong hands. Specifically, what presumption should be made if WorldCom's proprietary information is shared with BellSouth's retail units. WorldCom has proposed straightforward language that recognizes the importance of keeping its confidential information protected. In Part A, Attachment 19.1.2 of its proposed Interconnection Agreement, WorldCom proposes language that provides when WorldCom's proprietary information falls into the hands of BellSouth's retail units, BellSouth has the burden of showing that such information was not shared improperly. Assuming that the BellSouth retail unit obtained the information from a legitimate source, it should have no problem identifying that source. On the other hand, if the information were inappropriately shared, BellSouth's position would require WorldCom to "prove a negative" and show that BellSouth did not obtain the information by some permissible means.

BellSouth offers very little in response to WorldCom's language other than to promise it "takes seriously" this issue and that it will take all "reasonable" steps to ensure WorldCom's confidential information is not inappropriately shared. Cox Direct at 93. BellSouth's promises are encouraging, but are simply not enough. The contract must set forth exactly what the presumption will be if WorldCom's confidentiality is breached.

III. CONCLUSION

This Docket presents the Authority with issues that provide a clear choice between competitive policies and policies which will impede competition. WorldCom has offered legal and policy support as well as specific contract language for each pro-competitive position. WorldCom respectfully requests the Authority adopt the language described herein and set forth in the proposed Interconnection Agreement that accompanied its Petition for Arbitration.

RESPECTFULLY SUBMITTED this 6th day of July, 2001.

Jon Hastings

Jon Hastings
Boult, Cummings, Conner & Berry, PLC
Suite 1600
414 Union Street
Nashville, Tennessee 37219
(615) 252-2306

Susan Berlin by Jon Hastings

Susan Berlin
Dulaney L. O'Roark III
MCI WorldCom, Inc.
Six Concourse Parkway
Suite 3200
Atlanta, Georgia 30328
(770) 284-5498

Attorneys for MCImetro Access Transmission Services, LLC and Brooks Fiber Communications of Tennessee, Inc.

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing has been hand delivered or mailed to Guy M. Hicks, BellSouth Telecommunications, Inc. 333 Commerce Street, Suite 2101, Nashville, TN 37201-3300 this the 6th day of July, 2001.

Jon Hastings

Jon E. Hastings