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December 6, 2000

00-00369

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

Re: Petition of MCImetro Access Services, LLC and Brooks Fiber Communications of Tennessee, Inc. for Arbitration under the Telecommunications Act of 1996

Ladies and Gentlemen:

Enclosed please find the original plus thirteen (13) copies of the direct testimony of Lee Olson, Karen Kinard, Phillip Bomer, Sherry Lichtenberg and Don Price filed on behalf of WorldCom, Inc. A copy of the enclosed testimony has been electronically served on BellSouth Telecommunications, Inc.

Sincerely yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

Jon Hastings

Jon E. Hastings

JEH/sja

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been electronically served on the following parties on 6th day of December, 2000.

Guy M. Hicks, Esq.
Attorney for BellSouth
333 Commerce Street, Suite 2101
Nashville, Tennessee 37201-3300

Jon Hastings
Jon E. Hastings

BEFORE THE

TENNESSEE REGULATORY AUTHORITY

DOCKET NO. 00-00309

PREFILED DIRECT TESTIMONY

OF LEE OLSON

ON BEHALF OF WORLDCOM, INC.

December 6, 2000

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Lee M. Olson. My work address is 6 Concourse Parkway, Suite 400, Atlanta, Ga. 30328.

Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

A. I am employed by WorldCom, Inc., formerly known as MCI WorldCom, Inc., as a Senior Planning Engineer in WorldCom's Local Network Planning organization. As a Planning Engineer, my responsibilities include developing and maintaining local network architecture plans between WorldCom, Inc. and all local exchange carriers within the nine states that make up BellSouth's territory for both new and existing local switches. I also am the single point of contact for all network related engineering issues in these states.

Q. FOR HOW LONG HAS WORLDCOM EMPLOYED YOU?

A. I have been employed by WorldCom (including its predecessor, MCI Communications Corporation) since August 1998.

Q. PLEASE STATE YOUR PROFESSIONAL BACKGROUND BEFORE YOU JOINED WORLDCOM.

A. Prior to joining WorldCom, I was employed by AT&T Corporation for thirty-two years. I held various positions and assignments in AT&T's Operations, Network Management and Engineering departments. Management supervisory responsibilities included Central Office circuit order, switching, facilities, and network management. Engineering responsibilities included fundamental long range switch planning, and asset management. I also worked with power engineering, central office engineering, outside plant engineering, real estate

operations, Bell and Independent Companies in the distribution of capital assets under the 1984 Consent Decree between AT&T and the U.S. Justice Department. At the conclusion of my employment with AT&T my title was Senior Switch Planner.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to assist the Tennessee Regulatory Authority ("Authority") in resolving disputed issues between MCImetro Access Transmission Services, LLC and Brooks Fiber Communications of Tennessee, Inc., both subsidiaries of WorldCom (and which I shall refer to collectively as "WorldCom"), and BellSouth Telecommunications, Inc. ("BellSouth"), with regard to three issues that have arisen during the negotiation of a new Interconnection Agreement. My testimony concerns Attachment 4 to the agreement and addresses Issues 34, 36 and 37.

ISSUE 34

Is BellSouth obligated to provide and use two-way trunks that carry each party's traffic? (Attachment 4, Sections 2.1.1.2 and 2.1.2, 2.1.1.3-2.1.1.3.2, 2.2.6-2.2.7)

Q. HAS WORLDCOM PROPOSED CONTRACT LANGUAGE THAT WOULD MAKE TWO- WAY TRUNKING AVAILABLE UPON REQUEST BY WORLDCOM?

A. Yes. WorldCom has proposed the following Section 2.1.2 of Attachment 4: "One-way and two-way trunks. The parties shall use either one-way or two-way trunking or a combination, as specified by WorldCom." Other language

proposed by WorldCom makes clear that this requirement applies to combination trunk groups as well as to ordinary trunk groups. This language previously was addressed in connection with Issue 35, which has been consolidated with Issue 34. I discuss combination trunk groups in more detail in Issue 37.

Q. WHY DOES WORLDCOM WANT THE ABILITY TO REQUEST TWO-WAY TRUNKS?

A. Trunks can be one-way or two-way. Generally, two-way trunking is more efficient than one-way trunking for traffic that flows in both directions (for example, local, intraLATA interexchange (toll), and transit traffic), because, with two-way trunking, fewer trunks are needed to establish the interconnection than are needed when BellSouth insists only on one-way trunking. Two-way trunking also is efficient in that it minimizes the number of trunk ports needed for interconnection. As a practical matter, engineers working for WorldCom and BellSouth will attempt to work out the best trunking arrangement in each case. But in the event the engineers cannot agree, WorldCom should have the right to require two-way trunking.

Q. **WHY IS WORLDCOM ENTITLED TO TWO-WAY TRUNK GROUPS UPON REQUEST?**

A. WorldCom's proposed language simply incorporates the FCC's requirements on two-way trunking. The applicable FCC rule provides that "[i]f technically feasible, an incumbent LEC shall provide two-way trunking upon request." 47 C.F.R. § 51.305(f). BellSouth has acknowledged that providing two-way trunks is technically feasible, and that BellSouth is willing to provide two-way trunks

upon request, but BellSouth is not necessarily willing to use those trunks. If WorldCom orders a two-way trunk and BellSouth refuses to use that trunk for its traffic, however, the efficiencies of two-way trunking will be lost. Thus, if BellSouth's position were accepted, the FCC's two-way trunking rule would become meaningless.

ISSUE 36

Does MCIW, as the requesting carrier, have the right pursuant to the Act, the FCC's Local Competition Order, and FCC regulations, to designate the network point (or points) of interconnection at any technically feasible point? (Attachment 4, Sections 1.3 and 1.3.1, Attachment 5, Section 2.1.4.)

Q. WHAT DOES IT MEAN TO "INTERCONNECT" THE WORLDCOM AND BELLSOUTH NETWORKS?

A. Building a local network means nothing unless that network can be seamlessly interconnected with BellSouth's network and with the networks of other telecommunications carriers. In the context of my testimony, interconnection means the linking of networks. The point at which WorldCom's local network physically connects to the ILEC's network sometimes is called the point of interconnection ("POI"). This definition of "interconnection" is consistent with how the FCC defined that term in paragraph 176 of its Local Competition Order dealing with interconnection. *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* First Report and Order, CC Docket No. 96-98 (rel. Aug. 8, 1996) ("Local Competition Order").

The POI plays a critical role in overall interconnection. From a financial perspective, the POI represents the "financial demarcation" -- the point where

WorldCom's network ends and the ILEC's "transport and termination" charges begin and visa versa. From an engineering perspective, there are a variety of things that must happen at the POI to make interconnection seamless and complete. It should also be noted that over this physical interconnection there is a "logical interconnection" of the networks—i.e. the trunk groups that connect CLEC and ILEC switches traversing the "physical interconnection." In my testimony I focus on the engineering aspects, but obviously the financial ramifications have a significant impact on how we interconnect and exchange traffic with BellSouth.

Q. HAS WORLDCOM PROPOSED CONTRACT LANGUAGE SETTING FORTH ITS RIGHT AS A REQUESTING CARRIER TO DESIGNATE ANY TECHNICALLY FEASIBLE POINT OF INTERCONNECTION?

A. Yes. WorldCom has proposed language setting forth its right under the Act to choose any technically feasible POI. This language includes WorldCom's right to designate a single point of interconnection, such as a BellSouth tandem, for LATA-wide termination. WorldCom has proposed Section 1.3 of Attachment 4 which provides that "WorldCom will designate the Point or Points of Interconnection and determine the method or methods by which the Parties interconnect."

Q. WHAT IS THE LEGAL BASIS FOR WORLDCOM'S POSITION?

A. Although I am not a lawyer, I am familiar with some rulings made by the FCC and other authorities on this issue. The Telecommunications Act of 1996 ("Act") provides that BellSouth has the "duty to provide, for the facilities and equipment

of any requesting telecommunications carrier, interconnection with the local exchange carrier's network . . . at any technically feasible point within the carrier's network." 47 U.S.C. § 251(c)(2). BellSouth thus must allow the requesting carrier to interconnect at any technically feasible point. In implementing the Act, the FCC explained Section 251(c)(2), stating:

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

Local Competition Order ¶ 172 (emphasis added). The FCC also stated that "[o]f course, requesting carriers have the right to select points of interconnection at which to exchange traffic with an incumbent LEC under section 251(c)(2)." Local Competition Order ¶ 220, n.464.

More recently, in its Texas 271 Order, the FCC has ruled that a CLEC may choose to interconnect with an ILEC at a single point. The FCC explained that:

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

Texas 271 Order at ¶ 77 (footnotes omitted).

WorldCom's right under the Act to choose a single POI (and thus the POI for both parties' traffic) has been affirmed in court decisions. For example, the United States District Court for the Middle District of Pennsylvania affirmed a Magistrate's decision establishing MCI's right to interconnect at a single

technically feasible POI and reversing a decision by the Pennsylvania Public Utility Commission specifying multiple points of interconnection. *MCI v. Bell Atlantic-Pennsylvania*, Civil No. 1:CV-97-1857, Memorandum and Order, p. 14 (M.D. Pa. June 30, 2000). The Magistrate ruled as follows:

> The PUC's decision to require MCI to interconnect with Bell Atlantic's network in every access tandem serving area is inconsistent with the Act and FCC regulations. In the absence of proof by Bell Atlantic that it is not technically feasible for MCI to have only one point of interconnection in each LATA, the agreement must permit MCI to establish a single point of interconnection per LATA consistent with the Act and FCC regulations. . . . As the FCC notes, under the FCC's interpretation new entrants may select the most efficient points at which to exchange traffic with incumbent LEC's thereby lowering the competing carrier's cost of, among other things, transportation and termination, citing FCC Order ¶ 172.

MCI v. Bell Atlantic-Pennsylvania, Civil No. CV-97-1857, Report and Recommendation, pp. 36-37, (M.D. Pa. Sept. 16, 1999). Similarly, the Ninth Circuit upheld provisions in an MFS contract permitting a single POI per LATA, citing Section 251 (c)(2) of the Act and noting that "[t]he plain language requires local exchange carriers to permit interconnection at any technically feasible point within the carrier's network." *US West v. MFS Intelenet*, 193 F.3d 1112 (9th Cir 1999).

The Massachusetts DTE has rejected a proposal by Bell Atlantic to impose multiple POIs, noting that:

> Regarding Bell Atlantic's request that the Department approve its proposal to require MediaOne and Greater Media to provide IPs [interconnection points, *i.e.*, POIs] at or near each of Bell Atlantic's tandems, neither the Act nor the FCC's rules requires MediaOne or any CLEC to interconnect at multiple points within a LATA to satisfy an incumbent's preference for geographically relevant interconnection points. See Id. at ¶¶ 198-199.

> Therefore, we find that a CLEC may designate a single IP for interconnection with an incumbent even though that CLEC may be serving a large geographic area that encompasses multiple ILEC tandems and end offices. There is no requirement of even preference under federal law that a CLEC replicate or in a lesser way mirror an ILEC's network. Indeed, the Act created a preference for CLECs to design and engineer in the most efficient way possible, which Congress envisioned could be markedly different than the ILECs networks. Id. at ¶ 172.
> Regarding Bell Atlantic's argument that if MediaOne and Greater Media do not establish "geographically relevant" IPs, they would be obligated to pay Bell Atlantic's transport costs, Bell Atlantic has pointed to nothing in the Act or FCC rules requiring CLECs to pay the transport costs that Bell Atlantic will incur to haul its traffic between Bell Atlantic's IP and the meet point. The FCC envisioned both carriers paying their share of the transport costs to haul traffic to the meet point under the interconnection rules. Bell Atlantic's cite to the FCC's language regarding "expensive interconnection" is not on point because the FCC there was referring to interconnection costs -- not transport costs.

Petition of Media One, Inc. and New England Telephone and Telegraph, for arbitration, D.T.E 99-42/43, 99-52, p. 25 (Mass. DTE August 25, 1999).

The Texas PUC also has affirmed a CLEC's right to designate a single POI per LATA. It found that a single POI is technically feasible, that technical feasibility refers solely to technical or operational concerns, rather than economic, space, or site considerations, and that SWBT (an ILEC) cannot compel AT&T (a CLEC) to interconnect at multiple points. Revised Arbitration Award, Docket No. 22315 (Sept. 27, 2000).

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. The main concern BellSouth has expressed about WorldCom having the right to choose the POI regards situations in which WorldCom serves a customer in one local calling area with a switch in another local calling area. Under BellSouth's

proposal, WorldCom at least in theory would be allowed to choose the POI for its originating traffic. Even in that case, however, BellSouth has stated that WorldCom would be responsible for establishing "interconnection trunks" (whether through BellSouth or another carrier) to the transport its customers' calls from the POI through BellSouth's network to the local calling area in question. Under this approach, BellSouth in effect could establish the POI even for calls originated by WorldCom. For calls originated on BellSouth's network, BellSouth insists that it can establish a POI for each local calling area in which WorldCom was offering local service. Thus, WorldCom would be responsible for transporting that call (originated by a BellSouth customer) back through BellSouth's network to WorldCom's network.

Q. SHOULD BELLSOUTH'S POSITION BE ADOPTED?

A. No. Even putting aside the law that establishes WorldCom's right to choose the POI, BellSouth's scheme cannot withstand analysis. BellSouth's proposal that WorldCom be required to transport its originating traffic beyond the POI to BellSouth's local calling areas violates BellSouth's duty under Section 251(b)(5) of the Act to "establish reciprocal compensation arrangements for the transport and termination of telecommunications." The FCC has defined "transport" for purposes of Section 251(b)(5) "as the transmission of terminating traffic that is subject to section 251(b)(5) from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party . . . ." Local Competition Order at ¶ 1039. BellSouth's proposal ignores the Act's requirement that BellSouth transport and terminate traffic from

the POI. Instead, BellSouth's proposal requires WorldCom to transport its traffic beyond the POI either by building its own facilities or by paying BellSouth (or a third party) for such transport.

BellSouth's proposal that it be able to designate the POI for its originating traffic and require WorldCom to transport that traffic through BellSouth's network to WorldCom's network is equally problematic. FCC rules provide that "[a] LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network." 47 C.F.R. § 51.703(b). BellSouth's proposal would enable BellSouth to charge transport fees to WorldCom for BellSouth's originating traffic and fails for that additional reason. Moreover, BellSouth's proposal effectively imposes multiple interconnection points on WorldCom (which is prohibited by the FCC's Texas 271 Order) and denies WorldCom the right to establish a single technically feasible interconnection point at which to exchange traffic with BellSouth.

Q. PUTTING LEGAL REQUIREMENTS ASIDE, WHY IS WORLDCOM'S PROPOSAL SUPERIOR TO BELLSOUTH'S?

A. In contrast to BellSouth's proposal, WorldCom's proposal complies with the law and is fair to both parties. Under WorldCom's proposal, WorldCom would be entitled to choose a POI, but of course would be required to do so on a point on BellSouth's network. WorldCom would establish an interconnection point in each LATA in which it originates traffic. Each party would be responsible for bringing its originating traffic to the POI and each party would be responsible for transporting and terminating the other party's traffic from the POI. Under this

approach, WorldCom 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. In contrast, BellSouth's proposal requires WorldCom to bear the cost of transporting BellSouth's originating traffic. Thus, unlike BellSouth's proposal, WorldCom's proposal treats WorldCom's and BellSouth's traffic the same and promotes local competition.

Q. HAS THE FCC ADDRESSED THE RESPONSIBILITY OF A CARRIER TO DELIVER ITS ORIGINATING TRAFFIC TO A CO-CARRIER FOR TERMINATION?

A. Yes. The FCC places 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. This responsibility includes the facilities necessary to deliver the call to a co-carrier's network. The FCC addressed this point in *In re: TSR Wireless, LLC, et al v. U.S. West, et. al.*, Memorandum Opinion and Order, File Nos. E-98-13, E-98-15, E-98-16, E-98-17, E-98-18, (rel. June 21, 2000) ("TSR Wireless Order"). The TSR Wireless Order sets forth the framework by which carriers recover costs incurred in carrying both originating and terminating traffic. The FCC describes the obligations of a carrier when its customers originate traffic as follows:

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

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

TSR Wireless Order ¶ 34.

Q. IS BELLSOUTH'S PROPOSAL CONSISTENT WITH THE RULES OF THE ROAD SET FORTH BY THE FCC?

A. No. BellSouth's proposal will relieve it of the obligation to deliver its originating traffic to the network of a co-carrier and also shifts the cost of facilities used to deliver these originating calls to the co-carrier.

Q. WHAT SHOULD THE AUTHORITY DO WITH RESPECT TO WORLDCOM'S PROPOSED INTERCONNECTION ARCHITECTURE?

A. For all the reasons I have discussed, the Authority should adopt the contract language proposed by WorldCom stating that WorldCom has the right to designate any technically feasible POI.

ISSUE 37

Should BellSouth be permitted to require MCIW to fragment its traffic by traffic type so it can interconnect with BellSouth's network? (Attachment 4, Sections 2.2.6-2.2.7.)

Q. CAN YOU PLEASE DESCRIBE HOW TRAFFIC IS EXCHANGED BETWEEN THE PARTIES?

A. Once networks are physically connected, it is necessary from an engineering perspective to partition those facilities into various types of trunk groups required to carry the different types of local interconnection traffic. Based on our experience, we believe that traffic should be segregated as follows:

- A separate trunk group that carries local traffic, non-equal access intraLATA interexchange (toll) traffic, and local transit traffic to other LECs;
- A separate trunk group for equal access inter-LATA or intraLATA interexchange traffic that transits the ILEC network.
- Separate trunks connecting WorldCom's switch to each 911/E911 tandem.
- A separate trunk group connecting WorldCom's switch to BellSouth's operator service center. This permits WorldCom's operators to talk to BellSouth's operators. Operator-to-operator connection is critical to ensure that operator assisted emergency calls are handled correctly and to ensure that one carrier's customer can receive busy line verification or busy line interrupt if the other end user is a customer of a different LEC.
- A separate trunk group connecting WorldCom's switch to the BellSouth directory assistance center if WorldCom is purchasing BellSouth's unbundled directory assistance service.

With regard to the first requested trunk group, it should be noted that there is no technical requirement to segregate local, intraLATA interexchange (toll), and transit traffic on separate trunk groups. Indeed, it is often more efficient to

"pack" a trunk group with both local traffic, intraLATA interexchange (toll), and transit traffic. Because these types of traffic are "rated" differently, the receiving carrier would either have to have a way to discern the jurisdiction of the traffic (for example, calling party number or "CPN") or rely on reporting by the sending carrier, via a percent local usage, or "PLU," or similar reporting mechanism.

The trunk segregation detailed above is an initial architecture that meets WorldCom's immediate needs for interconnection. The trunks that carry local, intraLATA interexchange (toll), and transit traffic are generally similar to the industry standard Feature Group D trunks with CCS7 signaling. WorldCom requires CCS7 signaling on all trunks used to pass local, intraLATA interexchange (toll), and transit traffic. There are also some unique instances where the more outdated MF signaling may be required on certain trunk groups due to the connectivity to other carriers, and WorldCom requests that BellSouth comply with this request in order to complete this traffic.

WorldCom also requires that the trunks used to carry local, interexchange intraLATA (toll), and transit traffic are configured with B8ZS line coding and Extended Superframe (ESF). B8ZS and ESF are required to support the transmission of 64Kbps ("Clear Channel") traffic between the networks of ILECs and CLECs. Without Clear Channel transmission, subscribers of ILECs and CLECs would not be able to terminate various types of switched data traffic, including ISDN.

Q. HAS WORLDCOM PROPOSED LANGUAGE WHICH PROHIBITS TRUNK FRAGMENTATION?

A. Yes, WorldCom has proposed Section 2.2.7 of Attachment 4, which (as revised since the Petition in this Docket was filed) provides: "BellSouth shall provision two-way trunks without any user restrictions or trunk fragmentation requirements except as specified in this Agreement."

Q. WHAT IS THE NATURE OF THE DISPUTE?

A. There are two parts to this issue. The first part concerns whether BellSouth must provide and use two-way trunking upon request by WorldCom. As I noted in Issue 34, BellSouth should be required to do so. As to the second part of Issue 37, it is WorldCom's position that it should be able to combine local, intraLATA and transit traffic on one trunk group. If BellSouth wishes to continue to separate its traffic between local, intraLATA toll and transit traffic with other CLECs, or within its own network, of course that is its business decision. WorldCom only is proposing these three traffic types be carried on one trunk group for the traffic going over the joint optical mid-span fiber meet between WorldCom and BellSouth, for network efficiency reasons.

Q. DOES THAT CONCLUDE YOUR DIRECT TESTIMONY?

A. Yes it does.

BEFORE THE

TENNESSEE REGULATORY AUTHORITY

DOCKET NO. 00-00309

PREFILED DIRECT TESTIMONY

OF KAREN KINARD

ON BEHALF OF WORLDCOM, INC.

DECEMBER 6, 2000

Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND POSITION.

A. My name is Karen Kinard. My business address is 8521 Leesburg Pike, Vienna, Virginia 22182. I am employed by WorldCom, Inc. as a Senior Staff Specialist VI, ILEC Performance Reporting and Advocacy, National Carrier Policy and Planning.

Q. PLEASE PROVIDE INFORMATION ON YOUR BACKGROUND AND EXPERIENCE.

A. I am responsible for performance measurement development for WorldCom, and I was a key developer of the Local Competition Users' Group's version 7 Service Quality Measurement document released in August 1998. I have also been WorldCom's lead representative in carrier-to-carrier performance measurement and remedy discussions in New York, Pennsylvania and New Jersey. I have held various positions since joining WorldCom's Local Initiatives group in June 1996, including leading a team that provided subject matter expertise during the first round of interconnection agreement negotiations.

Before joining WorldCom, I was an editor for eleven years at Telecommunications Reports ("TR"), covering state regulation, federal and state access charge issues, and jurisdictional cost separations policy. I also held the position of Chief Technology Editor and other top editorial positions, including serving as the principal editor of TR's Communications Business and Finance and Cable-Telco Competition Report newsletters. I initiated TR's Communications Billing Report newsletter before joining Phillips Business

International's Communications Today daily electronic newsletter in 1995 as its chief FCC correspondent. From 1976 to 1984, I served in various positions as an aide to the Congressman for the 7th District of Pennsylvania, including Press Secretary and Legislative Assistant for telecommunications policy and banking.

I received my Masters of Science degree in Telecommunications Policy and Management from George Washington University in 1984. I received my Bachelors of Science degree in Communications from West Chester University in 1975. I also hold a paralegal certificate in Corporate Law from Widener University.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to explain why the language proposed by MCImetro Access Transmission Services, LLC and Brooks Communications of Tennessee, Inc., both subsidiaries of WorldCom (and which I will refer to collectively as "WorldCom") concerning performance measurements should be adopted by Tennessee Regulatory Authority ("Authority"). My testimony focuses on the following areas relating to Issue 105: (A) the measures that should be included in the performance measurement plan; (B) the level of disaggregation that should be applied to those measures; (C) appropriate analogs and benchmarks; (D) the statistical methodology that should be used; (E) remedies that should apply for failure to meet performance standards; and (F) audit requirements that should be included.

A. **Performance Measures**

Q. **WHAT MEASURES SHOULD BE INCLUDED IN THE PERFORMANCE MEASUREMENT PLAN?**

A. The measures that should be used are summarized in the Table of Contents of the WorldCom's Measurements and Performance Standards, Version 1.3 ("MPS"), which is attached to WorldCom's version of Attachment 10 to the Interconnection Agreement (Exhibit C to the Arbitration Petition). Measures are missing from BellSouth's SQM in each of the measurement categories -- ordering and provisioning, maintenance and repair, general measures, billing, operator services, directory assistance and listings, network performance, and collocations.

Q. **IN GENERAL, WHY IS IT IMPORTANT THAT THESE MEASURES BE INCLUDED IN THE PERFORMANCE MEASUREMENT PLAN?**

A. If these measures are not included, it will be difficult to assess whether BellSouth's performance in these areas complies with the requirements of the Telecommunications Act of 1996 (Act) that BellSouth provide parity of service or a meaningful opportunity to compete. For service areas in which a BellSouth retail analog exists, without performance reporting WorldCom will not know whether it is receiving parity service because it will not know the level of service BellSouth is providing to its own customers. When no retail analog exists, without a benchmark the parties will not know in advance what level of performance will be deemed adequate to provide WorldCom a meaningful opportunity to compete. Moreover, without performance measures, the only

way for WorldCom to enforce its rights under the Act without voluntary disclosure and cooperation from BellSouth would be to initiate enforcement proceedings. Consumers can be better protected, and the parties' and the Authority's resources conserved, by the adoption of these performance measures.

Q. WHAT ARE SOME OF THE KEY MEASURES THAT ARE MISSING FROM THE ORDERING AND PROVISIONING CATEGORY?

A. Such measures include the following:

Percent Design Layout Records Received in X Days.

This metric measures the percent of time BellSouth provides WorldCom with information needed for provisioning an interconnection trunk. Often WorldCom only receives this data the day before or the same day a trunk is due. This late receipt does not allow WorldCom to finish the work on its end in order to meet the scheduled BellSouth due date. The design layout record should be received just a few days after the receipt of the FOC if not on the same day as the FOC. This measure has been adopted in New York, Pennsylvania and New Jersey for Verizon.

Percent On-Time Loss Notification. This metric measures the percent of time BellSouth timely informs WorldCom that it will lose a customer to either BellSouth or another CLEC. This is important so that WorldCom knows to stop billing the customer for WorldCom service it no longer is receiving. This measure is particularly critical for UNE-P and resale service delivery methods

where WorldCom does not have visibility into whether the customer has switched local carriers.

Average Offered Interval. This measure shows the average number of days between the order application date and the committed due date. It is important to determine if WorldCom orders are being scheduled for completion in the same timeframe as BellSouth orders. WorldCom needs the same opportunity to schedule due dates as BellSouth has for its customers. This measurement has been adopted in New York, Pennsylvania and New Jersey for Verizon.

Percent Order Accuracy. This measure gauges the percentage of orders that BellSouth completes accurately. On-time order completion is of little value if the orders are not completed correctly. For example, a customer that orders a DS1 line and receives an ISDN line instead, or who orders ten POTS lines and receives three instead, will not be satisfied because the installation occurred on time. I note that this concern could be addressed by providing that for measures with a stop time based on order completion the order would not be considered complete until correctly provisioned. This measurement has been adopted in Pennsylvania, New Jersey, New York and Massachusetts for Verizon; in Texas for SBC; and in Colorado for U S West.

Provisioning Troubles Prior to Loop Acceptance A customer suddenly experiencing degraded service or other problems during but before completion of the transition of service to WorldCom may blame the rough transition on WorldCom, even if WorldCom has not yet obtained the customer. Monitoring troubles during this initial phase of establishing a customer relationship are

critical. These troubles are not captured in the trouble report metric because WorldCom cannot enter a trouble ticket untilBellSouth systems recognize this customer as WorldCom's customer. California has adopted this measure for Pacific Bell.

Percent Service Loss From Early Cuts and Percent Service Loss from Late Cuts. This metric measures the percent of WorldCom customer conversions that are completed too early or too late, causing the customer to be without service or with degraded service. customers often suffer from degraded or lost service caused by BellSouth mistakes or failure to adhere to established cutover procedures. A late cut translation often means the customer cannot receive all or certain incoming calls. This metric should be reported separately for loop orders, loop with LNP orders and stand alone LNP orders. This measure has been adopted in New York for Verizon, Texas for SBC and is currently a part of the OSS Test plan for Arizona and the Regional Oversite Committee ("ROC"), which involves the other U S West states. California has adopted a similar measure showing on-time performance, rather than early or late, and Connecticut recently approved this measure for SBC-SNET and Verizon. Most importantly, this Authority adopted this measure in *In re Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996*, Interim Order of Arbitration Award, Docket No. 99-00430 (Aug. 11, 2000) ("ITC^DeltaCom Award").

Percent of Time 10-Digit Trigger Is Applied "X" Hours Prior to the LNP Order Due Date. This measure shows the percent of time that BellSouth applies the 10-digit trigger, a precautionary device, to the LNP conversion to ensure that the service is likely not to be disrupted. This measure has been adopted in Texas for SBC, and the Authority adopted this measure in the ITC^DeltaCom Award.

Q. WHAT ARE SOME OF THE KEY MEASURES THAT ARE MISSING FROM THE GENERAL CATEGORY?

A. Such measures include the following:

Average Notification of Interface/OSS Outage. This metric measures how promptly BellSouth informs WorldCom that an interface is unavailable. WorldCom needs to be notified when BellSouth systems are down so that WorldCom can make alternative work plans. Failure to timely inform WorldCom of outages can cause WorldCom to waste time troubleshooting its own interfaces. Timely notification also prevents the BellSouth's CLEC help centers from being inundated with calls about an already known outage. This measure has been adopted in Pennsylvania, New Jersey, New York and Massachusetts for Verizon; in California for Pacific Bell; and in Connecticut for SBC-SNET and Verizon.

Percent of Change Management Notices and Documentation Sent On-Time. This measure shows the times that BellSouth provides advance notice and associated documentation on any change to its OSS according to standards and timeframes already agreed to as part of the parties' change management

agreement. Advance notice and documentation are necessary so WorldCom can keep its own systems up and running and make the appropriate modifications so it can continue to interact with BellSouth's newly modified systems. Often ILEC failures to adhere to change management notice requirements have caused delays in building interfaces or have stopped the operations of functioning CLEC OSS interfaces. ILECs must measure their adherence to their change management notice commitments and definitions of emergency notices. This measure has been adopted in Pennsylvania, New Jersey, New York and Massachusetts for Verizon.

Percent Software Certification Failures and Software Problem Resolution Timeliness. These measures show whether software validation procedures, test deck scenarios and error corrections standards already agreed to by the WorldCom and BellSouth are being adhered to. This measurement provides some assurance that BellSouth will sufficiently test its OSS before a system is rolled out. WorldCom needs to be sure that when BellSouth introduces software upgrades, WorldCom's existing systems still will be able to function with them. This measure has been adopted in New York and Massachusetts for Verizon.

Q. WHAT MEASURES ARE SOME OF THE KEY MEASURES THAT ARE MISSING FROM THE NETWORK PERFORMANCE CATEGORY?

A. Such measures include the following:

Percent of ILEC Responses to Reciprocal Trunk Requests in X Days. This metric measures the percent of time BellSouth adds inbound trunks at WorldCom's request, which is important so WorldCom may avoid trunk

blocking situations when it adds new customers. This measure discloses what has been a hidden interval: the time from which WorldCom notifies BellSouth that BellSouth needs to augment its inbound trunk to WorldCom until BellSouth sends its ASR to WorldCom. WorldCom holds up its own customer orders waiting for these augments to avoid degraded service for its new or existing customers. If BellSouth delays in sending its Access Service Requests for inbound trunks to WorldCom, this will cause harm to WorldCom. This measure has been adopted in Pennsylvania and New York for Verizon.

Mean Time to Notify CLEC of Network Disruptions and Restorations. This metric measures the timeliness with which BellSouth notifies WorldCom of major network disruptions that impact WorldCom's network and customers as well as the timeliness for notice of the restoration of service. WorldCom should be informed of outages as soon as BellSouth broadcasts this information to its own technicians so WorldCom can inform its own customers and make alternative arrangements for customers, if necessary. A similar measure has been adopted in Pennsylvania for Verizon, California for Pacific Bell and Connecticut for SBC-SNET and Verizon. As an alternative, as long as the appropriate WorldCom contacts are a part of the same distribution list as BellSouth's contacts, this measurement could be deleted because the process would be parity by design.

Q. WHAT KEY MEASURE IS MISSING FROM THE COLLOCATION CATEGORY?

A. The following measure is missing:

Average Collocation Delay Days for Missed Due Dates. This measurement shows the average delay days caused by BellSouth to complete collocation facilities. When BellSouth has missed a collocation due date, it is important that BellSouth act as quickly as possible to rectify this situation. WorldCom's entire business plans may depend on this single collocation being completed promptly. It is critical that collocation due dates are not missed at all and it is important to know how often collocation due dates are missed. It also is imperative that once BellSouth misses a due date, it complete the installation soon as possible. Resources cannot be diverted to complete other collocations in a timely manner once a due date is missed. This measure will help ensure that any missed due date is completed quickly. This measure has been adopted in Pennsylvania, New Jersey, New York and Massachusetts for Verizon and in Texas for SBC.

Q. WHAT MEASURE IS MISSING FROM THE DATABASES CATEGORY?

A. The following measure is missing:

Percent NXXs Loaded and Tested Prior to the LERG Effective Date. This measurement shows the percent of time BellSouth ensures that an NXX is properly functioning in the Local Exchange Routing Guide database so that a customer can continue to receive calls after switching to WorldCom. NXXs not loaded properly in BellSouth central offices, tandems and 911 selective routers can cause calls to be misconnected and in the case of 911, pose a serious public safety concern. Not loading the NXXs at all can inhibit a market launch or expansion of service because WorldCom may not as a practical matter enter a

market where its customers may not be able to receive their phone calls. This measure has been adopted in Pennsylvania for Verizon, in Texas for SBC, in California for Pacific Bell, and in Arizona and the ROC for U S West's OSS Test. The Authority adopted this measure in the ITC^DeltaCom Award.

Q. WHICH OF THE ADDITIONAL MEASURES THAT WORLDCOM PROPOSES ARE ITS HIGHEST PRIORITIES?

A. Although WorldCom believes that all of these measures are important, the most critical are Percent of Change Management Notices and Documentation Sent On Time, Percent Software Certification Failures and Software Problem Resolution Timeliness, Percent Order Accuracy, Provisioning Troubles Prior to Loop Acceptance, and Percent Service Loss from Early and Late Cuts.

B. <u>Disaggregation</u>

Q. IN GENERAL, WHAT TYPES OF DISAGGREGATION SHOULD BE REQUIRED IN A PERFORMANCE MEASUREMENT PLAN?

A. Disaggregation should be required by CLEC, by product, by ordering activity, by geographic scope, by volume category, by interface type and (in some cases) by reason for held order.

Q. PLEASE EXPLAIN WHY IT IS IMPORTANT TO DISAGGREGATE BY INDIVIDUAL CLEC.

A. Without CLEC specific performance data, WorldCom will never be able to know if the level of performance it receives from BellSouth is at parity or meets the specified benchmark. Any poor performance WorldCom does receive from BellSouth could be masked by BellSouth giving better than normal performance

to other CLECs. WorldCom's marketing strategy will be different than other CLECs' strategies -- and WorldCom's orders, queries and system needs will accordingly be different. In New York and Texas, for example, WorldCom's results for some measures have been much better than the aggregate of all CLECs and results for other measures that have been much worse. If BellSouth does not report measures at an individual CLEC level, neither the Authority nor WorldCom will know the exact level of service provided.

Q. FOR WHAT KEY MEASURE DOES BELLSOUTH FAIL TO PROVIDE CLEC SPECIFIC DATA?

A. BellSouth fails to report OSS Query Response Time for ordering and maintenance and repair on an individual CLEC basis.

Q. PLEASE EXPLAIN WHY PRODUCT DISAGGREGATION IS IMPORTANT.

A. Product disaggregation is key because different performance can be expected based on the type of product being ordered. Lumping together one type of order that has a two day interval with another type of order that has a ten day interval and producing a report showing that on average the orders are provisioned in seven days tells one nothing about whether either type of order was provided at parity or met the benchmark. Such aggregate treatment masks disparities in service and should not be permitted. The basic principle of product disaggregation is that each product should be tracked separately.

Q. WHAT PRODUCT DISAGGREGATION DOES THE MPS CALL FOR?

A. Levels of disaggregation for each measurement category are provided in Appendices A-H of the MPS. Examples of important product disaggregation include Resale, UNEs and Trunks, broken down by residential and business customer, where appropriate. Further disaggregation for resale and UNEs include DS1 and DS3. These two products have differing provisioning and repair intervals and complexities that require separate reporting. Separating BRI ISDN from PRI ISDN is important for the same reason. UNE-Platform needs to be reported separately because this product combines the DS0 (or higher) loop with switching and transport and is different from just ordering a DS0 without the switching and transport. Although INP is being phased out by LNP, if there are still INP orders, these should be separated out from LNP orders so that an apples to apples comparison can be made. WorldCom simply wants products disaggregated to the level where relatively few expected dissimilarities exist.

Q. PLEASE EXPLAIN WHY IT IS IMPORTANT TO DISAGGREGATE BY ORDERING ACTIVITY.

A. Examples of ordering activities include new service installations and service migrations without changes. Because these different order activities involve different processes, they should be reported separately. A customer who changes from BellSouth to WorldCom but doesn't add or delete any features should be a relatively easy and quick order for BellSouth to complete. However, a customer who chooses to remove features it is not using with BellSouth or to add new features like call waiting, voicemail, or a second or third line, will make that customer's order more complex and may be more

time-consuming. The orders that are most similar can be grouped together with like orders for reporting purposes. The orders that are dissimilar should not be grouped together for reporting purposes because the aggregate data will not be meaningful.

Q. WHAT ORDERING ACTIVITY DISAGGREGATION ARE PARTICULARLY IMPORTANT?

A. New installation, migrations of service with and without changes and local number porting are especially important to report separately.

Q. SHOULD BELLSOUTH BE REQUIRED TO REPORT ON ITS PERFORMANCE IN TENNESSEE FOR EACH MEASUREMENT?

A. Yes. The Authority ruled in the ITC^DeltaCom Award that all measures should be reported at the state level. WorldCom cannot evaluate BellSouth's performance relating specifically to Tennessee customers unless BellSouth reports its performance for Tennessee. The same CLECs do not operate in all the same states, let alone at the same volumes in each state or with the same type of product mixes. Products ordered in Tennessee may be more advanced than in Alabama causing intervals to vary and bill invoices and usage feeds to be more complex. To report a particular service for an entire nine state region would not allow CLECs or state commissions to understand the level of performance for their state.

Q. PLEASE EXPLAIN WHY GEOGRAPHIC DISAGGREGATION AT THE LOCAL LEVEL (SUCH AS BY MSA) ALSO IS IMPORTANT.

A. If only statewide reporting is provided, CLECs that operate only in discrete areas of the state cannot compare the performance they receive to what BellSouth provides itself in those areas. Because service levels may vary from area to area, such CLECs cannot determine whether they are receiving parity of service.

Q. WHAT OTHER TYPES OF DISAGGREGATION SHOULD BE REQUIRED?

A. Several other types of disaggregation should be are required. Volume category disaggregation captures differences that may arise based on, for example, the number of lines being ordered. For instance, WorldCom learned through experience using BellSouth's EDI 7.0 interface that the number of lines that could be requested on one purchase order was limited to 325. By capturing data based on the volume involved, such problems can be detected. Disaggregation also should be provided by interface type. The only way to determine, for example, whether BellSouth's TAG interface meets the applicable standards is to provide data specifically for that interface. If TAG data is lumped together with LENS data, the performance of the TAG interface will be obscured. Finally, in cases involving held orders, the reason for the order being held should be captured and reported. For instance, it is important to know whether the order was held because of a lack of facilities, a problem with workload, or a system error of some kind. That information is critical to resolving problems that arise in this area.

Q. DOES THE MPS PROVIDE FOR DISAGGREGATION BASED ON VOLUME CATEGORY, INTERFACE TYPE AND REASON FOR HELD ORDER?

A. Yes.

C. <u>Retail Analogs and Benchmarks</u>

Q. IN GENERAL, WHAT APPROACH SHOULD THE COMMISSION TAKE WITH RESPECT TO RETAIL ANALOGS AND BENCHMARKS?

A. OSS functions provided to CLECs must be compared to BellSouth retail analogs if they exist. If no analog exists, BellSouth's performance must be gauged by a performance standard. *Application of Ameritech Michigan to Provide In-Region, InterLATA Services in Michigan*, Memorandum Opinion and Order, CC Docket 97-137 at ¶¶ 139-41 (rel. Aug. 19, 1997).

Q. WHAT IS WORLDCOM'S PREFERRED APPROACH TO ANALOGS AND BENCHMARKS?

A. WorldCom's preferred approach is for all measures to have a benchmark as the applicable standard, which benefits WorldCom, the Authority and BellSouth. A numerical benchmark is easy to administer and review because statistical analysis is not required; allows WorldCom representatives to inform customers of interval targets while on the phone with the new or potential customer; and allows WorldCom to establish service level agreements with its customers and to plan its business and marketing based on standards that do not fluctuate. Benchmarks also provide BellSouth with a known target of performance it needs to provide to CLECs. BellSouth and WorldCom executives also can manage

employees and business processes to fixed performance levels. However, if BellSouth demonstrates that an appropriate retail analog exists, then parity may become the applicable standard.

Q. WHAT PERFORMANCE STANDARDS SHOULD APPLY?

A. The benchmarks proposed by WorldCom should apply, except when BellSouth establishes an appropriate retail analog. WorldCom's proposed benchmarks have been derived from input received from WorldCom personnel knowledgeable concerning the business processes in question and through discussions in various state performance measurement collaboratives. WorldCom's benchmarks are based on the level of performance that can be expected of an efficient ILEC to perform a service for its wholesale customers. An exception to these requirements arises in the event of WorldCom delays, customer delays and force majeure events.

D. <u>Statistical Methodology</u>

Q. WHY IS IT NECESSARY TO APPLY A STATISTICAL METHODOLOGY WHEN ASSESSING PERFORMANCE MEASUREMENT DATA?

A. A statistical methodology should be applied when a parity standard is used. Application of a statistical methodology ensures that conclusions of parity or disparity can be drawn with a reasonable level of confidence based on the performance data provided for CLECs and BellSouth. Use of statistical techniques ensures that factors such as sample size and distribution of data are taken into account when assessing parity.

Q. WHAT STATISTICAL METHODOLOGY DOES WORLDCOM PROPOSE FOR MEASURES THAT HAVE A PARITY STANDARD?

A. WorldCom has proposed the modified z test using a 95% confidence level. This approach has been endorsed by the FCC in *In re: Application by Bell Atlantic New York for Authorization Under Section 271 of the Communication Act to Provide In-Region, InterLATA Service in New York*, Memorandum Opinion and Order, CC Docket No. 99-295 ¶ 392 (rel. Dec. 22, 1999) ("Bell Atlantic 271 Order"), as well as by public service commissions in Texas and California. I also note that in various performance measurement workshops, the parties have discussed extensively an alternative statistical method. If agreement on that statistical method can be reached, WorldCom would be willing to adopt that method in Tennessee as well.

Q. SHOULD A STATISTICAL METHODOLOGY BE APPLIED TO MEASURES THAT HAVE BENCHMARKS?

A. No. As the FCC has acknowledged, "[s]tatistical testing . . . is not necessary for a metric using benchmarks." Bell Atlantic 271 Order, Appendix B, footnote 1. Any fluctuations in random variation are picked up through the actual benchmark being set less than 100% and for longer than the actual time necessary to complete the task. For example, a hot cut can be accomplished in 5 minutes, yet WorldCom is not asking for a hot cut performance standard of 100% in 5 minutes. Instead WorldCom's benchmark varies from one hour to 8 hours depending on the number of lines converted via a coordinated process.

E. Remedies

Q. WHAT BASIC COMPONENTS SHOULD A REMEDY MODEL INCLUDE?

A. Among other things, a valid remedy plan should have remedies that are substantial enough to drive compliance with the Act; have remedies that escalate based on both the magnitude and duration of the poor performance; provide that remedies are self-executing; apply remedies at the submetric level; and should not allow for "overforgiveness" through the use of a delta.

Q. DOES WORLDCOM'S PROPOSED ATTACHMENT 10 INCLUDE THESE COMPONENTS?

A. Yes. I should note further that the WorldCom remedy plan is being reviewed internally and may be revised in the future. In the event a revised plan is developed prior to the arbitration, WorldCom will file the revised plan with the Authority.

F. Audit Requirements

Q. HOW SHOULD AN AUDIT BE REQUESTED?

A. When WorldCom has a dispute with BellSouth over the accuracy or integrity of BellSouth's reporting processes or performance results, WorldCom and BellSouth should cooperate to resolve the matter within thirty days. If the matter cannot be resolved in thirty days, then WorldCom should have the right to ask for an audit of BellSouth's systems, processes and data for particular processes or measures, provided that WorldCom does not ask for an audit more than two times in a twelve month period for the same process or measure.

Whenever any CLEC requests an audit, the reason for the audit needs to be communicated to all CLECs as well as the audit results.

Q. WHO SHOULD PAY FOR AN AUDIT?

A. BellSouth should pay for the first two audits for a similar process. BellSouth has the responsibility to prove that its systems and processes are accurate and has sole control over those systems and processes. If BellSouth does not properly manage its performance measurements reporting and this causes WorldCom to question BellSouth's reporting, which in turn requires an audit, WorldCom should not have to pay for the audit.

Q. DOES THAT CONCLUDE YOUR TESTIMONY?

A. Yes it does.

BEFORE THE

TENNESSEE REGULATORY AUTHORITY

DOCKET NO. 00-00309

PREFILED DIRECT TESTIMONY

OF PHILLIP A. BOMER

ON BEHALF OF WORLDCOM, INC.

December 6, 2000

Q. PLEASE STATE YOUR NAME.

A. Phillip A. Bomer.

Q. BY WHOM ARE YOU EMPLOYED?

A. WorldCom, Inc ("WorldCom"), formerly known as MCI WorldCom, Inc.

Q. IN WHAT CAPACITY ARE YOU EMPLOYED BY WORLDCOM, AND WHAT IS YOUR BUSINESS ADDRESS?

A. I am employed as a Senior Staff Specialist II in WorldCom's Local Network Planning Group, specifically in the Collocation Facility Planning section. My work address is Six Concourse Parkway, suite 800, Atlanta, GA 30328.

Q. FOR HOW LONG HAS WORLDCOM EMPLOYED YOU?

A. I have been employed by WorldCom (including its predecessor, Metropolitan Fiber Systems, Inc.) since June 1997.

Q. PLEASE STATE YOUR EDUCATIONAL AND PROFESSIONAL BACKGROUND BEFORE JOINING WORLDCOM.

A. My resume is attached as Exhibit PAB-1. In brief, prior to joining WorldCom, I was employed by AT&T Local (formerly Teleport Communications Group ("TCG")). As an Applications Engineer I was responsible for the design and implementation of Private Line Networks and the integration of such into the company network. I served as an Inside Plant Technician, in which I turned up all types of circuits for new service, handled trouble calls and performed maintenance on transmission equipment. I also worked as an Outside Plant Technician, installing, maintaining and splicing the fiber optic network, and as Outside Plant Supervisor, being responsible for the Illinois fiber network and the

in-house and contractor crews that maintained it. In addition I was assigned to be a Technical Consultant to the sales team to help them better assess and provide for our customers needs. Before joining TCG I was the Installation Manager for Cable Communications Inc., an electrical and communications contracting firm. There I managed 52 crews for the communications arm including their CATV and MDU Construction departments. I held positions as Communications Technician, Construction Supervisor and E.E.O. Officer. I have worked for several communications contracting companies over the years, including A.H.S.E.A. CATV, American Spliceco and T.M.R. Construction, just to name a few. I also have military experience with the United States Marine Corps, where I was a Motor Transport Operator/ Refueler and Tractor-Trailer LVS Instructor. I served in the Persian Gulf War, in both the Desert Shield and Desert Storm Operations.

As concerns collocation, since 1997 I have been responsible for managing collocation facilities (including space, power and connectivity) for WorldCom at various ILEC's central offices, including Southwestern Bell, Pacific Bell, Nevada Bell and select GTE areas. I am currently assigned to the BellSouth and Sprint accounts. I am responsible for the implementation of all augments and requests for new service with the ILEC, including the preparation and submission of all documents and payments. I am the single point of contact regarding collocation issues. In that capacity I have developed and tracked project timelines to assign responsibilities and insure departmental participation from inception through construction. I have provided cost estimates, timetables on collocation builds, and capacity constraint reports. I also have researched tariff issues and have acted as

an internal subject matter expert, providing consultation on central office space constraint issues, as well as collocation issues for the arbitration of carrier agreements.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to assist the Tennessee Regulatory Authority ("Authority") in resolving disputed issues between, on the one hand, MCImetro Access Transmission Services, LLC and Brooks Fiber Communications of Tennessee, Inc., both subsidiaries of WorldCom (and which I shall refer to collectively as "WorldCom"), and, on the other hand, BellSouth Telecommunications, Inc. ("BellSouth"), with regard to Issues 54-56 and 59-66 in this docket.

Q. WHY IS IT IMPORTANT THAT THE AUTHORITY RESOLVE COLLOCATION ISSUES?

A. Collocation has long been a source of pitfalls and frustration for CLECs. Yet collocation, given the growth of and demand for xDSL "broadband" services and the emphasis by the Federal Communications Commission ("FCC") on collocation in *In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-98 (released November 5, 1999), is of key importance now in the development of competition in local exchange service. State commissions, in particular, have an important role in defining and resolving collocation issues, such as provisioning intervals, in the context of arbitration and generic proceedings. *In re Deployment of Wireline*

Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, First Report and Order ¶¶ 54-55 (released March 31, 1999) ("Advanced Services Order"). In the Advanced Services Order, as well as *In re Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Dockets Nos. 98-147 and 96-98, Order on Reconsideration and Second Further Notice of Proposed Rulemaking in CC Docket No. 98-147 and Fifth Further Notice of Proposed Rulemaking in CC Docket No. 96-98 (released August 10, 2000) ("Order on Reconsideration"), the FCC adopted collocation rules to serve as minimum standards. Advanced Services Order at ¶ 8; Order on Reconsideration at ¶ 5. States are permitted to adopt additional requirements, which can greatly assist in the development of competition.

Q. WHAT DOES WORLDCOM SEEK TO ACCOMPLISH IN THIS ARBITRATION,WITH REGARD TO COLLOCATION ISSUES GENERALLY?

A. CLECs want expeditious, predictable and specific provisions for ordering and provisioning collocation space. Thus we seek to reduce uncertainty and opportunities for delay and litigation, through language in our interconnection agreement that comprehensively deals with the terms, conditions, intervals and rates for collocation.

ISSUE 54

Should security charges be assessed for collocation in offices with existing card key systems and how should security costs be allocated in central offices where new card key systems are being installed? (Attachment 5, Section 7.3; Attachment 1, Appendix 1.)

Q. WHAT IS THE LANGUAGE PROPOSED BY WORLDCOM CONERNING THIS ISSUE?

A. WorldCom has proposed that the following language be added to Attachment 5, Section 7.3: "BellSouth shall recover the costs for security for the Premises pro rata on a per square foot basis across all usable space in the Premises."

Q. WHAT IS BELLSOUTH'S POSITION?

A. BellSouth's proposal is to allocate the costs of a security card key system, existing *or* to be installed in the future, so that carriers pay the same charge regardless of the amount of space occupied (*i.e.*, on a per capita basis). BellSouth complains that security access costs would constantly have to be recalculated and reassessed each time an additional party established a collocation arrangement in a particular office and each time an existing collocator changed the square footage of its collocation arrangement. BellSouth further states that allocating security access costs as WorldCom proposes does not consider that certain space within an office cannot be used for the placement of telecommunications equipment by any party, including BellSouth. BellSouth contends that the benefits of accessing BellSouth's central offices via a security card key system is not a function of how much space the carrier occupies in that central office, because such access provides "equal value" to all parties.

Q. WHAT IS WORLDCOM'S RESPONSE, AS WELL AS ITS PROPOSAL TO RESOLVE THIS ISSUE?

A. When BellSouth invests in a new card reader security system and has it installed, it does so because it has chosen to protect its equipment (or because it is upgrading its security systems). BellSouth typically does not invest in a new card reader system to protect collocators' equipment. Of course, while it is BellSouth's choice that causes these costs to be incurred, collocators may benefit marginally from BellSouth's choice. To the extent, then, that both BellSouth and the collocators are the beneficiaries of reasonable security measures, a reasonable allocation of the costs should be developed. A "reasonable allocation" must bear some relationship to the benefits derived by each party. Those benefits are related to the relative investments made in or as concerns the central office by the ILECs and the collocators. BellSouth, instead, in effect maintains that a collocator must pay as much as BellSouth pays for the installation of the security system. Based, however, on the Telecommunications Act of 1996 ("Act"), FCC rules and other precedent, the better approach is to base any cost recovery on the square footage that a CLEC occupies.

I say "any" cost recovery, because, as an initial matter, to the extent ILECs are permitted to assess any security costs in addition to those already included in charges that are incurred for floor space, those costs should: 1) not be imposed in a separate charge, 2) consider the extent to which CLECs wish to provide security for themselves, 3) be based on forward-looking costing principles, rather than the retrofitting of existing central office configurations, and 4) be borne on a pro-rata basis, based on square footage.

Q. WHAT ABOUT RECOVERING COSTS FROM A CLEC FOR SYSTEMS THAT WERE PREVIOUSLY INSTALLED?

A. BellSouth has been upgrading its security systems throughout its network, and seeks to recover costs from CLECs for having previously installed card reader systems in central offices. If the existing system does not benefit collocators as well as BellSouth, there should be no cost recovery for its installation from a CLEC.

The cost of a security system may provide a benefit to everyone that uses the central office (i.e., it is a common cost). To the extent that the cost of a previously installed security system has not already been fully depreciated and is appropriately to be recovered in part from collocators, any remaining cost should be recovered as part of common costs in the floor space monthly recurring charge. No separate rate element should exist. Further, a separate rate element only increases the probability that the common cost will be incorrectly and possibly "double" recovered.

Q. WHY IS WORLDCOM'S PROPOSAL A BETTER SOLUTION?

A. A pro-rata allocation of security costs based upon the square footage occupied by the ILEC and each collocator in the central office is reasonable. A pro-rata allocation of security costs based on the square footage occupied by BellSouth and each collocator will assess each carrier (including BellSouth) a cost that is related to the benefit it derives from the security system. A carrier that occupies a good deal of space and protects a large amount of telecommunications equipment will be assessed a greater share of the security costs than a carrier that occupies a

small space and is protecting only a small amount of equipment. That is the way it should be.

A per capita allocation of security costs, which is maintained by BellSouth, would assess all carriers the same charge, regardless of the amount of space occupied by a given carrier. This allocation is arbitrary, because it fails to recognize that BellSouth chooses to incur these costs. Moreover, a per capita allocation bears no relationship to the different level of benefits derived by each carrier from a security system.

Q. WHAT GUIDANCE DO THE ACT AND FCC DECISIONS PROVIDE WITH RESPECT TO THIS ISSUE?

A. Section 251 (a) of the Act requires all "telecommunications carriers" to "interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." Section 251 (c) (3) requires incumbent LECs to provide nondiscriminatory access to unbundled network elements ("UNEs"). Section 251 (c)(6) imposes an obligation on ILECs "to provide, on rates, terms and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements. . . . " ILECs must allow collocation of "equipment necessary for interconnection or access to unbundled network elements. . . ."

With respect to security issues, the FCC specifically ruled in the Advanced Services Order that "(a)n incumbent LECs may adopt reasonable security measures to protect their central office equipment." *Id.* at ¶ 8. At the same time, however, "the incumbent LEC may not impose discriminatory security

requirements that result in increased collocation costs without the concomitant benefit of providing necessary protection of the incumbent LEC's equipment." *Id.* at ¶ 28. Hence, the FCC "expect[s] that state commissions will permit incumbent LECs to recover the costs of implementing these security measures from collocating carriers in a reasonable manner." *Id.* at ¶ 48.

More to the point, the FCC stated that

> incumbent LECs *must* allocate space preparation, ***security measures***, and other collocation charges on a ***pro-rated*** basis so the first collocator in a particular incumbent premises will not be responsible for the entire cost of site preparation . . . In order to ensure that the first entrant into an incumbent's premises does not bear the entire cost of site preparation, the incumbent must develop a system of partitioning the cost by comparing, for example, the amount of conditioned space actually occupied by the new entrant with the overall space conditioning expenses."

Id. at ¶ 51 (emphasis added). The D.C. Circuit Court of Appeals, in *GTE Service Corporation v. Federal Communications Commission*, No. 99-1176 (D.C. Cir. March 17, 2000), stated that this "approach . . . is fully justified as a reasonable way to ensure that LECs do not impose prohibitive requirements on new competitors and thus kill competition before it ever gets started." This ruling indirectly supports WorldCom's position that the costs of new security card systems should be allocated on a pro-rata basis, based on the square footage that the new entrant occupies relative to the total space for which the card system is designed to secure. It is important to keep in mind that the standards and rules implemented by the FCC in the Advanced Services Order serve as *minimum* requirements; states have the flexibility to respond to specific issues, such as

presented here and elsewhere in this arbitration with respect to collocation, by imposing additional requirements. Advanced Services Order, at ¶ 23.

Q. ARE THERE ANY STATE PUBLIC SERVICE COMMISSION RULINGS THAT SUPPORT WORLDCOM, AND IF SO, WHAT IS THEIR RELEVANCE?

A. Yes. The Florida Public Service Commission recently ruled on the issue of compensation for security measures, in Section XVII of *In re: Petition of Competitive Carriers for Commission Action to support local competition in BellSouth Telecommunications, Inc., service territory,* Docket No. 981834-TP (May 11, 2000) and *In re: Petition of ACI Corp. d/b/a Accelerated Connections, Inc. etc.*, Docket No. 990321-TP, Order No. PSC-00-0941-FOF-TP (May 11, 2000) ("Florida Order"). The Florida Commission made the following determinations:

> First, we are persuaded and so find that *the costs of security arrangements*, site preparation, and other costs necessary to the provisioning of collocation space incurred by the ILEC *that benefit only a single collocating party in a central office should be paid for by that collocating party.* ...(R)ecovering costs only from the party that benefits will eliminate the burden on ILECs and other collocators of paying for costs of collocation they did not cause to be incurred.
>
> Second, we find it appropriate that the *costs of security arrangements*, site preparation, and other costs necessary to the provisioning of collocation space incurred by the ILEC *that benefit both current and future collocating parties shall be recoverable by the ILEC from current and future collocating parties. In this case, these costs shall be allocated based on the amount of floor space occupied by a collocating party, relative to the total collocation space for which site preparation was performed.*

> Third, we find that the *costs of security arrangements*, site preparation, and other costs necessary to the provisioning of collocation space incurred by the ILEC *that benefit current or future collocating parties and the ILEC shall be recoverable by the ILEC from current and future collocating parties, and a portion shall be attributed to the ILEC itself.* We note that the ALECs [i.e., competitive local exchange carriers] addressed their concerns over security issues that not only benefit collocating parties, but also benefit the ILEC. Acknowledging those concerns, we shall require that *when multiple collocators and the ILEC benefit from modifications or enhancements, the cost of such benefits or enhancements shall be allocated based on the amount of square feet used by the collocator or the ILEC, relative to the total useable square footage in the central office.*

(Emphasis added). Also, in *Investigation of Southwestern Bell Telephone Company's Entry into the Texas InterLATA Telecommunications Market, Public Utility Commission of Texas*, Order No. 52, Project No. 16251, the Texas Public Utilities Commission ("Texas PUC") adopted the following language from SWBT's proposal, in its collocation tariff, section 26.17.1 (Rate Elements for SWBT Central Offices):

> (B) Safety and Security. This charge represents reasonable costs incurred by SWBT to secure its equipment contained within the used space of the Central Office. This charge is expressed as a recurring rate on a per square foot basis as specified in 26.17.3f (B) following...-Interior Security Partition – Provisioning of door locks and keying of existing doors- Security camera systems -Locking cabinets [etc.]" (emphasis added).

This language, which deals with security issues generally, supports WorldCom's position on this issue. The FCC has cited with approval the Texas PUC, in particular, for its efforts with regard to collocation. Advanced Services Order at ¶ 55.

ISSUE 55

Should BellSouth be required to provide a response, including a firm cost quote, within 15 days of receiving a collocation application? (Attachment 5, sections 2.1.1.3, 7.20.)

Q. WHAT LANGUAGE HAS WORLDCOM PROPOSED?

A. WorldCom has proposed the following language in Attachment 5:

> 2.1.1.3 Application Response. BellSouth will respond as soon as possible, but no longer than 15 days after receipt of an Application whether the Application is Bona Fide, and if it is not Bona Fide, the items necessary to cause the Application to become Bona Fide. BellSouth shall provide a comprehensive written response and notice of space availability within 15 days of receipt of a complete application. When WorldCom submits ten or more applications within ten calendar days, the initial 15-day response period will increase by 10 days for every additional 10 applications or fraction thereof. The Application Response will detail whether the amount of space requested is available or if the amount of space requested is not available, the amount of space that is available. The response will also include the configuration of the space. The response also must include all information necessary for WorldCom to place a firm order, including a detailed price quote. When BellSouth's response includes an amount of space less than that requested by WorldCom or differently configured, WorldCom must amend its application to request no more than the space available.

The reference (in the statement of the issue) to Attachment 5, Section 7.20, concerning subsequent application fees, refers to the intervals established in Section 2.1.1.3.

BellSouth has proposed the following language:

> 2.1.1.3 Application Response. In addition to the notice of space availability pursuant to Section 2.1, BellSouth will respond within ten (10) business days of receipt of an Application whether the Application is Bona Fide, and if it is not Bona Fide, the items necessary to cause the Application to become Bona Fide. When space has been determined to be available, BellSouth will provide a comprehensive written response within thirty (30) business days of receipt of a complete application. When multiple applications

are submitted within a fifteen business day window, BellSouth will respond to the applications as soon as possible, but no later than the following: within thirty (30) business days for applications 1-5; within thirty-six (36) business days for applications 6-10; within forty-two (42) business days for applications 11-15. Response intervals for multiple applications submitted within the same timeframe for the same state in excess of 15 must be negotiated. All negotiations shall consider the total volume from all requests from telecommunications companies for collocation. The Application Response will detail whether the amount of space requested is available or if the amount of space requested is not available, the amount of space that is available. The response will also include the configuration of the space. When BellSouth's response includes an amount of space less than that requested by MCIm or differently configured, MCIm must amend its application to reflect the actual space available prior to submitting a Bona Fide Firm Order.

Q. WHAT ARE THE PARTIES' POSITIONS ON THIS ISSUE?

A. WorldCom's position is that BellSouth should be required to provide a response, including a firm cost quote, within fifteen days of receiving a collocation application. BellSouth agrees that it must respond to a collocation application within a firm interval. In response to a single application for collocation, however, BellSouth proposes to provide the necessary information in two intervals. First, BellSouth has proposed that it provide information as to space availability and as to whether the application submitted to it is complete and accurate, within ten *business* days of receiving an application. Second, BellSouth has stated that it will provide a "complete response" to the application, i.e., a cost quote and the configuration of the space, within thirty *business* days of receiving the application. BellSouth has stated it needs this additional time to consider the existing building configuration, space usage and forecasted demand, building code and regulatory requirements, and certain "design practices".

Q. WHAT IS YOUR RESPONSE TO BELLSOUTH?

A. First, although BellSouth categorically maintains that it cannot "reasonably" complete the work necessary to reply to a collocation request within fifteen days, it is unreasonable for BellSouth to maintain that it *needs* thirty *business* days – which amounts to a month and a half – to provide the requested information.

In this regard, I certainly agree, without knowing how BellSouth "considers" these matters, that the existing building configuration, space usage and forecasted demand must be taken into account by the ILEC. I strongly disagree, however, with any implication that space occupied or "reserved" by BellSouth can be invariably and unilaterally removed by it from further consideration, or that local "building codes and regulatory requirements" can or should be used to unilaterally justify a denial of collocation, or to preempt the requirements of the Act.

As will be discussed below, nothing in the Advanced Services Order construes "days" as "business days." Indeed, that order states that a collocation application should be accepted or denied within ten [calendar] days of submission. *Id.* at ¶ 55. The Order on Reconsideration specifically states that the report provided by the ILEC in this respect must be provided in ten *calendar* days, as opposed to ten *business* days. *Id.* at ¶ 64. *See* 47 C.F.R. §51.5, as amended by the Order on Reconsideration (a "day" is a *calendar* day). In other states (*e.g.*, North Carolina), BellSouth has advocated that its intervals for providing a space availability report and a firm price quote must be stated in

calendar days, and has proposed intervals of ten days and thirty days, respectively.

Q. WHAT IS WORLDCOM ASKING THIS AUTHORITY TO DO, AND WHY?

A. The Authority should establish a firm period or interval within which BellSouth, as with any ILEC, must supply a complete response to a collocation application. That interval should be fifteen days, and should include both space availability information and the firm price quote. A CLEC requires a complete response, including a firm cost quote, to prepare and submit a firm order for collocation space. The response that BellSouth gives to collocation applications determines the period in which provisioning of collocation requests is completed, and, ultimately, when BellSouth will be subject to competition from the CLEC. Minor changes that do not cause BellSouth to make available more space than has been initially requested, or that do not cause BellSouth to change its provisioning of power, should not restart the ordering process. I believe the decisions of other state commissions support our position that a complete response, including a price quote, can be provided within the period requested by WorldCom.

Q. WHAT HAVE OTHER STATE PUBLIC UTILITY COMMISSIONS DONE IN THIS RESPECT?

A. The Florida Order, in Section II, states the following:

> Upon consideration, we are persuaded . . . that the initial response to an application for collocation should contain sufficient information for the CLEC to place a firm order. We are also persuaded . . . that price quotes must be included in the response because they are essential to placing a firm order.

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

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

Q. WITH REGARD TO BELLSOUTH'S PROPOSAL REGARDING THE USE OF "BUSINESS" DAYS RATHER THAN CALENDAR DAYS, AND ITS PROPOSAL FOR ADDITIONAL RESPONSE TIMES WHEN

CERTAIN NUMBERS OF APPLICATIONS ARE FILED WITHIN A GIVEN PERIOD, WHAT IS WORLDCOM'S RESPONSE?

A. Throughout Attachment 5, BellSouth construes "days" as "business days." As stated above, the Order on Reconsideration construes "days" as "calendar days," and I anticipate that BellSouth will amend its proposal for Tennessee to remove its references to "business" days. I understand the Georgia Public Service Commission recently rejected BellSouth's "business days" approach in the context of provisioning intervals, in an order entered on June 29, 2000 in the ITC^DeltaCom arbitration with BellSouth in Docket No. 10854-U. I also understand that the same commission ordered BellSouth in the Intermedia arbitration to provide a firm price quote within thirty *calendar* days. There is no evidence, in any event, that BellSouth needs additional response times for these situations or, for that matter, how much additional time BellSouth needs in a given situation. BellSouth should be required to demonstrate to the Authority in a waiver petition that time in addition to that proposed by WorldCom is needed.

ISSUE 56

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

Q. WHAT LANGUAGE HAS WORLDCOM PROPOSED CONCERNING THIS ISSUE?

A. WorldCom has proposed the following language (with the disputed language in bold):

> 3.4 MCIm shall provide a concrete pad, the structure housing the arrangement, HVAC, lighting, and all facilities that connect the structure (i.e. racking, conduits, etc.) to the BellSouth demarcation point. At MCIm's option, BellSouth shall provide an **AC or DC** power source and access to physical collocation services and facilities subject to the same nondiscriminatory requirements as applicable to any other physical collocation arrangement.

Q. IS BELLSOUTH GENERALLY OPPOSED TO PROVIDING DC POWER TO COLLOCATORS?

A. No. The issue has arisen with respect to adjacent collocation space, not with respect to collocating within the central office of BellSouth.

Q. WHAT IS ADJACENT COLLOCATION SPACE?

A. Adjacent collocation space is described in 47 C.F.R. § 51.323 (k) (3). When space is legitimately exhausted in a particular ILEC premises, collocation in adjacent controlled environmental vaults or similar structures must be made available to the extent technically feasible. The FCC defined "premises" in 47 C.F.R. § 51.5 to refer "to an incumbent LEC's central offices and serving wire centers, as well as all buildings or similar structures owned or leased by an incumbent LEC that house incumbent LEC facilities on public rights-of-way, including but not limited to vaults containing loop concentrators or similar structures." In the Order on Reconsideration, the definition of "premises" was clarified to include

> all buildings and similar structures owned, leased, or otherwise controlled by the incumbent LEC that house its network facilities, all structures that house incumbent LEC facilities on public rights-of-way, and all land owned, leased, or otherwise controlled by an incumbent LEC that is adjacent to these structures. *Id.* at ¶ 44.

Q. WHY IS THIS ISSUE IMPORTANT?

A. *Collocated equipment runs on DC power*, yet BellSouth's view is, after the CLEC has been relegated to adjacent collocation space (i.e., outside the central office), BellSouth is not obligated to provide DC power.

The opportunity for discrimination against CLECs is particularly acute in this situation. Adjacent collocation space does not have to be employed for collocation unless space in BellSouth's central office is legitimately exhausted. Space can be exhausted, according to BellSouth, if BellSouth occupies or reserves space, even for functions unrelated to the functioning of the central office or collocators.

If BellSouth categorically refuses to provide DC power, CLECs must incur significant costs to accommodate AC power, provided by BellSouth or from some other source, and to convert that power to DC. These costs will be incurred, moreover, as a result of being required to collocate equipment *outside* of a BellSouth central office. Adjacent collocation space will be exhausted at a faster rate, given the space requirements of maintaining equipment needed to convert AC power to DC power.

Q. WHY DOES BELLSOUTH MAINTAIN SUCH A POSITION?

A. BellSouth categorically states that the cabling used to house DC power is not "rated for outside use." BellSouth evidently purports to have some safety concerns about the use of DC power; yet the national electric codes mention no problem with the provision by BellSouth of DC power, and BellSouth has recently conceded that there is no prohibition on providing DC power outside the central office. I understand that BellSouth is not necessarily willing to provide

AC power. Indeed, BellSouth's presumed option for CLECs – to use batteries in an enclosed space – rebuts BellSouth's alleged safety concerns, since that option itself could introduce safety concerns. CLECs would have to employ generators, batteries and other equipment in order to provide collocation from the adjacent location. Even if BellSouth's contentions regarding safety were generally valid (which they are not), the principle of "technical feasibility," by which requests for physical collocation are considered, strongly suggests that DC power cannot be *categorically* denied.

Indeed, BellSouth has offered to provide DC power in other collocation arrangements outside the central office; namely, with respect to collocation at remote terminals. BellSouth recently offered the following to CLECs in North Carolina in the context of a proposal for remote terminal collocation:

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

Q. WHAT DO THE FCC'S REGULATIONS REQUIRE?

A. In the Advanced Services Order, the FCC held

> [W]hen collocation space is exhausted at a particular LEC location, we require incumbent LECs to permit collocation in adjacent controlled environmental vaults or similar structures to the extent technically feasible.

Id. at ¶¶ 6, 44. Thus the FCC's regulations require BellSouth, as an initial matter, to provide collocation in its central office, or in adjacent controlled environmental vaults or similar structures. The regulations also require BellSouth to provide power and physical collocation services to the adjacent collocation space "subject to the *same* nondiscrimination requirements as applicable to any other physical collocation arrangement." 47 C.F.R § 51. 323 (k) (3) (emphasis added). This is a matter of fairness: BellSouth must provide DC power to a CLEC's equipment in an adjacent collocation if BellSouth provides DC power to the equipment in the central office.

Hence the FCC also held that "(t)he incumbent must provide power and physical collocation services and facilities, subject to the same nondiscrimination requirements as traditional collocation arrangements." Advanced Services Order, at ¶ 44.

Q. DO ANY STATE PUBLIC SERVICE COMMISSION ORDERS SUPPORT WORLDCOM'S POSITION?

A. Yes. In the Florida Order, in Section IV, the Florida Commission held that

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

These services should by implication include DC power, to the extent that its provision is technically feasible.

Similarly, the Texas PUC has ordered that DC power must be made available to adjacent collocation space. In *Investigation of Southwestern Bell Telephone Company's Entry into the Texas InterLATA Telecommunications Market, Public Utility Commission of Texas*, Order No. 54, Project No. 16251, the Texas PUC ordered the following to be incorporated in SWBT's tariff:

> Sec. 6.1.1 Types of Available Physical Collocation Arrangements
>
> 6.1.1(E) Adjacent Space Collocation-
>
> (originally 6.1.1(D)) The Commission finds that SWBT should provide power in multiples of the following DC power increments: 20, 40, 50, 100, 200, and 400 AMPS. SWBT should provide reference to the definition of the term "Legitimately Exhausted." The Commission notes that provision of DC power to adjacent on-site collocation facility may include increments of 600 and 800 Amps; however, the feasibility and rates for providing 600, and 800 Amps service will be finalized during the permanent cost proceeding. The Commission finds that SWBT and the collocators shall mutually agree upon the location of the "adjacent structure. . .
>
> The Commission therefore finds that 6.1.1(E) should be modified as follows:
>
> 6.1.1(E) Adjacent Space Collocation – Where Physical Collocation space within a SWBT Eligible Structure is Legitimately Exhausted, as that term is defined in Section 2 of this Tariff, SWBT will permit Collocators to physically collocate in adjacent controlled environmental vaults or similar structures that SWBT uses to house equipment, to the extent technically feasible. SWBT and CLEC will mutually agree on the location of the designated space on SWBT premises where the adjacent structure will be placed. SWBT will not withhold agreement as to the site desired by Collocator, subject only to reasonable safety and maintenance requirements. . . . At its option, the Collocator may choose to provide its own AC and DC power to the adjacent structure. SWBT will provide physical collocation services to such adjacent structures, subject to the same

requirements as other collocation arrangements in this tariff.

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

Q. IS IT IMPORTANT WHAT OTHER STATE COMMISSIONS ORDER REGARDING COLLOCATION?

A. Yes. In the Advanced Services Order the FCC held that "(a) collocation method used by one incumbent LEC or mandated by a state commission is presumptively technically feasible for any other incumbent LEC." *Id.* at ¶ 8. "(D)eployment by any incumbent LEC of a collocation arrangement gives rise to a rebuttable presumption in favor of a competitive LEC seeking collocation in any incumbent LEC premises that such an arrangement is technically feasible." *Id.* at ¶ 45. 47 C.F.R. § 51.321 (c) embodies this concept.

Q. WHAT IS WORLDCOM PROPOSING THAT BELLSOUTH PROVISION, WITH RESPECT TO DC POWER TO AN ADJACENT COLLOCATION SITE?

A. WorldCom will provide the cabling to BellSouth's power distribution board. BellSouth would provide the conduit to the adjacent collocation space. The pricing would be calculated pursuant to Attachment I of the interconnection agreement.

Q. PLEASE SUMMARIZE YOUR TESTIMONY IN THIS REGARD.

A. The law requires adjacent collocation to be provided in a non-discriminatory manner. There is no demonstrable or compelling reason why DC power should not be provided to CLECs.

ISSUE 59

Should collocation space be considered complete before BellSouth has provided WorldCom with cable facility assignments ("CFAs")? (Attachment 5, Section 7.15.2).

Q. WHAT LANGUAGE HAS WORLDCOM PROPOSED CONCERNING THIS ISSUE?

A. WorldCom has proposed the following language (with disputed language in bold):

> 7.15.2 BellSouth will not be deemed to have completed work on a Collocation Space until it conforms to the original or jointly amended request **and BellSouth has provided the cable assignment information necessary to use the facility.**

Q. WHAT IS WORLDCOM'S POSITION IN THIS REGARD?

A. Space is unusable unless we have been provided with cable facility assignments ("CFAs"). CFAs – which pertain to the naming and inventorying of cable facilities within a central office -- are necessary for CLECs to order service. Hence BellSouth should provide CFAs before the space is considered "completed." CFAs, for example, regarding the cabling from the collocation to the MDF, should be made available and assigned to WorldCom as part of the response to our initial request for collocation.

Q. WHAT IS BELLSOUTH'S POSITION?

A. It maintains that collocation space is complete once all construction work done by BellSouth or BellSouth's certified vendors is "complete," at which point BellSouth will render a final bill to the CLEC and start charging the CLEC recurring charges for occupying the space. Unless this issue is resolved, therefore,

BellSouth would not have to furnish CFAs to WorldCom, but WorldCom would have to begin paying BellSouth for the "completed" space.

Q. WHY SHOULD THE AUTHORITY RULE IN FAVOR OF WORLDCOM ON THIS POINT?

A. The common sense meaning of "complete" is that everything that is necessary for the CLEC to occupy the space and turn up power has been done. If BellSouth maintains that its work is "complete" but there remains an ambiguity whether service can be ordered, then a CLEC will remain uncertain whether it is able to provision service, at a definite time, for its customers. This is an instance where the Authority should remove some uncertainty. As stated by the FCC in both the Advanced Services Order, ¶ 23, and *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order ¶ 558 (released August 8, 1996) ("Local Competition Order"), states have the flexibility to respond to specific issues by imposing requirements that are consistent with the national rules. As part of the collocation application, WorldCom gives BellSouth information that it needs to supply CFAs, and the information WorldCom needs from BellSouth, for the most part, can and should be supplied by BellSouth early in the process.

Q. HOW DOES BELLSOUTH'S POSITION AS A PRACTICAL MATTER AFFECT A CLEC'S ABILITY TO PROVIDE SERVICE?

A. When a CFA is not provided, the CLEC is forced to hold orders from its customers until the CFA is provided. During this period WorldCom, or any other CLEC, is losing revenue, while paying for space that it cannot put into service –

and the CLEC has been given no set time in which to resolve this dilemma. The longer the customer has to wait, the greater the chance is that the CLEC will lose that business to another CLEC, or to BellSouth itself (thus eliminating competition). Thus we ask that the Commission decide that collocation space should not be considered "complete" until it is usable and interconnection may commence.

ISSUE 60

Should BellSouth provide WorldCom with certain collocation information at the joint planning meeting? (Attachment 5, sections 7.17.2, 7.17.4 and 7.17.10.)

Q. WHAT LANGUAGE HAS WORLDCOM PROPOSED CONCERNING THIS ISSUE?

A. WorldCom has proposed the following language:

> **7.17.2 If available, the exact cable type and cable termination requirements <u>for MCIm provided POT bays</u> (i.e., connector type, number and type of pairs, and naming convention) that will be used. If this information is not available at the joint planning meeting, BellSouth shall provide it within 30 days of the date of the joint planning meeting.**
>
> ***7.17.4 Power cabling connectivity information including the sizes and number of power feeders and power feeder fuse slot assignment on the BellSouth BDFB.***
>
> 7.17.10 Identification of all technically feasible demarcation points associated with the equipment reflected in the Bona Fide Firm Order.

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. BellSouth has stated it is willing to provide certain (but not all) information specified by WorldCom, but not necessarily at the joint planning meeting.

BellSouth concedes it is willing to provide the exact cable location termination requirements at the joint planning meeting, *or* within thirty days thereafter (*see* WorldCom's proposed Attachment 5, Section 7.17.2). Thus there appears to be no issue remaining regarding the language of section 7.17.2.

With respect to section 7.17.4, BellSouth states that "much of the information" we seek is not available, or is "not required" to be provided. BellSouth, however, does not state which information is allegedly not available or that it is not required to provide. BellSouth would furnish this information, in any event, to a vendor, but not to WorldCom. Thus there is no reason why BellSouth cannot make it available to WorldCom.

As for section 7.17.10, despite the fact that the identification of demarcation points is key information for a collocator (as well as BellSouth) to know, to decide where and how it wishes to interconnect, BellSouth asserts that this information has "nothing to do" with what is needed at the joint planning meeting. BellSouth maintains that it has the right to designate demarcation points, and, consequently, that it will not even *identify* technically feasible demarcation points.

Q. WHAT IS YOUR RESPONSE?

A. CLECs need predictable, specific provisions for ordering and provisioning collocation space. BellSouth, however, essentially advocates an approach that would subject CLECs to uncertainty, expense and delay. We seek to reduce, not to expand, uncertainty and opportunities for delay and litigation. Identification of key information, like power connectivity information, including size and number

of power feeders, the exact cable type and termination requirements for the CLEC-provided point of termination ("POT") bays and identification of technically feasible demarcation points, allows choices for ordering and provisioning collocation space, much like the tariff process that exists for other services today, and, more specifically, enables a CLEC to begin its design plans for collocation space. Unless the CLEC has the requested information, then it will not know how to complete collocation.

Q. WHY IS THE JOINT PLANNING MEETING IMPORTANT?

A. Our position is based on common sense: CLECs need certain key information to begin its design plans for a collocation space. As a practical matter, the providing of this information commences the period for the CLEC to do its engineering work; i.e., if the parties do not understand the other's needs or limitations, then the likelihood of delays and disputes is increased. For example, knowing that BellSouth will identify cable requirements and a technically feasible demarcation point assists a CLEC in ascertaining what equipment it needs. With respect to the identification of demarcation points, this information also relates to some extent to the distance between the customer's premises and the collocated equipment, and thus whether the CLEC may provide advanced services to that customer.

Q. WHAT SHOULD OCCUR AT THE JOINT PLANNING MEETING?

A. Both parties should walk away from the meeting knowing how to engineer their respective "ends" of the collocation process. Unless the CLEC has the requested information, then it will not know how to complete collocation.

Q. IS BELLSOUTH'S POSITION REASONABLE, IN VIEW OF THE NEED FOR THIS INFORMATION?

A. No. This information would obviously assist both BellSouth and CLECs, and its withholding appears to be for the purpose of delay. BellSouth does not want to identify technically feasible demarcation points because it denies that CLECs have the right to designate these points. Although the Local Competition Order and Advanced Services Order, as well as the FCC's rules, contemplate that the CLEC choose the point of interconnection, that is really not the issue here: the point is that identification of feasible demarcation points would assist a CLEC in designing its collocation and determining what services it may provide. BellSouth should be required to provide the information as requested. Advanced Services Order, ¶ 23; Local Competition Order, ¶ 558. See 47 C.F.R. § 51.321 (a).

ISSUE 61

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

Q. WHAT LANGUAGE HAS WORLDCOM PROPOSED?

A. WorldCom has proposed the following language (with disputed language in bold):

> 7.18.6 **Charges for -48V DC power are as set forth in Attachment 1.** Rates include redundant feeder fuse positions (A&B) and cable rack to MCIm's equipment or space enclosure. When obtaining power from a BellSouth Battery Distribution Fuse Bay, fuses and power cables (A&B) must be engineered (sized), and installed by MCIm's certified vendor. .

Q. WHAT ARE THE PARTIES' POSITIONS?

A. WorldCom's position is that the rate proposed by WorldCom in Attachment 1 should apply on a per *used* ampere basis, taking into account the rated capacity of the equipment actually installed in the collocation space. BellSouth has proposed rates on a per *fused* ampere capacity basis; i.e., based on the size of the fuse it installs to handle equipment currently installed, equipment that may be installed in the future, plus a margin above that level.

Q. WHAT IS THE FUNDAMENTAL DIFFERENCE BETWEEN THE PARTIES' POSITIONS?

A. WorldCom's proposal, simply stated, is based on the fact that the parties original interconnection agreement, which was approved by the Authority, contemplates pricing power on a per ampere basis, which was to be based on the manufacturer's specifications for collocated equipment in use.

Thus it is clear from the previous agreement that BellSouth would measure how much power each CLEC was using and would bill the CLEC accordingly. The Authority ordered a permanent rate, which has been proposed for use here by WorldCom, and which must be applied on this basis. Consequently, the Authority should order that the rate proposed by WorldCom in Attachment 1 of the interconnection agreement, which is the rate ordered by the Authority, be applicable as between the parties.

Moreover, WorldCom's proposal permits BellSouth to recover from WorldCom over the life of the power supply equipment, WorldCom's pro-rata share of the cost of power supply. A recurring rate equal to the forward-looking

cost of power supply per amp times the amps consumed by WorldCom fully compensates BellSouth. BellSouth should bill WorldCom a recurring rate per amp equal to the forward-looking cost of power supply times the number of amps consumed by the WorldCom equipment actually installed.

In contrast, BellSouth's proposal would allow BellSouth to recover from WorldCom more than WorldCom's share of the costs. BellSouth proposes to charge a large up-front non-recurring charge for construction of power supply plus a recurring rate that also will reflect the cost of the power supply. This method represents a "double" recovery of the costs by BellSouth

Q. WHAT DOES BELLSOUTH CONTEND?

A. BellSouth would engraft additional language onto the Authority-established rate structure, as well as onto the original interconnection agreement between WorldCom and BellSouth. BellSouth would require that the charges for power, which it admits are assessed per ampere per month, must be based upon the certified vendor-engineered and installed power feed fused ampere capacity. BellSouth's proposal would allow BellSouth to recover from WorldCom more than WorldCom's share of the costs.

ISSUE 62

Should BellSouth be required to provision caged collocation space (including provision of the cage itself) within 90 days and virtual and cageless collocation within 45 days? (Attachment 5, section 7.19.)

Q. WHAT LANGUAGE HAVE THE PARTIES PROPOSED?

A. WorldCom proposed the following language:

7.19.1 Unless abatement of an Environmental Hazard or Hazardous Materials is required, Intervals for physical collocation shall be a maximum of ninety (90) days for caged collocation and forty-five (45) days for cageless collocation from the date BellSouth receives MCIm's firm order request. Intervals for virtual and cageless collocation will not exceed sixty (60) days. These intervals are further defined in Attachment X.

BellSouth has proposed the following language:

Construction and Provisioning Interval. BellSouth will negotiate construction and provisioning intervals per request on an individual case basis. Excluding the time interval required to secure the appropriate government licenses and permits, BellSouth will use best efforts to complete construction for collocation arrangements under ordinary conditions as soon as possible and within a maximum of 90 business days from receipt of a complete and accurate Bona Fide Firm Order. Ordinary conditions are defined as space available with only minor changes to support systems required, such as but not limited to, HVAC, cabling and the power plant(s). Excluding the time interval required to secure the appropriate government licenses and permits, BellSouth will use best efforts to complete construction of all other collocation space ("extraordinary conditions") within 130 business days of the receipt of a complete and accurate Bona Fide Firm Order. Extraordinary conditions are defined to include but are not limited to major BellSouth equipment rearrangement or addition; power plant addition or upgrade; major mechanical addition or upgrade; major upgrade for ADA compliance; environmental hazard or hazardous materials abatement.

Q. WHAT ARE THE PARTIES' POSITIONS?

A. WorldCom's *initial* proposed language is stated above. WorldCom's position is that BellSouth should be required to provision caged collocation space within ninety calendar days and cageless or virtual collocation within sixty calendar days of the application for collocation. WorldCom discusses below the effect of the Order on Reconsideration on its position.

BellSouth's position is that the collocation provisioning intervals should be no greater than ninety *business* days for caged and cageless collocations under

ordinary conditions and, I believe, fifty *business* days for virtual collocation under ordinary conditions. I anticipate that, consistent with BellSouth's changed position in other states (e.g., North Carolina), and as a result of the Order on Reconsideration, BellSouth will advocate ninety *calendar* days for caged and cageless collocation under ordinary conditions, and fifty or more calendar days for virtual collocation. BellSouth will continue to insist that these intervals commence from the acceptance by the CLEC of the firm price quote.

Q. WHY ARE PROVISIONING INTERVALS PARTICULARLY IMPORTANT?

A. The issue of intervals in which collocation requests will be provisioned is an ultimate issue, in terms of importance, for collocators and ILECs. Firm intervals within which BellSouth must provision caged, virtual and cageless collocation, as is the case with respect to providing a response to a collocation application, are needed. "(T)imely provisioning of collocation space is essential to telecommunications carriers' ability to compete effectively in the markets for advanced services and other telecommunications service." Order on Reconsideration, at ¶ 17. *See* ¶ 22 (timely provisioning is "critically important"). An ILEC has every incentive *not* to provision space in any particular period. Therefore, the Authority should establish a firm interval. Intervals of ninety days for caged collocation and sixty days for virtual and cageless collocation, measured from the application for collocation, are reasonable.

Q. IS BELLSOUTH'S POSITION DEFENSIBLE?

A. No. An interval that is ninety *business* days is about four and a half *months* long. Such a period is too long. Moreover, cageless collocation, by definition, should be much easier to provision than caged collocation, and BellSouth has given no justification as to why cageless collocation cannot be accomplished in less than ninety days. Likewise, virtual collocation is similar to cageless collocation with respect to provisioning.

Q. IS VIRTUAL COLLOCATION SIMILAR TO CAGELESS COLLOCATION WITH REGARD TO PROVISIONING?

A. Yes. The main difference between the two is that, with a physical (cageless) collocation arrangement, tape is placed on the floor around a collocator's equipment to identify it, and the collocator itself is allowed access to the equipment to perform maintenance; whereas, with a virtual arrangement BellSouth maintains the collocator's equipment for the CLEC. Thus any time frame in which cageless collocation can be provisioned is also appropriate for virtual collocation.

Q. WHAT HAS THE FCC STATED CONCERNING THIS ISSUE, AND WHAT IS YOUR REACTION?

A. According to the FCC, the incumbent LEC should complete any technically feasible physical collocation arrangement, whether caged or cageless, no later than ninety calendar days *after receiving a collocation application*, where space, *whether conditioned or unconditioned*, is available in the ILEC's premises and the state commission does not set a different interval or the incumbent and the requesting carrier have not agreed to a different interval. *Id.* at ¶ 27. Although

BellSouth focuses on the ability of a state commission to set a different interval, the FCC, after hearing comments from all parties, in effect set a national *maximum* interval, which it presumes that ILECs are capable of meeting.

The FCC's provisioning interval is in effect shorter than what WorldCom initially proposed for caged collocation (and appears to be, in effect, equal to or longer than what WorldCom initially proposed for cageless collocation). The FCC's interval, at least as it affects caged collocation, should be adopted by the Authority for the parties' interconnection agreement. In any event, the FCC's provisioning interval should be made available for CLECs, including WorldCom in this agreement, to use.

Q. DO YOU CONTEND THAT CAGELESS COLLOCATION MAY BE PROVISIONED IN AN INTERVAL SHORTER THAN CAGED COLLOCATION?

A. Yes. By definition, because certain considerations, for example, as related to space availability and configuration, plus the lack of having to construct a cage, are different for cageless collocation than for caged collocation, cageless collocation should be subject to a shorter interval. I understand that a recent regional interconnection agreement involving ITC^DeltaCom and BellSouth sets forth a thirty day interval for provisioning cageless collocation (commencing upon receipt by BellSouth of a bona fide order). *See also In re Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996*, Second Interim Order of Arbitration Award, Docket No. 99-00430 at 5 (Aug. 31,

2000) (also including a "sixty (60) business day maximum, thus, allowing additional time for extraordinary circumstances").

Q. HAVE ANY PUBLIC SERVICE COMMISSIONS, BESIDES THE AUTHORITY, RULED ON THE INTERVALS FOR PROVISIONING OF PHYSICAL COLLOCATION?

A. Yes. The Georgia Commission, in *Petition for Arbitration of ITC^DeltaCom Communications, Inc.*, Docket No. 10854-U (June 29, 2000), adopted a sixty calendar day interval for provisioning of cageless collocation. That position is consistent with the one I support in this testimony, to the extent that it recognizes that cageless collocation takes less time to provision than caged collocation.

The Texas PUC, in *Investigation of Southwestern Bell Telephone Company's Entry into the Texas InterLATA Telecommunications Market, Public Utility Commission of Texas*, Order No. 54, Project No. 16251, has decided that, for "active collocation space," caged collocation must be provisioned within ninety days by SWBT, and that cageless collocation must be provisioned within fifty-five days. "Active collocation space" is defined in Order No. 59 in the same docket, as "space within an Eligible Structure that can be designated for physical collocation, which has sufficient telecommunications infrastructure systems". Eligible structures include central offices, space within CEVs, huts and cabinets.

The Order on Reconsideration cites what other state commissions have done in this regard. See *id.* at ¶¶ 18-19.

ISSUE 63

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

Q. WHAT LANGUAGE HAS WORLDCOM PROPOSED CONCERNING THIS ISSUE?

A. WorldCom has proposed the following language (with disputed language shown in bold:

> 7.21.1 MCIm may elect to place MCIm-owned or MCIm-leased fiber entrance facilities into the Collocation Space. BellSouth will designate the point of entrance in close proximity to the Central Office building housing the Collocation Space, such as an entrance manhole or a cable vault which are physically accessible by both parties. MCIm will provide and place fiber cable at the point of entrance of sufficient length to be pulled through conduit and into MCIm's Collocation Space. If MCIm uses an entrance facility with a metallic member, BellSouth shall open the cable sheath in the vault and bond the metallic member to ground. In the event MCIm utilizes a non-metallic entrance facility, grounding of the cable will not be required. MCIm must contact BellSouth for instructions associated with duct assignments and scheduling and other information as required prior to placing the entrance facility cable in the manhole. MCIm is responsible for maintenance of the entrance facilities, except that BellSouth is responsible for the maintenance of any bonding required. At MCIm's option BellSouth will accommodate where technically feasible a microwave entrance facility pursuant to separately negotiated terms and conditions. **Notwithstanding any other provision of this Agreement, MCI may use fiber, copper, coaxial, or any other technically feasible type of entrance cable.**

Q. WHAT IS THE REGULATORY BACKGROUND OF THIS ISSUE?

A. The FCC's regulations specifically permit collocators to use copper cable: "When an incumbent LEC provides physical collocation, virtual collocation, or both, the incumbent LEC shall: ... (3) permit interconnection of copper or coaxial cable if such interconnection is first approved by the state commission." 47 C.F.R. § 51.323(d)(3).

Q. DOES A SIGNIFICANT AMOUNT OF COPPER CABLE OWNED BY BELLSOUTH PRESENTLY ENTER BELLSOUTH CENTRAL OFFICES?

A. Yes. *BellSouth even admits that this is the case.* Although BellSouth characterizes the copper entering its central offices as distribution rather than for purposes of interconnection, there still is a significant amount of copper entering BellSouth's central offices. Therefore, as a matter of parity and nondiscriminatory treatment, WorldCom is clearly entitled to bring copper cable into the central office as well.

Q. HOW SHOULD THE AUTHORITY RESOLVE THIS ISSUE?

A. As a matter of parity and nondiscriminatory treatment, a CLEC is clearly entitled to bring copper cable into the central office. Copper entrance ducts merely present another factor in considering what space and facilities are available for collocation. Copper is technically feasible and still a viable means of transport and delivery of circuits. The Authority may recognize these facts by fashioning a general rule allowing the use of copper entrance facility, subject to the ILEC's right to raise specific reasons why, in a given instance, the use of copper is not feasible. If 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; indeed, some start-up CLECs could be forced out of business. Although ILECs should be allowed to reserve some space (central office or entrance ducts) for future needs, any such reservation should be supported on a competitively neutral basis, with forecasts and growth projections, and the CLEC should have the right

to *review* what space exists and what future requirements an ILEC has when the latter contends there is a "near exhaust" situation. The burden should remain on the ILEC to *demonstrate impairment* of service; otherwise, CLECs would face a nearly impossible task to prove that the facility is not near exhaustion.

ISSUE 64

Is WorldCom entitled to verify BellSouth's assertion, when made, that dual entrance facilities are not available? Should BellSouth maintain a waiting list for entrance space and notify WorldCom when space becomes available? (Attachment 5, section 7.21.2.)

Q. WHAT LANGUAGE HAS WORLDCOM PROPOSED CONCERNING THIS ISSUE?

A. WorldCom has proposed the following language (with disputed language in bold):

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

an inspection must be received by BellSouth within five (5) business days of the notification of lack of capacity. Any request received by BellSouth later than five (5) business days after MCIm's receipt of BellSouth's Application Response will be fulfilled within five (5) business days of the request. In addition, BellSouth shall notify MCIm when capacity is available for a dual entrance, and such capacity shall be made available on a first come, first served basis.

Q. WHAT ARE "DUAL ENTRANCE" FACILITIES?

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

Q. WHAT ARE THE PARTIES' POSITIONS ON THIS ISSUE?

A. WorldCom's position is that a CLEC should be permitted to verify BellSouth's assertion that dual entrance facilities are not available. WorldCom is not asking for a formal "tour" of the central office; instead, a limited inspection of entrance facility should be sufficient. I believe that BellSouth will not disagree this is acceptable.

BellSouth should also maintain a waiting list for entrance space and notify the CLEC when space becomes available.

Q. PLEASE ELABORATE ON THE PARTIES' RESPECTIVE POSITIONS.

A. BellSouth admits it must provide at least two interconnection points at a premises "at which there are at least two entry points for the incumbent LEC's cable facilities, and at which space is available for new facilities in at least two of those entry points," citing 47 C.F.R. § 51.323(d)(2). The right to any inspection of a

premises, in BellSouth's opinion (at least as I understand it was expressed earlier in these negotiations), only applies when an incumbent LEC "contends space for physical collocation is not available" in a given central office. BellSouth has claimed it is not denying physical collocation when BellSouth does not have dual entrance facilities available, so that a "tour" of the central office is not necessary, and states it provides information as to whether there is more than one entrance point for BellSouth's cable facilities. In the event there is only one entrance point, according to BellSouth the CLEC can visually verify that another entrance point does not exist, which does not require a formal tour. In the event that dual entrance points exist but space is not available, BellSouth states it will provide documentation, upon request and at the CLEC's expense, so that the CLEC can verify that no space is available for new facilities.

Of course, in some instances documentation will not suffice; for example, when there are dual facilities indicated on plans or specifications for the building, but the ILEC alleges that one or both facilities have been exhausted. Again, WorldCom believes that BellSouth does not disagree with the principle that a CLEC should be permitted to verify, through physical inspection, an assertion that dual entrances are not available.

This is particularly so when the ILEC is claiming a lack of capacity. A visual inspection may not be necessary in many situations, particularly when a lack of capacity is not alleged, and in those situations WorldCom would not request a visual inspection inside the central office; however, it is quite possible, as BellSouth would admit, that what would need to be inspected is underground

and thus undetectable from the street. In those instances the CLEC would need to arrange for an inspection of entrance locations, and the parties' Agreement should provide predictability and a clear expression of BellSouth's and WorldCom's respective rights, or risk delay and litigation. It is a reasonable requirement, particularly in light of the FCC's similar, but even more expansive rule, of allowing new entrants to tour an incumbent's premises in order to verify an assertion that physical collocation space is not available. 47 C.F.R. § 51.323(f); Advanced Services Order, ¶ 57. WorldCom here is not asking for such a "tour." The CLEC, however, should similarly be allowed to verify a claim that dual entrances are not available. In this instance, a CLEC is merely asking for an inspection of entrance locations. Where exhaustion is not an issue, in most cases the CLEC can review the plans and specifications furnished by the ILEC, rather than physically inspecting the entrance locations.

Q. WHAT IS THE FCC'S POSITION ON THIS MATTER?

A. The FCC's regulations require BellSouth to provide dual entrances for the facilities of collocators. See 47 C.F.R. § 51.323(d)(2). Other specific regulations have been cited above. Since the FCC has declared that a denial of space triggers a requirement that an inspection be permitted, it is a reasonable conclusion that a denial of dual entrances, which permit the necessary diversity that a CLEC needs, triggers the requirement of permitting verification of that claim.

Q. SHOULD BELLSOUTH MAINTAIN A WAITING LIST OF NEW ENTRANTS WHO HAVE BEEN DENIED ENTRANCE SPACE?

A. Yes. BellSouth should also offer space to the new entrants when it becomes available, based upon their position on the waiting list.

BellSouth, however, maintains that, should the fact that there is no entrance space available be the reason for denying a request for collocation, BellSouth will include that office on its space exhaust list, as required. However, BellSouth states it should not be required to incur the time and expense of maintaining a waiting list simply because dual entrance facilities may not be available.

Q. IS BELLSOUTH'S POSITION WITH RESPECT TO WAITING LISTS REASONABLE?

A. No. Just as BellSouth must indicate those of its premises that are full, 47 C.F.R. § 51.321 (h), and should maintain a waiting list with respect to collocation space generally at a central office (*see* Section 2.2.3 of Attachment 5), it is reasonable to expect BellSouth to maintain a waiting list for dual entrance facilities.

Moreover, since the lack of dual entrances, as a practical matter, will determine whether collocation is advisable at a given location, a waiting list is a reasonable and not overly burdensome requirement for the ILEC to maintain under the circumstances. This Authority has the authority to require ILECs to engage in practices that are in addition to the minimal standards that the federal rules require, and what WorldCom proposes is certainly consistent with those rules.

ISSUE 65

What information must BellSouth provide to WorldCom regarding vendor certification? (Attachment 5, Sections 7.22.1)

Q. HAS MCIM RECENTLY SUBMITTED A NEW PROPOSAL TO BELLSOUTH?

A. Yes. The substitute language of WorldCom with regard to Section 7.22, and new Section 10, are contained in Exhibit PAB 2, attached to this testimony.

Q. WHAT IS THIS LANGUAGE INTENDED TO ACCOMPLISH?

A. As the following testimony indicates, the parties were talking "past one another," and negotiations had reached an impasse. In an effort to break the stalemate, we proposed this substituted language. Pursuant to this language, WorldCom would be certified to provide work for itself, and would agree to abide by certain rules. I do not know yet what reaction BellSouth has to this language.

Q. WHAT LANGUAGE DID WORLDCOM PREVIOUSLY PROPOSE CONCERNING THIS ISSUE?

A. WorldCom proposed the following language:

> 7.22.1 BellSouth shall provide MCIm with a list of BellSouth certified vendors for performance of work required or permitted under this Agreement. BellSouth shall indicate on the list what types of work each vendor is certified to perform. BellSouth shall provide MCIm with the specifications and training requirements necessary for a vendor to become BellSouth certified, and such specifications and training requirements shall be the same that BellSouth uses to certify its own vendors. If MCIm submits documentation to BellSouth that a proposed vendor, including MCIm, meets the specifications and training requirements, BellSouth shall add such vendor to the list of BellSouth certified vendors. BellSouth shall provide MCIm updates to the list of BellSouth certified vendors as vendors are added or removed from the list. MCIm's BellSouth Certified Vendor shall bill MCIm directly for all work performed for MCIm pursuant to this Attachment and BellSouth shall have no liability for nor responsibility to pay such charges imposed by the Certified Vendor.

Q. WHAT HAS BEEN WORLDCOM'S POSITION ON THIS ISSUE?

A. WorldCom's position has been that BellSouth must provide WorldCom with detailed information on the specifications and training requirements for a vendor to become BellSouth certified so that WorldCom knows what is required and, if necessary, can train its proposed vendors. WorldCom has no problem with adhering to reasonable safety requirements, which should be the focus of certification requirements. Additional requirements – for example, that WorldCom or its vendors must perform installation work on behalf of BellSouth, or pursuant to a separate "contract" that BellSouth has proposed WorldCom's vendors to enter into with it, which I understand BellSouth has brought up in negotiations - are unreasonable and should not be sanctioned by the Authority.

Q. PLEASE EXPLAIN THE CONTEXT OF WORLDCOM'S POSITION.

A. BellSouth must allow WorldCom to use its own vendors to provision and maintain its collocation space. BellSouth may approve the criteria by which these vendors are certified to perform such work, under 47 C.F.R.. § 51.323(j), but per that section it may not "unreasonably withhold approval of contractors." BellSouth is permitted to approve vendors hired by WorldCom to construct its collocation space, provided that such approval is based on the same criteria that BellSouth uses in approving vendors for its own purposes.

Q. WHAT HAS BELLSOUTH PROVIDED WORLDCOM?

A. BellSouth has provided WorldCom with brochures that generally describe what BellSouth's vendors are required to observe, for purposes of certification.

Q. WHAT IS THE PROBLEM WITH THIS RESPONSE?

A. Although the brochures may be "precisely the same information that BellSouth provides its vendors," as BellSouth insists, that information is not what *BellSouth* itself may require as part of its approval process. It is not sufficient or reasonable, as a matter of contract between two competitors, to expect that WorldCom content itself in having been invited informally to "contact the BellSouth vendor certification group for further information." There must be contractual assurances that the same information that BellSouth uses to certify its vendors will, in fact, be provided WorldCom. Otherwise, there is introduced into the interconnection agreement the opportunity for delay and further litigation. It is reasonable and necessary that BellSouth be required as a matter of contract to provide the information needed for certification.

ISSUE 66

What industry guidelines or practices should govern collocation? (Attachment 5, Section 9).

Q. WHAT LANGUAGE HAS WORLDCOM PROPOSED RELATING TO THIS ISSUE?

A. WorldCom has proposed the following language:

> Section 9. Technical References
>
> BellSouth shall provide collocation in accordance with the following standards:
>
> 9.1 Institute of Electrical and Electronics Engineers (IEEE) Standard 383, IEEE Standard for Type Test of Class 1 E Electric Cables, Field Splices, and Connections for Nuclear Power Generating Stations.
>
> 9.2 National Electrical Code (NEC) latest issue.

9.3 GR-1089-CORE Electromagnetic Compatibility and Electrical Safety – General Criteria for Network Telecommunications Equipment.

9.4 TR-EOP-000063 Network Equipment-Building System (NEBS) Generic Equipment Requirements, Issue 3 (March 1988). Now replaced by GR-63, Issue 01, Oct 1995

9.5 TR-EOP-000151,Generic Requirements for -24, -48, -130, and -140 Volt Central Office Power Plant Rectifiers, Issue 1 (Bellcore, May 1985).

9.6 TR-EOP-000232, Generic Requirements for Lead-Acid Storage Batteries, Issue 1 (Bellcore, June 1985).

9.7 TR-NWT-000154, Generic Requirements for -24,- 48, -130, and -140 Volt Central Office Power Plant Control and Distribution Equipment, Issue 2 (Bellcore, January 1992).

9.8 TR-NWT-000295, Isolated Ground Planes: Definition and Application to Telephone Central Offices, Issue 2 (Bellcore, July 1992).

9.9 TR-NWT-000840, Supplier Support Generic Requirements (SSGR), (A Module of LSSGR, FR-NWT-000064), Issue 1 (Bellcore, December 1991).

9.10 TR-NWT-001275 Central Office Environment Installations/Removal Generic Requirements, Issue 1 (January 1993). Now replaced by GR-1275, Issue 01, REV01, March 1998.

9.11 Underwriters' Laboratories Standard, UL 94.

Q. WHY DOES WORLDCOM WANT BELLSOUTH TO RECOGNIZE THESE STANDARDS IN THE PARTIES' INTERCONNECTION AGREEMENT EXPLICITLY?

A. These standards, if incorporated into the agreement, would reduce uncertainty and give the parties clear guidance with respect to the issues embodied by the standards.

Q. WHAT ARE THOSE STANDARDS?

A. These are recognized industry standards with respect to the matters described: equipment, power and the like. Collocation is of critical importance in the development of competition in local exchange service. There is no reason why collocation, in the wake of the Act and the FCC's orders respecting it, cannot or should not be made predictable, specific and "user friendly." See 47 C.F.R. § 51.323 (b); Advanced Services Order ¶ 23. BellSouth has agreed to the inclusion of industry guidelines elsewhere in the Agreement, and it is reasonable that these guidelines apply to collocation.

Q. WHAT STANDARDS DOES BELLSOUTH AGREE ARE APPLICABLE WITH GENERALLY ACCEPTED INDUSTRY PRACTICES?

A. BellSouth has cited only two standards, which as noted above have since been replaced, with which it takes issue. Telcordia's NEBS Standard TR-EOP-000063 AND TR-NWT-001275 have been replaced by GR-63, Issue 01, Oct 1995 and GR-1275, Issue 01, REV01, Mar 1998. GR-63 identifies the minimum spatial and environmental criteria for equipment used in a telecommunication network. The environmental criteria covers temperature and humidity, fire resistance, earthquake and vibration, airborne contaminants, acoustic noise, and illumination. The spatial section includes criteria for equipment and associated cable distribution systems. GR-1275 provides the Telcordia view of requirements associated with the support that installation suppliers are expected to provide with their services. These services might be associated with the installation of new or expanded equipment as well as the removal of existing equipment.

Three of the standards that WorldCom proposes have been proposed by BellSouth for inclusion in the context of a generic collocation document in North Carolina. BellSouth does not disagree that any of the standards proposed by WorldCom apply to the industry.

Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

A. At this time, yes.

Exhibit PAB 1

PHILLIP A. BOMER

3760 Cherry Ridge Boulevard
Atlanta, Georgia 30034
Phone: 404-212-8928

SUMMARY

- More than fifteen years of combined technical and managerial experience in the Telecommunications Industry. Experienced in the installation and maintenance of copper, coaxial, and fiber optic cables along with underground and aerial construction procedures and management.

EDUCATION

DeVry Institute, Chicago, Illinois - Computer Programming
Eastern Illinois University, Charleston, Illinois - Biology and Chemistry studies

EXPERIENCE

10/97 – Present

WorldCom, Inc. (formerly MCI/WorldCom, Inc.)
ILEC Collocation Facility Planner, Atlanta, GA.
Purpose: To manage and allocate resources to provide space, power and connectivity at various ILEC (Incumbent Local Exchange Carrier) central offices.
Responsible for management of collocation facilities.

- Governed WorldCom's collocation spaces for Southwestern Bell, Pacific Bell, Nevada Bell and select GTE areas. Currently assigned to the Bell South and Sprint accounts.
- Developed and tracked project timelines to assign responsibilities and insure departmental participation from inception through construction.
- Provide cost estimates, timetables on collocation builds, and capacity constraint reports.
- Research tariff issues and act as Subject Matter Expert (SME) providing consultation on central office space constraint issues, as well as all collocation issues for the arbitration of carrier agreements.

09/94 - 09/97

Teleport Communications Group, Inc.
Applications Engineer, Chicago, IL.
Responsible for system design of network and private line customers and all documentation and the project management of such implementations.

- Performed Field engineering / site surveys for upcoming projects
- Supervision of installation crews both in-house and contractors on all construction projects
- Quality control of area Central Office collocations.
- Also held positions as Outside Plant Supervisor, Outside Plant Tech and Inside Plant Tech.

02/88 - 09/94

Cable Communications Inc.
Installation Manager, Chicago, IL.
Responsible for all installation services.

- Managed 52 crews installing telecommunications equipment and CATV services.
- Managed MDU Construction projects
- Managed Complaints
- DS0 through OTDR testing and troubleshooting
- Stratum 3 clock installation
- Coaxial and fiber splicing
- Familiar with DDM 1000, 2000, OC3, OC12, OC48, OC192, DV6000 DAP, FOX 2, FOX 3R, Soneplex , etc.

Title progression included Communications Technician , Construction Supervisor and E.E.O. Officer.

PHILLIP A. BOMER

3760 Cherry Ridge Boulevard
Atlanta, Georgia 30034
Phone: 404-212-8928

EXPERIENCE (continued)

01/86 - 01/88 **A.H.S.E.A. CATV Co.**
Installation Supervisor, Chicago, IL.
Directed the installation services, overseeing 23 crews and directly supervising the installation and quality control of multiple dwelling unit construction.

12/85 - 12/86 **American Spliceco**
Quality Control Inspector, Moorehead City, NC.
Inspected single family homes, multiple dwelling units, aerial and underground construction of coax and fiber for the Telco and Cable TV installations.

11/83 - 11/85 **Mid-Com Construction**
Field Engineer, Chicago, IL.
Designed and drafted wiring plans for MDU projects.

05/81 - 10/82 **T.M.R. Construction**
Warehouseman, Chicago, IL.
Spliced, assembled and inspected cables and related electronics for CATV construction.

OTHER EXPERIENCE

UNITED STATES MARINE CORPS
Motor Transport Operator / Refueler
Motor Transport Tractor-Trailer / LVS Instructor E-4
Served in the 1990 - 91 Gulf War, in both Desert Shield and Desert Storm operations, in refueling with a combat support company. Attained two meritorious promotions.

7.22.1.1BellSouth acknowledges that MCIm has formally requested that BellSouth certify MCIm to provide engineering and installation services. When MCIm becomes certified pursuant to the signing of this Agreement, it only shall be certified to provide engineering and installation services to itself and its affiliates.

7.22.1.1 MCIm shall comply with the BellSouth certification specifications and training requirements pursuant to Section 10 of this Attachment in order to perform such engineering and installation.

New section 10 (Certification of MCIm) is as follows:

1. Scope
MCIm, when acting as a BellSouth Certified Vendor for the limited purpose of engineering and installing equipment for itself and its affiliates in collocation space in a BellSouth Central Office, remote location, or adjacent location, shall comply with the following specifications

3. (sic) Locations: When acting in the capacity of a certified vendor, BellSouth locations shall have the same meaning as contained in the provisions of this Agreement.

4. Services: When acting in the capacity of a certified vendor, Services, as may be used in this Section, shall mean MCIm provided Engineering and Installation Service being provided to WorldCom affililiates.

5. Material: When acting in the capacity of a certified vendor, Materials, as may be used in this Section, shall mean materials required by MCIm to install equipment.

6. MCIm's performance: When acting in the capacity of a certified vendor, MCIm shall comply with the all provisions of this Agreement.

7. Specifications: When acting in the capacity of a certified vendor, MCIm shall comply with the all specification provisions of this Agreement.

8. ACTIVITY REPORT

8.1 For the purposes of this Agreement,
MCIm shall provide BellSouth a document listing all activity that MCIm is scheduled to perform, is performing and/or has completed in BellSouth's Location(s). This report shall document:

8.1.1 The location where the activity is to be, is being or has been

performed;

8.1.2 The start date of the activity;

8.1.3 A statement of the work to be performed;

8.1.4 Items that BellSouth and/or BellSouth's Supplier will need to perform;

8.1.5 The name(s) of MCIm's Technician(s) who will be performing the work activity; and

8.1.6 Name of MCIm or the MCIm affiliate for whom MCIm will perform the activity.

8.1.7 This information shall be updated and given to BellSouth immediately when the information has changed from the pervious update. If no such update occurs within any given calendar month, MCIm shall provide the report by the fifth (5^{th}) working day of the following month.

8.1.8 The report shall be provided to the following BellSouth representatives:

Mike Popick
Manager, Quality Assurance Staff
675 West Peachtree Street, Rm. 22J64
Atlanta, GA 30075
E-mail Address:
Mike.Popick1@bridge.bellsouth.com

L. E. Lyles
Quality Assurance Manager
675 West Peachtree Street, Rm. 22J64
Atlanta, GA 30075
E-Mail Address: L. E. Lyles@bridge.bellsouth.com

9. REPRESENTATIVES

9.1 When acting in the capacity of a certified vendor All Services that MCIm performs under this Section are subject to BellSouth's Representatives' contract administration activities. Such activities include, but are not limited to, monitoring MCIm performance, Agreement interpretation and amendment, maintenance of Agreement, inspecting work performed, verifying work completion. In addition to or

instead of BellSouth's Representative, contract administration activities may be performed by the individual(s) designated as BellSouth's delegate, or others as may be delegated by BellSouth in writing.

BellSouth's Representative shall be:

Quality Assurance:
Mike Popick
Manager, Quality Assurance Staff
675 West Peachtree Street, Rm. 22J64
Atlanta, GA 30075
E-Mail Address:
Mike.Popick@bridge.bellsouth.com

Contract Administration:
Dave Woodrome
Supply Manager, E&I Turf
675 West Peachtree Street, Rm. 39K70
Atlanta, GA 30075
E-Mail Address: David.Woodrome@bridge.bellsouth.com

10 **Security and Safety Requirements: When acting in the capacity of a certified vendor, MCIm shall comply with the Security and Safety provisions of this Agreement.**

11. COMPUTER ASSET PROTECTION STANDARDS FOR CONTRACT PERSONNEL

11.1 MCIm agrees to comply with the current issue of BellSouth's Technical Reference, CSS-400-400-TR " *Security Requirements for System or Network Access by Vendor, Contractor and Supplier Personnel*," hereby incorporated herein by this reference (referred to herein as "Standards"). BellSouth agrees to provide to MCIm any revisions or re-writes of CSS-400-400-TR prior to the implementation of such revision or re-writes to allow MCIm to review the revision or re-write to insure compliance to such revision or re-write MCIm agrees that all of its personnel having access to BellSouth's systems (BellSouth's mechanized databases containing BellSouth's Business, confidential and/or proprietary information) will be covered by the contents of these Standards and will sign a certification provided to that effect. Failure of any of MCIm personnel to sign the certification may be grounds for BellSouth refusing to allow that individual, or individuals, access to BellSouth's systems.

11.2 MCIm further agrees to be responsible for all acts, use and conduct of MCIm employees that violate the Standards covered in CSS-400-400-TR. MCIm agrees to fully indemnify, defend at its own expense, and hold BellSouth harmless against any breach of the terms contained and set forth in CSS-400-400-TR.

As used in CSS-400-400-TR, the word "contractor" shall be construed to mean MCIm, while the name "BellSouth" shall mean BellSouth.

12. INSPECTION

12.1 At its option, BellSouth may inspect Material and/or Services engineered and/or installed by MCIm. If BellSouth so chooses, then BellSouth, BellSouth's authorized agents and/or representatives shall inspect the Material and/or Services according to BellSouth's quality assurance specifications, Technical Reference (TR) 73503, "Central Office Engineering and Installation Standards," as may change from time to time. This reference hereby incorporates those specifications into this Agreement. BellSouth's inspection or failure to inspect on any occasion shall not affect BellSouth's rights or MCIm's obligations under other provisions of this Agreement.

12.2 BellSouth or BellSouth's authorized agents or representatives may perform on-site audits of MCIm's quality systems. These audits will follow the appropriate Bellcore Technical Reference GR 1252-Core, "Quality System Generic Requirements For Hardware." BellSouth, at its option, may determine, arrange and conduct other ways to ensure quality compliance.

13.1 SERVICE OUTAGE

13.1.1 When acting in the capacity of a Cerfified Vendor, MCIm shall comply with the network interference provisions of Attachment 8 of this Agreement.

14. RECORDS AND AUDITS

14.1 MCIm shall maintain complete and accurate records of all activity performed in BellSouth's Location(s) where MCIm performs services. Whenever applicable, MCIm shall also maintain records, including but not limited to, the following:

14.1.1 (sic)

14.1.2 Records detailing any physical inventories installed at BellSouth Location(s).

14.2 MCIm shall keep such records for at least three (3) years after completion of Services performed in BellSouth's Location(s). BellSouth and its authorized agents and representatives may audit such records during the respective periods in which MCIm is required to maintain such records. BellSouth may access such records on MCIm's premises, inspect and photocopy same, and retain copies of such records away from MCIm's premises with safeguards as BellSouth in its sole discretion may deem necessary. BellSouth shall also have such above-described auditing rights with respect to MCIm's agents, contractors, or subcontractors.

16. Quality of Services: MCIm shall perform Services, when acting in the capacity of a certified vendor, in a good and professional manner in compliance with the provisions of TR73503 to BellSouth's satisfaction in meeting the Specifications set forth in the provisions of this Agreement.

17.DOCUMENTATION

14.3 (sic) Documentation" shall mean any materials or Services relating to, arising out of or resulting from Material or, Services provided by MCIm hereunder including, without limitation, such materials sufficient for (i) BellSouth to determine interface capabilities with other hardware and (ii) BellSouth to plan for, install, and engineer any supporting network elements required to interface with BellSouth's network. This Documentation includes, but is not limited to, specifications, drawings and or schematics.

18 PRODUCT, SERVICE AND ENGINEERING COMPLAINTS

18.1 BellSouth and MCIm shall report and resolve unsatisfactory conditions or improper performance of any Material, product, Service or telecommunications operations system in accordance with the current issue of Bellcore Generic Requirements GR-230-CORE, "Generic Requirements for Engineering Complaints" (or replacing document) incorporated herein by this reference. All Materials, products and Services specified in this Agreement fall subject to this Bellcore Generic Requirements document.

19. Environmental Compliance: When acting in the capacity of a certified vendor, MCIm shall comply with the Environmental provisions of this Agreement.

When MCIm is acting in the capacity of a certified vendor, the Parties shall comply with the confidential information provisions of Part A of this Agreement.
25. (sic)

34. FACILITY RULES AND GOVERNMENT CLEARANCE

34.1 Both parties' employees and representatives shall comply with all internal rules and regulations while on each other's premises. If required by Government regulations, such compliance shall include submission of a satisfactory clearance from the U. S. Department of Defense and other concerned federal authorities. Under no circumstances will BellSouth be responsible of obtaining any form of clearance for MCIm or that of its employees.

35. THIRD PARTY SERVICES PROVIDER'S PERSONNEL

35.1 As a condition of providing Services in BellSouth Location(s), When acting in the capacity of a certified vendor, MCIm shall comply with the Section 7.3 Security provisions of this Attachment.

36. INSURANCE

During the term of this Agreement, When acting in the capacity of a certified vendor, MCIm shall comply with the Insurance provisions of this Agreement.

47. INCORPORATION BY REFERENCE

47.1 The terms and conditions contained in Section: 400-400-TR – Security Requirments for System or Network Access by Vendor, Contractor and Supplier Personnel and Information Publication IP are fully incorporated herein by this reference. The parties acknowledge the existence of the various Technical References, Technical Advisories, Quality Program Specifications, Technical Specifications and other publications and documentation specifically referenced in these documents. The applicable terms of said documents are also fully incorporated herein by this reference.

BEFORE THE

TENNESSEE REGULATORY AUTHORITY

DOCKET NO. 00-00309

PREFILED DIRECT TESTIMONY

OF SHERRY LICHTENBERG

ON BEHALF OF WORLDCOM, INC.

December 6, 2000

Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND POSITION.

A. My name is Sherry Lichtenberg. My business address is 701 S. 12th St., Arlington, Virginia 22202. I am employed by WorldCom, Inc. in the Mass Markets Product Development Department as a senior manager.

Q. PLEASE DESCRIBE YOUR EMPLOYMENT BACKGROUND.

A. My duties include designing, managing, and implementing WorldCom's local telecommunications services to residential customers on a mass market basis nationwide, including Operations Support Systems ("OSS") testing. I have nineteen years experience in the telecommunications market, four years with WorldCom and fifteen years with AT&T. Prior to joining WorldCom, I was Pricing and Proposals Director for AT&T Government Markets, Executive Assistant to the President, and Staff Director for AT&T Government Markets.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to assist the Tennessee Regulatory Authority ("Authority") in resolving disputed issues between MCImetro Access Transmission Services, LLC and Brooks Fiber Communications of Tennessee, Inc., both subsidiaries of WorldCom (and which I shall refer to collectively as "WorldCom"), and BellSouth Telecommunications, Inc. ("BellSouth"), with regard to a number of the issues that have arisen during the negotiation of a new Interconnection Agreement. My testimony concerns Issues 5, 15, 19, 80, 81 and 101.

ISSUE 5

Should BellSouth be required to provide OS/DA as a UNE? (Attachment 3, Section 2.8.)

Q. WHAT LANGUAGE HAVE THE PARTIES PROPOSED CONCERNING PROVISION OF OPERATOR SERVICES AND DIRECTORY ASSISTANCE AS UNES?

A. The parties have proposed the following language in Attachment 3 (with disputed language proposed by WorldCom in bold):

> 2.8 In addition to the unbundled Network Elements set forth above, BellSouth shall provide to MCIm the following Network Elements, in accordance with FCC Rules, that are described in Attachment 9 of this Agreement:
>
> **Operator Services (subject to FCC Rules)**
> . . .
> **Directory Assistance (subject to FCC Rules)**

Q. WHAT IS WORLDCOM'S POSITION ON THIS ISSUE?

A. WorldCom's position is that BellSouth must provide operator services and directory assistance ("OS/DA") as a UNE until it complies with the FCC's rulings in *Third Report and Order,* FCC 99-238, *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket 96-98, Released November 5, 1999 ("UNE Remand Order"). Because BellSouth has not yet complied with the order, it must provide OS/DA as a UNE.

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. BellSouth contends that because it offers selective routing, it is not required to provide OS/DA as a UNE.

Q. WHAT IS THE BASIS FOR WORDLCOM'S POSITION?

A. The FCC has concluded that "[i]n instances where the requesting carrier obtains the unbundled switching element from the incumbent, the lack of customized routing effectively precludes requesting carriers from using alternative OS/DA providers and, consequently, would materially diminish the requesting carrier's ability to provide the services it seeks to offer." UNE Remand Order, ¶ 463. ILECs must provide OS/DA as a UNE "to the extent they have not accommodated technologies used for customized routing." *Id.* BellSouth should be required to provide selective routing that enables CLECs, as a technical and a practical matter, to obtain alternative OS/DA. BellSouth should be required to provide selective routing that uses a signaling protocol that is compatible with CLECs' OS/DA platforms, that provides economical transport, that can be ordered electronically and that has been tested and proven under real-world commercial conditions. Because BellSouth does not do so, it should be required to provide OS/DA as a UNE.

Q. WHAT SELECTIVE ROUTING METHODS DOES BELLSOUTH MAKE AVAILABLE TODAY?

A. If a CLEC serves a customer via UNE-P and wishes to use an alternative OS/DA provider, it must choose one of two selective routing methods – the line class code method or the AIN hubbing method.

Q. PLEASE EXPLAIN YOUR UNDERSTANDING OF THE LINE CLASS CODE METHOD OF SELECTIVE ROUTING AND ITS LIMITATIONS.

A. Based on what we have learned from BellSouth, the line class code method permits a CLEC to order line class codes that include selective routing to an

alternative OS/DA platform. Simply routing OS/DA traffic using the line class method without any enhancement is of no practical value to WorldCom, however, because WorldCom uses the Feature Group D signaling protocol for its OS/DA traffic, while BellSouth uses the modified operator services signaling ("MOSS") protocol for its OS/DA traffic. If BellSouth were to route OS/DA traffic to WorldCom using the MOSS protocol (assuming WorldCom could use it at all), WorldCom would not be able to identify the caller, which means it would not be able to bill for its services

Using what BellSouth calls a "pseudo-code" technique, BellSouth can convert its MOSS protocol to the feature group D signaling protocol at the BellSouth tandem and then route the call to the WorldCom OS/DA platform. Although this approach appears to route calls correctly, it does not provide WorldCom with an effective and practical selective routing solution. One major problem is that the line class code method and pseudo-code technique would not allow WorldCom to take advantage of the common transport trunk groups already in place between BellSouth end offices and tandems. Instead, WorldCom would be required to build or lease dedicated transport from every BellSouth end office serving its customers to the corresponding tandems. This is an extraordinarily inefficient and expensive way to provide OS/DA service, particularly for the statewide residential service that WorldCom plans to offer. Moreover, BellSouth does not currently provide an electronic means for WorldCom to order selective routing to its OS/DA platform. As a practical matter, therefore, the line class

code method, even as enhanced by the pseudo-code technique, does not provide an effective means of selectively routing traffic to WorldCom's OS/DA platform.

Q. PLEASE EXPLAIN YOUR UNDERSTANDING OF THE AIN HUBBING METHOD OF SELECTIVE ROUTING AND ITS LIMITATIONS.

A. Based on what we have learned from BellSouth, the AIN hubbing method of selective routing involves transporting OS/DA traffic from BellSouth end offices to a designated switch from which the traffic can be taken to the CLEC's chosen OS/DA platform. CLECs can share transport from the BellSouth end offices to the AIN hub, provided of course that more than one CLEC signs up to use this method. If WorldCom wishes to use its own OS/DA platform, it must obtain dedicated trunking from the AIN hub to its platform. Also, direct trunking from certain end offices to the CLECs' OS/DA platform is required to obtain compatible feature group D signaling. As with the line class code method, BellSouth does not currently provide the ability to order AIN hub selective routing electronically. WorldCom's account team informed us that the initial start-up cost for a CLEC to obtain AIN hubbing is about $400,000. I have since been informed that BellSouth has proposed a somewhat lower start-up cost in a recent proceeding in Tennessee (Docket No. 00-00544). In addition, WorldCom would still be required to pay for line class codes in each of these switches, shared or dedicated trunking to the BellSouth designated switch, and dedicated trunking from that switch to the WorldCom OS/DA platform. These added costs are directly related to the inefficient design that BellSouth chose to accomplish the

AIN solution. The more appropriate design would have been not at a foreign switch, but at the point of origination of the call.

Q. WHAT IS YOUR CONCLUSION ABOUT THE ADEQUACY OF THE LINE CLASS CODE METHOD AND THE AIN HUBBING METHOD?

A. Neither method provides a practical, commercially effective method of selectively routing OS/DA traffic to an alternative OS/DA provider. BellSouth therefore should be required to provide OS/DA as a UNE and that WorldCom's proposed language requiring BellSouth to do so should be adopted.

ISSUE 15

When an MCIW customer served via the UNE-platform makes a directory assistance or operator call, must the ANI-II digits be transmitted to MCIW via Feature Group D signaling from the point of origination? (Attachment 3, Section 7.2.1.16.)

Q. WHAT IS THE LANGUAGE IN DISPUTE?

A. The parties are in agreement on the following language from Attachment 3, except for the bold language proposed by WorldCom:

> 7.2.1.16 Subject to section 7.1.2, above, BellSouth shall assign each MCIm subscriber line the class of services designated by MCIm using line class codes and shall route operator calls from MCIm subscribers as directed by MCIm at MCIm's option. For example, BellSouth may translate 0- and 0+ intraLATA traffic, and route the call through appropriate trunks to an MCIm Operator Services Position System (OSPS). **Calls from Local Switching must pass the ANI-II digits unchanged**.

Q. WHEN A WORLDCOM CUSTOMER SERVED VIA THE UNBUNDLED NETWORK ELEMENT-PLATFORM MAKES A DIRECTORY

ASSISTANCE OR OPERATOR CALL, SHOULD THE ANI-II DIGITS BE TRANSMITTED TO WORLDCOM?

A. Yes. ANI-II digits provide WorldCom with the number of the calling party and of any calling restrictions on the line, and enable carriers to bill for calls properly. WorldCom has proposed that the Agreement provide in this respect that "[c]alls from Local Switching must pass the ANI-II digits unchanged."

Q. WHAT IS THE STATUS OF THIS ISSUE?

A. The parties do not appear to be far apart on this issue. BellSouth has acknowledged that using the line class code method of selective routing and the pseudo-code technique, it can pass the ANI-II digits unchanged. Likewise, BellSouth has stated that it can pass the ANI-II digits unchanged using its AIN hubbing method, with the caveat that for one switch type direct trunking to the WorldCom OS/DA platform would be required. There is therefore no dispute concerning the technical feasibility of providing what WorldCom has requested. WorldCom's proposed language should be adopted.

ISSUE 19

How should BellSouth be required to route OS/DA traffic to MCIW's operator services and directory assistance platforms? (Attachment 3, Sections 7.3.2, 7.3.2.2, 7.3.2.3, 7.6.4, 14.2.1.5. and 14.2.8; Attachment 9, Sections 2.8.1, 2.8.1.1, 3.2.1.1, 3.5.2 and 3.5.2.1.)

Q. WHAT LANGUAGE HAS WORLDCOM PROPOSED CONCERNING ROUTING OF OS/DA TRAFFIC TO WORLDCOM'S OS/DA PLATFORMS?

A. A number of provisions address this issue, from Attachments 3 and 9. The provisions in Attachment 3 (with agreed upon language in standard font, BellSouth language in italics, and WorldCom language in bold) are as follows. (The language set forth below has changed somewhat from that contained in Exhibit C to the Petition in this docket as a result of further negotiations between the parties.)

> 7.3.2. In addition to the requirements referenced in Appendix 1 of this Attachment, BellSouth shall provide access to the following:
> . . .
>
> **7.3.2.2 Interface to Operator Services through appropriate trunk interconnections using selective routing and a signaling format acceptable to MCIm for the system; and**
>
> **7.3.2.3 Interface to MCIm directory assistance services through the MCIm switched network or to Directory Services through the appropriate trunk interconnections using selective routing and a signaling format acceptable to MCIm for the system; and 950 access or other MCIm required access to interexchange carriers as requested through appropriate trunk interfaces.**
>
> **7.6.4 When MCIm's Operator Services Platform(s) traffic is routed to dedicated transport, BellSouth, as specified by MCIm, shall overflow this traffic to shared trunk groups.**
>
> **14.2.1.5 Based on the line class codes established by MCIm in BellSouth's end office, Tandem Switching shall provide connectivity to Operator Systems as designated by MCIm[.]**
>
> **14.2.8 Tandem Switching shall route calls to BellSouth or MCIm endpoints or platforms (e.g., operator services and PSAPs) on a per call basis as designated by MCIm. Detailed primary and overflow routing plans for all interfaces available within the BellSouth switching network shall be mutually agreed to by MCIm and BellSouth. Such plans shall meet MCIm requirements for routing calls through the local network.** *Notwithstanding the provisions of Section 14.3.4,*

Tandem Switching shall not be used to route OS or DA calls, either directly or on an overflow basis.

The relevant provisions proposed by WorldCom from Attachment 9 are as follows:

2.8.1 BellSouth shall route resale and UNE-P Operator Services traffic to MCIm's designated platform **using switched access facilities that provide ANI, or in any other manner agreed to by MCIm.** *MCIm shall order selective routing and separate trunk groups to the designated platform for each BellSouth end office identified by MCIm.*

2.8.1.1 At its option, MCIm may order, and BellSouth shall provision, separate trunk groups from the BellSouth access tandem or end office to MCIm's platform, as directed by MCIm.

3.2.1.1 At MCI's option, BellSouth shall route **all 411, 1411, 555-1212** *Directory Assistance* traffic to MCIm's Directory Assistance Services platform. *MCIm shall order selective routing and separate trunk groups to the designated platform for each BellSouth end office identified by MCIm.* **using FGD signaling either through direct end office trunking or via the access tandem.**

3.5.2 BellSouth shall route resale and UNE-P Directory Assistance traffic to MCIm's designated platform using switched access facilities that provide ANI, or in any other manner agreed to by MCIm.

3.5.2.1 At its option, MCIm may order, and BellSouth shall provision, separate trunk groups from the BellSouth access tandem or end office to MCIm's platform, as directed by MCIm.

Q. WHAT ISSUE GIVES RISE TO THE PARTIES' DIFFERENCES WITH RESPECT TO THIS LANGUAGE?

A. Broadly stated, the issue is what means BellSouth should be required to use in transporting OS/DA traffic to WorldCom's OS/DA platforms.

Q. WHAT IS WORLDCOM'S POSITION ON THIS ISSUE?

A. WorldCom's position is that WorldCom should have the option of having OS/DA traffic delivered to its OS/DA platforms in one of two ways. First, BellSouth must transport this traffic using shared transport, either for all OS/DA calls or on an overflow basis, using a compatible signaling protocol from the point of origination. Second, BellSouth must, at WorldCom's option, provide dedicated transport for this traffic, using a compatible signaling protocol from the point of origination.

Q. WHAT IS BELLSOUTH'S POSITION ON THE OS/DA ROUTING ISSUE?

A. BellSouth claims that it provides selective routing in accordance with FCC rules, is not required to deliver OS/DA traffic using shared transport, and is not required to send OS/DA traffic over dedicated trunks with compatible signaling.

Q. WHAT IS THE BASIS FOR WORLDCOM'S POSITION WITH RESPECT TO SHARED TRANSPORT?

A. For WorldCom to provide its own OS/DA service efficiently for its customers served by unbundled switching, WorldCom must be able to obtain OS/DA traffic over shared transport via a BellSouth tandem, and over dedicated trunks that can overflow to shared transport as needed. Without shared transport, WorldCom would be required to lease dedicated trunk groups from every BellSouth end office serving its customers, which would be prohibitively expensive and grossly inefficient. To deliver OS/DA traffic via shared transport, BellSouth must provide Feature Group D signaling from the point of origination (that is, at the BellSouth end office providing the unbundled switching).

FCC rules provide that ILECs must provide "all technically feasible transmission facilities, features, functions, and capabilities that the requesting telecommunications carrier could use to provide telecommunications services." 47 C.F.R. 51.319(d)(2)(B). It is technically feasible for BellSouth to convert its OS/DA signaling protocol at its end offices so that OS/DA signaling can be sent over shared transport. Possible ways of doing so include modifying the equal access tables in BellSouth's switches and employing an Advanced Intelligent Network ("AIN") solution at the point of origination of the call. BellSouth should be required to implement such a solution.

Q. WHAT IS THE BASIS FOR WORLDCOM'S POSITION WITH RESPECT TO DEDICATED TRANSPORT?

FCC regulations require BellSouth to provide any technically feasible customized routing functions. 47 C.F.R. § 51.319 (c)(1)(A)(iii)(2). Moreover, BellSouth must provide customized routing in a manner that actually enables WorldCom to route the directory assistance and operator services traffic to WorldCom's self-provisioned DA and OS platforms because "[l]ack of a customized routing solution that enables competitors to route traffic to alternative OS/DA providers would . . . effectively preclude competitive LECs from using such alternative providers." UNE Remand Order, ¶ 462. The customized routing solution should provide WorldCom with a non-discriminatory and efficient method for bringing the OS/DA traffic to WorldCom's OS/DA platform. To meet this requirement, BellSouth must, at WorldCom's option, provide selective routing to WorldCom

dedicated trunks carrying its OS/DA traffic, using a compatible signaling protocol from the point of origination.

ISSUE 80

Should BellSouth be required to provide an application-to-application access service order inquiry process? (Attachment 8, Sections 2.1.1.2 and 2.2.3.)

Q. WHAT LANGUAGE HAS WORLDCOM PROPOSED CONCERNING AN APPLICATION-TO-APPLICATION ACCESS SERVICE ORDER INQUIRY INTERFACE?

A. WorldCom has proposed the following language in Attachment 8:

> 2.1.1.2 In addition, at WorldCom's request, BellSouth shall design, develop, implement, test, and maintain an Application-to-Application access service order inquiry interface.
>
> 2.2.3 BellSouth shall provide the following transaction sets for access order inquiry:
>
> > 2.2.3.1 Service Address Validation -- G1.0. This function allows WorldCom to query BellSouth's systems for address validation using CUST PREM, working ECCKT, CLLI code. BellSouth shall respond with found, not found, alternatives, or restricted. BellSouth shall provide SWC/LSO and/or address, when appropriate. If ATIS/OBF adopts the US Postal Publication 28 Standard for Service Address, BellSouth and WorldCom will base their Access Inquiry implementation on that standard.
> >
> > 2.2.3.2 Service Availability -- G2.0: This function allows WorldCom to determine service availability or validate the earliest date of product service availability requested between two (2) SWC locations.
> >
> > 2.2.3.3 CFA (Channel Facility Assignment) Inquiry - G3.0. This function allows WorldCom to query the current status of facility channels or slots.

Q. WHAT IS WORLDCOM'S POSITION ON THIS ISSUE?

A. Such an application-to-application inquiry process is needed to obtain pre-order information electronically for UNEs ordered via an access service request and should be provided.

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. BellSouth claims it is not required to provide such a process under the Act.

Q. WHAT IS THE BASIS FOR WORLDCOM'S POSITION?

A. WorldCom has proposed language that would require BellSouth to develop an application-to-application access service order process. WorldCom for some time now has been using access service requests ("ASRs") to order local services, and it is those local services for which WorldCom seeks an application-to-application capability. Indeed, many of the local facilities WorldCom orders from BellSouth in Tennessee today to supply dial tone to its customers are combinations of DS1 loop and DS1 transport ("DS1 combos"), which are ordered using an ASR. WorldCom needs pre-order functionalities, including address validation, service availability inquiry and cable facilities inquiry, to enable it to order these local facilities more effectively and to compete on equal footing with BellSouth.

Q. WHY AS A PRACTICAL MATTER DOES WORLDCOM NEED AN APPLICATION-TO-APPLICATION PRE-ORDERING INTERFACE FOR LOCAL SERVICES ORDERED USING AN ASR?

A. Application-to-application processing permits an CLEC, such as WorldCom, to mechanize the ordering function completely. The information gathered in the pre-ordering phase of a sales cycle is the information (such as present services,

restrictions and billing name) that ultimately will make up the order. The ability to capture this information electronically during the sales pre-ordering cycle minimizes errors that are typically introduced from manually transferring information from one system to another.

Q. BELLSOUTH HAS CONTENDED THAT WORLDCOM HAS NO NEED FOR AN ASR PRE-ORDERING FUNCTIONALITY BECAUSE WORLDCOM CAN ORDER UNES AND RESALE USING LOCAL SERVICE REQUESTS. PLEASE RESPOND.

A. BellSouth's contention apparently is based on its recent decision purporting to require WorldCom to use a manual LSR process to order DS1 combos rather than the electronic ASR process that the parties have been using. A requirement that WorldCom use a manual ordering process would be a major step backward that would lead to delays, errors and customer dissatisfaction. In resolving this issue, the Authority should require BellSouth to continue making the electronic ASR process available to WorldCom for local orders for which BellSouth does not have a tested, electronic LSR process.

ISSUE 81

Should BellSouth provide a service inquiry process for local services as a pre-ordering function? (Attachment 8, Section 2.2.1.)

Q. WHAT LANGUAGE HAS WORLDCOM PROPOSED CONCERNING BELLSOUTH'S OBLIGATION TO PROVIDE A SERVICE INQUIRY PROCESS?

A. WorldCom has proposed the following language, which BellSouth opposes:

2.2.1 BellSouth shall perform service inquiry as a pre-ordering function as requested by WorldCom.

Q. WHAT IS WORLDCOM'S POSITION ON THIS ISSUE?

A. Service inquiries permit a CLEC to determine the facilities available to serve a customer and the location of those facilities.

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. BellSouth refuses to provide service inquiry process based on its contention that service inquiry is a function of ordering, not pre-ordering.

Q. WHAT IS A SERVICE INQUIRY PROCESS?

A service inquiry process enables the sales representative to find out whether the facilities needed to serve the customer are available, and where they are located. Availability obviously is important because if facilities are not available, it will take longer to provide the service than if they are. Having information about the availability of facilities enables us to manage customer expectations and likewise enables customers to adjust their plans based upon when they can expect to receive the services they wish to order. Knowing facilities location helps in selling to customers that have particular needs such as network redundancy.

Q. WHAT IS THE BASIS FOR WORLDCOM'S POSITION?

A. WorldCom requires this information to facilitate local sales. When a WorldCom sales representative is trying to close a sale for local service, the prospective customer may want to know whether facilities exist to provide the service it would like to receive. Customers also want to know the location of facilities so they can determine whether there is sufficient redundancy in the facilities used to serve them.

WorldCom has requested that BellSouth provide manual and electronic service inquiry processes for local services that may be used when the local service is being ordered via an LSR or an ASR. BellSouth has access to such information electronically, and has acknowledged that it uses the information on a pre-order basis for its large business customers. BellSouth has, however, refused to make this information available to WorldCom before it submits an order. BellSouth should be required to provide manual and electronic service inquiry processes on a pre-order basis.

ISSUE 101

Is BellSouth required to provide shared transport in connection with the provision of custom branding? Is MCIW required to purchase dedicated transport in connection with the provision of custom branding? (Attachment 9, Sections 2.2.4.3.3, 2.8.1, 2.8.1.1, 3.2.1.1, 3.2.4.3.3, 3.5.2, and 3.5.2.1.)

Q. WHAT LANGUAGE HAVE THE PARTIES PROPOSED CONCERNING ROUTING OF OS/DA TRAFFIC TO BELLSOUTH'S OS/DA PLATFORMS?

A. The parties have proposed the following language in Attachment 9 (with BellSouth language in italics and WorldCom language in bold):

> *2.2.4.3.3 Custom Branding and Self Branding require MCIm to order dedicated trunking from each BellSouth end office identified by MCIm, to either the BellSouth Traffic Operator Position System (TOPS) or MCIm Operator Service Provider. Rates for trunks are set forth in Attachment 1.* [This provision concerns OS.]

> 2.8.1 BellSouth shall route resale and UNE-P Operator Services traffic to MCIm's designated platform **using switched access facilities that provide ANI, or in any other manner agreed to by MCIm.** *MCIm shall order selective routing and separate trunk*

groups to the designated platform for each BellSouth end office identified by MCIm.

2.8.1.1 At its option, MCIm may order, and BellSouth shall provision, separate trunk groups from the BellSouth access tandem or end office to MCIm's platform, as directed by MCIm.

3.2.1.1 At MCI's option, BellSouth shall route **all 411, 1411, 555-1212** *Directory Assistance* traffic to MCIm's Directory Assistance Services platform. *MCIm shall order selective routing and separate trunk groups to the designated platform for each BellSouth end office identified by MCIm.* **using FGD signaling either through direct end office trunking or via the access tandem.**

3.2.4.3.3 Custom Branding and Self Branding require MCIm to order dedicated trunking from each BellSouth end office identified by MCIm, to either the BellSouth Traffic Operator Position System (TOPS) or MCIm Operator Service Provider. Rates for trunks are set forth in Attachment 1. [This provision concerns DA.]

3.5.2 BellSouth shall route resale and UNE-P Directory Assistance traffic to MCIm's designated platform using switched access facilities that provide ANI, or in any other manner agreed to by MCIm.

3.5.2.1 At its option, MCIm may order, and BellSouth shall provision, separate trunk groups from the BellSouth access tandem or end office to MCIm's platform, as directed by MCIm.

Q. WHAT IS THE ISSUE THAT GIVES RISE TO THE PARTIES' DIFFERENCES CONCERNING THIS LANGUAGE?

A. The issue is what means BellSouth must use to transport OS/DA traffic from its switches to its OS/DA platform, when WorldCom requests branding for such calls.

Q. WHAT IS WORLDCOM'S POSITION ON THIS ISSUE?

A. WorldCom's position is that BellSouth must provide branding for WorldCom's OS/DA traffic routed to BellSouth's OS/DA platform without requiring dedicated trunking.

Q. WHAT IS BELLSOUTH'S POSITION?

A. BellSouth maintains that dedicated trunk groups must be used to obtain custom branding.

Q. WHAT IS THE BASIS FOR WORLDCOM'S POSITION?

A. If WorldCom uses BellSouth's OS/DA platform, it must be able to route its OS/DA traffic there in an efficient manner and obtain custom branding. Custom branding involves BellSouth branding calls to its OS/DA platform in the name of the CLEC whose customer is calling. FCC rules provide as follows:

> The refusal of a providing local exchange carrier (LEC) to comply with the reasonable request of a competing provider that the providing LEC rebrand its operator services and directory assistance, or remove its brand from such services, creates a presumption that the providing LEC is unlawfully restricting access to its operator services and directory assistance. The providing LEC can rebut this presumption by demonstrating that it lacks the capability to comply with the competing provider's request.

47 C.F.R. § 51.217(d). WorldCom's request is that BellSouth brand WorldCom's calls without requiring dedicated trunking to do so. When WorldCom does not have enough traffic coming from a particular BellSouth end office to justify dedicated trunking for OS/DA traffic, it must be able to use shared transport.

Q. IS IT TECHNICALLY FEASIBLE TO PROVIDE BRANDED OS/DA OVER SHARED TRANSPORT?

A. Yes. Both Bell Atlantic and SBC have developed the capability to provide branding from OS/DA calls using shared transport. More to the point, BellSouth is developing a method that would route OS/DA traffic over the same trunks used to carry BellSouth's OS/DA traffic to the TOPS platform. Using this so-called "OLNS method," BellSouth will identify the source of the call at the TOPS platform and brand the call accordingly. BellSouth has stated that the OLNS method should be available by the end of the year 2000 or the first quarter of 2001.

Q. WHY IS THIS AN IMPORTANT ISSUE?

A. When WorldCom begins offering service via UNE-P on a mass market basis, it will not, at least initially, have sufficient OS/DA traffic volumes to justify dedicated trunking. Under BellSouth's proposal, WorldCom would have to obtain dedicated trunks to every end office where it had even a single customer served by UNE-P. This is clearly an inefficient and costly arrangement that would impede the development of local competition.

Q. DOES THAT CONCLUDE YOUR DIRECT TESTIMONY?

A. Yes it does.

BEFORE THE

TENNESSEE REGULATORY AUTHORITY

DOCKET NO. 00-00309

PREFILED DIRECT TESTIMONY

OF DON PRICE

ON BEHALF OF WORLDCOM, INC.

December 6, 2000

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Don Price. My business address is 701 Brazos, Suite 600, Austin, Texas 78701.

Q. PLEASE DESCRIBE YOUR EDUCATION AND EMPLOYMENT BACKGROUND.

A. I have a Bachelor of Arts degree in Sociology from the University of Texas at Arlington, conferred in 1976, and was awarded a Master of Arts in Sociology from the University of Texas at Arlington in 1978. My telecommunications career spans more than twenty years, beginning in 1979 with GTE (General Telephone Company of the Southwest), where my role in the Economic Planning department included responsibility for making internal forecasts of central office switching equipment and outside plant needs. I assumed positions of increasing responsibilities during my five years with GTE, becoming familiar with many of the workings of a regulated local exchange telephone company, including the business office, billing systems, and network design and operations. In 1983, I was hired as a Telecommunications Rate Analyst in the Engineering Division of the Public Utility Commission of Texas. In that role, I provided policy recommendations and testimony on a variety of telecommunications pricing and tariff issues including switched and special access charges, long distance services, and numerous other local and long distance service offerings. In 1986, I began my employment with MCI Telecommunications Corporation (whose parent in 1998 merged with WorldCom, Inc.) in the State Regulatory department in Austin, Texas. Over the past fourteen years I have provided expert testimony

on complex pricing and policy issues in twelve states, and have represented the company on such issues before the FCC. I have also made presentations on telecommunications policy issues before professional and trade associations. Following the passage of the Telecommunications Act of 1996 ("Act"), I was closely involved with developing MCI's policy positions for use in negotiations with incumbent local exchange carriers and in subsequent arbitration proceedings to resolve disputes arising in such negotiations. I personally testified on broad policy issues in the initial round of arbitrations on behalf of MCI in North Carolina, Florida, and Texas. My current responsibilities involve developing policy for use in state regulatory proceedings across the company's domestic operations, including input on interconnection negotiations and enforcement actions related to disputes over interpretations of interconnection agreement terms and conditions.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to assist the Tennessee Regulatory Authority ("Authority") in resolving disputed issues between MCImetro Access Transmission Services, LLC and Brooks Fiber Communications of Tennessee, Inc., both subsidiaries of WorldCom, both subsidiaries of WorldCom (and which I will refer to collectively as "WorldCom"), and BellSouth Telecommunications, Inc. ("BellSouth"), with regard to this arbitration. My testimony relates to Attachments 1, 2, 3, 4, 6, 7, 8 and 9 and Part A of the Interconnection Agreement, and covers Issues 1, 3, 6, 8, 18, 22, 23, 28, 29, 39, 40, 42, 45-47, 51, 52, 67, 68, 75, 94-96, 100 and 107-110.

A. PRICING

ISSUE 1

Should the electronically ordered NRC apply in the event an order is submitted manually when electronic interfaces are not available or not functioning within specified standards or parameters? (Attachment 1, Section 2.9.)

Q. WHAT IS THE LANGUAGE IN DISPUTE ON THIS ISSUE?

A. WorldCom has proposed the following language in Attachment 1:

> 2.9.1 LSRs submitted by means of one of the available electronic interfaces will incur the per LSR nonrecurring OSS electronic ordering charge associated with electronically ordered facilities as specified in Table 1 of this Attachment. Provided that electronic interfaces are functioning within specified standards and parameters, LSRs submitted by means other than one of the available electronic interfaces (mail, fax, courier, etc.) will incur a nonrecurring manual ordering charges associated with manually ordered facilities as specified in Table 1 of this Attachment. An individual LSR will be identified for billing purposes by its Purchase Order Number (PON). If electronic interfaces are not available or not functioning within specified standards or parameters at the time when the LSR is submitted, the manual ordering nonrecurring charge does not apply. The electronically ordered nonrecurring charge will apply in the event LSRs are submitted manually when electronic interfaces are not available or not functioning within specified standards or parameters. Each LSR and all its supplements or clarifications issued, regardless of their number, will count as a single LSR for nonrecurring charge billing purposes. Nonrecurring charges will not be refunded for LSRs that are canceled by WorldCom.

Q. WHAT ARE THE PARTIES' POSITIONS ON THIS ISSUE?

A. WorldCom's position is that it should pay the electronic, rather than the manual, nonrecurring OSS charge when BellSouth does not provide electronic ordering for CLECs for the service in question, but does provide electronic ordering for itself. BellSouth's position is that WorldCom should have to pay the manual ordering charge under these circumstances.

Q. SHOULD BELLSOUTH BE PERMITTED TO CHARGE CLECS FOR MANUAL OSS PROCESSING, WHEN BELLSOUTH'S OWN RETAIL SYSTEMS ARE AUTOMATED, AND WHEN BELLSOUTH DOES NOT MAKE ELECTRONIC OSS INTERFACES AVAILABLE TO ITS COMPETITORS?

A. No. This is, by definition, not based on forward-looking economic principles, and is unreasonable and discriminatory and thus violates the Telecommunications Act of 1996 (the "Act"). If BellSouth uses electronic processes for its own OSS and does not provide electronic processes to its competitors to obtain what amounts to substantially the same elements or services, it is not providing parity. The FCC has stated that "(o)bviously, an incumbent that provisions network resources electronically does not discharge its obligation under section 251 (c)(3) by offering competing providers access that involves human intervention." *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, CC Docket No. 96-98 at ¶ 523 (Released Aug. 8, 1996) ("Local Competition Order"). Certainly that access must be provided within the same time frames enjoyed by the incumbent.

Q. ARE THERE PUBLIC POLICY REASONS WHY BELLSOUTH SHOULD NOT BE ABLE TO CHARGE CLECS FOR MANUAL OSS WHEN IT PROVIDES ELECTRONIC OSS TO ITSELF?

A. Yes. BellSouth should not be encouraged to use inefficient, costly systems to serve CLECs when it provides substantially the same elements or services to its

own customers using electronic processes. Indeed, BellSouth should be strongly encouraged to do just the opposite.

B. RESALE

ISSUE 3

Should the resale discount apply to all telecommunication services BellSouth offers to end users, regardless of the tariff in which the service is contained? (Attachment 2, Section 1.1.1.)

Q. WHAT CONTRACT LANGUAGE HAVE THE PARTIES PROPOSED CONCERNING THE SERVICES BELLSOUTH MUST PROVIDE ON A RESALE BASIS?

A. WorldCom has proposed the following language in Attachment 2:

> 1.1.1. Local Resale shall include all Telecommunications Services offered by BellSouth to parties other than telecommunications carriers, regardless of the particular tariff or other method by which such Telecommunications Services are offered. For example, Local Resale shall include Telecommunications Services offered in BellSouth's access tariffs and made available to parties other than telecommunications carriers, regardless of whether or not such Telecommunications Services are offered in other tariffs, too. Local Resale shall be subject only to the limitations and restrictions set forth in this Agreement.

BellSouth has proposed the following competing language:

> 1.1.1. MCIm may resell the tariffed local exchange and toll Telecommunications Services of BellSouth contained in the General Subscriber Service Tariff and Private Line Service Tariff. Local Resale can only be used in the same manner as specified in BellSouth's Tariffs. Local Resale is subject to the same terms and conditions as are specified for such services when furnished to an individual end user of BellSouth in the appropriate section of BellSouth's Tariffs.

Q. WHAT IS WORLDCOM'S POSITION ON THIS ISSUE?

A. Offering a retail service under a tariff other than the private line or GSST tariffs does not preclude a company from the wholesale discount.

Q. WHAT IS BELLSOUTH'S POSITION CONCERNING THIS PROVISION?

A. BellSouth contends that only private line and GSST tariff services should be available for the resale discount.

Q. WHAT DO THE ACT AND FCC RULES REQUIRE CONCERNING SERVICES THAT MUST BE PROVIDED ON A RESALE BASIS?

A. The Act requires BellSouth "not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications services." Act, § 251 (b)(1). BellSouth is required to "offer to any requesting telecommunications carrier any telecommunications service that [BellSouth] offers on a retail basis to subscribers that are not telecommunications carriers for resale at wholesale rates." 47 C.F.R. § 51.605(a).

Q. DOES BELLSOUTH'S POSITION COMPLY WITH THOSE PROVISIONS?

A. No. BellSouth seeks to discriminate against WorldCom by denying it the right to resell services included in BellSouth's Federal and State Access tariffs, even when BellSouth offers those services to end users. Thus, under BellSouth's position it would be free to include retail services in its access tariffs and offer such services to its end users, while prohibiting WorldCom from reselling those services at prices that would enable it to compete with BellSouth. Such a result would not be consistent with the requirements of the Act.

C. UNBUNDLED NETWORK ELEMENTS

ISSUE 6

Should BellSouth be directed to perform, upon request, the functions necessary to combine unbundled network elements that are ordinarily combined in its network? (Attachment 1, Section 1.5; Attachment 3, Section 2.4)

Q. PLEASE STATE WORLDCOM'S POSITION REGARDING THIS ISSUE.

A. BellSouth should be directed to perform, upon request, the functions necessary to combine unbundled network elements that are ordinarily combined in BellSouth's network.

Q. WHAT LANGUAGE HAS WORLDCOM PROPOSED CONCERNING THIS ISSUE?

A. WorldCom has proposed the following language in Attachment 3:

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

Q. PLEASE STATE BELLSOUTH'S POSITION.

A. Only those elements that already have been combined in BellSouth's network must be provided to CLECs in combined form.

Q. WHAT ARE THE DUTIES TO WHICH BELLSOUTH IS SUBJECT WITH RESPECT TO UNBUNDLING ITS NETWORK?

A. As emphasized by the Supreme Court in *AT&T Corp. v. Iowa Utilities Board*, ILECs, including BellSouth, are subject under the Telecommunications Act to

duties intended to facilitate market entry. Foremost among these duties is the ILEC's obligation under 47 U.S.C. Section 251(c) to share its network with competitors. Section 251(c)(3) establishes:

> The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.

Q. HAS THE FCC PROMULGATED RULES TO FURTHER DEFINE BELLSOUTH'S DUTIES IN THIS RESPECT?

A. Yes. In its Local Competition Order, the FCC explicitly declined to impose a requirement of facility ownership on carriers who sought to lease network elements. Local Competition Order ¶¶ 328-340. The effect of this omission was to allow competitors to provide local phone service relying *solely* on the elements in an incumbent's network.

The FCC pricing rules then promulgated continue to govern the Authority's decision in this proceeding. They include 47 C.F.R. section 51.503 (General Pricing Standard) and, as discussed in more detail below, 47 C.F.R. section 51.315 (Combination of unbundled network elements). The latter rule, and its section (b) in particular, is often referred to as the "all elements" rule. Section 51.315(b) states: "Except upon request, an incumbent LEC shall not

separate requested network elements that the incumbent LEC currently combines."

Q. HAS BELLSOUTH CHALLENGED THESE RULES?

A. Yes. In the aftermath of the Local Competition Order, ILECs, including BellSouth, argued that this "all elements" rule undermined the goal of encouraging entrants to develop their own facilities. The Eighth Circuit, however, to which the appeal of the Local Competition Order was brought, deferred to the FCC's approach. The Eighth Circuit was of the view that the language of §251(c)(3) indicates that "a requesting carrier may achieve the capability to provide telecommunications service completely through access to the unbundled elements of an incumbent LEC's network." 120 F.3d. at 814.

The Eighth Circuit, however, thought that the FCC went too far in enacting 47 C.F.R. section 315(b). As characterized by the Supreme Court in *Iowa Utilities Board*:

> The Court of Appeals believed that [allowing requesting carriers to lease the incumbent's entire, preassembled network] would render the resale provision of the statute a dead letter, because by leasing the entire network rather than purchasing and reselling service offerings, entrants could obtain the same product–finished service–at a cost-based, rather than wholesale, rate. 120 F.3d, at 813. Apparently reasoning that the word "unbundled" in §251(c)(3) meant "physically separated," the [Eighth Circuit] vacated Rule 315(b) for requiring access to the incumbent LEC's network elements "on a bundled rather than an unbundled basis."

Q. WHAT WAS THE RESULT OF THIS LITIGATION?

A. The Supreme Court reversed the Eighth Circuit. In *Iowa Utilities Board* the Court concluded that

> It was entirely reasonable for the [FCC] to find that the text does not command this conclusion. It forbids incumbents to sabotage network elements that are provided in discrete pieces, and thus assuredly contemplates that elements may be requested and provided in this form (which the [FCC's] rules do not prohibit). But it does not say, or even remotely imply, that elements must be provided only in this fashion [i.e., disconnected] and never in combined form. . . As the [FCC] explains, it is aimed at preventing incumbent LECs from "disconnect[ing] previously connected elements, over the objection of the requesting carrier, not for any productive reason, but just to impose wasteful reconnection costs on new entrants." ...It is true that Rule 315(b) could allow entrants access to an entire preassembled network. In the absence of Rule 315(b), however, incumbents could impose wasteful costs on even those carriers who requested less than the whole network. It is well within the bounds of the reasonable for the Commission to opt in favor of ensuring against an anticompetitive practice.

Thus, in reinstating Rule 315(b), the Supreme Court agreed that the FCC reasonably concluded that the Act does not require a CLEC to own any facilities in conjunction with UNEs leased from an ILEC. Instead, according to the Supreme Court CLECs are entitled to "an entire preassembled network."

The Supreme Court remanded to the FCC to further evaluate the unbundling obligations of section 251 of the Act.

Q. WHAT OCCURRED ON REMAND?

A. Because of pending issues before the Eighth Circuit, the FCC in *In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-98 (released Nov. 5, 1999) ("UNE Remand Order"), declined to revisit the "currently combines" requirement of Rule 51.315(b). The FCC did restate, based on its pronouncement in its Local

Competition Order, that an incumbent LEC must provision network element combinations where such elements are "ordinarily combined within [the] network, in the manner which they are typically combined." UNE Remand Order, ¶ 479. The FCC also clearly stated that it has concluded that the "proper reading of `currently combines' in rule 51.315(b) means `ordinarily combined within [the incumbent's] network, in the manner which they are typically combined.'" *Id.* at ¶ 479 (quoting the Local Competition Order).

Q. WHAT IS THE EFFECT OF THE FCC RULES ON THIS ISSUE?

A. According to the FCC, then, CLECs can purchase UNEs in combination, such as a loop and a port, even when the network elements supporting the underlying service are not physically connected at the time the service is ordered, because those UNEs are typically combined. CLECs can then obtain UNE combinations at UNE prices. *Id.* at ¶¶ 480, 486.

Thus, Rule 315(b) requires BellSouth to provide UNE combinations, not already combined, provided BellSouth "currently combines" them for its customers. Rule 315(b), by its own terms, applies to elements that the incumbent "currently combines," not merely elements that are "currently combined." In the Local Competition Order, at paragraph 296, the FCC stated that the proper reading of "currently combines" is "ordinarily combined within their network, in the manner which they are typically combined." Accordingly, the only FCC interpretation of "currently combines" remains the literal one, contained in the Local Competition Order.

Q. DOES THE RECENT DECISION BY THE EIGHTH CIRCUIT CHANGE YOUR OPINION?

A. No. It is clear from that decision that FCC Rule 51.315(b) remains in effect. That rule supports WorldCom's position in this case.

Q. WHAT CONCLUSIONS DO YOU DRAW FROM THE FCC RULES AND THE DECISIONS YOU HAVE REVIEWED?

A. A ruling requiring BellSouth to combine currently unconnected network elements that are ordinarily combined is consistent with the intent of the Telecommunications Act to hasten competitive entry through a number of service delivery methods, including use of leased network elements. It is also consistent with the Supreme Court's ruling in *Iowa Utilities Board*, which rejected the view that Section 251(c)(3) of the Act only allows the leasing of "discrete pieces" of network elements. *Id.* At 737.

Nothing in the Telecommunications Act precludes a requirement that BellSouth lease network elements in combined form. Moreover, an Authority ruling directing BellSouth to combine elements upon request, when, in this instance, those elements are ordinarily combined by the incumbent, is reasonable and pro-competitive, as well as required by section 315(b), thus fulfilling the fundamental purpose of the Act. A contrary ruling would either limit the benefits of competition to those end users for which historical practice has dictated, in some cases arbitrarily, that BellSouth has previously combined network elements, or not discourage BellSouth from separating previously combined elements. The Act imposes no limitation on competitors' ability to

provide a "completed service" by relying solely on the incumbent's network elements rather than any facilities owned by the competitors, and section 315(b) requires it. ILECs must provide UNE combinations even if they are not already combined.

Further, those network elements, if combined, cannot be separated except at the request of competitors, and must be provided to competitors at cost-based rates. BellSouth must commit to making available all combinations of UNEs in its network at cost-based rates.

Q. WHAT ELEMENTS DOES BELLSOUTH CURRENTLY COMBINE IN ITS NETWORK?

A. There is no question that BellSouth currently combines, for example, all elements included in UNE-P to provide its own local service, and that BellSouth currently combines loop and transport (sometimes referred to as the "enhanced extended loop" or "EEL") to provide special access services.

Q. HOW HAS THIS AUTHORITY RULED WITH REGARD TO THE "CURRENTLY COMBINES" ISSUE?

A. In *In re Petition of BellSouth Telecommunications, Inc. to Convene a Contested Case to Establish "Permanent Prices" for Interconnection and Unbundled Network Elements*, Second Interim Order re: Revised Cost Studies and Geographic Deaveraging, Docket No. 97-01262 at 10 (Nov. 22, 2000)("Second Cost Order"), the Authority ruled that BellSouth should be required to provide recurring and nonrecurring costs for UNE combinations already combined in its network. The Authority concluded that "BellSouth must provide the

combination throughout its network as long as it provides this same combination to itself anywhere in its network." *Id.* at footnote 17.

Q. HAVE ANY OTHER STATE PUBLIC SERVICE COMMISSIONS IN THE BELLSOUTH REGION RULED ON THE ISSUE REGARDING UNE COMBINATIONS?

A. Yes. The Georgia Commission has ruled that CLECs can order UNE combinations, even if the particular elements being ordered are not actually physically connected at the time the order is placed. *In re Generic Proceeding to Establish Long-Term Pricing Policies for Unbundled Network Elements*, Docket No. 10692-U, Order (Feb. 1, 2000) ("Georgia UNE Order").

Regarding the "currently combines" requirement, the Georgia Commission observed:

> BellSouth has interpreted the term "currently combines" as "currently combined." BellSouth defines the term to mean those elements "that are physically in a combined state as of the time the CLEC requests them and which can be converted to UNEs on a 'switch as is' or 'switch with changes' basis. . . . Currently combined elements only include loops, ports, transport or other elements that are currently installed for the existing customer that the CLEC wishes to serve."

The Georgia Commission then stated that:

> at the very least, Rule 315(b) requires BellSouth to provide combinations of elements that are already physically connected to each other regardless of whether they are currently being used to serve a particular customer. The Supreme Court, however, did not state that it was reinstating Rule 315(b) only to the extent it prohibited incumbents from ripping apart elements currently physically connected to each other. It reinstated Rule 315(b) in its entirety, and it did so based on its

interpretation of the nondiscrimination language of Section 251(c)(3).

The Georgia Commission accordingly found that "currently combines" means "ordinarily combined" within the BellSouth network. Georgia UNE Order at 5. Thus CLECs can order combinations of ordinarily combined elements, even if the particular elements being ordered are not actually physically connected at the time the order is placed. It is my understanding the Georgia Commission has issued decisions in subsequent Section 252 arbitrations consistent with its policy as articulated in Docket No. 10692-U.

Q. WHAT WOULD BE THE EFFECT IF THE AUTHORITY ADOPTED BELLSOUTH'S ARGUMENT?

A. If this Authority were to limit the definition of "currently combines" to the more restrictive "currently combined" interpretation, the process of obtaining elements would be more cumbersome and would serve no purpose except to complicate the ordering process and thus impede competition.

This is the conclusion reached by the Georgia Commission:

> even assuming *arguendo* that `currently combines' means `currently combined,' rather than go through the circuitous process of requiring the CLEC to submit two orders (*e.g.*, one for special access followed by another to convert the special access to UNEs) to receive the UNE combination, the process should be streamlined to allows CLECs to place only one order for the UNE combination.

Georgia UNE Order at 12. BellSouth's argument appears to create an absurd dichotomy between existing customers and new customers. The absurdity of this argument can be understood with a simple example: According to BellSouth, a CLEC could offer residential service to Mr. Jones by using a loop/port

combination if Mr. Jones is an existing BellSouth customer for this service. The network facilities used to provide residential service to Mr. Jones' house are currently combined. If Mr. Jones, however, were to sell his house to his friend Mr. Smith, under BellSouth's proposal the CLEC might not be able to offer service using the loop/port combination to Mr. Smith because he is not an existing BellSouth customer. The same local loop, the same switch port – and the same connection between them – would remain in place, but BellSouth would no longer consider these facilities to be connected for the purpose of defining a UNE combination that could be purchased.

The equal absurdity of the proposed existing/new location dichotomy is also readily apparent from the following example: So long as Mr. Jones were to stay in his existing house (where he is a BellSouth customer), a CLEC may offer residential service to him by using a loop/port combination. If, however, he were to build a house down the street that will also be served by BellSouth's network, the CLEC would be unable to provide service to him using a loop/port combination, even though the connection from the new house to the BellSouth network (including the loop to port combination) would have been established. Presumably, however, if Mr. Jones first signs up for BellSouth's residential service, he would then be eligible to be served by a CLEC using a loop/port combination because he would no longer represent a new location.

Q. WOULD THERE BE A COMPETITIVE ADVANTAGE TO BELLSOUTH IN THIS RESPECT?

A. Absolutely. The advantage to BellSouth in these situations should be clear.

Q. PLEASE SUMMARIZE YOUR TESTIMONY IN THIS REGARD.

A. The FCC's Rule 315(b), the Supreme Court's decision in *AT&T v. Iowa Utilities Board*, the UNE Remand Order and this Authority's Second Cost Order require that BellSouth perform the functions necessary to combine unbundled network elements that are ordinarily combined in BellSouth's network.

ISSUE 8

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

Q. WHAT LANGUAGE HAS WORLDCOM PROPOSED CONCERNING UNE SPECIFICATIONS?

A. WorldCom has proposed, in Appendix 1 to Attachment 3, industry standard UNE specifications.

Q. WHAT IS WORLDCOM'S POSITION ON THIS ISSUE?

A. WorldCom's position is that BellSouth proprietary specifications should not be included.

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. BellSouth takes the opposite view, contending that certain BellSouth proprietary specifications should be included.

Q. WHAT IS THE BASIS FOR WORLDCOM'S POSITION?

A. WorldCom has proposed industry standard UNE specifications for loops in Appendix 1 to Attachment 3. BellSouth seeks to add to those specifications BellSouth TR73600, which WorldCom opposes because it is a BellSouth proprietary specification. BellSouth's proposed "specification" in fact includes

many provisions that are contractual in nature, stating the terms and conditions on which BellSouth will offer described services. The document thus goes much further than providing loop specifications. BellSouth evidently hopes to use its proposed document as a Trojan horse, subjecting WorldCom to terms and conditions that are not included in the body of the interconnection agreement. For example, in Attachment 3, Section 4.6.1, the parties have agreed to language describing SL1, non-designed loops. At page 7, the BellSouth proposed specifications state that a 2-wire, non-designed loop "is only available via a 2-wire, loop-start interface," a significant restriction not found in Section 4.6.1. As another example, Attachment 5, Section 2.1.4 provides WorldCom with access (through a BellSouth certified vendor) to BellSouth's main distribution frame ("MDF") for loops that BellSouth normally terminates on an MDF. The BellSouth specifications state at page 5, however, that "[t]he interface at the MDF is not accessible by the CLEC."

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.

ISSUE 18

Is BellSouth required to provide all technically feasible unbundled dedicated transport between locations and equipment designated by MCIW so long as the facilities are used to provide telecommunications services, including interoffice transmission facilities to network nodes

connected to MCIW switches and to the switches or wire centers of other requesting carriers? (Attachment 3, Section 10.1.)

Q. WHAT CONTRACT LANGUAGE HAVE THE PARTIES PROPOSED CONCERNING THE END POINTS FOR DEDICATED TRANPORT?

A Since the Petition was filed in this Docket, WorldCom has proposed the following language in Attachment 3 (the disputed language proposed by WorldCom is in bold):

> 10.1 Definition: Dedicated Transport is BellSouth 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 provides telecommunications between wire centers owned by BellSouth or requesting telecommunications carriers, or between switches owned by BellSouth or requesting telecommunications carriers. **The end points of Dedicated Transport need not be wire centers or switch locations and may be at facilities of other requesting telecommunications carriers besides MCIm. BellSouth shall provide local channel-dedicated and/or interoffice transport-dedicated between MCIm and a third party carrier and BellSouth shall not require MCIm to have network equipment at the third party carrier's location. Dedicated Transport shall be provided at transmission rates specified by MCIm, including, but not limited to, DS1, DS3, OC-n, and STS-1. Nothing herein shall be construed to require BellSouth to construct facilities to provide Dedicated Transport where such facilities do not currently exist, except BellSouth shall provide the electronic equipment necessary to provide Dedicated Transport .**

Q. WHAT IS WORLDCOM'S POSITION ON THIS ISSUE?

A. WorldCom's position is 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.

Q. WHAT IS BELLSOUTH'S POSITION?

A. BellSouth contends that it only is required to provide dedicated transport between BellSouth and WorldCom switches and wire centers.

Q. WHAT FCC REQUIREMENTS APPLY TO THIS ISSUE?

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

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

47 C.F.R. § 51.319(d)(1)(A). BellSouth is required to "[p]rovide all technically feasible transmission facilities, features, functions, and capabilities that the requesting telecommunications carrier could use to provide telecommunications services." 47 C.F.R. § 51.319(d)(2)(B). Further, BellSouth must permit a requesting carrier to connect unbundled interoffice transmission facilities to equipment designated by the requesting carrier. 47 C.F.R. § 51.319(d)(2)(C).

BellSouth's unbundling obligation "extends *throughout* its ubiquitous transport network." UNE Remand Order, ¶ 324 (emphasis added). Thus, BellSouth is not required to build new transport facilities to meet specific requests by CLECs for point-to-point service, but it is required to provide unbundled service where it has facilities in place.

Q. WHY DOES WORLDCOM NEED BELLSOUTH TO PROVIDE DEDICATED TRANSPORT TO POINTS THAT ARE NOT IN BELLSOUTH OR WORLDCOM WIRE CENTERS OR END OFFICES?

A. WorldCom's local networks utilize a very different architecture than the ILECs' networks, as we do not have "hub and spoke" networks that connect all the loops (or "spokes") at various wire centers. Rather, WorldCom's "local loops" ride fiber optic SONET rings and can traverse several serving wire center territories to get between a customer and the serving switch. These "loops" can be routed through several transport nodes within WorldCom's network to connect the customer to the switch. The SONET rings that connect the switching node to the transport nodes (which then link to the separate SONET rings that terminate in the customer premise) act in a similar way to BellSouth's common transport. In other words, because of the way WorldCom's network is configured, it will often be most efficient to link transport nodes, which are WorldCom's traffic aggregation points, to BellSouth dedicated transport rather than making the link at the WorldCom switch.

This approach is consistent with the UNE Remand Order. In rejecting ILEC claims that unbundled transport should not be made available because competitive alternatives are available, the FCC noted that

> [t]he competitive alternatives that are available along limited point-to-point routes do not necessarily allow competitive LECs to connect their collocation arrangements or switching nodes according to the needs of their individual network designs. These carriers also require dedicated transport to deliver traffic from their own traffic aggregation points to the incumbent LECs network for purposes of interconnection.

UNE Remand Order, ¶ 346.

Q. WHY DOES WORLDCOM NEED BELLSOUTH TO PROVIDE DEDICATED TRANSPORT TO THIRD PARTY CARRIERS?

A. BellSouth typically will have transport facilities to those carriers that WorldCom lacks. In such cases, frequently it will be more efficient for WorldCom to lease such facilities from BellSouth rather than constructing its own.

Q. MUST BELLSOUTH PROVIDE DEDICATED TRANSPORT TO THIRD PARTY CARRIERS WITH WHICH BELLSOUTH IS INTERCONNECTED?

A. Yes. As I already have noted, the FCC has required ILECs to provide dedicated transport throughout their networks. UNE Remand Order, ¶ 324. In addition, the FCC's definition of dedicated transport applies to the provision of telecommunications between wire centers and switches of ILECs or "requesting telecommunications carriers." 47 C.F.R. § 51.319(d)(1)(A)." "Requesting telecommunications carriers" in this context means all requesting carriers with whom BellSouth is interconnected.

ISSUE 22

Should the Interconnection Agreements contain MCIW's proposed terms addressing line sharing, including line sharing in the UNE-P and unbundled loop configurations? (Attachment 3, Sections 14.1-14.1.8.)

Q. WHAT LANGUAGE IS IN DISPUTE CONCERNING THIS ISSUE?

A. WorldCom has submitted proposed line sharing language to BellSouth based on BellSouth's agreement with COVAD and certain other terms and conditions. A copy of this proposal is attached as Exhibit 1.

Q. WHAT IS THE SOURCE OF THE DISAGREEMENT BETWEEN THE PARTIES?

A. Under WorldCom's proposal, BellSouth would be required to provision UNE-P to WorldCom in a manner that permits WorldCom's customer to retain data service from a data CLEC ("DLEC") that is already providing the customer service via line sharing with BellSouth. Under BellSouth's position, if WorldCom were to win the customer's voice business, BellSouth would remove the line-sharing splitter, thereby disconnecting the customer's data service.

Q. WHY SHOULD WORLDCOM'S LANGUAGE BE ADOPTED?

A. BellSouth's approach not only would be unnecessarily disruptive to the customer, but also would be anti-competitive, because it would enable BellSouth to retain a practical monopoly over providing voice service to customers who want to use line sharing to meet their data needs.

The FCC labeled this issue "line splitting" in its decision on SBC's 271 application for Texas. *Application by SBC Communications Inc. et. al Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas*, Memorandum Opinion and Order, CC Docket No. 00-65 at ¶ 323 (released June 30, 2000) ("Texas 271 Order"). In the line-splitting scenario, "both the voice and data service will be provided by competing carrier(s) over a single loop." *Id.* at ¶ 324.

The FCC's rules make clear that BellSouth should be required to provision UNE-P to WorldCom in a manner that permits line splitting between a WorldCom and a DLEC. When WorldCom obtains a loop via UNE-P, it

acquires rights to the entire loop, including the portions used to provide voice service and the portions capable of providing advanced services. The FCC's rules expressly state the purchase of a UNE includes "all of the unbundled network element's features, functions, and capabilities" 47 C.F.R. § 51.307 (c). As the FCC stated, "as a result, incumbent LECs have an obligation to permit competing carriers to engage in line splitting over the UNE-P where the competing carrier purchases the entire loop . . . ." Texas 271 Order at ¶ 325.

Another issue raised by WorldCom's proposed language is whether BellSouth should be required to supply the splitter that is already in place on a line shared between itself and a DLEC. Under WorldCom's proposal, BellSouth would be required to provide the splitter. Although the FCC does not require this of ILECs, Texas 271 Order at ¶ 325, states are free to decide this issue themselves. In a Texas arbitration award, Southwestern Bell was ordered not to only permit line splitting via UNE-P but to provide the splitter as well. The Arbitration Award states as follows:

> As noted above, the Arbitrators in this case find that SWBT is required to provide the splitter in order to allow AT&T to access the full functionality of the loop. . . . the Arbitrators also believe that this decision will promote more rapid deployment of advanced services to a broader cross section of customers, as required by Section 706 of the FTA. The evidence in this case shows that SWBT's proposal requiring UNE-P CLECs to collocate in order to gain access to the high frequency portion of the loop [SWBT's proposal was what BellSouth is offering WorldCom], (1) unnecessarily increases the degree of coordination and manual work and accordingly increases both the likelihood and duration of service interruptions; (2) introduces unnecessary delays for space application, collocation construction, and splitter installation; and (3) unnecessarily wastes central office and frame space. Thus, the Arbitrators believe that SWBT's proposal significantly prohibits UNE-P providers from achieving commercial volume, not only

> because collocation is required but also because SWBT does not propose to prewire, or allow the CLEC to prewire, from the intermediate distribution frame (IDF) to the CLEC's splitter. Arbitrators presented with a scenario where the CLEC is not required to collocate and the ILEC is offering to prewire (or allow the CLEC to prewire) from the IDF to the CLEC splitter may very well reach a different conclusion than the Arbitrators reached in this case.

Petition of Southwestern Bell Telephone Company for Arbitration with AT&T Communications of Texas, L.P. et. al Pursuant to Section 252(B)(1) of the Federal Communications Act of 1996, Arbitration Award, Docket No. 22315 at 19 (Sept. 13, 2000) (footnote omitted).

Because FCC rules require BellSouth to make line splitting available to WorldCom when WorldCom provides voice service to an end-user using UNE-P, the Authority should incorporate this requirement in the interconnection agreement. Additionally, because provisioning of the splitter by BellSouth is the only means to enable line splitting that is efficient, timely, and minimally disruptive to the retail customer, BellSouth should be required to provide the splitter to WorldCom.

ISSUE 23

Does MCIW's right to dedicated transport as an unbundled network element include SONET rings that exist on BellSouth's network? (Attachment 3, Sections 10.2.3, 10.5.2, 10.5.6.3, 10.5.9, 10.6, 10.7.2.16.)

Q. HAS WORLDCOM PROPOSED CONTRACT LANGUAGE REGARDING PROVISION OF UNBUNDLED TRANSPORT AS A SONET SYETEM?

A. Yes, WorldCom has proposed several provisions that require BellSouth to provide unbundled transport as a UNE consistent with the Act and FCC regulations. Some of these provisions relate to provision of SONET transport systems in a ring architecture in addition to point to point systems, electronic provisioning control of SONET rings, the technical requirements of dedicated transport using SONET technology, the use of industry standard SONET interfaces, and digital cross connect systems with SONET ring terminal functionality, where technically feasible. These provisions are in Attachment 3, Sections 10.2.3, 10.5.2, 10.5.6.3, 10.5.9, 10.6 and 10.7.2.16. The provisions proposed by WorldCom in Section 10.2, which have been revised by WorldCom since the Petition in this Docket was filed, are as follows (with disputed language in bold):

> 10.2 BellSouth shall offer, at the rates set forth in Attachment 1, Dedicated Transport in each of the following manners:
>
> 10.2.1.1 As capacity on a shared facility.
>
> 10.2.2 As a circuit (e.g., DS1, DS3, OC-n, STS-1) dedicated to MCIm; and,
>
> **10.2.3. As dedicated transport on an existing SONET ring. Such dedicated transport shall include all the features, functions, and capabilities of that existing SONET ring, to the extent technically feasible.**
>
> **10.2.4.1 Nothing in Sections 10.2.1-10.2.3 shall be construed to require BellSouth to construct transport facilities where such a system does not presently exist, but BellSouth shall provide the electronics necessary to provide such dedicated transport to MCIm on existing facilities.**

Q. WHAT ISSUE HAS ARISEN CONCERNING THESE PROVISIONS?

A. BellSouth has objected to any and all provisions dealing with SONET ring architecture. BellSouth has cited paragraph 324 of the FCC's UNE Remand Order in rejecting WorldCom's request that unbundled transport be provided as a SONET ring architecture.

Q. PLEASE DESCRIBE THE SONET RING UNBUNDLED TRANSPORT THAT WORLDCOM HAS SOUGHT TO INCLUDE IN THE INTERCONNECTION AGREEMENT.

A. The provisions proposed by WorldCom require BellSouth to provide unbundled transport as a SONET ring wherever BellSouth has existing fiber facilities in place for a SONET ring. WorldCom has not proposed that BellSouth construct new facilities where facilities do not exist.

Q. IS BELLSOUTH REQUIRED TO PROVIDE UNBUNDLED TRANSPORT IN A SONET RING ARCHITECTURE WHERE THE FACILITIES TO DO SO EXIST?

A. Yes, the FCC has made that very clear, and nothing in the paragraph relied upon by BellSouth detracts from that obligation. The FCC stated that "[a]lthough we conclude that an incumbent LEC's unbundling obligation extends throughout its ubiquitous transport network, including ring transport architectures, we do not require incumbent LEC's to construct new transport facilities to meet specific competitive LEC point-to point demand requirements for facilities that the incumbent LEC has not deployed for its own use." UNE Remand Order, ¶ 324.

Q. THE FCC REFERS TO TRANSPORT FACILITIES IN THE QUOTED PARAGRAPH. WHAT ARE TRANSPORT FACILITIES?

A. Transport facilities are the media used to transmit messages, in this case fiber. When the FCC says that incumbents must provide unbundled transport, including ring transport architectures, but that they are not required to construct new transport facilities, that means that the incumbent does not have to construct new fiber where none exists. On the other hand, in the words of the FCC "an incumbent LEC's unbundling obligation extends throughout its ubiquitous transport network, including ring transport architectures...." Thus, where facilities do exist, BellSouth is required to provide unbundled transport as a SONET ring architecture.

Q. DOES THE LANGUAGE PROPOSED BY WORLDCOM REQUIRE BELLSOUTH TO CONSTRUCT NEW FIBER TRANSPORT FACILITIES?

A. No, it does not. WorldCom's proposed language does not require BellSouth to construct new fiber facilities. It only requires BellSouth to add the necessary electronics to existing fiber transport facilities to provide unbundled transport in a SONET ring architecture. As noted above, this is precisely what the FCC has required of incumbents.

Q. DOES BELLSOUTH'S UBIQUITOUS TRANSPORT NETWORK CONTAIN A HIGH PERCENTAGE OF FIBER FACILITIES?

A. Yes, more than 80% of BellSouth's interoffice network consists of fiber facilities in a ring architecture. Provision of interoffice transport in a ring architecture is technically feasible and the facilities to do so exist throughout BellSouth's network.

ISSUE 28

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

Q. HAS WORLDCOM PROPOSED CONTRACT LANGUAGE ADDRESSING THE ISSUE OF THE CALLING NAME DATABASE?

A. Yes, WorldCom has proposed Attachment 3, Section 13.7, which provides as follows: "Calling Name (CNAM) Database: The CNAM Database contains subscriber information (including name and telephone number) used to show the customer name of an incoming call on a display attached to the telephone. BellSouth shall provide the CNAM Database in accordance with the following:" Thereafter, a series of detailed subsections follow.

Q. WHAT ISSUE HAS ARISEN WITH RESPECT TO PROVISION OF THE CALLING NAME DATABASE?

A. BellSouth refuses to provide a download of the calling name database.

Q. WHY DOES WORLDCOM REQUIRE A DOWNLOAD OF THE CALLING NAME DATABASE?

A. The calling name database is needed in order to provide a number of services to WorldCom's customers, including Caller ID with name service. The database should be provided via electronic download or on magnetic tape because this is the most efficient means of providing it.

Q. WHAT HAS THE FCC RULED WITH RESPECT TO THE CALLING NAME DATABASE?

A. The FCC has ruled that "Incumbent LECs must also offer unbundled access to call-related databases, including, but not limited to, the Line Information database (LIDB), Toll Free Calling database, Number Portability database, Calling Name database, Operator Services/Directory Assistance databases, Advanced Intelligent Network databases, and the AIN platform and architecture." UNE Remand Order, Executive Summary (between paragraphs 15 and 16).

Q. WHY SHOULD THE CALLING NAME DATABASE BE PROVIDED VIA ELECTRONIC DOWNLOAD?

A. Electronic download is the most efficient, least costly means of providing the database. It is technically feasible to provide the information in this form, and indeed, the directory assistance database is provided via electronic download. There is no reason why the calling name database cannot be provided in the manner as is the directory assistance database.

D. Interconnection.

ISSUE 29

Should calls from MCIW customers to BellSouth customers served via Uniserve, Zipconnect, or any other similar service, be terminated by BellSouth from the point of interconnection in the same manner as other local traffic, without a requirement for special trunking? (Attachment 4, Section 1.1.1.)

Q. WHAT LANGUAGE HAS WORLDCOM PROPOSED CONCERNING THIS ISSUE?

A. WorldCom has proposed the following language in Attachment 4:

1.1.1 BellSouth shall not require MCIm to establish trunks for local interconnection to points other than the Point of Interconnection because of a particular service offered by BellSouth to its customers (e.g. Uniserv or ZipConnect).

Q. MR. OLSON'S TESTIMONY DESCRIBES THE DIFFERENT TRUNK GROUPS THAT SHOULD BE ESTABLISHED BETWEEN BELLSOUTH AND WORLDCOM. IS THERE AN ISSUE WITH RESPECT TO THE ESTABLISHMENT OF TRUNK GROUPS?

A. Yes, there is. BellSouth will not accept calls over the existing feature group D local interconnection trunks for termination to a BellSouth Uniserv customer. BellSouth designed Uniserv to work on its TOPS platform using feature group C MOSS trunking. In those areas where BellSouth has deployed this service, its design has required WorldCom to install new trunk groups from our local switches to the BellSouth TOPS platform. This new trunking requirement has increased our cost of doing business to support a BellSouth service for which BellSouth collects the revenue.

Q. WHAT IS UNISERV?

A. Uniserv is a BellSouth retail service which allows BellSouth business subscribers to have their customers dial a single telephone number from anywhere in the LATA to call to a single service location. Uniserv is a free call to the caller with BellSouth being compensated for the call by its business customer.

Q. SHOULD SPECIAL OPERATOR SERVICES TRUNK GROUPS BE REQUIRED FOR THE TERMINATION OF CALLS BY WORLDCOM CUSTOMERS TO BELLSOUTH UNISERV CUSTOMERS?

A. No, special trunk groups should not be required. These calls should be sent over the local interconnection trunk group and then terminated by BellSouth as are other local or intraLATA calls. BellSouth's proposed requirement that WorldCom establish special operator trunk groups for these calls adds complexity to the network, adds cost, and reduces trunking efficiencies.

Q. ARE THERE OTHER REASONS WHY BELLSOUTH'S PROPOSAL THAT OPERATOR SERVICES TRUNKS BE ESTABLISHED FOR UNISERV CALLS SHOULD BE REJECTED?

A. Yes, BellSouth's position requires WorldCom to deliver Uniserv calls to the TOPS switch in violation of the provisions of the Act and FCC's Local Competition Order which allow WorldCom to interconnect at any technically feasible point of its choosing. In addition, BellSouth's position is inconsistent with its duty to transport and terminate all traffic that is delivered to the interconnection point.

Q. WHAT SHOULD THE AUTHORITY DO?

A. The Authority should direct BellSouth to accept calls directed to its Uniserv customers at the interconnection point and transport and terminate these calls from that point.

ISSUE 39

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

Q. WHAT LANGUAGE UNDERLIES THIS ISSUE?

A. BellSouth has proposed the following Section 9.7.2 of Attachment 4:

Rates for transiting local transit traffic shall be as set forth in Attachment 1 of this Agreement. Wireless Type 1 traffic shall not be treated as transit traffic from a routing or billing perspective. Wireless Type 2A traffic shall not be treated as transit traffic from a routing or billing perspective until BellSouth and the Wireless carrier have the capability to properly meet-point-bill in accordance with MECAB guidelines.

This language is intended to perpetuate BellSouth's current practices with respect to this traffic, which WorldCom opposes for the reasons set forth below.

Q. HOW SHOULD WIRELESS TYPE 1 AND WIRELESS TYPE 2A TRAFFIC BE TREATED UNDER THE INTERCONNECTION AGREEMENT?

A. This issue involves Wireless Type 1 and Type 2A traffic, which is transit traffic originated by one carrier, delivered to BellSouth's tandem, tandem switched by BellSouth to the network of a third carrier, and then terminated by the third carrier. BellSouth receives a transiting fee for this service, as it should. However, it also charges the originating carrier for reciprocal compensation, which BellSouth retains. WorldCom disagrees with this practice. The carrier that ultimately terminates the call, the third carrier in this three carrier transaction, should receive the reciprocal compensation payment. BellSouth should be directed to turn over to the terminating carrier the reciprocal compensation payment which BellSouth currently collects from the originating carrier. Of course, BellSouth would retain the transiting fee (tandem switching) which it charges the originating carrier. The call termination revenue which BellSouth bills the originating carrier should be remitted to the carrier who actually performs the call termination function.

BellSouth's practice of retaining reciprocal compensation payments on this traffic could subject WorldCom to liability to the CMRS provider. For example, where WorldCom originates traffic to a CMRS provider and BellSouth transits the call, BellSouth will charge reciprocal compensation to WorldCom and retain it. The CMRS provider, which should be entitled to the payment, may seek such payment from WorldCom which had originated the call and had turned over the payment to BellSouth. Clearly, WorldCom should not have to pay reciprocal compensation twice. Therefore, if the Authority does not direct BellSouth to remit the reciprocal compensation to the terminating carrier, it should at a minimum direct BellSouth to indemnify WorldCom against any lawsuit filed by the CMRS provider that results from BellSouth's practice of retaining the reciprocal compensation payment.

Finally, BellSouth has indicated that for Type 2A traffic, it intends to end the practice of billing for such traffic as landline traffic when the involved parties have the necessary meet point billing system capabilities. WorldCom requests that BellSouth be directed to continue to provide the billing function as it does now, but as noted above, that the payments in all cases be remitted to the carrier performing the terminating function.

ISSUE 40

What is the appropriate definition of internet protocol (IP) and how should outbound voice calls over IP telephony be treated for purposes of reciprocal compensation? (Attachment 4, Sections 9.3.3.)

Q. WHAT IS THE LANGUAGE IN DISPUTE CONCERNING THIS ISSUE?

A. BellSouth has proposed the following language as Section 9.3.3 of Attachment 4: "Switched Access Traffic is as defined in the BellSouth Access Tariff. Additionally, IP Telephony traffic will be considered switched access traffic." WorldCom opposes this for the reasons discussed below.

Q. HAS BELLSOUTH PROPOSED THAT IP TELEPHONY BE TREATED IN THE INTERCONNECTION AGREEMENT AS SWITCHED ACCESS FOR PURPOSES OF INTER-CARRIER COMPENSATION?

A. Yes, it has. However, as discussed below, BellSouth has not defined IP; it has mischaracterized the traffic it seeks to address; it eliminates the only form of intercarrier compensation appropriate to the traffic (reciprocal compensation); and it has not established that the subject of assessing access charges on this traffic is an appropriate subject for this arbitration.

Q. DOES BELLSOUTH PROPOSE AN ACTUAL DEFINITION OF INTERNET PROTOCOL ("IP") IN SUPPORT OF ITS POSITION ON THE TREATMENT OF THIS TRAFFIC?

A. No. While BellSouth frames this issue as being at least somewhat related to the definition of IP, its proposed contract language merely makes a sweeping generalization as to the "use" of IP, not what IP actually is.

This is a significant failing, as defining IP is a prerequisite for any discussion of how such traffic should be treated. In its 1998 Report to Congress, the Federal Communications Commission ("FCC") examined "Internet-based services known as IP telephony." Federal-State Joint Board on Universal Service, Report to Congress, CC Docket No. 96-45, FCC 98-67 at ¶ 83 (April 10,

1998) ("Report"). The FCC defined "IP telephony" as "services [that] enable real-time voice transmission using Internet protocols," Report at ¶ 84, and recognized that a "wide range of service can be provided using packetized voice." Report at ¶ 90. Ultimately, the FCC declined to make any definitive pronouncements regarding the regulatory status of various specific forms of IP telephony. Report at ¶ 90. The FCC has also declined to require providers of IP telephony to pay access charges.

Q. WHAT INCONSISTENCIES DO YOU SEE WITH BELLSOUTH'S PROPOSED TREATMENT OF IP BASED TRAFFIC WHEN COMPARED TO THE FCC DEFINITION OF IP TELEPHONY?

A. BellSouth's proposal suggests that the mere presence of IP indicates that "traditional long-distance calling" is the service being provided. BellSouth's proposal fails to recognize that IP telephony can be utilized to provide, in the FCC's words, a "wide range of service." (Bell South also alleges that there is an "increasing use of IP technology" and then concludes that such increased use somehow justifies its proposal. WorldCom fails to see the relevance of frequency of use of a particular technology to classification of traffic.) Treating all traffic which utilizes IP as long-distance would erroneously categorize all such traffic that is actually *local* in nature.

Q. IS THE BELLSOUTH PROPOSAL CONSISTENT WITH ESTABLISHED INTER-CARRIER COMPENSATION MECHANISMS?

A. No. There are only two forms of inter-carrier compensation local carriers receive for assisting each other in delivering calls: "reciprocal compensation" and

"access charges." Congress recognized that when a customer of one carrier makes a local call to a customer of another carrier, the caller pays only its own carrier for the telephone services – leaving the other carrier uncompensated. The Telecommunications Act of 1996 therefore requires the caller's local carrier to compensate the other carrier whose facilities are used to complete the local call. The second form of inter-carrier compensation is access charges. When a caller makes a long-distance call, he pays his long-distance company – not his local carrier – for the call. The long-distance company pays access charges to local telephone carriers to compensate them for originating and terminating the long-distance calls over their networks.

Because the FCC has not imposed interstate access charges on IP telephony, the only available form of inter-carrier compensation for the services at issue in this arbitration is reciprocal compensation. As this Authority has previously recognized, reciprocal compensation applies to intercarrier calls delivered to ISPs in the local calling area.

Q. WHAT IS WORLDCOM'S POSITION ON WHETHER THIS AUTHORITY SHOULD REQUIRE PAYMENT OF ACCESS CHARGES ON LONG DISTANCE CALLS UTILIZING PHONE-TO-PHONE IP TELEPHONY?

A. The question of whether long-distance carriers should pay interstate access charges when they utilize IP telephony is beyond the scope of this arbitration proceeding.

The issue of access charges for interstate long distance calls is clearly within the jurisdiction of the FCC and not this Authority. While BellSouth tries to argue that these calls should be classified as switched exchange access traffic and be subject to access charges, that is a question that the FCC, not this Authority, must answer. In fact, BellSouth has presented the very arguments it makes here to the FCC and the FCC has not adopted BellSouth's arguments. Instead, in its 1998 Report to Congress, Docket No. 96-45, FCC 98-67 (April 10, 1998) ("FCC Report"), the FCC examined the issue of IP telephony including the arguments of Bell South and concluded that it would be inappropriate to make any definitive pronouncements in the absence of a more complete record focused on individual service offerings. FCC Report, ¶ 89. The FCC further specifically declined to impose access charges on IP telephony noting that "we will likely face difficult and contested issues relating to the assessment of access charges on these providers . . . . We intend to examine these issues more closely based on the more complete records developed in future proceedings." FCC Report, ¶ 91. Because federal law currently does not allow access charges to be imposed on IP Telephony, it would be contrary to federal law and the Authority's jurisdiction for it to impose access charges on interstate long distance calls utilizing Phone-to Phone IP Telephony.

Moreover, because the FCC will be addressing the issue of access charges in this area, it would be appropriate for this Authority to await the FCC's decision before addressing the issue of access charges for intrastate long distance calls utilizing Phone-to-Phone IP Telephony. This is particularly true

because the FCC has recognized that it may be difficult to determine whether particular IP telephony calls are interstate or intrastate and intends to address that issue in the context of determining whether access charges should apply. FCC Report, ¶ 91.

The FCC has announced plans to institute in the near future a proceeding to examine issues associated with IP telephony. (TR Daily, June 30, 2000). For all of the reasons noted above, the Authority should await the FCC's decision rather than addressing this issue in this arbitration proceeding.

ISSUE 42

Should MCIW be permitted to route access traffic directly to BellSouth end offices or must it route such traffic to BellSouth's access tandem? (Attachment 4, Section 2.3.8.)

Q. WHAT LANGUAGE HAS BELLSOUTH PROPOSED CONCERNING WHETHER WORLDCOM SHOULD BE REQUIRED TO ROUTE SWITCHED ACCESS TRAFFIC TO BELLSOUTH'S ACCESS TANDEM?

A. BellSouth has proposed the following language in Attachment 4, which WorldCom opposes:

> 2.3.8 MCIm agrees not to deliver switched access traffic to BellSouth for termination except over MCIm ordered switched access trunks and facilities.

Q. WHAT IS WORLDCOM'S POSITION ON THIS ISSUE?

A. BellSouth should not be permitted to require WorldCom to route all terminating switched access traffic over switched access trunks and facilities. This

requirement would allow BellSouth to monopolize the tandem services business, and WorldCom should be permitted to offer such services.

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. BellSouth contends WorldCom should be prohibited from delivering switched access traffic by any means other than switched access trunks and facilities.

Q. WHAT IS THE BASIS FOR WORLDCOM'S POSITION?

A. The prohibition BellSouth proposes 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. BellSouth's language would ensure that it always would be able to charge for tandem and transport when terminating toll traffic, and would eliminate competition for tandem and transport services. BellSouth's proposed language is anticompetitive and should be rejected.

Q. IS WORLDCOM SEEKING TO AVOID THE PAYMENT OF ACCESS CHARGES ON LONG DISTANCE CALLS?

A. No. WorldCom objects to the language proposed by BellSouth because WorldCom does not want language in the Agreement that would preclude WorldCom from offering tandem services to other carriers, as described above. BellSouth incorrectly suggests that WorldCom's opposition to the language proposed by BellSouth is an attempt to disguise switched access traffic as local traffic over local interconnection trunks. Perhaps BellSouth misunderstands WorldCom's intent. In fact, BellSouth's proposal will perpetuate its monopoly over the provision of access services to IXCs in violation of the Act. WorldCom

is entitled to provide the tandem and transport services associated with toll calling and if WorldCom does so, BellSouth will be entitled to bill the access charges associated with the access services it provides at the end office.

ISSUE 45

How should third party local transit traffic be routed and billed by the parties? (Attachment 4, Sections 9.7.1,, 10.7.1.1,)

Q. WHAT LANGUAGE GIVES RISE TO THIS ISSUE?

A. WorldCom has proposed the following sections 9.7.1 and 10.7.1.1, to which BellSouth has objected:

> 9.7.1 For calls that transit BellSouth's network, whether they originate from MCIm and terminate to a third party LEC, CLEC or CMRS provider, or originate from that third party and terminate to MCIm, and transit BellSouth's network, MCIm may require BellSouth to make arrangements directly with that third party for any compensation owed in connection with such calls on MCIm's behalf, or deal directly with that third party, at MCIm's option.
>
> 10.7.1.1 If MCIm requires BellSouth to make arrangements directly with a third party LEC, CLEC or CMRS provider on MCIm's behalf, BellSouth shall compensate MCIm for such calls terminating to MCIm using MCIm's rates as described herein, and charge MCIm for such calls terminating to that third party as if such calls had terminated in BellSouth's network, using BellSouth's rates as described herein.

Q. HOW SHOULD THIRD PARTY TRANSIT TRAFFIC BE ROUTED AND BILLED BY THE PARTIES?

A. Transit traffic, whether the jurisdiction of the call is local or intraLATA toll, should be routed and billed in the most efficient way possible for all LECs. From a routing perspective, this traffic should be exchanged over the same

logical trunk group as all other local and intraLATA toll traffic. This reduces the number of trunk groups needed for both companies, and keeps translations simple for both companies. Typically, the volume of transit traffic does not warrant its own trunk group to each tandem. From a billing perspective, it is also efficient to minimize the number of bills and record exchange for transit traffic. It is best to illustrate using a couple of call flow examples. If a call is originated from WorldCom, transited by BellSouth, and terminated to an independent LEC, WorldCom proposes that BellSouth bill WorldCom for a transiting charge, and the call termination charges as well. BellSouth would then settle up with the independent LEC, as it has have done for years. The independent LEC would not have to go through the network expense of separate trunk groups and billing expense for billing this small volume of traffic from WorldCom, but obtains payment from BellSouth, since BellSouth billed WorldCom. All carriers along the route are compensated for their piece of carrying the call. In the reciprocal fashion, if a call is originated from an independent LEC, transited through BellSouth, and terminated to WorldCom, WorldCom proposes that BellSouth bill the independent for a transiting charge (if applicable), and WorldCom bill BellSouth for terminating that call on the WorldCom network. Again, BellSouth would obtain payment from the independent LEC. This practice is consistent with the Ordering and Billing Forum (OBF) Meet Point Billing Guidelines (single bill/single tariff option). Again, this reduces the number of trunks groups, record exchange, and number of bills (to render and to audit) for all carriers.

Q. WHAT ARE BELLSOUTH'S OBJECTIONS TO THIS APPROACH?

A. BellSouth has two objections. First, BellSouth does not want to render a bill for reciprocal compensation to the originating carrier as described above. Instead, it believes that the terminating carrier should bill the originating carrier. Second, BellSouth wants WorldCom to establish separate trunk groups for transit traffic.

Q. CAN YOU DESCRIBE ANOTHER INSTANCE IN WHICH BELLSOUTH RENDERS BILLS FOR RECIPROCAL COMPENSATION ON THIRD PARTY TRANSIT TRAFFIC?

A. Yes, as discussed above with respect to Wireless Type 1 and Wireless Type 2A traffic (Issue 39), BellSouth bills the originating carrier for call termination. BellSouth does this even though BellSouth does not actually terminate the call but rather transits it to another carrier for termination. The process used by BellSouth on Wireless Type 1 and Type 2A traffic of billing the originating carrier for call termination should also apply to other types of third party transit traffic. Of course, as noted with respect to Issue 39, BellSouth should retain the transiting fee but should remit the reciprocal compensation payment to the carrier that actually provides the call termination.

Q. PLEASE COMMENT ON BELLSOUTH'S OBJECTION TO TRANSIT TRAFFIC BEING ROUTED OVER THE LOCAL INTERCONNECTION TRUNK.

A. From a network perspective, again, it is WorldCom's position to route the local/intraLATA and transit traffic on a combined trunk group. There are tremendous network efficiencies by combining these three traffic types, from a

facilities, trunking, and switch port perspective, and also from the standpoint of maintaining translations tables so that calls are properly routed. The Authority should rule specifically that all of these types of traffic can be sent over the same trunk. Any requirement that separate trunks be established for transit traffic is just a wasteful use of scarce resources.

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? (Attachment 4, Sections 9.4.6. and 9.10.)

Q. WHAT LANGUAGE HAS BELLSOUTH PROPOSED THAT GIVES RISE TO THIS ISSUE?

A. BellSouth has proposed the following Sections 9.4.6 and 9.10 of Attachment 4:

> 9.10 The Parties agree that the jurisdiction of a call is determined by its originating and terminating (end-to-end) points. For the purpose of delivery of BellSouth originating traffic to MCIm, BellSouth will pay to MCIm reciprocal compensation for Local Traffic terminating to MCIm end users physically located in the BellSouth rate center to which the MCIm end user's NPA/NXX is assigned. If MCIm assigns NPA/NXXs to specific BellSouth rate centers and assigns numbers from those NPA/NXXs to MCIm end users physically located outside of the rate center to which the NPA/NXX is assigned, BellSouth traffic originating from within the BellSouth rate center where the NPA/NXX is assigned and terminating to a MCIm customer physically located outside of such rate center, and at a location toll to the BellSouth originating rate center, shall not be deemed Local Traffic, and no compensation from BellSouth to MCIm shall be due therefor. Further, MCIm agrees to identify such traffic to BellSouth and to compensate BellSouth for originating and transporting such traffic to MCIm at BellSouth's tariffed intrastate switched access rates. In addition, MCIm should not use NPA/NXXs to collect BellSouth originated local or intraLATA toll traffic and for delivery to a point outside the LATA from where the originating NPA/NXX rate center resides.

9.4.6 If MCIm does not identify such traffic to BellSouth, to the best of BellSouth's ability BellSouth will determine which whole MCIm NPA/NXXs on which to charge the applicable rates for originating intrastate network access service as reflected in BellSouth's Intrastate Access Service Tariff. BellSouth shall make appropriate billing adjustments if MCIm can provide sufficient information for BellSouth to determine whether said traffic is local or toll

Q. WHAT IS FOREIGN EXCHANGE SERVICE?

A. Foreign exchange ("FX") service involves providing service to a customer physically located outside the rate center for which his or her NPA/NXX is assigned. For example, if a WorldCom customer in Nashville is assigned an NPA/NXX from the Columbia rate center, that customer is receiving a foreign exchange service. Customers from Columbia may call the WorldCom customer's foreign exchange number and that call will be treated as a local call. Issue 46 concerns language proposed by BellSouth that would treat foreign exchange traffic in some respects as if it were intraLATA toll traffic. Specifically, when a BellSouth customer called a WorldCom foreign exchange customer, BellSouth would not be required to pay reciprocal compensation, but instead would be entitled to be paid access charges for originating and transporting the traffic to WorldCom.

Q. HOW SHOULD WORLDCOM FX TRAFFIC BE TREATED?

A. WorldCom FX traffic should be treated as local traffic. Whether a call is local or not depends on the NPA/NXX dialed, not the physical location of the customer. Jurisdiction of traffic is properly determined by comparing the rate centers associated with the originating and terminating NPA/NXXs for any given call, not the physical location of the end-users. Comparison of the rate centers associated with the calling and called NPA/NXXs is consistent with how the

jurisdiction of traffic and the applicability of toll charges are determined within the industry today.

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

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

Order Instituting Rulemaking on the Commission's Own Motion Into Competition for Local Exchange Service, Rulemaking 95-04-043 at 21, 23, 24 (California PUC, Sept. 2, 1999)("California Order"). The California Commission thus held that it is the applicable rate center as identified by

telephone number prefix, not the physical location of the calling or called party, that is used to rate calls. FX calls are local calls based upon the designated rate center of the assigned NXX prefix even if the customer is not physically located within the rate center. (The California Commission noted that a carrier providing FX service has an obligation to negotiate reasonable intercarrier compensation for routing FX calls. The commission did not determine what such reasonable compensation would entail. For the reasons discussed below, WorldCom submits that it is reasonable for a carrier to charge reciprocal compensation for terminating FX traffic.)

The treatment of FX calls as local calls for which reciprocal compensation is due is also illustrated by other currently existing arrangements. A service exists today, interstate foreign exchange service, in which an IXC can purchase an FX line from BellSouth in Nashville, and assign the line to a customer located anywhere, in Denver for example. Calls to that number from customers in the Nashville calling area will be treated as local; and BellSouth will charge reciprocal compensation for calls to that number from the Nashville calling area. It does not matter where the customer receiving the call is located; BellSouth will charge reciprocal compensation to CLECs whose customers dial the Nashville number.

Q. HOW DOES BELLSOUTH TREAT ITS OWN FX TRAFFIC?

A. BellSouth offers FX service in Tennessee without imposing the very restriction it seeks to place on WorldCom's FX service. BellSouth's General Subscriber Service Tariff for Tennessee at A9.1.1.A specifies that "Foreign exchange

service is exchange service furnished to a subscriber from an exchange other than the one from which the subscriber would normally be served." When BellSouth provides retail FX service, NPA/NXXs are assigned to end users located outside the local calling area of the rate center with which the NPA/NXX has been associated, and the jurisdiction (*i.e.*, local vs. toll) of traffic delivered from the foreign exchange to the end user is determined as if the end user were physically located in the foreign exchange.

Q. WHAT WOULD THE EFFECT OF BELLSOUTH'S PROPOSAL BE ON COMPETITION?

A. BellSouth's proposal to classify WorldCom's FX service as toll service and to impose access charges effectively will prohibit WorldCom from offering FX service in competition with BellSouth. This proposal is anti-competitive, limits choices available to consumers, and is inconsistent with the notion of parity. CLECs offer this service today in direct competition with the ILECs. BellSouth's position, if adopted, will raise WorldCom's cost of providing a competitive service to a level that would effectively eliminate WorldCom's ability to offer a competing FX service. This result is hardly in keeping with the Authority's prior decisions encouraging the development of a competitive environment that will allow consumers to have choices when shopping for FX and similar services.

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

access will force end users who currently access their ISP via FX service to seek another provider of Internet access (assuming such a choice of ISPs exists). The California Commission has recognized the anti-competitive effects of applying access charges to a CLEC's FX service:

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

California Order at 26. As the California Commission recognized, the retail offering of FX service and its associated rating (as a local call) based on the rate centers associated with the assigned NXXs must be applied to FX offerings from CLECs. Failure to do so distorts the way in which a CLEC can make a competitive FX offering available and, would in fact eliminate competition for this increasingly important service.

In addition to eliminating competition with BellSouth's FX service, BellSouth's proposal also would eliminate competition with BellSouth's Primary Rate ISDN Extended Reach Service (ERS). At Section A42.3.1.P. of the General Subscriber Service Tariff this service is described as follows:

> ERS is designed to "extend the reach" of the Inward Data Option customer from a centrally located metropolitan local calling area into the areas of the LATA which are "non-local" to the metropolitan area. The ERS customer purchases telephone numbers within each desired "non-local" calling area to allow

their clients to call them without incurring intraLATA Long Distance Message Telecommunications Services Charges.

When BellSouth offers this ERS service it engages in exactly the same practice (assigning NPA/NXXs to end users located outside the local calling area of the rate center associated with the NPA/NXX and classifying this traffic as local regardless of the actual end points) that it seeks to prohibit a CLEC from engaging in. BellSouth also has no problem determining jurisdiction of this traffic (local) by comparing the rate centers associated with the originating and terminating NPA/NXXs regardless of the physical location of the end user. Elimination of competition for the ERS service should be viewed as particularly troubling, as this is a service favored by Internet Service Providers ("ISP"). It allows ISPs to establish a point of presence in a single metropolitan area and then to have their customers reach them from foreign exchanges on a local call basis. BellSouth's proposal ultimately would make this service available only from the monopoly ILEC, which has its own ISP. It would put upward pressure on rates and provide no incentive (and perhaps even a disincentive) for the ILEC to offer a high level of service and innovations. Such changes not only would result in upward pressure on rates for Internet access service in Tennessee but might well inhibit the availability of Internet access in the more remote and rural areas of the state. BellSouth's proposal will change the treatment of many calls to the Internet, which are currently treated as local calls. Many customers reach the Internet via a local call by dialing their ISP's FX number, which has been assigned by a CLEC. BellSouth's proposal would, for the first time, assess access charges on these calls to the Internet. To allow BellSouth to burden a

CLEC's provision of this service with access charges while BellSouth provides ERS service will jeopardize the gains made by ISPs and by end users seeking competitive choices among ISPs.

Q. PLEASE SUMMARIZE YOUR TESTIMONY ON THIS ISSUE.

A. BellSouth's proposal to treat WorldCom's FX service as a toll service is intended to accomplish several goals for BellSouth: it allows BellSouth to avoid paying reciprocal compensation, it allows BellSouth to assess access charges on local calls, and it shields BellSouth's service from competition. The Authority should reject BellSouth's proposal because FX calls are rated as local industry-wide and because BellSouth treats its own FX service as a local service. The Authority should affirm that the proper method for determination of traffic jurisdiction is to compare the rate centers associated with the originating and terminating NPA/NXXs. The Authority also should permit CLECs to offer competitive FX service to their customers on non-discriminatory terms and require BellSouth to pay reciprocal compensation to CLECs for this local traffic. For all of these reasons, BellSouth's proposed language should be rejected.

ISSUE 47

Should reciprocal compensation payments be made for calls bound to ISPs? (Attachment 4, Section 9.3.2; Part B, Section 80)

Q. WHAT IS THE LANGUAGE IN DISPUTE CONCERNING THIS ISSUE?

A. Two sections are in dispute. Attachment 4 includes the following language, with WorldCom's proposed language in bold, and BellSouth's proposed language in bold and underlined:

9.3.2 Local Traffic **includes <u>does not include</u>** traffic directed to Internet Service Providers.

WorldCom proposes the following definition in Part B, Section 80:

> **Internet Service Providers are entities that provide their customers the ability to obtain on-line information through the Internet by combining computer processing, information storage, protocol conversion, and routing with transmission to enable users to access Internet content and services.**

BellSouth proposes the following definition in Part B, Section 80:

> **"INTERNET SERVICE PROVIDER" or "ISP" <u>provides services offered over common carrier telecommunications facilities used in interstate communications, which employ computer processing applications. ISPs combine computer processing, information storage, protocol conversion, and routing with transmission to enable users to access Internet content and services. Internet Service Providers are a subset of Information Service Providers; either can be referred to as ISPs; both are a subset of Enhanced Service Providers (ESPs.</u>**

Q. PLEASE DESCRIBE THE DISPUTE OVER PAYMENT OF RECIPROCAL COMPENSATION FOR ISP-BOUND TRAFFIC.

A. The issue is really quite simple. BellSouth urges the Authority not to require payment of reciprocal compensation for ISP-bound traffic because it maintains such calls are not local. WorldCom, like other CLECs who have arbitrated this issue in Tennessee, focuses on which party incurs costs. WorldCom reasons that since a BellSouth customer who uses WorldCom's network to complete a call causes costs for WorldCom, BellSouth must compensate WorldCom for such costs.

Q. HAS THE AUTHORITY SPOKEN TO THIS ISSUE?

A. Yes. In *In re Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996*, Interim Order of Arbitration Award, Docket No. 99-00430 at 34 (Aug. 11, 2000) ("ITC^DeltaCom Award"), the Authority ruled that "BellSouth shall compensate DeltaCom through reciprocal compensatoin for all calls that are properly routed over local trunks, including ISP-bound traffic." The same conclusion should be reached here.

Q. WOULD YOU COMMENT ON THE MANNER IN WHICH CLECs AND ILECs TRANSPORT AND DELIVER ISP-BOUND CALLS?

A. Yes. The best way to understand this is from the context of a single call, wherein the local customer uses her basic local service provided by BellSouth to dial-up an Internet service provider who is a local service customer of WorldCom. The steps in such a call are described below in terms of how the carriers' switches perform their various functions in establishing the requested connection.

The first step occurs when the BellSouth local service customer clicks on a "dial-up" icon on her computer to dial the ISP's access number. When the icon was established, the user name and password, as well as the ISP's access number, was stored in the computer so that the customer merely has to click the "connect" button on the icon for the computer to dial the number using the computer's modem.

Upon clicking on the computer icon, the computer sends information to BellSouth's local switch serving the customer advising the switch that the customer has gone "off-hook." The "off-hook" condition is telephone-speak for

how the switch reacts when the customer lifts the receiver off the switch-hook or hits the "talk" button on a cordless handset. In response to the "off hook" condition, the BellSouth local switch provides a dial tone, which signals that it is ready for the customer to dial the called party's telephone number -- in this instance, the ISP.

When dial tone is sensed on the line, the customer's computer acts precisely like a touch tone phone and sends the multi-frequency tones corresponding to the ISP's telephone number.

To properly route the call, the BellSouth local switch first analyzes the dialed telephone number -- or more accurately, the NPA-NXX of the dialed number -- to determine whether the call is local, intraLATA toll, or interLATA. This is done by analyzing the dialed number in conjunction with the local calling scope for the switch. If the switch determines that the dialed number is, for example, a WorldCom number within the local calling area of the BellSouth customer, the ILEC switch would send to WorldCom a SS7 message requesting an open local interconnection trunk for transmission and alerting WorldCom of the called party's number.

In response to the ILEC's SS7 message, WorldCom would respond with appropriate SS7 messages, advising of the available local interconnection trunk path between the carriers' local switches and that the called party's line is not busy. At the same time, WorldCom's local switch would analyze the dialed number (in the same way it would any incoming call) and signal the customer's

customer premises equipment -- by providing "ring current" or its equivalent -- that an incoming call is being attempted.

At the originating end, in response to the SS7 signaling information from WorldCom, the ILEC's local switch would route the call to the available local interconnection trunk path for completion by WorldCom.

When the called party (the WorldCom end user customer) goes "off hook," the WorldCom local switch senses that the call has been answered and completes the call, and provides to the ILEC an SS7 message ("address complete" or "answer") notifying that the call has been answered. That message instructs both carriers' networks to keep up the connection which has been established between the two end users on the two networks, until one or the other of the end users goes "on hook", signaling that the call is finished and the connection can be taken down.

Q. HOW LONG DOES IT TAKE FOR THE NETWORKS TO COMPLETE THE VARIOUS STEPS YOU HAVE DESCRIBED?

A. All of the steps occur almost instantaneously.

Q. WITH RESPECT TO COMPENSATION AS BETWEEN CARRIERS FOR THE TRANSPORT AND DELIVERY OF ISP-BOUND TRAFFIC, WHAT RULES CURRENTLY GOVERN?

A. Generally, when two (or more) interconnecting carriers collaborate to deliver a call, the carriers are compensated for carrying that traffic through either reciprocal compensation or access charges. When two LECs jointly provide interstate access (e.g., by delivering a call to an interexchange carrier), the

carriers will share access revenues received from the interstate service provider. Conversely, when two LECs collaborate to complete a local call, the originating carrier is compensated by its end user and the terminating carrier is entitled to reciprocal compensation pursuant to section 251(b)(5) of the Act. Section 251(b)(5) of the Act requires all LECs "to establish reciprocal compensation arrangements for the transport and termination of telecommunications." In the Local Competition Order, the FCC construed this provision to apply only to the transport and termination of "local" telecommunications traffic.

At the same time, however, as discussed above, ISP-bound traffic has been treated as local traffic for many years. Moreover, BellSouth has no means, other than mere estimations, of determining what ISP-bound traffic it delivers to WorldCom or to any other CLEC. Thus BellSouth has no means to distinguish or segregate ISP-bound traffic from other traffic that originates on the BellSouth network, is transported to a CLEC having a switch, and is delivered to the CLEC's ISP customer – all located within the same local calling area.

Q. HAS THE FCC ISSUED ANY DECISIONS REGARDING ISP-BOUND TRAFFIC?

A. Yes. The FCC issued a ruling on the ISP issue in *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Inter-Carrier Compensation for ISP-Bound Traffic,* CC Docket No. 96-98, Declaratory Ruling in and Notice of Proposed Rulemaking (rel. Feb. 26, 1999) ("Declaratory Ruling"). The FCC's decision was vacated by *Bell Atlantic Telephone Cos. v. FCC*, et al., No. 99-1094 (D.C. Cir. March 24, 2000) ("Bell Atlantic ISP Traffic

Decision"). (A copy of the Bell Atlantic ISP Traffic Decision is attached as Exhibit 2.) The Declaratory Ruling and the Bell Atlantic ISP Traffic Decision support WorldCom's position on the ISP issue.

Q. WHAT IS YOUR RECOMMENDATION ON THIS ISSUE?

A. The Authority should follow the ITC^DeltaCom Order and require that the new agreement affirmatively contain WorldCom's proposed language, which explicitly treats ISP-bound traffic as local traffic.

ISSUE 51

Under what circumstances Is BellSouth required to pay tandem charges when MCIW terminates BellSouth local traffic? (Attachment 4, Sections 9.4,10.4.2, 10.4.2.3.)

Q. WHAT LANGUAGE HAVE THE PARTIES PROPOSED CONCERNING THIS ISSUE?

A. WorldCom has proposed the following language:

> 10.4.2 Where MCIm's switch serves a geographic area comparable to the area served by BellSouth's tandem switch, MCIm shall charge BellSouth the same rates BellSouth would charge MCIm for transport and termination of Local Traffic from BellSouth's tandem switch to BellSouth's End Users.
>
> 10.4.2.1 Transport (where used) – compensation for the transmission and any necessary tandem switching of Local Traffic.

10.4.2.2 The rate for common transport is set forth in Table 1 of Attachment I under the heading "Local Interconnection (Call Transport and Termination)." For the purposes of this Section, both Parties shall bill each other the average mileage of all End Offices subtending the applicable BellSouth Tandem Office.

10.4.2.3 The rate for tandem switching is set forth in Table 1 of Attachment I under the heading "Local Interconnection (Call Transport and Termination)." The tandem switching rate includes any switching by subtending Tandem Offices. Where MCIm's Switch serves a geographic area comparable to the area served by BellSouth's Tandem Switch, MCIm shall charge BellSouth for transport in accordance with this Section.

BellSouth has proposed the following language (except for the bold language proposed by WorldCom):

9.4 The Parties shall provide for the mutual and reciprocal recovery of the costs for the elemental functions performed in transporting and terminating local traffic on each other's network. The Parties agree that the rates for transport and termination of calls on its respective networks are as set forth in Attachment 1 of this Agreement. **The rates for transport and termination of Local Traffic that BellSouth and MCIm charge each other are set forth in Attachment 1 of this Agreement.**

9.4.1 For the purposes of this Attachment, Common (Shared) Transport is defined as the transport of the originating Party's traffic by the terminating Party over the terminating Party's common (shared) facilities between the terminating Party's tandem switch and end office switch and/or between the terminating Party's tandem switches.

9.4.2 For the purposes of this Attachment, Tandem Switching is defined as the function that establishes a communications path between two switching offices through a third switching office (the Tandem switch).

9.4.3 For the purposes of this Attachment, End Office Switching is defined as the function that establishes a communications path between the trunk side and line side of the End Office switch.

9.4.4 If MCIm utilizes a switch outside the LATA and BellSouth chooses to purchase dedicated or common (shared) transport from MCIm for transport and termination of BellSouth originated traffic, BellSouth will pay MCIm no more than the airline miles between the V & H coordinates of the Point of Interconnection within the LATA where MCIm receives

the BellSouth-originated traffic and the V & H coordinates of a point on the LATA boundary in the direction of the MCIm switch or at a point otherwise agreed to by the Parties. For these situations, BellSouth will compensate MCIm at either dedicated or common (shared) transport rates specified in Attachment 1 of this Agreement and based upon the functions provided by MCIm as defined in this Attachment.

9.4.5 Neither Party shall represent Switched Access Services traffic as Local Traffic for purposes of payment of reciprocal compensation.

9.4.6 If MCIm does not identify such traffic to BellSouth, to the best of BellSouth's ability BellSouth will determine which whole MCIm NPA/NXXs on which to charge the applicable rates for originating intrastate network access service as reflected in BellSouth's Intrastate Access Service Tariff. BellSouth shall make appropriate billing adjustments if MCIm can provide sufficient information for BellSouth to determine whether said traffic is local or toll.

Q. WHAT ARE THE PARTIES' POSITIONS ON THIS ISSUE?

A. WorldCom's position is that BellSouth should be required to pay WorldCom transport and termination charges at the same rates BellSouth charges to transport and terminate traffic from its tandem switches whenever (i) WorldCom uses a switch that provides functionality equivalent to that of a tandem switch or (ii) a WorldCom switch serves a geographic area that is comparable to the area served by a BellSouth tandem switch. BellSouth's position is that WorldCom may not charge the tandem rate unless it uses a tandem switch in the same network configuration used by BellSouth.

Q. WHAT PRINCIPLES DID THE FCC ESTABLISH IN THE LOCAL COMPETITION ORDER FOR RECIPROCAL COMPENSATION TO BE PAID TO CLECS?

A. After establishing how reciprocal compensation rates would be determined for ILECs, the FCC turned to the question of what rates should apply to CLECs.

The FCC concluded that the ILECs' reciprocal compensation rates should be adopted as the "presumptive proxy" for the CLECs' rates – in other words, the rates were required to be the same. Local Competition Order, ¶ 1085. The only exception to this rule arises when a CLEC establishes that its transport and termination costs are *higher* than those of the ILEC. Local Competition Order, ¶ 1089; FCC Rule 51.711(b). The FCC provided a number of reasons for ordering symmetrical treatment, including the following:

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

3. Symmetrical rates might reduce ILECs' ability to use their bargaining power to negotiate high termination rates for themselves and low termination rates for CLECs. Local Competition Order, ¶ 1087.

Q. WHAT DID THE FCC CONCLUDE CONCERNING SYMMETRY OF TANDEM INTERCONNECTION RATES?

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

> We find that the "additional costs" incurred by a LEC when transporting and terminating a call that originated on a competing carrier's network are likely to vary depending on whether tandem switching is involved. We, therefore, conclude that states may establish transport and termination rates in the arbitration process that vary according to whether the traffic is routed through a tandem switch or directly to the end-office switch. In such event, states shall also consider whether new technologies (*e.g.*, fiber ring or wireless networks) perform functions similar to those performed by an incumbent LEC's tandem switch and thus, whether some or all calls terminating on the new entrant's network should be priced the same as the sum of transport and termination via the incumbent LEC's tandem switch. *Where the interconnecting carrier's switch serves a geographic area comparable to that served by the incumbent LEC's tandem switch, the appropriate proxy for the interconnecting carrier's additional costs is the LEC tandem interconnection rate.*

(Emphasis added.)

Q. PLEASE EXPLAIN WHAT THIS LANGUAGE MEANS IN PRACTICAL TERMS.

A. The FCC reached three conclusions. First, it is appropriate to establish an additional rate for ILECs when they use a tandem switch in the transport and termination of CLECs' local traffic. Second, states may consider whether some or all calls terminated by a CLEC may be priced at that higher rate if the CLEC uses alternative technologies or architectures to perform functions similar to

those performed by the ILEC's tandem switch. Third, the higher rate *must* be applied when the CLEC's switch serves a geographic area comparable to that served by the ILEC's tandem switch.

Q. MUST AN CLEC PROVIDE TANDEM SWITCHING, AS BELLSOUTH CONTENDS, TO OBTAIN THE HIGHER TANDEM RATE?

A. Absolutely not. When the CLEC's switch serves an area comparable to the area served by an ILEC tandem switch, the CLEC *automatically* is entitled to receive the tandem interconnection rate in addition to the end office interconnection rate. In other words, the FCC created a "safe harbor" for CLECs that meet the geographic comparability test. When that test is satisfied, no proof of functional comparability is required and the CLEC is entitled to the higher rate.

Q. HOW DOES THE FCC'S CODIFICATION OF THIS PRINCIPLE BEAR ON YOUR ANALYSIS?

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

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

(3) Where the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate.

(Emphasis added.) The FCC could not have been more clear. The geographic comparability rule was adopted without exception or qualification. WorldCom's proposed language therefore should be adopted.

ISSUE 52

Should BellSouth be required to pay access charges to WorldCom for non-presubscribed intraLATA toll calls handled by BellSouth? (Attachment 4, 9.5.3.)

Q. WHAT IS THE LANGUAGE IN QUESTION?

A. The following language has been proposed by the parties in Attachment 4, with WorldCom's language in bold and BellSouth's language in bold and underlined:

9.5.2 **When an intraLATA toll call originates from a 3rd party that transits the BellSouth network via a BellSouth tandem switch and terminates to an MCIm End User, BellSouth will forward the terminating EMI messages to MCIm for billing purposes. These messages will be formatted as EMI 1101XX records and contain the appropriate Carrier Identification Code of the originating party. BellSouth will populate the "From Number NPA" and "NXX" in the EMI record with NPA/NXX belonging to the 3rd party originating the call. MCIm will render its termination charges, if any, to the originating 3rd party pursuant to applicable contract language between MCIm and the 3rd party. MCIm will then forward to BellSouth an 1150XX meet point billing record in order for BellSouth to render BellSouth charges to the 3rd Party pursuant to applicable contract language between BellSouth and the 3rd party.**

9.5.3 **When an intraLATA toll call originates from MCIm that transits the BellSouth network via a BellSouth tandem switch and terminates to a 3rd Party End User, BellSouth will forward the terminating EMI messages to the 3rd Party for billing purposes. These messages will be formatted as EMI**

1101XX records and contain MCIm's Carrier Identification Code and NPA/NXX. The 3rd Party will render its termination charges, if any, to MCIm pursuant to applicable contract language between MCIm and the 3rd Party. BellSouth shall render BellSouth transit traffic charges to MCIm for functions performed pursuant to the rates in this Agreement.

Q. WHAT IS WORLDCOM'S POSITION ON THIS ISSUE?

A. WorldCom's position is that when it terminates an intraLATA call, and BellSouth is the intraLATA carrier, BellSouth must pay WorldCom terminating access.

Q. WHAT IS BELLSOUTH'S POSITION?

A. BellSouth contends that when a customer of an independent telephone company ("ICO") makes an intraLATA toll call to a WorldCom customer, or receives an intraLATA toll call from a WorldCom customer, and BellSouth serves as the intraLATA carrier, WorldCom should be compensated by the ICO.

Q. IS BELLSOUTH'S POSITION VALID?

A. No. BellSouth requires the MCI long distance company to pay originating access when a BellSouth customer uses MCI to make an intraLATA call to an ICO's customer, and terminating access when an ICO's customer uses MCI to make an intraLATA call to a BellSouth customer. BellSouth should pay access charges to WorldCom when BellSouth acts as an intraLATA toll carrier.

E. RIGHTS-OF-WAY, CONDUITS, POLE ATTACHMENTS

ISSUE 67

When WorldCom has a license to use BellSouth rights-of-way, and BellSouth wishes to convey the property to a third party, should BellSouth be required to convey the property subject to WorldCom's license? (Attachment 6, Section 3.6.)

Q. WHAT LANGUAGE HAS WORLDCOM PROPOSED CONCERNING CONVEYANCES OF BELLSOUTH PROPERTY SUBJECT TO WORLDCOM LICENSE RIGHTS?

A. The parties have agreed to the following language in Attachment 6, except for the bold language proposed by WorldCom:

> 3.6 No Effect on BellSouth's Right to Convey Property. Nothing contained in this Attachment or in any license issued hereunder shall in any way affect the right of BellSouth to convey to any other person or entity any interest in real or personal property, including any poles, conduit or ducts to or in which MCIm has attached or placed facilities pursuant to licenses issued under this Section **provided however that BellSouth shall give MCIm reasonable advance written notice of such intent to convey, and further provided that BellSouth shall only convey the property subject to any licenses granted hereunder.**

Q. WHAT ISSUE GIVES RISE TO THE PARTIES' DISAGREEMENT OVER THIS LANGUAGE?

A. The issue is whether, when WorldCom has a license to use BellSouth rights-of-way, and BellSouth wishes to convey the property to a third party, BellSouth should be required to convey the property subject to WorldCom's license.

Q. WHAT IS WORLDCOM'S POSITION ON THIS ISSUE?

A. WorldCom should not be required to forfeit its license rights, and possibly strand facilities, when BellSouth conveys the underlying property.

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. BellSouth contends it should be able to convey the underlying property without regard to WorldCom licenses.

Q. WHAT IS THE BASIS FOR WORLDCOM'S POSITION?

A. WorldCom should not be put in the position of investing in facilities and potentially having them be stranded because BellSouth decides to convey the underlying property. Further, BellSouth should not be able to sell property in a way that protects its own facilities but not those of WorldCom (such as by selling the property subject to its own rights, but not those of WorldCom). BellSouth's position is that it should be able to transfer property without regard for any licenses WorldCom has or any improvements it has made. This unreasonable position should be rejected and WorldCom's language should be incorporated into the parties' agreement.

ISSUE 68

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

Q. WHAT LANGUAGE HAVE THE PARTIES PROPOSED CONCERNING PAYMENTS FOR PRE-LICENSE SURVEYS AND MAKE-READY WORK?

A. The parties have proposed competing Attachment 6, Sections 4.7.3 and 5.6.1, with BellSouth's language requiring payment in advance for pre-license surveys and make-ready work, and WorldCom's language not requiring payment in advance.

Q. WHAT IS WORLDCOM'S POSITION ON THIS ISSUE?

A. A requirement for advanced payment for pre-license surveys and make-ready work would create delays and would not be commercially reasonable.

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. Advanced payment should be required.

Q. WHAT IS THE BASIS FOR WORLDCOM'S POSITION?

A. A pre-payment requirement would delay the work and would not be commercially reasonable. BellSouth should be required to begin work once it has sent WorldCom an invoice stating the amount that will be charged for the project in question. WorldCom is willing to pay the invoice within fourteen days, which would give WorldCom time to process payment, and would be commercially reasonable.

F. NUMBER PORTABILITY

ISSUE 75

For end users served by INP, should the end user or the end user's local carrier be responsible for paying the terminating carrier for collect calls, third party billed calls or other operator assisted calls? (Attachment 7, Section 2.6.)

Q. WHAT LANGUAGE HAS BELLSOUTH PROPOSED CONCERNING WHO SHOULD BE BILLED FOR COLLECT CALLS, THIRD PARTY BILLED CALLS OR OTHER OPERATOR ASSISTED CALLS, WHEN THE END USER IS SERVED BY INP?

A. BellSouth has proposed the following language in Attachment 7:

> 2.6 The calling Party shall be responsible for payment of the applicable charges for sent-paid calls to the INP number. For collect, third-Party, or other operator-assisted non-sent paid calls to the ported telephone number, BellSouth or MCIm shall be responsible for the payment of charges under the same terms and

conditions for which the end user would have been liable for those charges. Either company may request that the other block collect and third company non-sent paid calls to the INP assigned telephone number. If a company does not request blocking, the other company will provide itemized local usage data for the billing of non-sent paid calls on the monthly bill of usage charges provided at the individual end user account level. The detail will include itemization of all billable usage. Each company shall have the option of receiving this usage data on a daily basis via a data file transfer arrangement. This arrangement will utilize the existing industry uniform standard, known as EMI standards, for exchange of billing data. Files of usage data will be created daily for the optional service. Usage originated and recorded in the sending BellSouth RAO will be provided in unrated or rated format, depending on processing system. MCIm usage originated elsewhere and delivered via CMDS to the sending BellSouth RAO shall be provided in rated format.

Q. WHAT IS WORLDCOM'S POSITION ON THIS ISSUE?

A. The end user should be responsible for payment. The terminating carrier can obtain billing information from the end user's local carrier.

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. BellSouth contends the local carrier should be responsible for payment, claiming it has no way to bill the end user for such calls.

Q. WHAT IS THE BASIS FOR WORLDCOM'S POSITION?

A. BellSouth has proposed language that would require the party whose end user served via INP receives a collect call, third party billed or other operator assisted call be responsible for payment to the other party. For example, if an WorldCom end user receives a collect call from a BellSouth customer, BellSouth would propose that it bill WorldCom for the charges, thus imposing on WorldCom the responsibility for billing the end user and the risk of nonpayment. BellSouth's proposal is unreasonable. The practice in the industry is for the toll carrier to bill

the end user directly. The toll carrier can obtain the necessary billing information (for the applicable charge) from the end user's local carrier.

G. BUSINESS PROCESS REQUIREMENTS

ISSUE 94

Should BellSouth be permitted to disconnect service to WorldCom for nonpayment? (Attachment 8, Section 4.2.18.)

Q. WHAT LANGUAGE HAVE THE PARTIES PROPOSED CONCERNING DISCONNECTION FOR NONPAYMENT?

A. WorldCom has proposed the following language:

> 4.2.18 Nonpayment. Absent a good faith billing dispute, if payment of account is not received by the bill day in the month after the original bill day, the billing Party may pursue dispute resolution according to the provisions of Part A.

BellSouth has proposed the following language:

> 4.2.18.1 Absent a good faith billing dispute, if payment of account is not received by the bill day in the month after the original bill day, the billing Party may provide written notice to billed party, that additional applications for service will be refused and that any pending orders for service will not be completed if payment is not received by the fifteenth day following the date of the notice. In addition the billing Party may, at the same time, give thirty days notice to the person designated by the billed Party to receive notices of noncompliance, and discontinue the provision of existing services to the billed Party at any time thereafter without further notice.

Q. WHAT IS WORLDCOM'S POSITION ON THIS ISSUE?

A. The parties should not disconnect for nonpayment. The appropriate remedy should be determined in dispute resolution.

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. Disconnection should be an available remedy.

Q. WHAT IS THE BASIS FOR WORLDCOM'S POSITION?

A. Disconnection is a draconian remedy that would have a negative impact on consumers. This is not how carriers resolve disputes. If BellSouth determined that payment was being withheld in bad faith, it could cut off (or threaten to cut off) all of WorldCom's customers being served via resale or UNEs. BellSouth should not be able to hold WorldCom's customers hostage so it can maximize its bargaining leverage. Dispute resolution is the appropriate remedy when one of the parties claims that payment is being withheld in bad faith.

The consequences to Tennessee consumers and to local exchange competition are too great to permit BellSouth to have the contractual right to give thirty days notice that it will terminate service to its dependent competitor one month after a bill is rendered. Customers would have their basic local service cut off and would naturally blame WorldCom for terminating service. BellSouth should not be granted such leverage (the threat of turning off customers' dial tone) to exact settlement from WorldCom when disputes arise. Normal dispute resolution processes, as proposed by WorldCom, should be followed.

ISSUE 95

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

Q. WHAT LANGUAGE HAVE THE PARTIES PROPOSED CONCERNING THE BILLING FORMAT TO BE USED?

A. The parties have proposed different versions of Attachment 8, Section 5, which is set forth in Attachment C to the Petition.

Q. WHAT ISSUE GIVES RISE TO THE DIFFERENT LANGUAGE PROPOSED BY THE PARTIES?

A. The basic issue dividing the parties is whether BellSouth should be required to provide WorldCom with all Electronic Message Interexchange ("EMI") standard fields on the bills it provides.

Q. WHAT IS WORLDCOM'S POSITION ON THIS ISSUE?

A. BellSouth should be required to provide bills using the EMI standard fields.

Q. WHAT IS BELLSOUTH'S POSITION?

A. BellSouth proposes to provide billing records using its tariffed services known as access daily usage file ("ADUF") and optional daily usage file ("ODUF"), which apparently contain a subset of the fields contained in an EMI record.

Q. WHAT IS THE BASIS FOR WORLDCOM'S POSITION?

A. The EMI format is the industry standard used by all the other Bell companies. WorldCom should be entitled to receive complete billing information with all EMI fields. BellSouth should be contractually obligated to provide EMI billing records; otherwise, it will be free to move away from the industry standard and develop proprietary records, if it has not done so already.

ISSUE 96

Should BellSouth be required to give written notice when a central office conversion will take place before midnight or after 4 a.m.? (Attachment 8, Section 6.2.4.)

Q. WHAT LANGUAGE HAVE THE PARTIES PROPOSED CONCERNING NOTIFICATION OF CENTRAL OFFICE CONVERSIONS?

A. WorldCom has proposed the following language in Attachment 8, with agreed upon language in normal case, WorldCom language in bold and BellSouth language in italics:

> 6.2.4 For services provided through resale, BellSouth agrees to provide scheduled maintenance for residential and small business subscribers, consisting of cable throws, performed with test sets which prevent the subscribers' services from being interrupted during the activity. BellSouth shall monitor individual cutover work to insure that the service is not in use prior to the cut. Central office conversions shall be publicized through the media and will occur after midnight and before 4:00A.M., unless MCIm is provided with **written notification** *notification via web posting.*

Q. WHAT IS WORLDCOM'S POSITION ON THIS ISSUE?

A. Written notice should be required.

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. Notice via web posting should be required.

Q. WHAT IS THE BASIS FOR WORLDCOM'S POSITION?

A. The parties have agreed that central office conversions will occur after midnight and before 4 a.m., unless WorldCom is notified to the contrary. Central office conversions can involve taking down CLECs' switched service, and therefore it is critical that WorldCom receive written notice in the event such a conversion is expected to take place at another time. BellSouth's proposal that notification be made via web posting is insufficient for transmitting such important information.

H. ANCILLARY SERVICES

ISSUE 100

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

Q. WHAT LANGUAGE HAVE THE PARTIES PROPOSED CONCERNING REQUESTS FOR RATE QUOTES AND CHARGES?

A. WorldCom has proposed the following language in Attachment 9, which BellSouth has not accepted:

> 2.2.2.12 Upon a subscriber request for either a rate quote or time and charges, BellSouth shall, through a neutral response, inquire of the subscriber from which carrier the rate or time and charges is requested. The operator will connect the call to that carrier.

Q. WHAT IS WORLDCOM'S POSITION ON THIS ISSUE?

A. BellSouth operators should be required 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.

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. BellSouth's position is that its operators should not be required to inquire as to the customer's carrier of choice in this situation.

Q. WHAT IS THE BASIS FOR WORLDCOM'S POSITION?

A. One function performed by BellSouth operators is responding to customer inquiries concerning rates and time charges. For example, a customer may request the rate for a long distance call from Nashville to Knoxville at a certain time of day, or may ask how long he or she spent on a long distance call and how much it cost.

WorldCom's proposed language would require BellSouth operators to inquire as to the customer's carrier of choice when the caller requests a rate quote

or time and charges, and forward the caller to that carrier. BellSouth has refused to agree to this language. The language proposed by WorldCom is included in the current interconnection agreement and is consistent with sound public policy.

Q. WHY SHOULD BELLSOUTH OPERATORS ASK WORLDCOM CUSTOMERS FOR THEIR CARRIER OF CHOICE WHEN SUCH CUSTOMERS REQUEST A QUOTE OF TIME AND CHARGES?

A. WorldCom's concern is that that today, when the BellSouth operator does not know the customer's long distance carrier, BellSouth's practice is to quote BellSouth's rates. WorldCom's request is designed to address the potential for customer confusion inherent in BellSouth's current practice.

Q. IS WORLDCOM ASKING BELLSOUTH TO PROVIDE A SERVICE FOR FREE?

A. No it is not. WorldCom understands that it must pay BellSouth for the time its operators spend handling calls from WorldCom's customers, which of course would include any extra time required to inquire about the customer's long distance carrier and to transfer the call. BellSouth's principal concern appears to be that because it is not always possible to identify the customer's local carrier, it would be required to make the requested inquiry of all customers, not just WorldCom customers. But BellSouth's OLNS method, which BellSouth has stated it expects to make available by the first quarter of 2001, should solve this problem because BellSouth has stated that the OLNS method will enable BellSouth to determine the source of a call at the TOPS platform. Thus, the BellSouth operator will know whether or not the caller is a WorldCom customer

and can handle WorldCom's customers' calls differently than calls from the customers of other carriers.

Q. HAS BELLSOUTH RAISED ANY OTHER CONCERNS RELATING TO THIS ISSUE?

A. Yes. BellSouth has raised concerns about its Operator Transfer Service ("OTS") for transferring calls to long distance companies. BellSouth has complained that if the WorldCom customer calling the operator is not served by a long distance carrier that subscribes to the OTS service, BellSouth would not be able to charge the carrier for the transfer. The simple response to this argument is that a large part of an operator's job description involves connecting callers to the people they are trying to reach. If a customer calls a BellSouth operator and provides the appropriate information for a long distance call, the operator should connect that customer to its chosen long distance carrier so the call can be completed. It is difficult to see why the BellSouth operator would not provide essentially the same service when the WorldCom customer has requested a rate quote or time and charges. In either situation, BellSouth would be compensated for the time required for the operator to make the necessary connection. Not only would BellSouth receive full compensation, it would obtain a bonus when the long distance carrier involved subscribed to OTS, because BellSouth would receive payment from that carrier as well.

I. GENERAL TERMS AND CONDITIONS

ISSUE 107

Should the parties be liable in damages, without a liability cap, to one another for their failure to honor in one or more material respects any

one or more of the material provisions of the Agreements? (Part A, Sections 11.1.1 and 11.1.2.)

Q. WHAT LANGUAGE HAVE THE PARTIES PROPOSED CONCERNING A LIABILITY CAP?

A. WorldCom has proposed the following language in Part A (disputed language is shown in bold):

11.1. Liability Cap.

11.1.1 With respect to any claim or suit, whether based in contract, tort or any other theory of legal liability, by MCIm, any MCIm customer or by any other person or entity, for damages associated with any of the services provided by BellSouth pursuant to or in connection with this Agreement, including but not limited to the installation, provision, preemption, termination, maintenance, repair or restoration of service, and subject to the provisions of the remainder of this Section, BellSouth's liability shall be limited to an amount equal to the proportionate charge for the service provided pursuant to this Agreement for the period during which the service was affected. Notwithstanding the foregoing, claims for damages by MCIm, any MCIm customer or any other person or entity resulting from the gross negligence or willful misconduct of BellSouth **and claims for damages by MCIm resulting from the failure of BellSouth to honor in one or more material respects any one or more of the material provisions of this Agreement** shall not be subject to such limitation of liability.

11.1.2 With respect to any claim or suit, whether based in contract, tort or any other theory of legal liability, by BellSouth, any BellSouth customer or by any other person or entity, for damages associated with any of the services provided by MCIm pursuant to or in connection with this Agreement, including but not limited to the installation, provision, preemption, termination, maintenance, repair or restoration of service, and subject to the provisions of the remainder of this Section, MCIm's liability shall be limited to an amount equal to the proportionate charge for the service provided pursuant to this Agreement for the period during which the service was affected. Notwithstanding the foregoing, claims for damages by BellSouth, any BellSouth customer or any other person or entity resulting from the gross negligence or willful misconduct of MCIm **and claims for damages by BellSouth resulting from the failure of MCIm to honor in one or more material respects any one or more of the material provisions of this Agreement** shall not be subject to such limitation of liability.

Q. WHAT IS WORLDCOM'S POSITION ON THIS ISSUE?

A. There should be no limitation of liability for material breaches of the Agreement.

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. BellSouth contends there should be such a limitation.

Q. WHAT IS THE BASIS FOR WORLDCOM'S POSITION?

A. The parties should be given the proper incentives to comply with the Agreement. Without an exception to the liability cap for material breaches, BellSouth would have an incentive to breach the contract when the benefit to BellSouth exceeded its possible liability. The language WorldCom has proposed is reciprocal, is commercially reasonable, and should be adopted.

ISSUE 108

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

Q. WHAT LANGUAGE HAS WORLDCOM PROPOSED CONCERNING THE AVAILABILITY OF SPECIFIC PERFORMANCE?

A. WorldCom has proposed the following language in Part A:

> 14.1 The obligations of BellSouth and the Services offered under this Agreement are unique. Accordingly, in addition to any other available rights or remedies, MCIm may seek specific performance as a remedy.

Q. WHAT IS WORLDCOM'S POSITION ON THIS ISSUE?

A. Services under the Agreement are unique, and specific performance is an appropriate remedy for BellSouth's failure to provide the services as required in the Agreement.

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. BellSouth contends that whether specific performance is appropriate must be decided on a case by case basis. BellSouth also asserts that this issue is not appropriate for arbitration.

Q. WHAT IS THE BASIS FOR WORLDCOM'S POSITION?

A. The nature of the services provided by BellSouth under the Agreement are such that specific performance will be the most appropriate remedy. BellSouth is the monopoly seller of interconnection, resale services and UNEs, and is often a reluctant seller at that. WorldCom must have the ability to require BellSouth to provide elements and services, through enforcement actions brought to this Authority if necessary. The Authority will be hamstrung in discharging its responsibility to enforce interconnection agreements if it cannot order BellSouth to comply with their terms. The right to specific performance is included in the current Interconnection Agreement. WorldCom should continue to have the right to seek that remedy.

ISSUE 109

Should BellSouth be required to permit WorldCom to substitute more favorable terms and conditions obtained by a third party through negotiation or otherwise, effective as of the date of WorldCom's request. Should BellSouth be required to post on its web site all BellSouth's interconnection agreements with third parties within fifteen days of the filing of such agreements with the Authority? (Part A, Section 18.)

Q. WHAT LANGUAGE HAVE THE PARTIES PROPOSED CONCERNING BELLSOUTH'S PROVISION OF NONDISCRIMINATORY TERMS AND CONDITIONS?

A. WorldCom has proposed the following language in Part A:

Section 18. Non-Discriminatory Treatment

If as a result of any proceeding or filing before any Court, State Commission, or the Federal Communications Commission, voluntary agreement or arbitration proceeding pursuant to the Act or pursuant to any applicable state law, BellSouth becomes obligated to provide Services and Elements, whether or not presently covered by this Agreement, to a third party at rates or on terms and conditions more favorable to such third party than the applicable provisions of this Agreement, MCIm shall have the option to substitute such more favorable rates, terms, and conditions for the relevant provisions of this Agreement which shall apply to the same States as such other Party, and such substituted rates, terms or conditions shall be deemed to have been effective under this Agreement as of the date such substituted rates, terms, or conditions are requested by MCIm. BellSouth shall post on its web site any BellSouth agreement between BellSouth and any third party within fifteen (15) days of the filing of such agreement with any state Commission.

Q. WHAT ISSUES GIVES RISE TO THE PARTIES' DISAGREEMENT OVER THIS LANGUAGE?

A. There are two related issues. The first is whether, when WorldCom substitutes more favorable terms and conditions obtained by a third party through negotiation or otherwise, those terms should be effective as of the date of WorldCom's request. The second is whether BellSouth should be required to post on its web site its interconnection agreements within fifteen days of the day they are filed with the Authority.

Q. WHAT IS WORLDCOM'S POSITION ON THIS ISSUE?

A. BellSouth should provide nondiscriminatory treatment, and provide WorldCom with such agreements.

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. BellSouth does not agree that substituted language should be effective as of the date it is requested, and is not willing to post its agreements on its web site, or otherwise provide them to WorldCom.

Q. WHAT IS THE BASIS FOR WORLDCOM'S POSITION?

A. Under Section 252(i) of the Act, WorldCom is entitled to obtain a rate, term or condition that a third party obtains from BellSouth. This right prevents BellSouth from bestowing special rates, terms and conditions on certain carriers that gives them a competitive advantage. When WorldCom elects to adopt a rate, term or condition from another party's interconnection agreement, the effective date should be when WorldCom elects to adopt the terms and conditions.

As a practical matter, if WorldCom is to take advantage of this right, it must have ready access to the interconnection agreements of third parties. BellSouth therefore should be required to provide WorldCom any interconnection agreement between BellSouth and a third party within fifteen days of the filing of the agreement, as WorldCom's current interconnection agreement requires. If BellSouth, contrary to the Act, does not file the agreement, then it should provide WorldCom with a copy within fifteen days of execution. To make this process as efficient as possible, WorldCom is willing to allow BellSouth to discharge this obligation by posting the agreements on its web site.

ISSUE 110

Should BellSouth be required to take all actions necessary to ensure that WorldCom confidential information does not fall into the hands of BellSouth's retail operations, and should BellSouth bear the burden of proving that such disclosure falls within enumerated exceptions? (Part A, Section 20.1.1.1.)

Q. WHAT LANGUAGE HAVE THE PARTIES PROPOSED CONCERNING BELLSOUTH'S TREATMENT OF CONFIDENTIAL INFORMATION?

A. The parties have proposed the following language in Part A (WorldCom's proposed language that BellSouth disputes is in bold; BellSouth's proposed language that WorldCom disputes is in bold and underlined):

> 20.1.1.1 Notwithstanding the provisions of Section 20.1.1, under no circumstances will BellSouth disclose MCIm's Confidential Information to, or permit access to MCIm's Confidential Information by, the retail operations or any employee thereof, or the retail customer representatives of, BellSouth or any BellSouth Affiliate, or any independent contractors to any of the foregoing, and BellSouth and any BellSouth Affiliate shall take **all actions necessary <u>reasonable measures</u>** to ensure that any such retail operations and any employees thereof, their respective retail customer representatives, and any independent contractors of any of the foregoing, cannot access MCIm's Confidential Information. **In the event that the retail operations, any employees thereof, or retail customer representatives of BellSouth or any BellSouth Affiliate, or any independent contractors to any of the foregoing, possess or have knowledge of any MCIm Confidential Information, that fact will establish a rebuttable presumption that BellSouth breached its obligations under this Section 20, and BellSouth will bear the full burden of showing that BellSouth as to such Confidential Information is subject to one or more of the exceptions set forth in Section 20.1.2.**

Q. WHAT IS WORLDCOM'S POSITION ON THIS ISSUE?

A. BellSouth should take all measures necessary to protect WorldCom's confidential information from BellSouth's retail operations, and should bear the burden of proving that disclosure falls within enumerated exceptions.

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. BellSouth proposes that it only should be required to take all reasonable measures to protect confidential information from BellSouth's retail operations, and should not bear the burden of proving that disclosure falls within enumerated exceptions.

Q. WHAT IS THE BASIS FOR WORLDCOM'S POSITION?

A. By virtue of BellSouth's position as WorldCom's sole supplier of many services and elements, BellSouth comes into possession of WorldCom confidential information. It is critical that this information not fall into the hands of BellSouth's retail operation, which could use the information to its competitive advantage. BellSouth is only willing to "take all reasonable measures" to safeguard WorldCom's confidential information from its retail operations, and is not willing to assume the burden of establishing that disclosure of such information falls into one of the enumerated exceptions (such as the exception for when confidential information becomes public through no breach of contract by BellSouth).

BellSouth's proposal does not go far enough to protect WorldCom's confidential information. BellSouth should be required to take all actions necessary to ensure that its retail operations do not obtain such information. If such disclosure does occur, a rebuttable presumption should arise that BellSouth has breached its obligations to preserve confidentiality, and BellSouth should bear the burden of proving that the disclosure was permissible under one of the exceptions enumerated in Part A, section 19.1.2.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

7.1 Introduction – Line Sharing:

7.1.1 BellSouth shall support MCIm's ability to provide combinations of voice services, data services, and voice and data services.

7.2 Definitions:

7.2.1 Use of the High Frequency Spectrum (HFS) portion of the Loop by MCIm or a third party Carrier authorized by MCIm to provide Advanced Services, on Loops employed by MCIm in a UNE-P configuration (a combination of all Network Elements), or a Loop Transport combination, or Loop alone, to provide Customers Telecommunications Service. In this configuration, BellSouth performs operational activities necessary to facilitate extracting the High Frequency Spectrum ("HFS") so that MCIm (or its authorized Advanced Services supplier) can utilize the HFS portion of the Loop.

7.3 General Requirements:

7.3.1 MCIm may provide voice service or other telecommunications Services over the same Loop that BellSouth or any data affiliate of BellSouth, or any data CLEC, uses to provide data services to that Customer, and BellSouth shall not interrupt or terminate services provided in the HFS. BellSouth agrees to continue to provide all existing data services in the HFS, to any Customer that chooses MCIm as its Carrier for voice service or other Telecommunications Services where the Customer desires continuation of MCIm's services.

7.3.2 Whenever MCIm provides service utilizing a Loop, either as part of a UNE-P or otherwise, MCIm may, at its option, control the entire Loop spectrum in order to provide both voice and HFS services, whether by itself of sharing with an authorized Advanced Services provider.

7.3.3 Where the BellSouth is line sharing, convert the voice portion of the Loop to MCIm UNE-P while leaving the service in the HFS portion of the Loop intact. As part of the conversion order, billing of the HFS portion of the Loop to the Advanced Services provider must be terminated if MCIm so requests.

7.3.4 Where BellSouth is line sharing, convert the voice portion of the Loop to MCIm UNE-P and, as part of the same transaction, connect the HFS portion of the Loop to MCIm's designated point of interconnection.

7.3.5 Add voice capability, where none currently exists, to a Loop where only the HFS is used for service delivery. BellSouth shall provide the capability to utilize the telephone number of any voice line currently

provided by BellSouth to the Customer at the same location, provided the Customer disconnects the associated BellSouth line with that telephone number, and MCIm provides the service, via UNE-P from the same Central Office. As part of the conversion order, MCIm shall have the ability to redirect billing of the Loop from the Advanced Services Provider to MCIm.

7.4 Maintenance Requirements for Loops with and without Advanced Services will be reported as specified in Attachment 10 of this contract.

7.5 Advances Services Deployment: BellSouth splitters must be available to MCIm, or its authorized Advanced Services supplier, on a line by line basis. While BellSouth may make splitters available to MCIm on a shelf by shelf basis, this option will not preclude MCIm from obtaining splitters, as needed, on a line by line basis.

7.6 Line Sharing –General: BellSouth shall provide MCIm access to the high frequency portion of the local loop as an unbundled network element ("High Frequency Spectrum Network Element" or "HUNE") at the rates set forth in Section 4 herein. BellSouth shall provide MCIm with the HUNE irrespective of whether BellSouth chooses to offer xDSL services on the loop.

7.6.1 The HUNE is defined as the frequency range above the voiceband on a copper loop facility carrying analog circuit-switched voiceband transmissions. Access to the HUNE is intended to allow MCIm's the ability to provide Digital Subscriber Line ("xDSL") data services. The HUNE shall be available for any version of xDSL presumed acceptable for deployment pursuant to 47 C.F.R. Section 51.230, including, but not limited to, ADSL, RADSL, and any other xDSL technology that is presumed to be acceptable for deployment pursuant to FCC rules. BellSouth will continue to have access to the low frequency portion of the loop spectrum (from 300 Hertz to at least 3000 Hertz, and potentially up to 3400 Hertz, depending on equipment and facilities) for the purposes of providing voice service, unless MCIM is providing voice service over the loop. MCIm may directly deploy, or deploy through a third party, any Advanced Services equipment that operates within the Spectrum Classes defined in the T1E1.4 Spectrum Management Standard or conforms to other generally recognized and applicable industry standards and which operates within the high frequency portion of the loop.

7.6.2 The following loop requirements are necessary for MCIm to be able to access the HUNE: an unconditioned, 2-wire copper loop. An unconditioned loop is a copper loop with no load coils, low-

pass filters, range extenders, DAMLs, or similar devices and minimal bridged taps consistent with ANSI T1.413 and T1.601. The process of removing such devices is called "conditioning." BellSouth shall charge and MCIm shall pay as interim rates, the same rates that BellSouth charges for conditioning stand-alone loops (e.g.,unbundled copper loops, ADSL loops, and HDSL loops) until permanent pricing for loop conditioning is established either by mutual agreement or by a state public utility commission. The interim costs for conditioning are subject to true up as provided in paragraph 4.0. BellSouth will condition loops to enable MCIm to provide xDSL-based services on the same loops used to provide analog voice service, regardless of loop length. BellSouth is not required to condition a loop for shared-line xDSL if conditioning of that loop significantly degrades BellSouth's voice service. BellSouth shall charge, and MCIm shall pay, for such conditioning the same rates BellSouth charges for conditioning stand-alone loops (e.g., unbundled copper loops, ADSL loops, and HDSL loops.) If MCIm requests that BellSouth condition a loop longer than 18,000 ft. and such conditioning significantly degrades the voice services on the loop, MCIm shall pay for the loop to be restored to its original state.

7.6.3 MCIm's meet point is the point of termination for MCIm's or the toll main distributing frame in the central office ("Meet Point"). BellSouth will use jumpers to connect the MCIm's connecting block to the splitter. The splitter will route the HUNE on the circuit to the MCIm's xDSL equipment in the MCIm's collocation space.

7.6.4 MCIm shall have access to the Splitter for test purposes, irrespective of where the Splitter is placed in the BellSouth premises.

7.7 PROVISIONING OF HUNE AND SPLITTER SPACE

7.7.1 BellSouth will provide MCIm with access to the HUNE as follows:

7.7.1.1 BellSouth is unable to obtain a sufficient number of splitters for placement in all central offices requested by competitive local exchange carriers ("CLECs") by June 6, 2000. Therefore, BellSouth, MCIm and other CLECs have developed a process for allocating the initial orders of splitters. BellSouth will install all splitters ordered on or before April 26, 2000, in accordance with the schedule set forth in Attachment 1 of this Agreement. Once all splitters ordered by all CLECs on or before April 26, 2000, have been installed, BellSouth will install splitters within forty-two (42) calendar days of MCIm's submission of such

order to the BellSouth Complex Resale Support Group; provided, however, that in the event BellSouth did not have reasonable notice that a particular central office was to have a splitter installed therein, the forty-two (42) day interval shall not apply. Collocation itself or an application for collocation will serve as reasonable notice. BellSouth and MCIm will reevaluate this forty-two (42) day interval on or before August 1, 2000.

7.7.1.2 After June 6, 2000, once a splitter is installed on behalf of MCIm in a central office, MCIm shall be entitled to order the HUNE on lines served out of that central office.

7.7.1.3 BellSouth will select, purchase, install, and maintain a central office POTS splitter and provide MCIm access to data ports on the splitter. In the event that BellSouth elects to use a brand of splitter other than Siecor, the Parties shall renegotiate the recurring and non-recurring rates associated with the splitter. In the event the Parties cannot agree upon such rates, the then current rates (final or interim) for the Siecor splitter shall be the interim rates for the new splitter. BellSouth will provide MCIm with a carrier notification letter at least 30 days before of such change and shall work collaboratively with MCIm to select a mutually agreeable brand of splitter for use by BellSouth. MCIm shall thereafter purchase ports on the splitter as set forth more fully below.

7.7.1.4 BellSouth will install the splitter in (i) a common area close to the MCIm collocation area, if possible; or (ii) in a BellSouth relay rack as close to the MCIm DS0 termination point as possible. For purposes of this section, a common area is defined as an area in the central office in which both Parties have access to a common test access point. BellSouth will cross-connect the splitter data ports to a specified MCIm DS0 at such time that a MCIm end user's service is established.

7.7.1.5 In the event the end-user's BellSouth provided voice service is terminated for reasons such as non-payment, , and MCIm desires to continue providing xDSL service on such loop, MCIm shall be required to purchase the full stand-alone loop unbundled network element. In the event BellSouth disconnects the end-user's voice service pursuant to its tariffs or applicable law, and MCIm desires to continue providing xDSL service on such loop, MCIm shall be required to purchase the full stand-alone loop unbundled network element.

7.7.1.6 MCIm and BellSouth shall continue to work together collaboratively to develop systems and processes for provisioning

the HUNE in various real life scenarios. BellSouth and MCIm agree that MCIm is entitled to purchase the HUNE on a loop that is provisioned over fiber fed digital loop carrier. BellSouth will provide MCIm with access to feeder subloops at UNE prices. BellSouth and MCIm will work together to establish methods and procedures for providing MCIm access to the HUNE over fiber fed digital loop carriers by August 1, 2000.

7.7.1.7 Only one competitive local exchange carrier shall be permitted access to the HUNE of any particular loop.

7.7.1.8 To order HUNE on a particular loop, MCIm must have a DSLAM collocated in the central office that serves the end-user of such loop. BellSouth will work collaboratively with MCIm to create a concurrent process that allows MCIm to order splitters in central offices where MCIm is in the process of obtaining collocation space and enables BellSouth to install such splitters before the end of MCIm's collocation provisioning interval. While that process is being developed, MCIm may order splitters in a central office once it has installed its Digital Subscriber Line Access Multiplexer ("DSLAM") in that central office. BellSouth will install these splitters within the interval provided in paragraph 2.1.

7.7.1.9 BellSouth will devise a splitter order form that allows MCIm to order splitter ports in increments of 1, 24 or 96 ports.

7.7.1.10 BellSouth will provide MCIm the Local Service Request ("LSR") format to be used when ordering the HUNE.

7.7.1.11 BellSouth will initially provide access to the HUNE within the following intervals: Beginning on June 6, 2000, BellSouth will return a Firm Order Confirmation ("FOC") in no more than two (2) business days. BellSouth will provide MCIm with access to the HUNE as follows:

7.7.1.11.1 For 1-5 lines at the same address within three (3) business days from the receipt of MCIm's LSR; 6-10 lines at same address within 5 business days; and more than 10 lines at the same address is to be negotiated. BellSouth and MCIm will re-evaluate these intervals on or before August 1, 2000.

7.7.1.12 MCIm will initially use BellSouth's existing pre-qualification functionality and order processes to pre-qualify line

and order the HUNE. MCIm and BellSouth will continue to work together to modify these functionalities and processes to better support provisioning the HUNE. BellSouth will use its best efforts to make available to MCIm, by the fourth quarter of 2000, an electronic pre-ordering, ordering, provisioning, repair and maintenance and billing functionalities for the HUNE.

7.8 MAINTENANCE AND REPAIR - MCIm shall have access, for test, repair, and maintenance purposes, to any loop as to which it has access to the HUNE. MCIm may access the loop at the point where the combined voice and data signal exits the central office splitter.

7.8.1 BellSouth will be responsible for repairing voice services and the physical line between the network interface device at the customer premise and the Meet Point of demarcation in the central office. MCIm will be responsible for repairing data services. Each Party will be responsible for maintaining its own equipment.

7.8.2 If the problem encountered appears to impact primarily the xDSL service, the end user should call MCIm. If the problem impacts primarily the voice service, the end user should call BellSouth. If both services are impaired, the recipient of the call should coordinate with the other service provider(s).

7.8.3 BellSouth and MCIm will work together to diagnose and resolve any troubles reported by the end-user and to develop a process for repair of lines as to which MCIm has access to the HUNE. The Parties will continue to work together to address customer initiated repair requests and other customer impacting maintenance issues to better support unbundling of HUNE.

7.8.3.1 The Parties will be responsible for testing and isolating troubles on its respective portion of the loop. Once a Party ("Reporting Party") has isolated a trouble to the other Party's ("Repairing Party") portion of the loop, the Reporting Party will notify the Repairing Party that the trouble is on the Repairing Party's portion of the loop. The Repairing Party will take the actions necessary to repair the loop if it determines a trouble exists in its portion of the loop.

7.8.3.2 If a trouble is reported on either Party's portion of the loop and no trouble actually exists, the Repairing Party may charge the Reporting Party for any dispatching and testing (both inside and outside the central office) required by the Repairing Party in order to confirm the loop's working status.

7.8.4 In the event MCIm's deployment of xDSL on the HUNE significantly degrades the performance of other advanced services or of BellSouth's voice service on the same loop, BellSouth shall notify MCIm and allow twenty-four (24) hours to cure the trouble. If MCIm fails to resolve the trouble, BellSouth may discontinue MCIm's access to the HUNE on such loop.

BELL ATLANTIC TELEPHONE COMPANIES,
Petitioner,
v.
FEDERAL COMMUNICATIONS COMMISSION
and United States of America, Respondents.
Telecommunications Resellers Association, et al.,
Intervenors.

Nos. 99-1094, 99-1095, 99-1097, 99-1106, 99-1126, 99-1134, 99-1136 and 99-1145.

United States Court of Appeals,
District of Columbia Circuit.

Argued Nov. 22, 1999.

Decided March 24, 2000.

Incumbent local exchange carriers (LECs) and firms which provide local exchange telecommunications services to internet service providers (ISPs) petitioned for review of rulings of the Federal Communications Commission (FCC) determining that calls to ISPs within the caller's local calling area are not "local" so a to be subject to reciprocal compensation requirement applicable to "local telecommunications traffic," and determining that, in the absence of federal regulation, state commissions have the authority to impose reciprocal compensation. The Court of Appeals, Stephen F. Williams, Circuit Judge, held that the FCC failed to adequately explain why LECs that terminate calls to ISPs are not properly seen as "terminat[ing] ... local telecommunications traffic," and why such traffic is "exchange access" rather than "telephone exchange service," thus requiring remand.

Vacated and remanded

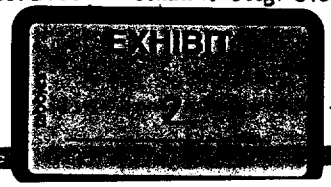
[1] TELECOMMUNICATIONS ⚿336
372k336
Although internet service providers (ISPs) use telecommunications to provide information service, they are not themselves "telecommunications providers," and the Federal Communications Commission (FCC), in ruling that calls to ISPs within the caller's local calling area are not "local" so a to be subject to reciprocal compensation requirement, has not satisfactorily explained why local exchange carriers (LECs) that terminate calls to ISPs are not properly seen as "terminat[ing] ... local telecommunications traffic," nor has it adequately explained the appropriateness of its decision to treat end-to-end analysis, applicable to jurisdictional determinations, as controlling, thus requiring remand. Telecommunications Act of 1996, 47 U.S.C.A. § 251(b)(5); 47 C.F.R. §§ 51.701(a), 64.702(a).
See publication Words and Phrases for other judicial constructions and definitions.

[2] TELECOMMUNICATIONS ⚿336
372k336
The Federal Communications Commission (FCC), in ruling that calls to internet service providers (ISPs) within the caller's local calling area are not "local" so as to be subject to reciprocal compensation requirement, has not satisfactorily explained why such traffic is "exchange access" rather than "telephone exchange service" under the governing statute, thus requiring remand to the FCC. Communications Act of 1934, § 3(16, 47), 47 U.S.C.A. § 153(16, 47); Telecommunications Act of 1996, 47 U.S.C.A. § 251(b)(5); 47 C.F.R. § 51.701(a).

[3] ADMINISTRATIVE LAW AND PROCEDURE ⚿762
15Ak762
Though Court of Appeals reviews agency's interpretation only for reasonableness where Congress has not resolved the issue, where a decision is valid only as a determination of policy or judgment which the agency alone is authorized to make and which it has not made, a judicial judgment cannot be made to do service.
On Petitions for Review of a Declaratory Ruling of the Federal Communications Commission.

Mark L. Evans and Darryl M. Bradford argued the causes for petitioners. With them on the briefs were Thomas F. O'Neil, III, Adam H. Charnes, Mark B. Ehrlich, Donald B. Verrilli, Jr., Jodie L. Kelley, John J. Hamill, Emily M. Williams, Theodore Case Whitehouse, Thomas Jones, Albert H. Kramer, Andrew D. Lipman, Richard M. Rindler, Robert M. McDowell, Robert D. Vandiver, Cynthia Brown Miller, Charles C. Hunter, Catherine M. Hannan, Michael D. Hays, Laura H. Phillips, J. G. Harrington, William P. Barr, M. Edward Whelan, III, Michael K. Kellogg, Michael E. Glover, Robert B. McKenna, William T. Lake, John H. Harwood, II, Jonathan J. Frankel, Robert Sutherland, William B. Barfield, Theodore A. Livingston and John E. Muench. Maureen F. Del Duca, Lynn R. Charytan, Gail L. Polivy, John F. Raposa and Lawrence W. Katz entered appearances.

Christopher J. Wright, General Counsel, Federal



Communications Commission, argued the cause for respondents. With him on the brief were Daniel M. Armstrong, Associate General Counsel, and John E. Ingle, Laurence N. Bourne and Lisa S. Gelb, Counsel. Catherine G. O'Sullivan and Nancy C. Garrison, Attorneys, U.S. Department of Justice, entered appearances.

David L. Lawson argued the cause for intervenors in opposition to the LEC petitioners. With him on the brief were Mark C. Rosenblum, David W. Carpenter, James P. Young, Emily M. Wiliams, Andrew D. Lipman, Richard M. Rindler, Robert D. Vandiver, Cynthia Brown Miller, Theodore Case Whitehouse, Thomas Jones, John D. Seiver, Charles C. Hunter, Catherine M. Hannan, Carol Ann Bischoff and Robert M. McDowell.

William P. Barr, M. Edward Whelan, Michael E. Glover, Mark L. Evans, Michael K. Kellogg, Mark D. Roellig, Dan Poole, Robert B. McKenna, William T. Lake, John H. Harwood, II, Jonathan J. Frankel, Robert Sutherland, William B. Barfield, Theodore A. Livingston and John E. Muench were on the brief for the Local Exchange Carrier intervenors.

Robert J. Aamoth, Ellen S. Levine, Charles D. Gray, James B. Ramsay, Jonathan J. Nadler, David A. Gross, Curtis T. White, Edward Hayes, Jr., and David M. Janas entered appearances for intervenors

Before: WILLIAMS, SENTELLE and RANDOLPH, Circuit Judges.

Opinion for the Court filed by Circuit Judge STEPHEN F. WILLIAMS.

STEPHEN F. WILLIAMS, Circuit Judge:

*1 The Telecommunications Act of 1996, Pub.L. No. 104-104, 110 Stat. 56, 47 U.S.C. §§ 151-714, requires local exchange carriers ("LECs") to "establish reciprocal compensation arrangements for the transport and termination of telecommunications." Id. § 251(b)(5). When LECs collaborate to complete a call, this provision ensures compensation both for the originating LEC, which receives payment from the end-user, and for the recipient's LEC. By regulation the Commission has limited the scope of the reciprocal compensation requirement to "local telecommunications traffic." 47 CFR § 51.701(a). In the ruling under review, it considered whether calls to internet service providers ("ISPs") within the caller's local calling area are themselves "local." In doing so it applied its so-called "end-to-end" analysis, noting that the communication characteristically will ultimately (if indirectly) extend beyond the ISP to websites out-of-state and around the world. Accordingly it found the calls non-local. See In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic, 14 FCC Rcd 3689, 3690 (¶ 1) (1999) ("FCC Ruling").

Having thus taken the calls to ISPs out of § 251(b)(5)'s provision for "reciprocal compensation" (as it interpreted it), the Commission could nonetheless itself have set rates for such calls, but it elected not to. In a Notice of Proposed Rulemaking, CC Docket 99-68, the Commission tentatively concluded that "a negotiation process, driven by market forces, is more likely to lead to efficient outcomes than are rates set by regulation," FCC Ruling, 14 FCC Rcd at 3707 (¶ 29), but for the nonce it left open the matter of implementing a system of federal controls. It observed that in the meantime parties may voluntarily include reciprocal compensation provisions in their interconnection agreements, and that state commissions, which have authority to arbitrate disputes over such agreements, can construe the agreements as requiring such compensation; indeed, even when the agreements of interconnecting LECs include no linguistic hook for such a requirement, the commissions can find that reciprocal compensation is appropriate. FCC Ruling, 14 FCC Rcd at 3703-05 (¶¶ 24-25); see § 251(b)(1) (establishing such authority). "[A]ny such arbitration," it added, "must be consistent with governing federal law." FCC Ruling, 14 FCC Rcd at 3705 (¶ 25).

*2 This outcome left at least two unhappy groups. One, led by Bell Atlantic, consists of incumbent LECs (the "incumbents"). Quite content with the Commission's finding of § 251(b)(5)'s inapplicability, the incumbents objected to its conclusion that in the absence of federal regulation state commissions have the authority to impose reciprocal compensation. Although the Commission's new rulemaking on the subject may eventuate in a rule that preempts the states' authority, the incumbents object to being left at the mercy of state commissions until that (hypothetical) time, arguing that the commissions have mandated exorbitant compensation. In particular, the incumbents, who are paid a flat monthly fee, have generally been forced to provide compensation for

internet calls on a per-minute basis. Given the average length of such calls the cost can be substantial, and since ISPs do not make outgoing calls, this compensation is hardly "reciprocal."

Another group, led by MCI WorldCom, consists of firms that are seeking to compete with the incumbent LECs and which provide local exchange telecommunications services to ISPs (the "competitors"). These firms, which stand to receive reciprocal compensation on ISP-bound calls, petitioned for review with the complaint that the Commission erred in finding that the calls weren't covered by § 251(b)(5).

The end-to-end analysis applied by the Commission here is one that it has traditionally used to determine whether a call is within its interstate jurisdiction. Here it used the analysis for quite a different purpose, without explaining why such an extension made sense in terms of the statute or the Commission's own regulations. Because of this gap, we vacate the ruling and remand the case for want of reasoned decisionmaking.

* * *

*3 In February 1996 Congress passed the Telecommunications Act of 1996 (the "1996 Act" or the "Act"), stating an intent to open local telephone markets to competition. See H.R. Conf. Rep. No. 104-458, at 113 (1996). Whereas before local exchange carriers generally had state-licensed monopolies in each local service area, the 1996 Act set out to ensure that "[s]tates may no longer enforce laws that impede[ ] competition," and subjected incumbent LECs "to a host of duties intended to facilitate market entry." AT&T Corp. v. Iowa Utils. Bd., 525 U.S. 366, 119 S.Ct. 721, 726, 142 L.Ed.2d 835 (1999).

Among the duties of incumbent LECs is to "provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network ... for the transmission and routing of telephone exchange service and exchange access." 47 U.S.C. § 251(c)(2). ("Telephone exchange service" and "exchange access" are words of art to which we shall later return.) Competitor LECs have sprung into being as a result, and their customers call, and receive calls from, customers of the incumbents.

We have already noted that § 251(b)(5) of the Act establishes the duty among local exchange carriers "to establish reciprocal compensation arrangements for the transport and termination of telecommunications." 47 U.S.C. § 251(b)(5). Thus, when a customer of LEC A calls a customer of LEC B, LEC A must pay LEC B for completing the call, a cost usually paid on a per- minute basis. Although § 251(b)(5) purports to extend reciprocal compensation to all "telecommunications," the Commission has construed the reciprocal compensation requirement as limited to local traffic. See 47 CFR § 51.701(a) ("The provisions of this subpart apply to reciprocal compensation for transport and termination of local telecommunications traffic between LECs and other telecommunications carriers."). LECs that originate or terminate long-distance calls continue to be compensated with "access charges," as they were before the 1996 Act. Unlike reciprocal compensation, these access charges are not paid by the originating LEC. Instead, the long-distance carrier itself pays both the LEC that originates the call and links the caller to the long distance network, and the LEC that terminates the call. See In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499, 16013 (¶ 1034) (1996) ("Local Competition Order").

The present case took the Commission beyond these traditional telephone service boundaries. The internet is "an international network of interconnected computers that enables millions of people to communicate with one another in 'cyberspace' and to access vast amounts of information from around the world." Reno v. ACLU, 521 U.S. 844, 844, 117 S.Ct. 2329, 138 L.Ed.2d 874 (1997). Unlike the conventional "circuit-switched network," which uses a single end-to- end path for each transmission, the internet is a "distributed packet-switched network, which means that information is split up into small chunks or 'packets' that are individually routed through the most efficient path to their destination." In the Matter of Federal-State Joint Board on Universal Service, 13 FCC Rcd 11501, 11532 (¶ 64) (1998) ("Universal Service Report "). ISPs are entities that allow their customers access to the internet. Such a customer, an "end user" of the telephone system, will use a computer and modem to place a call to the ISP server in his local calling area. He will usually pay a flat monthly fee to the ISP (above the flat fee already paid to his LEC for use of the local exchange network). The ISP "typically purchases business lines

from a LEC, for which it pays a flat monthly fee that allows unlimited incoming calls." FCC Ruling, 14 FCC Rcd at 3691 (¶ 4).

In the ruling now under review, the Commission concluded that § 251(b)(5) does not impose reciprocal compensation requirements on incumbent LECs for ISP-bound traffic. FCC Ruling, 14 FCC Rcd at 3690 (¶ 1). Faced with the question whether such traffic is "local" for purposes of its regulation limiting § 251(b)(5) reciprocal compensation to local traffic, the Commission used the "end-to-end" analysis that it has traditionally used for jurisdictional purposes to determine whether particular traffic is interstate. Under this method, it has focused on "the end points of the communication and consistently has rejected attempts to divide communications at any intermediate points of switching or exchanges between carriers." FCC Ruling, 14 FCC Rcd at 3695 (¶ 10). We save for later an analysis of the various FCC precedents on which the Commission purported to rely in choosing this mode of analysis.

*4 Before actually applying that analysis, the Commission brushed aside a statutory argument of the competitor LECs. They argued that ISP-bound traffic must be either "telephone exchange service," as defined in 47 U.S.C. § 153(47), or "exchange access," as defined in § 153(16). [FN1] It could not be the latter, they reasoned, because ISPs do not assess toll charges for the service (see id., "the offering of access ... for the purpose of the origination or termination of telephone toll services"), and therefore it must be the former, for which reciprocal compensation is mandated. Here the Commission's answer was that it has consistently treated ISPs (and ESPs generally) as "users of access service," while treating them as end users merely for access charge purposes. FCC Ruling, 14 FCC Rcd at 3701 (¶ 17).

Having decided to use the "end-to-end" method, the Commission considered whether ISP-bound traffic is, under this method, in fact interstate. In a conventional "circuit-switched network," the jurisdictional analysis is straightforward: a call is intrastate if, and only if, it originates and terminates in the same state. In a "packet-switched network," the analysis is not so simple, as "[a]n Internet communication does not necessarily have a point of 'termination' in the traditional sense." FCC Ruling, 14 FCC Rcd at 3701-02 (¶ 18). In a single session an end user may communicate with multiple destination points, either sequentially or simultaneously. Although these destinations are sometimes intrastate, the Commission concluded that "a substantial portion of Internet traffic involves accessing interstate or foreign websites." Id. Thus reciprocal compensation was not due, and the issue of compensation between the two local LECs was left initially to the LECs involved, subject to state commissions' power to order compensation in the "arbitration" proceedings, and, of course to whatever may follow from the Commission's new rulemaking on its own possible ratesetting.

* * *

*5 The issue at the heart of this case is whether a call to an ISP is local or long-distance. Neither category fits clearly. The Commission has described local calls, on the one hand, as those in which LECs collaborate to complete a call and are compensated for their respective roles in completing the call, and long-distance calls, on the other, as those in which the LECs collaborate with a long-distance carrier, which itself charges the end-user and pays out compensation to the LECs. See Local Competition Order, 11 FCC Rcd at 16013 (¶ 1034) (1996).

Calls to ISPs are not quite local, because there is some communication taking place between the ISP and out-of-state websites. But they are not quite long-distance, because the subsequent communication is not really a continuation, in the conventional sense, of the initial call to the ISP. The Commission's ruling rests squarely on its decision to employ an end-to-end analysis for purposes of determining whether ISP-traffic is local. There is no dispute that the Commission has historically been justified in relying on this method when determining whether a particular communication is jurisdictionally interstate. But it has yet to provide an explanation why this inquiry is relevant to discerning whether a call to an ISP should fit within the local call model of two collaborating LECs or the long-distance model of a long-distance carrier collaborating with two LECs.

In fact, the extension of "end-to-end" analysis from jurisdictional purposes to the present context yields intuitively backwards results. Calls that are jurisdictionally intrastate will be subject to the federal reciprocal compensation requirement, while calls that are interstate are not subject to federal regulation but instead are left to potential state regulation. The inconsistency is not necessarily fatal, since under the 1996 Act the Commission has jurisdiction to

implement such provisions as § 251, even if they are within the traditional domain of the states. See AT&T Corp., 119 S.Ct. at 730. But it reveals that arguments supporting use of the end-to-end analysis in the jurisdictional analysis are not obviously transferable to this context.

In attacking the Commission's classification of ISP-bound calls as non-local for purposes of reciprocal compensation, MCI WorldCom notes that under 47 CFR § 51.701(b)(1) "telecommunications traffic" is local if it "originates and terminates within a local service area." But, observes MCI WorldCom, the Commission failed to apply, or even to mention, its definition of "termination," namely "the switching of traffic that is subject to section 251(b)(5) at the terminating carrier's end office switch (or equivalent facility) and delivery of that traffic from that switch to the called party's premises." Local Competition Order, 11 FCC Rcd at 16015 (¶ 1040); 47 CFR § 51.701(d). Calls to ISPs appear to fit this definition: the traffic is switched by the LEC whose customer is the ISP and then delivered to the ISP, which is clearly the "called party."

In its ruling the Commission avoided this result by analyzing the communication on an end-to-end basis: "[T]he communications at issue here do not terminate at the ISP's local server ..., but continue to the ultimate destination or destinations." FCC Ruling, 14 FCC Rcd at 3697 (¶ 12). But the cases it relied on for using this analysis are not on point. Both involved a single continuous communication, originated by an end-user, switched by a long- distance communications carrier, and eventually delivered to its destination. One, Teleconnect Co. v. Bell Telephone Co., 10 FCC Rcd 1626 (1995), aff'd sub nom. Southwestern Bell Tel. Co. v. FCC, 116 F.3d 593 (D.C.Cir.1997) ("Teleconnect"), involved an 800 call to a long-distance carrier, which then routed the call to its intended recipient. The other, In the Matter of Petition for Emergency Relief and Declaratory Ruling Filed by the BellSouth Corporation, 7 FCC Rcd 1619 (1992), considered a voice mail service. Part of the service, the forwarding of the call from the intended recipient's location to the voice mail apparatus and service, occurred entirely within the subscriber's state, and thus looked local. Looking "end-to-end," however, the Commission refused to focus on this portion of the call but rather considered the service in its entirety (i.e., originating with the out-of-state caller leaving a message, or the subscriber calling from out-of-state to retrieve messages). Id. at 1621 (¶ 12).

*6 [1] ISPs, in contrast, are "information service providers," Universal Service Report, 13 FCC Rcd at 11532-33 (¶ 66), which upon receiving a call originate further communications to deliver and retrieve information to and from distant websites. The Commission acknowledged in a footnote that the cases it relied upon were distinguishable, but dismissed the problem out-of-hand: "Although the cited cases involve interexchange carriers rather than ISPs, and the Commission has observed that 'it is not clear that [information service providers] use the public switched network in a manner analogous to IXCs,' Access Charge Reform Order, 12 FCC Rcd at 16133, the Commission's observation does not affect the jurisdictional analysis." FCC Ruling, 14 FCC Rcd at 3697 n.36 (¶ 12). It is not clear how this helps the Commission. Even if the difference between ISPs and traditional long-distance carriers is irrelevant for jurisdictional purposes, it appears relevant for purposes of reciprocal compensation. Although ISPs use telecommunications to provide information service, they are not themselves telecommunications providers (as are long-distance carriers).

In this regard an ISP appears, as MCI WorldCom argued, no different from many businesses, such as "pizza delivery firms, travel reservation agencies, credit card verification firms, or taxicab companies," which use a variety of communication services to provide their goods or services to their customers. Comments of WorldCom, Inc. at 7 (July 17, 1997). Of course, the ISP's origination of telecommunications as a result of the user's call is instantaneous (although perhaps no more so than a credit card verification system or a bank account information service). But this does not imply that the original communication does not "terminate" at the ISP. The Commission has not satisfactorily explained why an ISP is not, for purposes of reciprocal compensation, "simply a communications-intensive business end user selling a product to other consumer and business end-users." Id.

The Commission nevertheless argues that although the call from the ISP to an out-of-state website is information service for the end-user, it is telecommunications for the ISP, and thus the telecommunications cannot be said to "terminate" at the ISP. As the Commission states: "Even if, from the perspective of the end user as customer, the telecommunications portion of an Internet call

'terminates' at the ISP's server (and information service begins), the remaining portion of the call would continue to constitute telecommunications from the perspective of the ISP as customer." Commission's Br. at 41. Once again, however, the mere fact that the ISP originates further telecommunications does not imply that the original telecommunication does not "terminate" at the ISP. However sound the end-to-end analysis may be for jurisdictional purposes, the Commission has not explained why viewing these linked telecommunications as continuous works for purposes of reciprocal compensation.

*7 Adding further confusion is a series of Commission rulings dealing with a class, enhanced service providers ("ESPs"), of which ISPs are a subclass. See FCC Ruling, 14 FCC Rcd at 3689 n.1 (¶ 1). ESPs, the precursors to the 1996 Act's information service providers, offer data processing services, linking customers and computers via the telephone network. See MCI Telecommunications Corp. v. FCC, 57 F.3d 1136, 1138 (D.C.Cir.1995). [FN2] In its establishment of the access charge system for long-distance calls, the Commission in 1983 exempted ESPs from the access charge system, thus in effect treating them like end users rather than long-distance carriers. See In the Matter of MTS & WATS Market Structure, 97 F.C.C.2d 682, 711-15 (¶ 77-83), 1983 WL 183026 (1983). It reaffirmed this decision in 1991, explaining that it had "refrained from applying full access charges to ESPs out of concern that the industry has continued to be affected by a number of significant, potentially disruptive, and rapidly changing circumstances." In the Matter of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, 6 FCC Rcd 4524, 4534 (¶ 54) (1991). In 1997 it again preserved the status quo. In the Matter of Access Charge Reform, 12 FCC Rcd 15982 (1997) ("Access Charge Reform Order"). It justified the exemption in terms of the goals of the 1996 Act, saying that its purpose was to "preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services." Id. at 16133 (¶ 344) (quoting 47 U.S.C. § 230(b)(2)).

This classification of ESPs is something of an embarrassment to the Commission's present ruling. As MCI WorldCom notes, the Commission acknowledged in the Access Charge Reform Order that "given the evolution in [information service provider] technologies and markets since we first established access charges in the early 1980s, it is not clear that [information service providers] use the public switched network in a manner analogous to IXCs [inter-exchange carriers]." 12 FCC Rcd at 16133 (¶ 345). It also referred to calls to information service providers as "local." Id. at 16132 (¶ 342 n.502). And when this aspect of the Access Charge Reform Order was challenged in the 8th Circuit, the Commission's briefwriters responded with a sharp differentiation between such calls and ordinary long-distance calls covered by the "end-to-end" analysis, and even used the analogy employed by MCI WorldCom here--that a call to an information service provider is really like a call to a local business that then uses the telephone to order wares to meet the need. Brief of FCC at 76, Southwestern Bell v. FCC, 153 F.3d 523 (8th Cir.1998) (No. 97-2618). When accused of inconsistency in the present matter, the Commission flipped the argument on its head, arguing that its exemption of ESPs from access charges actually confirms "its understanding that ESPs in fact use interstate access service; otherwise, the exemption would not be necessary." FCC Ruling, 14 FCC Rcd at 3700 (¶ 16). This is not very compelling. Although, to be sure, the Commission used policy arguments to justify the "exemption," it also rested it on an acknowledgment of the real differences between long-distance calls and calls to information service providers. It is obscure why those have now dropped out of the picture.

Because the Commission has not supplied a real explanation for its decision to treat end-to-end analysis as controlling, Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43, 103 S.Ct. 2856, 77 L.Ed.2d 443 (1983); 5 U.S.C. § 706(2)(A), we must vacate the ruling and remand the case.

*8 [2] There is an independent ground requiring remand--the fit of the present rule within the governing statute. MCI WorldCom says that ISP-traffic is "telephone exchange service[ ]" as defined in 47 U.S.C. § 153(16), which it claims "is synonymous under the Act with the service used to make local phone calls," and emphatically not "exchange access" as defined in 47 U.S.C. § 153(47). Petitioner MCI WorldCom's Initial Br. at 22. In the only paragraph of the ruling in which the Commission addressed this issue, it merely stated that it "consistently has characterized ESPs as 'users of access service' but has treated them as end users for pricing purposes." FCC Ruling, 14 FCC Rcd at 3701 (¶ 17). In a statutory

world of "telephone exchange service" and "exchange access," which the Commission here says constitute the only possibilities, the reference to "access service," combining the different key words from the two terms before us, sheds no light. "Access service" is in fact a pre-Act term, defined as "services and facilities provided for the origination or termination of any interstate or foreign telecommunication." 47 CFR § 69.2(b).

If the Commission meant to place ISP-traffic within a third category, not "telephone exchange service" and not "exchange access," that would conflict with its concession on appeal that "exchange access" and "telephone exchange service" occupy the field. But if it meant that just as ESPs were "users of access service" but treated as end users for pricing purposes, so too ISPs are users of exchange access, the Commission has not provided a satisfactory explanation why this is the case. In fact, in In the Matter of Implementation of the NonAccounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, 11 FCC Rcd 21905, 22023 (¶ 248) (1996), the Commission clearly stated that "ISPs do not use exchange access." After oral argument in this case the Commission overruled this determination, saying that "non-carriers may be purchasers of those services." In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability, FCC 99-413, at 21 (¶ 43) (Dec. 23, 1999). The Commission relied on its preAct orders in which it had determined that non-carriers can use "access services," and concluded that there is no evidence that Congress, in codifying "exchange access," intended to depart from this understanding. See id. at 21-22 (¶ 44). The Commission, however, did not make this argument in the ruling under review.

Nor did the Commission even consider how regarding noncarriers as purchasers of "exchange access" fits with the statutory definition of that term. A call is "exchange access" if offered "for the purpose of the origination or termination of telephone toll services." 47 U.S.C. § 153(16). As MCI WorldCom argued, ISPs provide information service rather than telecommunications; as such, "ISPs connect to the local network 'for the purpose of' providing information services, not originating or terminating telephone toll services." Petitioner MCI WorldCom's Reply Br. at 6.

[3] The statute appears ambiguous as to whether calls to ISPs fit within "exchange access" or "telephone exchange service," and on that view any agency interpretation would be subject to judicial deference. See Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 842-43, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984). But, even though we review the agency's interpretation only for reasonableness where Congress has not resolved the issue, where a decision "is valid only as a determination of policy or judgment which the agency alone is authorized to make and which it has not made, a judicial judgment cannot be made to do service," SEC v. Chenery Corp., 318 U.S. 80, 88, 63 S.Ct. 454, 87 L.Ed. 626 (1943). See also Acme Die Casting v. NLRB, 26 F.3d 162, 166 (D.C.Cir.1994); Leeco, Inc. v. Hays, 965 F.2d 1081, 1085 (D.C.Cir.1992); City of Kansas City v. Department of Housing and Urban Development, 923 F.2d 188, 191-92 (D.C.Cir.1991).

* * *

*9 Because the Commission has not provided a satisfactory explanation why LECs that terminate calls to ISPs are not properly seen as "terminat[ing] ... local telecommunications traffic," and why such traffic is "exchange access" rather than "telephone exchange service," we vacate the ruling and remand the case to the Commission. We do not reach the objections of the incumbent LECs-- that § 251(b)(5) preempts state commission authority to compel payments to the competitor LECs; at present we have no adequately explained classification of these communications, and in the interim our vacatur of the Commission's ruling leaves the incumbents free to seek relief from state-authorized compensation that they believe to be wrongfully imposed.

So ordered.

FN1. "Telephone exchange service" is defined as:
(A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service. 47 U.S.C. § 153(47).
"Exchange access" is defined as:
the offering of access to telephone exchange services or facilities for the purpose of the origination or

termination of telephone toll services. Id. § 153(16).

FN2. The regulatory definition states that ESPs offer "services ... 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." 47 CFR § 64.702(a).

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