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VIA HAND DELIVERY

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

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

Dear Mr. Waddell:

Enclosed please find an original and thirteen copies of BellSouth's Post-Hearing Brief. Copies are being provided to counsel of record.

Thank you for your attention to this matter.

Very truly yours,

Joelle Phillips

JP/jej

Enclosure

398997

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

BELLSOUTH TELECOMMUNICATIONS, INC.'S POST-HEARING BRIEF

I. INTRODUCTION

BellSouth Telecommunications, Inc. ("BellSouth") submits this Post-Hearing Brief to assist the Tennessee Regulatory Authority ("the Authority") in its consideration of the issues raised in this arbitration proceeding initiated by MCImetro Access Transmission Services, LLC and Brooks Fiber Communications of Tennessee, Inc. (collectively referred to herein as "WorldCom"). BellSouth has been negotiating the terms of a new interconnection agreement with WorldCom since November 1999. Although BellSouth and WorldCom were able to reach agreement on a number of issues, many issues remain unresolved.[1]

The remaining issues that this Authority must resolve reach nearly every corner of the parties' interconnection agreement; they concern matters as varied as how interconnection facilities should be provisioned to whether WorldCom should pay for make ready work for

[1] The parties have resolved many of the issues originally in dispute, including certain issues that were resolved after the hearing in this case. The resolved issues in Tennessee are: 1, 2, 3, 4, 5, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30, 31, 32, 33, 38, 41, 43, 44, 49, 50, 53, 54, 57, 58, 59, 60, 65, 66, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 96, 97, 98, 99, 101, 102, 103, 104, 106, 107, 109, 111, and 112. The parties have agreed to incorporate the Authority's decision in the generic performance measures docket (add cite) as a resolution of Issue 105.

collocation in advance. But, there is a recurring theme that runs through this arbitration: WorldCom believes that it may demand any work process or arrangement from BellSouth, without regard to the requirements of the Telecommunications Act of 1996 ("the 1996 Act") or applicable rulings of the Federal Communications Commission ("FCC") and without regard to whether BellSouth makes available such processes or arrangements for itself. BellSouth's positions on the remaining unresolved issues in this arbitration are fully consistent with the 1996 Act and applicable FCC rulings; the same cannot be said about the positions espoused by WorldCom.

In addition to being unconstrained by the law, in many instances the language proposed by WorldCom is fraught with ambiguity and is not even consistent with the testimony offered by WorldCom at the hearing. Adopting WorldCom's language would only ensure to embroil the parties and this Authority in disputes down the road, which is hardly in the public interest. For these reasons, as explained more fully below, based on the evidence introduced at the hearing and the applicable law, BellSouth respectfully submits that the Authority should adopt BellSouth's position on each of the remaining issues in dispute.

II. STATUTORY OVERVIEW

The 1996 Act provides that parties negotiating an interconnection agreement have the duty to negotiate in good faith.[2] After negotiations have continued for a specified period, the 1996 Act allows either party to petition a state commission for arbitration of unresolved issues.[3] The petition must identify the issues resulting from the negotiations that are resolved, as well as

[2] 47 U.S.C. § 251(c)(1).

[3] 47 U.S.C. § 252(b)(2).

those that are unresolved.[4] The petitioning party must submit along with its petition "all relevant documentation concerning: (1) the unresolved issues; (2) the position of each of the parties with respect to those issues; and (3) any other issues discussed and resolved by the parties."[5] A non-petitioning party to a negotiation under this section may respond to the other party's petition and provide such additional information as it wishes within 25 days after the state commission receives the petition.[6] The 1996 Act limits a state commission's consideration of any petition (and any response thereto) to the unresolved issues set forth in the petition and in the response.[7]

Through the arbitration process, the Authority must now resolve the remaining disputed issues in a manner that ensures the requirements of Sections 251 and 252 of the 1996 Act are met. The obligations contained in those sections of the 1996 Act are the obligations that form the basis for negotiation, and if negotiations are unsuccessful, they then form the basis for arbitration. Once the Authority provides guidance on the unresolved issues, the parties will incorporate those resolutions into a final agreement that will then be submitted to the Authority for its final approval.[8]

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

[5] 47 U.S.C. § 252(b)(2).

[6] 47 U.S.C. § 252(b)(3).

[7] 47 U.S.C. § 252(b)(4).

[8] 47 U.S.C. § 252(a).

III. DISCUSSION

Issue 6: **Should BellSouth be directed to perform, upon request, the functions necessary to combine unbundled elements that are ordinarily combined in its network?**

BellSouth has no obligation to combine any UNEs for WorldCom that are not currently in fact combined to serve a particular location or customer. Although BellSouth recognizes that the Authority has addressed this issue in its decision in the Intermedia Arbitration in Docket No. 99-00948, BellSouth offers the following analysis in an effort to persuade the Authority to reconsider that decision.

Section 251(c)(3) of the 1996 Act requires incumbent LECs such as BellSouth to "provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service." From the plain wording of the 1996 Act, there is no doubt that the CLECs are required to combine the network elements for themselves. Notwithstanding this very plain language, the FCC initially interpreted the 1996 Act to require the incumbent LECs to combine the UNEs, upon the request of a CLEC. The FCC's interpretation was codified in FCC Rules 51.315(c), which provides in pertinent part that: "Upon request, an incumbent LEC shall perform the functions necessary to combine unbundled network elements in any manner, even if those elements are not ordinarily combined in the incumbent LEC's network...."

47 CFR § 51.315(c), however, was vacated by the 8th Circuit Court of Appeals in *Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997) *reversed in part*, 525. U.S. 366 (1999). The reversal of this particular rule was not a part of the appeal to the Supreme Court of the United States and that part of the 8th Circuit's decision was not reviewed, vacated or reversed. Nevertheless, the 8th Circuit, as part of its review of those sections of its decision that were

reviewed by the Supreme Court and remanded for further action, reconsidered, essentially on its own motion, its ruling vacating this particular subsection. That is, even though it was not required to do so, the 8th Circuit reviewed again its decision to vacate CFR §51.315(c), and confirmed its earlier ruling. The 8th Circuit Court of Appeals said:

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

[add cite].

It is hard to imagine how the Court could have been much clearer on this point. The FCC acknowledged what it had been told by the 8th Circuit in its first order issued following the Court's ruling. In the FCC's *Third Report and Order and Fourth Further Notice of Proposed Rulemaking*, FCC 99-238, released November 5, 1999 ("*UNE Remand Order*"), the FCC confirmed that incumbent local exchange carriers ILECs presently have no obligation to combine network elements for CLECs when those elements are not currently combined in the ILEC's network. As the FCC made clear, Rule 51.315(b) applies to elements that are "in fact" combined, stating that "[t]o the extent an unbundled loop is in fact connected to unbundled

dedicated transport, the statute and our rule 51.315(b) require the incumbent to provide such elements to requesting carriers in combined form." (¶ 480). The FCC declined to adopt a definition of "currently combines," as AT&T proposes in this case, that would include all elements "ordinarily combined" in the incumbent's network. *Id.* (declining to "interpret rule 51.315(b) as requiring incumbents to combine unbundled network elements that are 'ordinarily combined'..."). No other conclusion could reasonably be reached.

WorldCom's position with regard to this issue is that, irrespective of the clear language of the rules, the court decisions regarding the rules, and the FCC's own view of its rules, that the Authority should order BellSouth to combine UNEs for WorldCom, if the particular type of UNEs in question are combined anywhere in BellSouth's network. If the Authority interpreted Rule 51.315(b) the way WorldCom suggests, this means that the Authority would have to interpret a rule that clearly only addresses the separation of already combined UNEs, in a manner that would simply turn the rule on its head. In fact, such an interpretation would render the vacated Rule 315(c) unnecessary and meaningless. WorldCom's position has been rejected by the 8th Circuit and the FCC and should be rejected by the Authority as well.

The appropriate resolution of Issue 6 is for the Authority to conclude that BellSouth cannot be compelled to combine, at TELRIC rates, UNEs that WorldCom buys. BellSouth agrees that it cannot separate elements that are already in fact combined and serving the particular location or customer in question unless requested to do so by the CLEC.

Issue 8: **Should UNE specifications include non-industry standard, BellSouth proprietary specifications? (Attachment 3, Appendix 1; Attachment 3, Sections 4.3-4.14).**

Although industry standards provide useful guidance for the provision and maintenance of unbundled network elements, industry standards do not presently exist for each and every

unbundled network elements, including unbundled loops. Milner, Dir. at 7-8. In the absence of industry standards, BellSouth has developed technical requirements describing the unbundled loops offered by BellSouth and how these elements relate to any existing industry standards. Specifically, BellSouth has developed Technical Requirement 73600 (TR 73600) which provides details as to what BellSouth offers and how BellSouth's unbundled loops are related to any existing industry standards where industry standards exist. Milner, Reb. at 17. Inclusion of TR 73600 into the parties' interconnection agreement would help avoid disputes concerning the capabilities of any unbundled loops purchased from BellSouth.

Issue 18: **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? (Attachment 3, section 10.1).**

BellSouth is not required to build dedicated transport facilities between WorldCom's network locations, whether they be "nodes" or network switches or between WorldCom's network and another carrier's network. BellSouth is only required to provide transport between its central offices or between its central offices and those of competing carriers. *First Report and Order,* ¶ 440. BellSouth's proposed language is consistent with the FCC's definition of "dedicated transport," which refers to the "incumbent LEC transmission facilities 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). Thus, WorldCom's attempt to require BellSouth to provide interconnection facilities between WorldCom and another carrier's network under the guise of "dedicated transport" should be summarily rejected.

The FCC also has specifically addressed the issue of whether an incumbent's obligations include constructing facilities between locations where the incumbent has not deployed facilities for its own use. According to the FCC:

> In the *Local Competition First Report and Order*, the Authority limited an incumbent LEC's transport unbundling obligation to existing facilities, and did not require incumbent LECs to construct facilities to meet a requesting carrier's requirements where the incumbent LEC has not deployed transport facilities for its own use. Although we conclude that an incumbent LEC's unbundling obligation extends throughout its ubiquitous transport network, including ring transport architectures, *we do not require incumbent LECs to construct new transport facilities to meet specific competitive LEC point-to-point demand requirements for facilities that the incumbent LEC has not deployed for its own use*. [Footnotes deleted] (emphasis added)

Third Report and Order, ¶ 324. The FCC's unbundling requirements refer to the existing dedicated transport facilities in BellSouth's network and cannot reasonably be read to require BellSouth to construct transport facilities between other carriers' locations.

At the hearing, WorldCom insisted that it was not seeking to require BellSouth to construct new fiber transport facilities where none presently exist. Price, Hearing Tr. at 196. Nevertheless, the most recent language proposed by WorldCom appears to require BellSouth to do precisely that by obligating BellSouth to provide "electronic equipment necessary to provide Dedicated Transport." Price, Dir. at 19. While BellSouth does not object to providing the necessary electronics associated with BellSouth-provided dedicated transport, WorldCom's language appears to require more. Requiring BellSouth to construct transport facilities – whether those facilities consist of fiber or electronics – would be inconsistent with the FCC's order.

WorldCom's proposed language on this issue also is inconsistent with the recent ruling of the United States Court of Appeals for the Eighth Circuit. If WorldCom's language were adopted, it would purport to require BellSouth to combine local channels and interoffice transport on WorldCom's behalf. As discussed in greater detail in Issue 6, above, in *Iowa Utils.*

Bd. v. FCC, 219 F.3d 744, 750 (8th Cir. 2000), the Eighth Circuit vacated the FCC's rules that purported to obligate incumbents to combine previously uncombined network elements on behalf of a requesting carrier. In so doing, the Eighth Circuit noted that "Congress has directly spoken on the issue of who shall combine previously uncombined network elements. It is the requesting carriers who shall 'combine such elements.' It is not the duty of the ILECs to 'perform the functions necessary to combine unbundled network elements in any manner' as required by the FCC's rule." The Eighth Circuit reiterated its earlier decision to vacate the FCC rules. *See Id.*[9]

WorldCom's language is inconsistent with rulings of the FCC and the federal courts. Accordingly, the Authority should reject WorldCom's language and adopt BellSouth's position on this issue.

Issue 28: **Should BellSouth provide the calling name database via electronic download, magnetic tape or via similar convenient media? (Attachment 3, Section 13.7).**

This issue concerns WorldCom's request for a download of the CNAM or calling name database. CNAM is the database that allows carriers providing the Caller ID service to match the incoming caller's name with the telephone number. Cox, Dir. at 23-24. This database contains calling name information for all BellSouth end users and the end users of any carrier that stores their customers' names in BellSouth's calling name database. Cox, Dir. at 24.

The FCC requires that BellSouth provide CLECs with *access* to its calling name database, which BellSouth does. In paragraph 402 of its *Third Report and Order*, the FCC states "we require incumbent LECs, upon request, to provide nondiscriminatory access to their call-

[9] On September 22, 2000, the Eighth Circuit stayed its mandate at it relates to the court's decision to vacate the FCC's pricing rules pending the disposition of any petitions for certiorari. *See Iowa Utils. Bd. v. FCC,* Docket No. 96-3321 (8th Cir. Sept. 22, 2000). However, no such stay was entered with respect to the Eighth Circuit's decision reaffirming its earlier ruling vacating the FCC's rules that purported to obligate incumbents to combine network elements on behalf of requesting carriers.

related databases on an unbundled basis, for the purpose of switch query and database response through the SS7 network."

BellSouth provides CLECs with nondiscriminatory access to BellSouth's calling name database, regardless of whether the CLEC has its end user names stored in BellSouth's calling name database or whether the CLEC elects to maintain its own database for its end users' names. In either situation, the CLEC would provision its switch to appropriately route calling name queries to BellSouth's calling name database in order to obtain access to the name of an originating caller whose name is stored in BellSouth's calling name database. Cox, Dir. at 24.

For reasons that it has never adequately explained, WorldCom does not want the method of access to CNAM required by the FCC, but rather wants this Authority to require BellSouth to provide WorldCom with a download of the entire CNAM database. Nothing in the 1996 Act nor any FCC order can reasonably be read to obligate BellSouth to provide an electronic download of any call-related database, including CNAM. In fact, although the FCC has not addressed CNAM specifically, in its Second Louisiana Order, the FCC discussed access to BellSouth's directory assistance databases. According to the FCC, BellSouth must provide access to such databases either on a "'read only' or 'per dip' basis, or provide the entire database of subscriber listings." *In re: Application of BellSouth Corporation, et al., For Provision of In-Region, InterLATA Services In Louisiana,* CC Docket No. 98-121, ¶ 248 (Oct. 17, 1998). Thus, consistent with the FCC's analysis, when BellSouth provides access on a per query basis, as is the case with CNAM, no other form of access is required. Indeed, BellSouth itself accesses the CNAM database on a dip-by-dip basis. Cox, Hearing Tr. at 310.

To fulfill WorldCom's demand for an electronic download of the CNAM database, BellSouth would have to develop new computer programs, address the issue of how to update the

download, and perform whatever other work is necessary to make the data available to WorldCom. Even assuming that WorldCom was willing to compensate BellSouth for such work (an issue that is not addressed in either WorldCom's proposed language or its testimony), there is no reason why BellSouth should be compelled to devote otherwise limited resources to provide WorldCom with something that is neither required nor necessary.

Issues 34, 35: Is BellSouth obligated to provide and use two-way trunks that carry each party's traffic? (Attachment 4, Sections 2.1.1.2, 2.1.2, 2.1.1.8, and 2.3.1.1).

BellSouth is obligated to provide and use two-way local interconnection trunks where traffic volumes are too low to justify one-way trunks. *First Report and Order,* ¶ 219. For all other instances, BellSouth believes that the use of one-way trunking or two-way trunking is best determined by the parties on a case-by-case basis. While two-way trunks may be more efficient then one-way trunks under some circumstances, this is not always the case. For example, if the busy hour traffic patterns in both directions are relatively similar, then there will be few, if any, trunk termination savings obtained by using two-way trunks in lieu of one-way trunks. Similarly, if the traffic is predominately in one direction, there are little to no savings in two-way trunk terminations over one-way trunk terminations. Cox, Dir. at 14. WorldCom's witness, Mr. Olson agreed that, in some circumstances, it may be more efficient to use one-way trunks, rather than two-way trunks. Olson, Hearing Tr. at 140.

However, WorldCom's position is that BellSouth should be required to interconnect via two-way trunks whenever WorldCom so requests. That is, WorldCom seeks absolute control of when and if BellSouth is able to use one-way trunking or two-way trunking to interconnect with WorldCom's network. Olson, Hearing Tr. at 141. And, while he stated in his pre-filed testimony that "as a practical matter, engineers working for WorldCom and BellSouth will attempt to work out the best trunking arrangement in each case," (Dir. at 3), Ms. Olson admitted

at the hearing that WorldCom's proposed language does not suggest any cooperation by engineers. Hearing Tr. at 142.

BellSouth has repeatedly informed WorldCom that BellSouth is more than willing to use two-way trunks when it makes economic sense to do so and has proposed a corresponding set of trunking principles. However, when there are no real efficiencies to be gained in using two-way trunks, BellSouth is entitled to use one-way trunking for its own traffic just as WorldCom is entitled to use one-way trunking for its own traffic. BellSouth should not be required to provide inefficient trunk arrangements simply because WorldCom demands it. Accordingly, WorldCom's language should be rejected.

Issue 36: 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? (Attachment 4, Sections 1.3 and 1.3.1, Attachment 5, section 2.1.4).

This issue requires a determination of whether WorldCom or BellSouth is going to be financially responsible for certain facilities needed to carry local traffic from a BellSouth local calling area to a distant Point of Interconnection established by WorldCom. The calls that utilize the facilities in question are calls that originate in one BellSouth local calling area and are intended to be completed in that same local calling area, but must be routed out of that local calling area because of WorldCom's network design.

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

BellSouth Exhibit 1 also shows a BellSouth subscriber and an WorldCom subscriber located in LCA 1. However, while BellSouth has an end office switch in LCA 1, WorldCom does not, choosing instead to serve its customer located in LCA 1 from WorldCom's switch located in LCA 20. Olson, Hearing Tr. at 148. WorldCom has decided to serve its customer in LCA 1 this way because it is cheaper to provide transport throughout a LATA than to provide multiple switches in the LATA. Although that may not hold true as WorldCom's customer base evolves, it is the theory that underlies WorldCom's current approach to the local telephone market.

The sole issue implicated by Issue 36 involves calls flowing from BellSouth's subscriber in LCA 1 to WorldCom's subscriber in LCA 1. BellSouth did not ask WorldCom to put a single switch in an area that can be hundreds of miles from the originating point of the local call. Mr. Olson explained that, until WorldCom has sufficient customers in a given local calling area, WorldCom cannot justify the capital expense of putting in a switch. Hearing Tr. at 150 . WorldCom made that choice and now wants BellSouth to pay for it.

When a BellSouth subscriber in LCA 1 originates a call to an WorldCom subscriber in LCA 1, but the call is hauled to LCA 20 due to WorldCom's network design, there is no dispute that whichever company hauls the call all the way to LCA 20 is going to incur costs. Olson, Hearing Tr at 149. The issue is who will be financially responsible for carrying this call from LCA 1 to LCA 20. BellSouth's position is that WorldCom's network design is the cause of this cost and WorldCom should be responsible to pay the cost.

BellSouth acknowledges that WorldCom can establish a physical point of interconnection with BellSouth at any technically feasible point and if it chooses to have only a single such point in a LATA, that is WorldCom's choice. Cox, Dir. at 31. WorldCom can, however, lease

facilities from BellSouth or any other entity to collect traffic from local calling areas outside of the local calling area in which its Point of Interconnection is found. *Id.* at 31-32. When WorldCom leases facilities from BellSouth, the leased facilities are not a part of WorldCom's network and the Point of Interconnection is found at the point where WorldCom's owned facilities end and the leased facilities begin. *Id.* at 32. Nothing in BellSouth's proposed solution to this issue would require WorldCom to build another (or the first) foot of cable devoted to local service in Tennessee beyond that required to establish a single point of interconnection in the LATAs that WorldCom chooses to serve.

WorldCom admits that BellSouth incurs a cost for transporting local traffic outside of the local calling area in which it originates and terminates to WorldCom's Point of Interconnection in a distant local calling area. Indeed, Mr. Olson admitted that BellSouth wouldn't incur such costs if WorldCom had not decided to set up its network in that manner. Hearing Tr. at 152. If BellSouth is required to carry local traffic outside of the local calling area in which it originates and terminates to some distant Point of Interconnection established by WorldCom, then WorldCom should compensate BellSouth for its efforts. Otherwise, BellSouth has no source of revenue to cover the cost of transporting such local traffic. Although WorldCom may have the flexibility to establish rate structures to ensure that it recovers these costs, BellSouth has no such luxury due to its established tariffed rates. BellSouth's basic local exchange rates do not compensate BellSouth for these costs. Cox, Dir. at 39.

Thus, when viewing the equities of the situation, it is clear that BellSouth's position that WorldCom should be financially responsible for these costs that it has caused is the appropriate position. If WorldCom prevails on this issue, then WorldCom will have succeeded in requiring BellSouth to subsidize WorldCom's entry into the local exchange market in Tennessee.

WorldCom has caused these facilities to be needed and this cost to be incurred and should therefore pay for the facilities.

It would be convenient to point to a statute or to an FCC order or rule that neatly resolves this issue, but no such statute, order or rule exists. Both parties agree that, as a matter of law, WorldCom is entitled to interconnect where it wants and to deliver its originated traffic to BellSouth at that point. MCI, in a proceeding at the FCC, however, asked the FCC to declare that both the incumbent local exchange company and the competitive local exchange company had to declare a single point of interconnection on each other's network where its originating traffic would be delivered. *See In re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, August 8, 1996 (*Local Interconnection Order.*) ¶ 214. The FCC refused, leaving it to negotiation and arbitration to resolve the issue. Therefore, the Authority is essentially left to resolve this matter based on the evidence presented and the Authority's own sense of equity and fair play.

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

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

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

In the recent arbitration between BellSouth and Intermedia, Docket No. 99-00948, the Authority confronted a similar issue. In that case, Intermedia raised the issue of whether it should have to interconnect at each tandem where it homed NPA/NXXs. *See* Interim Order of Arbitration Award (June 25, 2001) ("*Intermedia Order*") at p. 45. In deciding the issue, the Authority concluded that Intermedia could elect to use multiple tandem access ("MTA") to reduce the number of interconnection points in a local calling area, but "Intermedia must interconnect in at least one tandem in the local calling area where its NPA/NXX is homed." *Id.* at 46. Moreover, and on a point which directly relates to WorldCom's Issue 36, the Authority decided that "Intermedia must pay BellSouth just and reasonable compensation for additional tandem switching and transport charges not included in the negotiated reciprocal compensation rate of Intermedia utilizes MTA." *Id.* The issue here is conceptually the same. WorldCom should compensate BellSouth for the additional costs caused by its method of interconnection.

This interconnection issue has been addressed in a similar fashion by at least two federal courts exercising appellate review over state commission arbitration decisions: *US West v. AT&T Communications*, 31 F. Supp. 2d 839 (D. Or. 1998), reversed in part, vacated in part sub. nom. *US West v. AT&T*, 224 F.3^{d} 1049 (9th Cir. 2000)[10]; and *US West v. Jennings*, 46 F. Supp. 2d 1004 (D. Az. 1999). In *US West v. AT&T*, the federal court stated that "[t]echnical feasibility answers the question of *whether* a CLEC may interconnect at a given point, but it does not answer the question of *how many* points of interconnection a CLEC must have." *US West v. AT&T*, 31 F. Supp. 2d at 852 (emphasis in original). Although the court rejected US West's

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

claim that a CLEC is required to establish a point of interconnection in each local exchange in which it intends to provide service, the court did rule that "the mechanics of a particular interconnection arrangement are best determined by each state's PUC, ... subject of course to the standards established by the Act and any FCC regulations (where appropriate)." *Id.*

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

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

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

The above quoted FCC and federal court decisions provide the following guidance to the Authority for resolving Issue 36: (1) the 1996 Act does not define the minimum number of interconnection points that a CLEC must establish in a given LATA; (2) the decision regarding how many points of interconnection a CLEC must establish is best determined by the state commission; (3) in determining how many points of interconnection a CLEC must establish, a state commission may consider "relevant factors, including whether a CLEC is purposefully structuring its point(s) of interconnection to maximize the cost to the ILEC or to otherwise gain

an unfair competitive advantage"; and (4) as an alternative to requiring a CLEC to establish additional interconnection points, a state commission may require a CLEC to compensate the incumbent for costs resulting from an inefficient interconnection.

The South Carolina Public Service Commission ("SCPSC") recently required AT&T to bear the cost incurred by BellSouth to carry BellSouth's local traffic that originates and terminates within a local calling area to AT&T's distant point of interconnection. On January 30, 2001, the SCPSC issued Order No. 2001-079 in Docket No. 2000-527-C, *IN RE: Petition of AT&T Communications of the Southern States, Inc. for Arbitration of Certain Terms and Conditions of a Proposed Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. Section 252.* In response to this issue, the SCPSC ruled:

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

The North Carolina Utilities Commission ("NCUC") has issued its Recommended Arbitration Order[11] in the WorldCom/BellSouth arbitration conducted in North Carolina last year. That arbitration contained many of the same issues as the present arbitration, including Issue 36. In its recommended order in Docket Number 447, Sub 10, the NCUC stated that "if [WorldCom} interconnects at points within the LATA but outside of BellSouth's local calling area from which traffic originates, [WorldCom] should be required to compensate BellSouth for or otherwise be responsible for, transport beyond the calling area." Recommended Order at 49.

[11] WorldCom has requested reconsideration of the NCUC's decision on Issue 36. Pursuant to the procedures followed by that commission, the NCUC heard the arbitration, received briefs and proposed orders from the parties, and then issued its Recommended Arbitration Order, to which the parties may file exceptions, or requests for reconsideration on specific points.

Mr. Olson argued in his pre-filed testimony that the FCC has issued a decision that confirms WorldCom's interpretation of the federal regulations, citing *In Re: TSR Wireless, LLC, et al. v. U.S. West*, file Nos. E-98-13, et. al., FCC 00-194 (June 21, 2000). Olson, Dir. at 11-12. That case does not support WorldCom's position.

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

> (b) Local telecommunications traffic. For purposes of this subpart, local telecommunications traffic means:
>
> (1) Telecommunications traffic between a LEC and a telecommunications carrier other than a CMRS provider that originates and terminates within a local service area established by the state commission; or
>
> (2) Telecommunications traffic between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area ....[12]

Thus, section 51.701(b)(1) defines "local telecommunications traffic" for purposes of wire line traffic, while subsection (2) defines "local telecommunications traffic" for purposes of CMRS providers. CMRS means Commercial Mobile Radio Service, and CMRS carriers include providers of one-way paging and other wireless services. *See TSR Wireless*, ¶2. A "Major Trading Area" (MTA") represents the local calling area for CMRS providers and is analogous to the local service area of wireline service providers such as BellSouth. Cox, Reb. at 18.

The *TSR Wireless* decision is that a local exchange carrier has an obligation to deliver at no charge calls within the MTA, or local calling area. Indeed, Paragraph 31 of the *TSR Wireless*

[12] That section has been amended to change certain language that is not relevant to this issue.

decision provides: "Section 51.701(b), when read in conjunction with Section 51.701(b)(2), requires LECs to deliver, without charge, traffic to CMRS providers *anywhere within the MTA in which the call originated*, with the exception of RBOCs, which are generally prohibited from delivering traffic across LATA boundaries." (Emphasis added.)

The only reasonable conclusion that can be reached is that BellSouth's obligation to deliver traffic to WorldCom's Point of Interconnection at no additional charge has to be limited to calls that not only originate and terminate within the same local service area, but that do not leave that local service area in the first instance. Clearly that is the proposition for which *TSR Wireless* stands. In resolving Issue 36, the Authority should conclude that, while WorldCom can have a single Point of Interconnection (or two) in a LATA if it chooses, WorldCom remains financially responsible for the facilities necessary to carry calls that originate and terminate in a local calling area to that distant Point of Interconnection. That is the only fair and equitable result.

Issue 37: **Should BellSouth be permitted to require WorldCom to fragment its traffic by traffic type so it can interconnect with BellSouth's network? (Attachment 4, Section 2.2.7).**

WorldCom has proposed language that purports to prohibit BellSouth from fragmenting trunk groups by traffic type. WorldCom's Attachment 4, Section 2.2.7. In other words, under WorldCom's proposal, BellSouth would be prohibited from having separate trunks that carry local and toll traffic, even though BellSouth maintains such separate trunk groups for itself. BellSouth should be allowed to provision its trunks in any technically feasible and nondiscriminatory manner without regard to the arbitrary conditions that WorldCom seeks to impose.

In particular, WorldCom's proposed language would permit WorldCom to combine local, transit and intraLATA toll traffic on the same trunk group. Olson, Dir. at 15. Transit traffic is traffic that originates on one carrier's network, is switched and transported by BellSouth, and then is sent to another carrier's network. Scollard, Hearing Tr. at 429. With respect to transit traffic, separate trunk groups are essential in order to ensure proper billing. Scollard, Hearing Tr. at 433, 434-35. With respect to transit traffic, BellSouth is neither the originating nor terminating carrier and thus must be able to segregate such traffic in order to ensure that it only bills the originating carrier for the transiting function performed by BellSouth. WorldCom has offered no proposal to address BellSouth's billing concerns. The Authority should reject WorldCom's position on this issue.

Issue 39: How should Wireless Type 1 and Type 2A traffic be treated under the Interconnection Agreements? (Attachment 4, Section 9.7.2).

This issue concerns the treatment of wireless traffic. Wireless traffic is "transit traffic" in that in originates on one party's network, is switched and transported by a second party and then is sent to a third party's network. Cox, Dir. at 42. The party that switches the call from the first party to the third party is due payment for that function. *Id.* However, wireless traffic is unlike other transit traffic in that, in many cases, when a wireless company is one of the three parties, neither BellSouth, the wireless company nor the CLEC has the necessary system capabilities required to bill each other using the normal Meet Point Billing process. *Id.* at 42-43.

Wireless Type 1 traffic is wireless traffic that uses a BellSouth NXX. Cox, Dir. at 43. In other words, the wireless carrier does not have its own NXX, but uses numbers in an NXX assigned to BellSouth's land-line service. In this case, the Wireless Type 1 Traffic is indistinguishable from BellSouth-originated or BellSouth-terminated traffic from a Meet Point

Billing perspective. *Id.* Therefore, for routing and billing purposes, BellSouth proposes to treat this transit traffic as BellSouth-originated or terminated traffic.

Wireless Type 2A traffic is wireless traffic that is distinguishable from BellSouth-originated or terminated traffic because the wireless carrier has distinct NXXs assigned for its use. Cox Dir. at 44. However, as discussed above, the necessary system capabilities required to bill through the Meet Point billing process must be in place. *Id.* Such arrangements are necessary in order for BellSouth to send the appropriate billing records to the wireless carrier and to the CLEC. Therefore, until such arrangements are used by the wireless carriers, BellSouth must continue to treat Wireless Type 2A transit traffic as BellSouth originated or terminated traffic.

It is not clear what the dispute really is between the parties with respect to this issue. WorldCom acknowledges that BellSouth does not have the capability today to distinguish Wireless Type 1 traffic from its own traffic and that the Meet Point billing capability for Wireless Type 2A traffic does not presently exist. Price, Hearing Tr. at 205. BellSouth's proposal for the treatment of wireless traffic under these circumstances is reasonable, and WorldCom never articulates a satisfactory reason why that proposal should not be adopted.

Issue 40: 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? (Attachment 4, Section 9.3.3).

This issue concerns the appropriate treatment of phone-to-phone Internet Protocol ("IP") Telephony. IP Telephony is, in very simple and basic terms, a mode or method of completing a telephone call. The word "Internet" in Internet Protocol telephony refers to the name of the protocol; it does not mean that the service necessarily uses the World Wide Web. Internet protocol, or any other protocol, is an agreed upon set of technical operating specifications for

managing and interconnecting networks. The Internet protocol is the language that gateways use to talk to each other. It has nothing to do with the transmission medium (wire, fiber, microwave, etc.) that carries the data packets between gateways, but rather concerns gateways, or switches, that are found on either end of that medium. Cox, Dir. at 45.

In the issue, Bellsouth is concerned only with traffic that is long distance, phone-to-phone IP telephony. Cox, Reb. at 21. In other words, this issue does not include computer-to-computer or computer-to-phone traffic. Moreover, Bellsouth is not seeking to recover switched access charges for local calls using IP telephony. Cox, Reb. at 22. BellSouth simply wants the Authority to determine that reciprocal compensation is not due for what is undeniably a long distance call. The type of network that is used to transport the call between the calling party and the called party is irrelevant. But, WorldCom will not agree that, for example, a call from Nashville to Atlanta using IP telephony should be treated as a long distance call. Price, Hearing Tr. at 208. The Authority should adopt BellSouth's position on this issue and conclude that local calls, regardless of the technology used to complete them, are subject to reciprocal compensation and that long distance calls, regardless of the technology used to complete them, are not subject to reciprocal compensation

Issue 42: Should WorldCom be permitted to route access traffic directly to BellSouth end offers or must it route such traffic to BellSouth's access tandem? (Attachment 4, Section 2.3.8).

BellSouth has proposed language making clear that WorldCom will not "deliver switched access to BellSouth for termination except over WorldCom ordered switched access trunks and facilities." In other words, WorldCom should not be permitted to send access traffic under the guise of local traffic. WorldCom has objected to this language for reasons that are not readily apparent, except perhaps to the extent WorldCom wants to avoid paying access charges.

This issue has only to do with ensuring the payment of switched access charges. BellSouth's ability to properly route and bill switched access traffic between BellSouth and IXCs is dependent upon established switched access processes and systems. Cox, Reb. at 24. Further, BellSouth's ability to properly route and bill switched access traffic between IXCs and Independent Telephone Companies and other CLECs subtending BellSouth access tandems also depends on these switched access processes and systems. *Id.*

As Mr. Scollard explained, allowing WorldCom to terminate switched access traffic into BellSouth's network via non-access trunks and processes would eliminate BellSouth's ability to properly bill for this traffic.

> Each type of interconnection facility carries with it unique characteristics with regard to the recording of billing data for calls going across that facility. The plain truth is that when MCI sends a call across its local interconnection trunks, it is recorded in BellSouth's network as just that – a call originated from MCI's local customer and sent to BellSouth. Therefore, BellSouth cannot distinguish this access traffic from the other local traffic based on the call records. BellSouth would then be forced to factor the access traffic using the Percent Local Usage (PLU) factors to determine what should be billed. This subjects more traffic to the factors than currently is the case which leads to greater inaccuracies in the bills to MCI.

Scollard, Reb. at 2.

WorldCom insists that requiring it to route access traffic on switched access trunks will impair WorldCom's ability to offer competitive tandem services. Price, Dir. at 40. The fact that WorldCom may want to offer a competitive tandem service does not entitle WorldCom to build out its interexchange access network at TELRIC-based unbundled network element prices. As the FCC has made clear, CLECs are entitled to use shared or dedicated transport as an unbundled network element to provide interstate exchange access services only to those customers to whom the CLEC "provides local exchange service." *Third Order on Reconsideration and Further*

Notice of Proposed Rulemaking, CC Docket No. 96-98 and CC Docket 95-185, ¶ 38 (Aug. 18, 1997). However, WorldCom apparently wants to require BellSouth to interconnect at unbundled network element prices for the completion of long distance traffic to customers to whom WorldCom does not even provide local exchange service, which the FCC rules do not permit.

Ultimately, Mr. Price admitted that, with this issue, WorldCom is attempting to reduce the cost of doing business for its long distance affiliate:

> Q. And it's certainly, at least partly, MCI's desire to provide access service to its own long-distance affiliate, correct?
>
> A. Yes.
>
> Q. Now, the long-distance company of MCI purchases the ability to get to the end office, and that's called – that's an access service, correct?
>
> A. Yes, it is.
>
> Q. It's a retail price for that, right? Well, it's a non-UNE price, correct?
>
> A. Thank you for that clarification. That helps. Yes, I agree with that.
>
> Q. So aren't you simply trying to substitute a non-UNE price for the same service with a UNE price for your own affiliate?
>
> A. Yes, I think that's a fair way to put it. I think that one of the goals of the Telecommunications Act was for carriers to find new and novel ways to compete, and if the Congress and the FCC had some specified types of competition that they wanted to say, "this is what you can do, and any other competition you can't do," then I guess they would have probably chosen to write the Act and the enabling rules a little bit differently. But, I mean, the whole notion of opening up the market to competition is to encourage people to do the sort of thinking-out-of-the box kind of thing.
>
> If we can obtain facilities from BellSouth for which BellSouth is fairly compensated and then use those facilities to essentially compete with another service that BellSouth has, I don't see anything wrong with that at all.

Price, Hearing Tr. at 210-11.

If WorldCom were to perform the tandem and transport functions for a number of carriers and send that access traffic to BellSouth via WorldCom's local interconnection trunks, how would BellSouth know which carriers to bill the appropriate access charges? WorldCom has no answer to this fundamental question and gives absolutely no assurances that BellSouth would be able to bill access charges accurately under WorldCom's proposal. This is reason enough for the Authority to reject WorldCom's position and adopt BellSouth's proposed language.

Issues 45, 48: How should third party transit traffic be routed and billed by the parties? (Attachment 4, Sections 2.3.1, 9.5.2 and 9.5.3).

This issue concerns the routing and billing of third party local transit traffic by the parties. While BellSouth is willing to route local transit traffic, WorldCom wants BellSouth to pay reciprocal compensation for such traffic, which BellSouth is not obligated to do. Cox, Reb. at 26. For example, when an AT&T customer calls a WorldCom customer and that call transits BellSouth's network, WorldCom wants BellSouth to pay WorldCom reciprocal compensation for the call on AT&T's behalf and then collect the money from AT&T. Likewise, when an WorldCom customer calls an AT&T customer and that call transits BellSouth's network, WorldCom wants BellSouth to pay AT&T on WorldCom's behalf and then collect the money from WorldCom. In other words, WorldCom wants BellSouth to finance all reciprocal compensation payments that may be owed to or by WorldCom by other carriers for traffic that BellSouth is neither originating nor terminating.

WorldCom apparently wants this type of arrangement so WorldCom does not have to consummate an interconnection agreement with the originating carrier. However, Section 251(b) of the 1996 Act requires all LECs to negotiate interconnection contracts to set the terms and conditions of traffic exchange. If a CLEC desires that BellSouth perform the transit function, the CLEC is responsible for ordering from and payment to BellSouth for the applicable transiting

interconnection charges. Additionally, the CLEC is responsible for negotiating an interconnection agreement with other CLECs with which they intend to exchange traffic. BellSouth should not be asked to relieve WorldCom of its obligations under the 1996 Act.

Issue 46: Under what conditions, if any, should the parties be permitted to assign NPA/NXX's code to end users outside the rate center which the NPA/NXX's is homed? (Attachment 4, Section 9.4.6; Section 9.10).

This issue concerns the inter-carrier compensation due when a telephone number which is associated with a particular rate center is assigned to a customer who is physically located outside that rate center or even outside of the state. Cox, Dir. at 55. Notwithstanding WorldCom's claims to the contrary, BellSouth is not attempting to restrict WorldCom's ability to allocate numbers out of its assigned NPA/NXX codes to its end users. However, WorldCom should use its NPA/NXXs in such a way that BellSouth can distinguish local traffic from intraLATA toll traffic and interLATA toll traffic for BellSouth originated calls. *Id.* Furthermore, WorldCom should not be permitted to collect reciprocal compensation for calls terminating to a customer physically located outside of the local calling area, since such a call would not "originate and terminate" within the local calling area so as to trigger the obligation to pay reciprocal compensation. *See* 47 C.F.R. § 51.701(a).

BellSouth is concerned that, through the NPA/NXX assignment issue, WorldCom will attempt to collect reciprocal compensation for calls that are not local and are in fact long distance. The clearest method of explaining the dispute is to use the illustration discussed by BellSouth witness Cox in her Direct Testimony at pp. 55-57.

Assume WorldCom is assigned NPA/NXX 423/336 and WorldCom has chosen to assign 423/336 to the Copper Basin rate center. When a BellSouth end user in Copper Basin calls a WorldCom customer in Copper Basin, who has any number in the 423/336 code, the BellSouth

customer is not charged for a long distance call. What if WorldCom gave telephone number 423-336-2000, for example, to its customer in Chattanooga? When the BellSouth customer in Copper Basin calls 423-336-2000, BellSouth would treat the call as if its Copper Basin customer made a local call. However, in reality, BellSouth hands off the call to WorldCom and WorldCom carries the call to its end user in Chattanooga. The end points of the call are in Copper Basin and Chattanooga. More extreme, WorldCom could assign another telephone number, 423-336-3000 to its customer in New York. If a BellSouth customer in Cooper Basin were to call the 423-336-3000 number, the end points of the call are in Copper Basin and New York. In neither case are these calls "local." Rather, these calls are long distance to which reciprocal compensation should not apply.

In the BellSouth-Intermedia arbitration, the Authority addressed this same issue and concluded:

> The designation of home local tandem for each Intermedia NPA/NXX is necessary to allow the parties to require reciprocal compensation payments, which are appropriate if a call terminates in the local calling area where the NPA/NXX is homed, or access charges, which are appropriate if the traffic terminates in a local calling area other than where the NPA/NXX is homed. The choice of a home local tandem necessarily defines a BellSouth local calling area, which in turn will define whether reciprocal compensation or access charges are due for a call, even when Intermedia uses the same NPA/NXX codes in several BellSouth local calling areas.

Intermedia Order, at 47-48. The Authority should reach the same conclusion in this docket.

According to WorldCom, the type of call at issue is akin to BellSouth's foreign exchange (FX) service. Price, Hearing Tr. at 225-26. However, even assuming that were true, the FCC has firmly held that FX service, to the extent it involves a call originating and terminating in two different LATAs, is interstate in nature. *New York Telephone Co.--Exchange System Access Line Terminal Charge for FX and CCSA Service*, Memorandum Opinion and Order, 76 F.C.C. 2d 349

(1980). In that case, petitioners challenged an intrastate New York Telephone tariff imposing a charge on the local exchange service used by out-of-state customers of FX and Common Control Switching Arrangement (CCSA) services. The services allowed an end user in New York to call a customer located out of state by dialing a local number and paying local rates. For example, an FX service purchased by a Washington, D.C. business would allow a New York City resident to call that business's out-of-state premises by dialing the local New York City number associated with the local exchange portion of service. *Id.* at 351.

Notwithstanding the fact that the originating caller could access the service by dialing a local number and paying local charges, and despite the fact that the FX customer had to purchase local exchange service from New York Telephone, the FCC concluded that the service as a whole was interstate and thus subject to FCC jurisdiction. *Id.* at 352. Moreover, the FCC concluded that the Communications Act did not "reserve to the state jurisdiction over the local exchange portion of interstate services." *Id.* Thus, the fact that a New York customer can call a local number to reach an out-of-state business in Washington does not alter the interstate nature of the call.

More recently, in considering this same issue in a case involving one of WorldCom's subsidiaries, the Maine Public Utilities Authority concluded that a service utilizing the assignment of NPA/NXX codes to customers outside the local calling area was plainly an interexchange service. Order, *In re: Investigation into Use of Central Office Codes (NXXs) by New England Fiber Communications, LLC d/b/a Brooks Fiber*, Docket No. 98-758 (Me. P.U.C. June 30, 2000), at p. 15.

Even more recently, two other state commissions have considered the issue and concluded that reciprocal compensation is not owed for calls made to telephone numbers

associated with a particular rate center but assigned to customers physically located outside that rate center. For example, in a docket opened to consider several issues related to reciprocal compensation, the Texas Public Utilities Authority stated that reciprocal compensation is not due when the CLEC uses such an arrangement, which the Texas Authority equated to foreign-exchange or FX service: "The Authority finds that to the extent that FX-type and 8YY traffic do not terminate within a mandatory local calling scope, they are not eligible for reciprocal compensation." Arbitration Award, *Proceeding to Examine Reciprocal Compensation Pursuant to Section 252 of the Federal Telecommunications Act of 1996*, Docket No. 21982 (T.P.U.C. July, 2000), at p. 17 (copy attached as Exhibit 1). The Illinois Commerce Authority has reached the same conclusion: "FX traffic does not originate and terminate in the same local rate center and therefore, as a matter of law, cannot be subject to reciprocal compensation." Arbitration Decision, *Level 3 Communications, Inc.'s Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois*, Docket No. 00-0332 (Ill. Commerce Comm'n Aug. 30, 2000), at p. 9 (copy attached as Exhibit 2).[13]

There is simply no authority, and WorldCom cites none, for the proposition that a telephone call originated in one local calling area that terminates outside that local calling area is subject to the payment of reciprocal compensation. Such calls are simply not "local," as all the authorities to consider the issue uniformly hold.

Moreover, resolution of this issue has nothing to do with promoting local competition. Local service competition is only created when WorldCom is offering local service to its end

[13] Both the Illinois and Texas Commissions concluded that the service at issue was equivalent to FX service, while the Maine Authority held that the service was more closely akin to 800 service, even though it had parallels to FX service. However, this is a distinction without a difference. In either case, a call originated by a customer in one local calling area to another customer assigned a telephone number associated with that local calling

users. Here, the service at issue is offered to BellSouth's local service customers. When WorldCom allows a BellSouth customer in Copper Basin to call toll free to a WorldCom customer in Chattanooga who has been assigned a telephone number associated with Copper Basin, no local competition is created in Copper Basin. In such a case, WorldCom has no contact or business relationship with the BellSouth customer for use of this service. Even though WorldCom is not providing anything that even remotely resembles local service, WorldCom insists it should be paid reciprocal compensation for such an arrangement, which makes no legal or economic sense.

In short, the issue here is not whether WorldCom could offer an FX-type service to its own customers; it clearly can. The issue here is what will be the consequences of such an arrangement upon the compensation which WorldCom and BellSouth owe to each other. In no circumstance should such compensation involve the payment of reciprocal compensation.[14]

Issue 47: Should reciprocal compensation payments be made for ISP-bound traffic? (Attachment 4, Section 9.3.2, Part B, Section 80).

BellSouth's position regarding the payment of reciprocal compensation for calls that transit an Internet Service Provider is set out in BellSouth witness Cox's testimony. *See* Cox Dir. at 65-66; Cox Reb. at 32-33. In that testimony, Ms. Cox explains that such calls are not local calls, but rather are interstate calls that are not subject to reciprocal compensation.

As Ms Cox noted, BellSouth acknowledges that the Authority has addressed this issue in several other arbitrations, including the NEXTLINK arbitration. In those cases, the Authority determined that the parties would pay reciprocal compensation for traffic that transited ISPs on

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area but physically located somewhere else does not "originate and terminate" in the local calling area so as to trigger the payment of reciprocal compensation.

[14] Under BellSouth's proposal, the same rules that apply to WorldCom would apply to BellSouth. BellSouth would not expect WorldCom to pay reciprocal compensation for calls from WorldCom customers to BellSouth's FX customers.

an interim basis until the FCC issued its decision in the reciprocal compensation cases pending before it, subject to a true up based on that FCC decision.

The FCC has now acted. On April 27, 2001, it issued its Order on Remand and Report and Order, FCC 01-131, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98 (released April 27, 2001) and *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68 (released April 27, 2001) ("Order on Remand"). In its Order on Remand, the FCC unequivocally declared that ISP-bound traffic was intended by Congress to be excluded from the reciprocal compensation requirements of the 1996 Act. (Order on Remand, at paragraph 34). The FCC further declared that "[b]ecause we now exercise our authority under section 201 to determine the appropriate intercarrier compensation for ISP bound traffic, however, state commissions will no longer have authority to address the issue." (Order on Remand, at paragraph 82). Thus, the FCC has now declared that this traffic is not subject to reciprocal compensation payments and has pre-empted the Authority. Therefore, BellSouth respectfully concludes that the Authority does not have jurisdiction to require the payment of reciprocal compensation for ISP-bound traffic and this issue cannot be further addressed in this proceeding.

Issue 51: Under what circumstances is BellSouth required to pay tandem charges when WorldCom terminates BellSouth local traffic? (Attachment 4, Section 10.4.2).

The Authority has considered the issue of the tandem interconnection rate in several prior arbitrations, including the Intermedia Arbitration, where the Authority concluded that a CLEC must meet both a functionality and geographic comparability test. *Intermedia Order* at 11. There is no dispute that WorldCom's switches do not perform a tandem function.

Nevertheless, BellSouth acknowledges that the Federal Communications Commission ("FCC"), in its recent Notice of Proposed Rule Making, *In the Matter of Developing a Unified Intercarrier Compensation Regime,* CC Docket No. 01-92 (rel. April 27, 2001) ("NPRM"), addressed, in language that appears to support WorldCom's position, the issue of whether a CLEC must show that its switch performs the tandem function in order to qualify for the tandem interconnection rate. In paragraph 105 of the NPRM, the FCC stated:

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

More recently, the FCC responded to an inquiry from Sprint PCS in which it reiterated its view expressed in the NPRM that a CLEC may receive the tandem interconnection rate by meeting the geographic comparability test. *See* Letter to Sprint PCS from Thomas J. Sugrue Chief, Wireless Telecommunications Bureau and Dorothy T. Attwood Chief, Common Carrier Bureau (May 9, 2001).

The recent statements by the FCC appear to undercut BellSouth's interpretation of Section 51.711(a)(3) on the issue of tandem functionality. It is worth noting, however, that the FCC's recent interpretation of that rule is inconsistent with the FCC's earlier statements regarding this issue and inconsistent with court decisions[15] and other state commission

[15] Several federal court and other state commission decisions have held that the functions performed by another carrier's switch should be considered in determining whether that carrier is entitled to receive compensation for end-office, tandem, and transport elements in transporting terminating traffic. *See, e.g., U.S. West Communications, Inc. v. Minnesota Public Utilities Authority*, 55 F. Supp. 2d at 977; *U.S. West Communications, Inc. v. Public Service Authority of Utah*, 75 F. Supp. 2d 1284, 1289 (D. Utah 1999) (affirming commission requirement that U.S.

decisions,[16] including this Authority's decisions, requiring CLECs to demonstrate that its switches perform a tandem function. The FCC did not expressly invalidate any prior state commission ruling on this issue.

While it appears that the FCC does not now require a tandem functionality test to be met, a CLEC still must meet the geographic comparability test, which WorldCom does not meet, as discussed below.

The FCC rules require that "symmetrical rates are rates that a carrier other than an incumbent LEC assesses upon an incumbent LEC for transport and termination of local telecommunications traffic equal to those that the incumbent LEC assesses upon the other carrier for the same services." 47 C.F.R. § 51.711(a)(1). Also, the FCC stated that "[w]here the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate." 47 C.F.R. § 51.711(a)(3).

West compensate Western Wireless at the tandem switching rate after concluding that Western Wireless's "switches perform comparable functions and serve a larger geographic area"); *MCI Telecommunications Corp. v. Illinois Bell Telephone Company d/b/a Ameritech Illinois, Inc., supra.* (in deciding whether WorldCom was entitled to the tandem interconnection rate, the commission correctly applied the FCC's test to determine whether WorldCom's switch "performed functions similar to, and served a geographical area comparable with, an Ameritech tandem switch"); *U.S. West Communications v. MFS Intelenet, Inc.*, 193 F.3d 1112, 1124 (9th Cir. 1999)("the [state commission] properly considered whether MFS's switch performs similar functions and serves a geographic area comparable to US West's tandem switch.")

[16] In an arbitration involving MCI and Sprint (Docket No. 961230-TP), the Florida Public Service Commission determined that "MCI is not entitled to compensation for transport and tandem switching unless it actually performs each function." Order No. PSC-97-0294-FOF-TP, issued March 14, 1997. Earlier, in its Order in the Metropolitan Fiber Systems of Florida, Inc. ("MFS") and Sprint arbitration case in Docket No. 960838-TP, the FPSC determined that "MFS should not charge Sprint for transport because MFS does not actually perform this function." FPSC Order No. PSC-96-1532-FOF-TP, issued December 16, 1996. *See also* Decision 99-09-069, *In re: Petition of Pacific Bell for Arbitration of an Interconnection Agreement with MFS/WorldCom*, Cal. Pub. Utils. Comm'n Application 99-03-047, 9/16/99, at 16 ("a party is entitled to tandem and common transport compensation only when the party actually provides a tandem or common transport function.")

In an attempt to demonstrate geographic comparability, WorldCom submitted maps purportedly indicating the geographic area that its switches in Memphis and Knoxville can serve. However, WorldCom submitted no evidence of the geographic area its switches actually serve. WorldCom offered no evidence of the number of customers it serves, or the location of those customers. Price, Hearing Tr. at 228-29. In fact, Mr. Price stated that he believed such evidence to be irrelevant. *Id.*

Although Mr. Price may not see the relevance of the information he failed to provide to the Authority, courts have a different view. This is clear from the decision of the federal district court in *MCI Telecommunications Corp. v. Illinois Bell Telephone Company d/b/a Ameritech Illinois, Inc.*, 1999 U.S. Dist. LEXIS 11418, *19 (N.D. Ill, June 22, 1999). In that case, MCI argued that it should be compensated at the tandem rate for its switch in Bensonville, Illinois. The Illinois Commerce Commission ("ICC") rejected MCI's argument, finding that MCI had failed to provide sufficient evidence to support a conclusion that it was entitled to the tandem interconnection rate.

In affirming the ICC on the tandem switching issue, the federal district court found that MCI's "intentions for its switch" were "irrelevant." According to the court, MCI was required to identify the location of its customers and the geographical area "actually serviced by WorldCom's switch," which WorldCom had utterly failed to do. Id. at *22-23 n.10. The district court reasoned that:

> The "Chicago area" is large, yet MCI offered no evidence as to the location of its customers within the Chicago area. Indeed, an MCI witness said that he "doubted" whether MCI had customers in every "wire center territory" within the Chicago service area. WorldCom's customers might have been concentrated in an area smaller than that served by an Ameritech tandem switch or MCI's customers might have been widely scattered over a large area, which raises the question whether provision of service to two different customers constitutes service to the entire geographical area

> between the customers. These are questions that MCI could have addressed, but did not. . . . In short, MCI offered nothing but bare, unsupported conclusions that its switch currently served an area comparable to Ameritech tandem switch or was capable of serving such an area in the future. The ICC's determination that "MCI has not provided sufficient evidence to support a conclusion that it is entitled to the tandem interconnection rate" was not arbitrary and capricious.

Id. at *22-23 (emphasis added). The district court's reasoning applies equally here and is fatal to WorldCom's claim that its switch serves a comparable geographic area. The Authority should deny WorldCom's request for tandem switching compensation because WorldCom did not prove that its switch is actually serving a geographic area comparable to BellSouth's switch.

Issue 52: Should BellSouth be required to pay access charges to WorldCom for non-presubscribed intraLATA toll calls handled by BellSouth? (Attachment 4, Section 9.2.2).

This issue involves the payment of access charges for intraLATA calls made by non-BellSouth customers that are handled by BellSouth. BellSouth should not be required to pay WorldCom access charges under such circumstances. Instead, BellSouth proposes that, for non-presubscribed intraLATA traffic, the originating LEC should compensate the terminating LEC at the intrastate switched access rate levels for the services provided. This proposal is based upon the rationale that the originating LEC collects its intraLATA toll rates from its originating end user, and then compensates the terminating LEC for services provided in terminating the call.

When an end user served by an Independent Telephone Company ("ICO") originates an intraLATA toll call transported by BellSouth to WorldCom, BellSouth is jointly providing the toll call with the ICO. When an ICO customer calls a WorldCom customer, the transaction should be between the ICO and WorldCom. In Tennessee, ICOs do not send call records to BellSouth. Therefore, although WorldCom wants to bill BellSouth instead of the ICO, BellSouth has no way to validate the bill. These arrangements have been in effect since the de-pooling of

intraLATA toll by incumbent local exchange carriers and the establishment of intraLATA toll competition by the Authority. Cox Dir. at 75.

WorldCom argues that BellSouth should pay access charges to WorldCom when BellSouth is the intraLATA toll carrier. Price, Dir. at 46. Although BellSouth may receive the intraLATA toll revenue in this situation, BellSouth has no record to indicate to what calls the revenue is applicable. Cox, Reb. at 37. The call could be an intraLATA toll call or an extended area call. The ICO has the call record to distinguish the call. *Id.* at 38, WorldCom should bill the ICO for terminating access. Thereafter, the ICO will bill BellSouth to recover whatever access charges were paid to WorldCom. *Id.* The Authority should reject WorldCom's position on this issue.

Issue 55: Should BellSouth be required to provide a response, including a firm cost quote, within 15 days of receiving a collocation application? (Attachment 5, Section 2.1.1.3).

The Authority recently decided the issue of collocation intervals in the *Intermedia Order*. In that decision (at pp. 14-16), the Authority adopted the national standard intervals adopted by the FCC in its Order on Reconsideration and Second Notice of Proposed Rulemaking in *In re Deployment of Wireline Services Offering Advanced Telecommunications Capability* CC Docket No. 98-147, FCC 00-297, 15 FCC Rcd. 17,806 (Aug. 10, 2000).

Since the Authority's deliberations in the Intermedia-BellSouth arbitration, BellSouth sought and obtained a waiver from certain provisions of the *Collocation Reconsideration Order*. *See* Order No. DA 01-475, *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147 (rel. Feb. 21, 2001) ("*BellSouth Waiver Order*"). In granting BellSouth's request for a waiver, the FCC noted that the petitions for reconsideration filed by Verizon, SBC, and Qwest (who were also granted waivers) of the FCC's

collocation intervals had "greatly expand[ed] the record on reasonable physical collocation intervals beyond what was available to the [FCC] when it adopted the *Collocation Reconsideration Order*." *See BellSouth Waiver Order*, at ¶ 7. Moreover, the FCC stated that "this greatly expanded record countenances pause before we insist on absolute compliance with that *Order*." *Id.* Among other issues presented to the FCC was the issue of CLECs requiring forecasts in order to assist ILECs in managing their collocation space and planning for collocation. At the hearing, Mr. Bomer stated that WorldCom did not object to providing BellSouth with forecasts. Bomer, Hearing Tr. at 88.

The FCC's doubts about the reasonableness of the intervals it established in the *Collocation Reconsideration Order* cast the same doubts on the Authority's decision to adopt those intervals in the *Intermedia Order*. Therefore, while BellSouth expects that the Authority will reach the same decision on collocation intervals that it reached in the *Intermedia Order*, BellSouth respectfully suggests that the Authority also require WorldCom to provide BellSouth with forecasts of its collocation needs as Mr. Bomer agreed WorldCom would be willing to do. Moreover, the Authority should open a generic docket to consider collocation intervals and other collocation issues. A generic proceeding would permit the Commission to consider more recent developments at the FCC on collocation issues and the positions of all interested parties.

Issue 56: Should BellSouth be required to provide DC power to adjacent collocation space? (Attachment 5, section 3.4).

At issue in this item is WorldCom's demand that BellSouth provide DC power (rather than AC power) to an adjacent collocation arrangement.[17] The FCC rules do not require BellSouth to provide DC power to an adjacent collocation arrangement. 47 C.F.R. 51.323 (k)(3)

[17] An adjacent collocation arrangement would only be used where collocation space within BellSouth's central office had been exhausted. Bomer, Hearing Tr. at 88.

only requires that BellSouth provide a power source to an adjacent arrangement, it does not specify the type of power. Moreover, WorldCom's proposal that BellSouth run DC power to an adjacent collocation space is inconsistent with the National Electrical Safety Code. Milner, Dir. at 23.

In making adjacent collocation available, BellSouth will do so in a nondiscriminatory manner (that is, all CLECs obtaining adjacent collocation will be treated in the same manner) and at parity with itself. Milner, Reb. at 28. At all of BellSouth's remote site locations, AC power runs to the site and BellSouth then "converts" the AC power to DC power inside the remote site location. DC power for adjacent collocation arrangements. *Id.* Mr. Bomer admitted that BellSouth has offered to provide WorldCom with power to its adjacent collocation arrangements in the same manner that BellSouth provides power to its own remote terminals. Bomer, Hearing Tr. at 89-90. WorldCom has offered no legitimate basis for this Authority to order BellSouth to treat WorldCom differently than BellSouth treats itself and other CLECs.

Issue 61: What rates, terms and conditions should govern the provision of DC power to WorldCom's collocation space? (Attachment 5, Section 7.18.6).

The issue in dispute here is manner in which the rate for DC power should be calculated. The parties appear to agree that the rates for DC power should be those established by the Authority. But, WorldCom and BellSouth disagree on whether that per amp charge should be applied to the fused capacity BellSouth is required to provide to WorldCom or if it should be applied only to the capacity used by WorldCom. BellSouth believes that the per amp charge should apply to the fused capacity (rated power consumption) for the equipment it installs in its collocated spaces, as is the case with every other CLEC collocated with BellSouth. Milner, Dir. at 26.

BellSouth's Collocation Handbook (Issue 8) states "Charges for -48V DC power are assessed per ampere per month based upon the certified vendor engineered and installed power feed fused ampere capacity." BellSouth sizes the power plant capacity that serves collocated equipment based on the power requirement of the equipment specified in WorldCom's collocation application. Equipment manufacturers state the rated power consumption for its equipment and the power plant is built accordingly. Rather than measuring power consumption, BellSouth simply applies a factor to the rated power consumption provided by the equipment manufacturer in order to determine power costs. Milner, Dir. at 27.

In other arbitrations, WorldCom argued that it should only pay for the power it uses. BellSouth offered to resolve this issue by having WorldCom pay for whatever meters would have to be installed to measure WorldCom's power consumption and by cooperating with WorldCom to determine an appropriate billing process. Bomer, Hearing Tr. at 100-01. But now, it is WorldCom's position that metering would be "cumbersome." Bomer, Hearing Tr. at 101. Instead, WorldCom would like to be billed a flat rate based on the equipment's rated capacity ("steady state"), whether or not the actual power consumption mirrors that capacity. Bomer, Hearing Tr. at 103-04. The Authority should reject WorldCom's proposal on this issue and order the parties to implement the same procedure adopted in the BellSouth-NEXTLINK arbitration on this issue.

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? (Attachment 5, section 7.19).

The Authority should resolve this issue in the same manner described in Issue 55, above, except with respect to virtual collocation, for which BellSouth believes intervals of 50 calendar days (under ordinary conditions) and 75 calendar days (under extraordinary conditions).

Issue 63: **Is WorldCom entitled to use any technically feasible entrance cable, including copper facilities? (Attachment 5, section 7.21.1).**

This issue concerns WorldCom's demand that it be permitted to use copper entrance cable. Copper cable currently enters BellSouth central offices, which is associated with BellSouth loop distribution facilities. However, entrance facilities are considered to be interconnection trunks, and all of BellSouth's interconnection trunks entering BellSouth central offices are optical fiber facilities. The FCC rules regarding an ILEC's collocation obligation under the Act state that the ILEC should only accommodate copper entrance facilities if such interconnection is first ordered by the state commission. 47 C.F.R. 51.323 (d)(3). Undoubtedly, the FCC was concerned that permitting CLECs to place copper interconnection facilities would exhaust the space available for interconnection trunks entering ILEC central offices. Neither WorldCom nor any other CLEC should be permitted to place copper entrance facilities since this would accelerate the exhaust of entrance facilities at BellSouth's central offices at an unacceptable rate. The only exception is with adjacent space collocation arrangements as defined by the FCC in 47 CFR § 51.323(k)(3).

Issue 64: **Is 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 WorldCom when space becomes available? (Attachment 5, section 7.21.2).**

Under the FCC rules BellSouth is required to provide at least two interconnection points at a premises "at which there are at least two entry points for the incumbent LEC's cable facilities, and at which space is available for new facilities in at least two of those entry points." 47 C.F.R. § 51.323(d)(2). BellSouth has agreed to provide information as to whether there is more than one entrance point for BellSouth's cable facilities. In the event that dual entrance points exist but space is not available, BellSouth will provide documentation, upon request, and

at WorldCom's expense, so that WorldCom can verify that no space is available for new facilities. 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. Milner Dir. at 31. However, BellSouth should not be required to incur the time and expense of maintaining a waiting list simply because dual entrance facilities may not be available.

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? (Attachment 6, Section 2.5).

WorldCom has proposed language that would purport to control the disposition of BellSouth's property. Specifically, WorldCom's proposed language would purport to prohibit BellSouth from conveying property unless it does so subject to any licenses granted to WorldCom such as for use of BellSouth's poles, ducts or conduit. Price, Dir. at 65.

WorldCom's proposal is not reasonable The fact that BellSouth has granted WorldCom a license to make use of BellSouth's facilities does not authorize WorldCom to restrict BellSouth's sale or conveyance of BellSouth's property. If the granting of such a license to use property created a real property right in favor of WorldCom, the value of that license would be much greater. BellSouth should retain the right to convey the property (without the burden of WorldCom's license) to a third party, as long as BellSouth gives WorldCom reasonable notice of the pending sale. WorldCom's proposed language should be rejected.

Issue 68: Should BellSouth require that payments for make-ready work be made in advance? (Attachment 6, Sections 4.7.3 and 5.6.1).

BellSouth has proposed language that would obligate WorldCom to pay for make ready work in advance. Moreover, BellSouth has proposed to schedule make-ready work for completion in a nondiscriminatory manner on a first come, first served basis at parity with

BellSouth. BellSouth also has proposed to begin the process of scheduling make-ready work within twenty days of receipt of payment from WorldCom, unless the period is extended for good cause. BellSouth's proposals are commercially reasonable and will ensure that all CLECs are treated in a nondiscriminatory manner with respect to such work. Accordingly, this language should be included in the parties' interconnection agreement.

Issue 80: Should BellSouth be required to provide an application-to-application access service order inquiry process? (Attachment 8, Sections 2.1. 1.2, 2.2.3.).

WorldCom's attempt to require that BellSouth maintain an interexchange ("IXC") process to handle local service requests should be rejected by this Authority. As WorldCom testified, the access service request ("ASR") process is a method used by IXC carriers to order facilities. Lichtenberg, Hearing Tr. at 60. The national standard for ordering UNEs and resale services is through the submission of an [local service request] LSR, not an ASR, however. Pate, Reb. at 5. Therefore, not only does WorldCom seek to leverage its experience as an IXC provider by continuing to use the ASR process to order certain UNEs, it also desires that BellSouth add additional functionality to the ASR process.

WorldCom completely disregards that BellSouth has in place a number of interfaces that allow electronic preordering functionality for UNEs. Instead, WorldCom's proposed language would not only require BellSouth to continue to accept ASRs, it would also require BellSouth to create additional functionality for WorldCom. Lichtenberg, Dir. at 12. Rather than build a new interface for WorldCom, the more appropriate resolution of this issue would be for WorldCom to use the existing LSR process.

Despite WorldCom's recognition that BellSouth seeks to treat orders for local service in a uniform manner, in essence WorldCom desires to pass on to BellSouth the responsibility of reformatting its access orders. This Authority should not permit WorldCom to circumvent the

uniform LSR system to gain a competitive advantage.

WorldCom's apparent dispute on this issue concerns its past ability to order DS-1 loop/transport functionality using an electronic Access Service Request ("ASR") process. WorldCom disregards key facts in attempting to compare the ASR process with BellSouth's retail systems. First, BellSouth must perform manual work on the orders submitted by WorldCom in this manner. Second, WorldCom was ordering special *access* services via the ASR process, not unbundled network elements. BellSouth had to manually convert WorldCom's special access services into the DS1 loop/transport combination. Pate, Hearing Tr. at 381. WorldCom's attempt to leverage its interexchange carrier experience at the expense of BellSouth should not be permitted

Issue 95: Should BellSouth be required to provide WorldCom with billing records with all EMI standard fields? (Attachment 8, section 5).

BellSouth provides billing records with Electronic Message Interexchange (EMI) fields in accordance with industry standards. BellSouth provides CLECs with usage records created using the EMI guidelines. BellSouth has a number of interfaces that allow WorldCom to receive these usage records. Each interface has been created using the guidelines contained in the EMI documents. BellSouth's proposed language dealing with usage recordings is to clarify the exact nature of how these records will be provided. The EMI guidelines call for differing types of records, record fields and data formats depending on the type of usage being recorded. For example, the EMI standards for usage record associated with meet point billing are far different than usage records exchanged between companies to be used to bill for a toll call reverse billed to the terminating number. Scollard, Dir. at 7.

The language proposed by BellSouth clearly defines which types of records will be included on the different interfaces and the processes used to create each. While not every field

contained in an EMI record may be provided, BellSouth provides every field that is required in order for WorldCom to bill its customers. Scollard, Dir. at 8. BellSouth's language is reasonable and should be adopted.

Issue 100: Should BellSouth operators be required to ask WorldCom customers for their carrier of choice when such customers request a rate quote or time and charges (Attachment 9, Section 2.2.2.12.)

BellSouth's operators respond to customer inquiries concerning rates and time charges. However, BellSouth's practice is to quote only BellSouth's rates. Customers who inquire about long distance rates are advised they should seek that information from their long distance carrier. If that carrier is an Operator Transfer Service (OTS) customer, BellSouth will offer to transfer the caller to their carrier so that the rate can be quoted immediately. WorldCom's proposed language would require BellSouth's operators to inquire as to the customer's carrier of choice and forward the call to that carrier every time a customer requests a rate quote or time and charges. Milner Dir. at 34. There are additional costs the BellSouth would incur to implement WorldCom's proposal. WorldCom has not offered to compensate BellSouth for such costs. The Authority should adopt BellSouth's position on this issue.

Issue 108: Should WorldCom be able to obtain specific performance as a remedy for BellSouth 's breach of contract? (Part A, Section 14.1).

Specific performance is a remedy to which WorldCom may or may not be entitled under Tennessee law. It is certainly not a requirement of Section 251 of the 1996 Act nor is it an appropriate subject for arbitration under Section 252. While certain services provided under the agreement may be unique, that is certainly not the case universally. For example, the parties are obligated to pay each other reciprocal compensation for the transport and termination of local traffic; there is nothing "unique" about such payments. To the extent WorldCom can show that

it is entitled to obtain specific performance under Tennessee law in particular circumstances, WorldCom can make this showing without agreement from BellSouth.

Issue 110: **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? (Part A, Section 20.1.1.1.).**

The issue in dispute concerns the extent to which BellSouth must protect WorldCom's confidential information. BellSouth is willing to take all *reasonable* actions necessary to ensure that WorldCom's confidential information "does not fall into the hands of BellSouth's retail operations." However, WorldCom's proposed language would ostensibly require that BellSouth "take all actions" to protect such information without any limitation and without specifying what actions WorldCom has in mind. WorldCom's proposal is fraught with difficulties and is an invitation to ongoing disputes. The only actions that BellSouth should be required to take are those that are "reasonable," which is the language BellSouth has proposed and which is the language this Authority should adopt.

The Authority also should reject WorldCom's proposed "rebuttable presumption" that BellSouth has done something wrong simply by virtue of the fact that WorldCom's confidential information may be disclosed. BellSouth is responsible under the law and will abide by the law in taking all reasonable measures to protect confidential information. However, WorldCom's demand that BellSouth prove that it was not the source of a release of confidential information is patently unreasonable because WorldCom's confidential information could be disclosed by any number of sources, including WorldCom itself as well as WorldCom's vendors and contractors. It is improper and absurd to assume that the disclosure of such information, by default, must have come from BellSouth.

CONCLUSION

For the reasons set forth above, BellSouth requests that the Authority adopt BellSouth's position on each issue enumerated above.

Respectfully submitted, this 6th day of July, 2001.

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CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2001, a copy of the foregoing document was served on the parties of record, via the method indicated:

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