

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

April 3, 2002

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 BELL SOUTH
TELECOMMUNICATIONS, INC.
CONCERNING INTERCONNECTION
AND RESALE UNDER THE
TELECOMMUNICATIONS ACT OF 1996**

DOCKET NO.
00-00309

INTERIM ORDER OF ARBITRATION AWARD

Table of Contents

I.	FACTUAL AND PROCEDURAL HISTORY	5
II.	<u>ISSUE 6</u> - SHOULD BELLSOUTH BE DIRECTED TO PERFORM, UPON REQUEST, THE FUNCTIONS NECESSARY TO COMBINE UNBUNDLED NETWORK ELEMENTS ("UNES") THAT ARE ORDINARILY COMBINED IN ITS NETWORK?	6
	A. POSITIONS OF THE PARTIES	6
	B. DELIBERATIONS AND CONCLUSIONS	7
III.	<u>ISSUE 8</u> - SHOULD UNBUNDLED NETWORK ELEMENT ("UNE") SPECIFICATIONS INCLUDE NON-INDUSTRY STANDARD, BELLSOUTH PROPRIETARY SPECIFICATIONS?	9
	A. POSITIONS OF THE PARTIES	9
	B. DELIBERATIONS AND CONCLUSIONS	9
IV.	<u>ISSUE 18</u> - IS BELLSOUTH REQUIRED TO PROVIDE ALL TECHNICALLY FEASIBLE UNBUNDLED DEDICATED TRANSPORT BETWEEN LOCATIONS AND EQUIPMENT DESIGNATED BY WORLDCOM SO LONG AS THE FACILITIES ARE USED TO PROVIDE TELECOMMUNICATIONS SERVICES, INCLUDING INTEROFFICE TRANSMISSION FACILITIES TO NETWORK NODES CONNECTED TO WORLDCOM SWITCHES AND TO THE SWITCHES OR WIRE CENTERS OF OTHER REQUESTING CARRIERS?	11
	A. POSITIONS OF THE PARTIES	11
	B. DELIBERATIONS AND CONCLUSIONS	12

V.	<u>ISSUE 28</u> - SHOULD BELLSOUTH PROVIDE THE CALLING NAME DATABASE ("CNAM") VIA ELECTRONIC DOWNLOAD, MAGNETIC TAPE, OR VIA SIMILAR CONVENIENT MEDIA?	13
	A. POSITIONS OF THE PARTIES	13
	B. DELIBERATIONS AND CONCLUSIONS.....	13
VI.	<u>ISSUES 34 AND 35</u> - IS BELLSOUTH OBLIGATED TO PROVIDE AND USE TWO-WAY TRUNKS THAT CARRY EACH PARTY'S TRAFFIC?	16
	A. POSITIONS OF THE PARTIES	16
	B. DELIBERATIONS AND CONCLUSIONS.....	16
VII.	<u>ISSUE 36</u> - 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?	18
	A. POSITIONS OF THE PARTIES	18
	B. DELIBERATIONS AND CONCLUSIONS.....	19
VIII.	<u>ISSUE 37</u> - SHOULD BELLSOUTH BE PERMITTED TO REQUIRE WORLDCOM TO FRAGMENT ITS TRAFFIC BY TRAFFIC TYPE SO IT CAN INTERCONNECT WITH BELLSOUTH'S NETWORK?.....	20
	A. POSITIONS OF THE PARTIES	20
	B. DELIBERATIONS AND CONCLUSIONS.....	20
IX.	<u>ISSUE 40</u> - 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?	22
	A. POSITIONS OF THE PARTIES	22
	B. DELIBERATIONS AND CONCLUSIONS.....	22
X.	<u>ISSUE 42</u> - SHOULD WORLDCOM BE PERMITTED TO ROUTE ACCESS TRAFFIC DIRECTLY TO BELLSOUTH END OFFICES OR MUST IT ROUTE SUCH TRAFFIC TO BELLSOUTH'S ACCESS TANDEM?	24
	A. POSITIONS OF THE PARTIES	24
	B. DELIBERATIONS AND CONCLUSIONS.....	24
XI.	<u>ISSUES 45 AND 48</u> - HOW SHOULD THIRD PARTY TRANSIT TRAFFIC BE ROUTED AND BILLED BY THE PARTIES?.....	26
	A. POSITIONS OF THE PARTIES	26
	B. DELIBERATIONS AND CONCLUSIONS.....	27
XII.	<u>ISSUE 46</u> - UNDER WHAT CONDITIONS, IF ANY, SHOULD THE PARTIES BE PERMITTED TO ASSIGN AN NPA/NXX CODE TO END USERS OUTSIDE THE RATE CENTER IN WHICH THE NPA/NXX IS HOMED?	28
	A. POSITIONS OF THE PARTIES	28
	B. DELIBERATIONS AND CONCLUSIONS.....	28

XIII.	<u>ISSUE 47</u> - SHOULD RECIPROCAL COMPENSATION PAYMENTS BE MADE FOR INTERNET SERVICE PROVIDER ("ISP") BOUND TRAFFIC?	30
	A. POSITIONS OF THE PARTIES	30
	B. DELIBERATIONS AND CONCLUSIONS.....	30
XIV.	<u>ISSUE 51</u> - UNDER WHAT CIRCUMSTANCES IS BELL SOUTH REQUIRED TO PAY TANDEM CHARGES WHEN WORLDCOM TERMINATES BELL SOUTH LOCAL TRAFFIC?	32
	A. POSITIONS OF THE PARTIES	32
	B. DELIBERATIONS AND CONCLUSIONS.....	32
XV.	<u>ISSUE 52</u> - SHOULD BELL SOUTH BE REQUIRED TO PAY ACCESS CHARGES TO WORLDCOM FOR NON-PRESUBSCRIBED INTRALATA TOLL CALLS HANDLED BY BELL SOUTH?	35
	A. POSITIONS OF THE PARTIES	35
	B. DELIBERATIONS AND CONCLUSIONS.....	36
XVI.	<u>ISSUE 55</u> - SHOULD BELL SOUTH BE REQUIRED TO PROVIDE A RESPONSE, INCLUDING A FIRM COST QUOTE, WITHIN FIFTEEN DAYS OF RECEIVING A COLLOCATION APPLICATION?	37
	A. POSITIONS OF THE PARTIES	37
	B. DELIBERATIONS AND CONCLUSIONS.....	37
XVII.	<u>ISSUE 56</u> - FOR PURPOSES OF THE INTERCONNECTION AGREEMENT BETWEEN WORLDCOM AND BELL SOUTH, SHOULD BELL SOUTH BE REQUIRED TO PROVIDE DC POWER TO ADJACENT COLLOCATION SPACE?	40
	A. POSITIONS OF THE PARTIES	40
	B. DELIBERATIONS AND CONCLUSIONS.....	41
XVIII.	<u>ISSUE 61</u> - FOR PURPOSES OF THE INTERCONNECTION AGREEMENT BETWEEN WORLDCOM AND BELL SOUTH, SHOULD THE PER AMPERE RATE FOR THE PROVISION OF DC POWER TO WORLDCOM'S COLLOCATION SPACE APPLY TO AMPS USED OR TO FUSED CAPACITY?	42
	A. POSITIONS OF THE PARTIES	42
	B. DELIBERATIONS AND CONCLUSIONS.....	43
XIX.	<u>ISSUE 62</u> - SHOULD BELL SOUTH BE REQUIRED TO PROVISION CAGED PHYSICAL COLLOCATION SPACE (INCLUDING PROVISION OF THE CAGE ITSELF) WITHIN 90 DAYS AND CAGELESS AND VIRTUAL COLLOCATION WITHIN 45 DAYS?	44
	A. POSITIONS OF THE PARTIES	44
	B. DELIBERATIONS AND CONCLUSIONS.....	45
XX.	<u>ISSUE 63</u> - FOR PURPOSES OF THE INTERCONNECTION AGREEMENT BETWEEN WORLDCOM AND BELL SOUTH, IS WORLDCOM ENTITLED TO USE ANY TECHNICALLY FEASIBLE ENTRANCE CABLE, INCLUDING COPPER FACILITIES?	47
	A. POSITIONS OF THE PARTIES	47
	B. DELIBERATIONS AND CONCLUSIONS.....	47

XXI.	<u>ISSUE 64</u> - IS WORLDCOM ENTITLED TO VERIFY BELL SOUTH'S ASSERTION, WHEN MADE, THAT DUAL ENTRANCE FACILITIES ARE NOT AVAILABLE? SHOULD BELL SOUTH MAINTAIN A WAITING LIST FOR ENTRANCE SPACE AND NOTIFY WORLDCOM WHEN SPACE BECOMES AVAILABLE?	49
A.	POSITIONS OF THE PARTIES	49
B.	DELIBERATIONS AND CONCLUSIONS	49
XXII	<u>ISSUE 67</u> - WHEN WORLDCOM HAS A LICENSE TO USE BELL SOUTH RIGHTS-OF-WAY, AND BELL SOUTH WISHES TO CONVEY THE PROPERTY TO A THIRD PARTY, SHOULD BELL SOUTH BE REQUIRED TO CONVEY THE PROPERTY SUBJECT TO WORLDCOM'S LICENSE?	51
A.	POSITIONS OF THE PARTIES	51
B.	DELIBERATIONS AND CONCLUSIONS	52
XXIII.	<u>ISSUE 68</u> - SHOULD BELL SOUTH REQUIRE THAT PAYMENTS FOR MAKE-READY WORK BE MADE IN ADVANCE?	53
A.	POSITIONS OF THE PARTIES	53
B.	DELIBERATIONS AND CONCLUSIONS	53
XXIV.	<u>ISSUE 80</u> - SHOULD BELL SOUTH BE REQUIRED TO PROVIDE AN APPLICATION-TO-APPLICATION ACCESS SERVICE ORDER INQUIRY PROCESS?	55
A.	POSITIONS OF THE PARTIES	55
B.	DELIBERATIONS AND CONCLUSIONS	56
XXV.	<u>ISSUE 95</u> - SHOULD BELL SOUTH BE REQUIRED TO PROVIDE WORLDCOM WITH BILLING RECORDS WITH ALL ELECTRONIC MESSAGE INTEREXCHANGE ("EMI") STANDARD FIELDS?	57
A.	POSITIONS OF THE PARTIES	57
B.	DELIBERATIONS AND CONCLUSIONS	57
XXVI.	<u>ISSUE 100</u> - SHOULD BELL SOUTH OPERATORS BE REQUIRED TO ASK CALLERS FOR THEIR CARRIER OF CHOICE WHEN SUCH CALLERS REQUEST A RATE QUOTE OR TIME AND CHARGES?	59
A.	POSITIONS OF THE PARTIES	59
B.	DELIBERATIONS AND CONCLUSIONS	59
XXVII.	<u>ISSUE 110</u> - SHOULD BELL SOUTH BE REQUIRED TO TAKE ALL ACTIONS NECESSARY TO ENSURE THAT WORLDCOM CONFIDENTIAL INFORMATION DOES NOT FALL INTO THE HANDS OF BELL SOUTH'S RETAIL OPERATIONS, AND SHOULD BELL SOUTH BEAR THE BURDEN OF PROVING THAT SUCH DISCLOSURE FALLS WITHIN ENUMERATED EXCEPTIONS?	60
A.	POSITIONS OF THE PARTIES	60
B.	DELIBERATIONS AND CONCLUSIONS	61
XXVIII.	ORDERED	62

I. FACTUAL AND PROCEDURAL HISTORY

On April 14, 2000, MCImetro Access Services, LLC and Brooks Fiber Communications of Tennessee, Inc. (collectively "WorldCom") filed a petition pursuant to Section 252(b) of the Telecommunications Act of 1996 ("Act") requesting that the Tennessee Regulatory Authority ("Authority") arbitrate the interconnection agreement between WorldCom and BellSouth Telecommunications, Inc. ("BellSouth"). Including sub-issues, the petition contained one hundred twelve (112) issues. BellSouth filed a response to the petition on May 9, 2000. At the June 6, 2000 Authority Conference, the Directors accepted the petition for arbitration, appointed themselves as Arbitrators, appointed the General Counsel or his designee to serve as the Pre-Arbitration Officer, and directed the parties to participate in mediation.¹

The parties participated in a mediation conference on October 11, 2000, thereby resolving a number of issues. On November 13, 2000, the parties submitted the *Tennessee Matrix of Unresolved Issues*, and on April 27, 2001, the parties updated the *Tennessee Matrix of Unresolved Issues*. In an order entered on May 1, 2001, the Pre-Arbitration Officer approved and adopted the April 27th *Tennessee Matrix of Unresolved Issues*.

The Directors, acting as arbitrators, held a hearing on May 7th and 8th, 2001. As a result of the hearing and negotiations preceding the hearing, the parties resolved many issues. The following twenty-eight (28) issues remain unresolved: 6, 8, 18, 28, 34, 35, 36, 37, 40, 42, 45, 46, 47, 48, 51, 52, 55, 56, 61, 62, 63, 64, 67, 68, 80, 95, 100, and 110. The Directors, acting as arbitrators, deliberated the merits of the remaining, disputed issues following a regularly scheduled Authority Conference on December 18, 2001.

¹ See *Order Accepting Arbitration, Appointing Arbitrators, Appointing a Pre-Arbitration Officer and Directing Mediation*, p. 1 (Aug. 3, 2000).

II. ISSUE 6 - SHOULD BELLSOUTH BE DIRECTED TO PERFORM, UPON REQUEST, THE FUNCTIONS NECESSARY TO COMBINE UNBUNDLED NETWORK ELEMENTS ("UNEs") THAT ARE ORDINARILY COMBINED IN ITS NETWORK?

A. Positions of the Parties

BellSouth claims that it is not obligated to combine UNEs because the Eighth Circuit Court vacated Section 51.315(c)-(f) of the FCC Rules.² In support of its position, BellSouth cites the Federal Communications Commission's ("FCC") *UNE Remand Order*³ and asserts that the FCC "confirmed that incumbent LECs presently have no obligation to combine network elements for CLECs when those elements are not currently combined in BellSouth's network."⁴ Additionally, BellSouth argues that requiring it to combine UNEs is not sound public policy.⁵

WorldCom argues that "the only reasonable interpretation of the 'currently combines' requirement is that BellSouth is obligated to provide the types of combinations that ordinarily exist in its network . . . regardless of whether such elements are combined today to serve the particular customer that WorldCom wishes to serve."⁶ WorldCom argues that Section 315(b) of the FCC Rules requires BellSouth to provide combinations and applies to elements that the incumbent "currently combines," not merely elements that are "currently combined." In support of its position, WorldCom cites the *First Report and Order*⁷ for the proposition that currently combines means "ordinarily combined within their network, in the manner which they are typically combined."⁸

² See Cynthia K. Cox, Pre-Filed Direct Testimony, pp. 8-9 (Dec. 6, 2000).

³ See *In re: Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, FCC 99-238, CC Docket No. 96-98, 15 FCC Rcd. 3696 (Nov. 5, 1999) (Third Report and Order and Fourth Further Notice of Proposed Rulemaking) (hereinafter *UNE Remand Order*).

⁴ Cynthia K. Cox, Pre-Filed Direct Testimony, p. 9 (Dec. 6, 2000).

⁵ See *id.* at 9.

⁶ Don Price, Pre-Filed Rebuttal Testimony, p. 6 (Dec. 13, 2000).

⁷ See *In re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, FCC 96-325, CC Docket No. 96-98, 11 FCC Rcd. 15,499, para. 296 (Aug. 8, 1996) (First Report and Order) (hereinafter *First Report and Order*).

⁸ Don Price, Pre-Filed Direct Testimony, p. 11 (Dec. 6, 2000) (quoting *First Report and Order*, *supra* note 7, ¶ 296).

B. Deliberations and Conclusions

The Arbitrators addressed this same issue in Docket No. 99-00948 and held:

Rules governing combinations of network elements have been the subject of continuous litigation since their introduction in 1996. The Eighth Circuit of the United States Court of Appeals vacated Section 51.315 (b) through (f) of the FCC Rules in 1997.⁹ The Eighth Circuit stated that subsection (b) “is contrary to § 251(c)(3) because the rule would permit the new entrants access to the incumbent LEC’s network elements on a bundled rather than unbundled basis” and that the subsection (c) – (f) could not “be squared with the terms of subsection 251(c)(3).”¹⁰ The Supreme Court overruled the Eighth Circuit’s decision as to Section 51.315(b) and held that the FCC’s interpretation of Section 251(c)(3) was “entirely rational” and “well within the bounds of the reasonable.”¹¹ On remand, the Eighth Circuit recognized that the Supreme Court reversed the Eighth Circuit’s decision to vacate Section 51.315(b) and, therefore, only discussed Section 51.315(c)-(f), the “Additional Combinations Rule.”¹²

Section 51.315(b) provides: “Except upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines.”¹³ The Arbitrators agree with the [Georgia Public Service Commission’s] conclusion that Section 51.315(b) applies to elements that BellSouth currently combines, not only those elements that are currently combined.¹⁴ In the *First Report and Order*, the FCC stated that the proper reading of “currently combines” is “ordinarily combined within their network, in the manner which they are typically combined.”¹⁵ In the *UNE Remand Order*, the FCC declined to further elaborate on the meaning of “currently combines” after noting that the matter was pending in the Eighth Circuit Court of Appeals.¹⁶ Therefore, the only FCC interpretation of “currently combines” is the interpretation in the *First Report and Order*.

The Authority has addressed this same issue and the Directors acting as Arbitrators have addressed a similar, related issue in other dockets. In the Permanent Prices Docket, the Authority held that “ILECs are now prevented from separating network elements that are already combined before leasing them to a competitor.”¹⁷ In a later Order, the Authority affirmed this holding by ruling that “BellSouth must

⁹ See *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 813 (8th Cir. 1997) *aff’d in part rev’d in part sub nom. AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 119 S.Ct. 721, 737-38 (1999).

¹⁰ *Id.*

¹¹ *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 395, 119 S.Ct. 721, 737-38 (1999).

¹² See *Iowa Utils. Bd. v. FCC*, 219 F.3d 744, 758-59 (8th Cir. 2000) *cert. granted in part*, 121 S.Ct. 878 (2001).

¹³ 47 C.F.R. § 51.315(b).

¹⁴ See *GPSC February 2000 Order*, p. 11.

¹⁵ *First Report and Order*, [*supra* note 7] ¶ 296.

¹⁶ See *UNE Remand Order*, [*supra* note 3] ¶ 479.

¹⁷ *Permanent Prices, Order Re Petitions for Reconsideration and Clarification of Interim Order of Phase I*, p. 20 (Nov. 3, 1999). Although the discussion of Section 51.315(b) was commingled with the discussion of whether BellSouth must provide Integrated Digital Loop Carrier (“IDLC”), IDLC is distinguishable in that it is a service “platform” rather than an unbundled network element. As such, it combines the loop and switch port functions, not loop and switch port unbundled network elements. It should be noted that those same IDLC functions cannot be separated without destroying the identity and many of the advantages of the IDLC platform itself.

provide the combination throughout its network as long as it provides this same combination to itself anywhere in its network."¹⁸

In *ICG Telecom*, the Arbitrators ruled that BellSouth was to provide Enhanced Extended Links ("EELs"), which consist of two combined UNEs, to ICG Telecom Group, Inc. Although the Arbitrators did not specifically define "currently combines" in *ICG Telecom*, the Arbitrators find that decision should serve as guidance in determining the proper definition of "currently combines" herein.

Given the plain language of Section 51.315(b), federal decisions related to the validity of Section 51.315(b), the FCC's interpretation of Section 51.315(b), the Authority's decision in the Permanent Prices Docket, and the Arbitrators' decision in *ICG Telecom*, the Arbitrators voted unanimously to define "currently combines" as any and all combinations that BellSouth currently provides to itself anywhere in its network. Thus, the Arbitrators reject BellSouth's position that the combination has to be already combined for a particular customer at a particular location. Instead, BellSouth must provide any combination to Intermedia throughout Intermedia's network as long as BellSouth provides that same combination to itself anywhere in its network.¹⁹

In Docket No. 00-00691, the Arbitrators adopted this same reasoning.²⁰ The Arbitrators found that neither party presented any basis for resolving the issue presented in this Docket differently than the issues presented in Docket Nos. 99-00948 or 00-00691. Therefore, consistent with the Arbitrators' previous decisions and the authorities cited therein, the Arbitrators voted unanimously to require BellSouth to provide Sprint any UNE combinations at the sum of TELRIC²¹ rates that BellSouth combines for its own retail customers anywhere in BellSouth's network.

¹⁸ *Permanent Prices, Second Interim Order Re: Cost Studies and Geographic Deaveraging*, p. 10 fn. 17 (Nov. 22, 2000).

¹⁹ *In re: Petition for Arbitration of the Interconnection Agreement Between BellSouth Telecommunications, Inc. and Intermedia Communications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket No. 99-00948, *Interim Order of Arbitration Award*, pp. 26-28 (Jun. 25, 2001) (footnotes 9 through 18 appear in the original).

²⁰ *See In re: Petition of Sprint Communications Company L.P. for Arbitration with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket No. 00-00691, *Final Order of Arbitration Award*, pp. 5-7 (Jan. 24, 2002).

²¹ TELRIC is an acronym for Total Element Long Run Incremental Cost, which is a cost methodology.

III. ISSUE 8 - SHOULD UNBUNDLED NETWORK ELEMENT ("UNE") SPECIFICATIONS INCLUDE NON-INDUSTRY STANDARD, BELL SOUTH PROPRIETARY SPECIFICATIONS?

A. Positions of the Parties

BellSouth states that "[a]lthough industry standards provide useful guidance for the provision and maintenance of UNEs, there are no industry standards at present for every UNE."²²

BellSouth asserts that it has "developed standards in cases where no industry standard exists which should be incorporated into the parties' interconnection agreement."²³

WorldCom proposes industry standard UNE specifications for loops and states:

The additional requirements BellSouth is seeking to include would impose burdensome restrictions on WorldCom and would inject inconsistencies that could well lead to contract disputes. Loop specifications should provide parameters that the parties can rely on when designing their networks. BellSouth's proposal has much more self-serving objectives and should be rejected.²⁴

WorldCom opposes BellSouth's specifications, BellSouth TR73600, "because it is a BellSouth proprietary specification" and "includes many provisions that are contractual in nature, stating the terms and conditions on which BellSouth will offer described services."²⁵

B. Deliberations and Conclusions

Section 51.311(b) of the FCC Rules provides: "[T]he quality of an unbundled network element, as well as the quality of the access to such unbundled network element, that an incumbent LEC provides to a requesting telecommunications carrier shall be at least equal in quality to that which the incumbent LEC provides to itself."²⁶ UNE technical specifications should not include terms and conditions. Instead, general terms and conditions should be specified in the

²² W. Keith Milner, Pre-Filed Direct Testimony, p. 7 (Dec. 6, 2000).

²³ *Id.*

²⁴ Don Price, Pre-Filed Direct Testimony, p. 18 (Dec. 6, 2000).

²⁵ *Id.* at 17-18.

²⁶ 47 C.F.R. § 51.311(b).

interconnection agreement and should be applicable to all UNEs. BellSouth has the right to develop and use an internal standard for its own purposes, but should not impose that standard on a competing local exchange carrier ("CLEC") when that standard pertains to anything other than specificity of UNE quality.

BellSouth's specifications include general terms and conditions. WorldCom provided industry standards for UNEs where standards currently exist. In cases where no industry standard currently exist, WorldCom has agreed to accept BellSouth's technical specifications as proposed in BellSouth's TR73600.

Based on the foregoing, the Arbitrators voted unanimously to: (1) adopt the industry standards proposed by WorldCom in Appendix 1 of Attachment 3;²⁷ (2) require that UNEs be provided to WorldCom equal in quality to that which BellSouth provides to itself in compliance with Section 51.311(b) of the FCC Rules and include only the necessary industry standards to ensure the technical specifications pertaining to a UNE are met and (3) require the parties to include any terms and conditions in the general provisions of the interconnection agreement and make such terms and conditions applicable to all UNEs.

²⁷ Appendix 1 of Attachment 3 to the interconnection agreement is attached to WorldCom's petition for arbitration and includes BellSouth TR73600 technical specifications where there is no proposed industry standard.

IV. 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?

A. Positions of the Parties

BellSouth argues that the FCC requires it to “unbundle dedicated transport in BellSouth’s existing network and has specifically excluded transport between other carriers’ locations.”²⁸ Thus, BellSouth contends that it is not required to offer or build dedicated transport facilities between WorldCom network switches or WorldCom’s network and another carrier’s network.²⁹ BellSouth quotes the FCC’s *First Report and Order* and argues that it is only required to “provide unbundled access to dedicated transmission facilities between LEC central offices or between such offices and those of competing carriers.”³⁰ BellSouth also relies on the FCC’s *UNE Remand Order* for the proposition that it is not required to construct facilities where the incumbent local exchange carrier (“ILEC”) has not deployed transport facilities for its own use.³¹

WorldCom counters that “BellSouth is required to provide dedicated interoffice transmission facilities to the locations and equipment designated by WorldCom, including network nodes connected to WorldCom wire centers and switches and to the wire centers and switches of other requesting carriers.”³² WorldCom argues that pursuant to Section 51.319(d)(2)(C), BellSouth “must permit a requesting carrier to connect unbundled interoffice transmission facilities to equipment designated by the requesting carrier”³³ and that “BellSouth’s unbundling obligation’s

²⁸ Cynthia K. Cox, Pre-Filed Direct Testimony, p. 16 (Dec. 6, 2000).

²⁹ See *id.* at 16-17.

³⁰ *Id.* at 16 (quoting *First Report and Order*, *supra* note 7, ¶ 440).

³¹ See *id.* at 16-17 (citing *UNE Remand Order*, *supra* note 3, ¶ 324).

³² Don Price, Pre-Filed Direct Testimony, p. 19 (Dec. 6, 2000).

³³ *Id.* at 20 (citing 47 C.F.R. § 51.319(d)(2)(C)).

'extends *throughout* its ubiquitous transport network.'"³⁴ Therefore, WorldCom concludes that, although "BellSouth is not required to build new transport facilities . . . it is required to provide unbundled service where it has facilities."³⁵

B. Deliberations and Conclusions

Section 51.319(d)(1) of the FCC Rules clearly supports WorldCom's position in that it provides:

Interoffice transmission facility network elements include:

(i) Dedicated transport, defined as incumbent LEC transmission facilities, including all technically feasible capacity-related services including, but not limited to, DS1, DS3 and OCn levels, dedicated to a particular customer or carrier, that provide telecommunications between wire centers owned by incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers³⁶

In addition, Section 251(a)(1) of the Act provides that each telecommunications carrier has the duty "to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers."³⁷ Based on these authorities, the Arbitrators voted unanimously to require BellSouth to provide all technically feasible unbundled dedicated transport between locations and equipment designated by WorldCom so long as the facilities currently exist in BellSouth's network, including interoffice transmission facilities to network nodes connected to WorldCom switches and to the switches or wire centers of other requesting carriers.

³⁴ *Id.* (quoting *UNE Remand Order*, *supra* note 3, ¶ 324).

³⁵ *Id.*

³⁶ 47 CFR § 51.319(d)(1)(i).

³⁷ 47 U.S.C. § 251(a)(1) (Supp. 2000).

V. ISSUE 28 - SHOULD BELL SOUTH PROVIDE THE CALLING NAME DATABASE ("CNAM") VIA ELECTRONIC DOWNLOAD, MAGNETIC TAPE, OR VIA SIMILAR CONVENIENT MEDIA?

A. Positions of the Parties

BellSouth asserts that it "provides CLECs with access to its calling name database on an unbundled basis consistent with the requirements of the FCC's UNE Remand Order."³⁸ BellSouth further asserts that "[a]ccess to BellSouth's calling name database is made available to CLECs 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."³⁹ Moreover, BellSouth contends that lack of an electronic download does not impair a CLEC's ability to offer service to its customers.⁴⁰

WorldCom asserts that the FCC requires BellSouth to offer unbundled access to call-related databases, including the CNAM database.⁴¹ WorldCom urges that an electronic download of the database is efficient, the least costly means of providing the database, and is technically feasible.⁴² Lastly, WorldCom asserts that it will compensate BellSouth for the database download.⁴³

B. Deliberations and Conclusions

In the *UNE Remand Order*, the FCC stated:

We find that, as a general matter, requesting carriers' ability to provide the services they seek to offer is impaired without unbundled access to the incumbent LECs' call-related databases. Thus, we require incumbent LECs, upon request, to provide nondiscriminatory access to their call-related databases on an unbundled basis, for the purpose of switch query and database response through the SS7 network. We conclude that requesting carriers' ability to provide the services they seek to offer is impaired without unbundled access to the incumbent LECs' [Advanced Intelligent Network (AIN)] platform and architecture. Thus, we find that incumbent LECs,

³⁸ Cynthia K. Cox, Pre-Filed Direct Testimony, p. 24 (Dec. 6, 2000) (citing *UNE Remand Order*, *supra* note 3, ¶ 402).

³⁹ *Id.*

⁴⁰ *See id.* at 25.

⁴¹ *See* Don Price, Pre-Filed Direct Testimony, p. 30 (Dec. 6, 2000) (quoting *UNE Remand Order*, *supra* note 3, ¶¶ 15-16).

⁴² *See id.*

⁴³ *See Post Hearing Brief of WorldCom*, p. 9 (Jul. 6, 2001).

upon request, must provide nondiscriminatory access to their AIN platform and architecture.⁴⁴

Thereafter, the FCC clarifies that the definition of call-related databases includes the CNAM database.⁴⁵ Additionally, the FCC states:

Incumbent LECs must allow requesting carriers that have purchased an incumbent LEC's local switching capability to use the incumbent LEC's service control point element in the same manner, and via the same signaling links, as the incumbent LEC itself. An incumbent LEC must allow a requesting carrier that has deployed its own switch and has linked that switch to an incumbent LEC's signaling system to gain access to the incumbent LEC's service control point in a manner that allows the requesting carrier to provide any call-related database-supported services to customers served by the requesting carrier's switch.⁴⁶

The FCC has made it clear that ILECs such as BellSouth are required to provide nondiscriminatory access to the CNAM database and BellSouth is complying with this requirement.

WorldCom takes issue, however, with the fact that it currently obtains access to the CNAM database via BellSouth's SS7 network.⁴⁷ WorldCom contends that in order to provide CNAM information on a call using this source, it must: (1) dip into its own database in search of information; (2) if the calling party is not a WorldCom customer, WorldCom must do a table look-up based on the calling party's NPA-NXX and determine the database that must be searched; and (3) query that database.⁴⁸ WorldCom states that this method is time consuming and costly and, therefore, requests an electronic download.⁴⁹ BellSouth did not know whether there had been discussions on WorldCom's offer to compensate BellSouth for a download of the CNAM database and merely indicated that was not their preferred method of delivery.⁵⁰

⁴⁴ *UNE Remand Order*, *supra* note 3, ¶ 402.

⁴⁵ *See id.* ¶ 403.

⁴⁶ *Id.* ¶ 410.

⁴⁷ *See Don Price, Pre-Filed Rebuttal Testimony*, p. 13 (Dec. 13, 2000).

⁴⁸ *See id.*

⁴⁹ *See id.*

⁵⁰ Transcript of Proceedings, May 8, 2001, pp. 310-11 (Hearing).

Based on the foregoing, the Arbitrators found that requiring BellSouth to provide an electronic download of the CNAM database to WorldCom is consistent with the Act and places BellSouth and WorldCom in parity. Therefore, the Arbitrators voted unanimously to require BellSouth to provide an electronic download of the CNAM database to WorldCom provided WorldCom compensates BellSouth for the download.

VI. ISSUES 34 AND 35 - IS BELLSOUTH OBLIGATED TO PROVIDE AND USE TWO-WAY TRUNKS THAT CARRY EACH PARTY'S TRAFFIC?

A. Positions of the Parties

BellSouth asserts that it is "only obligated to provide and use two-way local interconnection trunks where traffic volumes are too low to justify one-way trunks."⁵¹ BellSouth argues that in other situations it has the option of using one-way trunks for its traffic. BellSouth explains that two-way trunks are not always the most efficient due to busy hour characteristics and balance of traffic.⁵²

WorldCom contends that two-way trunking is more efficient than one-way trunking when traffic flows in both directions, because two-way trunking requires fewer trunks and minimizes the number of trunk ports needed for interconnection. WorldCom also argues that its proposed language incorporates Section 51.305(f) of the FCC Rules. WorldCom asserts that if it orders a two-way trunk and BellSouth is permitted to refuse to use that trunk for its traffic, the efficiencies of two-way trunking would be lost and Section 51.305(f) would be meaningless.⁵³

B. Deliberations and Conclusions

The Arbitrators find that the ILEC and CLEC should jointly use two-way trunking to create effective use of the public network and to avoid negating the efficiencies the FCC sought to obtain. Section 51.305(f) of the FCC Rules states: "If technically feasible, an incumbent LEC shall provide two-way trunking upon request."⁵⁴ The FCC has concluded that the term "technically feasible"

⁵¹ Cynthia K. Cox, Pre-Filed Direct Testimony, pp. 26 (Dec. 6, 2000).

⁵² See *id.* at 26-27.

⁵³ See Lee Olson, Pre-Filed Direct Testimony, p. 3-4 (Dec. 6, 2000).

⁵⁴ 47 CFR § 51.305(f).

refers to technical or operational concerns, not economic, space, or site concerns.⁵⁵ In the *UNE*

Remand Order, the FCC stated:

Costs and Quality. We find that lack of unbundled access to the incumbent's shared transport facilities materially increases a requesting carrier's costs of providing service. . . . Specifically, an inability to reasonably forecast traffic volumes would likely cause a requesting carrier to purchase an insufficient amount, or conversely, too much dedicated transport capacity. In shared transport arrangements, the switch routes the competitor's traffic through the most efficient trunking group available. The trunking group is shared among many users, including the incumbent LEC's end users, thereby reducing requesting carrier costs and utilizing capacity only when necessary to route and complete a call.⁵⁶

Based on the foregoing, a majority⁵⁷ of the Arbitrators voted that, upon request, BellSouth shall provide and use two-way trunking where available unless it demonstrates to the Authority that the provision or use of two-way trunking is not "technically feasible" due to operational or technical concerns.

⁵⁵ See *First Report and Order*, *supra* note 7, ¶ 198.

⁵⁶ *UNE Remand Order*, *supra* note 3, ¶ 375.

⁵⁷ Director Greer agreed that BellSouth should provide two-way trunks, but further stated that the Arbitrators should not require BellSouth to use the two-way trunks. Transcript of Proceedings, Dec. 18, 2001, p. 29 (Arbitration Deliberations).

VII. 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 ("POI") AT ANY TECHNICALLY FEASIBLE POINT?

A. Positions of the Parties

BellSouth frames the issue as "whose customers should pay for the costs that WorldCom creates as a result of its network design decisions."⁵⁸ BellSouth argues that WorldCom's approach fails to take into consideration the fact that there is not one BellSouth network.⁵⁹ BellSouth does not, however, object to WorldCom designating a single POI in a LATA on one of BellSouth's networks for WorldCom's end users' originating traffic or to WorldCom "using the interconnecting facilities between BellSouth's 'networks' to have local calls delivered or collected throughout the LATA."⁶⁰ Despite these concessions, BellSouth argues that if local calls are completed between BellSouth's customers and WorldCom's customers using this single point of interconnection, then WorldCom should be financially responsible for the additional costs WorldCom causes.⁶¹

WorldCom proposes that it will choose a POI in each LATA in which it originates traffic and that each party will be responsible for transporting and terminating the other party's traffic from the POI.⁶² WorldCom argues that under this proposal it "would not be required to arrange transport on BellSouth's side of the POI before it could serve customers in another local calling area, but could expand its network as traffic volumes warranted."⁶³ WorldCom argues that the "FCC places

⁵⁸ Cynthia K. Cox, Pre-Filed Direct Testimony, p. 30 (Dec. 6, 2000).

⁵⁹ *See id.*

⁶⁰ *Id.*

⁶¹ *See id.* at 31.

⁶² *See* Lee Olson, Pre-Filed Direct Testimony, p. 10 (Dec. 6, 2000).

⁶³ *Id.* at 11.

the responsibility for costs associated with originating traffic on the carrier that originates the call when the originated traffic must be delivered to another carrier's network for completion."⁶⁴

B. Deliberations and Conclusions

Section 251 of the Act obligates ILECs to provide interconnection within their networks and access to UNEs at any "technically feasible point."⁶⁵ The FCC has concluded that the term "'technically feasible' refers solely to technical or operational concerns, rather than economic, space, or site considerations" and that an ILEC must prove to the appropriate state commission that a particular interconnection or access point is not technically feasible.⁶⁶ The FCC has further concluded that the obligations imposed by Section 251 include modifications to ILEC facilities "to the extent necessary to accommodate interconnection or access to network elements."⁶⁷ BellSouth has not made any filings or demonstrated to the Arbitrators that any POI is not technically feasible. This factual situation should be treated no differently than if two ILECs were interconnecting with each other, each being responsible for delivering calls to the others' POI. Therefore, the Arbitrators voted unanimously that (1) WorldCom has the right to designate the point(s) of interconnection; (2) WorldCom shall be responsible for delivering calls to the point of interconnection with BellSouth and when WorldCom does not have facilities to transport the call to its own end user then WorldCom should be required to compensate BellSouth for use of BellSouth's network to complete the call and; (3) BellSouth shall be responsible for delivering calls to the POI, as they would with any other LEC, whether it happens to be an ILEC or CLEC.

⁶⁴ *Id.* (citing *In re: TSR Wireless, LLC v. U.S. West Comm., Inc.*, FCC 00-194, File Nos. E-98-13, E-98-15, E-98-16, E-98-17, E-98-18, 15 FCC Rcd. 11,166, ¶ 34 (June 21, 2000) (Memorandum Opinion and Order)).

⁶⁵ 47 U.S.C. § 251(c)(2)(B) & (3) (Supp. 2000).

⁶⁶ *First Report and Order*, *supra* note 7, ¶ 198, 205.

⁶⁷ *Id.* ¶ 198.

VIII. ISSUE 37 - SHOULD BELL SOUTH BE PERMITTED TO REQUIRE WORLD COM TO FRAGMENT ITS TRAFFIC BY TRAFFIC TYPE SO IT CAN INTERCONNECT WITH BELL SOUTH'S NETWORK?

A. Positions of the Parties

BellSouth asserts that it must separate the local traffic from toll traffic in order for it to provide local traffic direct end office trunk groups.⁶⁸ BellSouth argues that "[t]here are no valid engineering reasons to force BellSouth to transport all of [WorldCom's] local traffic via the BellSouth access tandem switches."⁶⁹ BellSouth states that it will switch WorldCom's originated local traffic via the BellSouth tandems in exchange for compensation; however, BellSouth should be allowed "to provision its trunks for its originating traffic to be terminated to [WorldCom] in any technically feasible and nondiscriminatory manner without regard to the arbitrary conditions that [WorldCom] seeks to impose."⁷⁰ WorldCom's position is that the Arbitrators should permit it to combine local, intraLATA and transit traffic on one trunk group and that doing so is often more efficient.⁷¹

B. Deliberations and Conclusions

This issue centers on the efficient use of trunks. If an ILEC were to require a CLEC to fragment traffic, then efficiencies are lost because the CLEC is forced to duplicate the ILEC's network architecture. This scenario also increases the CLEC's costs. Section 51.305 of the FCC Rules provides: "An incumbent LEC shall provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the incumbent LEC's network: (1) For the transmission and routing of telephone exchange traffic, exchange access traffic or both; (2) At

⁶⁸ See W. Keith Milner, Pre-Filed Direct Testimony, p. 15 (Dec. 6, 2000).

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ See Lee Olson, Pre-Filed Direct Testimony, pp. 13-14 (Dec. 6, 2000).

any technically feasible point”⁷² The Arbitrators read this Section as providing CLECs with the ability to combine local, intraLATA and transit traffic at any technically feasible point and to transport this traffic on one trunk from their POI. The specific traffic type should be readily distinguishable using SS7 signaling on all trunks.

BellSouth prefers that WorldCom place its local traffic on direct end office trunk groups when the amount of traffic creates network efficiencies, but is willing to continue to switch WorldCom’s originated local traffic via the BellSouth tandems if WorldCom continues to compensate BellSouth.⁷³ From this concession it is apparent that WorldCom is already combining local, intraLATA, and transit traffic and should be permitted to continue to do so, provided the calls are properly timed, rated, and billed. Therefore, the Arbitrators voted unanimously to permit WorldCom to combine local, intraLATA, and transit traffic on one trunk group provided the calls are properly timed, rated, and billed.

⁷² 47 CFR § 51.305(a)(1) & (2).

⁷³ See W. Keith Milner, Pre-Filed Direct Testimony, p. 15 (Dec. 6, 2000).

IX. 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?

A. Positions of the Parties

BellSouth asserts that IP is an "agreed upon set of technical operating specifications for managing and interconnecting networks" and that IP telephony is a "mode or method of completing a telephone call."⁷⁴ BellSouth states that, to the extent that it is technically feasible, reciprocal compensation should apply to local calls provided via IP telephony and access charges should apply to long distance calls provided via IP telephony.⁷⁵

WorldCom did not propose a specific definition of IP. WorldCom argues that whether long-distance carriers should pay access charges when utilizing IP telephony is beyond the scope of this arbitration. Instead, WorldCom argues that this issue is clearly within the FCC's jurisdiction. WorldCom also notes that the FCC has declined for now to impose access charges on IP telephony.⁷⁶

B. Deliberations and Conclusions

The FCC has not provided a specific definition of IP. The FCC's definition of enhanced services, however, is instructive. The FCC defines enhanced services as "services, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information."⁷⁷ Using this definition, the

⁷⁴ Cynthia K. Cox, Pre-Filed Direct Testimony, p. 45 (Dec. 6, 2000).

⁷⁵ See *id.* at 47-48.

⁷⁶ See Don Price, Pre-Filed Direct Testimony, pp. 37-38 (Dec. 6, 2000) (citing *In re: Federal-State Joint Board on Universal Service*, FCC 98-67, CC Docket No. 96-45, 13 FCC Rcd. 11,501 (Apr. 10, 1998) (Report to Congress)).

⁷⁷ 47 CFR § 65.702.

Arbitrators voted unanimously to define IP for the purpose of this proceeding as the computer processing format of subscriber transmitted information that allows a subscriber to receive access to additional, different, or restructured information.

Having defined IP, the next question is how should outbound voice calls over IP telephony be treated for purposes of reciprocal compensation. Once again, the FCC has not decided this specific issue, but it is useful to look at how the FCC treats a call to internet service providers ("ISPs"). The FCC established intercarrier compensation rates for traffic delivered to ISPs and concluded that this traffic is interstate access traffic, specifically "information access."⁷⁸ The FCC did not preclude states from applying this same analysis to voice traffic delivered via IP. This fact supports the position that it does not matter whether a call is voice or data for purposes of intercarrier compensation. In further support of this position is the FCC's finding that "[t]he record fails to demonstrate that there are inherent differences between the costs of delivering a voice call to a local end-user and a data call to an ISP, thus the 'mirroring' rule we adopt here requires that incumbent LECs pay the same rates for ISP-bound traffic that they receive for section 251(b)(5) traffic."⁷⁹ Based on the foregoing, the Arbitrators voted unanimously that calls using IP, regardless of whether the call is data or voice, should be treated the same as circuit switched traffic subject to FCC Rules for intercarrier compensation.

⁷⁸ *In re: Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, FCC 01-131, CC Docket No. 96-98, 16 FCC Rcd. 9151, ¶ 44 (Apr. 27, 2001) (Order of Remand and Report and Order) (hereinafter *Reciprocal Compensation Remand Order*).

⁷⁹ *Id.* ¶ 8.

X. ISSUE 42 - SHOULD WORLDCOM BE PERMITTED TO ROUTE ACCESS TRAFFIC DIRECTLY TO BELL SOUTH END OFFICES OR MUST IT ROUTE SUCH TRAFFIC TO BELL SOUTH'S ACCESS TANDEM?

A. Positions of the Parties

It is BellSouth's position that WorldCom is attempting to disguise switched access traffic as local traffic by routing such switched access traffic over local interconnection trunks. BellSouth contends that the switched access traffic should be handled according to switched access tariffs. BellSouth proposed language "making clear that WorldCom will not 'deliver switched access to BellSouth for termination except over WorldCom ordered switched access trunks and facilities.'"⁸⁰

WorldCom argues that the Arbitrators should reject BellSouth's position because it would allow BellSouth to monopolize the tandem services business. WorldCom asserts that BellSouth's solution "effectively would require WorldCom to route all toll traffic to BellSouth's access tandems using special access facilities, and would preclude WorldCom from routing toll traffic from its own tandem switches to BellSouth end offices."⁸¹

B. Deliberations and Conclusions

As long as carriers properly identify calls by traffic type (either local or long distance), rate and time the calls, and compensate parties for each traffic type then WorldCom should be permitted to route access traffic directly to BellSouth end offices. In the *First Report and Order*, the FCC found:

New entrants will only be encouraged to interconnect at end-office switches, rather than tandem switches, when the decrease in incumbent LEC transport charges justifies the extra costs incurred by the new entrant to route traffic directly through the incumbent LEC's end-office switches. Carriers will interconnect in a way that minimizes their costs of interconnection, including the use of cost-based LEC network elements.⁸²

⁸⁰ Cynthia K. Cox, Pre-Filed Direct Testimony, pp. 51 (Dec. 6, 2001) (quoting BellSouth's proposed language).

⁸¹ Don Price, Pre-Filed Direct Testimony, p. 40 (Dec. 6, 2000).

⁸² *First Report and Order*, *supra* note 7, ¶ 1091.

This finding clearly supports the proposition that CLECs should not be required to duplicate the ILEC's network, but instead should be permitted to provide service in the most practical and efficient manner to further establish competition in the market place. BellSouth's position is contrary to this proposition. Therefore, the Arbitrators voted unanimously to order BellSouth to permit WorldCom to route access traffic directly to BellSouth end offices and not require WorldCom to route such traffic to BellSouth's access tandem. Additionally, the Arbitrators voted unanimously that each party should be properly compensated for each traffic type.

XI. ISSUES 45 AND 48 - HOW SHOULD THIRD PARTY TRANSIT TRAFFIC BE ROUTED AND BILLED BY THE PARTIES?

A. Positions of the Parties

BellSouth asserts that, despite WorldCom's desires, it is not obligated to pay reciprocal compensation for local transit traffic terminating to WorldCom. Instead, BellSouth contends that WorldCom should seek compensation from the originating carrier.⁸³ BellSouth contends that "the CLEC is responsible for ordering from and payment to BellSouth for the applicable transiting interconnection charges" and is responsible for negotiating an interconnection agreement with other CLECs with which they intend to exchange traffic.⁸⁴ BellSouth notes that it provides records to CLECs that allow them to bill a third party carrier for terminating traffic from the originating LEC.⁸⁵

WorldCom states that transit traffic should be exchanged over the same logical trunk group as all other local and intraLATA toll traffic. WorldCom contends that this is the most efficient method because it reduces the number of trunk groups needed and simplifies translations. WorldCom also asserts that minimizing the number of bills and record exchanges for transit traffic promotes efficiency. WorldCom proposes the following compensation regimes: (1) if a call is originated from WorldCom, transited through BellSouth, and terminated to an independent LEC, then BellSouth should bill WorldCom transiting and termination charges and (2) if a call is originated from an independent LEC, transited through BellSouth, and terminated to WorldCom, then BellSouth bills the independent LEC a transiting charge, if applicable, and WorldCom for terminating that call on the WorldCom network.⁸⁶

⁸³ See Cynthia K. Cox, Pre-Filed Direct Testimony, p. 52 (Dec. 6, 2000).

⁸⁴ *Id.* at 53.

⁸⁵ See *id.* at 54.

⁸⁶ Don Price, Pre-Filed Direct Testimony, pp. 41-42 (Dec. 6, 2000).

B. Deliberations and Conclusions

In basic terms, the LEC that performs the transiting function or intermediary function is the party that takes the call from the originating LEC and hands it off to a terminating LEC. A CLEC should be responsible for its own billing functions, but the ILEC should provide the CLEC with the necessary records to enable the CLEC to bill for the calls. The FCC has stated:

We recognize that transport and termination of traffic, whether it originates locally or from a distance exchange, involves the same network functions. Ultimately, we believe that the rates that local carriers impose for the transport and termination of local traffic and for the transport and termination of long distance traffic should converge.⁸⁷

Section 51.319(g) of the FCC Rules require ILECs to provide nondiscriminatory access to operations support systems, including billing functions supported by an ILECs' databases and information.⁸⁸

Based on these authorities, the Arbitrators voted unanimously to allow the parties to route third party transit traffic as each sees fit provided that the transited traffic reaches the terminating carrier and the party properly identifies the traffic. In addition, the Arbitrators voted unanimously to order each party to be responsible for their own billing functions and BellSouth to provide to WorldCom, for compensation, the third party transit traffic records for those calls routed through BellSouth.

⁸⁷ *First Report and Order*, *supra* note 7, ¶ 1033.

⁸⁸ 47 CFR 51.319(g).

XII. ISSUE 46 - UNDER WHAT CONDITIONS, IF ANY, SHOULD THE PARTIES BE PERMITTED TO ASSIGN AN NPA/NXX CODE TO END USERS OUTSIDE THE RATE CENTER IN WHICH THE NPA/NXX IS HOMED?

A. Positions of the Parties

BellSouth asserts that WorldCom can give telephone numbers to customers who are physically located in a different local calling area than the local calling area to which WorldCom has assigned the NPA/NXX. BellSouth adds, however, that if WorldCom does this, then calls originated by BellSouth end users to those numbers are not local calls and such calls are not subject to reciprocal compensation. Instead, contends BellSouth, the calls are long distance and WorldCom should compensate BellSouth for the originating switched access service.⁸⁹

WorldCom refers to the assignment scenario involved in this issue as foreign exchange ("FX") service. WorldCom argues that its FX traffic should be treated as local traffic and the determination of whether a call is local depends on the NPA/NXX dialed, not the physical location of the customer.⁹⁰ In addition, WorldCom asserts that BellSouth provides this same service "without imposing the very restriction it seeks to place on WorldCom's FX service."⁹¹ WorldCom contends that the imposition of access charges on FX service will effectively prohibit WorldCom from offering FX service in competition with BellSouth.⁹²

B. Deliberations and Conclusions

In Docket No. 99-00948, the Arbitrators found that the parties may establish their own local calling areas and assign numbers for local use anywhere within such areas as long as the parties properly rate, time, and compensate each other and other carriers for the mutual exchange of such traffic. Additionally, the Arbitrators held that calls to an NPA/NXX in a local calling area outside

⁸⁹ See Cynthia K. Cox, Pre-Filed Direct Testimony, p. 55 (Dec. 6, 2000).

⁹⁰ See Don Price, Pre-Filed Direct Testimony, p. 45 (Dec. 6, 2000).

⁹¹ *Id.* at 47.

⁹² See *id.* at 48.

the local calling area where the NPA/NXX is homed shall be treated as intrastate, interexchange toll traffic and, therefore, are subject to access charges. Finally, the Arbitrators determined that nothing in their ruling exempted either party or any other carrier from the provisions of Tenn. Code Ann. § 65-21-114 requiring all carriers to provide county-wide calling.⁹³

The Arbitrators found that neither party presented any basis for resolving the issue presented in this Docket differently than the issues presented in Docket No. 99-00948. Therefore, consistent with the Arbitrators' decision in Docket No. 99-00948, the Arbitrators voted unanimously that the parties are allowed to assign numbers in the manner they choose, consistent with applicable law, as long as the parties properly rate, time and compensate each other and other carriers for the mutual exchange of such traffic. In addition, calls to an NPA/NXX in a local calling area outside the rate center where the NPA/NXX is homed shall be treated as intrastate, interexchange toll traffic and are, therefore, subject to access charges. Finally, nothing in this ruling should be construed as exempting either party, or any other carrier, from the Tenn. Code Ann. § 65-21-114 requiring all carriers to provide county-wide calling.

⁹³ See *In re: Petition for Arbitration of the Interconnection Agreement Between BellSouth Telecommunications, Inc. and Intermedia Communications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket No. 99-00948, *Interim Order of Arbitration Award*, pp. 43-44 (Jun. 25, 2001).

XIII. ISSUE 47 - SHOULD RECIPROCAL COMPENSATION PAYMENTS BE MADE FOR INTERNET SERVICE PROVIDER ("ISP") BOUND TRAFFIC?

A. Positions of the Parties

BellSouth contends that pursuant to the FCC's *Reciprocal Compensation Remand Order*, "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."⁹⁴ WorldCom agrees that the Authority is without jurisdiction to determine whether calls to ISPs are subject to reciprocal compensation. Nevertheless, WorldCom urges the Arbitrators to affirm their previous rulings holding that ISP-bound calls are subject to reciprocal compensation and order the parties to include a provision in their interconnection agreement that would require the parties to treat ISP-bound traffic as Section 251(b)(5) traffic in the event the *Reciprocal Compensation Remand Order* is reversed, vacated or remanded.⁹⁵

B. Deliberations and Conclusions

The Authority has specifically ruled in the past that ISP-bound traffic is local and BellSouth is required to pay reciprocal compensation to CLECs on whose networks such calls terminate.⁹⁶ However, the FCC in its *Reciprocal Compensation Remand Order* issued on April 27, 2001 concluded that "a reasonable reading of the statute is that Congress intended to exclude [ISP-bound traffic] from the reciprocal compensation requirements of Section 251(b)(5)."⁹⁷ 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

⁹⁴ *BellSouth Telecommunications, Inc.'s Post-Hearing Brief*, p. 32 (Jul. 6, 2001).

⁹⁵ *See Post Hearing Brief of WorldCom*, p. 36 (Jul. 6, 2001).

⁹⁶ *See In re: Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996*, Docket No. 99-00430, *Interim Order of Arbitration Award*, p. 34 (Aug. 11, 2000); *In re: Petition for Arbitration of the Interconnection Agreement Between BellSouth Telecommunications, Inc. and Time Warner Telecom of Mid-South, L.P. Pursuant to Section 252(B) of the Telecommunications Act of 1996*, Docket No. 99-00797, *Final Order of Arbitration Award*, p. 4 (Aug. 4, 2000).

⁹⁷ *Reciprocal Compensation Remand Order*, *supra* note 78, ¶ 34.

longer have authority to address this issue.”⁹⁸ The FCC then established the following reciprocal compensation regime:

1. For the first six-months after the FCC Order becomes effective, intercarrier compensation for ISP-bound traffic will be capped at a rate of \$.0015 per minute-of-use (“mou”). Beginning with the seventh month, rates are capped at \$.0010/mou for a period of eighteen months. Starting in the twenty-fifth month and extending until month thirty-six or the Commission takes further action on intercarrier compensation issues, rates for ISP-bound traffic will be capped at \$.0007.
2. The total number of minutes that a carrier may receive reciprocal compensation for ISP-bound traffic is capped.
3. As the transitional rates are caps on intercarrier compensation they have no effect to the extent that states have ordered local carriers to exchange ISP-bound traffic at rates below the caps or on a bill-and-keep basis.
4. In order to limit disputes and costly measurements to identify ISP-bound traffic, the FCC adopts a rebuttable presumption that traffic exchanged between local carriers that exceeds a 3:1 ratio of terminating to originating traffic is ISP-bound and subject to rate caps and compensated minutes.
5. The rate caps for ISP-bound traffic, or the lower rates imposed by a state commission pertinent to such traffic, apply only if the incumbent offers to exchange all traffic subject to § 251(b)(5) at the same rate.⁹⁹

In addition, the FCC observed that “[f]or those incumbent LECs that choose *not* to offer to exchange section 251(b)(5) traffic subject to the same rate caps we adopt for ISP-bound traffic, we order them to exchange ISP-bound traffic at the state-approved or state arbitrated reciprocal compensation reflected in their contracts.”¹⁰⁰ In light of these developments, the Authority is without jurisdiction to determine that local calls to ISPs are properly Section 251(b)(5) traffic and subject to reciprocal compensation when BellSouth agrees to exchange Section 251(b)(5) traffic at the FCC approved rates. In the absence of such an agreement, BellSouth is subject to the Authority’s rulings related to ISP bound traffic. Therefore, the Arbitrators voted unanimously to order the parties to exchange ISP-bound traffic pursuant to the requirements set forth in the FCC’s *Reciprocal Compensation Remand Order* issued on April 27, 2001.

⁹⁸ *Id.* ¶ 82.

⁹⁹ *See id.* ¶ 8.

¹⁰⁰ *Id.* ¶ 89.

XIV. ISSUE 51 - UNDER WHAT CIRCUMSTANCES IS BELL SOUTH REQUIRED TO PAY TANDEM CHARGES WHEN WORLDCOM TERMINATES BELL SOUTH LOCAL TRAFFIC?

A. Positions of the Parties

BellSouth initially argued that the FCC's two-part test to determine whether a carrier is eligible for tandem switching compensation required a CLEC to establish that its switch serves the same geographic area as the ILEC's tandem switch and that the CLEC's switch actually performs the local tandem functions.¹⁰¹ In support of its position, BellSouth cited the *First Report and Order* and Section 51.711(a) of the FCC Rules.¹⁰² In its post-hearing brief, however, BellSouth admitted that the FCC "does not now require a tandem functionality test to be met."¹⁰³

WorldCom maintains that it is automatically entitled to receive the tandem interconnection rate in addition to the end office interconnection rate when its switch serves an area comparable to the area served by BellSouth's tandem switch.¹⁰⁴ In support of its position, WorldCom cites Section 51.711(a) of the FCC Rules¹⁰⁵ and asserts the policy argument that adoption of BellSouth's position rewards BellSouth by allowing it to pay less for access to the more efficient WorldCom network, but charge WorldCom more for its access to BellSouth's less efficient network architecture.¹⁰⁶

B. Deliberations and Conclusions

The FCC, in its most recent Notice of Proposed Rulemaking in CC Docket No. 01-92, clarified and interpreted Section 51.711(a)(3) as follows:

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

¹⁰¹ See Cynthia K. Cox, Pre-Filed Direct Testimony, p. 68 (Dec. 13, 2000).

¹⁰² See *id.* at 69-70.

¹⁰³ BellSouth Telecommunications, Inc.'s Post-Hearing Brief, p. 34 (Jul. 6, 2001).

¹⁰⁴ See Don Price, Pre-Filed Direct Testimony, p. 62 (Dec. 6, 2000).

¹⁰⁵ See *id.* at 62-63.

¹⁰⁶ See Don Price, Pre-Filed Rebuttal Testimony, p. 35 (Dec. 13, 2000).

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."¹⁰⁷

Therefore, as long as WorldCom meets the geographic comparability test, it is entitled to the tandem interconnection rate. WorldCom does not have to satisfy the functional equivalency criteria before it may seek tandem charges.

Although the issue only requests a ruling on the circumstances requiring the payment of tandem charges, the parties' filings indicate that they do not agree on whether WorldCom has established the existence of those circumstances. The Arbitrators find that the number of customers WorldCom serves, or the location of those customers has little, if any, significance to the geographic comparability test. When the FCC issued the geographic comparability rule, it could not possibly have expected a CLEC's customer base to be numerically equivalent to that of a well-established ILEC such as BellSouth. At this stage, WorldCom's customer base is naturally much smaller and much more concentrated than BellSouth's customer base. This does not, however, mean that WorldCom's switches do not cover nor have the capacity to serve geographic areas comparable to BellSouth's local tandems. Indeed, WorldCom has provided maps of the Knoxville and Memphis areas, which are comparable to areas served by BellSouth's tandem switches, and demonstrated that its switches could serve those areas. Hence, BellSouth's contention that WorldCom has failed to meet the geographic comparability test is without merit.

Based on the foregoing, the Arbitrators voted unanimously to require BellSouth to pay tandem rates to WorldCom as long as WorldCom's switch is capable of serving a geographic area comparable to the area served by BellSouth's tandem switch. Further, the Arbitrators voted

¹⁰⁷ *In re: Developing a Unified Inter-Carrier Compensation Regime*, FCC 01-132, CC Docket No. 01-92, 2001 WL 455872, ¶ 105 (Apr. 27, 2001) (Notice of Proposed Rulemaking).

unanimously that WorldCom is entitled to the tandem interconnection rate as WorldCom's switch could serve a geographic area comparable to the area served by BellSouth's tandem switch.

XV. ISSUE 52 - SHOULD BELLSOUTH BE REQUIRED TO PAY ACCESS CHARGES TO WORLDCom FOR NON-PRESUBSCRIBED INTRALATA TOLL CALLS HANDLED BY BELLSOUTH?

A. Positions of the Parties

BellSouth does not dispute the fact that it requires WorldCom to pay originating and terminating access when its customers use WorldCom to make an intraLATA call to an independent telephone company ("ICO") customer and when an ICO customer uses WorldCom to make an intraLATA call to WorldCom's customers. According to BellSouth "[e]ven though BellSouth receives the intraLATA toll revenue, [it has] no record to indicate what call or calls the revenue applies to."¹⁰⁸ In essence, BellSouth claims WorldCom should go to the ICOs to collect any access charge it is due because ICOs do not send BellSouth Extended Area Calls or countywide calls and BellSouth can not validate the bill.¹⁰⁹

WorldCom contends that BellSouth should pay access charges to WorldCom when BellSouth acts as an intraLATA toll carrier and an ICO makes an intraLATA toll call to a WorldCom customer or receives an intraLATA toll call from a WorldCom customer. WorldCom contends that this is similar to BellSouth requiring WorldCom to pay originating access when a BellSouth customer uses WorldCom to make an intraLATA call to an ICO's customer and terminating access when an ICO's customer uses WorldCom to make an intraLATA call to a BellSouth customer.¹¹⁰

¹⁰⁸ Cynthia K. Cox, Pre-Filed Rebuttal Testimony, p. 37 (Dec. 13, 2000).

¹⁰⁹ See Cynthia K. Cox, Pre-Filed Direct Testimony, p. 75 (Dec. 6, 2000).

¹¹⁰ See Don Price, Pre-Filed Direct Testimony, p. 64 (Dec. 6, 2000).

B. Deliberations and Conclusions

WorldCom's request is reasonable. Just as BellSouth requires WorldCom to pay "originating access when a BellSouth customer uses [WorldCom] to make an intraLATA call to an ICO's customer, and terminating access when an ICO's customer uses [WorldCom] to make an intraLATA call to a BellSouth customer,"¹¹¹ BellSouth should: (1) pay WorldCom terminating access, when BellSouth terminates a non-prescribed intraLATA call and BellSouth is the intraLATA carrier; and (2) pay WorldCom originating access when a WorldCom customer uses BellSouth to make an intraLATA call to an ICO's customer. Therefore, the Arbitrators voted unanimously to require BellSouth to pay access charges to WorldCom for non-pre-subscribed intraLATA toll calls handled by BellSouth.

¹¹¹ Don Price, Pre-Filed Direct Testimony, p 64 (Dec. 6, 2000).

XVI. ISSUE 55 - SHOULD BELL SOUTH BE REQUIRED TO PROVIDE A RESPONSE, INCLUDING A FIRM COST QUOTE, WITHIN FIFTEEN DAYS OF RECEIVING A COLLOCATION APPLICATION?

A. Positions of the Parties

BellSouth proposes that it will respond to space availability requests within ten (10) business days of receiving WorldCom's collocation application. However, due to the scope and nature of the work involved, BellSouth is offering to provide a cost quote and date the collocation arrangement will be available to the requesting CLEC within thirty (30) business days. BellSouth argues that it has to consider factors such as the existing building configuration, space usage, forecasted demand, and design practices before it responds to any CLEC with a space ready date.¹¹²

WorldCom agrees that BellSouth has to consider these factors in order to respond to its collocation application, but believes thirty (30) business days is unreasonable.¹¹³ WorldCom also contends that BellSouth's proposal is not consistent with the requirements of the Act, the FCC's *Advanced Services Order*,¹¹⁴ and BellSouth's own proposal to the North Carolina Public Service Commission. In short, WorldCom is requesting that the Authority reject BellSouth's proposal and require it to provide a response, including a firm cost quote, within fifteen (15) days of receiving a collocation application.¹¹⁵

B. Deliberations and Conclusions

In the Act, Congress recognized the importance of collocation arrangements in bringing competition to the telecommunications market. Section 251(c)(6) of the Act requires ILECs to

¹¹² See W. Keith Milner, Pre-Filed Direct Testimony, pp. 19-21 (Dec. 6, 2000).

¹¹³ See Phillip A. Bomer, Pre-Filed Direct Testimony, pp. 15-16 (Dec. 6, 2000).

¹¹⁴ See *In re: Deployment of Wireline Services Offering Advanced Telecommunications Capability*, FCC 99-48, CC Docket No. 98-147, 14 FCC Rcd. 4761 (Mar. 31, 1999) (hereinafter *Advanced Services Order*).

¹¹⁵ See Phillip A. Bomer, Pre-Filed Direct Testimony, pp. 15-16 (Dec. 6, 2000).

provide collocation to requesting carriers on “rates, terms, and conditions that are just, reasonable, and nondiscriminatory.”¹¹⁶ Despite this clearly stated objective of Congress, requesting CLECs must wait for protracted lengths of time, as long as six to eight months in some circumstances, after their initial collocation request before collocation space becomes available.¹¹⁷ Timely provisioning of physical collocation space is critical if CLECs are to compete effectively in the markets for advanced services and other telecommunication services.¹¹⁸

The FCC has established reasonable collocation arrangements. These arrangements are standards to be followed in the absence of other reasonable arrangements set by states.¹¹⁹ According to a recent order, “an incumbent LEC must tell the requesting telecommunications carrier whether a collocation application has been accepted or denied within 10 calendar days after receiving the application.”¹²⁰

WorldCom’s request is slightly different from what other CLECs have requested in that WorldCom wants BellSouth to provide cost quotes with a response to its collocation application. Despite this added requirement, the Arbitrators find that WorldCom’s request is reasonable particularly in light of the FCC’s ten-day standard; a standard upheld by the Authority in a previous docket.¹²¹ Moreover, the FCC has recognized that ILECs, such as BellSouth, have had ample time since the enactment of section 251(c)(6) to develop internal procedures sufficient to meet its ten

¹¹⁶ 47 U.S.C. § 251(c)(6) (Supp. 2001).

¹¹⁷ See *In re Deployment of Wireline Services Offering Advanced Telecommunications Capability*, FCC 00-297, CC Docket No. 98-147, 15 FCC Rcd. 17,806, ¶ 14 (Aug. 10, 2000) (Order on Reconsideration and Second Further Notice of Proposed Rulemaking) (hereinafter *Order on Reconsideration*).

¹¹⁸ See *id.* ¶ 22.

¹¹⁹ See *id.*

¹²⁰ *Id.* ¶ 24.

¹²¹ See *In re: Petition for Arbitration of the Interconnection Agreement Between BellSouth Telecommunications, Inc. and Intermedia Communications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket No. 99-00948, *Interim Order of Arbitration Award*, pp. 15-16 (Jun. 25, 2001).

(10) day deadline.¹²² The Arbitrators find that the same can be said for the fifteen (15) day deadline requested by WorldCom.

For BellSouth to be subject to this deadline, however, WorldCom must provide BellSouth with a forecast of its collocation needs. The FCC has found this to be a reasonable arrangement.¹²³ Additionally, WorldCom is not opposed to providing a forecast of its collocation needs to BellSouth either for a particular central office or statewide.¹²⁴

Based on the foregoing, the Arbitrators voted unanimously to require BellSouth to provide WorldCom a response, including a firm cost quote, within fifteen (15) calendar days of receiving a collocation application. Further, in order for BellSouth to be subject to this time period, WorldCom must provide a forecast to BellSouth of its collocation needs. The parties shall submit final best offers on the time frame for providing the forecasts no later than January 11, 2002.

¹²² See *Order on Reconsideration*, *supra* note 117, ¶ 24.

¹²³ See *In re: Deployment of Wireline Services Offering Advanced Telecommunications Capability*, DA 01-475, CC Docket No. 98-147, 16 FCC Rcd. 4560, ¶ 11 (Feb. 21, 2001) (Memorandum Opinion and Order).

¹²⁴ See Transcript of Proceedings, May 7, 2001, vol. I, p. 88 (Hearing).

XVII. ISSUE 56 - FOR PURPOSES OF THE INTERCONNECTION AGREEMENT BETWEEN WORLDCOM AND BELL SOUTH, SHOULD BELL SOUTH BE REQUIRED TO PROVIDE DC POWER TO ADJACENT COLLOCATION SPACE?

A. Positions of the Parties

BellSouth opposes the provision of DC power to adjacent collocation space on two grounds. First, it argues that the FCC's rules do not require BellSouth to provide DC power to adjacent collocation arrangement.¹²⁵ Moreover, BellSouth maintains that running DC power from central offices to adjacent collocation spaces does not conform to the National Electric Safety Code because "the cabling used to house DC power is not rated for outside use."¹²⁶ BellSouth is willing, however, to provide AC power to an adjacent arrangement and claims that it utilizes this same arrangement at its own sites located outside its central office buildings.¹²⁷

WorldCom alleges that the accommodation of AC power and the conversion of AC to DC power is a costly undertaking for any CLEC to accept.¹²⁸ As to BellSouth's concerns over safety, WorldCom states that it has offered to provide the "cabling from BellSouth's BDFB to the adjacent site, provided BellSouth supplies the conduit."¹²⁹ As for whether the cabling should be used outdoors, WorldCom argues that "typically the cabling would be run underground."¹³⁰ In addition, WorldCom argues that by requiring BellSouth to provide adjacent collocation, the FCC in the *Advanced Services Order* and *Order on Reconsideration*¹³¹ required BellSouth to provide DC power to adjacent collocation space.¹³²

¹²⁵ See W. Keith Milner, Pre-Filed Direct Testimony, p. 23 (Dec. 6, 2000).

¹²⁶ *Id.*

¹²⁷ See *id.*

¹²⁸ See Phillip A. Bomer, Pre-Filed Direct Testimony, p. 20 (Dec. 6, 2000).

¹²⁹ Phillip A. Bomer, Pre-Filed Rebuttal Testimony, p. 13 (Dec. 13, 2000).

¹³⁰ *Id.*

¹³¹ See *Advanced Services Order*, *supra* note 114; *Order on Reconsideration*, *supra* note 117.

¹³² See Phillip A. Bomer, Pre-Filed Rebuttal Testimony, p. 13 (Dec. 13, 2000).

B. Deliberations and Conclusions

The Arbitrators find that WorldCom has not demonstrated why BellSouth should provision DC power to adjacent collocation space. It failed to rebut BellSouth's contention that running DC power to an adjacent collocation arrangement contravenes the National Electric Safety Code because the cabling used to house DC power is not rated for outside use. Even though WorldCom offered to provide the cabling and asserts that the cabling would be run underground, by the admission of its own witness, running the conduit underground is not considered indoor use.¹³³ Thus, the Arbitrators are not convinced that WorldCom's proposal satisfies the National Electric Safety Code regarding the cabling used to house DC power.

The Arbitrators are also not persuaded by WorldCom's assertion that the conversion of AC to DC power is always a more costly undertaking than providing DC power to adjacent collocation spaces. When cross-examined WorldCom's witness, Mr. Phillip Bomer, admitted that, under certain circumstances, "it may be more cost effective to run the AC in and then convert it [to DC power.]"¹³⁴

For these reasons, the Arbitrators voted unanimously that BellSouth is not required to provide DC power to adjacent collocation space.

¹³³ See Transcript of Proceedings, May 7, 2001, vol. I, p. 98 (Hearing).

¹³⁴ *Id.*

XVIII. ISSUE 61 - FOR PURPOSES OF THE INTERCONNECTION AGREEMENT BETWEEN WORLDCOM AND BELL SOUTH, SHOULD THE PER AMPERE RATE FOR THE PROVISION OF DC POWER TO WORLDCOM'S COLLOCATION SPACE APPLY TO AMPS USED OR TO FUSED CAPACITY?

A. Positions of the Parties

BellSouth argues that the Authority adopted rates based on fused capacity in Docket No. 97-01262.¹³⁵ Further, BellSouth maintains that the per ampere charge should apply to fused capacity because BellSouth's costs for its power plant are a function of peak power loads rather than average or nominal loads.¹³⁶ BellSouth contends that it must use peak power loads because "the power plant must be built to withstand peak aggregate power demands for both BellSouth's equipment and all collocators' equipment."¹³⁷ Nevertheless, BellSouth has indicated a willingness to "work cooperatively to identify and install suitable power monitoring devices and [to] develop and implement procedures to read and tabulate monitored power consumption levels from which a bill would be generated."¹³⁸

WorldCom maintains that BellSouth should apply the per ampere charge to amperes used rather than fused ampere capacity. WorldCom argues that this proposal permits BellSouth to recover WorldCom's pro-rata share of the cost of the power supply and fully compensates BellSouth.¹³⁹ WorldCom also asserts that BellSouth's proposal would allow it to "charge a large up-front non-recurring charge for construction of power supply, plus a recurring rate that also will reflect the cost of the power supply" thereby enabling it to recover from WorldCom more than

¹³⁵ See W. Keith Milner, Pre-Filed Rebuttal Testimony, p. 39 (Dec. 13, 2000).

¹³⁶ See *id.* at 38

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ See Phillip A. Bomer, Pre-Filed Direct Testimony, pp. 31-32 (Dec. 6, 2000).

WorldCom's share of the costs.¹⁴⁰ Lastly, WorldCom asserts that its proposal is consistent with the rates ordered by the Authority in Docket No. 97-01262.¹⁴¹

B. Deliberations and Conclusions

BellSouth has indicated its willingness to engage in a cooperative effort to develop a method and procedure for monitoring power consumption levels in order to generate a bill.¹⁴² Further, under cross-examination, BellSouth's witness, Mr. Keith Milner, admitted that it is inappropriate for BellSouth to charge WorldCom for amperes not used or requested by WorldCom.¹⁴³ Accordingly, the Arbitrators voted unanimously that the per ampere rate for the provision of DC power to WorldCom's collocation space should apply to amperes used and not to fused capacity.

¹⁴⁰ Phillip A. Bomer, Pre-Filed Rebuttal Testimony, p. 17 (Dec. 13, 2000).

¹⁴¹ See *Post-Hearing Brief of WorldCom*, pp. 51-52 (Jul. 6, 2001).

¹⁴² See W. Keith Milner, Pre-Filed Rebuttal Testimony, p. 38 (Dec. 13, 2000).

¹⁴³ See Transcript of Proceedings, May 8, 2001, vol. II, p. 510 (Hearing).

XIX. ISSUE 62 - SHOULD BELL SOUTH BE REQUIRED TO PROVISION CAGED PHYSICAL COLLOCATION SPACE (INCLUDING PROVISION OF THE CAGE ITSELF) WITHIN 90 DAYS AND CAGELESS AND VIRTUAL COLLOCATION WITHIN 45 DAYS?

A. Positions of the Parties

BellSouth proposes ninety (90) calendar days from the application date for caged and cageless collocation; fifty (50) calendar days for virtual collocation under ordinary conditions; and seventy-five (75) calendar days for virtual collocation under extraordinary conditions.¹⁴⁴ BellSouth defines ordinary conditions as "space being available with only minor changes required to the network or building infrastructure."¹⁴⁵

WorldCom's position is that BellSouth should be required to provide caged collocation space within ninety (90) calendar days and cageless or virtual collocation within sixty (60) calendar days of the application.¹⁴⁶ In short, WorldCom is requesting the Arbitrators to adopt the FCC's interval for caged collocation.¹⁴⁷ WorldCom argues that the issues of space availability, configuration, and construction are less complex for cageless collocation than for caged collocation, therefore cageless collocation should be subject to shorter interval.¹⁴⁸ WorldCom also argues that the provisioning of virtual collocation is similar to cageless collocation.¹⁴⁹ To further justify its request for a shorter interval for cageless collocation, WorldCom references a recent regional interconnection agreement between ITC^DeltaCom and BellSouth in Tennessee containing thirty (30) day interval from the receipt by BellSouth of a bona fide order for cageless collocation.¹⁵⁰

¹⁴⁴ See W. Keith Milner, Pre-Filed Direct Testimony, pp. 27-28 (Dec. 6, 2000).

¹⁴⁵ *Id.*

¹⁴⁶ See Phillip A. Bomer, Pre-filed Direct Testimony, p. 33 (Dec. 6, 2000).

¹⁴⁷ See *id.* at 36.

¹⁴⁸ See *id.* at 35-36.

¹⁴⁹ See *id.* at 35.

¹⁵⁰ See *id.* at 36.

B. Deliberations and Conclusions

Consistent with the findings in Issue 55, the Arbitrators found that the timely provisioning of physical collocation space is critical to the development of competition in the markets for advanced services and other telecommunication services.¹⁵¹ In the *Order on Reconsideration*, the FCC established reasonable intervals for the provisioning of collocation arrangements to be followed in the absence of other reasonable arrangements set by states.¹⁵² According to the *Order on Reconsideration*, "an incumbent LEC should be able to complete any technically feasible physical collocation arrangements, whether caged or cageless, no later than 90 calendar days after receiving an acceptable collocation application, where space, whether conditioned or unconditioned, is available in the incumbent LEC premises."¹⁵³ The FCC reached its decisions after examining the experiences of ILECs in the provisioning of collocation arrangements to different requesting carriers. The FCC's findings suggest that there are ILECs that complete collocation requests in less than ninety calendar days.

In Docket No. 99-00430, the Arbitrators adopted ITC^DeltaCom's final best offer that required BellSouth to provide cageless collocation to DeltaCom within thirty (30) calendar days after DeltaCom places the firm order when there is conditioned space and DeltaCom installs the bays/racks.¹⁵⁴ Pursuant to the final best offer, in no event, should the provisioning interval for cageless collocation exceed sixty (60) business days from the date of the firm order.¹⁵⁵ Later, in

¹⁵¹ See *supra* p. 39.

¹⁵² See *Order on Reconsideration*, *supra* note 117, ¶ 22.

¹⁵³ *Id.* ¶ 27.

¹⁵⁴ See *In re: Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996*, Docket No. 99-00430, *Final Best Offer of ITC^DeltaCom Communications, Inc.*, Issue 4(a) (May 4, 2000).

¹⁵⁵ See *id.*

Docket No. 99-00948, the Arbitrators cited their decision in Docket No. 99-00430 and held as follows:

- 1) BellSouth shall inform Intermedia whether collocation space is available within **ten (10) calendar days** of receiving Intermedia's application for collocation. The Arbitrators agree with the FCC that ILECs, such as BellSouth, have had the opportunity since the enactment of the Act to develop internal procedures to meet this deadline.
- 2) BellSouth shall provision cageless collocation to Intermedia within **thirty (30) calendar days** after Intermedia places the firm order when there is conditioned space and Intermedia installs the bays/racks. In no event, should the provisioning interval for cageless collocation exceed **ninety (90) calendar days** from the date of the firm order.
- 3) BellSouth shall provision caged physical collocation arrangements requested by Intermedia, provided collocation spaces are available in BellSouth facilities, within **ninety (90) calendar days**.¹⁵⁶

Consistent with the *Order on Reconsideration* and the Arbitrators' previous rulings in Docket Nos. 99-00430 and 99-00948, the Arbitrators voted unanimously:

- 1) BellSouth shall provision cageless collocation to WorldCom within **thirty (30) calendar days** after the firm order is placed where there is conditioned space and where WorldCom installs the bays/racks. In no event, should the provisioning interval for cageless collocation exceed **ninety (90) calendar days** from the date of the firm order.
- 2) BellSouth shall be required to provision caged physical collocation space within **ninety (90) calendar days** of receiving an acceptable collocation application.

¹⁵⁶ In re: Petition for Arbitration of the Interconnection Agreement Between BellSouth Telecommunications, Inc. and Intermedia Communications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996, Docket No. 99-00948, Interim Order of Arbitration Award, pp. 15-16 (Jun. 25, 2001).

XX. ISSUE 63 - FOR PURPOSES OF THE INTERCONNECTION AGREEMENT BETWEEN WORLDCOM AND BELL SOUTH, IS WORLDCOM ENTITLED TO USE ANY TECHNICALLY FEASIBLE ENTRANCE CABLE, INCLUDING COPPER FACILITIES?

A. Positions of the Parties

BellSouth asserts that the Arbitrators should not permit CLECs to use non-fiber optic entrance facilities because this would accelerate the exhaust of entrance facilities at BellSouth central offices at an unacceptable rate. BellSouth explains that the only exception occurs with adjacent collocation. BellSouth admits that the FCC does not require BellSouth to accommodate non-fiber optic entrance facilities unless ordered to do so by the state commission.¹⁵⁷ BellSouth asserts that such a ruling "would be to the detriment of other CLECs desiring to collocate in an office with limited entrance space available."¹⁵⁸

WorldCom maintains that as a matter of parity and nondiscriminatory treatment, it is entitled to use copper entrance facilities.¹⁵⁹ WorldCom asserts that "[i]f copper were categorically eliminated as an entrance facility, CLECs would be forced to install the more expensive fiber optic systems, which would raise everyone's costs, and may cause undue financial burden on a new entrant."¹⁶⁰ WorldCom agrees that BellSouth should be allowed to reserve some space for future needs; however, it wants to review what space exists and what future requirements BellSouth has when BellSouth contends there is a near exhaust situation.¹⁶¹

B. Deliberations and Conclusions

Both BellSouth's and WorldCom's arguments have merit. Clearly, BellSouth's central offices have space constraints. Using copper facilities would certainly accelerate the exhaust of

¹⁵⁷ See W. Keith Milner, Pre-Filed Direct Testimony, p. 29 (Dec. 6, 2000).

¹⁵⁸ W. Keith Milner, Pre-Filed Rebuttal Testimony, p. 42 (Dec. 13, 2000).

¹⁵⁹ See Phillip A. Bomer, Pre-Filed Direct Testimony, p. 39 (Dec. 6, 2000).

¹⁶⁰ *Id.*

¹⁶¹ See *id.* at 39-40.

entrance facilities quicker than if providers used only non-copper entrance facilities. Thus, requiring BellSouth to allow WorldCom to use copper as an entrance facility without any restrictions would have a negative impact on other CLECs that might wish to do the same. Likewise, it is true that if the Arbitrators prohibited copper entrance facility then CLECs would be forced to install more expensive fiber optic systems. Such a result would raise costs and possibly cause undue financial burden on new entrants.

Additionally, the fact that copper enables xDSL service to be provided by CLECs operates in favor of allowing copper facilities to some extent. The public interest will not be served best if the Authority rules that WorldCom is limited to fiber optic systems. Thus, public interest requires that if there is no space constraint in BellSouth central offices, WorldCom should be entitled to use any technically feasible entrance cable, including copper facilities.

Based on the foregoing, the Arbitrators voted unanimously that if there is no space constraint in BellSouth's central offices, then WorldCom is entitled to use any technically feasible entrance cable, including copper facilities. Further, if BellSouth claims that it is running out of entrance facilities in a particular central office, it should allow WorldCom a tour of its central offices. Lastly, if, after touring a given BellSouth central office, WorldCom disagrees with BellSouth's claim that there is a space constraint, WorldCom may petition the Authority for resolution of the issue.

XXI. ISSUE 64 - IS WORLDCOM ENTITLED TO VERIFY BELL SOUTH'S ASSERTION, WHEN MADE, THAT DUAL ENTRANCE FACILITIES ARE NOT AVAILABLE? SHOULD BELL SOUTH MAINTAIN A WAITING LIST FOR ENTRANCE SPACE AND NOTIFY WORLDCOM WHEN SPACE BECOMES AVAILABLE?

A. Positions of the Parties

BellSouth claims that there is "considerable time and expense associated with maintaining a waiting list for each central office in which dual entrance facilities may not be available."¹⁶² BellSouth also argues that it is not required by the FCC to maintain a waiting list for dual entrance facilities.¹⁶³ As to whether BellSouth should provide a tour of the entrance facilities, BellSouth agreed to provide "a limited tour of the cable vault to see that there's only one cable entrance facility."¹⁶⁴ This, in effect, satisfies WorldCom's request.

WorldCom believes that it should be permitted a limited inspection of entrance facilities and ducts to determine whether dual entrance facilities are available.¹⁶⁵ As to whether BellSouth should maintain a waiting list for entrance space, WorldCom maintains that it is reasonable to expect BellSouth to maintain a waiting list for dual entrance facilities so that it can offer space to new entrants based on their position on the waiting list.¹⁶⁶

B. Deliberations and Conclusions

During the Hearing, BellSouth accepted WorldCom's contention that WorldCom should be permitted a limited inspection of entrance facilities and ducts to confirm BellSouth's assertion that dual entrance facilities are not available.¹⁶⁷ As to the waiting list issue there is insufficient evidence in the record to sustain a finding that there is considerable time and expense associated with

¹⁶² W. Keith Milner, Pre-Filed Rebuttal Testimony, p. 45 (Dec. 13, 2000).

¹⁶³ See *id.* at 46.

¹⁶⁴ Transcript of Proceedings, May 8, 2001, vol. II, p. 516 (Hearing).

¹⁶⁵ See Phillip A. Bomer, Pre-Filed Direct Testimony, p. 41 (Dec. 6, 2000).

¹⁶⁶ See *id.* at 44.

¹⁶⁷ See Transcript of Proceedings, May 8, 2001, vol. II, p. 516 (Hearing).

maintaining a waiting list for central offices in which dual entrance facility may not be available.¹⁶⁸

It is expected that BellSouth inventories its facilities for its own purposes. It should not be any more difficult or costly to maintain a list of carriers that want to use entrance facilities as they become available. For these reasons, the Arbitrators voted unanimously that WorldCom is entitled to a tour of the entrance facilities to verify that there is only one cable entrance facility and that BellSouth is required to maintain a waiting list for dual entrance facilities.

¹⁶⁸ See W. Keith Milner, Pre-Filed Rebuttal Testimony, p. 45 (Dec. 13, 2000).

XXII ISSUE 67 - WHEN WORLDCOM HAS A LICENSE TO USE BELL SOUTH RIGHTS-OF-WAY, AND BELL SOUTH WISHES TO CONVEY THE PROPERTY TO A THIRD PARTY, SHOULD BELL SOUTH BE REQUIRED TO CONVEY THE PROPERTY SUBJECT TO WORLDCOM'S LICENSE?

A. Positions of the Parties

BellSouth defines the property in question as "BellSouth's poles, conduit or ducts to or in which [WorldCom] has attached or placed facilities pursuant to a license."¹⁶⁹ BellSouth argues that it has not restricted its ability to convey its property by granting a license to make use of BellSouth's facilities.¹⁷⁰ BellSouth contends that it "should be able to sell or otherwise convey its property without restriction so long as BellSouth gives [WorldCom] reasonable notice of such sale or conveyance."¹⁷¹ BellSouth also notes that its Rights of Way agreements with WorldCom do not create an easement in favor of WorldCom and do not convey an interest in the subject property.¹⁷²

WorldCom contends that it "should not be required to forfeit its license rights, and possibly strand facilities, when BellSouth conveys the underlying property."¹⁷³ In addition, WorldCom asserts BellSouth's position is discriminatory and anticompetitive because "BellSouth should not be able to sell property in a way that protects its own facilities but not those of WorldCom."¹⁷⁴ WorldCom rebuts BellSouth's reliance on the rights of way agreements by asserting that the argument is circular because, if WorldCom prevails on this issue, WorldCom will be entitled to amend the rights of way agreements.¹⁷⁵

¹⁶⁹ Cynthia K. Cox, Pre-Filed Direct Testimony, p. 79 (Dec. 6, 2000).

¹⁷⁰ See *BellSouth Telecommunications, Inc.'s Post-Hearing Brief*, p. 42 (July 6, 2001).

¹⁷¹ Cynthia K. Cox, Pre-Filed Direct Testimony, p. 79 (Dec. 6, 2000).

¹⁷² See *id.*

¹⁷³ Don Price, Pre-Filed Direct Testimony, p. 65 (Dec. 6, 2000).

¹⁷⁴ *Id.* at 66; see *Post-Hearing Brief of WorldCom*, pp. 61-62 (July 6, 2001).

¹⁷⁵ See Don Price, Pre-Filed Rebuttal Testimony, p. 37 (Dec. 13, 2000).

B. Deliberations and Conclusions

During the deliberations, the Arbitrators recognized that the parties did not seem to agree as to the definition of the term "property" as used in the language of the issue and that the definition of that term could affect their decision. Moreover, neither party cited any legal authority in support of their position despite the representations of counsel that the issue contains legal and policy aspects.¹⁷⁶ Thus, in order to avoid any unintended consequences, the Arbitrators voted unanimously to hold the issue in abeyance and to require the parties to file legal briefs and final best offers no later than January 11, 2002.

¹⁷⁶ See Transcript of Proceedings, May 8, 2001, v. II, pp. 339-42 (Hearing).

XXIII. ISSUE 68 - SHOULD BELL SOUTH REQUIRE THAT PAYMENTS FOR MAKE-READY WORK BE MADE IN ADVANCE?

A. Positions of the Parties

BellSouth asserts that WorldCom should “pay in advance for any work [WorldCom] requests BellSouth to perform, as do other CLECs that have signed BellSouth’s standard license agreement.”¹⁷⁷ BellSouth also claims that it is not unusual to require advance payment. Further, BellSouth argues this arrangement will not harm WorldCom.¹⁷⁸

WorldCom maintains that a requirement for advanced payments will create delays and is not commercially reasonable.¹⁷⁹ Hence, WorldCom wants BellSouth to begin work as soon as WorldCom receives an invoice stating the amount BellSouth will charge for the project and offers to “fax BellSouth, upon receipt of an invoice, written authorization to commence the work at WorldCom’s expense.”¹⁸⁰ WorldCom is willing to pay the invoice within fourteen (14) days. This arrangement, argues WorldCom, will give it time to process the payment and is commercially reasonable.¹⁸¹

B. Deliberations and Conclusions

It is common for parties in a business relationship to agree to terms and conditions that require advance payments. Likewise, it is common for parties to agree to conduct their business relationship on credit with payments to be made at some later date. There is nothing fundamentally wrong with either BellSouth’s or WorldCom’s positions on this issue. Neither party, however, has put forward a reasonable compromise solution or presented sufficient proof or argument in favor of their respective position. Given these circumstances, the Arbitrators voted unanimously to order

¹⁷⁷ W. Keith Milner, Pre-Filed Direct Testimony, p. 33 (Dec. 6, 2000).

¹⁷⁸ See *id.*

¹⁷⁹ See Don Price, Pre-Filed Direct Testimony, p. 67 (Dec. 6, 2000).

¹⁸⁰ Don Price, Pre-Filed Rebuttal Testimony, p. 38 (Dec. 13, 2000).

¹⁸¹ See Don Price, Pre-Filed Direct Testimony, p. 67 (Dec. 6, 2000).

WorldCom to compensate BellSouth for make-ready work by paying fifty percent (50%) of the invoice amount in advance and the remaining sum upon completion of the work.

XXIV. ISSUE 80 - SHOULD BELL SOUTH BE REQUIRED TO PROVIDE AN APPLICATION-TO-APPLICATION ACCESS SERVICE ORDER INQUIRY PROCESS?

A. Positions of the Parties

BellSouth maintains that the Arbitrators should not require it to provide an application-to-application access service order inquiry process. BellSouth contends that “[a]ccess services are not part of BellSouth’s obligations under the Act and [WorldCom] should not be permitted to use this arbitration to try to enhance its interexchange service offerings.”¹⁸² The national standard for ordering UNEs and resale services, contends BellSouth, is through the submission of a Local Service Request (“LSR”), not an Access Service Request (“ASR”).¹⁸³ BellSouth asserts that the electronic pre-ordering functionality WorldCom seeks is available through the LSR process and WorldCom’s use of LSRs and ASRs is satisfactory.¹⁸⁴ However, BellSouth admits that the FCC has observed that the ASR process is one method for provisioning EELs.¹⁸⁵

WorldCom claims that it “has been using [ASRs] to order local services, and it is those local services for which WorldCom seeks an application-to-application capability.”¹⁸⁶ WorldCom asserts that it uses the ASR process to order DS1 loop and transport combinations (“DS1 Combos”) to supply dial tone to its customers.¹⁸⁷ WorldCom contends that it needs pre-ordering functionalities to “enable it to order these local facilities more effectively and to compete on equal footing with BellSouth.”¹⁸⁸

¹⁸² Ronald M. Pate, Pre-Filed Direct Testimony, p. 10 (Dec. 6, 2000).

¹⁸³ See *id.* at 11.

¹⁸⁴ See *id.*; Ronald M. Pate, Pre-Filed Rebuttal Testimony, p. 6 (Dec. 13, 2000).

¹⁸⁵ See Ronald M. Pate, Pre-Filed Rebuttal Testimony, p. 6 (Dec. 13, 2000) (citing *UNE Remand Order*, *supra* note 3, n.581).

¹⁸⁶ Sherry Lichtenberg, Pre-Filed Direct Testimony, p. 13 (Dec. 6, 2000).

¹⁸⁷ See *id.*

¹⁸⁸ *Id.*

B. Deliberations and Conclusions

BellSouth objects to providing an application-to-application access service inquiry process to WorldCom on the grounds that “[a]ccess services are not part of BellSouth’s obligations under the Act and [WorldCom] should not be permitted to use this arbitration to try to enhance its interexchange service offerings.”¹⁸⁹ However, BellSouth does not deny that it has permitted CLECs, including WorldCom, to order DS1 combos via the ASR process in the past.¹⁹⁰ Further, under cross-examination, BellSouth’s witness, Mr. Ronald M. Pate, acknowledged that an application-to-application ASR process would not benefit WorldCom unless it used the process to order a local product like the DS1 combo.¹⁹¹ Mr. Pate also admitted that BellSouth uses the ASR process to order MegaLink circuits, which are functionally equivalent to DS1 combos.¹⁹² It would be discriminatory for BellSouth to allow its representatives to obtain pre-order information electronically to order MegaLink circuits and deny a CLEC the electronic capability to order local services. Therefore, the Arbitrators voted unanimously that WorldCom is entitled to obtain an application-to-application access service order inquiry process for DS1 loop and DS1 combos.

¹⁸⁹ Ronald M. Pate, Pre-Filed Direct Testimony, p. 10 (Dec. 6, 2000).

¹⁹⁰ See Transcript of Proceedings, May 8, 2001, v. II, pp. 380-81 (Hearing).

¹⁹¹ See *id.* at 401-02.

¹⁹² See *id.* at 373-75.

XXV. ISSUE 95 - SHOULD BELLSOUTH BE REQUIRED TO PROVIDE WORLDCOM WITH BILLING RECORDS WITH ALL ELECTRONIC MESSAGE INTEREXCHANGE ("EMI") STANDARD FIELDS?

A. Positions of the Parties

BellSouth contends that it provides the "EMI fields that are required for the types of records included on the usage interfaces."¹⁹³ BellSouth asserts that it will continue to provide WorldCom with EMI consistent billing records; however, BellSouth asserts that the parties' interconnection agreement should make clear how the records will be provided.¹⁹⁴ BellSouth alleges that WorldCom's proposed language on this issue is "unclear, confusing and does not describe in sufficient detail the manner in which the records will be provided."¹⁹⁵ BellSouth asserts that its proposed language clarifies how BellSouth will provide the records.¹⁹⁶

WorldCom claims that BellSouth should be required to provide EMI billing records, because it is the industry standard used by all the other Bell companies.¹⁹⁷ Unless it is contractually obligated to do so, WorldCom argues, "[BellSouth] will be free to move away from the industry standard and develop proprietary records, if it has not done so already."¹⁹⁸

B. Deliberations and Conclusions

BellSouth asserts that it will provide WorldCom with EMI consistent billing records, but contends that WorldCom's proposal does not clearly delineate how BellSouth should provide the records.¹⁹⁹ This statement clearly indicates that the contention surrounding this issue is not if BellSouth will provide EMI billing records, but how BellSouth will provide EMI billing records. The record before the Arbitrators is not sufficient to address this specific contention nor did the

¹⁹³ David P. Scollard, Pre-Filed Direct Testimony, p. 7 (Dec. 6, 2000).

¹⁹⁴ See *id.* at 6.

¹⁹⁵ David P. Scollard, Pre-Filed Rebuttal Testimony, p. 4 (Dec. 13, 2000).

¹⁹⁶ See David P. Scollard, Pre-Filed Direct Testimony, p. 7 (Dec. 6, 2000).

¹⁹⁷ See Don Price, Pre-Filed Direct Testimony, p. 71 (Dec. 6, 2000).

¹⁹⁸ *Id.*

¹⁹⁹ See David P. Scollard, Pre-Filed Direct Testimony, p. 6 (Dec. 6, 2000).

parties frame the issue so as to include this particular dispute. Therefore, the Arbitrators voted unanimously to require BellSouth to provide WorldCom with billing records with all EMI standard fields. In addition, the Arbitrators voted unanimously to order the parties to submit final best offers no later than January 11, 2002 clarifying how BellSouth will provide the EMI records.

XXVI. ISSUE 100 - SHOULD BELL SOUTH OPERATORS BE REQUIRED TO ASK CALLERS FOR THEIR CARRIER OF CHOICE WHEN SUCH CALLERS REQUEST A RATE QUOTE OR TIME AND CHARGES?

A. Positions of the Parties

BellSouth argues that it is not obligated to ask customers about their carrier of choice or transfer the call to that carrier for free.²⁰⁰ BellSouth offers to transfer the caller to a long distance carrier, if that carrier is an Operator Transfer Service (“OTS”) customer.²⁰¹

WorldCom is requesting that the Authority require BellSouth operators “to ask WorldCom customers for their carrier of choice when they request a rate quote or time charge and connect the caller to that carrier.”²⁰² WorldCom agrees to pay for the time BellSouth operators spend handling calls from its customers, including the time spent asking about the customer’s long distance carrier and transferring the call.²⁰³

B. Deliberations and Conclusions

It is unclear why this issue is still before the Arbitrators. BellSouth has agreed to WorldCom’s request provided WorldCom compensates BellSouth for the service and WorldCom has agreed to compensate BellSouth. If the issue involves other contentious points, they are not apparent from the record. Therefore, based on the record, the Arbitrators voted unanimously that, as long as WorldCom is willing to compensate BellSouth for handling WorldCom customers’ requests for a rate quote or time and charges, BellSouth operators shall ask WorldCom local customers their carrier of choice and answer their question accordingly.

²⁰⁰ See W. Keith Milner, Pre-Filed Direct Testimony, p. 34 (Dec. 6, 2000).

²⁰¹ See *id.*

²⁰² Don Price, Pre-Filed Direct Testimony, p. 73 (Dec. 6, 2000).

²⁰³ See *id.* at 74-75.

XXVII. 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?

A. Positions of the Parties

BellSouth asserts that it 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, it refuses to agree to WorldCom's proposed language that would require BellSouth to "take all actions' to protect such information without any limitation and without specifying what actions WorldCom has in mind."²⁰⁴ Further, according to BellSouth, "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."²⁰⁵

WorldCom maintains that BellSouth's proposal falls short of protecting WorldCom's confidential information. According to WorldCom, "BellSouth should be required to take all actions necessary to ensure that its retail operations do not obtain [WorldCom's confidential] information."²⁰⁶ Further, WorldCom proposes that, if disclosure occurs, then a rebuttable presumption should arise that BellSouth has breached its obligations to preserve WorldCom's confidentiality.²⁰⁷ WorldCom also opines that the "most likely source of confidential WorldCom information for BellSouth's retail units is its wholesale division."²⁰⁸ WorldCom argues that

²⁰⁴ *BellSouth Telecommunications, Inc.'s Post Hearing Brief*, p. 46 (Jul. 6, 2001).

²⁰⁵ *Id.*

²⁰⁶ Don Price, Pre-Filed Direct Testimony, p. 82 (Dec. 6, 2000).

²⁰⁷ See Don Price, Pre-Filed Rebuttal Testimony, p. 49 (Dec. 13, 2000).

²⁰⁸ *Id.* at 47.

BellSouth's retail operation will obtain an unfair competitive advantage if it receives access to WorldCom's confidential information.²⁰⁹

B. Deliberations and Conclusions

As applied, WorldCom's proposal and BellSouth's proposal are the same. To explain, application of WorldCom's proposal would implicitly include an analysis of whether BellSouth acted reasonably to ensure that WorldCom's confidential information was not inappropriately shared.

The Arbitrators disagree with WorldCom's statement that the most likely source of confidential WorldCom information is BellSouth's wholesale division. WorldCom did not substantiate this claim. WorldCom's confidential information could be obtained from any number of sources; therefore, it is not appropriate to hold BellSouth accountable simply because WorldCom's confidential information was unreasonably disclosed.

For the foregoing reasons, the Arbitrators voted unanimously to require that BellSouth take all reasonable actions necessary to ensure that WorldCom's confidential information does not fall into the hands of BellSouth's retail operations. Further, the Arbitrators determined that the burden of proving that BellSouth has failed to do so should rest with WorldCom.


²⁰⁹ See *id.* at 49.

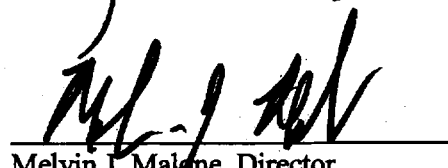
XXVIII. ORDERED

The foregoing *Interim Order of Arbitration Award* reflects the Arbitrators resolution of Issues 6, 8, 18, 28, 34, 35, 36, 37, 40, 42, 45, 46, 47, 48, 51, 52, 56, 61, 62, 63, 64, 68, 80, 100, and 110 and partial resolution of Issues 55 and 95. All resolutions contained herein comply with the provisions of the Telecommunications Act of 1996 and are supported by the record in this proceeding. BellSouth Telecommunications, Inc; MCImetro Access Services, LLC; and Brooks Fiber Communications of Tennessee, Inc. shall submit final best offers as requested herein on Issues 55, 67, and 95 no later than Friday, January 11, 2002.

TENNESSEE REGULATORY AUTHORITY,
BY ITS DIRECTORS ACTING AS
ARBITRATORS


Sara Kyle, Chairman


H. Lynn Greer, Jr., Director


Melvin J. Malone, Director

ATTEST:


K. David Waddell, Executive Secretary