00-00309

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December 13, 2000

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

Dear Mr. Waddell:

Enclosed please find the original plus thirteen (13) copies of the rebuttal testimony of Lee Olson, Karen Kinard, Sherry Lichtenberg, Don Price, and Phillip Bomar filed on behalf of WorldCom, Inc. We are also filing, under separate cover, a proprietary version of Don Price's testimony. A copy of the enclosed testimony has been served on BellSouth Telecommunications, Inc.

Sincerely yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

Jon E. Hastings

JEH/sja

POSTED 12-13-00

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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 13th day of December, 2000.

Guy M. Hicks, Esq.
Attorney for BellSouth
333 Commerce Street, Suite 2101
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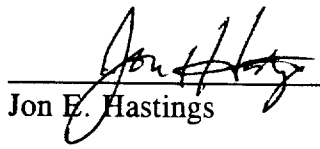

Jon E. Hastings

BEFORE THE

TENNESSEE REGULATORY AUTHORITY

DOCKET NO. 00-00309

PREFILED REBUTTAL TESTIMONY

OF LEE OLSON

ON BEHALF OF WORLDCOM, INC.

December 13, 2000

Q. PLEASE STATE YOUR NAME.

A. Lee M. Olson.

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

A. I am employed as a Planning Engineer in WorldCom's Local Network Planning organization. My work address is 6 Concourse Parkway, Suite 400, Atlanta, Ga. 30328. In my testimony I will use the term "WorldCom" to refer to both MCImetro Access Transmission Services, LLC Brooks Fiber Communications of Tennessee, Inc.

Q. HAVE YOU PREVIOUSLY FILED DIRECT TESTIMONY IN THIS DOCKET?

A. Yes.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. The purpose of my rebuttal testimony is to respond to arguments made by BellSouth witnesses Milner and Cox concerning 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.)

Q. WHAT IS BELLSOUTH'S POSITION WITH RESPECT TO THE USE OF TWO-WAY TRUNKS?

A. Ms. Cox states in her Direct Testimony that BellSouth supports the use of two-way trunks, but that BellSouth should retain the right to use one-way trunks for

its traffic if it so chooses, except when traffic volumes are too low to justify one-way trunks.

Q. CAN BELLSOUTH'S POSITION BE RECONCILED WITH THE FCC'S REGULATIONS?

A. No, it cannot. The FCC's regulations state that "[i]f technically feasible, an incumbent LEC shall provide two-way trunking upon request." 47 C.F.R. 51.305(f). Nothing in the regulation provides BellSouth with the right to use one-way trunking for its traffic if a CLEC such as WorldCom requests two-way trunking.

Q. DOES BELLSOUTH ASSERT THAT TWO-WAY TRUNKING IS NOT TECHNICALLY FEASIBLE?

A. No.

Q. MS. COX CITES PARAGRAPH 219 OF THE FCC'S LOCAL COMPETITION ORDER AS SUPPORT FOR HER ASSERTION THAT WORLDCOM'S RIGHT TO REQUIRE TWO-WAY TRUNKING IS LIMITED TO THE SITUATION IN WHICH TRAFFIC VOLUMES ARE TOO LOW TO JUSTIFY ONE-WAY TRUNKING. (COX DIRECT AT 28-29.) PLEASE COMMENT.

A. Paragraph 219 reads as follows:

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

conclude that if two-way trunking is technically feasible, it would not be just, reasonable, and nondiscriminatory for the incumbent LEC to refuse to provide it.

Ultimately, the question here is whether, when the engineers cannot agree on one-way trunks or two-way trunks, BellSouth or WorldCom has the final say. Although I am not a lawyer, it appears clear that the FCC in this passage gives the final say to CLECs like WorldCom. In other words, the FCC does not give BellSouth the right to second guess WorldCom's decision in favor of two-way trunks, based on traffic volume or anything else. The fact that FCC Rule 305(f) requires BellSouth to provide two-way trunks upon request, without limitation, confirms this conclusion.

Q. MS. COX ASSERTS THAT BELLSOUTH SHOULD BE ALLOWED TO USE ONE-WAY TRUNKING BECAUSE BELLSOUTH MAY WANT TO TRUNK DIRECTLY TO A WORLDCOM END OFFICE. (COX DIRECT AT 27.) PLEASE ADDRESS THIS ASSERTION.

A. The parties have agreed on when either WorldCom or BellSouth may use direct end office trunking. WorldCom's ability to require BellSouth to provision and use two way trunks would not prevent BellSouth from using direct end office trunks when permitted under the agreement.

Q. MS. COX ALSO CONTENDS THAT IF WORLDCOM WERE ABLE TO REQUIRE BELLSOUTH TO USE TWO-WAY TRUNKS, WORLDCOM EFFECTIVELY COULD DETERMINE THE POINT OF INTERCONNECTION FOR BELLSOUTH'S ORIGINATING TRAFFIC,

WHICH WOULD INCREASE BELLSOUTH'S COSTS. PLEASE RESPOND.

A. As I discussed in my Direct Testimony, and further address below, WorldCom has the right to choose the point of interconnection ("POI") for its own and BellSouth's originating traffic. Thus, Ms. Cox's concern does not provide a valid reason for BellSouth's position.

Q. FINALLY, MS. COX RAISES A NUMBER OF OTHER OBJECTIONS TO TWO-WAY TRUNKING. (COX DIRECT AT 28.) PLEASE ADDRESS THOSE OBJECTIONS.

A. All of the "complex" issues that Ms. Cox raises about two-way trunking can be answered quite directly:

1) Determining the number of trunks required is the regular, day-to-day work of our companies' traffic engineers, who meet periodically to discuss the relevant factors, such as traffic volumes and blocking criteria.

2) Facility augmentation occurs when the 75% trigger of trunk utilization is reached, so two-way trunking does not present a difficult engineering challenge in that regard.

3) The parties have agreed that BellSouth has the right to use direct end office trunk groups under specified conditions, so decisions about direct end office trunking do not affect the two-way trunking issue.

4) Determining whose facilities to use also is not particularly challenging. Typically, the facilities to be used will be WorldCom's facilities on its side of the joint optical midspan fiber meet, the joint optical midspan fiber meet

itself (which both companies own), and BellSouth's facilities on its side of the joint SONET midspan fiber meet.

5) Two-way trunking does not give rise to additional problems in determining where the POI(s) will be. Typically the POI will be where the joint optical midspan fiber meet is – so one point will be at WorldCom's fiber optic terminal (FOT), and the other will be at BellSouth's FOT. In any case, as discussed in my Direct Testimony and below concerning Issue 36, WorldCom has the right to choose the POI.

6) WorldCom will perform the administrative control function for the two way trunks. Both companies utilize electronic threshold exceptions to monitor trunk group quality. However, WorldCom traffic engineers do not have as many offices to monitor as our counterparts in BellSouth do. This means we are better able to respond, implement corrective action, and track service affecting issues on the trunk groups associated with our local switches. In addition, BellSouth traffic engineers have an incentive in servicing their own network before they service WorldCom's network.

7) With respect to compensation for multi-jurisdictional traffic, the basic principle is that WorldCom will pay when it uses BellSouth's network to deliver traffic to the latter's customers, and also for transiting functions, and BellSouth will pay when it uses WorldCom's network to deliver traffic to WorldCom's customers.

Q. MS. COX STATES THAT ISSUE 35 HAS BEEN RESOLVED. IS THAT ACCURATE?

A. Ms. Cox's statement is not entirely accurate. It is more accurate to say that Issue 35 has been consolidated with Issue 34.

ISSUE 36

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

Q. DOES MS. COX DISPUTE THAT WORLDCOM HAS THE RIGHT TO DESIGNATE THE POI?

A. Although it is not entirely clear from her testimony, it does not appear that Ms. Cox disputes that WorldCom may designate the POI between our companies' networks. Her testimony focuses instead on who should pay for transporting traffic from BellSouth customers in one local calling area to a POI in another local calling area.

Q. MS. COX STATES THERE IS A DISTINCTION BETWEEN THE POINT OF INTERCONNECTION AND THE INTERCONNECTION POINT. DO YOU AGREE?

A. No. In my experience, these terms are used interchangeably. Ms. Cox is correct that the POI is the place where networks are physically linked, but incorrect in her assertion that the interconnection point may be a different place where financial responsibility for a call changes hands.

Q. WHERE DOES FINANCIAL RESPONSIBILITY FOR A CALL CHANGE HANDS?

A. Financial responsibility changes hands at the POI, where the parties' networks are physically linked. Under the Telecommunications Act of 1996 ("Act"), every local exchange carrier has "[t]he duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications." Act, § 251(b)(5). To be "just and reasonable," the terms and conditions of reciprocal compensation must "provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier." Act, § 251(d)(2).

As I noted in my Direct Testimony, 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 . . . ." *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order at ¶ 1039 (rel. Aug. 8, 1996) ("Local Competition Order"). The FCC defined "termination" as "the switching of traffic that is subject to section 251(b)(5) at the terminating carrier's end office switch . . . and delivery of that traffic from that switch to the called party's premises." *Id.* at ¶ 1040.

Under these provisions of the Act and the Local Competition Order, each party's duty to transport and terminate the other party's originating traffic extends from the POI to the called party's premises, and each carrier is obligated to pay the other reciprocal compensation for transporting and terminating that

traffic. Thus, the POI is the financial, as well as the physical, demarcation point between the parties' networks. As I pointed out in my Direct Testimony, this conclusion was confirmed by the FCC in *In re: TSR Wireless, LLC, et al v. U.S. West, et. al.*, File Nos. E-98-13, E-98-15, E-98-16, E-98-17, E-98-18, Memorandum Opinion and Order (rel. June 21, 2000).

Q. HOW DO YOU RESPOND TO MS. COX'S ASSERTION THAT WORLDCOM SHOULD PAY FOR BELLSOUTH TO TRANSPORT ITS ORIGINATING TRAFFIC FROM ONE LOCAL CALLING AREA TO A POI IN ANOTHER LOCAL CALLING AREA?

A. Ms. Cox's theory is at odds with the basic concept of interconnection, which is that each party carries its originating traffic to the POI at its own expense and then hands off that traffic and pays the other party to transport and terminate it. Moreover, as I noted in my Direct Testimony, 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 theory calls for the assessment of charges that the FCC forbids.

Q. DOES MS. COX CITE ANY AUTHORITY THAT SUPPORTS HER POSITION THAT THERE CAN BE A FINANCIAL DEMARCATION POINT THAT IS DIFFERENT THAN THE POI?

A. No. Ms. Cox cites paragraphs 199 and 209 of the Local Competition Order, but those paragraphs deal with the cost of interconnection itself, that is, the cost of physically interconnecting networks. Nothing in paragraphs 199 and 209

suggests that one party must pay the other party to transport the other party's originating traffic.

Q. MS. COX CONTENDS THAT BELLSOUTH'S FINANCIAL DEMARCATION THEORY CAN BE JUSTIFIED BECAUSE BELLSOUTH HAS SEVERAL LOCAL NETWORKS WITHIN A LATA. IS THIS CONTENTION VALID?

A. No. Ms. Cox's theory is that BellSouth has a separate local network in each local calling area and that BellSouth can require WorldCom to interconnect in each local calling area where it wants to serve customers. Such an interconnection requirement would force WorldCom to build or lease facilities from its network to each local calling area where it wished to do business. Ms. Cox's theory is wrong. The Act requires an ILEC to provide "interconnection with the local exchange carrier's *network,*" not *networks*. 47 U.S.C. § 251 (c)(2) (emphasis added).

As I noted in my Direct Testimony, WorldCom is entitled to establish a single POI in a given LATA. *Application by SBC Communications Inc. et. al Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas*, CC Docket No. 00-65, Memorandum Opinion and Order at ¶ 323 (rel. June 30, 2000. Thus, it cannot be true, as Ms. Cox contends, that BellSouth can force WorldCom to establish a POI in every local calling area WorldCom wishes to serve. Rather, WorldCom may establish a single POI that interconnects with BellSouth's entire local network in all local calling areas in a LATA.

Q. IS IT ACCURATE TO CHARACTERIZE BELLSOUTH'S NETWORK ARCHITECTURE AS A GROUP OF ISOLATED LOCAL NETWORKS?

A. No. Obviously, BellSouth's end offices in each local calling area are interconnected with the rest of BellSouth's local network. BellSouth's local network includes the transport linking the local calling areas together.

Q. MS. COX CLAIMS BELLSOUTH WOULD BE TREATED UNFAIRLY IF IT DID NOT RECEIVE COMPENSATION WHEN A BELLSOUTH CUSTOMER CALLS A WORLDCOM CUSTOMER IN THE SAME LOCAL CALLING AREA, BUT THE POI IS IN ANOTHER LOCAL CALLING AREA. PLEASE RESPOND.

A. In the first place, WorldCom does not currently serve customers in Tennessee where the POI is in a different local calling area than the customer, so Ms. Cox's concern is purely theoretical at this point. Even if WorldCom did serve customers in this manner, however, there would be no unfairness involved. Although BellSouth is not compensated for originating a call from its customer in one local calling area to the POI in another local calling area when the call is destined for a WorldCom customer next door to the caller, WorldCom likewise receives no compensation when the call flow is reversed. The parties are in exactly the same position. As a practical matter, the concern Ms. Cox raises is not likely to be significant because even assuming WorldCom decided to serve remote customers with "long loops," when WorldCom built a large enough customer base in the remote local calling area, it would be cost-effective for

WorldCom to install a remote switch to serve those customers and establish an additional POI in that local calling area.

Q. WOULD BELLSOUTH'S PROPOSAL PROMOTE EFFICIENT NETWORK ARCHITECTURE?

A. No. One of the purposes of the Act is to encourage new and more efficient network configurations. BellSouth pays lip service to this principle but its proposal undermines it. BellSouth's proposal would force WorldCom to mimic BellSouth's network as WorldCom expanded into new areas. It would require WorldCom to build facilities to places where it would not be economic for WorldCom to do so based on traffic volumes. At its core, BellSouth's proposal is an attempt to dictate WorldCom's network architecture to make it look more like BellSouth's. BellSouth has no right under the Act to do so.

ISSUE 37

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

Q. MR. MILNER STATES THAT PART OF THE DISPUTE BETWEEN THE PARTIES CONCERNS THE PROVISIONING OF TWO-WAY TRUNKING. IS THAT THE CASE?

A. Yes. I have explained WorldCom's position on the two-way trunking issue in my discussion of Issue 34,

Q. MR. MILNER COMPLAINS THAT WORLDCOM'S POSITION WOULD PREVENT BELLSOUTH FROM USING DIRECT END OFFICE TRUNKING. IS THAT A VALID POINT?

A. No. As I already have noted, the parties already have agreed on the circumstances in which the parties may use direct end office trunking. WorldCom's proposed language concerning trunk fragmentation would not prevent BellSouth from using direct end office trunking when otherwise permitted under the parties' agreement.

Q. MR. MILNER ALSO RAISES THE CONCERN THAT SEPARATE TRUNKS ARE REQUIRED FOR CERTAIN TYPES OF TRAFFIC, SUCH AS E911 TRAFFIC. IS WORLDCOM PREPARED TO ADDRESS THAT CONCERN?

A. Yes. As I noted in my Direct Testimony, there are certain types of traffic, such as E911 traffic, that are routed over separate trunk groups, and WorldCom has no problem making it clear that it does not intend for such traffic to be routed over combination trunk groups.

What is important to WorldCom is 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, that of course is its business decision. WorldCom is only proposing that these three traffic types be carried on one trunk group for the traffic going over the joint optical midspan fiber meet between WorldCom and BellSouth, for network efficiency reasons.

Q. DOES THAT CONCLUDE YOUR REBUTTAL TESTIMONY?

A. Yes.

BEFORE THE

TENNESSEE REGULATORY AUTHORITY

DOCKET NO. 00-00309

PREFILED REBUTTAL TESTIMONY

OF KAREN KINARD

ON BEHALF OF WORLDCOM, INC.

DECEMBER 13, 2000

Q. PLEASE STATE YOUR NAME.

A. my name is Karen Kinard.

Q. DID YOU FILE DIRECT TESTIMONY IN THIS PROCEEDING ON BEHALF OF WORLDCOM?

A. Yes. I will continue to use "WorldCom" to refer collectively to MCImetro Access Transmission Services, LLC and Brooks Fiber Communications of Tennessee, Inc.

Q. WHAT IS THE PURPOSE OF YOUR PRESENT TESTIMONY?

A. The purpose of my testimony is to respond to the Direct Testimony of BellSouth witnesses Coon and Cox concerning Issue 105.

Q. MR. COON STATED THAT WORLDCOM IS ACTING INAPPROPRIATELY IN ATTEMPTING TO NEGOTIATE INDEPENDENTLY FOR THE MEASURES IN THE MPS DOCUMENT. DO YOU AGREE?

A. No. WorldCom does not oppose BellSouth using measures in its SQM that cover the same performance areas as metrics proposed by WorldCom, provided those metrics are defined correctly. However, because the Authority has not yet established a generic docket to develop a comprehensive set of performance measurements, this arbitration is the only forum for WorldCom to propose additional metrics, disaggregation and improved standards in Tennessee.

Q. ARE WORLDCOM'S PROPOSED MEASURES BASED SOLELY ON THE LOCAL COMPETITION USER GROUP'S PROPOSED MEASURES?

A. No. WorldCom's proposed metrics in its MPS document go beyond the measures proposed by the Local Competition Users Group to include those that have been implemented in other states' collaboratives around the country that address issues relevant to WorldCom's business plans. Many of the metrics come from the collaboratives that have been held in New York, Texas and Pennsylvania. In addition, the Georgia Public Service Commission voted substantially in favor of a staff recommendation to add several metrics to BellSouth's SQM. The Georgia staff recommended that the following metrics be added:

- Response Time for Manual LMU Queries
- Response Time for Electronic LMU Queries
- Acknowledgement Timeliness
- Acknowledgement Completeness
- FOC/Reject Response Completeness
- % Completions/Attempts w/o Notice or < 24 hours notice
- Average Recovery Time for Coordinated Cuts
- Cooperative Acceptance Testing Attempts vs. Requested by CLECs
- Recurring Charge Completeness
- Non-recurring Charge Completeness
- Mean Time to Notify CLECS of Network Outages
- Mean Time to Notify CLECS of Interface Outages
- Average Database Update Interval
- Percent Database Update Accuracy
- NXX and LRNs loaded and tested by LERG date
- BFRs processed in 30 bd
- BFR Quotes provided in X days

The addition of these metrics to the SQM for Tennessee would bring it much closer to WorldCom's MPS than it is today. Many of these metrics cover performance areas that the Authority saw fit to add to BellSouth's SQM in the ITC^DeltaCom arbitration. WorldCom recommends that the Authority order

BellSouth to adopt the additional metrics recommended by the Georgia staff, as well as additional metrics ordered by the Authority in the ITC^DeltaCom arbitration. BellSouth also should include the five new measures it proposed to offer in its initial testimony in the recent Georgia proceeding, particularly the metric on the Timeliness of Change Management Notice (one of the metrics proposed by WorldCom in this arbitration).

In addition to the foregoing metrics, WorldCom seeks to include Order Accuracy (ordered by most other states, including Georgia in its first metrics collaborative), Timeliness of Loss Notifications (agreed to by SBC-Ameritech), Timeliness of Design Layout Records (adopted in New York, Pennsylvania, Massachusetts and New Jersey), Percent Software Certification Errors and Software Error Resolution (adopted in New York, Massachusetts and New Jersey), Billing Errors Corrected in X Days (being studied by KPMG in the Florida OSS test) and Percent of ILEC Responses to Reciprocal Trunk Requests in X Days (adopted in the Pennsylvania, New York, Massachusetts and New Jersey plans).

Business experience often dictates the need for new metrics. Some of the metrics described above address issues that became important to WorldCom even after the writing of the MPS. These include the Acknowledgement Timeliness, Acknowledgement Completeness, and FOC/Reject Response Completeness, which capture when status notices on orders are never received by the CLEC but are not otherwise captured because existing interval metrics only record the timeliness of what is received. Moreover, WorldCom's UNE-P

business experience in other states demonstrates that billing completion notice timeliness and completion notices measures will be needed when BellSouth develops EDI notification of billing completions (stopping its own billing and letting the CLEC know it may bill the customer it now owns). As WorldCom pursues additional business activity in BellSouth states, it likely will find that additional metrics or metric revisions should be required. WorldCom strongly recommends that the Authority initiate a separate proceeding to fine tune business rules and update metrics and remedy plans periodically (every six months).

Q. MR. COON CONTENDS THAT THE SQM CONTAINS APPROPRIATE LEVELS OF DISAGGREGATION. DO YOU AGREE?

A. No. Additional levels of disaggregation (such as for 2-wire DSL, 4-wire DSL, line sharing, collocation type for original construction and augments, etc.) are required. If statewide volumes of any UNE or UNE combination have not exceeded a certain level (say, ten of a certain product per month) WorldCom is agreeable to await that threshold being hit before BellSouth starts adding such new levels of disaggregation. But the addition of levels of disaggregation for like-to-like comparisons should be an automatic process as new products come on line.

Q. MR. COON CONTENDS THAT BELLSOUTH'S ANALOGS AND BENCHMARKS ARE APPROPRIATE. DO YOU AGREE?

A. No. Both the Louisiana staff recommendation and the recent Georgia staff recommendation have proposed improvements to the benchmarks in BellSouth's

current SQM in many of the same areas proposed by WorldCom. But even these recommendations do not go far enough in bringing BellSouth's intervals in line with the benchmarks adopted in many other state collaboratives. For instance, many of BellSouth's benchmarks need only be met 85% of the time to avoid a remedy payment to CLECs, whereas nearly all metrics adopted in Pennsylvania, New York and New Jersey, save for Operator Answer Time (lower) and System Availability (higher), are at the 95% performance level. Texas standards are even higher than 95% for many metrics. In particular, BellSouth's collocation and trunk order confirmation are much longer than in many other states.

Q. IS MR. COON CORRECT WHEN HE CONTENDS THAT WORLDCOM WILL NOT ACCEPT THE STATISTICAL METHODOLOGY AGREED TO BY BELLSOUTH, WORLDCOM AND AT&T?

A. No. The parties never reached full agreement. The area where WorldCom does not agree with BellSouth's statistical methodology concerns the use of a parameter delta to determine the balancing critical value (modified z score) that would trigger the payment of remedies.

Q. SHOULD WORLDCOM BE REQUIRED TO PAY FOR PERFORMANCE MEASUREMENT AUDITS?

A. New York, Pennsylvania and Massachusetts are among states that have not required CLECs to pay for annual audits in the early years of performance assurance plan implementation. WorldCom would be willing to share costs of mini- or targeted audits beyond the first three annual audits. If the first three

annual audits show significant problems in reporting, WorldCom believes the annual audits should be continued at BellSouth's full expense on a year-to-year basis with the Authority deciding at what points CLECs should share in the costs.

Q. DOES WORLDCOM AGREE THAT THE AUTHORITY CANNOT IMPOSE SELF-EXECUTING REMEDIES AND METRICS ON BELLSOUTH BEFORE 271 APPROVAL?

A. No. In *In re Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996*, Docket No. 99-00430, Interim Order of Arbitration Award, at 12 (Aug. 11, 2000) ("ITC^DeltaCom Award"), the Authority ruled that it "may impose performance measures and enforcement mechanisms."

Q. DOES WORLDCOM HAVE CONCERNS ABOUT BELLSOUTH'S VSEEM STRUCTURE?

A. Yes. WorldCom believes there are serious problems with this per occurrence plan, not the least of which is the "parameter delta" BellSouth proposes to use in determining whether remedies should apply. The parameter delta of 1 for Tier I and delta of 0.5 for Tier II remedies, as proposed by BellSouth, would provide an excessively wide buffer in determining whether a miss of a BellSouth metric with a parity standard is competitively significant. It would allow performance that would fail the Texas and New York plans approved by the FCC to be excused from remedy payments in BellSouth states. If the Authority were to

decide to adopt the BellSouth plan, the delta should be set at less than 0.25 with a cap on the Balancing Critical Value (a modified z score) calculated using the delta. The cap should be set at –3.1, such as CLECs have recently proposed in Florida. The basis for my opinion is set forth in the paper prepared by Prof. John Jackson, which is attached as Exhibit KK-1.

Q. WHAT ARE OTHER STRUCTURAL PROBLEMS WITH VSEEM III?

A. Additional problems include the following:

Lack of Minimum Payments: Per Occurrence plans may work when competition is robust and few new products are coming to market. However, in Tennessee where competition is still struggling for a foothold, a per occurrence plan can easily become a cost BellSouth will readily pay to keep the doors closed to competition. Per occurrence plans keep remedies the lowest when CLECs are just beginning to ramp up in a market or launching new services in competition with the ILECs. Per occurrence remedies need to be augmented by per measure remedies when disparity is severe or repeated. CLEC reputations and financial resources are most vulnerable in those early stages of market entry or product offering. Competitors could be driven out of the market long before per occurrence remedies would reach levels to motivate BellSouth to spend money for human and capital resources to fix the problem, let alone offset BellSouth's powerful incentive to retain existing local, new high-margin advanced digital services, and eventually long distance profits.

New York and Pennsylvania have adopted remedies paid on a per-measure basis. The Pennsylvania plan adds per measure payments on top of pro

rata payments (somewhat similar to per occurrence) when disparate performance continues in the second month and beyond. The New York plan even creates Special Measures, a super measurement-based remedy, focused on past performance weaknesses of Verizon. The special measures divide large remedy amounts ($2.5 million quarterly for flow through, $2 million monthly for hot cuts and $2 million monthly for missing notices, for example) among the CLEC community when benchmarks are missed for metric groups. The New York Commission believed that these were persistent problems that needed a very large incentive to outweigh the costs and competitive advantages of not fixing underlying operational problems. A per measure remedy plan such as that proposed by WorldCom is appropriate initially. Later on the Authority may want to move to a combination of a per measure and per occurrence plan, with first month, low level performance misses triggering per occurrence remedies. Misses at intermediate or severe levels or continuing into subsequent months would trigger additional per measure remedies.

Inadequacy of low per-occurrence payments: The base remedy amounts proposed are simply too low to provide an adequate incentive for BellSouth to cooperate with its competitors in the local market. These amounts would have little impact on a company the size of BellSouth and do not provide significant incentive to comply with the designated performance standards. The impact of BellSouth providing poor service to CLECs trying to compete for customers can have multiple effects. CLECs would likely see customers discontinue their

relationship with the CLEC for local service, and some customers may discontinue using this CLEC for long distance and other services as well. Word of mouth could keep customers who never even tried a CLEC from doing so. At the very least, the Authority should set a minimum payment level if the per occurrence remedies trigger a very low remedy amount.

Tier II Remedies Should Be Calculated Each Month: VSEEM III Tier II remedy payments are not triggered unless BellSouth has discriminated against the entire CLEC community for three consecutive months. The problem is that even one month of poor performance, such as during a CLEC's ramp-up before it has established a reputation in the local market, can seriously erode prospects for local competition. Also, it is difficult to imagine that even two consecutive months of poor performance would not gravely impact any CLEC at any stage of market entry. Under VSEEM III, BellSouth could provide discriminatory service eight out of twelve months on an aggregate basis and still pay no penalty. In short, the Tier II remedies may rarely, if ever, be triggered, leaving BellSouth with only the prospect of a small fine from the inadequate remedy amounts in Tier I.

Magnitude and Duration Factors Are Not Adequately Addressed: Remedies do not increase for more severe violations, and increase insignificantly for repeated violations: The plan only picks up the number of customers harmed, not the degree to which they received poorer service than retail customers. It does not

distinguish whether the standard was exceeded by 1 day for 100 people or 30 days for 100 people. In both instances the same remedy amount would apply.

Under Tier I, the remedy amounts do increase with the duration of the miss, but are insignificant for repeated violations. The trunk remedies are especially low even if calculated per DS0 and the collocation remedies should increase rather than stay static if missed repeatedly. The percentage increase in remedy amounts from month to month drops dramatically in the fourth month and beyond. Also, BellSouth reduces its exposure by holding the payment steady at the sixth month and beyond. Moreover, under Tier II BellSouth pays the same amount of remedies each month even if it fails to correct a severe problem for months on end. Clearly VSEEM III does not provide for higher payments for more severe misses, and only Tier I payments increase, albeit minimally after repeated violations.

At the very least, the Authority should allow the per occurrence remedies to reset themselves at higher levels if lower level remedies do not deter inferior service to CLECs. BellSouth should receive only one chance (three months of compliant performance) before remedies return to first month levels. If after achieving this three months of compliance, BellSouth begins another run of repetitive substandard CLEC performance, the remedy should use the last highest level duration remedy as the base going forward. The one chance to return to the initial base is adequate. If BellSouth begins to repeat failures of a metric again then the remedies are obviously too low to provide an incentive for BellSouth to retain a fix it was capable of sustaining for three months.

Tier III Remedies are Too Lenient: BellSouth could easily thwart one or all modes of entry by missing in only one metric category and the Authority should take action long before BellSouth's proposed Tier III trigger is hit to stop BellSouth's long distances marketing and expansion.

Q. SHOULD THERE BE A CAP ON THE REMEDY PLAN?

A. No. WorldCom believes that only a review cap should be set. When the review cap is reached, then monies due CLECs above this cap are placed in escrow while the Authority reviews the performance that triggered them and how best to get this into compliance. This may result in the escrow monies being paid to CLECs and the state fund, or by the Authority taking other action to gain improved performance. In any case, the uncertainty will make it harder for BellSouth to quantify whether the remedy potential is a lesser price than fixing the problem.

The absolute (as opposed to procedural) cap BellSouth has proposed for VSEEM III is low in comparison to the states that have set absolute caps. It is below the 36% of net local return levels ($137 million), as calculated via the FCC's ARMIS data (see chart below), that the FCC found adequate (when considered in addition to Verizon's existing contractual remedies and state and federal enforcement authority) to encourage compliant performance in approving Bell Atlantic (now Verizon's) 271 application for New York. It is also below the 44% of net local return level ($167 million) that the New York

Commission set after Verizon's 271 approval and the 44% level approved by the vote of the Georgia Commission.

But even if a 44% review cap were set, BellSouth's per occurrence remedies are so low that it would be hard for it to come anywhere near that cap in missing more than half of the metrics repeatedly in its remedy plan. The Authority should adopt a per measure plan or a combined per occurrence per measure plan to promote competition and encourage BellSouth to meet its 251 obligations.

Data for Tennessee from ARMIS 43-01 (1999)						
(Downloaded from FCC Web Site: http://www.fcc.gov/ccb/armis/)						
Year	Company Name	Row_#	Row_Title	Total_b	State_g	Interstate_h
1999	BellSouth	1090	Total Operating Revenues	1,808,329	1,291,024	438,538
1999	BellSouth	1190	Total Operating Expenses	1,166,116	773,527	281,424
1999	BellSouth	1290	Other Operating Income/Losses	17	28	10
1999	BellSouth	1390	Total Non-operating Items (Exp)	165,760	22,107	-33
1999	BellSouth	1490	Total Other Taxes	103,054	81,805	21,894
1999	BellSouth	1590	Federal Income Taxes (Exp)	160,663	127,454	41,469
1999	BellSouth	1915	Net Return	N/A	N/A	93,794
1999	BellSouth	101	Switched Lines (ARMIS 43-08)	2,679,790		
FCC's Net Return Calculation*						
				Net Return	36% Net Return	44% Net Return
	BellSouth		"Net Return"	379,953	136,783	167,179

*Calculations in testimony based on FCC New York 271 Order at ft. 1332: "To arrive at a total "Net Return" figure that reflects both interstate and intrastate portions of revenue derived from local exchange service, we combined line 1915 (the interstate "Net Return" line) with a computed net intrastate return number (total intrastate operating revenues and other operating income, less operating expenses, non-operating items and all taxes)."

Q. IS WORLDCOM WILLING TO MODIFY THE REMEDY PLAN OUTLINED IN ITS MPS DOCUMENT?

A. Yes. WorldCom is willing to modify its plan to accept BellSouth per occurrence levels for first time low level misses, with additional per measure remedies added for repeated or severe misses similar to those adopted by the two Pennsylvania Administrative Law Judges ("ALJs") in a Pennsylvania generic performance measures proceeding.. (*Joint Petition of NEXTLINK of Pennsylvania, Inc. et al. for an Order Establishing a Formal Investigation of Performance Standards, Remedies, and Operations Support Systems Testing for Bell Atlantic-Pennsylvania, Inc.*, Docket No. P-00991643, Recommended Decision (August 6, 1999).)

This plan imposes additional remedies on top of pro-rata reimbursements if misses extend into the second ($2500), third ($5000) or fourth ($25,000) month levels. A chart describing the ALJs' plan is attached as Exhibit KK-2. The Pennsylvania Commission subsequently reduced the second and third tier levels to $2000 and $4000 in its December 31, 1999 order and made the $25,000 level subject to the Commission's discretion in light of its landmark decision to split Verizon-Pennsylvania into separate retail and wholesale units. Because the Authority has not adopted such structural separation, WorldCom recommends that the ALJs' plan with BellSouth's per occurrence amounts be used in lieu of the ALJs' plan's use of CLEC bill refunds. The addition of these per measure remedies to per occurrence remedies would go a long way toward correcting the inadequacy of BellSouth's per occurrence plan. These per measure levels may need to be revised upward upon periodic review of the Authority, or via automatic increase for repetitive failures.

Q. **DOES THAT CONCLUDE YOUR REBUTTAL TESTIMONY?**

A. Yes it does.

EXHIBIT 1

Crucial Shortcomings of the "Balancing Critical Value" Approach to Performance Appraisal

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I. Introduction

Section 271 of the Telecommunication Act of 1996 provided for ILEC entry into the long distance telephone service market if CLECs were allowed to enter the various local telephone service markets. This CLEC entry, in turn, is predicated upon the CLECs' ability to purchase from the ILEC various services crucial to their ability to compete in the local market. Consequently, the Act further requires that the ILEC provide these services to the CLECs at a quality level *at least equal* to that they provide to their own customers or affiliates. Thus, the evaluation of parity in local service provision has become a central issue in all proceedings concerning ILECs' 271 approval.. Statistical means difference tests, typically based on (some version of) the LCUG Z statistic, have become the cornerstone in the evaluation of service quality provision. Indeed, test results are not only used to determine whether the ILEC has discriminated against the CLEC in service quality provision, they also enter into the determination of the magnitude of the penalty involved according to several performance assurance plans (such as those proposed by SBT, BST, and AT&T). It is this latter use that has led to the development of a "balancing critical values" approach to parity testing and performance appraisal.

When one makes a decision concerning the presence or absence of parity in service provision based on a statistical test, he or she can err in one of two possible ways. They could conclude that discrimination in service provision exists when in fact it does not, or they could conclude that discrimination does not exist when in fact it does. Because the null hypothesis of the test assumes "no discrimination," the former error involves the rejection of a true null. It is called a type I error, and the probability (or risk) of committing such an error is called α. The latter error involves the acceptance of a false null. It is called a type II error, and the probability (or risk) of committing such an error is called β. The equal risk approach to parity testing amounts to determining a critical value of the test statistic called a balancing critical value (BCV), that equates α with β. This principle was first enunciated by LCUG in the early (pre 1998) stages of parity testing discussions, but the current version is the result of joint efforts of Bell South's statistical consultants from Ernst and Young and AT&T's (now retired) statistical expert Colin Mallows. Indeed, a BCV has become an integral part of both AT&T and Bell South's Performance Assurance Plans (PAPs).

In principle, an equal chance of error approach is attractive for (at least) two reasons. First, it remedies a number of difficulties encountered by the alternative approach. A number of PAPs, e.g., SBTs' Texas plan, employ a fixed critical value of the test statistic and a K-table in lieu of a BCV approach. Without going into a detailed criticism, the K-table corrects for random variation in the test statistic by allowing the ILEC to fail "k" tests per month without penalty. Many CLECs object to this approach because the table

is derived based on an unrealistic assumption (that the ILEC always provides parity service) and because it ignores type II errors. The BCV approach avoids these criticisms (and handles the random variation problem) by employing a critical value of the test statistic that equates the probabilities of committing type I and type II errors.

Second, the BCV approach dovetails neatly with the objective of unbiased penalty assessment. An optimal statistical decision would be one that equates the costs of making a type one error with the costs of making a type two error. ILEC representatives are typically more than willing to disclose how much a type I error costs them. CLECs, on the other hand, have a more difficult time determining how much a type II error costs them. These costs involve not only the foregone penalty payment and the cost to their reputation; they also entail the cost to society of having to continue monopolistic service provision while losing the benefits of competition. Since these costs are difficult to calculate, it is not reasonable to expect an optimal statistical decision. The BCV, however, accomplishes the next best thing. Since, the probability that the ILEC would have to pay a fine when it is not discriminating is equal to the probability that it will not have to pay a fine when it is discriminating, the long run expected value of inappropriate net penalty payments is zero.

It is indisputable that the BCV approach has a definite allure for parity testing and performance appraisal. Unfortunately, operationalizing equal risk, putting the principle into practice, exposes a major flaw that literally can open Pandora's Box in terms of allowing the ILEC to thwart meaningful CLEC competition at the local level. The problem relates to the key role played by a parameter δ in determining what critical values of the test statistic will lead to the rejection of parity. The flaw is that the value given to δ is arbitrarily determined. Pandora's Box is opened when δ is set equal to "large" values and all the evidence suggests that ILECs are intent on pursuing exactly this strategy.

II. The Importance of Specifying Delta

To apply equal risk, one must (a) determine an expression for the value of α assuming the null hypothesis is true, (b) determine an expression for the value of β assuming the alternative hypothesis is true, and (c) set these two expressions equal to each other so as to solve for the balancing critical value (BCV) of the test statistic that equates α and β. Step (a) is easy because the CLEC and ILEC population means are assumed to be equal -- it does not matter what value they are equal to, just that they are equal to each other. The procedure becomes problematic at step (b) because we must have a specific value for the difference between the CLEC and ILEC population means in order to compute β. This is the point in the argument at which statisticians typically cop out. Ideally, we would like to compute β based on a means difference that is only just large enough to be marginally "competitively significant". Statisticians argue that they are in no position to gauge how large means differences should be in order to be marginally competitive significant, this matter should be left to "telephony experts". But given a measure of this difference, they can easily compute the BCV and hence implement an equal probability

of Type I and Type II errors. The AT&T/BST statisticians capsulize the problem as follows:

$$H_0 : \mu_C = \mu_I; \quad \sigma_C^2 = \sigma_I^2$$
$$H_A : \mu_C = \mu_I + \delta \cdot \sigma_I; \quad \sigma_I^2 = \lambda \sigma_C^2 \tag{1}$$

Clearly, parity service provision requires both equality of means and equality of variances. The second set of equalities in H_0 and H_A above allow for discrimination in the form of the CLEC variance exceeding the ILEC variance by a multiplicative factor λ, $\lambda>1$; i.e., the ILEC provides the CLEC more variable service than it provides itself. While this is certainly an important source of discrimination, it is of only tangential importance to the problem at hand. Thus, in what follows, the variances are assumed to be equal; i.e., $\lambda=1$.) In this view, the CLEC and ILEC means are equal under H_0 and differ by an amount equal to $\delta \cdot \sigma_I$ under H_A. Analytically, under these assumptions, steps (a), (b), and (c) lead to the formula

$$BCV = \frac{\textit{Expected Value of Test Statistic Assuming Means Differ by } \delta \cdot \sigma_I - \textit{Expected Value of Test Statistic Assuming Means do not Differ}}{\textit{Variance of Test Statistic Assuming Means Differ by } \delta \cdot \sigma_I + \textit{Expected Value of Test Statistic Assuming Means do not Differ}} \tag{2}$$

Thus δ is a measure, in units of the ILEC standard deviation, of the extent to which the ILEC mean exceeds the CLEC mean (or, conversely). As such, specifying δ specifies the difference between the CLEC and ILEC means that would be marginally competitively significant in affecting local service competition. Further, specifying delta is integral to determining the BCV. It follows immediately that, since parity is rejected if the computed value of the test statistic "exceeds" the BCV, the value chosen for δ can determine the outcome of the test.

While the statistician may not be in a position to accurately specify δ, he or she is certainly able to evaluate the impact of choosing a particular δ on parity testing. Before turning to this question, however, let us examine briefly the ability of "telephony experts" to specify δ. In the past, BST "experts" have suggested that δ should equal 1; more recently regulators (the Florida Strawman proposal) have put forward a value of 0.5. No explanation has been offered as to how they arrived at these numbers. The following scenario is not out of the question: One day the chief ILEC negotiator phones one of his engineers and asks, "Hey Joe, suppose our average service provision was about one standard deviation better than what we provide the CLECs on average. Would that difference be competitively significant?" Joe thinks for a minute and responds, "Yeah, it probably would be, but let me check with Bill to see what he thinks. Hey, Bill..." To make a long story short, let's suppose that Bill and whoever else he consults concur. The value of δ has now been established, in the ILEC's mind, as 1. Admittedly, there is no real evidence to support this conjecture; but equally, there is no real evidence refuting it, either. That is one of the problems, ILECs provide no evidence from their "telephony experts" at all.

Charitably, the ILEC may simply have asked its experts the wrong question. It is probably true that selecting $\delta=1$, produces a means difference, $1\cdot\sigma$, that is competitively significant. But the important question is whether this is the least possible means difference that would be competitively significant. If one is willing to accept values of δ that lead to inframarginal differences in competitive significance, then there is an infinity of equally legitimate values that δ could take on. For example, if $\delta=1$ results in a competitively significant means difference ($1\cdot\sigma$), then so would values of $\delta=2, 3, 4, \ldots$, because they would lead to larger means differences than that given by $\delta=1$ (i.e., $2\cdot\sigma$, $3\cdot\sigma$, $4\cdot\sigma$, ...). Thus, specifying inframarginal values for δ becomes completely arbitrary, so that such values can contribute nothing to the solution of parity testing problems. The real question is how *small* can δ be made and the resulting means difference be competitively significant. Is it possible for means differences resulting from δ values of 0.5, 0.25, or 0.1 to be competitively significant differences? It is the value of δ that leads to the marginally competitively significant means difference that we require, because it is the only unique, unambiguous, meaningful value to assign to δ if competitive significance is to be the criterion by which we determine Type II error. For this reason, establishing the δ that leads to marginally competitively significant means difference should be the subject of considerable research on the part of economists and statisticians as well as engineers and other "telephony experts". The CLECs are aware of no models that have been estimated, no experiments that have been conducted by the ILECs. Indeed, the ILEC is typically in a uniquely poor position to conduct tests and experiments to establish the extent of marginally competitively significant differences in the provision of local telephone service because, generally speaking, it does not "compete" in local markets. In fact, a sound argument can be made that it is not possible at this time to accurately establish such values, because up to now, local telephone markets in the U.S. have not seen vigorous competition between the CLECs and the ILEC. Until such competition is the rule of the day, determining "competitive significance" can be based on nothing but conjecture.

III. The Statistical Consequences of Choosing a δ That is "Too Large"

Now consider the impact on parity testing of the ILEC's choice of $\delta=1$ rather than some, more appropriate, smaller number. The answer, in a nutshell, is this: the larger δ, the more extensive is the ILEC's carte blanche to thwart local competition. The rationale is as follows: (i) Larger values of δ indicate larger differences in SQM means. (ii) The larger the means difference, the less likely the commission of a type II error, i.e., the lower is β. (iii) Smaller values of β require smaller values of α to balance the two risks. (iv) Since α is not only the probability of committing a type I error but also the level of significance of the test, smaller values of α imply larger critical values of the test statistic. (v) Since larger means differences imply greater discrimination and since larger critical values of the test statistic make rejection of parity less likely, larger values of δ permit greater discrimination by the ILEC without its incurring a penalty. To see points (i)- (iv) more clearly, consider the Figure 1. The figure contains three sets of graphs with two graphs in each set. For each set, the upper graph can be considered as the distribution of ILEC sample means and the lower graph, as the distribution of CLEC sample means. The

service being analyzed is assumed to be one in which larger numbers mean worse performance. Thus, in accordance with equations 1, the mean of the ILEC distribution is μ and the mean of the CLEC distribution is $\mu+\delta\cdot\sigma$. In the upper set of graphs, $\delta=1$, in the middle set, $\delta=0.5$, and in the lowest set, $\delta=0.25$.

Graphically, determining the balancing critical value is easy. The probability of a type I error is simply the area under the ILEC curve to the right of X* (ILEC sample means so large that they give the appearance of non-parity when parity is in fact the case), and the probability of a Type II error is the area under the CLEC curve to the left of X* (CLEC sample means so small that they give the appearance of parity when it is not truly the case). Determining the balancing critical value simply amounts to adjusting the dashed vertical line -- the one labeled BCV and the one that defines X* -- so as to equalize these two areas. Also note that even though the distributions are not normalized, it still follows that larger α (=β) areas imply smaller (in absolute value) critical values, and conversely.

Now consider the upper set of graphs which have been constructed under the hypothesis that $\delta=1$. Here, the CLEC mean is a relatively large distance above the ILEC mean. Thus the BCV will determine α and β errors that are relatively small, indicating that the BCV itself will be relatively large in absolute value. Intuitively, since the CLEC mean is a relatively large distance above the ILEC mean, we are not very likely to commit a Type II error, that is, β is likely to be small. Consequently, α must also be small to equal β, and small α's correspond to large (in absolute value) critical values of the test statistic.

In comparison, consider the middle set of graphs. All factors are assumed to be the same as in the upper set except that now the CLEC mean is closer to the ILEC mean, $\delta=0.5$ rather than $\delta=1$. Relative to the first case, this increased proximity will lead to an increased β-risk and a BCV that cuts off larger areas in the tails of both distributions. Note that the larger α would correspond to a smaller (in absolute value) critical value of the test statistic.

Finally, note that the lowest set of graphs reinforces these notions. Again, everything is assumed to be the same as in the two earlier cases except that now the CLEC mean is closer still to the ILEC mean, $\delta=0.25$. Again, because of this increased proximity, the α- and β-risks are higher and the resulting BCV lower (in absolute value) than in the previous cases.

This analysis clearly demonstrates that, in general, the larger δ, the larger the critical value of the test statistic associated with the rejection of parity, *ceteris paribus*. Based on this result, it would not be difficult to accept a value of δ of 1 if the α- and β-risks were of a reasonable size; i.e., if the critical values of the test statistic were of reasonable magnitudes. Unfortunately, this is not the case for $\delta=1$, nor even for $\delta=0.5$. The problem is that the AT&T/BST approach guarantees that, given δ, the α-risk will equal the β-risk, *but it has nothing to say about the magnitude of risk at which they will be equal.* As a result, many tests have critical values that balance risks, but at infinitesimal risk levels. In fact, these levels of significance are so small as to make a mockery of parity testing.

Based on the hypothesis test defined in (1)

$$H_0 : \mu_C = \mu_I ; \sigma_C^2 = \sigma_I^2$$
$$H_A : \mu_C = \mu_I + \delta \cdot \sigma_I ; \sigma_I^2 = \lambda \sigma_C^2 \quad . \tag{1'}$$

Begin by assuming that λ=1. BST has suggested a simplified formula for approximating the BCV for the truncated Z statistic. (It should be noted that what BST calls the truncated Z is in fact a standard normal variate -- the truncated Z minus its mean and divided by its standard deviation -- so that its critical values are those of a traditional Z statistic):

$$BCV = \frac{-\delta}{2\sqrt{\frac{1}{n_C} + \frac{1}{n_I}}} . \tag{3}$$

Let us begin by assuming that δ=1, and let us assume that the ILEC sample size is sufficiently large so that the term $(1/n_I)$ in the denominator of (3) can be taken to be zero. Under these assumptions, the BCV depends only on δ and the CLEC sample size. Consider some typical CLEC sample size values, and note the implied values of BCV and the concomitant level of significance α (=β):

n_C	BCV	$\alpha = \beta$
50	-3.54	0.0002
100	-5.00	0.0000003
300	-8.66	2.3×10^{-16}
500	-11.18	2.5×10^{-28}
1000	-15.81	$.3 \times 10^{-54}$

It should be clear that, for very reasonable CLEC sample sizes, when δ=1, the AT&T/BST equal risk approach yields unacceptably large (in absolute value) critical values and unacceptably small levels of significance. Put into perspective, the FCC has suggested that α=0.05 (CV=-1.645) is a reasonable significance level to undertake statistical tests of parity. Some ILEC proposals have suggested α=0.025 (CV=-1.96) or even α=0.01 (CV=-2.365). But no *bona fide* statistician could honestly recommend that it would be reasonable to conduct a simple means difference test at anything smaller than the α=0.01 level of significance -- that is, until now. By requiring δ=1, BST has implicitly required that the level of significance be $1/50^{th}$ of the minimum acceptable level and $1/250^{th}$ of an appropriate level -- in their best case scenario (n_C = 50). For more reasonable sample sizes, the implications are even more outrageous. And these results are not an artifact of the simplifying assumptions used in the above analysis. BST analyzed 84 parity tests on two SQMs using April 1999 data for the state of Louisiana, with δ=1. They report a minimum BCV of -73.00 (!) and a median BCV of -3.74, implying that half of the tests were undertaken at a level of significance less than 0.00009. Indeed, roughly $3/4^{th}$ s of the tests were undertaken at less than the recommended 0.05 level of significance. These results indicate that, regardless of the opinion of the "telephony experts", the idea that δ=1 can be rejected based on its statistical implications alone.

These same conclusions also obtain in the case of δ=0.5, although to a lesser degree. Recall that this is the value of δ that regulators have put forward in the Florida "Strawman" proposal. If we repeat the above experiment with δ=0.5, we find the following:

n_C	BCV	$\alpha = \beta$
50	-1.77	0.038
100	-2.50	0.0062
300	-4.33	0.000007
500	-5.59	0.00000001
1000	-7.91	1.3×10^{-13}

Again, except for the n_C=50 case, all significance levels are less than the minimum acceptable level, and even for the n_C=50 case, the significance level is less than the recommended .05 level. Thus, for the reasons mentioned above, δ=0.5 must be rejected on the grounds of its statistical implications as too big. (We acknowledge that these numbers do not dovetail with those in examples found in Appendix D of the "Strawman" proposal. They do, however, dovetail with the numbers we compute using that same data but appropriate, exact, formulae from other sources.)

Finally, prior to his retirement, AT&T's Colin Mallows recommended a value of 0.25 for δ. Replicating the above experiment for δ=0.25 yields

n_C	BCV	$\alpha = \beta$
50	-0.88	0.19
100	-1.25	0.106
300	-2.16	0.015
500	-2.80	0.0026
1000	-3.95	0.00004

Judged by the implied level of significance of the test, these results are considerably more credible than the two previous cases. Still, for instances where n_C>100, the levels of significance are just too low. This inference is particularly important since both AT&T and BST plans recommend aggregating the test statistics up through many deep testing categories before comparing them to the BCV, so that large CLEC sample sizes are to be expected. (To illustrate, the relevant sample sizes in the previously mentioned Strawman examples are in excess of n_C=300.)

IV. Implications for Parity Testing, Performance Appraisal, and the Prospects for Operationalizing Equal Risk

The practical import the above statistical results concerning parity testing should be obvious: The larger the value of δ, the greater the means difference, i.e., the greater the extent of discrimination against the CLEC, permitted the ILEC before it is subject to a penalty payment. An example will illustrate: The ILEC owes a penalty when the computed value of the test statistic exceeds the BCV. For simplicity, assume the test statistic is the LCUG Z and that $n_{ILEC} \rightarrow \infty$. Thus a penalty is owed if

$$\frac{\overline{X}_{CLEC} - \overline{X}_{ILEC}}{\sigma_{ILEC}\sqrt{\frac{1}{n_{CLEC}}}} \geq BCV \qquad (4)$$

Substituting equation (3) for BCV and rearranging terms, a penalty will be owed if

$$\overline{X}_{CLEC} \geq \overline{X}_{ILEC} + 0.5 \cdot \delta \cdot \sigma_{ILEC} \qquad (5)$$

Now suppose the ILEC mean repair interval is, say 3 days with a standard deviation of 8. If $\delta = 1$, the CLEC mean repair interval would have to be *more than 7 days* (as compared to the ILEC's 3 days) before the ILEC would owe a penalty. Indeed, if $\delta = 0.5$, as suggested in the Florida Strawman, the CLEC mean repair interval would have to be *more than 5 days* (as compared to the ILEC's 3 days) before the ILEC would owe a penalty. Interestingly, if $\delta = 0.15$, the implied means difference would be 0.6 days, about the same as that implied by the critical Z value of 1.645 (with $n_{CLEC} = 400$) suggested by the FCC (0.67 days).

This example should make it clear why ILECs want large values of δ and CLECs want small values of δ. It should also make it clear why δ has become such an important bargaining chip in 271 negotiations. The value of δ is not something to be bargained over any more than the value of π is something to be voted on. As pointed out in section II, δ is the difference between mean CLEC and ILEC performance levels, measured in units of the ILEC standard deviation, which would be marginally competitively significant. Ideally, its value for many different SQMs would be the subject of serious study by statisticians, economists, engineers, and industry experts. To make δ subject to negotiation is to destroy the logical underpinnings of parity testing and performance appraisal - to make these underpinnings rest on the relative bargaining power of the participants rather than statistical science. Yet this result is as inevitable as night following day. Because we have not seen at the local level the kind of vigorous competition among providers that would allow an appropriate calculation of δ, the only methods available for specifying δ are conjecture and negotiation, hopefully tempered with a little statistical sanity.

Problems arising from the acceptance or rejection of parity are not the only practical problems arising from attempts to apply equal risk. Such problems are magnified when the BCV enters into the determination of the magnitude of penalties. Consider for example the penalty structure in the Florida Strawman proposal. In that plan, the computed value of the (truncated) Z (call it Z*) and the BCV (the parity gap) is divided by 4 and the resulting percentage (called the "volume proportion", it cannot be >1) which is then multiplied by the number of impacted CLECs to determine the "Affected Volume." This number multiplied by the per-occurrence penalty determines the payment to the CLEC for discriminatory service. Since penalties are owed only when Z*>BCV, increases in δ increase the BCV, which decreases the parity gap (for a given Z*), which decreases the volume proportion, which decreases the affected volume (for a given number of impacted CLECs), and hence lowers the penalty payment -- or the likelihood of a penalty being owed. *This means that by manipulating δ, the ILEC can*

manipulate penalty payments in such a way as to circumvent the intent of even the most adroit state oversight agencies. Other plans involving δ and the BCV (e.g., AT&T's), while more reasonable, have similar potential of not reflecting the harm of disparity in a real world environment. CLECs like WorldCom have agreed in joint CLEC remedy proposals to 0.25 as a generous trial for the BCV for individual CLEC results. But WorldCom is becoming increasingly alarmed, as it should well be, that regulators are splitting the difference between ILEC and CLEC proposals for BCV's without any considered analysis of the impact of this "guess" of competitive significance on the marketplace.

V. Can Equal Risk Be Made Operational?

In principle, the BCV is indeed a beautiful dream. It eliminates the problem of random variation, and it reduces to zero the expected value of inappropriate penalty payments. Unfortunately, the crucial parameter δ cannot be unambiguously determined, there is an incentive on the part of the ILEC (CLECs) to inflate (deflate) δ, and making the value of δ a bargaining chip destroys the statistical legitimacy of parity testing and performance appraisal. The ILEC cannot be expected to make an enlightened choice of δ because it has scant experience with competition. The CLECs cannot be expected to make an enlightened choice of δ because they have limited experience in terms of contracting with the ILEC and with providing services in the local market. Since the kind of research needed to obtain an enlightened choice of δ is not possible at the present time, and since conjecture and negotiation clearly incorporate incentives to game the system, some CLECs (in particular, WorldCom) *worry that a one-size-fits-all BCV can ever be made operational.*

For a moment, let us suspend disbelief and suppose that a BCV -- even with all its potential pitfalls -- is adopted. Would this be a good thing for the CLECs, the ILECs, the state regulatory agencies, or society as a whole? Even ignoring all of the problems brought to light up to now, the answer is still, "No!" Here is why: Suppose that in spite of all the impediments that the various equal risk plans place before it, competition still develops. Increased competition implies larger CLEC orders, and larger CLEC orders imply lower probabilities if type II errors, *ceteris paribus*. But lower values of β imply lower balancing values of α, which in turn imply larger BCVs. Consequently, under equal risk, increased competition will make it less likely to judge a given means disparity as indicative of discrimination. This consequence is clearly unacceptable. A given difference in the quality of services provided by the ILEC to its own customers versus that it provides to those of the CLEC is either discriminatory or it is not. The extent of CLEC/ILEC competition should have nothing to do with this inference. For this reason, the long run acceptability of BCVs is even more uncertain than its short run acceptability.

It remains but to conclude that implementing a BCV approach is a risky strategy indeed. The CLECs support AT&T's proposal of a BCV approach only to the extent that it's proposed value of $\delta = 0.25$ is taken to be a *maximum* acceptable trial value of that parameter for individual CLEC results. This position is based on statistical sanity; conjecture, bargaining, or further alterations to increase the BCV are not acceptable. If

state regulatory commissions find this position too intransigent, then some method other than the BCV approach must be found to deal with random variation and competitive significance.

Figure 1.

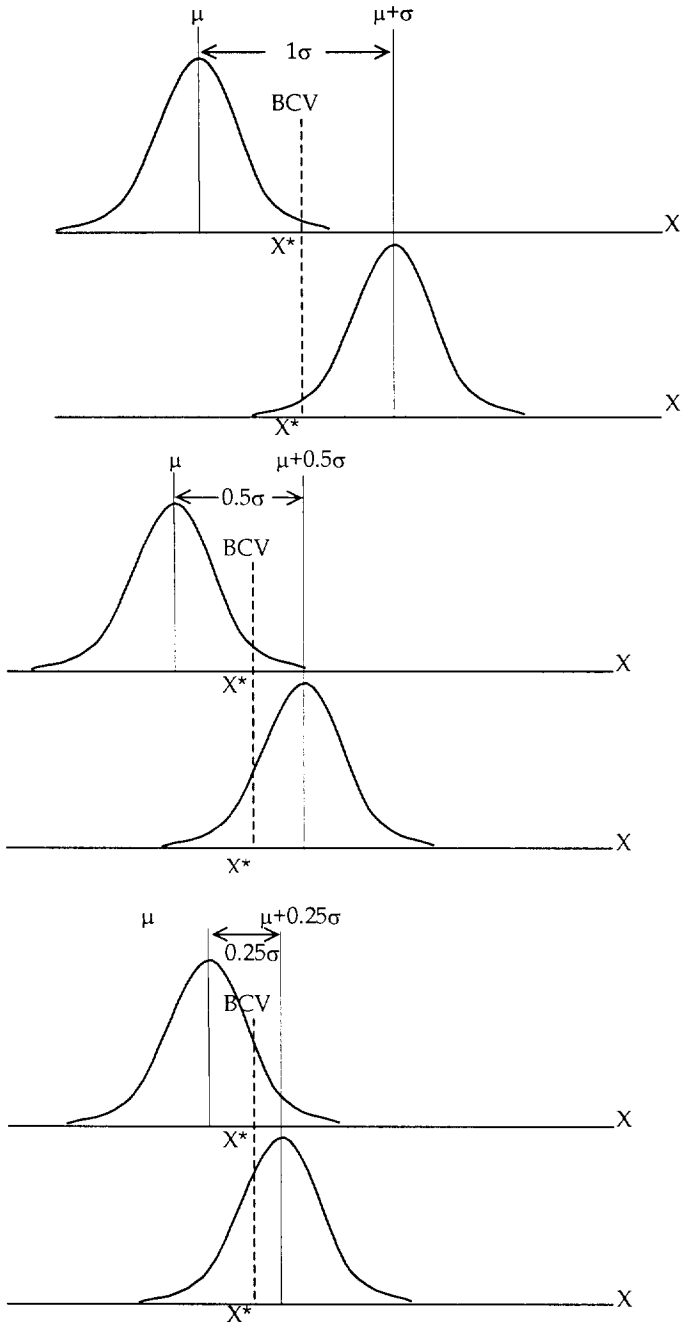

EXHIBIT 2

Pennsylvania ALJs' Remedy Plan Recommended Decision in P-00991643, date August 6, 1999		
Indication of Non-Party/Benchmark Failure		
Parity Metrics:		Non-parity: Modified z-score less than -1.645
Benchmark Metrics:		Any violation of benchmark results in remedies being applicable.
Application of Remedy - Tier I – Individual CLEC Violations (to CLECs)		
First Month:	**Tier I** **Severity**	For each submetric with parity or benchmark difference favoring ILEC by less than or equal to 50%, CLEC receives 50% of the fee charged for that service. For each submetric with parity or benchmark difference favoring ILEC of more than 50% the entire fee is returned. For metrics with no corresponding service fee, BA should take the total individual CLEC monthly fee for metric services and divide by the total number of metrics and submetrics used by that CLEC in that month. The average metric fee for the most part can then be used to calculate the repayment.
Second Violation of Same Metric (without two months of compliant results in between):	**Tier I**	First month remedies, plus an additional $2500 per submetric for each performance failure.
Third Violation of Same Metric (without two months of compliant results in between):	**Tier I**	First month remedies plus $5000 per each submetric performance failure
Fourth (and Subsequent) Violations of Same Metric (without two months of compliant results in between):	**Tier I**	First month remedies plus $25,000 per submetric performance failure.

Application of Remedy – Tier II CLEC Industry-Wide Violations Monies Possibly Paid to State Universal Service Fund.	
When, with 95% confidence monthly statistics show BA-PA failed to provide parity or missed a benchmark for all CLECs for any submetric. **First metric violated (in any month):** **Second and subsequent metrics violated (in the same month):**	a. Prior to §271 approval: request FCC to deny BA-PA's entry into long distance market and make it demonstrate 6 months to a year of compliant behavior before reapply.. **b.** If 271 authority already has been granted or granted and revoked, then remedy plan would be invoked for payments to state universal service fund. **$.50 per BA access line** **$.10 perBA access line**
Miscellaneous Issues	
Force Majeure Events	Even forces beyond BA's control should impact CLECs and BA equally. BA should pay the money and both BA and CLECs may petition the commission to correct a paid remedy that resulted from unreasonably skewed data.
CLEC Reimbursements for Assisting in Root Cause Analysis	BA must reimburse CLECs for expenses reasonably incurred in helping BA determine the cause of a performance failure.
Missing and Incomplete Reports	With reports due the 25th day after the reporting period ends, on the 26th day BA should pay $2500 plus $250 for each metric or submetric missing or incomplete. These amounts increase along the following schedule: 27th day $2500 plus $500 per missing item 28th day $5000 plus $500 per missing item 29th day $7500 plus $500 per missing item 30th day + $10,000 plus $500 per missing item
Adjustments to Remedies for Inflation	Remedies should track the Gross Domestic Price Index using the first year of the plan as the base year.
Capping Liabilities	No overall, per measure, or procedural caps.
Payment Methodology	Direct payments, no bill credits, accompanied by an explanatory voucher.
Sample Sizes	Parity Standard 10 Benchmarks--1

BEFORE THE

TENNESSEE REGULATORY AUTHORITY

DOCKET NO. 00-00309

PREFILED REBUTTAL TESTIMONY

OF SHERRY LICHTENBERG

ON BEHALF OF WORLDCOM, INC.

December 13, 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. In my testimony, I will use the term "WorldCom" to refer to both MCImetro Access Transmission Services, LLC and MCI WorldCom Communications, Inc.

Q. HAVE YOU PREVIOUSLY FILED DIRECT TESTIMONY IN THIS DOCKET?

A. Yes.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. The purpose of my rebuttal testimony is to respond to arguments made by BellSouth witness Milner concerning issues 5, 15, 19, and 101, and BellSouth witness Pate concerning issues 80 and 81.

ISSUE 5

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

Q. WOULD THE LINE CLASS CODE METHOD DESCRIBED BY MR. MILNER IN HIS DIRECT TESTIMONY PROVIDE EFFECTIVE SELECTIVE ROUTING TO WORLDCOM?

A. No. Mr. Milner acknowledges that the line class code method he describes requires a separate trunk group for each end office. This method would require WorldCom to use an overlay network to process operator service and directory assistance ("OS/DA") traffic, which would be inefficient and prohibitively

expensive. This is so in part because OS/DA traffic volume tends to be low, so an overlay network would require leasing a large number of trunks for relatively little traffic.

Q. IS THE LINE CLASS CODE METHOD DEFICIENT ONLY IN THAT IT REQUIRES THE DEPLOYMENT OF AN INEFFICIENT AND PROHIBITIVELY EXPENSIVE OVERLAY NETWORK?

No. Even with such a network in place, simply routing OS/DA traffic using the line class method without any enhancement is of no practical value to WorldCom, 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.

Q. HAS BELLSOUTH OFFERED AN EFFECTIVE AND PRACTICAL SOLUTION TO THIS SIGNALING PROTOCOL PROBLEM?

A. No. BellSouth did develop a pseudo-code technique that purported to address this concern. Although this technique does appear to route calls correctly, it does not provide WorldCom with an effective and practical selective routing solution. A serious 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 would be an extraordinarily inefficient and expensive way to provide OS/DA service, particularly for the statewide residential service that WorldCom intends to offer.

Q. DOES THE LINE CLASS CODE METHOD SUFFER FROM OTHER DEFICIENCIES?

A. Yes. BellSouth does not currently provide an electronic means for WorldCom to order selective routing to its OS/DA platform on a customer by customer basis using an LSR (local service request) submitted via EDI. This means that even if WorldCom decided to attempt to use the line class code method, it would have to submit a manual order for every single end user customer it signed up to ensure that each customer's calls were routed to the WorldCom OS/DA platform. WCOM generally issues from 3-5,000 orders per day for local service migrations when it launches residential service. Clearly, no manual method would support this type of volume.

Q. WOULD BELLSOUTH'S AIN HUBBING PROPOSAL PROVIDE EFFECTIVE SELECTIVE ROUTING?

A. I do not believe so. Mr. Milner asserts that AIN hubbing would allow the carriage of customized routing traffic over "common trunk groups" between the BellSouth end offices and the AIN hub. Yet this would not enhance the efficiency of BellSouth's proposal. Importantly, Mr. Milner's term "common trunk groups" does not appear to be the same thing as "common transport" (which would permit WorldCom's traffic to share trunks with BellSouth's

traffic). Use of "common trunk groups" would only appear to permit WorldCom to share trunking with another CLEC, provided that another CLEC decided to utilize AIN hubbing. With another CLEC or on its own, requiring WorldCom to build or lease dedicated transport from every BellSouth end office would be an extremely inefficient and expensive way to provide OS/DA service.The AIN hubbing solution would also require WorldCom to lease dedicated transport from each AIN hub to its OS/DA platform and to obtain direct trunking from certain end offices to its OS/DA platform to obtain compatible feature group D signaling.

Q. DOES THE AIN HUBBING CODE METHOD SUFFER FROM OTHER DEFICIENCIES?

A. Yes. As with the line class code method, BellSouth does not currently provide an electronic means for WorldCom to order selective routing to its OS/DA platform using AIN hubbing. This means that if WorldCom decided to attempt to implement this method, it would have to submit a manual order for every single end user customer it signed up to ensure that that customer's calls were routed to the WorldCom OS/DA platform.

ISSUE 15

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

Q. HOW DO YOU RESPOND TO MR. MILNER'S TESTIMONY ON THE ANI-II DIGIT ISSUE?

A. Mr. Milner appears to acknowledge that BellSouth's line class code method is capable of passing ANI-II digits unchanged. There thus appears to be no reason why BellSouth should not agree to language substantially similar to what WorldCom has proposed.

ISSUE 19

How should BellSouth be required to route OS/DA traffic to WorldCom'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. MR. MILNER CONTENDS BELLSOUTH IS NOT OBLIGATED TO PROVIDE OS/DA TRAFFIC OVER SHARED TRANSPORT VIA A BELLSOUTH TANDEM, OR OVER DEDICATED TRUNKS THAT CAN BE OVERFLOWED TO SHARED TRANSPORT. HOW DO YOU RESPOND?

Mr. Milner argues BellSouth has no obligation to provide OS/DA traffic over shared transport, or over dedicated transport on an overflow basis, because BellSouth routes its own traffic to a BellSouth TOPS tandem directly. This argument ignores the FCC's rule (47 C.F.R. 51.319(d)(2)(B)) requiring BellSouth to provide all technically feasible transmission facilities. This rule enables WorldCom to determine how its traffic will be transported, so long as technically feasible. Mr. Milner does not claim that shared transport and overflow arrangements are not technically feasible. Indeed, the testing done to date on BellSouth's proposed OS/DA method appears to demonstrate that what WorldCom is requesting is technically feasible. Accordingly, BellSouth should be required to provide such transport.

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. MR. PATE CONTENDS THAT ACCESS SERVICES ARE NOT PART OF BELLSOUTH'S OBLIGATIONS UNDER THE ACT AND THAT WORLDCOM SHOULD NOT BE PERMITTED TO USE THIS ARBITRATION TO TRY TO ENHANCE ITS INTEREXCHANGE SERVICE OFFERINGS. HOW DO YOU RESPOND?

A. Mr. Pate misses the point. WorldCom is not requesting BellSouth to provide pre-ordering functionality for interexchange services. 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 pre-order capability.

Q. MR. PATE CONTENDS 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. WorldCom's need for ASR pre-ordering functionality is predicated on its ability to order combinations of DS1 loops and transport ("DS1 combos") using an ASR. BellSouth now purports to require WorldCom to order DS1 combos using a manual LSR process rather than the electronic ASR process that BellSouth provided until recently. But BellSouth representatives order services comprised

of loop and transport elements using an electronic process, and I understand that BellSouth's representatives are able to pre-populate pre-ordering information on those orders. WorldCom likewise should have an electronic process to order DS1 combos, and should be able to integrate that ordering process with BellSouth's pre-ordering interface.

ISSUE 81

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

Q. DOES BELLSOUTH PROVIDE A SATISFACTORY SERVICE INQUIRY PROCESS?

A. No. Mr. Pate describes a service inquiry process that a CLEC can use "[i]f the CLEC desires to have BellSouth immediately order the service once the [service inquiry] is complete and compatible facilities are [available]." Mr. Pate does not discuss what the CLEC can do if it wishes to submit a service inquiry but does not necessarily wish to order the service. My understanding is that BellSouth does not offer this capability on a pre-order basis.

It is often the case that WorldCom needs facilities information as a part of its efforts to close a sale – that is, before WorldCom is in a position to submit an LSR. Even assuming that WorldCom could obtain all the information necessary to populate an LSR before making the sale, BellSouth's proposed method would require WorldCom to submit an order with the service inquiry and then cancel the order if it was not able to make the sale. That approach is

wasteful and gives rise to the risk that BellSouth's systems would not cancel orders in a timely manner.

Q. MR. PATE CONTENDS THAT THE SERVICE ORDER INQUIRY PROCESS IS ACCOMPLISHED IN SUBSTANTIALLY THE SAME TIME AND MANNER AS THAT OF BELLSOUTH'S RETAIL ORGANIZATION. HOW DO YOU RESPOND?

A. BellSouth has records providing facilities information. I understand based on Mr. Pate's testimony in the North Carolina, Georgia, and Florida arbitration cases that BellSouth's account teams have some access to this information on a pre-order basis. BellSouth should not be allowed to restrict this information's availability based on how it chooses to distribute the information within its own organization.

Q. MR. PATE ADMITS THAT BELLSOUTH'S LOOP QUALIFICATION PRE-ORDERING CAPABILITY WILL NOT MEET ALL THE NEEDS OF WORLDCOM AS SET FORTH IN ITS PROPOSED LANGUAGE. MR. PATE SUGGESTS THAT THE "CHANGE CONTROL PROCESS" OUGHT TO BE USED TO IMPLEMENT WORLDCOM'S REQUEST. DO YOU AGREE?

A. No, I do not. BellSouth has access to Service Inquiry 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. Irrespective of

the "Change Control Process," BellSouth should be required to provide manual and electronic Service Inquiry processes as a pre-ordering function for local services that may be used when the local service is being ordered via an LSR or an ASR.

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. DOES MR. MILNER COVER ANY ISSUES IN HIS TESTIMONY THAT YOU HAVE NOT ALREADY ADDRESSED IN YOUR DIRECT TESTIMONY?

A. No. For the reasons I stated in my Direct Testimony, WorldCom's language should be accepted and BellSouth's should be rejected.

Q. DOES THAT CONCLUDE YOUR REBUTTAL TESTIMONY?

A. Yes.

BEFORE THE

TENNESSEE REGULATORY AUTHORITY

DOCKET NO. 00-00309-TP

PREFILED REBUTTAL TESTIMONY

OF DON PRICE

ON BEHALF OF WORLDCOM, INC.

December 13, 2000

NON-PROPRIETARY

Q. PLEASE STATE YOUR NAME.

A. My name is Don Price.

Q. DID YOU FILE DIRECT TESTIMONY IN THIS PROCEEDING ON BEHALF OF WORLDCOM?

A. Yes. I will continue to use "WorldCom" to refer collectively to MCImetro Access Transmission Services, LLC and Brooks Fiber Communications of Tennessee, Inc.

Q. WHAT IS THE PURPOSE OF YOUR PRESENT TESTIMONY?

A. The purpose of my testimony is to respond to the testimony of BellSouth's witnesses with respect to 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.

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 BELLSOUTH'S POSITION WITH REGARD TO THIS ISSUE?

A. BellSouth's position is that manual ordering charges should apply whenever WorldCom places an order manually, either for its own business reasons or because BellSouth may not have an electronic interface that will allow WorldCom to place orders electronically.

Q. WHAT IS YOUR RESPONSE?

A. BellSouth should not be allowed to charge a manual ordering charge when it provides an electronic interface for itself and a manual interface to CLECs. For

example, BellSouth is purporting to require WorldCom to submit orders for DS1 loop-transport combinations ("DS1 combos") using a manual LSR process rather than the electronic ASR process WorldCom had been using. BellSouth has an electronic interface that its sales representatives use when ordering MegaLink service, which also has loop and transport elements. As Ms. Lichtenberg discusses with respect to Issue 80, BellSouth should not be allowed to replace the electronic ASR process with a manual LSR process. But if BellSouth were permitted to require a manual LSR process for DS1 combos, it should not be permitted to assess a manual ordering charge for such orders.

ISSUE 3

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

Q. MS. COX CONTENDS THAT THE FCC'S FIRST REPORT AND ORDER JUSTIFIES BELLSOUTH'S POSITION THAT ONLY SERVICES OFFERED IN ITS GSST AND PRIVATE LINE TARIFFS SHOULD BE AVAILABLE FOR DISCOUNT. HOW DO YOU RESPOND?

A. In the first place, the rule adopted by the Federal Communications Commission ("FCC") is clear. 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). The key question under the rule thus is whether BellSouth offers the telecommunications service in question

on a retail basis to subscribers that are not telecommunications carriers. The rule makes no distinction based on the tariff in which the service is contained.

BellSouth's argument is based on the FCC's statement in *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order ¶ 873 (released Aug. 8, 1996) ("Local Competition Order") that exchange access services are not subject to the resale requirements of the Telecommunications Act of 1996 ("Act"). Based on this statement, BellSouth seeks to exclude all provisions of its Federal and State Access tariffs from the Act's resale provisions. This approach is flawed because BellSouth includes in its Federal and State Access Tariff services that plainly are not access services.

BellSouth offers some services in its Federal and State Access Tariffs *and* in its Private Line Tariff or General Subscriber Services Tariff. A service that is included in access tariff and a private line or GSST tariff is the same service regardless of the tariff in which it appears; it cannot be an access service when it appears in an access tariff and a non-access service when it appears in the private line tariff. The exception discussed in the Local Competition Order for exchange access services therefore does not apply in the case of non-access services that happen to be included in access tariffs.

Q. AS A PRACTICAL MATTER, WHY IS IT IMPORTANT THAT BELLSOUTH OFFER THE RESALE DISCOUNT ON A NON-ACCESS SERVICE THAT IS INCLUDED IN AN ACCESS TARIFF?

A. The biggest concern is that BellSouth could exempt services from resale simply by offering them in access tariffs rather than in the private line or GSST tariff. Alternatively, BellSouth could execute a price squeeze by offering a service in its access tariffs at a lower price than it offers the service in the private line or GSST tariff. Unless BellSouth is required to offer the resale discount off the federal and state access tariff for non-access services, BellSouth effectively can foreclose resale competition for such services.

Q. MS. COX CONTENDS THAT THE BELL ATLANTIC 271 DECISION SUPPORTS HER POSITION. IS SHE CORRECT?

A. No. The FCC concluded that Bell Atlantic did not have to make the ADSL service in question available for the resale discount because it was a wholesale service. That is because Bell Atlantic did not make that service available to its end user customers. In contrast, the ADSL service that Bell Atlantic made available to its retail customers was offered to CLECs at the resale discount. *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*, CC Docket No. 99-295, Memorandum Opinion and Order ¶ 392 (released Dec. 22, 1999). The same principle should apply here. When BellSouth makes a service offering available to its end user customers, the offering should be classified as a retail service and offered to CLECs at the resale discount.

Q. PLEASE COMMENT ON BELLSOUTH'S POSITION REGARDING WHOLESALE DISCOUNTS FOR RESALE OF SERVICES.

A. BellSouth would have the Authority promote form over substance. BellSouth's position is that only private line and GSST tariffed services should be available for the wholesale discount. This position is untenable and cannot be supported as a matter of policy. There is simply no good reason that BellSouth should avoid the dictates of the Act simply by offering a service outside of its GSST or private line category of services. If it is a service available at retail, it must be made available at the wholesale discount.

Q. MS. COX CONTENDS THAT THE AUTHORITY DECIDED THIS ISSUE IN BELLSOUTH'S FAVOR IN THE FIRST ROUND OF ARBITRATIONS. IS SHE CORRECT?

A. No. In the Second and Final Order of Arbitration Awards to which Ms. Cox refers states there were to be no restrictions applicable to the resale of BellSouth services except (among other things) "a restriction on the resale of access." WorldCom does not dispute that exchange access services are not subject to the resale discount. But whether a service is an exchange access service should not be determined by whether BellSouth includes the service in one of its access tariffs. The Authority did not decide that issue in the first round of arbitrations.

ISSUE 6

Should BellSouth be directed to perform, upon request, the functions necessary to combine network elements that are ordinarily combined in its network? (Attachment 3, section 2.11.)

Q. PLEASE STATE YOUR UNDERSTANDING OF BELLSOUTH'S POSITION REGARDING COMBINATIONS OF UNES.

A. Ms. Cox states in her direct testimony that BellSouth has no obligation to combine elements for a CLEC unless the elements have already been combined to serve a particular BellSouth customer. Ms. Cox says that BellSouth is willing to negotiate a "voluntary commercial agreement" with WorldCom to combine certain UNEs, implying that this is not a proper subject for arbitration.

Q. WHAT IS YOUR RESPONSE TO BELLSOUTH'S POSITION?

A. I disagree with Ms. Cox's interpretation of the Eighth Circuit's decision and the meaning of Rule 51.315(b). The Eighth Circuit decision left in place Rule 51.315(b), which requires BellSouth to provide combinations of elements where it "currently combines" such elements in its own provision of services. As I discussed at length in my Direct Testimony, the only reasonable interpretation of the "currently combines" requirement is that BellSouth is obligated to provide the types of combinations that ordinarily exist in its network (e.g. loop and local switching combinations, or loop and transport combinations) regardless of whether such elements are combined today to serve the particular customer that WorldCom wishes to serve.

ISSUE 8

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

Q. MR. MILNER STATES THAT WORLDCOM WANTS BELLSOUTH TO COMMIT TO AN AS-YET UNDEFINED SET OF STANDARDS FOR UNBUNDLED LOOPS. IS THIS TRUE?

A. No. WorldCom proposed the national industry standard loop specifications. Those specifications are contained in Appendix 1 to Attachment 3 of the Interconnection Agreement, which is not in dispute here.

Q. MR. MILNER STATES THAT BELLSOUTH OFFERED ITS PROPRIETARY LOOP SPECIFICATIONS BECAUSE "THERE ARE NO INDUSTRY STANDARDS AT PRESENT FOR EVERY UNE." IS THIS A RELEVANT ARGUMENT?

A. Not at all. BellSouth's proposal does not purport to address "every UNE" or those UNEs for which no industry standard exists. Exhibit No. WKM-1, the document in question, is labeled "Unbundled Local Loop -- Technical Specifications." Local loops have been part of the public switched network since the earliest days of the telephone, and industry standard specifications already are in place for local loops. The same specifications that apply to local loops when they are used by BellSouth as part of its network also apply when those same loops are unbundled for CLECs. Thus, there is no need for BellSouth to introduce any proprietary specifications with regard to loops.

ISSUE 18

Is BellSouth required to provide all technically feasible unbundled dedicated transport between locations and equipment designated by WorldCom so long as the facilities are used to provide telecommunications services, including interoffice transmission facilities to network nodes connected to WorldCom switches and to the switches or wire centers of other requesting carriers? (Attachment 3, Section 10.1.)

Q. MS. COX STATES THAT BELLSOUTH'S DUTY TO UNBUNDLE DEDICATED TRANSPORT IS LIMITED TO BELLSOUTH'S EXISTING NETWORK. DO YOU AGREE?

A. Generally, yes. BellSouth's unbundling obligation generally is limited to its network as it exists at the time of WorldCom's request for dedicated transport, provided that BellSouth should be required to provide the electronic equipment necessary to provide such transport. The language proposed by WorldCom is consistent with that limitation because it does not purport to require BellSouth to build new transport facilities for WorldCom. It requires BellSouth to unbundle transport facilities that exist in BellSouth's network.

Q. MS. COX ASSERTS THAT BELLSOUTH SHOULD NOT BE REQUIRED TO PROVIDE TRANSPORT TO OTHER CARRIERS' LOCATIONS, CLAIMING THAT THE FCC'S RULES SPECIFICALLY EXCLUDE THIS ACTIVITY. DO YOU AGREE?

A. No. The FCC's rules are not as restrictive as BellSouth wishes them to be. For example, paragraph 440 of the Local Competition Order, which Ms. Cox quotes, mentions a number of locations to which BellSouth must provide unbundled transport. One of those locations, for instance, is an IXC's point of presence. The FCC has, in this case, indicated that a CLEC can order unbundled transport to another carrier, an IXC.

Q. IS THERE ANOTHER REASON WHY BELLSOUTH IS REQUIRED TO PROVIDE UNBUNDLED TRANSPORT TO THE LOCATIONS OF OTHER CARRIERS?

A. Yes, the FCC's regulations require BellSouth to provide transmission facilities to the locations of "requesting telecommunications carriers." BellSouth is interpreting this obligation as being limited to an obligation to provide transmission facilities only to WorldCom's locations. However, WorldCom is just one requesting telecommunications carrier and the obligation is not so limited. The FCC's rules require BellSouth to provide transmission facilities to the locations of any requesting telecommunications carrier. The reason is that BellSouth's transport network is ubiquitous and BellSouth will have transport facilities in place to all requesting telecommunications carriers. All carriers will interconnect with BellSouth, the dominant ILEC. BellSouth's obligation is to provide, upon request, unbundled transmission facilities to the locations of all requesting telecommunications carriers, not just, as it asserts, to a single requesting telecommunications carrier -- WorldCom. This is the conclusion reached by the Texas PUC regarding the unbundling obligation of Southwestern Bell as to dedicated transport in Docket 18117: Complaint of MCI Telecommunications Corporation and MCImetro Access Transmission Service, Inc. against SWBT for Violation of Commission Order in Docket Nos. 16285 and 17587 Regarding Provisioning of Unbundled Dedicated Transport.

Q. MS. COX ALSO OBJECTS TO PROVIDING UNBUNDLED TRANSMISSION FACILITIES TO WORLDCOM NODES THAT ARE

CONNECTED TO WORLDCOM SWITCHES. PLEASE COMMENT ON THIS ISSUE.

A. BellSouth transmission facilities currently run to nodes on WorldCom's network. These facilities are part of BellSouth's existing ubiquitous network. There is no legitimate reason for BellSouth's refusal to provide transport to locations that are currently part of its existing transport network.

Q. WHAT SHOULD THE AUTHORITY DO TO RESOLVE THE PARTIES' CONFLICT?

A. The Authority should direct that the Agreement include the language proposed by WorldCom regarding unbundled dedicated transport.

ISSUE 22

Should the Interconnection Agreements contain WorldCom'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. MS. COX CONTENDS THAT BELLSOUTH IS NOT OBLIGATED TO PROVIDE LINE SHARING WHEN WORLDCOM SERVES A CUSTOMER VIA THE UNE PLATFORM. HOW DO YOU RESPOND?

A. Ms. Cox's position is simply not consistent with a pro-competitive public policy. The effect of her position is that BellSouth is the only provider of voice telecommunications that can use the same physical loop in conjunction with a data CLEC's broadband service. For any other provider of voice telecommunications using the UNE platform, no such partnership is possible. Said differently, the end user would have to pay for a separate UNE loop to have the broadband service in any situation except where the voice service is

provided by BellSouth. BellSouth would, of course, stand to reap enormous competitive benefit from such a situation, but Ms. Cox has not shown any reason why her position is consistent with sound public policy.

ISSUE 23

Does WorldCom'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. WHAT IS YOUR UNDERSTANDING OF BELLSOUTH'S POSITION ON THIS ISSUE?

A. Ms. Cox states that if BellSouth has a SONET ring in place, it will provide dedicated transport to WorldCom over that ring, but that BellSouth is not obligated to provide unbundled access to the SONET rings themselves.

Q. WHAT IS THE PURPORTED BASIS FOR BELLSOUTH'S POSITION?

A. BellSouth bases its position primarily on Paragraph 337 of the UNE Remand Order, which states as follows:

> Notwithstanding the fact that we require incumbents to unbundle high-capacity transmission facilities, we reject Sprint's proposal to require incumbent LECs to provide unbundled access to SONET rings. In the Local Competition First Report and Order, the Commission limited an incumbent LEC's transport unbundling obligation to existing facilities, and did not require incumbent LECs to construct facilities to meet a requesting carrier's requirements where the incumbent LEC has not deployed transport facilities for its own use. Although we conclude that an incumbent LEC's unbundling obligation extends throughout its ubiquitous transport network, including ring transport architectures, we do not require incumbent LECs to construct new transport facilities to meet specific competitive LEC point-to-point demand requirements for facilities that the incumbent LEC has not deployed for its own use.

Q. DOES THE UNE REMAND ORDER SUPPORT BELLSOUTH'S POSITION?

A. Only in part. WorldCom agrees that BellSouth is not required to build SONET rings for WorldCom, and WorldCom is not requesting that BellSouth be required to do so. The parties' positions in this regard are in accord with the UNE Remand Order. Where the parties diverge is on the question of whether BellSouth must provide unbundled access to existing SONET rings , or whether BellSouth only must provide dedicated transport over SONET rings. Contrary to Ms. Cox's contention, nothing in paragraph 337 of the UNE Remand Order states that ILECs are not required to provide access to existing SONET rings. Rather, the FCC rejected a particular proposal by Sprint, which apparently would have required ILECs to build SONET rings for CLECs. That is not what WorldCom is requesting here.

Q. WHY, AS A PRACTICAL MATTER, IS IT IMPORTANT FOR WORLDCOM TO OBTAIN SONET FUNCTIONALITY?

A. SONET functionality provides a number of features not afforded by point-to-point dedicated transport. For example, SONET rings provide redundancy and the capability to accomplish nearly instantaneous recovery so that if a fiber is cut, service is not interrupted. SONET architecture also enables carriers to provision service remotely, so that, for instance, additional capacity can be provisioned to a customer from a central location. This is important because it allows WorldCom to respond to its customers' needs more quickly and with fewer opportunities for errors. BellSouth should not be permitted to

discriminate by affording itself such functionalities while preventing WorldCom from using them, even though the companies are using the same facilities.

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. MS. COX CONTENDS THAT BELLSOUTH MEETS ITS UNBUNDLING OBLIGATIONS BY ENABLING WORLDCOM TO OBTAIN ACCESS TO THE CNAM DATABASE VIA BELLSOUTH'S SS7 NETWORK. HOW DO YOU RESPOND?

A. Customers served via WorldCom's switches have telephone numbers that either were assigned to WorldCom or ported from BellSouth. For WorldCom to provide CNAM information on a call, it must first dip into its database in search of the information. If the calling party is not a WorldCom customer, WorldCom must do a table look-up, based on the calling party's NPA-NXX, and determine the database that must be searched and then query that database. That is both time consuming, in that the call in progress must be held while this activity is going on, and costly because WorldCom is required to establish facilities that duplicate BellSouth's facilities in addition to the facilities and circuitry necessary for its own database access. BellSouth, on the other hand, knows that an NPA-NXX outside of the NPA-NXX's assigned to it must route to a foreign database and can take the appropriate action without needlessly querying its own database. If WorldCom obtains downloads of BellSouth's CNAM database, it can stand on equal footing with BellSouth.

ISSUE 29

Should calls from WorldCom 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. IS THIS ISSUE SIMILAR TO ANY OTHER ISSUE IN THIS ARBITRATION?

A. This issue is similar in one respect to the issue of how to route calls to WorldCom's directory assistance and operator services platforms, Issue 19, and to the issue concerning the point of interconnection, Issue 36. The similarity is that in all three instances BellSouth's position imposes unnecessary trunking costs on WorldCom. BellSouth's position with respect to this issue will require WorldCom to add special trunks to BellSouth's TOPS platform so as to complete local calls. BellSouth's position with respect to Issue 19 would require WorldCom to construct an expensive and unnecessary overlay network to route calls to WorldCom's OS/DA platform. BellSouth's position on Issue 36 requires WorldCom to construct interconnection trunking to multiple points in a LATA, even though it is technically feasible to interconnect at a single point and have all calls handled by the interconnecting carriers on their side of that interconnection from or to that point. In all three instances WorldCom's position allows these calls to be completed in a more efficient manner and BellSouth's position requires unnecessary trunking by WorldCom.

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. DO BELLSOUTH'S PLANS TO IMPLEMENT MEET POINT BILLING FOR TYPE 2A WIRELESS TRAFFIC CHANGE WORLDCOM'S POSITION ON THIS ISSUE?

A. No. As I stated in my Direct Testimony, after meet point billing is implemented, BellSouth should continue to provide the billing function, but should remit payment to the carrier that terminates the traffic in question.

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 and 9.10.)

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

A. For all of the reasons noted in my Direct Testimony, the Authority should await the FCC's decision rather than addressing this issue in this arbitration proceeding.

As described in my Direct Testimony, the proposal is that if a call is originated from WorldCom, transited by BellSouth, and terminated to an ILEC, BellSouth would bill WorldCom for a transiting charge, and the call termination charges as well. BellSouth would then settle up with the ILEC, as it has 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 would obtain 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). This practice also is consistent with what both parties agree is the proper procedure for third party wireless traffic. Contrary to Ms. Cox's implication, this proposal does not require BellSouth to pay reciprocal compensation on third party transit traffic.

BellSouth has and will continue to have a network and a billing relationship with the other carriers, such that what we are asking is incremental to an ongoing activity. This is in contrast to what BellSouth's position is, which is to require us to assume both network and billing responsibilities that are many

times beyond what is necessary and reasonable, thereby driving up our cost of doing business and creating an unnecessary and uneconomical barrier to entry.

Q. WHY SHOULD THE AUTHORITY ADOPT WORLDCOM'S PROPOSAL?

A. The proposal will increase billing efficiencies for all companies in the Tennessee telecommunications industry. WorldCom speaks from experience concerning these benefits because this is how the traffic is routed and billed in over half of the country. Also, WorldCom's proposed billing arrangement is consistent with BellSouth's current billing practice for Type 1 and Type 2A wireless transit traffic. It is equally applicable to all transit traffic.

From a billing perspective, WorldCom's position significantly reduces the number of bills that all LECs in the LATA have to send to and audit from one another. It also significantly reduces the amount of record exchange required between the companies. Also, we believe that the reason BellSouth currently requires that separate trunk groups be established for transit traffic is so BellSouth can produce the necessary billing records for such transit traffic. WorldCom's proposal would also eliminate the need for separate and inefficient trunk groups for transit traffic.

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 translations table

correct and is the point made in my Direct Testimony: Calls are rated as local or long distance based on the NPA/NXX dialed, not the location of the end-user.

Q. DOES MS. COX PROVIDE STILL MORE EVIDENCE THAT FX CALLS ARE LOCAL CALLS?

A. Yes. At page 56, Ms. Cox notes that if WorldCom assigns an NPA-NXX to Copper Basin, Tennessee, BellSouth will treat a call made by one of its Copper Basin customers to that NPA-NXX as a local call and will bill its customer for a local call. At page 57, Ms. Cox indicates that BellSouth will treat the call as a local call by its Copper Basin customer even if the WorldCom NPA-NXX is assigned to a customer located in Chattanooga.

Q. IS THERE A DISCONNECT BETWEEN THIS ANALYSIS AND THE ULTIMATE CONCLUSION REACHED BY BELLSOUTH?

A. Yes, there is. BellSouth acknowledges that calls are rated as local or long distance based upon their NPA-NXXs. BellSouth will treat calls from its customers to FX customers of another carrier as local for purposes of billing its end-user. Yet, BellSouth wants to designate the exact same calls as non-local for purposes of inter-carrier compensation. At page 58, Ms. Cox opines that calls can be rated as local (based upon the NPA-NXX dialed) for retail end-user billing, but not for inter-carrier compensation purposes. It is discriminatory and irrational to designate the same call as both local and not local, depending upon the purpose for which the designation is being applied. Either a call is local or it is not local; it cannot be both as BellSouth suggests.

Q. WHAT WOULD BELLSOUTH ACCOMPLISH IF ITS POSITION IS ADOPTED BY THE AUTHORITY?

A. Ms. Cox asserts that BellSouth has no intention of limiting WorldCom's ability to define a local calling area for WorldCom's end users but does desire to avoid reciprocal compensation charges on calls from BellSouth end users to WorldCom customers who purchase FX service. The effect of BellSouth's position is to limit the ability of WorldCom to compete with BellSouth's FX service and similar offerings by eliminating a portion of the revenue a carrier receives for terminating a local call. BellSouth's proposal would preclude WorldCom from providing a comparable offering.

Q. MS. COX ASSERTS THAT IF WORLDCOM GIVES A TELEPHONE NUMBER TO A CUSTOMER WHO IS PHYSICALLY LOCATED IN A DIFFERENT LOCAL CALLING AREA THAN THE LOCAL CALLING AREA WHERE THAT NPA/NXX IS ASSIGNED, CALLS ORIGINATED BY BELLSOUTH END USERS TO THOSE NUMBERS ARE NOT LOCAL CALLS FOR ALL PURPOSES. IS SHE CORRECT?

A. No. As indicated in my Direct Testimony, whether a call is local or not depends on the 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. As

discussed more fully below, BellSouth's indication that this comparison should be used for "retail" services only further illustrates BellSouth's desire to have their own FX service treated as local and any competitor's offering of FX to be treated as toll.

Q. AT PAGE 56, MS. COX DISCUSSES A CALLING EXAMPLE WHERE A BELLSOUTH CUSTOMER IN THE COPPER BASIN LOCAL CALLING AREA CALLED A WORLDCOM NUMBER IN THE 423/336 CODE (WITHIN THE COPPER BASIN LOCAL CALLING AREA) ASSIGNED TO A WORLDCOM CUSTOMER PHYSICALLY LOCATED IN CHATTANOOGA. PLEASE COMMENT ON THAT DISCUSSION.

A. Ms. Cox notes that in this situation BellSouth would treat the call as a local call for purposes of billing its Copper Basin customer. Indeed, this result is correct because when BellSouth's customer dialed the Copper Basin number, she intended to make a local call and she did make a local call. Yet, Ms. Cox objects to the fact that reciprocal compensation is due for this call which WorldCom terminates.

Q. IS BELLSOUTH'S OBJECTION TO PAYING RECIPROCAL COMPENSATION ON THIS LOCAL CALL VALID?

A. No, it isn't. This call (what Ms. Cox refers to as a Copper Basin to Chattanooga call) is a call to an FX number, which Ms. Cox acknowledges is rated as a local call, and reciprocal compensation is payable on local calls.

Q. DOES BELLSOUTH PROPOSE A DISCRIMINATORY APPROACH TO FX OFFERINGS BY ITS COMPETITORS?

A. Yes. Continuing with Ms. Cox's example, if BellSouth provides one of its Copper Basin customers with FX service to Chattanooga, BellSouth treats calls from within the Copper Basin local calling area to the FX number as local. However, if WorldCom wishes to offer the same FX service, BellSouth wants the same exact call to be treated as a toll call for which reciprocal compensation would not be due. BellSouth's position is intended to obstruct a competitor's ability to offer a service which competes on an equal footing with BellSouth's FX service.

Q. MS. COX ALSO SUGGESTS THAT WORLDCOM COULD EVEN ASSIGN A COPPER BASIN NXX TO A CUSTOMER LOCATED IN NEW YORK AND THEN CLAIM THAT THE CALL IS LOCAL. PLEASE COMMENT ON THIS SUGGESTION.

A. What Ms. Cox appears to be describing is 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 or New York 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. Of course, interstate FX service is provided by IXCs, not local carriers, so it is not directly relevant here.

Q. MS. COX ASSERTS THAT THE FCC HAS MADE IT CLEAR THAT TRAFFIC JURISDICTION IS DETERMINED BASED UPON THE

ORIGINATING AND TERMINATING END POINTS OF A CALL AND CITES FEATURE GROUP A ACCESS SERVICE. PLEASE COMMENT ON THIS.

A. Contrary to Ms. Cox's implication, BellSouth is not providing Feature Group A service to a CLEC that is offering FX service to its customers. BellSouth's Feature Group A service is a switched access service provided to requesting *interexchange* carriers. Feature Group A involves the assignment of a *BellSouth* 10-digit telephone number to the interexchange carrier and provides for a variety of optional, BellSouth-provided features (e.g., hunt groups, uniform call distribution, service code denial) from a specific end office.

In Ms. Cox's view the CLEC should have to purchase switched access in order to provide a local service. However, just like BellSouth and unlike an interexchange carrier, when a CLEC provides FX service it does so as a local service provider, assigning to the end user a 10-digit telephone number from the CLEC's own NXX. Additionally, because the CLEC has a local switch, it does not rely on the BellSouth local switch to provide additional features as an interexchange carrier would.

BellSouth should not be allowed to re-categorize as toll, traffic historically viewed as local by pretending that a CLEC is an interexchange carrier.

Q. BELLSOUTH HAS ASSERTED ELSEWHERE THAT THE CLOSEST PARALLEL TO AN FX OFFERING BY A CLEC IS 800 SERVICE. DO YOU AGREE?

A. No. The closest parallel would be BellSouth's own FX service. Of course, BellSouth's position, if adopted, would 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. BellSouth's suggestion that a CLEC's FX service is comparable to 800 service is not correct. An 800 service allows toll free calling from callers in the LATA, the State, or indeed the entire country. FX service allows local calling limited to the rate center with which the NXX is associated. Calls to that NXX from anywhere else would not be local and would not be toll free. The California Commission has noted this distinction as discussed below in greater detail.

Q. WHAT POLICY ISSUES ARE RAISED BY BELLSOUTH'S ASSERTION THAT DETERMINATION OF CALL JURISDICTION BASED ON RATE CENTERS ASSOCIATED WITH THE NPA/NXXS IS ONLY APPLICABLE TO RETAIL END USER BILLING?

A. Simply put, BellSouth would like to place its competitors at a disadvantage by utilizing one standard (i.e., FX is local) for offering its retail services and another standard (i.e. FX is toll) when another local provider attempts to make a competitive offering. As noted above, the effect of this position is to increase BellSouth's potential competitors' costs of providing equivalent service offerings, thereby harming the competitive process.

Ms. Cox, at page 58 points to the FCC's jurisdictional analysis based on the originating and terminating end points of a call as the guide to be followed. However, the FCC's analysis has traditionally been utilized to determine

whether or not particular traffic is *interstate* and thereby within the FCC's jurisdiction. The discussion of call jurisdiction is merely a smokescreen to cover BellSouth's private business interest in reducing potential competition for its FX service.

Q. MS. COX ASSERTS THAT WHEN WORLDCOM ASSIGNS NXXs SO AS TO PROVIDE FX SERVICE, IT IS NOT SEEKING TO DEFINE ITS OWN LOCAL CALLING AREA BUT RATHER IS ATTEMPTING TO REDEFINE THE LOCAL CALLING AREA OF BELLSOUTH'S CUSTOMERS. IS THIS CORRECT?

A. No. Continuing with the Copper Basin-Chattanooga example introduced by Ms. Cox, when WorldCom provides an NXX associated with the Copper Basin rate center to WorldCom's customer located in Chattanooga, WorldCom is providing its customer with a local presence in Copper Basin because that is what the customer wants. Contrary to Ms. Cox's assertion, when WorldCom does so it is not redefining the local calling area of BellSouth's customers in Copper Basin. Just as when BellSouth provides an FX service allowing its end users in Copper Basin to place local calls to customers located elsewhere, the local calling scope of BellSouth's Copper Basin customers is not changed. The expectation of BellSouth's customers that when they call a Copper Basin exchange they are making a local call is not changed.

Q. IS MS. COX CORRECT THAT THIS ISSUE HAS NO EFFECT ON THE DEGREE OF LOCAL COMPETITION?

A. No. Ms. Cox reaches this conclusion by noting that, in her Copper Basin-Chattanooga hypothetical, the offering of FX service by a CLEC to a Chattanooga customer does nothing to enhance local competition in Copper Basin. Her statement is correct, but meaningless. Offering a service to a customer in Chattanooga does not enhance competition in Copper Basin, Nashville, Memphis, or any other place besides Chattanooga. Offering a service in Chattanooga enhances competition in Chattanooga. Likewise, if WorldCom offered the service in Copper Basin, competition would be enhanced in Copper Basin.

Q. MS. COX DESCRIBES A DECISION BY THE MAINE PUC IN HER TESTIMONY. PLEASE COMMENT ON THE RELEVANCE OF THAT DECISION.

A. The focus of the Maine PUC was on the impact of FX service on numbering resources in Maine and the effect on matters such as NXX code conservation for purposes of avoiding area code splits, etc. While the Maine PUC did make a determination on this matter, the focus was not on whether FX service is local or interexchange.

Q. MS. COX NOTES THAT THE MAINE PUC CONCLUDED THAT THE BROOKS FIBER FX SERVICE IN THAT CASE IS INTEREXCHANGE SERVICE. PLEASE ADDRESS THIS MATTER.

A. The Maine PUC did make this finding, however that finding is incorrect, for the reasons noted above. Moreover, the California PUC has found that this type of service, when provided by CLECs, is indeed equivalent to FX service:

We believe the Pac-West arrangement is equivalent to foreign exchange service, not to intraLATA toll-free calling as claimed by Pacific. Just as with other forms of foreign exchange service, the Pac-West arrangement relocates the rate center from which incoming calls are rated as either local or toll. Unlike intraLATA toll-free calling, however, the Pac-West arrangement does not permit a caller from any location to dial the ISP toll-free. The calling party would still incur toll charges if the call was made from a location whereby the rate center of the calling party was more than 12 miles from the rate center for the ISP's NXX prefix. The Pac-West arrangement is not equivalent to intraLATA toll-free calling.

Q. MS. COX REFERS TO DECISIONS BY THE ILLINOIS AND TEXAS COMMISSIONS. PLEASE COMMENT.

A. These decisions seem to adopt the position that a call placed to a competitor's FX service can be both a local call from the end-user's perspective and a non-local call as between the two carriers that must collaborate to complete the call. As previously discussed, WorldCom disagrees with this proposition for the reasons noted.

Q. MS. COX ALSO REFERS TO DECISIONS BY THE FLORIDA AND GEORGIA COMMISSION'S IN INTERMEDIA ARBITRATIONS. PLEASE COMMENT.

A. These decisions require that sufficient information be provided to terminating carriers for the proper rating of calls. As noted in both my Direct Testimony and herein, calls will receive the proper rating based upon the NPA-NXXs of the calling and called numbers.

Q. WHAT RESOLUTION WOULD WORLDCOM RECOMMEND TO THE AUTHORITY ON THIS ISSUE?

A. Just as stated in my Direct Testimony, the Authority should allow CLECs to assign NXXs within the LATA in a manner that provides for rating points different from routing points and conclude that the appropriate method for determining the jurisdiction of this traffic is to compare the rate centers associated with the calling and called NXXs. This resolution will permit CLECs such as WorldCom to offer competitive FX service to their customers on non-discriminatory terms.

Additionally, for the reasons stated above, BellSouth should be required to pay reciprocal compensation to the CLEC for this local traffic.

BellSouth's proposed contract language on this matter would not allow WorldCom to assign NXXs in such a manner as to provide *local* FX service. BellSouth has refused to recognize this as local traffic and has insisted on applying originating access charges as well as refusing to pay reciprocal compensation to the CLEC. BellSouth proposes to treat WorldCom's FX service differently than BellSouth treats its own retail FX service. The Authority should reject this discrimination.

ISSUE 47

Should reciprocal compensation payments be made for calls bound to ISPs?

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

A. Ms. Cox recognizes that the Authority previously has ruled that calls to ISPs are considered local traffic and are subject to the payment of reciprocal compensation. BellSouth is willing to "abide by" that decision until the FCC establishes final rules concerning ISP traffic.

Q. IS BELLSOUTH'S PROPOSAL ACCEPTABLE?

A. No. Ms. Cox suggests that the Authority make an interim ruling in this proceeding, subject to retroactive true-up when the FCC establishes final rules associated with ISP-bound traffic. WorldCom respectfully submits that there is no need for this Authority to await further FCC action; instead, the Authority should make the independent determination that reciprocal compensation should apply to this 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. PLEASE DESCRIBE BELLSOUTH'S POSITION ON THIS ISSUE.

A. Ms. Cox argues that WorldCom must meet a two-pronged test to receive reciprocal compensation at the tandem rate (including tandem switching, transport and end office switching): (1) WorldCom must show that its switches cover a geographic area comparable to BellSouth's tandems; and (2) WorldCom must show that its switches perform local tandem functions.

Q. IS BELLSOUTH'S POSITION VALID?

A. No. As I explained in my Direct Testimony, the FCC has been quite clear on this point. FCC Rule 51.711(a)(3) establishes that a CLEC is entitled to

reciprocal compensation at the tandem rate whenever its switch covers a geographic area comparable to the area covered by the ILEC's tandem. That rule does not include a requirement that the CLEC provide tandem functionality. Paragraph 1090 of the Local Competition Order, which I quoted in my Direct Testimony, makes it clear that a CLEC may obtain the tandem rate if it provides equivalent tandem functionality *or* it meets the geographic comparability requirement. Ms. Cox's contention that CLECs must establish tandem functionality *and* geographic comparability finds no support in the FCC's rules or the Local Competition Order.

BellSouth's two-prong test would undermine the policy in favor of efficient network design that the FCC was attempting to implement in the Local Competition Order. For example, the FCC stated in Paragraph 1090 of the Local Competition Order that states could consider whether new technologies performed functions similar to ILECs' tandem switches, and thus whether CLEC networks using such new technologies should be entitled to the tandem rate for reciprocal compensation. Ms. Cox contends that CLECs must use a tandem-and-end office arrangement before they are entitled to receive the tandem rate. In her view, if a CLEC uses a new technology that does not replicate this existing network structure, it is not eligible for the tandem rate. Rather than encouraging the use of new approaches to network architecture, as the FCC intended, BellSouth's approach would discourage such innovation and reward only those CLECs choosing to mimic BellSouth's network design.

Ms. Cox then goes one step further. Not only must the CLEC duplicate BellSouth's network architecture to obtain the tandem rate, but the CLEC's *tandems* must serve geographic areas that are comparable to the areas served by BellSouth's tandems. This view is mistaken for the reasons I discussed in my Direct Testimony. In addition, I note that FCC Rule 51.711(a)(3) provides that a CLEC is entitled to the tandem rate when the CLEC's *switch* (not its tandem) serves a geographic area comparable to the area served by a BellSouth tandem. Moreover, the geographic comparability test obviously was intended to foster new technologies that serve larger areas more efficiently than the old Bell network. Ms. Cox's view, to the contrary, apparently is that the FCC was concerned that CLECs might install networks with even more tandems than BellSouth uses and wished to guard against this problem by discouraging CLECs from investing millions of dollars on tandems that serve small geographic areas. It is fanciful to think that the FCC truly was concerned that CLECs would install such ridiculously inefficient networks. Ms. Cox's position cannot be reconciled with today's network technology of which the FCC obviously was quite well aware when it issued its Local Competition Order.

Q. ARE YOU FAMILIAR WITH DECISIONS ON THIS ISSUE THAT SUPPORT WORLDCOM'S POSITION ON THIS ISSUE IN OTHER STATES?

A. Yes. I am familiar with decisions in North Carolina, Ohio and Washington.

Q. PLEASE DESCRIBE THE NORTH CAROLINA DECISION.

A. In the ITC^DeltaCom/BellSouth arbitration, the North Carolina Utilities Commission rejected BellSouth's argument that a CLEC must satisfy both a functionality test and a geographic comparability test. The North Carolina Commission arbitration panel concluded:

> After careful and extensive review of the FCC's Rule 51.711 and the attendant discussion in Paragraph 1090, the Commission believes that the language in the FCC's Order clearly contemplates that exact duplication of the ILEC's network architecture is not necessary in order for the [CLEC] to be eligible to receive reciprocal compensation at the tandem switching rate. Further, we believe that the language in the FCC's Order treats geographic coverage as a proxy for equivalent functionality, and that the concept of equivalent functionality is included within the requirement that the equipment utilized by both parties covers the same basic geographic area. We further believe that the Rule and the Order language are not, for this reason, in conflict in the manner described by BellSouth and the Public Staff.

Recommended Arbitration Order, Docket No. P-500, Sub 10 (April 20, 2000), p. 15. (A copy is attached as Exhibit 3.) Although styled a "Recommended Arbitration Order," this order in fact constitutes the arbitration panel's ruling in the case.

Q. PLEASE EXPLAIN THE OHIO DECISION.

A. In its January 1, 1997 Arbitration Award in the MCI/Ameritech case (Case No. 96-888-TP-ARB), the Public Utilities Commission of Ohio made clear that a CLEC is entitled to the tandem interconnection rate based on a showing of geographic comparability alone. (An excerpt is attached as Exhibit 4.) The Commission at page 18 stated:

> How a non-incumbent LEC's switch functions is not the relevant criteria to determine the compensation rate. The Commission's guidelines specify that, where a switch of a non-incumbent LEC serves a geographic area comparable to the area served by the

incumbent LEC's tandem switch, the appropriate rate for the non-incumbent LEC is the incumbent LEC's tandem interconnection rate.

Q. PLEASE DESCRIBE DECISIONS IN WASHINGTON.

A. In the arbitration between Electric Lightwave, Inc. and GTE Northwest (Docket No. 980370), the arbitrator rejected an argument similar to the one being made by BellSouth here. (A copy is attached as Exhibit 5.) In his March 22, 1999 decision, the arbitrator at page 15 stated that "[t]he functional similarity between a CLEC switch and an incumbent LEC's tandem switch is not relevant where the evidence supports a finding that they serve a geographically comparable area."

Q. WHAT ARE THE GEOGRAPHIC AREAS AT ISSUE IN THIS CASE?

A. There are two geographic areas at issue -- Knoxville and Memphis.

Q. PLEASE DESCRIBE WORLDCOM'S LOCAL NETWORK IN THE KNOXVILLE AREA.

A. The WorldCom network consists of one switch. This switch, combined with the transport network described below, provides local service in two rate centers in the Knoxville area. Exhibit 6 provides the Local Serving Area Map for the WorldCom local network. WorldCom is currently providing local service to customers located in both of the rate centers in this area. While WorldCom uses one local switch and a transport network to serve these rate centers, BellSouth utilizes two local or access tandems and a multitude of end offices to serve this area.

Q. PLEASE DESCRIBE WORLDCOM'S LOCAL NETWORK IN THE MEMPHIS AREA.

A. The WorldCom network consists of one switch which is configured and equipped to provide local service in three rate centers. WorldCom currently has customers in two of these rate centers. Exhibit Seven provides the Local Serving Area Map for the WorldCom local network. While WorldCom uses one local switch and dedicated transport network to serve these rate centers, BellSouth utilizes two local or access tandems and a multitude of end offices to serve this area.

Q. PLEASE RESPOND TO MS. COX'S ASSERTION (PAGES 73-74) THAT WORLDCOM IS INAPPROPRIATELY SEEKING TO BASE COMPENSATION FOR TRANSPORT BASED ON THE AVERAGE DISTANCE BETWEEN BELLSOUTH'S END OFFICES SUBTENDING A BELLSOUTH TANDEM SWITCH.

A. Because of the different network architecture deployed by WorldCom, adoption of the BellSouth position rewards BellSouth by allowing it to pay less for access to the more efficient WorldCom network but charge WorldCom more for its access to BellSouth's less efficient network architecture. Only by requiring that payments are reciprocal is BellSouth provided with an incentive to move to a more efficient network architecture.

Q. PLEASE SUMMARIZE YOUR TESTIMONY ON THIS ISSUE.

A. WorldCom is entitled to the tandem rate when its switches serve a geographic area comparable to the area served by BellSouth's tandems. In the case of the Knoxville and Memphis areas, WorldCom's switches plainly meet this test.

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. DOES BELLSOUTH PROVIDE VALID GROUNDS FOR NOT PAYING WORLDCOM ACCESS CHARGES WHEN BELLSOUTH PROVIDES INTRALATA SERVICE FOR THE CUSTOMER OF AN INDEPENDENT TELEPHONE COMPANY?

A. No. The reason given by Ms. Cox is that independent telephone companies ("ICOs") do not provide call records to BellSouth when an ICO's customer uses BellSouth as the intraLATA toll carrier, and BellSouth therefore could not verify WorldCom's bills. The fact remains, however, that WorldCom has provided access service to BellSouth as the intraLATA toll carrier, and it is BellSouth that owes the access charges to WorldCom. If BellSouth feels it needs to make arrangements with the ICO to obtain call records not ordinarily provided, that is BellSouth's prerogative. Regardless, BellSouth must pay WorldCom for the service it provided.

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. DOES MS. COX GIVE A VALID REASON FOR BELLSOUTH'S PROPOSED CONTRACT LANGUAGE?

A. No. Ms. Cox contends that BellSouth's rights of way agreement provides BellSouth the rights it claims. This argument is circular. If WorldCom wins Issue 67, it will be entitled to revised language in new rights of way agreements that will provide the rights WorldCom is seeking.

ISSUE 68

Should BellSouth require that payments for make-ready work be made in advance? (Attachment 6, Sections 4.4.2, 4.7.3 and 5.6.1.)

Q. DOES MR. MILNER'S TESTIMONY SUPPORT BELLSOUTH'S POSITION?

A. No. Mr. Milner does not explain why work should be delayed until WorldCom processes payment for make-ready work. As I noted in my Direct Testimony, WorldCom is willing to make such payment within fourteen days, which is commercially reasonable. WorldCom has offered to fax BellSouth, upon receipt of an invoice, written authorization to commence the work at WorldCom's expense. The parties have agreed on credit and deposit language in this agreement, and BellSouth is free to apply that language to WorldCom's purchase of make-ready work. BellSouth has not explained why, among all the services WorldCom is purchasing in this agreement, only make-ready work must be paid for in advance.

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 IS BELLSOUTH'S POSITION, AND YOUR RESPONSE TO IT?

A. BellSouth has proposed that, when an end user served via Interim Number Portability ("INP") receives a collect call, third party billed or other operator assisted call, the end user's carrier should be responsible for payment to the other carrier. For example, if a WorldCom end user receives a collect call from a BellSouth customer, BellSouth would 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 contrary to the industry practice with respect to these types of calls. The practice in the industry is for the toll carrier to bill the end user directly. The toll carrier obtains the necessary billing information (for the applicable charge) from the end user's local carrier.

Q. MR. SCOLLARD STATES THAT, WITH INP, THE CLEC BECOMES BELLSOUTH'S CUSTOMER OF RECORD AND THUS BELLSOUTH SHOULD BE ABLE TO BILL THE CLEC FOR THE CALL. HOW DO YOU RESPOND?

A. The mere fact that BellSouth has provided a number for portability purposes should not be allowed to override the established industry practice of billing the end user for collect and third party calls. It is specious in this regard for Mr.

Scollard to suggest that WorldCom can "block" or "restrict" certain phone numbers if it is having difficulty collecting from its end users for these types of calls. Companies -- including BellSouth for intraLATA and all the interLATA providers -- providing service to WorldCom end users are responsible for billing for those services -- whether directly or via a billing and collections agreement with WorldCom by which it bills those charges for the toll or operator services provider on the WorldCom bill. If a service at issue is provided by BellSouth (such as an intraLATA collect call), then BellSouth should have to bill for that service in the same manner that other operator services and toll providers do today. If BellSouth needs billing name and address ("BNA") information from WorldCom in order to render a bill, WorldCom will provide it to BellSouth in the same manner that BellSouth provides CLECs with BNA information today. It is ludicrous and contrary to any industry standard to require a local exchange company to be responsible for these types of charges incurred by its end users.

Q. MR. SCOLLARD STATES THAT WORLDCOM CAN "AVOID THIS ISSUE" BY CHOOSING TO OFFER SERVICE VIA LNP RATHER THAN INP. IS THIS A VALID POINT?

A. No. WorldCom agrees that fewer and fewer customers will be served using INP. This issue may never even get raised. It is, however, BellSouth that is proposing the insertion of language that would make WorldCom responsible for all operator-assisted calls made and received by its customers. If the issue is so unlikely to be of concern, then BellSouth should stop insisting on the insertion of this onerous language.

ISSUE 94

Should BellSouth be permitted to disconnect service to WorldCom for nonpayment? (Attachment 8, Section 4.2.18)

Q. MS. COX STATES THAT BELLSOUTH'S POSITION IS THAT BELLSOUTH SHOULD BE PERMITTED TO DISCONNECT SERVICE IF WORLDCOM FAILS TO PAY BILLED CHARGES THAT ARE NOT DISPUTED. IS THIS POSITION REFLECTED IN THE LANGUAGE BELLSOUTH HAS PROPOSED?

A. No. The language BellSouth proposes would permit disconnection when WorldCom fails to pay "absent a good faith billing dispute." But parties often differ in opinion as to whether a dispute is in good faith. It would be wholly inappropriate for BellSouth to terminate service to WorldCom's or any CLEC's end user customers because BellSouth unilaterally determined that WorldCom's or another CLEC's dispute was not "in good faith." WorldCom's proposal would enable BellSouth to pursue dispute resolution if WorldCom does not pay. Dispute resolution could entail bringing an enforcement action before this Authority or suing in a court of law. These are standard procedures and do not contain the risks inherent in permitting a billing party to determine unilaterally that a billing dispute is not in good faith.

ISSUE 95

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

Q. MR. SCOLLARD STATES THAT BELLSOUTH IS WILLING TO PROVIDE BILLING RECORDS CONSISTENT WITH EMI GUIDELINES, BUT THAT ONLY BELLSOUTH'S PROPOSED LANGUAGE MAKES CLEAR HOW THOSE RECORDS WILL BE PROVIDED. DO YOU AGREE?

A. No. WorldCom's proposed language is clear that BellSouth must provide specific EMI records to WorldCom, in the EMI format. (Attachment 8, Section 5.2.17.) This language is nearly identical to the language in the existing interconnection agreement that was approved by the Authority. BellSouth's promise to provide billing records "consistent with EMI guidelines" falls short of a commitment to provide the EMI records themselves and is therefore unacceptable.

Q. MR. SCOLLARD CONTENDS THAT BELLSOUTH DOES PROVIDE THE EMI FIELDS THAT ARE REQUIRED FOR THE TYPE OF RECORDS INCLUDED ON THE USAGE INTERFACE INVOLVED. HOW DO YOU RESPOND?

A. It is not clear what it means to "provide the EMI fields that are required." Again, BellSouth stops short of committing to provide the EMI records themselves, and thus it appears BellSouth would be providing less than what WorldCom would receive from those records.

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. IS NOTIFICATION OF CENTRAL OFFICE CONVERSION VIA WEB POSTING ADEQUATE, AS MR. MILNER CONTENDS?

A. No. As I noted in my Direct Testimony, it is critical that CLECs receive notice of central office conversions when they are to take place outside the otherwise agreed-to "window" for conversions, and written notice therefore should be required. BellSouth has failed to explain why something as critical as a central office conversion will be documented only on its web site.

ISSUE 100

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

Q. DOES MR. MILNER'S TESTIMONY EXPLAIN ADEQUATELY WHY BELLSOUTH REFUSES TO HAVE ITS OPERATORS ASK WORLDCOM CUSTOMERS FOR THEIR CARRIER OF CHOICE WHEN SUCH CUSTOMERS REQUEST A QUOTE OF TIME AND CHARGES?

A. No. For the reasons I explained in my Direct Testimony, BellSouth will be compensated appropriately for providing this service and it should be required to do so.

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. MS. COX SAYS THAT "THE PARTIES HAD REACHED AGREEMENT ON A LIABILITY CAP." IS THAT TRUE?

A. No. The issue of whether to cap liability for material breaches has been in dispute throughout the negotiations. WorldCom believes strongly that 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.

Q. ACCORDING TO MS. COX, THIS ISSUE IS INAPPROPRIATE FOR THE AUTHORITY TO DECIDE PURSUANT TO SECTIONS 251 AND 252 OF THE ACT. DO YOU AGREE?

A. No. The Authority must be able to address general provisions such as this one in interconnection agreements. Otherwise, the party with no incentive to reach a bargain (that is, the incumbent provider) will be able to veto commercially reasonable terms. This is an unresolved issue. The Authority (acting as an arbitrator under the Act) is the appropriate forum for the resolution. In *WorldCom Telecommunications Corp. v. BellSouth Telecommunications, Inc.*, Case No. 4:97cv141-RH (N.D. Fl. June 6, 2000), the District Court for the Northern District of Florida ruled that a public service commission is required to address every issue presented to it for arbitration, specifically including issues regarding the liability of one party to the other.

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. WHY SHOULD THE AGREEMENT PROVIDE FOR SPECIFIC PERFORMANCE AS A REMEDY FOR BREACH OF CONTRACT?

A. The services provided by BellSouth under the Agreement—interconnection, unbundled network elements, resale services—are critical to WorldCom's ability to provide services to its customers as a CLEC. Specific performance is required to ensure that BellSouth provides the services that will be used by WorldCom to conduct business.

Q. MS. COX'S TESTIMONY ON THIS SUBJECT IS THAT SPECIFIC PERFORMANCE IS NOT AN APPROPRIATE SUBJECT FOR ARBITRATION. DO YOU AGREE?

A. No. The specific performance remedy relates directly to BellSouth's obligations to provide interconnection, unbundled network elements, and resale services under the Act. The rights conferred on CLECs under the Act and BellSouth's obligations to perform set forth in the Agreement are the subject matter of this arbitration. Inclusion of a clause confirming that specific performance of these obligations is available is an entirely appropriate subject for arbitration. Moreover, Ms. Cox's suggestion that WorldCom can make the showing needed for specific performance at a later date is just an attempt to delay the availability of the remedy. Ms. Cox proposes, in effect, a case-by-case consideration of whether or not specific performance should occur. This will just delay resolution of any future disputes in which specific performance is sought. Finally, and most fundamentally, the Agreement imposes obligations on BellSouth that have their basis in the Act. Specific performance is the remedy needed to enforce BellSouth's obligations under the Act. The Authority should adopt the language proposed by WorldCom.

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, and should BellSouth be required to provide WorldCom with copies of BellSouth's interconnection agreements with third parties within fifteen days of the filing of such agreements with the FPSC? (Part A, Section 18)

Q. MS. COX SAYS THAT WORLDCOM IS "INAPPROPRIATELY" SEEKING TO HAVE MORE FAVORABLE TERMS IN A SUBSEQUENT AGREEMENT ENTERED INTO BETWEEN BELLSOUTH AND ANOTHER CLEC MADE EFFECTIVE UPON THE EFFECTIVE DATE OF THE AGREEMENT WITH THE OTHER CLEC. IS THAT STATEMENT ACCURATE?

A. No. WorldCom is requesting that the effective date would be the date WorldCom requests the more favorable terms and conditions. That is when WorldCom adopts the new terms and therefore is entirely appropriate.

Q. WHY SHOULD BELLSOUTH BE REQUIRED TO POST INTERCONNECTION AGREEMENTS ON ITS WEBSITE?

A. It greatly facilitates the goals of Section 252(i) of the Act for BellSouth to post copies of new interconnection agreements on its website. In order to opt into preferable terms, WorldCom must become aware that another CLEC has such terms. The simplest and most efficient way for this to occur is for BellSouth to post copies of all new interconnection agreements within fifteen days of filing those agreements with the Authority.

Q. WOULD YOU LIKE TO MAKE A CORRECTION TO YOUR DIRECT TESTIMONY?

A. Yes. I stated in my Direct Testimony that the current agreement includes a provision requiring BellSouth to provide copies of new interconnection agreements with other parties within fifteen days of filing. While we have such provisions in our agreements with BellSouth in other states, it is not in our current Tennessee agreement.

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 operation, and shall BellSouth bear the burden of proving that such disclosure falls within enumerated exceptions? (Part A, Section 20.1.1.1.)

Q. ACCORDING TO MS. COX, IN THE EVENT BELLSOUTH RETAIL UNITS ARE MADE AWARE OF CONFIDENTIAL WORLDCOM INFORMATION, WORLDCOM SHOULD BEAR THE BURDEN OF PROVING THAT BELLSOUTH FAILED TO TAKE PROPER MEASURES TO KEEP THE CONFIDENTIAL INFORMATION FROM ITS RETAIL UNITS. HOW CAN WORLDCOM BE EXPECTED TO BEAR THE BURDEN OF PROVING SUCH A THING?

A. It would be nearly impossible for WorldCom to meet the burden of showing how information traveled from one portion of the BellSouth corporate family to another. If "Mr. Smith" in the local carrier service center learns of a new WorldCom plan for winning new small business customers and he shares this information with "Ms. Jones" in BellSouth's small business retail entity, WorldCom will have no information whatsoever that could help it establish the chain of events that led to such inappropriate disclosure.

Q. MS. COX SUGGESTS THAT BELLSOUTH'S RETAIL UNITS MIGHT LEARN OF CONFIDENTIAL INFORMATION ABOUT WORLDCOM FROM SOURCES OTHER THAN BELLSOUTH'S WHOLESALE UNITS, EVEN FROM WORLDCOM ITSELF. WHAT DO YOU BELIEVE IS THE RELATIVE LIKELIHOOD OF SUCH OCCURRENCES AND DO YOU BELIEVE IT TO BE ANY JUSTIFICATION FOR SHIFTING THE BURDEN OF PROOF TO WORLDCOM?

A. The most likely source of confidential WorldCom information for BellSouth's retail units is its wholesale division. The wholesale and retail divisions are both part of BellSouth. Both have the same ultimate corporate goal (increasing the value of "BLS" shares). It is the natural inclination of BellSouth entities to want to share information that will further their overall corporate goal. Additionally, employees of BellSouth wholesale operations may well know and interact with employees on BellSouth's retail side. It is appropriate to insist that BellSouth take all actions necessary to secure WorldCom confidential information because the incentives and ability of BellSouth wholesale and retail employees to share such information are compelling. Furthermore, WorldCom has recently obtained some very interesting evidence regarding "wholesale" personnel of the RBOCs and their ability to assist in "win back" analyses. A vendor widely used by RBOCs is implementing certain back-office systems updates designed to provide RBOC "wholesale" personnel with the ability to search certain UNE systems for "win back" opportunities. It is the ability and incentive for the

RBOC's "wholesale" personnel to identify such information and pass it to the "retail" side of the house that is cause for WorldCom's concern.

WorldCom employees, in contrast, have no incentive to share confidential information with BellSouth retail employees and, indeed, their opportunities for doing so would be far less than the opportunities of BellSouth wholesale employees.

Additionally, it would be relatively easy for BellSouth to prove (if the information is disclosed to a BellSouth retail unit by a source other than BellSouth wholesale) how the confidential information was obtained by the BellSouth retail unit. This is in stark contrast to the near impossibility of WorldCom's ever determining how the BellSouth retail unit obtained such information.

Q. WHY IS IT FAIR TO ESTABLISH A REBUTTABLE PRESUMPTION, SHOULD SUCH DISCLOSURE OF CONFIDENTIAL WORLDCOM INFORMATION OCCUR, THAT BELLSOUTH WHOLESALE LEAKED THE INFORMATION?

A. It is fair because, as noted above, BellSouth employees have incentives -- financial and cultural -- as well as significant opportunities, to share such information. Additionally, the threat of having to prevail against such a presumption is likely to cause BellSouth to establish tighter corporate policies regarding the confidential information of CLECs, reducing the chance that such inappropriate disclosures would ever occur.

Q. ACCORDING TO MS. COX, APPROPRIATE MEASURES FOR BELLSOUTH TO TAKE TO KEEP WORLDCOM'S INFORMATION CONFIDENTIAL WOULD BE "REASONABLE ACTIONS." DO YOU BELIEVE THAT THIS IS THE PROPER STANDARD?

A. I do not. BellSouth is WorldCom's sole supplier of many critical services and elements, which puts it in the position of learning a significant amount of confidential information. Should this information be learned by BellSouth's retail units, they could clearly use it to WorldCom's serious detriment. Having access to WorldCom's confidential information would place BellSouth's retail operation at an unfair competitive advantage. BellSouth is only willing to take "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 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 THAT CONCLUDE YOUR REBUTTAL TESTIMONY?

A. Yes, it does.

EXHIBIT 3

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. P-500, SUB 10

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Petition by ITC^DeltaCom Communications, Inc. For Arbitration of Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996	)	RECOMMENDED ARBITRATION ORDER

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on October 18-20, 1999

BEFORE: Commissioner Sam J. Ervin, IV, Presiding, and Commissioners Judy Hunt and William R. Pittman

APPEARANCES:

FOR ITC^DELTACOM COMMUNICATIONS, INC.:

Charles C. Meeker and Henry C. Campen, Jr., Parker, Poe, Adams & Bernstein, L.L.P., First Union Capitol Center, Suite 1400, 150 Fayetteville Street Mall, Raleigh, North Carolina 27602-0389

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FOR BELLSOUTH TELECOMMUNICATIONS, INC.:

Edward L. Rankin, III, General Counsel - North Carolina, BellSouth Telecommunications, Inc., Post Office Box 30188, Charlotte, North Carolina 28230

Thomas B. Alexander, General Attorney and Bennett L. Ross, General Attorney, BellSouth Telecommunications, Inc., 675 West Peachtree Street, Suite 4300, Atlanta, Georgia 30375-0001

FOR THE USING AND CONSUMING PUBLIC:

Lucy E. Edmondson, Staff Attorney, Public Staff - North Carolina Utilities Commission, 4326 Mail Service Center, Raleigh, North Carolina 27699-4326

BY THE COMMISSION: This arbitration proceeding is pending before the North Carolina Utilities Commission pursuant to Section 252(b) of the Telecommunications Act of 1996 (TA96 or the Act) and Section 62-110(f1) of the North Carolina General Statutes. On June 14, 1999, ITC^DeltaCom Communications, Inc. (DeltaCom) filed a Petition for Arbitration of Interconnection Agreement with BellSouth Telecommunications, Inc. (BellSouth) in this docket which initiated this proceeding. By its Petition, DeltaCom requested that the Commission arbitrate certain terms and conditions with respect to interconnection between itself as the petitioning party and BellSouth.

The purpose of this arbitration proceeding is for the Commission to resolve the issues set forth in the Petition and Responses. 47 U.S.C.A. Section 252(b)(4)(C). Under the Act, the Commission shall ensure that its arbitration decision meets the requirements of Section 251 and any valid Federal Communications Commission (FCC) [illegible] pursuant to Section 252. Additionally, the Commission shall establish rates according to the provisions

in 47 U.S.C.A. Section 252(d) for interconnection, services or network elements, and shall provide a schedule for implementation of the terms and conditions by the parties to the agreement. 47 U.S.C.A. Section 252(c).

Pursuant to Section 252 of TA96, the FCC issued its First Report and Order in CC Docket Numbers 96-98 and 95-185 on August 8, 1996 (Interconnection Order). The Interconnection Order adopted a forward-looking incremental costing methodology for pricing unbundled network elements (UNEs) which an incumbent local exchange company (ILEC) must sell new entrants, adopted certain pricing methodologies for calculating wholesale rates on resold telephone service, and provided proxy rates for State Commissions that did not have appropriate costing studies for UNEs or wholesale service. Several parties, including this Commission, appealed the Interconnection Order and on October 15, 1996, the United States Court of Appeals for the Eighth Circuit issued a stay of the FCC's pricing provisions and its "pick and choose" rule pending the outcome of the appeals.

The July 18, 1997 ruling of the Eighth Circuit, as amended on rehearing October 14, 1997, was largely in favor of state regulatory commissions and local phone companies and adverse to the FCC and potential competitors, primarily long distance carriers. The Eight Circuit held that 47 U.S.C.A. Sections 251 and 252 "authorize the state commissions to determine the prices an incumbent LEC may charge for fulfilling its duties under the Act." The Court of Appeals also vacated the FCC's "pick and choose rule." Iowa Utilities Board v. FCC, 120 F.3d 753 (8th Cir. 1997).

On January 25, 1999, the United States Supreme Court entered its Opinion in AT&T Corp. v. Iowa Utilities Board, 119 S.Ct. 721 (1999). The Supreme Court held, in pertinent part, that (1) the FCC has jurisdiction under Sections 251 and 252 of the Act to design a pricing methodology and adopt pricing rules; (2) the FCC's rules governing unbundled access are, with the exception of Rule 319, consistent with the Act; (3) it was proper for the FCC in Rule 319 to include operator services and directory assistance, operational support systems, and vertical switching functions such as caller I.D., call forwarding, and call waiting within the features and services that must be provided by competitors; (4) the FCC did not adequately consider the Section 251(d)(2) "necessary and impair" standards when it gave requesting carriers blanket access to network elements in Rule 319; (5) the FCC reasonably omitted a facilities-ownership requirement on requesting carriers; (6) FCC Rule 315(b), which forbids ILECs to separate already-combined network elements before leasing them to competitors, reasonably interprets Section 251 (c)(3) of the Act, which establishes the duty to provide access to network elements on nondiscriminatory rates, terms, and conditions and in a manner that allows requesting carriers to combine such elements; and (7) FCC Rule 809 (the "pick and choose" rule), which tracks the pertinent language in Section 252(i) of the Act almost exactly, is not only a reasonable interpretation of the Act, it is the most readily apparent. The Supreme Court remanded the cases back to the Eighth Circuit Court of Appeals for proceedings consistent with its opinion.

On June 10, 1999, the Eighth Circuit Court of Appeals entered an Order on remand in response to the Supreme Court's decision which, in pertinent part, reinstated FCC Rules 501-515, 601-611, and 701-717 (the pricing rules), Rule 809 (the "pick and choose" rule), and Rule 315(b) (ILECs shall not separate requested network elements which are currently combined). The Eighth Circuit also vacated FCC Rule 319 (specific unbundling requirements). The Court set a schedule for briefing and oral argument of those issues which it did not address in its initial opinion because of its ruling on the jurisdictional issues. The Court also requested the parties to address whether it should take any further action with respect to FCC Rules 315(c) - (f) regarding unbundling requirements. Iowa Utilities Board v. FCC, F.3d (Order Filed June 10, 1999).

By Order dated June 29, 1999, the Commission set this matter for hearing on October 18, 1999.

On July 9, 1999, BellSouth filed its prefiled direct testimony as well as its Response to DeltaCom's Petition for Arbitration.

On July 26, 1999, DeltaCom prefiled its rebuttal testimony.

On September 27, 1999, the Public Staff of the North Carolina Utilities Commission filed a Notice of Intervention in this proceeding.

On October 1, 1999, BellSouth filed a Motion to Resolve Issues. In its Motion, BellSouth requested that certain arbitration issues concerning UNEs and collocation be transferred to Docket No. P-100, Sub 133d, the Commission's generic UNE docket, and Docket No. P-100, Sub 133j, the Commission's generic collocation docket. On October 8, 1999, DeltaCom filed its Opposition to BellSouth's Motion to Resolve Issues.

On October 11, 1999, the Commission issued its Order Concerning UNEs and Collocation Issues. The

On October 13, 1999, DeltaCom filed a Motion for Clarification and to Defer Issues in which DeltaCom asked the Commission: (1) to clarify that its existing Interconnection Agreement with BellSouth will remain in effect until all issues deferred to the generic dockets have been decided and (2) to defer consideration of the issues relating to the reciprocal compensation associated with Internet Service Providers (ISPs) pending the Commission's decision in the ICG Telecom Group, Inc. (ICG) arbitration docket, Docket No. P-582, Sub 6. Specifically, DeltaCom was concerned with the 449 extended loops in service serving current customers in North Carolina and the status of the extended loops regarding additional customers.

On October 14, 1999, BellSouth prefiled redacted testimony.

On October 15, 1999, the Public Staff filed its Reply to DeltaCom's Motion for Clarification and to Defer Issues. With respect to the deferral of issues, the Public Staff supported the request of DeltaCom, saying that it is clearly in the public interest that there is no service disruption for DeltaCom customers receiving service via extended loops during the pendency of these issues. With respect to the deferral of a hearing concerning reciprocal compensation issues until a decision is issued in the pending arbitration between BellSouth and ICG, the Public Staff supported deferral of the reciprocal compensation issues to a generic proceeding.

On October 15, 1999, BellSouth filed its Response to DeltaCom's Motion. BellSouth argued that DeltaCom's Motion regarding continued operation under the existing Interconnection Agreement should be denied as unnecessary, and it stated that it did not oppose DeltaCom's Motion to defer consideration of issues related to inter-carrier reciprocal compensation as long as such consideration occurs within the context of a general proceeding as requested by BellSouth, and not within the pending ICG arbitration.

By Order dated October 15, 1999, the Commission concluded that good cause existed to defer consideration of issues in this docket relating to reciprocal compensation. The Commission reserved the question of deferring the reciprocal compensation issue pending the issuance of an Order in the ICG/BellSouth arbitration docket or pending the conclusion of a generic docket such as that proposed by BellSouth. The Commission further concluded that a decision regarding DeltaCom's Motion concerning continued operation under the existing Interconnection Agreement should be deferred pending further argument and clarification from the Parties at the beginning of the hearing scheduled for October 18, 1999.

This matter came on for hearing as scheduled on October 18, 1999. At the beginning of the hearing, the Commission Panel heard oral arguments for reconsideration of its decision to defer consideration of the reciprocal compensation issues. The Commission concluded that it would hear evidence on the issue of reciprocal compensation in the hearing. The Commission Panel also heard arguments from BellSouth and DeltaCom concerning DeltaCom's Motion to hold its existing Interconnection Agreement in effect pending implementation of a further agreement. The arguments concerned BellSouth's provision of extended loops to existing and prospective customers.

Following the preliminary oral argument, the hearing commenced. DeltaCom offered the direct and rebuttal testimony of Christopher J. Rozycki, Director of Regulatory Affairs for DeltaCom; the direct and rebuttal testimony of Michael Thomas, Director - Information Services for DeltaCom; and the direct and rebuttal testimony of Thomas Hyde, Senior Manager - Industry Relations for DeltaCom. The direct testimony of Don J. Wood was entered into the record by stipulation. BellSouth offered the direct testimony of Dr. William E. Taylor, Senior Vice President of National Economic Research Associates, Inc.; the direct testimony of Alphonso J. Varner, Senior Director - Regulatory Policy and Planning for BellSouth; the direct testimony of Ronald M. Pate, Director - Interconnection Services for BellSouth; the direct testimony of David P. Scollard, Manager - Wholesale Billing for BellSouth Billing, Inc., a subsidiary of BellSouth; and the direct testimony of W. Keith Milner, Senior Director - Interconnection Services for BellSouth.

In response to the oral argument held on October 18, 1999, the Commission entered an Order on October 19, 1999, requesting that BellSouth and DeltaCom each make a filing by October 22, 1999, setting forth: (1) a concise restatement of their arguments, (2) citations and text of relevant sections of the existing Interconnection Agreement, (3) the substance of the terms of the oral agreement between the Parties concerning continuation of service referred to at the October 18, 1999 oral argument, (4) the rates applicable to the extended loops and collocation service and authority therefor, and (5) each party's "bottom line" concerning the terms and conditions under which a continuation of service as to extended loops to new and existing customers would be effected.

On October 21, 1999, the Commission issued its Post-Hearing Order wherein the Commission instructed the [illegible] to arrive at a common list of remaining disputed issues consistently numbered

and identified. The Commission further requested the Parties to prepare a post-hearing matrix to be submitted at the same time as Proposed Orders and Briefs.

DeltaCom and BellSouth both submitted their filings on October 22, 1999 in compliance with the Commission's October 19, 1999 Order. DeltaCom's "bottom line" position was that the Interconnection Agreement provided for continuation of extended loop service for new customers in North Carolina until the Commission ruled on this issue in the generic docket. BellSouth's "bottom line" position was that it is under no obligation under either the Agreement or the FCC rules to combine unbundled elements with BellSouth's retail services. BellSouth argued that the extended loops were provided to DeltaCom in error by BellSouth employees unfamiliar with the terms of the Agreement. To avoid a complete disruption of DeltaCom's service, however, BellSouth reached an oral agreement with DeltaCom by which BellSouth would continue to provision these extended loops until such time as DeltaCom could establish collocation arrangements in the affected central offices. Until these collocation arrangements are completed, BellSouth also agreed to accept orders from DeltaCom for extended loops to serve new customers, but only for those central offices with existing extended loops and for which collocation requests had been submitted. Further, under the oral agreement, BellSouth will not process any requests for DeltaCom for extended loops involving other central offices.

On November 2, 1999, the Commission entered an Order Concerning Continuation of Service. Through this Order, the Commission provided an interim solution to the dispute of the status of new and existing DeltaCom customers with regard to extended loops. Pursuant to the Order, existing DeltaCom customers who are receiving or have received extended loop service shall be able to receive extended loop service out of central offices already providing service by extended loops. New customers shall be able to receive extended loop service out of central offices already providing service by extended loops. DeltaCom has no obligation to initiate or continue the collocation process at this time in those central offices already providing service to DeltaCom customers by extended loops. BellSouth is under no obligation to provide extended loop service to new customers out of central offices which provide no extended loops service to DeltaCom customers. DeltaCom has the option of converting any extended loop arrangement at central offices where some service is provided to DeltaCom customers via extended loops to a collocation arrangement. The interim solution, which applies only to extended loop arrangements, is subject to prospective revision and change based upon the Commission's generic consideration of issues related to extended loops in Docket No. P-100, Sub 133d.

On December 1, 1999, BellSouth and DeltaCom provided their Notification of Resolved and Unresolved Issues for Purposes for Arbitration.

On December 2, 1999, BellSouth filed a Motion for Reconsideration of the Commission's November 2, 1999 Order concerning continuation of service.

On December 6, 1999, BellSouth and DeltaCom filed their Proposed Orders and Briefs. On that same day, the Public Staff filed its Proposed Order.

On December 13, 1999, DeltaCom filed its Response to BellSouth's Motion for Reconsideration concerning continuation of service.

On December 16, 1999, the Commission issued its Order Denying Motion for Reconsideration.

On December 20, 1999, DeltaCom filed its Motion for Leave to File a Supplemental Brief. DeltaCom stated in its Motion that the Public Staff, in its Proposed Order, raised two issues concerning the tandem switch rate which DeltaCom had not anticipated would be raised. DeltaCom argued that it had not previously briefed the issues and needed to brief the issues now.

On December 21, 1999, BellSouth filed its Response to DeltaCom's Motion. On December 23, 1999, the Public Staff filed its Response to DeltaCom's Motion.

By Order dated December 29, 1999, the Commission allowed Supplemental Briefs.

On December 29, 1999, DeltaCom filed its Supplemental Brief. On January 5, 2000, BellSouth filed its Supplemental Brief.

On January 5, 2000, the Public Staff filed its Response to DeltaCom's Supplemental Brief.

By Order dated January 20, 2000, the Commission required DeltaCom and BellSouth to submit as late-filed exhibits certain information concerning the issue of whether DeltaCom's switches serve a comparable geographic area to BellSouth's tandem switches.

On February 21, 2000, DeltaCom and BellSouth made separate filings in compliance with the Commission's January 20, 2000 Order.

By Order dated February 29, 2000, the Commission sought additional information as late-filed exhibits concerning the tandem switching issue in addition to the maps already provided.

On March 7, 2000, DeltaCom filed its late-filed exhibits in response to the Commission's February 29, 2000 Order. On March 14, 2000, BellSouth filed its Response to DeltaCom's March 7, 2000 late-filed exhibits.

A glossary of the acronyms referenced in this Order is attached hereto as Appendix A.

WHEREUPON, based upon a careful consideration of the entire record in this arbitration proceeding, the Commission now makes the following

FINDINGS OF FACT

1. It is more appropriate to consider DeltaCom's proposed performance measurements and performance guarantees in the generic docket (Docket No. P-100, Sub 133k) established to address such issues. Further, the Commission concludes that it is appropriate for the Parties to include BellSouth's most recent Service Quality Measures (SQMs) in their Interconnection Agreement on an interim basis until a Final Order is issued by the Commission in the generic Docket No. P-100, Sub 133k, concerning performance measurements and enforcement mechanisms.

2. BellSouth is not required at this time to map Electronic Data Interchange (EDI) to the Direct Order Entry (DOE) system for all commonly ordered services requested by DeltaCom on behalf of its retail customers. However, the Commission is concerned about the lack of parity demonstrated in this proceeding and expects BellSouth to take appropriate action within a reasonable time frame to ensure that parity is reached in the instances noted in this proceeding. Finally, it is not appropriate to include any additional language in the Interconnection Agreement setting out BellSouth's obligation for providing UNEs and Operations Support Systems (OSS).

3. The appropriate reciprocal compensation rate for local traffic is the sum of the permanent rates for the individual network elements actually used to handle the call as established in Docket No. P-100, Sub 133d. The overall rate, including tandem switching, is approximately $.003 per minute. Further, dial-up ISP traffic should be subject to an interim inter-carrier compensation mechanism and the relevant rates should mirror those used for reciprocal compensation for local traffic. Such rates shall be subject to true-up at such time as the Commission has ruled pursuant to the FCC's anticipated order on the subject.

4. For reciprocal compensation purposes, DeltaCom should be compensated at BellSouth's tandem interconnection rate.

5. The Parties should incorporate into their new Interconnection Agreement the existing local interconnection arrangements pertaining to the following matters until or unless the Parties reach agreement otherwise: (1) definition of local traffic, (2) reconfiguration charges for new installations at existing points of interconnection, (3) payment of nonrecurring charges as a result of network redesigns/reconfigurations initiated by BellSouth, (4) trunking options available to the Parties, (5) the routing of traffic by the least costly method, (6) cross-connection charges applicable in a collocation arrangement at the BellSouth wire center, (7) the loading and testing of NXX codes, and (8) the delivery of traffic between DeltaCom, BellSouth, and a third party. The Commission declines to include any proposed provisions, in this regard, that are not contained in the current local interconnection arrangements. However, the Commission encourages BellSouth and DeltaCom to continue to negotiate on the matter of binding forecasts.

6. It is reasonable and appropriate to adopt BellSouth's proposed language providing that the party requesting an audit should be responsible for paying for the audit; however, a party overstating Percent Local Usage (PLU) or Percent Interstate Usage (PIU) by 20% or more shall pay for the cost of the audit.

7. The Commission declines to require the inclusion of language obligating the losing party to an enforcement proceeding or proceeding for breach of the Interconnection Agreement to pay the cost of the litigation.

8. The Commission declines to require the insertion of a tax liability provision in the Interconnection Agreement but encourages the Parties to continue negotiations on this issue.

9. The Commission declines to require the inclusion of a provision establishing compensation for a material breach of contract in the Interconnection Agreement.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

MATRIX ISSUE NO. 1(a): Should BellSouth be required to comply with the performance measures and guarantees for pre-ordering/ordering, resale and UNEs, provisioning, maintenance, interim number portability and local number portability, collocation, coordinated conversions, and the bona fide request process as set forth fully in Attachment 10 of Exhibit A to DeltaCom's Petition?

POSITIONS OF PARTIES

DELTACOM: Yes. DeltaCom argued that although the Commission has recently established a generic docket concerning performance measures and guarantees, DeltaCom believes that interim measures should be adopted in this arbitration because it may be some time before a final order is issued in the generic docket. DeltaCom argued that nothing in TA96 gives the Commission authority to preclude certain issues from arbitration simply because those issues affect more than one carrier or because those issues may be considered at a later date. DeltaCom maintained that TA96 specifically mandates that all issues be resolved. DeltaCom argued that this Federal mandate is particularly important in this instance where inadequate service by BellSouth will cause DeltaCom to lose customers and likely damage DeltaCom's reputation. DeltaCom posited that performance measures and guarantees are essential for three primary reasons: (1) BellSouth has competitive and financial incentives to block entry of DeltaCom into the North Carolina market; (2) as the owner of the local loop, BellSouth has the means to limit DeltaCom's ability to provide quality service; and (3) seeking redress through the regulatory complaint procedure or through the courts would be wasteful and ineffective in a competitive environment. DeltaCom stated that performance measures and guarantees are necessary and in the public interest because such provisions would create meaningful incentives for BellSouth to perform. DeltaCom stated that it proposes a three-tier set of performance measures and guarantees. The first tier calls for the waiver of nonrecurring charges when BellSouth fails to provide the ordered service in a timely fashion. The second tier of guarantees is triggered when BellSouth fails to meet a measurement in two out of three months during a quarter. Where such a "Specified Performance Breach" occurs, BellSouth is required to provide compensation of $25,000. The third level of DeltaCom's proposed performance guarantees is triggered only in the cases of extreme and extraordinary nonperformance, where BellSouth fails to meet a single measure five times during a six-month period. For those extreme cases, BellSouth must pay $100,000 for each default, for each day the default continues. Also, DeltaCom is recommending that the second- and third-tier guarantees, if assessed, be paid to a public interest fund. DeltaCom concluded that although the generic docket will provide consistent guidance in this area on a state-wide basis, the Commission should be concerned that several months may elapse before a final order is issued in the generic docket. Therefore, DeltaCom recommended that the Commission find that the performance measures and guarantees contained in Exhibit A at Attachment 10 be in place until the Commission issues a final and nonappealable order in the generic proceeding.

BELLSOUTH: No. BellSouth maintained that despite having made numerous requests early during the negotiations, BellSouth did not receive a copy of Attachment 10 from DeltaCom until the day after the negotiations ended. BellSouth stated that it does not believe that the so-called performance measures and performance guarantees in Attachment 10 to the Petition are appropriate. BellSouth stated that the Parties do not dispute the importance of or need for performance measurements in their Interconnection Agreement, only which performance measures should be included. BellSouth argued that it has offered in its negotiations with DeltaCom comprehensive performance measures that will ensure that BellSouth provides DeltaCom with nondiscriminatory access consistent with the requirements of TA96 and FCC orders and rules known as BellSouth's SQMs. BellSouth further noted that the Commission issued a November 4, 1999 Order establishing a generic docket to address performance measurements and enforcement mechanisms and that docket may be the more appropriate place for a decision regarding this issue. BellSouth recommended that the Commission require the Parties to incorporate BellSouth's SQMs into their Interconnection Agreement as may be subsequently modified consistent with future decisions by the Commission in its recently established generic docket to address performance measurements and enforcement mechanisms. With respect to performance guarantees, BellSouth argued that DeltaCom's proposed

performance guarantees constitute financial penalties, which the Commission lacks the statutory or jurisdictional authority under state law to unilaterally award without a hearing and absent BellSouth's prior consent. BellSouth recommended that the Commission specifically decline to adopt any of the performance guarantees offered by DeltaCom, but note that the subject of appropriate enforcement mechanisms will be taken up in Docket No. P-100, Sub 133k.

PUBLIC STAFF: No. The Public Staff stated that on November 4, 1999, the Commission established a generic docket, Docket No. P-100, Sub 133k, for the consideration of performance measures and enforcement mechanisms. The Public Staff maintained that the issues of performance measures and an enforcement mechanism are more appropriate for consideration in that docket. The Public Staff argued that consideration in a generic docket would lead to a uniform decision which would apply to all competing local providers (CLPs) and ILECs operating in North Carolina. The Public Staff recommended that the Commission deny any request by DeltaCom that it establish performance measures and an enforcement mechanism in this case on an interim basis and defer the issue to the generic proceeding since it would be of greater benefit to decide this issue on an industry-wide basis rather than to consider individual cases and make decisions in a piecemeal fashion.

DISCUSSION

The Commission notes that by Order dated November 4, 1999, the Commission established a generic docket to consider performance measurements and enforcement mechanisms which stemmed from the BellSouth/ICG arbitration proceeding (Docket No. P-582, Sub 6). In its Order, the Commission requested the industry, the Public Staff, the Attorney General, and other interested parties to form a Task Force. The Commission notes that, after being granted extensions of time, the Task Force is to file a report with the Commission by not later than May 3, 2000, which outlines specific issues agreed to by the Task Force as well as any issues on which the Task Force is unable to reach agreement. The Commission believes that it would be more appropriate for DeltaCom to actively participate on the Task Force established to address these issues on a statewide level rather than adopting DeltaCom's proposed set of performance measurements in this docket. Further, the Commission believes that BellSouth's proposal to include BellSouth's SQMs on an interim basis until an Order is issued in the generic proceeding in the Interconnection Agreement is a reasonable and appropriate recommendation. However, the Commission's decision is not intended to preclude the Parties from negotiating guarantees as referenced by BellSouth witness Varner during cross-examination by DeltaCom (See Transcript Volume 3, Page 117).

CONCLUSIONS

The Commission concludes that it is more appropriate to consider DeltaCom's proposed performance measurements and performance guarantees in the generic docket established to address such issues. Further, the Commission concludes that it is appropriate for the Parties to include BellSouth's most recent SQMs in their Interconnection Agreement on an interim basis until a Final Order is issued by the Commission in the generic Docket No. P-100, Sub 133k, concerning performance measurements and enforcement mechanisms.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

MATRIX ISSUE NO. 2: Is BellSouth providing services including OSS and UNEs to DeltaCom at parity with that which it provides to itself?

POSITIONS OF PARTIES

DELTACOM: No. DeltaCom argued that its access to OSS must be at parity with BellSouth's access. DeltaCom maintained that its evidence showed that for a customer desiring to switch from BellSouth to DeltaCom and add several commonly ordered services, DeltaCom submits the order for the customer to BellSouth electronically through EDI. DeltaCom stated that by design, such order falls out when it reaches BellSouth and that when the same order is placed by BellSouth to provide the same services with BellSouth as the retail service provider, the order is processed electronically. DeltaCom argued that this example reflects the underlying problem of BellSouth's failure to map EDI to the DOE system. DeltaCom maintained that BellSouth's systems must provide access to OSS for DeltaCom at least equal to that enjoyed by BellSouth. DeltaCom stated that both companies initially enter orders manually - DeltaCom through EDI and BellSouth through DOE - but it is only DeltaCom's orders that must be re-entered by BellSouth personnel. DeltaCom stated that its orders fall out while BellSouth's orders do not. DeltaCom maintained that it is technically feasible for BellSouth to map EDI to DOE and avoid this problem and that the Commission should require BellSouth to do so. DeltaCom recommended that the Commission find that the intent of the parity requirement is that the service really be equal and, therefore, [illegible] between the EDI and DOE systems for all commonly ordered services requested by

DeltaCom on behalf of its retail customers.

BELLSOUTH: Yes. BellSouth stated that it denies that it does not offer OSS and UNEs to DeltaCom at parity. BellSouth stated that it has offered to include language in the Interconnection Agreement consistent with TA96 and the FCC's rules regarding parity of services. BellSouth maintained that TA96 does not require BellSouth to provide DeltaCom with service at levels greater than BellSouth provides to its own end users. BellSouth argued that it is not clear what relief DeltaCom is seeking under this issue that is not already subsumed under other issues. BellSouth stated that FCC Rule 51.311 specifically provides: "The quality of an unbundled network element, as well as the quality of the access to such unbundled network element, that an ILEC provides to a requesting telecommunications carrier shall be at least equal in quality to that which the ILEC provides to itself." Therefore, BellSouth stated that it is already obligated, by TA96 and the FCC's rules, to provide DeltaCom and any other CLP nondiscriminatory access to telecommunications services, UNEs, and interconnection. BellSouth noted that it currently provides CLPs with nondiscriminatory electronic interfaces to access BellSouth's OSS including: the Local Exchange Navigation System (LENS) and the Telecommunications Access Gateway (TAG) for pre-ordering, ordering, and provisioning; EDI for ordering and provisioning; Trouble Analysis and Facilities Interface (TAFI) for maintenance and repair; Electronic Communications Trouble Administration (ECTA) for maintenance and repair; and Optional Daily Usage File (ODUF), Enhanced Optional Daily Usage File, and Access Optional Daily Usage File for billing. BellSouth asserted that it also offers CLPs manual interfaces to its OSS. BellSouth maintained that these interfaces allow CLPs to perform pre-ordering, ordering, provisioning, maintenance and repair, and billing functions for resale service in substantially the same time and manner as BellSouth does for itself, and, in the case of UNEs, provide a reasonable competitor with a meaningful opportunity to compete, which is all that is required. Further, BellSouth stated that although DeltaCom complains that more than 50% of its orders submitted electronically "fall out" for manual handling, that complaint must be put in proper perspective. BellSouth stated that it would be unfair to attribute every "fall out" to BellSouth and that obviously DeltaCom is having difficulty submitting complete and accurate orders. Also, BellSouth maintained that DeltaCom markets complex business services to its customers and such orders are designed to fall out for manual handling using the same processes that BellSouth uses to handle the same orders for its retail customers. BellSouth noted that its witness Pate testified that "[t]his 'fall out' has nothing to do with any supposed inadequacies in BellSouth's systems, but results from the fact that the requested services are complex." BellSouth also pointed out that witness Pate testified that the manual processes are in compliance with TA96 and the FCC's Rules. In conclusion, BellSouth recommended that the Commission conclude that from the record evidence BellSouth is providing parity of service, as required by TA96 and the FCC's rules, to DeltaCom with respect to access to BellSouth's OSS and to the provision of UNEs. BellSouth recommended that the Commission decline to grant DeltaCom any relief with respect to this issue.

PUBLIC STAFF: Yes. The Public Staff argued that the FCC and the Act effectively set out BellSouth's obligations for providing UNEs and OSS and that, therefore, no further language on this issue is necessary for inclusion in an arbitrated Interconnection Agreement. The Public Staff maintained that BellSouth is not required to give CLPs the same access it has to its OSS, but functionally equivalent access. The Public Staff further stated that it is not satisfied that the language suggested by either party, DeltaCom's "parity equal to or greater in quality" or BellSouth's "meaningful opportunity to compete," completely captures the essence of the Act or the FCC Rules. The Public Staff opined that DeltaCom's requested language could be seen as an invitation to further muddy the waters and that the language appears to raise the standard above that required by the FCC. The Public Staff recommended that the Commission not include additional language in the Interconnection Agreement setting out BellSouth's obligations for providing UNEs and OSS.

DISCUSSION

The Commission agrees with BellSouth that it is not clear from the record what relief DeltaCom is seeking under this issue that is not already subsumed under other issues. First, based on the Proposed Orders and Briefs of BellSouth and the Public Staff, it appears that DeltaCom is requesting that the language "parity equal to or greater in quality" be included in the Interconnection Agreement while BellSouth has suggested the language "meaningful opportunity to compete." DeltaCom requested in its Proposed Order that the Commission require BellSouth to map EDI to the DOE system for all commonly ordered services requested by DeltaCom on behalf of its retail customers.

The Commission notes that BellSouth has stated that it has offered to include language in the Interconnection Agreement consistent with TA96 and the FCC's Rules regarding parity of services. The Commission further notes that it agrees with BellSouth that TA96 does not require BellSouth to provide DeltaCom with service at levels greater than BellSouth provides to its own end users and that the FCC's language refers to service "at least equal in quality to" that which BellSouth provides to itself. Therefore, the Commission does not find it appropriate to

UNEs and OSS.

Additionally, the Commission notes that DeltaCom has requested that the Commission require BellSouth to map EDI to the DOE system for all commonly ordered services requested by DeltaCom on behalf of its retail customers. DeltaCom uses EDI to enter orders while BellSouth uses DOE to enter orders. DeltaCom maintained that by design, orders entered into EDI fall out when they reach BellSouth and that when the same order is placed by BellSouth to provide the same services with BellSouth as the retail service provider, the order is processed electronically. Therefore, DeltaCom maintained, BellSouth's systems are not providing access at least equal to that enjoyed by BellSouth in compliance with TA96 and the FCC. BellSouth asserted that it would be unfair to attribute every "fall out" to BellSouth and that obviously DeltaCom is having difficulty submitting complete and accurate orders. Also, BellSouth maintained that DeltaCom markets complex business services to its customers and such orders are designed to fall out for manual handling using the same processes that BellSouth uses to handle the same orders for its retail customers.

The Commission does not believe parity is obtained through BellSouth's OSS when DeltaCom's orders submitted through EDI fall out when they reach BellSouth for manual handling as evidenced in this record. Nevertheless, the Commission does not find it appropriate at this time to require BellSouth to map EDI to DOE as requested by DeltaCom. The Commission is concerned about the lack of parity demonstrated in this proceeding and expects BellSouth to take appropriate action within a reasonable time frame to ensure that parity is reached in the instances noted in this proceeding. However, the Commission is not inclined at this time to dictate specifically what action BellSouth should take to correct this lack of parity.

CONCLUSIONS

The Commission concludes that BellSouth should not be required to map EDI to the DOE system at this time for all commonly ordered services requested by DeltaCom on behalf of its retail customers. However, the Commission is concerned about the lack of parity demonstrated in this proceeding and expects BellSouth to take appropriate action within a reasonable time frame to ensure that parity is reached in the instances noted in this proceeding. Finally, the Commission concludes that it is not appropriate to include any additional language in the Interconnection Agreement setting out BellSouth's obligation for providing UNEs and OSS.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

MATRIX ISSUE NO. 3: What should be the rate for reciprocal compensation? Should BellSouth be required to pay reciprocal compensation to DeltaCom for all calls that are properly routed over local trunks, including calls to ISPs?

POSITIONS OF PARTIES

DELTACOM: Yes, reciprocal compensation should be paid. Calls to ISPs are the same as calls to local customers and cause the same costs. As a result, reciprocal compensation should be paid for these calls. DeltaCom has proposed a compromise reciprocal compensation rate of $.0045 per minute pending final ruling by the FCC. This rate is approximately one-half the rate in the Parties' current Interconnection Agreement.

BELLSOUTH: With respect to the first issue, the appropriate rate for reciprocal compensation is the sum of the individual network elements that are actually used to handle the call such as transport or switching. The rates for each of these network elements have previously been established by the Commission in its generic UNE cost proceeding.

With respect to the second issue, calls to ISPs, even if routed over local interconnection trunks, are not subject to TA96's requirement of reciprocal compensation. The FCC's recent Declaratory Ruling in CC Docket Nos. 96-98 and 99-68, released on February 26, 1999, confirmed unequivocally that the FCC had, will retain, and will exercise jurisdiction over ISP traffic because it is interstate in nature, not local. Under the provisions of TA96 and the FCC's Orders and Rules, only local traffic is subject to the reciprocal compensation requirements. Thus, reciprocal compensation is clearly not applicable to ISP-bound traffic. In addition to being contrary to the law, treating ISP-bound traffic as local for reciprocal compensation purposes is contrary to sound public policy.

PUBLIC STAFF: The appropriate rates for reciprocal compensation are the interim UNE rates, subject to true-up upon issuance of final rates in Docket No. P-100, Sub 133d. The same rates should apply to ISP-bound traffic as an interim inter-carrier compensation mechanism.

DISCUSSION

This issue includes two parts. The first is the appropriate reciprocal compensation rate for local traffic generally. The second is whether there should be an interim inter-carrier compensation mechanism rate applied to dial-up ISP calls and, if so, at what rate.

With respect to the first part, the Commission agrees with BellSouth and the Public Staff that the appropriate reciprocal compensation rate for local traffic is the sum of the individual network elements actually used to handle the call.See footnote 1 These rates were set by Order dated March 13, 2000, in Docket No. P-100, Sub 133d.

With respect to the second part, the Commission concurs with the Public Staff that dial-up ISP traffic should be subject to an interim inter-carrier compensation mechanism and that the relevant rates should mirror those used for reciprocal compensation for local traffic. This matter has been exhaustively treated in the Commission's Recommended Arbitration Order in Docket No. P-582, Sub 6 (ICG/BellSouth Arbitration), and subsequent rulings related to that docket. There is no need to repeat that discussion here since no new evidence has been introduced for the Commission to reconsider its prior ruling. The Commission believes that the decision in that docket, on this matter, should apply to subsequent arbitrations, including a true-up once the Commission has ruled pursuant to the FCC's anticipated order on the subject.

CONCLUSIONS

The Commission concludes that the appropriate reciprocal compensation rate for local traffic is the sum of the permanent rates for the individual network elements actually used to handle the call as established in Docket No. P-100, Sub 133d. The overall rate, including tandem switching, is approximately $.003See footnote 2 per minute.

It is further concluded that dial-up ISP traffic should be subject to an interim inter-carrier compensation mechanism and that the relevant rates should mirror those used for reciprocal compensation for local traffic. Such rates shall be subject to true-up at such time as the Commission has ruled pursuant to the FCC's anticipated Order on the subject.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

MATRIX ISSUE NO. 3: Should reciprocal compensation include the tandem switching function?

POSITIONS OF PARTIES

DELTACOM: Yes. As in the ICG arbitration, DeltaCom's compensation should include end-office, tandem, and transport elements of termination where its switches serve a geographic area similar to the area served by BellSouth's tandem switches.

BELLSOUTH: No. It is BellSouth's position that, consistent with FCC Rules and industry standards, DeltaCom does not qualify for tandem switching and common transport because its network design does not perform these functions. If a call is not handled by a switch on a tandem basis, it is not appropriate to pay reciprocal compensation for the tandem switching function.

PUBLIC STAFF: No. DeltaCom is not entitled to compensation for tandem switching because it has failed to prove that its switches provide the same functions as BellSouth's tandem switches and serve the same geographic areas.

DISCUSSION

DeltaCom witness Rozycki testified that if BellSouth wishes to charge DeltaCom for transport, end-office switching, and tandem switching on its terms, then DeltaCom should be able to charge BellSouth for the same elements. Witness Rozycki further testified that DeltaCom has designed a network where its switches perform the same functions as the BellSouth end-office and tandem switches. DeltaCom uses multifunction switches which serve large geographic areas in a manner similar to BellSouth's tandem switches, and represent precisely the situation contemplated in Section 51.711(a)(3).

In its Proposed Order, DeltaCom again contended that its compensation should include end-office, tandem, and transport elements of termination where such switches serve a geographic area similar to the area served by BellSouth's tandem switch. DeltaCom stated that, in view of the interim rate proposed by DeltaCom, detailed discussion of this issue is not required in the Commission Order, and that the rationale of the ICG/BellSouth Recommended Arbitration Order applies here as well.

BellSouth witness Varner testified that if a call is not handled by a switch on a tandem basis, it is not appropriate to pay reciprocal compensation for the tandem switching function. BellSouth will pay the tandem interconnection rate only if DeltaCom's switch is identified in the Local Exchange Routing Guide (LERG) as a tandem. Witness Varner explained that a tandem switch connects one trunk to another trunk and is an intermediate switch or connection between an originating call location and the final destination of the call. An end-office switch connects a line to a trunk enabling the subscriber to originate or terminate a call. If DeltaCom's switch is an end-office switch, then it is handling calls that originate from or terminate to customers served by that local switch, and thus BellSouth argued that DeltaCom's switch is not providing the tandem function. It is BellSouth's opinion that DeltaCom is seeking to be compensated for the cost of equipment it does not own and for functionality it does not provide.

In its Proposed Order, BellSouth argued that the FCC has identified two requirements that a CLP such as DeltaCom must meet in order to be compensated at the tandem interconnection rate: (1) DeltaCom's network must perform functions similar to those performed by BellSouth's tandem switch; and (2) DeltaCom's switch must serve a geographic area comparable to BellSouth's. BellSouth argued that DeltaCom cannot meet either of these requirements. BellSouth maintained that while DeltaCom's switch may be capable of performing tandem switching functions when connected to end-office switches, DeltaCom has presented no evidence in this record that proves that DeltaCom's switches perform such functions. BellSouth argued that, for example, there is not any evidence in this record that: (1) DeltaCom interconnects end-offices or performs trunk-to-trunk switching; (2) DeltaCom switches BellSouth's traffic to another DeltaCom switch; or (3) DeltaCom's switch provides other centralization functions, namely call recording, routing of calls to operator services, and signaling conversion for other switches, as BellSouth's tandem switches do and as is required by the FCC's Rules.

BellSouth further argued in its Proposed Order that even assuming DeltaCom's switch performs the same functions as BellSouth's tandem switch (which is not the case), there is no evidence in the record that DeltaCom's switch serves a geographic area comparable to BellSouth's. DeltaCom did not identify where the customers it serves in North Carolina are located -- information that would be essential to support a finding that DeltaCom's switch serves a comparable geographic area.

The Public Staff stated in its Proposed Order that under FCC Rule 51.711, DeltaCom failed to meet its burden of proof by showing that its switches performed similar functions to and served a comparable geographic area as BellSouth's tandem switches. The Public Staff contended that DeltaCom presented a "paucity of evidence" on this issue in this case. Other than DeltaCom witness Rozycki's testimony that DeltaCom's switches performed similar functions to and served a comparable geographic area as BellSouth's tandem switches, in the Public Staff's opinion there appears to be no further showing from DeltaCom as to details of these switches which DeltaCom contends should be treated as tandem switches.

The Public Staff cautioned in its Proposed Order that the FCC has set a high standard of proof on this issue and that it is infeasible, impracticable, and subjective for the Commission to determine whether one geographic area is comparable to another and whether one switch performs similar functions as another. Given the large number of wire centers in the state, there are innumerable permutations and combinations with which the Commission could be presented. The Public Staff opined that rendering a judgment on such issues would demand a substantial amount of Commission time, resources, and technical expertise.

On December 20, 1999, DeltaCom filed a Motion for Leave to File a Supplemental Brief regarding issues concerning the tandem switch rate. An Order Allowing Supplemental Briefs was issued on December 29, 1999.

In its Supplemental Brief, filed December 29, 1999, DeltaCom stated that the Public Staff has misinterpreted Rule 51.711 in a manner which, if adopted by this Commission, would impose a burden of proof on DeltaCom which has no legal basis, and which could result in an improper finding on a crucial issue in this docket. DeltaCom argued that the plain language of FCC Rule 51.711(a)(3) controls this issue. DeltaCom maintained that the Rule does not discuss functional equivalency, nor does it limit the type of switches used by non-ILECs that are entitled to the ILEC's tandem interconnection rate. DeltaCom stated that the Commission is required to adhere to the

DeltaCom further stated in its Supplemental Brief that the Public Staff erred when it asserted that DeltaCom had the burden of demonstrating that its switches performed similar functions to BellSouth's switches. DeltaCom stated that FCC Rule 51.711(a)(3) makes no mention of tandem functionality, nor does it imply that CLP switches must be functionally equivalent to ILEC tandem switches. If anything, the FCC's language implies an understanding that CLP network design and switch placement could vastly differ from traditional ILEC network design. DeltaCom argued that Rule 51.711 was crafted to ensure that CLPs were not financially penalized or discouraged from designing networks differently than that designed by the incumbent.

DeltaCom also argued in its Supplemental Brief that its testimony reflects that its local switch in North Carolina _ located in Greensboro _ serves the entire state of North Carolina, a geographic area "comparable" to the area served by BellSouth's tandem switches. DeltaCom stated that it has on file with this Commission a price list which states the geographic area by exchange available to its facilities-based customers served by its North Carolina switch, and the price list shows that DeltaCom serves 73 exchanges located throughout North Carolina from its switch in Greensboro. DeltaCom argued that this arrangement is an example of the types of radically different network designs envisioned in FCC Rule 51.711(a)(3), and also demonstrates why the FCC made no reference to the switches performing "similar functions." DeltaCom argued that its network is fundamentally different from that of BellSouth. Rule 51.711(a)(3) requires only that the Commission consider whether a "comparable" geographic area is served _ there simply is no functionality comparison to be made.

DeltaCom contended in its Supplemental Brief that BellSouth did not meet the burden of demonstrating that DeltaCom's switch does not serve such a geographical area, indeed, it is undisputed that DeltaCom's switch in Greensboro serves the entire State of North Carolina. DeltaCom maintained that BellSouth's argument that DeltaCom does not identify its switch in the LERG specifically as a tandem switch is of no legal consequence, because identification of a switch as a tandem in the LERG is not a requirement of FCC Rule 51.711(a)(3). (In a footnote, DeltaCom indicated the tandem function performed by DeltaCom's switch is a local tandem function with the access tandem function performed by a different switch. DeltaCom indicated that it is in the process of listing its North Carolina switch as a local tandem switch in the LERG.)

DeltaCom further contended that the language of Rule 51.711(a)(3) demonstrates that DeltaCom's switch does not have to serve as a tandem. DeltaCom argued that the Rule refers to "the switch of a carrier other than an ILEC" serving a comparable geographic area to the area served by "the ILEC's tandem switch." If the FCC intended to require non-ILECs to have tandem switches in order to be entitled to an ILEC's tandem interconnection rate, it would have said so. DeltaCom stated its argument is validated by the fact that the FCC specifies the ILEC switch as a "tandem," but uses the broad, unqualified word "switch" when referring to non-ILECs' equipment.

BellSouth stated in its Supplemental Brief that it agrees that Rule 51.711(a)(3) controls this issue. However, BellSouth maintained that the Rule cannot be read in a vacuum, but must be read in the broader context of TA96 and the FCC's Order adopting the Rule, both of which fully support the Public Staff's analysis of DeltaCom's burden of proof on the tandem switching issue.

BellSouth further contended in its Supplemental Brief that the FCC directed state commissions to consider two factors in determining whether a CLP should receive the same reciprocal compensation rate as would be the case if traffic were transported and terminated via the incumbent's tandem switch. First, the FCC directed state commissions to "consider whether new technologies (e.g., fiber ring or wireless network) performed functions similar to those performed by an ILEC'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 ILEC's tandem switch." Second, in addition to the functionality comparison, the FCC instructed state commissions to consider whether the new entrant's switch serves a geographic area comparable to that served by the ILEC's tandem switch, in which case the appropriate proxy for the new carrier's costs is the incumbent's tandem interconnection rate.

BellSouth stated in its Supplemental Brief that the Public Staff's conclusion that DeltaCom failed to satisfy its burden of proof on the tandem switching issue is abundantly correct, particularly given that the record evidence from DeltaCom on the tandem switching issue consisted of slightly more than one page of prefiled testimony in addition to witness Rozycki's responses to four questions from the Public Staff on the issue at the hearing. BellSouth argued that DeltaCom's latest filing should not obscure the inescapable truth that it failed to produce any evidence upon which this Commission could find in DeltaCom's favor on the tandem switching issue.

BellSouth contended in its Supplemental Brief that if the Commission were to conclude that DeltaCom was only required to prove that its switch serves a comparable geographic area to BellSouth's tandem switch (which BellSouth does not believe is the appropriate test), DeltaCom utterly failed to satisfy this burden of proof as well.

BellSouth further contended that DeltaCom does not and cannot point to a single shred of evidence in this record that establishes what geographic area its Greensboro switch currently serves and whether that area is comparable to the geographic area served by BellSouth's tandem switch. BellSouth stated that neither DeltaCom's tariffs nor its network map were entered into evidence. Furthermore, BellSouth asserted that even if considered by the Commission, neither DeltaCom's tariffs nor its network map demonstrate what geographic area DeltaCom's switch actually serves in North Carolina. BellSouth maintained that the issue is whether DeltaCom's Greensboro switch "serves" a comparable geographic area, not whether its switch is technically capable of serving a particular geographic area. *See* 47 C.F.R. Paragraph 51.711(a)(3); *see also MCI Telecommunications Corp. (MCI) v. Illinois Bell Telephone Company d/b/a Ameritech Illinois, Inc.*, 1999 U.S. Dist. LEXIS 11418 (N.D. Ill. June 22, 1999).

BellSouth stated that the evidence in this record (or lack thereof) on the question of whether DeltaCom's switch serves a comparable geographic area is similar to the record evidence confronted by the federal district court in *MCI v. Illinois Bell Telephone Company d/b/a Ameritech Illinois, Inc.* In that case, MCI argued that it should be compensated at the tandem rate for its switch in Bensonville, Illinois. The Illinois Commerce Commission (ICC) rejected MCI's argument, finding that MCI had failed to provide sufficient evidence to support a conclusion that it was entitled to the tandem interconnection rate.

The Public Staff, in its Response to DeltaCom's Supplemental Brief, stated that DeltaCom failed to demonstrate that its switch performs tandem functions in terminating a call delivered to it by a local exchange company (LEC). The Public Staff argued that the determination of whether DeltaCom's switch performs the tandem functionality on calls delivered to it by BellSouth is central to the Commission's decision as to whether DeltaCom should be compensated for the tandem switching and transport elements. The Public Staff argued that even if it could be construed that DeltaCom's switch serves an area comparable to that served by BellSouth's tandem switch, that determination, standing alone, is insufficient to qualify DeltaCom to receive compensation for the tandem switching and transport elements.

The Public Staff further stated in its Response to DeltaCom's Supplemental Brief that it is clear in reading Paragraph 1090 of the FCC's First Report and Order as a whole, and as an indication of the FCC's intent in promulgating Section 51.711 of its Rules, that the functionality of the interconnecting carrier's network must be considered for the purpose of determining whether the carrier should be compensated for tandem switching. The Public Staff maintained that in Paragraph 1090, the FCC makes it clear that states may establish transport and termination rates which vary according to whether the traffic is routed through a tandem switch or directly to the end office switch. However, the Public Staff opined that the FCC specifically directs the states to consider whether new technologies (e.g., fiber ring or wireless networks) perform functions similar to those performed by an ILEC's tandem switch. The Public Staff stated that if the only requirement were that the interconnecting carrier's switch serve an area comparable to the LEC's tandem switch, any consideration of the new technologies would be completely irrelevant.

The Public Staff stated that if the Commission were to adopt DeltaCom's position that the rule should be read in isolation without any consideration of Paragraph 1090, then a CLP with a switch serving a geographic area comparable to that served by the LEC's tandem would be entitled only to reciprocal compensation for tandem switching and for no other functions such as end-office switching or transport. The Public Staff stated that it did not believe this is the result that was intended by the FCC or desired by DeltaCom. The Public Staff stated that a major theme of TA96 is that rates should be cost-based, and this is the principle underlying the FCC Rule. The Public Staff maintained that it is unreasonable to conclude that a switch that performs no tandem functions should be compensated as if it did, merely because it serves a comparable geographic area. According to the Public Staff, the functionality of the switch is a key element which cannot be overlooked.

The Public Staff submitted that a diagram handed out by DeltaCom as an exhibit to its counsel's opening statement to show the geographic coverage of DeltaCom's network, and the unsupported assertions of its witness Rozycki as to geographic coverage and functionality, do not rise to the level necessary to support DeltaCom's position on this issue.

In conclusion, in its Response to DeltaCom's Supplemental Brief, the Public Staff submitted that to qualify for reciprocal compensation for tandem switching and transport, the CLP must show that its network performs the same functions as the incumbent LEC's tandem switch in terminating calls directed to it by the interconnecting LEC and that the CLP's switch serves a comparable geographic area. The Public Staff further submitted that DeltaCom has not met its burden of proof on either of these two elements.

On February 21, 2000, in response to Commission Order, DeltaCom filed a map of its switch coverage in North Carolina vs. BellSouth's local tandems which depicted that DeltaCom's Greensboro switch covers the

Greensboro, Raleigh, and Asheville Local Access and Transport Areas (LATAs), and its Columbia, South Carolina switch covers the Charlotte LATA. DeltaCom also filed a list of DeltaCom's collocations in BellSouth central offices in North Carolina, and a list of Common Language Location Identifier (CLLI) Codes for BellSouth central offices served by BellSouth local tandems. BellSouth filed LATA tandem serving area maps for its Asheville LATA Tandem, Asheville LATA Local Tandem, Charlotte LATA Tandem, Charlotte LATA Local Tandem, Greensboro LATA Tandem, Greensboro LATA Local Tandem, Raleigh LATA Tandem, Raleigh LATA Local Tandem, Wilmington LATA Tandem, and Wilmington LATA Local Tandem.

On March 7, 2000, in response to Commission Order dated February 29, 2000, DeltaCom filed a description of its switches and network architecture in North Carolina. DeltaCom described its network architecture as "super switches," and stated that these super switches perform many functions similar to the BellSouth end office and local tandem switches as well as also performing long distance or interexchange switching and access tandem switching functions. DeltaCom further stated that its "super switches" switch originating and terminating local traffic, sending the traffic to or receiving it from Traffic Concentration Nodes (TCNs) in the DeltaCom network. For local calls, the TCN gathers or concentrates originating local traffic in an area, and sends that traffic to the DeltaCom switch, thus performing a function similar to a BellSouth end office subtending a BellSouth tandem.

DeltaCom also filed four Exhibits as support. Exhibit 1 illustrated DeltaCom's North Carolina network, showing 17 Points of Presence (POPs). Exhibit 2 illustrated examples of North Carolina local calls that DeltaCom's Greensboro, North Carolina and Columbia, South Carolina switches handle today. DeltaCom contended that together, Exhibits 1 and 2 demonstrated that with the advent of fiber optic transport facilities and the enormous switching capacity available in today's switching platforms, the economics of the switch/transport tradeoff have changed. DeltaCom argued that competing local exchange companies (CLECs) today are able to perform many of the same functions with a single switch that may be performed by at least two switches in the BellSouth network.

In Exhibit 3, DeltaCom provided their number of customers and location. In Exhibit 4, DeltaCom illustrated a small sample of the calling to DeltaCom customers in Charlotte, originated by customers of BellSouth and other North Carolina LECs.

In its Response to DeltaCom's Exhibits filed on March 7, 2000, BellSouth contended that DeltaCom has failed to demonstrate that it incurs any "additional costs" beyond its end office switching function that would justify BellSouth paying DeltaCom the tandem interconnection rate. BellSouth further contended that the technology and concentration nodes referred to by DeltaCom as TCNs are used to multiplex traffic, not to switch traffic. Therefore, BellSouth stated that contrary to DeltaCom's claim, TCNs are simply multiplexing nodes on DeltaCom's transport facilities, not traffic switching points. According to BellSouth, DeltaCom's equipment provides long (or extended) loops, but does not perform a switching function.

BellSouth summarized its opposition as follows:

1. SONET loop concentration nodes are not switches, nor do they perform functions even similar to an end office switch.
2. While DeltaCom attempts to define the loops between the DeltaCom end user and the DeltaCom switch as trunks on "common transport" facilities, these facilities are nothing more than long loops.
3. To the extent that DeltaCom utilizes SONET technology and loop concentration nodes for its loops, either short or long, such costs are prohibited by the FCC from being recovered in reciprocal compensation for local traffic.
4. Contrary to DeltaCom's claims, the DeltaCom switch performs only end office loop-to-trunk port switching and does not perform local tandem switching functions.

The Commission concluded, in *Petition of ICG Telecom Group, Inc. for Arbitration of its Interconnection Agreement with BellSouth Telecommunications, Inc.*, Docket No. P-582, Sub 6, that ICG had met its burden of proof in regard to both geographic coverage and similar functionality. That decision, based primarily on the testimony of ICG witness Starkey, was upheld and reaffirmed in the Commission's Order Ruling on Objections, Request for Clarification, Reconsideration, and Composite Agreement issued March 1, 2000. In the same Order, the Commission concluded that although it chose not to make a decision in the ICG case on the principal difference in the positions of the parties - whether FCC Rule 51.711 prevails or if the attendant discussion in Paragraph 1090 of the FCC Order should also be considered - parties arbitrating this issue in future proceedings should file maps and provide substantial testimony in the record including information as to location of actual customersSee footnote 3, description of equipment and associated technology, and other relevant information.

After careful and extensive review of the FCC's Rule 51.711 and the attendant discussion in Paragraph 1090, the Commission believes that the language in the FCC's Order clearly contemplates that exact duplication of the ILEC's network architecture is not necessary in order for the CLP to be eligible to receive reciprocal compensation at the tandem switching rate. Further, we believe that the language in the FCC's Order treats geographic coverage as a proxy for equivalent functionality, and that the concept of equivalent functionality is included within the requirement that the equipment utilized by both parties covers the same basic geographic area. We further believe that the Rule and the Order language are not, for this reason, in conflict in the manner described by BellSouth and the Public Staff.

Based on the information filed by DeltaCom including the map and the description of its network, the Commission believes that DeltaCom has met its burden of proof that its switches cover a comparable area to that covered by BellSouth's switches and that, for reciprocal compensation purposes, DeltaCom is entitled to compensation at BellSouth's tandem interconnection rate.

CONCLUSIONS

The Commission concludes that, for reciprocal compensation purposes, DeltaCom should be compensated at BellSouth's tandem interconnection rate.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

MATRIX ISSUE NO. 5: Should the Parties continue operating under existing local interconnection arrangements?

POSITIONS OF PARTIES

DELTACOM: Yes. The Parties' existing Interconnection Agreement addresses each of the following topics, and the existing language in this regard should remain in place. Specifically, the current Interconnection Agreement language concerning cross-connect fees, reconfiguration charges, network redesign, NXX translation, the definitions of the terms "local traffic" and "trunking options", and the parameters establishing routing of originating traffic and each party's exchange of transit traffic should remain.

BELLSOUTH: BellSouth does not understand this issue and needs clarification from DeltaCom. The fact that DeltaCom has filed for arbitration with BellSouth and listed some 73 issues, many of which contain multiple questions, belies DeltaCom's request to maintain its existing arrangements with BellSouth. Additionally, DeltaCom proposed a new Interconnection Agreement attached as Exhibit A to the Petition rather than relying upon the existing Agreement. BellSouth has negotiated with DeltaCom in good faith and will continue to do so in an effort to reach a new Interconnection Agreement. This issue is not appropriate for arbitration.

PUBLIC STAFF: Yes. The Parties should continue to operate under the existing local interconnection arrangements until or unless the Parties reach agreement otherwise. The Commission should decline to include any proposed provisions not contained in the current local interconnection arrangements.

DISCUSSION

In addressing this issue, DeltaCom witness Hyde testified that at the time of the filing of DeltaCom's Petition, BellSouth was reviewing DeltaCom's proposed language. Thus, in order to preserve these issues, witness Hyde generically requested the same interconnection language that is in the current Interconnection Agreement as part of Issue 5. Witness Hyde testified that DeltaCom listed each section of the proposed language that it provided to BellSouth that it understood as open and under review as an unresolved issue in DeltaCom's Exhibit B matrix attached to its Petition.

In its Post-Hearing Brief, DeltaCom addressed this issue by dividing it into four subtopics which were included in DeltaCom's Exhibit B matrix, among others. DeltaCom stated that the existing Interconnection Agreement addresses, at least in part, each of the subtopics with the exception of binding forecasts. DeltaCom noted that the Parties have been able to negotiate all the other provisions concerning local interconnection with the exception of the following four subtopics: **(a)** "Should the current Interconnection Agreement language continue regarding cross-connect fees, reconfiguration charges, or network redesigns and NXX translations?"; **(b)** "What should be the definition of the terms 'local traffic' and 'trunking options'?"; **(c)** "What parameters should be

established to govern routing DeltaCom's originating traffic and each party's exchange of transit traffic?"; and (d) "Should the Parties implement a procedure for binding forecasts?"

In regard to DeltaCom's subtopics a, b, and c, DeltaCom noted that the Parties had been unable to negotiate any alternative arrangements. Thus, DeltaCom proposed that the language which is in the existing Interconnection Agreement relating to these subtopics should remain in place. DeltaCom noted that BellSouth agreed to the language that is in the existing Agreement and that this Commission approved that Agreement approximately two years ago as compliant with the Act and consistent with the public interest as required by Section 252(e)(2)(A) of the Act. DeltaCom stated that the terms and conditions in the previously approved Interconnection Agreement have enabled DeltaCom to enter the North Carolina local exchange market and have encouraged DeltaCom to make significant investments in facilities in North Carolina. DeltaCom believes that the current language related to DeltaCom's subtopics a, b, and c should be renewed and incorporated into the Interconnection Agreement resulting from this proceeding. DeltaCom argued that BellSouth has not provided any evidence that these requirements are no longer appropriate for the Interconnection Agreement between the Parties and the Parties have been unable to negotiate any alternative arrangements. Thus, absent a compelling reason to remove the existing language related to these subtopics a, b, and c, DeltaCom argued that the existing related language should remain in the Agreement.

BellSouth witness Varner testified that BellSouth's position on this issue is that negotiations take place in order to incorporate new language and terms into an Interconnection Agreement based upon new situations, governing law, processes, and technologies. Furthermore, witness Varner stated that this is not an arbitrable issue due to the fact that there is no contract language attached to this issue. Witness Varner noted that as stated in DeltaCom's position on this issue, the current arrangement has worked well for the past two years. However, DeltaCom's supporting testimony and petition seem to infer otherwise. Further, witness Varner testified that in order to ensure that DeltaCom and BellSouth have the most beneficial agreement for both Parties, new negotiations need to take place.

In its Proposed Order, BellSouth stated that for reasons that are not readily apparent, DeltaCom is asking this Commission to decide that DeltaCom should be permitted to operate under certain terms of its expired local Interconnection Agreement, while at the same time asking this Commission to arbitrate numerous disputes concerning proposed terms for a new Interconnection Agreement. Furthermore, BellSouth argued that DeltaCom attempted to expand the scope of this issue after the Petition for Arbitration was filed, by seeking to add an issue concerning binding forecasts and other newly raised matters. BellSouth objects to DeltaCom being permitted to do so. BellSouth noted that under the Act, DeltaCom is required to state the unresolved issues in its Petition. It is BellSouth's position that DeltaCom is attempting to expand those issues and it should not be allowed to do so.

In its Proposed Order, the Public Staff noted that Exhibit B to the Petition for Arbitration contains 19 particular references to DeltaCom's proposed Interconnection Agreement which pertain to this issue. The Public Staff noted that the record contains little substantive information on this issue. However, the Public Staff pointed out that if the current local interconnection arrangements cease and no substitute exists, service disruptions may well occur. Thus, the Public Staff stated that it is necessary to continue the current arrangements unless the Parties have reached agreement otherwise. Further, the Public Staff also stated that if the provision is not included in the current local interconnection arrangements, then the Commission should decline to order the inclusion of the proposed language.

The Commission disagrees with BellSouth's assertion that this is not an arbitrable issue because no contract language was attached. DeltaCom filed its Petition for Arbitration on June 14, 1999, and attached three exhibits to its Petition as follows: Exhibit A-Proposed Interconnection Agreement, Exhibit B-Matrix of Unresolved Issues, and Exhibit C-Verification. In its Exhibit B attached to the Petition, DeltaCom raised 19 items under this issue and specifically cited where the proposed related language was set forth in its proposed Interconnection Agreement. Based on DeltaCom's Proposed Order, it now appears that 10 of these items have been negotiated and that nine items remain unresolved. These nine items relate to the following matters: (1) definition of local traffic, (2) reconfiguration charges for new installations at existing points of interconnection, (3) payment of nonrecurring charges as a result of network redesigns/reconfigurations initiated by BellSouth, (4) trunking options available to the Parties, (5) the routing of traffic by the least costly method, (6) cross-connection charges applicable in a collocation arrangement at the BellSouth wire center, (7) the loading and testing of NXX codes, (8) the delivery of traffic between DeltaCom, BellSouth, and a third party, and (9) binding forecasts with liquidated damages. Of these nine items, all but one which relates to binding forecasts, have existing provisions that are in the current local interconnection arrangements.

The Commission agrees with the Public Staff that if the current local interconnection arrangements cease and no substitute exists, service disruptions may well occur. That, of course, is an undesired outcome. The local

interconnection arrangements outline how the Parties exchange and account for different traffic. Accordingly, the Commission believes that in order to avoid service disruptions, it is appropriate to require the Parties to incorporate into their new Interconnection Agreement their current local interconnection arrangements as they relate to the foregoing items, excluding binding forecasts, unless they negotiate other mutually acceptable provisions.

In regard to the implementation of a procedure for binding forecasts, DeltaCom urged the Commission to direct BellSouth to form a binding forecast capability that gives DeltaCom the assurance of having available facilities when needed and as forecasted. DeltaCom noted that with binding forecasts, BellSouth can build out its network without fearing that it will not be able to recoup its investments. DeltaCom stated its willingness to be bound by its forecasts. DeltaCom is willing to pay an underutilization charge for any trunks that are constructed by BellSouth for DeltaCom as a result of a binding forecast. Furthermore, DeltaCom stated that binding forecasts and the requirement that suppliers be made whole where purchasers over-forecast needs are procedures that have worked and continue to work well in the interexchange industry, and should be applied to the local exchange industry.

DeltaCom stated that it has been negotiating this matter of binding forecasts with BellSouth for almost a year. DeltaCom stated that it was approached by the BellSouth account team to implement binding forecasts on the assumption by at least some at BellSouth that binding forecasts had been agreed to and were needed to efficiently govern the relationship between the companies. DeltaCom stated that it is perplexed by BellSouth's refusal to agree to binding forecasts because of the benefits such a program will provide to BellSouth. Further, DeltaCom noted that BellSouth has not clearly opposed binding forecasts and still seems to be analyzing the issue. DeltaCom believes that binding forecasts should be implemented as one means to facilitate orderly and efficient local competition. It is DeltaCom's position that through the forecasts, BellSouth will be assisted in knowing what facilities need to be constructed and will not be harmed since DeltaCom will be required to pay an underutilization fee on any trunks that are not put into service.

BellSouth witness Varner testified that although not required under the Act or by FCC Rules, BellSouth is currently analyzing the possibility of providing a service whereby BellSouth commits to provisioning the necessary network buildout and support when a CLP agrees to enter into a binding forecast of its traffic requirements. Further, witness Varner testified that while BellSouth has not yet completed the analysis needed to determine if this is a feasible offering, BellSouth is willing to discuss the specifics of such an arrangement with DeltaCom.

In its Proposed Order, BellSouth argued that the Commission should deny DeltaCom's request for binding forecasts. BellSouth stated that Section 251 of the Act does not impose a duty nor an obligation on the part of an incumbent to enter into binding forecasts, which makes this issue inappropriate for arbitration. Further, BellSouth argued that DeltaCom's proposal for binding forecasts is ill-defined and administratively unworkable. Although DeltaCom would be willing to compensate BellSouth if DeltaCom fails to meet its forecast, the specifics of how this compensation would work are not spelled out in DeltaCom's proposal. Additionally, DeltaCom's proposal may make it difficult for BellSouth to serve other carriers that may require trunking capacity that has been reserved for DeltaCom pursuant to a binding forecast. For example, under DeltaCom's proposal, BellSouth would be prohibited from allowing other carriers to take advantage of these existing trunks, even though DeltaCom is not using, and may never use the trunks.

The Commission believes that it should decline to decide at this time whether the Act mandates a binding forecast requirement of the sort requested by DeltaCom, consistent with the Commission Recommended Arbitration Order in Docket No. P-582, Sub 6, involving ICG and BellSouth. However, the Commission does note that DeltaCom's request for this type of requirement does not appear to be inappropriate. In fact, such a provision can be found in BellSouth's Revised Statement of Generally Available Terms (SGAT). The Commission also agrees with the Public Staff that since this provision for binding forecasts is not included in the current local interconnection arrangements, then the Commission should decline to order the inclusion of the proposed language. However, BellSouth witness Varner testified that BellSouth was still analyzing this proposal and that BellSouth was willing to discuss the specifics of such an arrangement with DeltaCom. Accordingly, the Commission encourages BellSouth and DeltaCom to continue to negotiate on the matter of binding forecasts.

CONCLUSIONS

The Commission concludes that the Parties should incorporate into their new Interconnection Agreement the existing local interconnection arrangements pertaining to the following matters until or unless the Parties reach agreement otherwise: (1) definition of local traffic, (2) reconfiguration charges for new installations at existing points of interconnection, (3) payment of nonrecurring charges as a result of network redesigns/reconfigurations

initiated by BellSouth, (4) trunking options available to the Parties, (5) the routing of traffic by the least costly method, (6) cross-connection charges applicable in a collocation arrangement at the BellSouth wire center, (7) the loading and testing of NXX codes, and (8) the delivery of traffic between DeltaCom, BellSouth, and a third party. The Commission declines to include any proposed provisions, in this regard, that are not contained in the current local interconnection arrangements. However, the Commission encourages BellSouth and DeltaCom to continue to negotiate on the matter of binding forecasts.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

MATRIX ISSUE NO. 7(b)(iv): Who pays for the audit?

POSITIONS OF PARTIES

DELTACOM: DeltaCom argued that the party requesting the audit should pay for it. DeltaCom stated that this approach is simple and avoids any dispute as to who ultimately is responsible for the expense of the audit.

BELLSOUTH: BellSouth maintained that the issue is relatively straightforward: should one carrier that inaccurately reports information to a significant extent to another carrier be required to pay for the costs of the audit that uncovers the inaccurate information. BellSouth stated that it agrees that the party requesting an audit should be responsible for the costs of the audit, except that BellSouth would add that if the audit reveals that either party is found to have overstated the PLU or PIU by 20% or more, then that party should be required to reimburse the other party for the costs of the audit. Therefore, if a BellSouth-requested audit reveals that DeltaCom has overstated PLU/PIU percentages by 20% or more, DeltaCom should pay for the audit; otherwise, BellSouth would be required to do so. BellSouth maintained that this is a fair and reasonable provision for the protection of both Parties. BellSouth maintained that DeltaCom's argument that "each Party should pay for their own audits regardless of the outcome otherwise it would constitute a 'penalty'" is inconsistent with basic principles of cost causation. BellSouth further stated that paying the costs of an audit is not akin to a "penalty" as DeltaCom argued, since BellSouth would only be entitled to recover its actual costs incurred in conducting the audit, not fines or punitive damages. BellSouth argued that including such a provision in the Interconnection Agreement is reasonable and would create an incentive for DeltaCom to report accurately PLU/PIU information in the first place. Therefore, BellSouth recommended that the Commission conclude that it is reasonable to require the inclusion of a provision for audit rights in the Interconnection Agreement such that if one party is found to have overstated the PLU/PIU percentages by 20% or more, then that party should be required to pay for the entire audit.

PUBLIC STAFF: The Public Staff maintained that both Parties agree that, generally, the party requesting an audit should pay for it. The Public Staff further stated that one reason a party would request an audit is if it believed that reports provided by the other party were inaccurate or overstated. The Public Staff argued that should this belief be borne out by the audit, it is equitable that the party in error should pay the costs of the audit. The Public Staff maintained that including such language in the Interconnection Agreement encourages the Parties to deal with each other honestly and to ensure that information provided to each other is accurate. The Public Staff, therefore, recommended that the Commission accept BellSouth's proposed language providing that each party bears the cost of an audit; however, a party overstating PLU/PIU by 20% or more will bear the other party's audit costs.

DISCUSSION

The Commission notes that the Parties agree that the party requesting an audit should be responsible for paying for the audit. In addition, the Commission believes that it is reasonable and appropriate to adopt the additional language proposed by BellSouth that if an audit reveals that a party reported PLU/PIU in error and overstated such percentages by 20% or more, the party in error should pay for the cost of the audit. The Commission agrees with BellSouth and the Public Staff that inclusion of such language would encourage the Parties to deal with each other honestly and provide accurate information to each other.

CONCLUSIONS

The Commission concludes that it is reasonable and appropriate to adopt BellSouth's proposed language providing that the party requesting an audit should be responsible for paying for the audit; however, a party overstating PLU/PIU by 20% or more shall pay for the cost of the audit.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

MATRIX ISSUE NO. 8(b): Should the losing party to an enforcement proceeding or proceeding for breach of the Interconnection Agreement be required to pay the costs of such litigation?

POSITIONS OF PARTIES

DELTACOM: Yes. The losing party should pay the costs of such proceeding and litigation. Such a provision will deter frivolous claims, and encourage both Parties to resolve disputes informally. The Parties' present Interconnection Agreement contains this provision.

BELLSOUTH: No. BellSouth believes that the inclusion of a "loser pays" provision would have a chilling effect on both Parties to the extent that even meritorious claims may not be filed. TA96 is barely three years old and clearly represents an evolving area of rules and regulation. It is inevitable that complaints will be brought by various parties seeking clarification as issues emerge. Often times there is no clear "winner" or "loser," thus further complicating the use of a "loser pays" clause. A negative provision like "loser pays" should not be included in the agreement.

PUBLIC STAFF: No. It is not within the Commission's province to order the payment of attorney's fees and other costs by one party to another. While such a provision might indeed reduce litigation and encourage settlement and fair play, there is a real danger of even more controversy erupting as to whether a party can unequivocally be denominated as a winner.

DISCUSSION

DeltaCom witness Rozycki testified that a provision in the contract as to whether the losing party to an enforcement proceeding or a proceeding for breach of the Interconnection Agreement should be required to pay the costs of litigation would not encourage "forum shopping." First, DeltaCom stated that the proposed language is in the Parties' existing Interconnection Agreement so BellSouth has agreed to this language previously. Second, according to DeltaCom, the purpose of this provision is to encourage Parties to meet their commitments under this Agreement. Witness Rozycki further testified that he believed this provision actually encourages Parties to settle rather than face a negative decision. The Interconnection Agreement between DeltaCom and BellSouth which was previously approved contains a "loser pays" provision. DeltaCom simply seeks to continue that provision for two more years.

BellSouth witness Varner testified that it is inevitable that complaints will be brought by various parties seeking clarification as issues emerge. Often times there is no clear "winner" or "loser," thus further complicating the use of a "loser pays" clause. BellSouth stated that a negative provision like "loser pays" should not be included in the Agreement. Witness Varner further testified that BellSouth will agree to appropriate language regarding jurisdictional issues that would allow the Parties to seek damages under the Agreement from the courts since that would be a matter outside the Commission's jurisdiction. It is BellSouth's position that the Parties should determine at the time they enter the Interconnection Agreement where disputes will be resolved. BellSouth asserted that this is standard contract language and for good reason. It gives certainty as to how and where disputes will be resolved and it helps prevent the potential for "forum shopping" as well as the potential for inconsistent decisions under the Agreement.

The Public Staff recommended that the Commission encourage the Parties to continue negotiation of this issue and to consider seeking redress in another forum.

The Commission concurs with the Public Staff that it is not appropriate to require the inclusion of language obligating the losing party to an enforcement proceeding or proceeding for breach of the Interconnection Agreement to pay the cost of the litigation.

CONCLUSIONS

The Commission declines to require the inclusion of language obligating the losing party to an enforcement proceeding or proceeding for breach of the Interconnection Agreement to pay the cost of the litigation.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

MATRIX ISSUE NO. 8(e): Whether language covering tax liability should be included in the Interconnection

Agreement and, if so, whether that language should simply state that each party is responsible for its tax liability?

POSITIONS OF PARTIES

DELTACOM: No. A statement concerning tax liability need not be included. DeltaCom has proposed a compromise, supplying tax language acceptable to it to BellSouth which was less verbose and more understandable. BellSouth has not responded. In any event, the Agreement needs no provision relating to tax liability, which is an issue between the respective Parties and the relevant taxing authorities. DeltaCom noted that BellSouth had not put forward its suggested language into the record.

BELLSOUTH: Yes. BellSouth has proposed language for the Interconnection Agreement based upon BellSouth's experiences with tax matters and liability issues in connection with the Parties' obligations under interconnection agreements. A variety of taxes are imposed upon telecommunications carriers, both directly and indirectly (collected from end-users and other carriers). As would be expected, problems and disputes over the application and validity of these taxes will and do occur. The Interconnection Agreement should clearly define the respective rights and duties for each party in the handling of such tax issues so that they can be resolved fairly and quickly.

PUBLIC STAFF: No. Each party should be responsible for its own tax liability outside the Interconnection Agreement. However, if the Parties desire a provision on tax liability in the Agreement, such a provision should simply state that each party shall be responsible for its own tax liability.

DISCUSSION

The Commission believes that, while it may be desirable as a business practice to have provisions in a contractual agreement which spell out tax liability, the Commission should not itself impose such a provision, absent mutual agreement by the Parties. In his rebuttal testimony, DeltaCom witness Rozycki agreed with BellSouth that the Interconnection Agreement should clearly define the Parties' rights and duties in handling tax issues. The Parties did not agree, however, on the specific language to be included in the Agreement. While DeltaCom in negotiations proposed no language on taxes, witness Rozycki, in his direct testimony, did suggest language. The Commission believes that the Parties should continue their negotiations on this issue and arrive at a mutually agreeable provision, even if it is one that simply states that each party shall be responsible for its own tax liability.

CONCLUSIONS

The Commission declines to require the insertion of a tax liability provision in the Interconnection Agreement but encourages the Parties to continue negotiations on this issue.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

MATRIX ISSUE NO. 8(f): Should BellSouth be required to compensate DeltaCom for breach of material terms of the contract?

POSITIONS OF PARTIES

DELTACOM: Yes. There should be a provision establishing liability for a material breach of contract.

BELLSOUTH: The issue of penalties or liquidated damages is not an appropriate subject of arbitration. The Commission lacks the statutory or jurisdictional authority to award or order monetary damages or financial penalties. Even if a penalty or liquidated damage award could be arbitrated, it is completely unnecessary. State law and Commission complaint procedures are available, and are more than sufficient, to address or remedy any breach of contract situation should it occur. Furthermore, nothing in TA96 nor in any order of the FCC requires the inclusion of a liquidated damages provision in an Interconnection Agreement.

PUBLIC STAFF: The Commission should decline to include a provision in the Interconnection Agreement that requires either party to compensate the other party for the breach of material terms of the contract.

DISCUSSION

The Commission concurs with the Public Staff that the Commission should decline to include a provision establishing compensation for a material breach of contract. Further, the Commission notes that the Parties presented Section 11 - Resolution of Disputes in Part A of Exhibit A - Interconnection Agreement Between DeltaCom and BellSouth filed with DeltaCom's June 14, 1999 Petition for Arbitration.

CONCLUSIONS

The Commission declines to require the inclusion of a provision establishing compensation for a material breach of contract in the Interconnection Agreement. The Parties are referred to Section 11 of the Parties' Interconnection Agreement.

IT IS, THEREFORE, ORDERED as follows:

1. That BellSouth and DeltaCom shall prepare and file a Composite Agreement in conformity with the conclusions of this Order not later than June 5, 2000. Such Composite Agreement shall be in the form specified in paragraph 4 of Appendix A in the Commission's August 19, 1996 Order in Docket Nos. P-140, Sub 50, and P-100, Sub 133, concerning arbitration procedure (Arbitration Procedure Order).

2. That, not later than May 22, 2000, a party to the arbitration may file objections to this Order consistent with paragraph 3 of the Arbitration Procedure Order.

3. That, not later than May 22, 2000, any interested person not a party to this proceeding may file comments concerning this Order consistent with paragraphs 5 and 6, as applicable, of the Arbitration Procedure Order.

4. That, with respect to objections or comments filed pursuant to decretal paragraphs 2 or 3 above, the party or interested person shall provide with its objections or comments an executive summary of no greater than one and one-half pages single-spaced or three pages double-spaced containing a clear and concise statement of all material objections or comments. The Commission will not consider the objections or comments of a party or person who has not submitted such executive summary or whose executive summary is not in substantial compliance with the requirements above.

5. That parties or interested persons submitting Composite Agreements, objections or comments shall also file those Composite Agreements, objections or comments, including the executive summary required in decretal paragraph 4 above, on an MS-DOS formatted 3.5-inch computer diskette containing noncompressed files created or saved in WordPerfect format.

ISSUED BY ORDER OF THE COMMISSION.

This the 20th day of April, 2000.

NORTH CAROLINA UTILITIES COMMISSION
Cynthia S. Trinks, Deputy Clerk

bc041900.01

APPENDIX A

GLOSSARY OF ACRONYMS
Docket No. P-500, Sub 10

Act	Telecommunications Act of 1996
BellSouth	BellSouth Telecommunications, Inc.
CLLI	Common Language Location Identifier
CLP	Competing Local Provider
CLEC	Competing Local Exchange Company (Carrier)
Commission	North Carolina Utilities Commission
DeltaCom	ITC^DeltaCom Communications, Inc
DOE	Direct Order Entry

ECTA	Electronic Communications Trouble Administration
EDI	Electronic Data Interchange
FCC	Federal Communications Commission
ICC	Illinois Commerce Commission
ICG	ICG Telecom Group, Inc.
ILEC	Incumbent Local Exchange Company (Carrier)
ISP	Internet Service Provider
LATA	Local Access and Transport Area
LEC	Local Exchange Company (Carrier)
LENS	Local Exchange Navigation System
LERG	Local Exchange Routing Guide
MCI	MCI Telecommunications Corp.
MOU	Minute of Use
NXX	Used to symbolize telephone numbers not yet determined
ODUF	Optional Daily Usage File
OSS	Operations Support Systems
PIU	Percent Interstate Usage
PLU	Percent Local Usage
POP	Point of Presence
Public Staff	Public Staff-North Carolina Utilities Commission
SGAT	Statement of Generally Available Terms
SQMs	Service Quality Measures
TA96	Telecommunications Act of 1996
TAFI	Trouble Analysis and Facilities Interface
TAG	Telecommunications Access Gateway
TCN	Traffic Concentration Node
UNE	Unbundled Network Element

Footnote: 1 The issue of whether tandem switching should be included is addressed in Finding of Fact No. 4.

Footnote: 2 The actual rates are: End Office Switching, $.0017 per minute of use (mou); Tandem Switching, $.0009 per mou; Common Transport, $.00001 per mile per mou; and Common Transport Facilities Termination, $.00034 per mou.

Footnote: 3 The Commission concluded in the ICG Order that although it could find no basis in the FCC Rule or discussion that location of actual customers *is essential,* the Commission did not rule out such information as being relevant or useful.

EXHIBIT 4

award issued
1/9/97

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Petition of MCI Telecommunications Corporation for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Ameritech Ohio.	Case No. 96-888-TP-ARB

ARBITRATION AWARD
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Ameritech's 60-minute interval. However, the panel agreed with MCI that the provisioning of unbundled local loops should be subject to close scrutiny to ensure that Ameritech does not delay the loop cut-over of competitors.

MCI takes exception to the panel's recommendation. MCI contends that untimely cut-overs may significantly impair MCI's ability to efficiently offer service using unbundled loops. MCI also notes that, during the service disruption period, safety services (i.e., 911 service) will not be available. MCI also alleges that its five-minute window is consistent with the assumption used by Ameritech in its cost studies for completing such a task. Moreover, MCI noted that the parties already agree that other conversion times may be agreed upon for more complicated cut-overs (Schedule 9.5, ¶¶2.2.5 and 4.2.4).

Ameritech argues that there is nothing in the record in this proceeding that warrants a departure from the FCC's decision or warrants a five-minute loop cut-over requirement. Ameritech also states that there is more to be done than simply moving a jumper wire on a main distribution frame. Moreover, Ameritech states that its cost study used a five-minute interval as an estimate for the labor involved in simply pulling the jumper wire, but pulling the jumper wire is not all that must be done. Ameritech states that the Commission should adopt the panel's recommendation.

Arbitration Award: The cut-over process described by Ameritech requires manual work and coordination between the two companies. MCI, however, only mentions the single task of moving the jumper wires to justify its five-minute conversion interval. To the Commission, it does seem appropriate for Ameritech, prior to a live cut-over, to coordinate the cut-over with MCI's representative, to verify that the loop is indeed connected to the line that MCI requested, or to verify that the additional paths are installed correctly when number porting is requested. The Commission also notes that MCI will not be the only customer of Ameritech with which it needs to coordinate loop cut-overs. The evidence supports the 60-minute interval recommended by the panel.

V. Rates for Traffic Exchange and Unbundled Network Elements

What are appropriate compensation rates for transport and termination of local traffic (Petition, Ex. D.I.2.)?

Is Ameritech required to pay MCI the tandem office interconnection rate for transport and termination of calls on MCI's network (Petition, Ex. D.I.2.B.)?

What are the appropriate rates for the following UNEs: voice grade analog loops, DS-1 level loops, local switching, tandem switching and transport, loop distribution, and dark fiber (Petition, Ex. D.II.3.)?

Should Ameritech be able to recover nonrecurring and implementation costs (Petition, Ex. D.V.7.)?

The panel, recognizing that Ameritech's cost studies were severed from this arbitration proceeding, did an evaluation of the cost information presented by both parties. The panel determined that prices should be set at forward-looking economic costs, namely TELRIC, and a reasonable allocation of forward-looking joint and common costs. The panel evaluated both parties' cost information under the Commission's guidelines. The panel looked at Ameritech's TELRICs, plus joint and common costs, and then calculated a percentage adjustment, based upon the areas in which there were concerns. A 21 percent downward adjustment to the TELRICs was derived. The panel adjusted Ameritech's interim rate proposals by that percentage. Based upon these determinations, the panel recommended interim rates for transport and termination of local traffic, transit traffic, unbundled loops, unbundled ports, unbundled local switching, dedicated transmission links, shared transmission facilities, tandem-switching, nonrecurring charges, and virtual and physical collocation. Also, the panel recommended that a "true-up" mechanism be instituted if the interim rates differ from the rates that will be established by the Commission in 96-922.

MCI and Ameritech both filed exceptions to various portions of the panel's interim rate recommendations. MCI argues that the panel erred in five respects. First, MCI contends that the panel did not make a recommendation as to whether Ameritech is required to pay MCI the tandem office interconnection rate for transport and termination of calls originated on Ameritech's network and terminated on MCI's network. MCI believes that, where its switch serves a comparable geographic area to that served by Ameritech's tandem switch, Ameritech must pay MCI a symmetrical rate to that which MCI pays for transport and termination through Ameritech's tandem switch. MCI states that its switch currently serves a comparable geographic area and provides the same essential functions as Ameritech's tandem switch. Second, MCI believes that the panel's concerns with respect to its cost model are incorrect and its cost model should be adopted by the Commission. Third, MCI states that the Commission should determine that, once the interim rates will be replaced by the rates developed by the Commission in 96-922, no further "true-up" will be allowed. Fourth, MCI contends that its proposed end office termination rate ($.002 per minute-of-use (MOU)) should be adopted by the Commission, rather than the panel's recommendation of $.004 per MOU. In the alternative, MCI states that the Commission should set the interim rate at the mid-point, $.003 per MOU. Fifth, MCI strenuously objects to the panel's recommendation to use Ameritech's tariffed rates for nonrecurring charges for new service orders ($25.50) and line connection ($24.35). MCI states that the Commission should not adopt Ameritech's tariffed rates but, instead, make adjustments to Ameritech's proposed TELRIC nonrecurring charges. MCI made specific recommendations as to how each of those nonrecurring charges should be adjusted for determining interim rates.

Ameritech believes that the panel's interim rate recommendations should not be adopted for essentially seven reasons. First, Ameritech argues that the panel's concerns with the modified assumptions utilized by Ameritech in its TELRIC studies are misplaced. Second, Ameritech contends that interim rates should be determined without reference to the proxy rate ceilings or floors set by the FCC. Further, Ameritech believes that the panel report contains an incorrect rate for end office local termination on page 21 and fails to include a recommendation for an interim rate for tandem switching (Ameritech recommends that the interim tandem switching rate be $.0015 per MOU). Fourth, Ameritech maintains that the Commission should not use three weighted averages for unbundled loops prices (one for each of the three access areas/rate zones) because the costs associated with the eight loop types vary significantly from one another and since the weighted averages are not based upon forecasts appropriate to a weighted average price structure. Ameritech believes that the panel's recommended weighted average rate structure will encourage carriers to purchase only high cost loops, leaving Ameritech undercompensated. Ameritech suggests that the Commission, if it accepts the panel's adjustments, could decrease each of Ameritech's proposed loop rates by 21 percent.

Fifth, Ameritech states that the panel's recommended interim unbundled port rate is based upon costs from a prior study that involved ports with different features and functionalities than what Ameritech will unbundle for MCI and the costs associated with those features and functionalities will not be recovered through the unbundled local switching element. As with loops, Ameritech suggests that the Commission, if it accepts the panel's adjustments, could decrease each of Ameritech's proposed port rates by 21 percent. Sixth, Ameritech took exception to the panel's recommendation to use the FCC's approach, which converts dedicated transport rates into a per MOU rate, rather than establishing dedicated transport rates based upon a division of costs among the sharing carriers. Finally, Ameritech argues that the Commission should use Ameritech's TELRIC cost studies as the basis for setting rates for nonrecurring charges associated with provisioning UNEs, rather than its current tariffed rates, as the panel suggested.

Moreover, Ameritech states that Section 252(d)(2(A) of the 1996 Act requires that the rates paid by Ameritech to MCI for local transport and termination should not be symmetrical, but based upon the costs of providing interconnection. Ameritech argues that, until MCI demonstrates an ability to serve the geographic area reached by Ameritech's tandem switch (which it did not do in this proceeding), the default rate must be the end office rate for local transport and termination. Therefore, Ameritech states that the Commission should deny MCI's request for the tandem interconnection rates for all local transport and termination of calls originated on Ameritech's network. Lastly, Ameritech states that MCI's new nonrecurring rates should not be adopted as MCI has just presented them in its exceptions and they are based on invalid premises.

Arbitration Award: Ameritech submits that, at page 21 of the panel's report, the panel inadvertently reported an end office local termination rate of $.0015 per MOU

and, instead, should have reflected a rate of $.004 per MOU. The Commission agrees with Ameritech's correction and recognizes that the panel is recommending an end office local termination rate of $.004 and a tandem switching rate at $.0015 per MOU.

MCI proposes that compensation for transport and termination be based on the functionality of MCI's switch. How a non-incumbent LEC's switch functions is not the relevant criteria to determine the compensation rate. The Commission's guidelines specify that, where a switch of a non-incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the non-incumbent LEC is the incumbent LEC's tandem interconnection rate. The fundamental question then becomes: does MCI's switch located in Cleveland serve an area comparable to that served by Ameritech's tandem switch. We turn our attention to MCI's conditional certificate approved in Case No. 94-2012-TP-ACE, wherein the Commission granted MCI authority to provide local telecommunications service in Cuyahoga, Franklin, and Montgomery counties. We will presume, given the start-up nature of MCI's operations, that MCI shall serve the area for which we found it worthy of a certificate. In our view, that is a comparable service area. MCI's request that Ameritech pay MCI the tandem office interconnection rate for transport and termination of calls on MCI's network is granted. The reciprocal compensation rate for the term of the interconnection agreement for transport and termination is the panel's recommended interim tandem switching rate of $.0015 per MOU, until revised in our 96-922 proceeding. We have reached this conclusion on the basis of the information in this proceeding. We are deciding the issue on the best information we have. We expect the parties to provide regular reports to the Commission's telecommunications staff so that we may receive ongoing information.

Ameritech expressed its concern with the panel's recommendation on the prices for unbundled loops as those prices are based on weighted averages. The Commission supports the panel's recommendation requiring Ameritech to sell loops with a weighted average rate structure. We believe that applying a weighted average to all eight different types of loops, rather than developing eight separate rates for each access area, is a more appropriate method for interim rate setting. Furthermore, with the weighted averaging, we maintain consistency with Ameritech's alternative regulation plan for the setting of interim rates in access areas B, C, and D.

With regard to the other interconnection and recurring UNEs interim rates, MCI continues to believe its Hatfield Model should be used as the basis for setting rates in this proceeding. MCI specifically mentions that its proposed end office termination rate of $.002 per MOU should be adopted or, alternatively, a rate no greater than $.003 per MOU. The Hatfield Model, as noted by the panel, however, does not estimate nonrecurring costs and, accordingly, MCI did not propose any charges for nonrecurring costs. Nevertheless, MCI in its exceptions to the arbitration panel report attempted to develop interim nonrecurring charges for service ordering and line connection. Ameritech, likewise, argues that the panel's concerns with its TELRIC assumptions are misplaced and its TELRICs, as submitted, should be the basis to set rates. Ameritech also takes

exception to the panel's monthly unbundled line port rate derived from a prior Ameritech LRSIC study. We adopt the panel's recommendations on rates for interconnection and UNEs. We note that our findings are solely for the purpose of setting interim rates and that these issues will be fully explored in the 96-922 proceeding. We also believe that, with the expedited nature of the cost proceeding and our mechanism for a true-up, neither party will be significantly disadvantaged by these interim rates during this period. We believe that, despite MCI's and Ameritech's exceptions, the panel's basis for setting these interim rates was appropriately determined and neither party's interim rates nor the exceptions raised by the parties provide a sufficient basis to reject the panel's recommended rates.

With regard to the true-up mechanism, MCI requests the Commission make clear that, when the interim rates are replaced by permanent rates, these permanent rates should be derived in the 96-922 proceeding and that no further true-ups will be allowed. We have previously stated that the interim rates set in this proceeding will be fully explored in the 96-922 cost proceeding. In this proceeding, we will not prejudge the issue or preclude the future possibility of true-up adjustments. Rates to be used other than the interim rates, as well as any need for a true-up, will be addressed at the appropriate time in the 96-922 proceeding.

VI. Resale Issues

A. Wholesale/Resale Discount Methodology

What is the appropriate calculation of the wholesale/resale discount rate (Petition, Ex. D.III.2.)?

What is the appropriate methodology to apply the discount rate (Petition, Ex. D.III.3.)?

MCI and Ameritech used different approaches to determining the appropriate discount to use in setting wholesale prices. While both companies' approaches derive from the FCC's rules, MCI proposed across-the-board discount percentages of either 28.88 percent or 21.42 percent, depending on whether MCI uses Ameritech's directory assistance (DA) and operator services (OS). Ameritech proposed non-uniform discounts across its wholesale services, which, when aggregated, result in a composite discount of 15.9 percent. The panel found that it was unable to conclude that Ameritech's study was not a "bottom up" study and rejected Ameritech's approach. However, the panel noted that some of Ameritech's assumptions in identifying nonproduct-specific costs were reasonable. Nevertheless, the panel found MCI's model to be straight-forward and consistent with the FCC's Order and this Commission's guidelines. The panel recommended that MCI's model be used, subject to several adjustments regarding the ARMIS report used, assumptions for avoided uncollectible expenses, and assumptions for avoided customer service expenses. With those adjustments, the panel recommended that the resale discount, applied in an across-the-board fashion, be 25 percent when MCI

EXHIBIT 5

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition for Arbitration of an Interconnection Agreement Between ELECTRIC LIGHTWAVE, INC., and GTE NORTHWEST INCORPORATED Pursuant to 47 USC Section 252.	)	DOCKET NO. UT-980370 ARBITRATOR' S REPORT AND DECISION

I. MEMORANDUM

A. Procedural History.

On May 1, 1998, Electric Lightwave, Inc. (ELI), requested to negotiate an interconnection agreement with GTE Northwest Incorporated (GTE). On October 7, 1998, ELI, timely filed a Petition for Arbitration with the Washington Utilities and Transportation Commission ("Commission")[1] pursuant to 47 USC § 252(b)(1) of the Telecommunications Act of 1996, Public Law No. 104-104, 101 Stat. 56, *codified at* 47 U.S.C. § 151 et seq. (1996) (Telecom Act). The matter was designated Docket No. UT-980370.

The Commission entered an Order on Arbitration Procedure and appointed an arbitrator on October 27, 1998. GTE filed its response with the Commission on November 2, 1998.[2]

On November 13, 1998, a prehearing conference was held to establish a procedural schedule. On November 25, 1998, the parties jointly requested that the statutory deadline for resolution of disputed issues be extended and they waived all rights to challenge a Commission decision dated on or before March 8, 1999, on the basis of timeliness. On December 1, 1998, the First Supplemental Order on Prehearing Conference approving the joint request was entered. Opening testimony was filed on December 1, 1998. Reply testimony was filed January 4, 1999.

On January 13, 1999, a second prehearing conference was held. At the conference the parties agreed to stipulate the prefiled testimony and exhibits into

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[1] In this decision, the Washington Utilities and Transportation Commission is referred to as the Commission. The Federal Communications Commission is referred to as the FCC.

[2] The ELI Petition, including its proposed interconnection agreement, and GTE's Response, although not separately marked as hearing exhibits, are deemed a part of the record and properly before the Arbitrator and the Commission.

evidence, waive the scheduled hearing, and submit briefs on the unresolved issues. Opening briefs were filed on January 27, 1999. Reply briefs were filed on February 1, 1999.

On February 24, 1999, the parties jointly requested an additional extension of the statutory deadline to March 22, 1999, and for permission to file supplemental briefs. The requests were granted. Supplemental briefs were filed on March 8, 1999.

B. Presentation of Issues.

The parties presented three issues for resolution in this proceeding. GTE raised an additional issue in its Supplemental Brief. The issues are:

1. Should GTE and ELI Compensate Each Other under Their Agreement for the Costs of Transport and Termination for Traffic Exchanged Between Their Networks over Local Interconnection Facilities That Terminate to Internet Service Providers?

2. What Compensation Mechanism Should Be Applied for the Costs of Transport and Termination for Traffic Exchanged Between Networks over Local Interconnection Facilities That Terminate to ISPs?

3. Should GTE Compensate ELI for Traffic Exchanged Between Their Networks at the Tandem Switching Rate or at the End Office Switching Rate?

4. Should the Commission Shorten the Negotiated and Agreed to Term of the Agreement or Establish Procedures to Clarify or Modify Interim Rules for Inter-carrier Compensation?

C. Resolution of Disputes and Contract Language Issue.

On December 1, 1998, the First Supplemental Order on Prehearing Conference was entered and stated that "final offer" arbitration would not control dispute resolution. In preparing the arbitration report in this matter, the arbitrator was not required to choose between the parties' last proposals as to each unresolved issue. The arbitrator considered the parties' arguments and made decisions consistent with the requirements of state and federal law and the Commission on an issue-by-issue basis.

As a general matter, this decision is limited to the disputed issues presented for arbitration. 47 U.S.C. § 252(b)(4). Each decision of the arbitrator is subject to and qualified by the discussion of the issue. The arbitrator reserves the discretion to either adopt or disregard proposed contract language in making decisions. However, adoption of one party's position generally implies that the parties should use

that party's contract language incorporating the advocated position in preparing a final agreement. Contract language adopted remains subject to Commission approval. 47 U.S.C. § 252(e).

This Arbitrator's Report and Decision is issued in compliance with the procedural requirements of the Telecom Act, and it resolves all issues which were submitted to the Commission for arbitration by the parties. At the conclusion of this Report and Decision, the Arbitrator addresses the approval procedure to be followed in furtherance of the issuance of a Commission order approving an interconnection agreement between the parties.

C. Generic Pricing Proceeding

On October 23, 1996, the Commission entered an order in other arbitration dockets declaring that a generic proceeding would be initiated in order to review costing and pricing issues for interconnection, unbundled network elements, transport and termination, and resale.[3] The Commission stated that rates adopted in the pending arbitrations would be interim rates, pending the completion of the generic proceeding. That proceeding is underway.[4] Accordingly, the price proposals made in this arbitration have been reviewed with the goal of determining which offers a more reasonable interim rate. The conclusions of the arbitrator with respect to price proposals and supporting information are made in this context and do not necessarily indicate Commission approval or rejection of cost and price proposals for purposes of the Generic Case.

D. The Eighth Circuit Order and the FCC Rules

On August 8, 1996, the FCC issued its First Report and Order (Local Interconnection Order), including Appendix B - Final Rules (FCC Rules).[5] On October 15, 1996, the U. S. Court of Appeals, Eighth Circuit stayed operation of the FCC Rules relating to pricing and the "pick and choose" provisions.[6]

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[3] Order on Sprint's Petition to Intervene and to Establish Generic Pricing Proceeding (October 23, 1996) (Generic Pricing Order).

[4] *In the Matter of the Pricing Proceeding For Interconnection, Unbundled Elements, Transport and Termination, and Resale*, UT-960369 (general), UT-960370 (USWC), UT-960371(GTE); Order Instituting Investigations; Order of Consolidation; and Notice of Prehearing Conference, November 21, 1996 (Generic Case).

[5] *In the Matter of the Implementation of the Local Competition Rules of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order (August 8, 1996), Appendix B- Final Rules.

[6] *Iowa Utilities Board et al. v. FCC*, No. 96-3321, Order Granting Stay Pending Judicial Review (8th Cir. Oct. 15, 1996).

On July 18, 1997, the Eighth Circuit issued an order vacating several of the FCC Rules. On October 14, 1997, the Court entered an order on rehearing vacating additional FCC Rules. The Eighth Circuit decisions were thereafter appealed to the U. S. Supreme Court. On January 25, 1999, the Supreme Court issued a decision holding that the FCC Rules, with the exception of §51.319, are consistent with the Telecom Act.[7]

E. The FCC's Declaratory Order

On February 26, 1999, the Federal Communications Commission (FCC) entered its long awaited order on the issue of inter-carrier compensation for ISP-bound traffic (Declaratory Ruling).[8] The Declaratory Ruling was in response to a number of requests to clarify whether a local exchange carrier (LEC) is entitled to receive reciprocal compensation for traffic it delivers to an Internet service provider. Generally, competitive LECs (CLECs), such as ELI, contend that this is local traffic subject to the reciprocal compensation provisions of section 251(b)(5) of the Telecom Act. Incumbent LECs (ILECs), such as GTE, contend that this is interstate traffic beyond the scope of section 251(b)(5). The Declaratory Ruling concluded that ISP-bound traffic is jurisdictionally mixed and appears to be largely interstate, but further held that this conclusion does not in itself determine whether reciprocal compensation is due in any particular instance.

The FCC noted that it has no rule governing inter-carrier compensation for ISP-bound traffic, and found no reason to interfere with state commission findings as to whether reciprocal compensation provisions of interconnection agreements apply to ISP-bound traffic, pending adoption of a rule establishing an appropriate interstate compensation mechanism.[9] The FCC also reiterated that state commission authority over interconnection agreements pursuant to 252 of the Telecom Act extends to both interstate and intrastate matters, and the mere fact that ISP-bound traffic is considered largely interstate does not necessarily remove it from the section 251/252 negotiation and arbitration process.[10]

The FCC issued a Notice of Proposed Rulemaking simultaneous with the Declaratory Ruling for the purpose of adopting a rule regarding inter-carrier compensation for ISP-bound traffic. In the interim, the duty of state commissions to arbitrate interconnection disputes encompasses the resolution of disputed issues relating to ISP-bound traffic, consistent with governing federal law:

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[7] *AT&T Corp. v. Iowa Utilities Board*, 119 S. Ct. 721 (1999).

[8] In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Inter-Carrier Compensation for ISP-Bound Traffic, CC Docket Nos. 96-98 and 99-68, *Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68*, FCC 99-38 (February 26, 1999).

[9] Declaratory Ruling, ¶¶ 21-22.

[10] Declaratory Ruling, ¶ 25, citing the *Local Interconnection Order*, 11 FCC Rcd at 15544.

> . . . [N]othing in this Declaratory Ruling precludes state commissions from determining, pursuant to contractual principles or other legal or equitable considerations, that reciprocal compensation is an appropriate *interim inter-carrier compensation rule* [for ISP-bound traffic] pending completion of the rulemaking we initiate below. Declaratory Ruling, ¶ 27 (Emphasis added).
>
> * * * *
>
> Until adoption of a final rule, state commissions will continue to determine whether reciprocal compensation is due for [ISP-bound] traffic. Declaratory Ruling, ¶ 28.

The Commission must fulfill its statutory obligation under section 252 of the Telecom Act to resolve the disputes presented by ELI and GTE in this proceeding, and to decide whether an inter-carrier compensation mechanism should be established. As discussed in this report, the decision that reciprocal compensation is appropriate as inter-carrier compensation is an interim rule pending completion of the FCC's rulemaking and must vary to comply with subsequent federal rules.

F. The Internet

The Internet "is an international network of interconnected computers." *Reno. v. ACLU*, 117 S.Ct. 2329, 2334 (1997).

> [A]ccess to the Internet may take advantage of a wide variety of communication and information retrieval methods. These methods are constantly evolving and difficult to categorize precisely. But, as presently constituted, those most relevant . . . are electronic mail ("e-mail"), automatic mailing list services . . ., "newsgroups," "chat rooms," and the "World Wide Web." All of these methods can be used to transmit text; most can transmit sound, pictures, and moving video images. Taken together, these tools constitute a unique medium . . . located in no particular geographical location but available to anyone, anywhere in the world, with access to the Internet. *Id.*, 117 S.Ct. at 2335.

Essentially, the "Internet is a distributed packet-switched network, which means that information [being transported within the network] is split up into small chunks or 'packets' that are individually routed through the most efficient path to their destination." *Report to Congress*, In Re Federal-State Joint Board on Universal Service, FCC 98-67, at ¶ 64 (April 10, 1998). Generally, individuals contract with an Internet Service Provider (ISP) for a flat monthly fee to access the Internet. ISPs pay their own local exchange carrier for the telecommunications services that allow its customers to call it. If an ISP is located in the same "local" calling area as a customer, the customer may dial a seven-digit using the public switched telephone network to

connect to the ISP facility. The ISP's modem then converts the analog messages from its customers into data "packets" that are switched through the Internet and its host computers and servers. Digital information is transmitted back to the ISP to be converted into analog form and delivered to the ISP's customer.

G. Standards for Arbitration

The Telecommunications Act states that in resolving by arbitration any open issues and imposing conditions upon the parties to the agreement, the state commission is to: (1) ensure that the resolution and conditions meet the requirements of Section 251, including the regulations prescribed by the FCC under Section 251; (2) establish rates for interconnection services, or network elements according to Section 252(d); and (3) provide a schedule for implementation of the terms and conditions by the parties to the agreement. 47 U.S.C. § 252(c).

II. RESOLUTION OF DISPUTED ISSUES

1. Should GTE and ELI Compensate Each Other under Their Agreement for the Costs of Transport and Termination for Traffic Exchanged Between Their Networks over Local Interconnection Facilities That Terminate to Internet Service Providers?

A. GTE's Position

GTE argues that the FCC's Declaratory Ruling requires that ISP-bound traffic should not be the subject of mutual compensation under the interconnection agreement in this proceeding. GTE states that it is incumbent upon the Arbitrator to resolve this issue in the context of the largely negotiated interconnection agreement between the parties (Agreement).[11]

The Agreement provides that the parties shall reciprocally terminate local, intraLATA toll, optional EAS, and jointly provided Interexchange Carrier traffic originating on each other's networks. Agreement, Art. V, §3.1. The Agreement also provides that charges for the transport and termination of non-local traffic, including optional EAS, intraLATA toll, and interexchange traffic shall be in accordance with the parties' respective intrastate or interstate access tariffs or price lists. Agreement, Art. V, §3.2.1. According to GTE, there is no other provision in the Agreement for compensation of interstate traffic.

GTE argues that the FCC determined Internet traffic to be jurisdictionally interstate. Thus, ISP-bound traffic is non-local and not subject to reciprocal

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[11] *Petition of Electric Lightwave, Inc.*, Docket No. UT-980370, Exhibit B; Interconnection, Resale and Unbundling Agreement Between GTE Northwest Incorporated and Electric Lightwave, Inc.

compensation obligations under the negotiated terms of the Agreement. Furthermore, GTE argues that prior Commission decisions upholding reciprocal compensation for ISP-bound traffic should not be accorded any weight as precedent.

B. ELI's Position

ELI states that the FCC found ISP-bound traffic to be jurisdictionally mixed and largely interstate. However (contrary to GTE's position), ELI argues that the Declaratory Ruling provides that reciprocal compensation for ISP-bound traffic is lawful, despite the fact that it is jurisdictionally mixed. ELI argues that the Commission previously concluded that traffic terminated to ISPs is subject to reciprocal compensation, and in the absence of a contrary federal rule, the Commission should not depart from that precedent.[12]

ELI also argues that reciprocal compensation presents the most equitable mechanism for inter-carrier compensation. Carriers are typically compensated for terminating interstate traffic through access charges and local traffic through reciprocal compensation. However, ISPs do not pay access charges as a result of the FCC's "Enhanced Service Provider (ESP) exemption". Nevertheless, ELI contends that carriers must be compensated for the termination of traffic. Accordingly, reciprocal compensation is the logical alternative for ISP-bound traffic.

C. Discussion

Previous arbitration decisions by the Commission favoring reciprocal compensation for ISP traffic were made with the foreknowledge that the issue would be addressed by the FCC at a later date. GTE's argument that those decisions should not be accorded any weight as precedent in light of the FCC's Declaratory Ruling has merit. However, GTE's argument that ELI is estopped from receiving reciprocal compensation for ISP-bound traffic by the terms of the negotiated Agreement and the FCC's Declaratory Ruling is rejected as too narrow an interpretation. The parties submitted the issue to be arbitrated as:

> Should GTE and ELI compensate each other under this Agreement for the costs of transport and termination for traffic exchanged between their networks over local interconnection facilities that terminate to Internet Service Providers ("ISPs")?[13]

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[12] *Order Approving Negotiated and Arbitrated Interconnection Agreement*, In the Matter of the Petition for Arbitration of an Interconnection Agreement Between MFS Communications Company, Inc. (MFS), and U S WEST Communications, Inc., Docket No. UT-960323 (January 8, 1997) (MFS Arbitration).

[13] Exhibit 9.

GTE does not dispute that ISP-bound traffic is terminated over local interconnection facilities, and ISPs continue to be entitled to purchase their public switched telephone network links through local tariffs rather than interstate access tariffs.[14] The FCC found that ISP-bound traffic is jurisdictionally mixed and a substantial portion of dial-up ISP-bound traffic is interstate.

GTE argues that the negotiated provisions of the Agreement should be strictly construed and that ELI is implicitly estopped from receiving reciprocal compensation by the Declaratory Ruling. The Agreement provides that charges for the transport and termination of non-local traffic shall be in accordance with access tariffs or price lists. GTE maintains that the FCC's determination that ISP traffic is substantially interstate requires ELI to pursue compensation under the access tariffs, suggesting that the FCC exemption of ISPs from access charges is an unrelated issue.

ELI's statement of the disputed issue in its briefs differs from Exhibit 9:

> [Should the Commission] direct the parties to compensate each other under the reciprocal compensation mechanism contained in the interconnection agreement for the costs of termination of traffic to Internet Service Providers . . ..

GTE relies on the phrase "under the Agreement" to argue that the Commission is precluded from determining, pursuant to legal or equitable considerations, that reciprocal compensation is an appropriate interim inter-carrier compensation rule for ISP-bound traffic. However, the FCC's Declaratory Ruling recognized that the non-local character of ISP-bound traffic is not determinative of the compensation issue. The parties submitted their agreed upon statement of disputed issues prior to the FCC's Declaratory Order and GTE unreasonably relies on form over substance.

Although opening arguments by the parties focus on whether ISP-bound traffic was local or interstate, the underlying issue is whether reciprocal compensation should be exchanged. GTE witness Steve Pitterle acknowledged that the primary issue is whether the FCC's Declaratory Ruling provides that the ISP reciprocal compensation issue remains under the jurisdiction of this Commission. Exh. 3, p. 7. The Declaratory Ruling unambiguously provides that state commissions retain jurisdiction to determine whether reciprocal compensation is an appropriate interim inter-carrier compensation rule. To the extent the negotiated terms of the Agreement conflict with federal law, FCC rules, or the Commission's duty to arbitrate interconnection disputes under the Telecom Act, they will be rejected when submitted for approval pursuant to section 252(e)(2)(A)(ii).

The Declaratory Ruling, ¶ 27, states:

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[14] Declaratory Ruling, ¶ 20.

> [N]othing in this Declaratory Ruling precludes state commissions from determining, pursuant to contractual or other legal or equitable considerations, that reciprocal compensation is an appropriate interim inter-carrier compensation rule pending completion of the rulemaking we initiate below.

Accordingly, resolution of this issue requires determination of whether such other legal or equitable considerations exist.

While the FCC's Declaratory Ruling specifically addresses issues raised by various parties regarding compensation for transport and termination of ISP-bound Internet traffic, the underlying functionality provided by ISPs is the interconnection of a circuit-switched network with a packet-switched network. These two networks are fundamentally different; circuit switching reserves network resources to route messages whereas packet switching utilizes network resources based upon availability. Historically, the jurisdictional separation between circuit-switched local and long distance traffic is determined by the state in which a call originates and terminates. That distinction also reflects the additional costs incurred in reserving network resources over long distance. The jurisdictional analysis is less straightforward for the packet-switched network environment of the Internet.[15]

The FCC local Interconnection Order, at ¶ 1033, states:

> Ultimately, we believe that the rates that local carriers impose for the transport and termination of local traffic and for the transport and termination of long distance traffic should converge. We conclude, however, as a legal matter, that transport and termination of local traffic are different services than access service for long distance telecommunications.

Packet-switched networking brings the underlying costs for the transport and termination of local and long distance traffic closer to its ultimate convergence. The FCC has recognized that enhanced service providers (ESPs), including ISPs, use interstate access services, but exempted ESPs from the payment of certain interstate access charges and treated ISP-bound traffic as though it were local since 1983.[16] Thus, ISP-bound traffic can be characterized as "local-interstate".

Local-interstate traffic also exists in cases where territory in multiple states is included in a single local service area, and a local call crosses state lines. Two examples of such local service areas are Pullman, WA - Moscow, ID, and Clarkston, WA - Lewiston, ID. Although the Declaratory Ruling concludes that ISP-bound local-

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15 Declaratory Ruling, ¶ 18.

16 Declaratory Ruling, ¶¶ 5 and 23.

interstate traffic does not terminate at the ISP's local server, it does not necessarily terminate at a local carrier's end-office switch in some other state either. However, a *cost* of "terminating the call" occurs at the end-user ISP's local server (where the traffic is routed onto a packet-switched network), and the applicable rate should be determined by the state where the terminating carrier's end office switch is located.[17] ISPs are end-users, not telecommunication carriers.

In the case of ISP-bound traffic, the terminating carrier incurring costs is the carrier that delivers traffic to the ISP. In the context of ISP-traffic, the "call" actually consists of acquiring "access" to a packet-switched network. While a packet-switched network may enable users to replicate a circuit-switched call, Internet access is an amorphous medium and should not be considered a "call" in the switched-circuit sense.

D. Decision

Inter-carrier compensation for local-interstate traffic should be governed by interconnection agreements negotiated and arbitrated under sections 251 and 252 of the Telecom Act. A single set of negotiations regarding rates, terms, and conditions is more likely to lead to a process that is market-driven and efficient outcomes for all traffic exchanged by the parties. The Commission is not precluded from determining that reciprocal compensation is an appropriate interim inter-compensation rule for ISP-bound traffic by either the FCC's Declaratory Ruling or the Agreement.

The duty of local exchange carriers to establish reciprocal compensation arrangements for the transport and termination of telecommunications must be based upon compensating costs where they are incurred. LECs incur a cost when delivering traffic to an ISP that originates on another LEC's network and the terminating LEC does not directly receive any revenue from the customer who originates the call. Even though local-interstate traffic is not addressed by section 251(b)(5) of the Telecom Act, the FCC's policy of treating ISP-bound traffic as local for purposes of interstate access charges leads to the equitable conclusion that it also should be treated as local for purposes of reciprocal compensation charges. The only other alternative would be to apply interstate terminating access charges.

2. What Compensation Mechanism Should Be Applied for the Costs of Transport and Termination for Traffic Exchanged Between Networks over Local Interconnection Facilities That Terminate to ISPs?

A. GTE's Position

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[17] This outcome is consistent with the *Local Interconnection Order*, at ¶ 1038: "In cases in which territory in multiple states is included in a single local service area . . . we conclude that the applicable rate for any particular call should be that established by the state in which the call terminates."

GTE argues that ISP-bound traffic should not be treated as if it were local and that no compensation for transport and termination is appropriate. GTE argues that minutes-of-use (MOU) based compensation is inappropriate for ISP-bound traffic, and bill and keep or flat-rate compensation are the only alternatives that should be considered.

GTE witness Dr. Edward Beauvais emphasizes that it is inefficient to allow flat-rated local service for end users and require local carriers to pay reciprocal compensation for exchanging traffic based upon MOU. The result would be prices for local usage set at a level below the incremental cost of providing the end-to-end call. Dr. Beauvais contends that end user charges and carrier compensation charges must complement each other, and a usage-based compensation approach should not be approved and adopted in this arbitration unless this Commission is willing to re-examine the associated issues of end user pricing on a measured basis. GTE argues that economic distortions caused by the FCC's exemption of ISPs from access charges would be exacerbated if ISP-bound traffic also is made subject to reciprocal compensation.

GTE also argues that MOU-based compensation could lead to substantial unwarranted "subsidies" between carriers because of the long hold times associated with ISP traffic, and has nothing to do with the true costs for providing that service. GTE witness R. Kirk Lee contends that the expense of reciprocal compensation for traffic with longer average call duration has not been built into GTE's retail rate structure. GTE witness Steven Pitterle claims that GTE will be unable to recover its costs if it is required to compensate ELI for ISP-bound traffic on a usage basis.

GTE states that bill and keep is preferable to both MOU and flat-rated compensation methods as an interim mechanism. Bill and keep is a reasonable approximation of costs and a preferred outcome in Washington. Mr. Pitterle contends that bill and keep is an appropriate and equitable mechanism to maintain a consistent relationship between revenues received from flat-rated end users and potential compensation payments to ELI. A bill and keep mechanism would maintain the status quo between the parties until the FCC completes its rulemaking.

Alternatively, GTE proposes a flat-rated pricing system that more closely tracks the costs associated with ISP-bound traffic, and the revenues to be received to cover those costs. As explained by Mr. Lee, non-ISP local traffic would still be subject to the MOU compensation structure in the negotiated Agreement. GTE argues that the flat-rate per trunk charge calculated by Mr. Lee is a straightforward use of the costs developed by the Commission in the Generic Cost/Pricing Case.

B. ELI's Position

ELI proposes that the parties compensate each other for ISP-bound traffic under the MOU based reciprocal compensation mechanism contained in the Agreement. ELI argues that GTE's proposal for a different compensation mechanism

for ISP-bound traffic should be rejected because GTE failed to provide any evidence that there is a cost difference between terminating traffic to ISP and non-ISP end users. ELI witness Timothy Peters contends that ELI incurs the same costs to terminate a call from a GTE customer regardless of whether that call is made to an ELI ISP customer or any other customer within the local calling area.

ELI argues that GTE's revenues are unrelated to the proper determination of an appropriate reciprocal compensation mechanism. The Telecom Act requires that prices be established based upon the cost of transporting and terminating traffic. Furthermore, ELI contends that GTE promotes pricing methodologies which the FCC determined to be inconsistent with section 252(d)(1) of the Telecom Act.

ELI opposes a bill and keep mechanism because traffic between GTE and ELI is not balanced, as the parties acknowledged by agreeing to MOU compensation for the transport and termination of local traffic. The only reason GTE is advocating a different mechanism for ISP-bound traffic is because that traffic is also imbalanced, but in favor of ELI.

ELI states that there is nothing inherently wrong with using a properly calculated flat-rated port charge for reciprocal compensation purposes; however, GTE proposes a flat-rate to be applied only to ISP-bound traffic, yet GTE does not demonstrate that the costs of terminating ISP traffic differs from other local traffic.

C. Discussion

The reciprocal compensation mechanism and rates to be established in this arbitration are interim in two respects: 1) they are interim pending the determination of permanent rates in the Commission's Generic Cost/Pricing Case; and 2) they are interim pending the FCC's NPRM. GTE's proposal for alternative reciprocal compensation mechanisms are all predicated on different mechanisms for ISP local-interstate traffic and non-ISP local traffic, even though there is no evidence in the record that the costs for transport and termination differ. GTE seeks to retain MOU-based compensation for local traffic that is potentially imbalanced in its favor, but seeks to minimize (or avoid) any expense for ISP-bound traffic which is potentially imbalanced in ELI's favor. Furthermore, the GTE proposal does not allow for offsetting imbalances in one type of traffic with the other.

While it may be economically efficient to implement measured rates for local service as discussed by Dr. Beauvais, the existing statutory scheme and long standing regulatory policy in the state of Washington favors flat-rate local service, and this arbitration is not a proper proceeding to implement that kind of change. Due to the prevailing flat-rate retail structure and the lack of substantive evidence of differing costs for the transport and termination of ISP local-interstate and non-ISP local traffic, it is inappropriate and inequitable to adopt separate reciprocal compensation mechanisms in this arbitration.

The Commission has previously identified both bill and keep and capacity-based charge mechanisms as preferred outcomes for local call termination compensation. Nevertheless, GTE and ELI negotiated a MOU-based reciprocal compensation mechanism for local traffic in the Agreement. Furthermore, GTE considers that negotiated Agreement provision to be outside of the scope of this arbitration. The Commission approves negotiated agreements pursuant to section 252(e)(2)(A) of the Telecom Act, and there are no grounds to reject the reciprocal compensation mechanism for local traffic in the Agreement.

As the market for telecommunication services changes, traditional assumptions underlying retail rate structures may require revision as well. If GTE's retail rates do not provide sufficient revenues to offset expenses because of a shift in its end user calling patterns, a reasonable response would be to request rate relief based upon new cost studies rather than shift the burden onto other interconnecting carriers. Another reasonable response would be to support capacity based charges for the transport and termination of all traffic entitled to local treatment, not just the traffic that generates an undesirable imbalance under measured usage.

D. Decision

GTE's proposals that the Commission adopt separate reciprocal compensation mechanisms for the transport and termination of ISP-bound local-interstate and non-ISP local traffic are inappropriate and inequitable because there is no evidence that those traffic costs differ. Insofar as the parties have negotiated an MOU-based reciprocal compensation mechanism for local traffic in the Agreement and GTE considers that provision outside of the scope of this arbitration, it is unnecessary to further evaluate GTE's alternative proposals. The parties should apply the same MOU-based reciprocal compensation mechanism to ISP-bound local-interstate traffic that is used for non-ISP local traffic exchanged between their networks over local interconnection facilities.

3. Should GTE Compensate ELI for Traffic Exchanged Between Their Networks at the Tandem Switching Rate or at the End Office Switching Rate?

A. GTE's Position

GTE disputes ELI's claim that it serves a comparable geographic area to that served by GTE's tandem switch. GTE argues that the coverage of its tandem is substantially larger in GTE's service area than the area served by ELI's switch. GTE contends that the coverage must be equivalent or similar to the ILECs specific tandem at issue, and not a comparison between non-overlapping service areas.

GTE points to the pending installation of ELI's second switch and argues that ELI's claim that its network incurs more "transport" costs and less "switching" costs (thus, justifying the tandem rate) is negated. GTE argues that the second switch will

bring switching closer to ELI's end user customers making GTE's end office switching rate more appropriate. By increasing switching, ELI proportionately reduces the transport for which the FCC designated the tandem rate as a proxy in the FCC Rules. 47 C.F.R. section 51.711(a)(3) states:

> Where the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate.

GTE also argues that ELI's fiber optic rings constitute long local loops, not transport.

GTE witness Howard Jones defines and contrasts the functionality of a tandem switch with an end office switch. A tandem switch performs two basic functions: 1) it collects traffic from incoming trunk groups according to common destination points and then switches that traffic to a single outgoing trunk group to the common destination; and 2) it performs only trunk to truck switching. An end office switch performs line to line, line to trunk, and trunk to line (but not trunk to trunk) switching. Mr. Jones characterizes the ELI switch as an end office switch because all ELI customers are connected to the line side of the ELI switch.

B. ELI's Position

ELI argues that the reason for a rule regarding comparable service areas is that the coverage area best represents a reasonable approximation of the carrier's cost of switching traffic. According to ELI the term comparable indicates that the size of the areas served by the respective carrier's switch must be similar and not necessarily overlapping. Mr. Peters describes ELI's network as a single switch that is connected to interlocking fiber optic rings. ELI covers a comparable area, but with a single switch and extensive transport, rather than multiple switches. ELI's switch effectively acts as both a tandem and end-office switch. Mr. Peters states that ELI's network configuration is more efficient for its operations, but it does not necessarily incur any less cost to terminate local traffic in its geographic service area than GTE incurs.

ELI states that the sole reason for the installation of a second switch is that ELI's current switch is out of capacity and proximity to end users has no relation to the pending installation. ELI contends that it will incur increased switching costs in order to serve the same geographic area and urges the Commission to reject GTE's position because it fails to recognize the overall symmetry between the parties' costs of transport and termination.

Finally, ELI argues that the Commission's decision in the MFS Arbitration adopted MFS's proposal that its fiber optic ring network was entitled to tandem treatment for its single switch, and rejected arguments made by U S WEST that are identical to those now forwarded by GTE.

C. Discussion

In the paragraph explaining the effect of 47 C.F.R. § 51.711(a)(3), the FCC made it clear that it was utilizing a tandem rate as "the approximate proxy for the interconnecting carrier's additional costs" where an interconnecting carrier's switch serves a comparable geographic area. *Local Interconnection Order,* ¶ 1090. Although GTE argues that the forward-looking economic costs should be similar for an incumbent LEC and an interconnecting carrier providing service in the same geographic area, it offers no economic rationale in opposition to ELI's argument that the objective is to reasonably approximate the symmetrical cost of switching traffic.

In the MFS case, U S WEST argued that the MFS network did not coincide with its extensive geographic service area. MFS argued that if it serviced customers in U S WEST's central and eastern Washington exchanges it would have to absorb the cost of construction, leasing, or purchasing unbundled network elements to provide facilities. Identical circumstances exist relating to GTE's rural central Washington exchanges.

There is substantial overlap between ELI's and GTE's service area and ELI's overall service area is comparable to GTE.[18] New entrants to the market will be unable to match the economies of scope and scale enjoyed by GTE, and the FCC's rules do not require that ELI serve the same area as GTE.

The functional similarity between a CLEC switch and an incumbent LEC's tandem switch is not relevant where the evidence supports a finding that they serve a geographically comparable area. Nevertheless, the record indicates that ELI's switch performs the function of aggregating and routing traffic along its interlocking fiber optic rings similar to a tandem switch. Network upgrades to increase switching capacity do not impact the analysis of functional similarity of switches in alternative network configurations.

D. Decision

GTE should compensate ELI at the tandem switching rate.

4. Should the Commission Shorten the Negotiated and Agreed to Term of the Agreement or Establish Procedures to Clarify or Modify Interim Rules for Inter-carrier Compensation?

A. GTE's Position

GTE acknowledges its obligation to enter into an interconnection agreement while the FCC rulemaking opened in the Declaratory Ruling is pending.

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[18] Exhibit 8.

GTE argues that the FCC limited state commission authority to devise inter-carrier compensation rules by providing that a Commission decision is interim pending completion of the rulemaking. GTE believes that an unfair result will occur if it is bound by the Commission's decision after its legal obligations are clarified or modified by the FCC, and seeks to lay the groundwork for review at this time.

GTE expresses its willingness to renegotiate inter-carrier compensation either upon the issuance of final rules in FCC Docket No. 99-68, or after one year.

B. ELI's Position

ELI states that the parties negotiated and agreed to modify the rates, terms, and conditions of the interconnection agreement in order to conform with a change in law, including federal rules pertaining to the appropriate reciprocal compensation mechanism for ISP-bound traffic. Accordingly, ELI argues that GTE will not be deprived of future regulatory decisions as a result of any current, lawful decision of this Commission. If the FCC's rulemaking concludes with the adoption of a rule that conflicts with the interconnection agreement's compensation mechanism, those provisions are subject to change in accordance with federal rules pursuant to the terms of the Agreement.

C. Discussion

The Commission's authority to reject any portion of an interconnection agreement adopted by negotiation is governed by section 252(e)(2) of the Telecom Act. GTE and ELI have negotiated and agreed to an effective term of the Agreement (Article III, Section 2), and they did not request arbitration of the effective term as a disputed issue. The parties have also adopted by negotiation terms for resolving disputes arising during the effective term of the Agreement (Article III, Section 14), and for modification of the Agreement to comply with changes in law during the effective term (Article III, Sections 32 and 40). These portions of the Agreement do not discriminate against a third party telecommunications carrier, and implementation of these provisions is consistent with the public interest, convenience, and necessity. The terms of the Agreement sufficiently address GTE's concern that an unfair result may occur if subsequent FCC rules differ from the Commission's interim rules in this case.

D. Decision

The Commission should not shorten the negotiated and agreed to term of the Agreement or establish other procedures to clarify or modify interim rules for inter-carrier compensation.

III. IMPLEMENTATION SCHEDULE

Pursuant to 47 U.S.C. § 252(c)(3), the arbitrator is to "provide a schedule for implementation of the terms and conditions by the parties to the agreement." In this case the parties did not submit specific alternative implementation schedules. Specific contract provisions, however, may contain implementation time lines. The parties shall implement the agreement pursuant to the schedule provided for in the contract provisions, and in accordance with the 1996 Act, the applicable FCC rules, and the orders of this Commission.

In preparing a contract for submission to the Commission for approval, the parties may include an implementation schedule.

IV. CONCLUSION

The foregoing resolution of the disputed issues in this matter meets the requirements of 47 U.S.C. § 252(c). Insofar as the parties have largely negotiated an interconnection agreement, and few issues were submitted for arbitration, there is good cause to shorten the time for filing the Agreement with the Commission.

The parties are directed to submit an agreement consistent with the terms of this report to the Commission for approval within 14 days, pursuant to the following requirements of the Interpretive and Policy Statement, as modified:[19]

A. Filing and Service of Agreements for Approval

1. An interconnection agreement shall be submitted to the Commission for approval under Section 252(e) within 14 days after the issuance of the Arbitrators's Report, in the case of arbitrated agreements, or, in the case of negotiated agreements, within 30 days after the execution of the agreement. The 14 day deadline may be extended by the Commission for good cause. The Commission does not interpret the nine-month time line for arbitration under Section 252(b)(4)(C) as including the approval process.

2. Requests for approval shall be filed with the Secretary of the Commission in the manner provided for in WAC 480-09-120. In addition, the request for approval shall be served on all parties who have requested service (List available from the Commission Records Center. See Section II.A.2 of the Interpretive and Policy Statement) by delivery on the day of filing. The service rules of the Commission set forth in WAC 480-09-120 and 420 apply except as modified in this interpretive order or by the Commission or arbitrator. Unless filed jointly by all parties, the request for

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[19] *In the Matter of Implementation of Certain Provisions of the Telecommunications Act of 1996*, Docket No. UT-960269, Interpretive and Policy Statement Regarding Negotiation, Mediation, Arbitration, and Approval of Agreements Under the Telecommunications Act of 1996 (June 27, 1996) ("Interpretive and Policy Statement").

approval and any accompanying materials should be served on the other signatories by delivery on the day of filing.

3. A request for approval shall include the documentation set out in this paragraph. The materials can be filed jointly or separately by the parties to the agreement, but should all be filed by the 14-day deadline set out in paragraph 1 above.

B. Negotiated Agreements

a. A "request for approval" in the form of a brief or memorandum summarizing the main provisions of the agreement, setting forth the party's position as to whether the agreement should be adopted or modified, including a statement as to why the agreement does not discriminate against non-party carriers, is consistent with the public interest, convenience, and necessity, and is consistent with applicable state law requirements, including Commission interconnection orders.

b. A complete copy of the signed agreement, including any attachments or appendices.

c. A proposed form of order containing findings and conclusions.

C. Arbitrated Agreements

a. A "request for approval" in the form of a brief or memorandum summarizing the main provisions of the agreement, setting forth the party's position as to whether the agreement should be adopted or modified; and containing a separate explanation of the manner in which the agreement meets each of the applicable specific requirements of Sections 251 and 252, including the FCC regulations thereunder, and applicable state requirements, including Commission interconnection orders. The "request for approval" brief may reference or incorporate previously filed briefs or memoranda. Copies should be attached to the extent necessary for the convenience of the Commission.

b. A complete copy of the signed agreement, including any attachments or appendices.

c. Complete and specific information to enable the Commission to make the determinations required by Section 252(d) regarding pricing standards, including but not limited to supporting information for (1) the cost basis for rates for interconnection and network elements and the profit component of the proposed rate; (2) transport and termination charges; and (3) wholesale prices.

d. A proposed form of order containing findings and conclusions.

D. Combination Agreements (Arbitrated/Negotiated)

a. Any agreement containing both arbitrated and negotiated provisions shall include the foregoing materials as appropriate, depending on whether a

provision is negotiated or arbitrated. The memorandum should clearly identify which sections were negotiated and which arbitrated.

b. A proposed form of order is required, as above.

4. Any filing not containing the required materials will be rejected and must be refiled when complete. The statutory time lines will be deemed not to begin until a request has been properly filed.

E. Confidentiality

1. Requests for approval and accompanying documentation are subject to the Washington public disclosure law, including the availability of protective orders. The Commission interprets 47 U.S.C. § 252(h) to require that the entire agreement approved by the Commission must be made available for public inspection and copying. For this reason, the Commission will ordinarily expect that proposed agreements submitted with a request for approval will not be entitled to confidential treatment.

2. If a party or parties wishes protection for appendices or other materials accompanying a request for approval, the party shall obtain a resolution of the confidentiality issues, including a request for a protective order and the necessary signatures (Exhibits A or B to standard protective order) prior to filing the request for approval itself with the Commission.

F. Approval Procedure

1. The request will be assigned to Commission Staff for review and presentation of a recommendation at the Commission public meeting. The Commission does not interpret the approval process as an adjudicative proceeding under the Washington Administrative Procedure Act. Commission Staff who participated in the mediation process for the agreement will not be assigned to review the agreement.

2. Any person wishing to comment on the request for approval may do so by filing written comments with the Commission no later than 10 days after date of request for approval. Comments shall be served on all parties to the agreement under review. Parties to the agreement file written responses to comments within 7 days of service.

3. The request for approval will be considered at a public meeting of the Commission. Any person may appear at the public meeting to comment on the request for approval. The Commission may in its discretion set the matter for consideration at a special public meeting.

4. The Commission will enter an order, containing findings and conclusions, approving or rejecting the interconnection agreement within 30 days of request for approval in the case of arbitrated agreements, or within 90 days in the case of negotiated agreements. Agreements containing both arbitrated and negotiated provisions will be treated as arbitrated agreements subject to the 30 day approval deadline specified in the Act.

G. Fees and Costs

1. Each party shall be responsible for bearing its own fees and costs. Each party shall pay any fees imposed by Commission rule or statute.

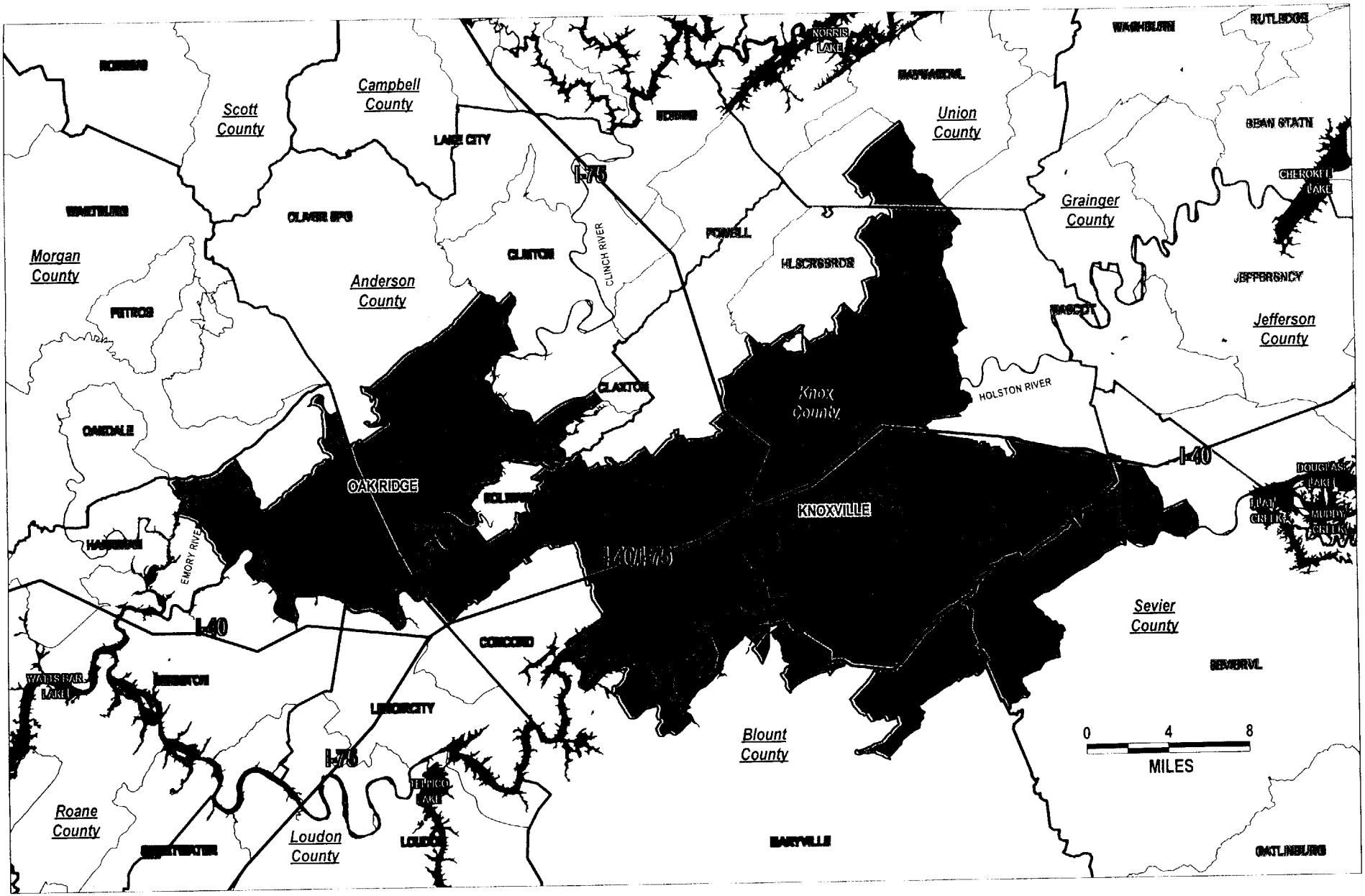
DATED at Olympia, Washington and effective this 22nd day of March 1999.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

LAWRENCE J. BERG
Arbitrator

EXHIBIT 6

KNOXVILLE - MCI WORLDCOM LOCAL SERVING AREA MAP



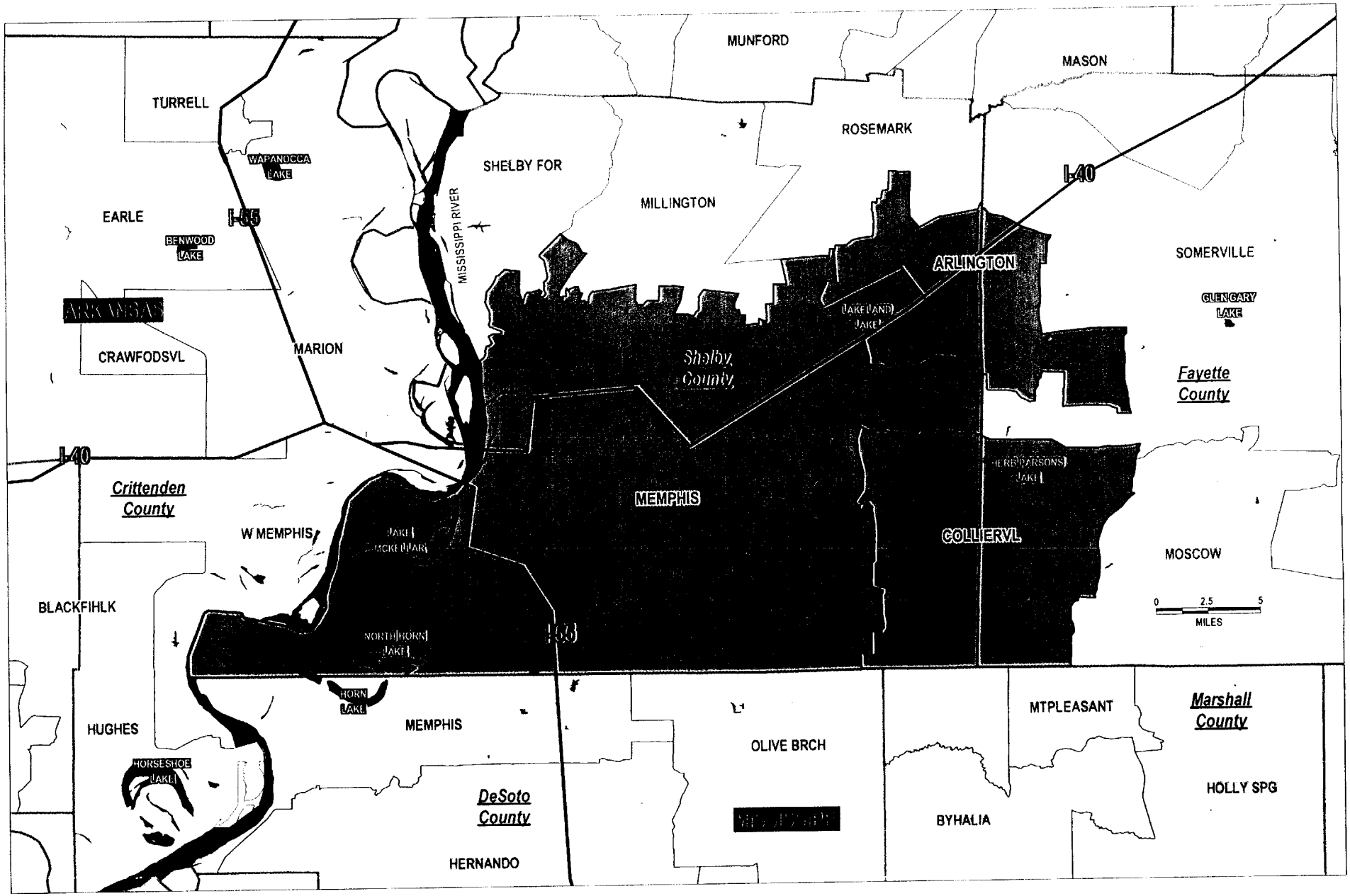
MCI WORLDCOM

MCI WORLDCOM SERVED RATE CENTER

** For internal use only. Map is intended as a reference alone and should be used in conjunction with NPA NXX Finder.

EXHIBIT 7

MEMPHIS - MCI WORLDCOM LOCAL SERVING AREA MAP



MCI WORLDCOM

MCI WORLDCOM SERVED RATE CENTER

** For internal use only. Map is intended as a reference alone and should be used in conjunction with NPA NXX Finder.

BEFORE THE

TENNESSEE REGULATORY AUTHORITY

DOCKET NO. 00-00309

PREFILED REBUTTAL TESTIMONY
OF
PHILLIP A. BOMER

December 13, 2000

TESTIMONY OF PHILLIP A. BOMER

DOCKET NO. 00-00309

DECEMBER 13, 2000

Q. PLEASE STATE YOUR NAME AND ADDRESS?

A. Phillip A. Bomer.

Q: DID YOU SUBMIT DIRECT TESTIMONY IN THIS PROCEEDING?

A: Yes.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to respond to certain pre-filed testimony of witnesses for BellSouth; specifically, Cynthia Cox and Keith Milner, with regard to Issues 54 through 66.

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; and Attachment 1, Appendix 1.)

Q: BELLSOUTH REFERS TO THE AT&T COLLOCATION MODEL ADOPTED BY THE AUTHORITY, AND STATES THAT, UNLESS THE AUTHORITY RECONSIDERS ITS POSITION, THERE IS NO ISSUE REGARDING SECURITY ACCESS, BECAUSE SUCH ACCESS IS INCLUDED WITHIN THE MODEL. BELLSOUTH ALSO STATES THAT, SHOULD THE AUTHORITY ADOPT BELLSOUTH'S COLLOCATION MODEL, BELLSOUTH MAY CONTINUE TO MAINTAIN ITS PROPOSED ALLOCATION OF SECURITY COSTS ON A PER CAPITA BASIS (COX DIRECT, P. 77). HOW DO YOU RESPOND?

A: In its *Interim Order on Phase I of Proceeding to Establish Prices for Interconnection and Unbundled Network Elements*, pp. 36-37, January 25, 1999, In re: Petition to Convene a Contested Case Proceeding to Establish Permanent Prices for Interconnection and Unbundled Network Elements, Docket No. 97-01262, the Authority did adopt the AT&T and MCI collocation model. The model estimates the forward-looking costs of providing collocation for a least-cost, most-efficient carrier. This is the correct approach and does not result in any separate rates for security access. Hence this issue has already been decided in favor of WorldCom, since the forward-looking cost of central office security systems is to be included in the cost per square foot of central office floor space. Since BellSouth, however, has had a policy of calculating and imposing costs based on a discriminatory per capita method, WorldCom proposed the language that is at issue here.

Q: BELLSOUTH STATES THAT WORLDCOM'S APPROACH TO ALLOCATION OF SECURITY COSTS IS UNREASONABLE AND UNWORKABLE (COX DIRECT, P. 77). HOW DO YOU RESPOND?

A: BellSouth complains that WorldCom's approach, which is to allocate such costs pro-rata, based on square footage, would necessitate the recalculation of the recurring charge for space "each time an additional party established a collocation arrangement". This is not true. The cost per square foot of central office floor space, which includes the cost of central office security system(s), is what it is no matter who is using the floor space, BellSouth or CLECs. The security system cost does not change depending on who is using the central office and the total amount of central office space does not change depending on who is using the

central office. As such, the cost per square foot of floor space, including security system cost, should not change depending on who is using the central office.

In any event, a "reasonable allocation," as recognized, for example, by the Florida Public Service Commission in its order cited in my Direct Testimony, must bear a reasonable relationship to the benefits derived by each party. The *Florida Order* recognizes this fact and provides for proper allocation of costs, depending on the circumstances.[1] Hence it is not reasonable to maintain that a collocator benefits equally with BellSouth, since the latter's investment in the central office is much greater than the collocator's. In this regard it does not matter that "certain space within an office cannot be used for the placement of telecommunications equipment" (although WorldCom broadly maintains that BellSouth must make space available for collocation); the square footage occupied by each entity, including BellSouth, within a central office approximates the differing levels of benefits among the parties to be derived from a security system. Moreover, when BellSouth decides to installs a *new* card reader system, it does so mainly because it has chosen to protect its equipment, not to protect collocators' equipment. Collocators have had little if any input into BellSouth's proposed measures, yet BellSouth proposes to recover its security costs largely from collocators. Therefore, the per capita allocation advocated by BellSouth is arbitrary, because it

[1] *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.

bears no relationship to the different level of benefits derived by each carrier from a security system.

Q: BELLSOUTH CONTENDS THAT ITS METHOD OF ALLOCATION IS "EASY TO ADMINISTER" (COX DIRECT, P. 78). HOW DO YOU RESPOND?

A: Administering an unnecessary separate charge for cost recovery of a security system is not easier than including the cost of security systems on a pro-rata basis in the charge for collocation floor space. Administering two or more charges is not easier than administering one charge. Further, it is irrelevant whether or not BellSouth's proposed cost recovery method is "easy to administer" (which it is not), because ease of administration should only be evaluated after first ensuring the method is not discriminatory.

ISSUE 55

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

Q: BELLSOUTH WILL RESPOND TO A CLEC WITHIN TEN (10) BUSINESS DAYS OF RECEIPT OF AN APPLICATION, AND WILL INFORM THE CLEC AS TO WHETHER SPACE IS AVAILABLE AND IF THE APPLICATION IS "COMPLETE." BELLSOUTH ALSO WILL PROVIDE A "COMPLETE" RESPONSE TO AN APPLICATION, INCLUDING A COST QUOTE, IN THIRTY (30) BUSINESS DAYS (MILNER DIRECT, PP. 19-20). WHAT IS YOUR RESPONSE?

A: First, it is distressing that BellSouth still proposes intervals measured in "business days." Nothing in the *Advanced Services Order*[2] or other FCC precedent construes "days" as "business days," and the FCC subsequently clarified its rules in the *Order on Reconsideration*[3] to state that "days" means calendar days. Id. at footnote 58; see 47 C.F.R. §51.5, as amended. I believe that the FCC intended to dispose forever of arguments about what is a "day." Otherwise, there would have been little reason for the FCC to issue these orders.

Second, the FCC has specifically determined that an ILEC shall provide space availability information within ten (10) calendar days.[4]

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[2] *First Report and Order* ("*Advanced Services Order*"), FCC 99-48, In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability, released March 31, 1999.

[3] *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*, FCC 00-297, In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Dockets Nos. 98-147 and 96-98, released August 10, 2000.

[4] See 47 C.F.R. §51.321 (h), as promulgated by the Advanced Services Order, at ¶ 58. The Order on Reconsideration, at ¶ 64, specifically ruled that this period is to be measured in calendar days. Also, 47 C.F.R. §51.323 (l) was amended by the *Order on Reconsideration* to read:

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

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

(2) Except as stated in paragraphs (l)(3) and (l)(4) of this section, an incumbent LEC must complete provisioning of a requested physical collocation arrangement within 90 days after

Third, BellSouth's proposals with respect to this issue are inconsistent with its positions elsewhere (e.g., North Carolina), where BellSouth has proposed intervals in terms of calendar days; i.e., ten (10) calendar days for the space availability response, and thirty (30) calendar days for the firm price quote.

Last, as discussed below with reference to Issue 62, the *Order on Reconsideration* is intended to set a national maximum interval. In setting this standard, the decisions of state commissions and the capabilities of ILECs were taken into account; clearly the FCC presumed that ILECs are capable of meeting the standard. See id. at ¶¶ 18-19, 37. Pursuant to the *Order on Reconsideration*, ILECs are required, unless a state commission decides upon a different interval, to complete any technically feasible physical collocation arrangement, no later than ninety (90) calendar days after receiving a collocation application. Although the

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receiving an application that meets the incumbent LEC's established collocation application standards.

(3) An incumbent LEC need not meet the deadline set forth in paragraph (l)(2) of this section if, after receipt of any price quotation provided by the incumbent LEC, the telecommunications carrier requesting collocation does not notify the incumbent LEC that physical collocation should proceed.

(4) If, within seven days of the requesting carrier's receipt of any price quotation provided by the incumbent LEC, the telecommunications carrier requesting collocation does not notify the incumbent LEC that physical collocation should proceed, then the incumbent LEC need not complete provisioning of a requested physical collocation arrangement until 90 days after receiving such notification from the requesting telecommunications carrier.

Also, the *Order on Reconsideration* stated that the response of the incumbent LEC would include informing a CLEC of "any deficiency" in its application, and is thus more than a notification of space availability. *Order on Reconsideration*, at ¶¶ 24, 37. It is not clear if BellSouth would provide an explanation of any "deficiency" if it deems the application not to be complete and accurate, although I believe that is BellSouth's intent.

Order on Reconsideration did not set an interval for providing price quotes, clearly the FCC intends ILECs to devote the necessary resources so that quotes are promptly furnished and provisioning takes place within the ninety (90) day period. Thus WorldCom's proposal that a price quote be provided within fifteen (15) days is more consistent with the federal mandate, as well as with the *Florida Order*, as stated in my Direct Testimony. Given the Authority's determination that cageless collocation may be provisioned within thirty (30) days of acceptance of a firm price quote, there is even more reason that BellSouth promptly and efficiently processes collocation applications.

Q. WHAT IS YOUR RESPONSE TO BELLSOUTH'S ASSERTIONS REGARDING THE FACTORS THAT MUST BE CONSIDERED IN DEVELOPING A REPLY TO A COLLOCATION REQUEST (MILNER DIRECT, P. 20)?

A. As I have stated, I agree, without fully knowing how BellSouth "considers" these matters, or what BellSouth's "design practices" are, 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 (particularly when BellSouth is proposing some use not related to the functioning of a central office), or that local "building codes and regulatory requirements" can or should be used to unilaterally justify a denial of collocation, or to preempt the requirements of the Telecommunications Act of 1996.

BellSouth preconditions space for collocation. It builds racks based on the standardized equipment that collocators are purchasing, and pursuant to previously forecasted demand for collocation within certain central offices. It has a program to remove obsolete equipment. Moreover, in my experience and understanding, building permits have not been an issue, except, perhaps, if the ILEC is building an addition to its central office, utility services are to be significantly upgraded, or there is a significant upgrade of the power plant. Thus there are limited circumstances that may justify a longer interval in some situations, but as a general matter the intervals proposed by WorldCom are sufficient for provisioning.

If there are extraordinary circumstances, BellSouth may apply for a waiver of the intervals set by the Authority. There is no need to lengthen the intervals for furnishing a response to an application simply because an unusual circumstance may occur, or because BellSouth contends a rate must be calculated on an individual case basis.

Q: BELLSOUTH CATEGORICALLY MAINTAINS IT IS NOT REASONABLE TO PRODUCE A RESPONSE TO AN APPLICATION WITHIN FIFTEEN (15) DAYS (MILNER DIRECT, P. 22). HOW DO YOU RESPOND?

It is unreasonable for BellSouth to base its position on its past performance (which has not been adequate – hence the FCC's orders), or on every conceivable event that, however unlikely, may occur, and to maintain that it invariably *needs* thirty *business* days – which amounts to a month and a half – to provide the requested information.

ISSUE 56

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

Q: BELLSOUTH STATES THAT THE FCC RULES DO NOT REQUIRE IT TO PROVIDE DC POWER TO AN ADJACENT COLLOCATION ARRANGEMENT (MILNER DIRECT TESTIMONY, P. 23). DO YOU HAVE A RESPONSE?

A: Yes. The FCC's clear mandate to ILECs is that they provide "power and physical collocation services and facilities [to the adjacent collocation space], subject to the same nondiscrimination requirements as applicable to any other physical collocation arrangement". 47 C.F.R § 51.323 (k)(3) (emphasis added). See *Advanced Services Order*, at ¶ 44. This clearly obligates BellSouth to provide DC power to adjacent collocation space.

Because Rule 323 (k)(3), however, does not expressly state the type of power to be provided, BellSouth concludes that it does not have to provide DC power. This statement is typical of the attitude that some ILECs have had toward the FCC's collocation orders. But the mandate of federal law requires ILECs to provide adjacent collocation subject to the same requirements as would be the case in the central office. Thus it was not necessary for the FCC to specify the use of DC power, because collocated equipment runs on DC power and there should be no difference in treatment merely because the CLEC is relegated to adjacent space. Moreover, the principle of "technical feasibility," by which requests for physical collocation are to be considered, strongly suggests that BellSouth cannot categorically deny DC power

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

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

There is no reason why DC power cannot be similarly provided by BellSouth to adjacent collocation space. Parity requires no less. I also understand that the Bell companies have provided power to locations outside their central offices in contexts other than to remote collocation space. I do not understand why BellSouth now takes a different position.

Q: BELLSOUTH PROPOSES TO TREAT CLECS "CONSISTENT WITH THE MANNER" AS IT TREATS ITSELF, BY REQUIRING CLECS TO CONVERT AC POWER PROVIDED BY BELLSOUTH AT THE ADJACENT SITE (MILNER DIRECT, PP. 29-30). WHAT, IF ANYTHING, IS WRONG WITH THIS PROPOSAL?

A: First, when space is legitimately exhausted in a central office, CLECs are relegated to adjacent space. There can be no disparate treatment of CLECs based on the mere fact that they are to be collocated in space next to the central office.

BellSouth concedes it supplies AC power to "thousands" of its remote facilities, which it then converts to DC power. Thus it is technically feasible to provide DC power to CLECs in adjacent collocation space. As stated above, there is no reason why BellSouth cannot convert AC power to DC power at adjacent collocation sites, and provide that power to CLECs.

Moreover, BellSouth will not necessarily provide AC power to CLECs, even if it is technically feasible to do so. BellSouth has stated it must first receive authorization from the "appropriate" authorities before it would provide AC power. It states that such authorization is necessary because power circuits would be run between buildings with different owners; yet the buildings are located on what has been BellSouth's real property. Then BellSouth implies that there may be a safety issue, if the adjacent collocation construction does not comply with "normal business practice". There certainly are space availability issues with regard to CLECs' installing their own power sources at the adjacent site; such a requirement could lead to exhaustion occurring at a faster rate. But BellSouth does not mention this problem.

Q: BELLSOUTH WILL NOT PROVIDE AC POWER TO AN ADJACENT COLLOCATION SITE GIVEN THAT IT CONTENDS THAT ARTICLE 225 OF THE NATIONAL ELECTRIC CODE DOES NOT SPECIFICALLY ALLOW POWER CIRCUITS TO BE RUN BETWEEN BUILDINGS WITH DIFFERENT OWNERS" (MILNER DIRECT, P. 30). HOW DO YOU RESPOND?

A: We do not agree with BellSouth's interpretation of the Code. BellSouth has admitted elsewhere that the Code does not prohibit DC power cable "outside" of the central office. BellSouth's argument appears to be a "smokescreen". Under

our proposal, since BellSouth would provide the power, it remains within BellSouth's control. As stated above, the power would be transmitted between real property that has been owned by BellSouth. This is not an instance of power theft or safety issues (since authorized installers would be involved), or of any other circumstance in which customers or the public would legitimately need to be protected as a result of the interaction of another carrier.

Q: BELLSOUTH ALSO STATES THAT WHATEVER CABLE IS USED TO PROVIDE POWER TO AN ADJACENT COLLOCATION SITE MUST BE "RATED" FOR THE ENVIRONMENT IN WHICH IT IS BEING USED, AND THAT THE CABLE HISTORICALLY USED FOR DC POWER INSIDE A CENTRAL OFFICE IS NOT RATED FOR USE "OUTDOORS" (MILNER DIRECT, PP. 23-30). HOW DO YOU RESPOND?

A: WorldCom has offered to provide the cabling from BellSouth's BDFB to the adjacent site, provided BellSouth supplies the conduit. This should take care of BellSouth's concerns. As for whether the cable is to be used "outdoors," typically the cabling would be run underground.

The bottom line is that BellSouth really is telling the Authority that, as a practical matter, it will not provision adjacent collocation – despite the mandate, which has been affirmed in court, of the *Advanced Services Order* and *Order on Reconsideration*.

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: BELLSOUTH STATES THAT COLLOCATION SPACE IS "COMPLETE" WHEN BELLSOUTH TURNS OVER THE SPACE TO THE CLEC FOR EQUIPMENT INSTALLATION, AND THAT PROVIDING CFAS SHOULD NOT BE A CONSIDERATION IN DETERMINING WHETHER THE COLLOCATION ARRANGEMENT IS "COMPLETE" (MILNER DIRECT, P. 24). HOW DO YOU RESPOND?

A: BellSouth maintains that collocation space is "complete" once all construction work done by it or its certified vendors has been finished. Only when construction of the collocation space has been finished, however, may WorldCom complete installation of its equipment and cable runs. Yet, despite the fact that CFAs are necessary for a CLEC to attach its cable and order service, upon completion of construction BellSouth will consider the space "available" and start billing WorldCom recurring charges for occupying the space, even if the CFAs have not yet been conferred. Thus BellSouth wants to charge WorldCom even if WorldCom's equipment is not operational because BellSouth has not advised it as to certain frame locations and designations of cables.

CLECs, including WorldCom, typically provide information early in the process as to what they intend to install, including the size of the tie cable and type of tie cable. There is no reason why BellSouth cannot, early in the process, provide CFAs. CFAs should be made available and assigned as part of the response to our initial request for collocation. Since these types of installations are subject to modification, WorldCom would notify BellSouth of changes in its requirements. Once we have installed our equipment, there could be some verification that the assignments are correct. Therefore, when WorldCom actually installs its

equipment should have no bearing on resolution of this issue. Without CFAs we simply cannot use the space, and thus it cannot be considered "complete".

Q: BELLSOUTH STATES THAT IT CANNOT PROVIDE CFAS UNTIL AFTER WORLDCOM INFORMS IT OF THE FRAME LOCATIONS AND DESIGNATIONS OF WORLDCOM'S CABLES AND BELLSOUTH VERIFIES THE ACCURACY OF SUCH INFORMATION (MILNER DIRECT, P. 25). WHAT IS YOUR RESPONSE?

A: BellSouth is referring to the information provided by the CLEC when ordering a circuit for the purpose of interconnection. That information cannot be provided without BellSouth first providing the CFA for its "section" of the circuit, in order to design or provision the "path" for the circuit.

Q: IS WORLDCOM PRECLUDING BELLSOUTH'S ABILITY TO CHARGE RECURRING RATES FOR SPACE, BY WORLDCOM NOT FINISHING ITS OWN WORK (MILNER DIRECT, P. 25)?

A: No. Whether or not WorldCom's equipment has been installed would not preclude BellSouth from charging recurring rates for space that has been constructed, provided that BellSouth has furnished the CFAs.

ISSUE 60

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

Q: BELLSOUTH CONCEDES IT IS WILLING TO PROVIDE THE EXACT CABLE LOCATION TERMINATION REQUIREMENTS AT THE JOINT PLANNING MEETING, OR WITHIN THIRTY (30) DAYS THEREAFTER (MILNER DIRECT, PP. 25-26). BASED ON THIS STATEMENT, DOES THIS CONFIRM THAT WORLDCOM'S PROPOSED §7.17.2 APPEARS TO BE ACCEPTABLE TO BELLSOUTH?

A: Yes, it confirms my Direct Testimony that BellSouth appears to accept our language.

Q: BELLSOUTH STATES THAT IT IS NOT REQUIRED TO PROVIDE THE OTHER INFORMATION REQUESTED BY WORLDCOM (DESCRIBED IN SECTIONS 7.17. 4 AND 7.17.10), OR THAT SUCH INFORMATION IS NOT READILY AVAILABLE (MILNER DIRECT, P. 26). HOW DO YOU RESPOND?

A: BellSouth has stated elsewhere that the information requested by WorldCom in proposed § 7.17.4 would be made available to WorldCom's vendor from BellSouth's vendor. Hence this information is available. BellSouth's position, simply put, is that it will not provide this information to WorldCom itself. This position is specious.

As concerns our proposed §7.17.10 (identification of demarcation points), BellSouth is apparently referring to *GTE Service Corporation, et al. v. Federal Communications Commission, et al.* ("*GTE Order*"), the D.C. Circuit ruling from March 2000, which dealt in relevant part with the designation of space for collocation within the central office. That decision, however, is not at issue here.[5] What is at issue, simply stated, is what information should be made available to a potential collocator; i.e., what information is relevant to the decision to collocate, including how much it will cost and whether advanced services can even be provided. Apparently BellSouth does not even want CLECs to know what options, if any, may be available to them. Identifying technically feasible demarcation points, however, is key information for a collocator (as well as

[5] WorldCom disagrees with the Court of Appeals with regard to this and other issues involved in this decision, for which it fully reserves its rights; the *First Report and Order* ("*Local Competition Order*"), FCC 96-325, In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, released in August 1996, and *Advanced Services Order*, as well as 47 C.F.R. 51.323, contemplate that the CLEC choose the point of interconnection.

BellSouth) to know, to decide where and how it could interconnect, and because a collocator is responsible for its "side" up to the point of demarcation. This information would obviously assist both BellSouth (the "seller" of collocation) and WorldCom (the "buyer" of collocation); hence, there is no legitimate reason why it should be withheld.

ISSUE 61

What rates should apply to the provision of DC power to WorldCom's collocation space? (Attachment 5, section 7.18.6.)

Q: BELLSOUTH IMPLIES THAT WORLDCOM'S POSITION ON THIS ISSUE IS DIFFERENT FROM OTHER CLECS' POSITIONS (MILNER DIRECT (PP. 26)? WHAT IS YOUR RESPONSE?

A: BellSouth states that the per amp charge established by the Authority should apply to the fused capacity for the equipment it installs, "as is the case with every other CLEC collocated with BellSouth." Other CLECs, however, agree with WorldCom, as evidenced by the recent collocation hearing in North Carolina, in which this issue was paramount. BellSouth fuses its equipment to handle peak aggregate demands of the all the equipment in the central office, including its own, and then seeks to charge CLECs both nonrecurring and recurring rates based on the fused capacity, rather than what a CLEC actually uses. Thus 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 would allow BellSouth to recover from WorldCom more than WorldCom's share of the costs.

WorldCom's proposal, moreover, is based on the fact that the parties' original interconnection agreement, which was approved by the Authority, contemplates pricing power on a per used ampere basis. Thus the rate proposed by WorldCom in Attachment 1 of the parties' Agreement should apply on a per used ampere basis, taking into account the rated capacity of the equipment actually installed in the collocation space.

Q: BELLSOUTH BASES ITS POSITION ON ITS COLLOCATION HANDBOOK (MILNER DIRECT, P. 27). HOW DO YOU RESPOND?

A: BellSouth would require that its charges for power must be "based upon the certified vendor engineered and installed power feed fused ampere capacity" (emphasis added). This language is taken from BellSouth's Collocation Handbook, which is not part of the parties' Agreement. BellSouth is proposing to engraft additional language onto the parties' existing agreement, based on its assessment as to the size of the fuse it may install.

ISSUE 62

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

Q: BELLSOUTH PROPOSES TO PROVISON PHYSICAL COLLOCATION (CAGELESS AS WELL AS CAGED) IN NINETY (90) CALENDAR DAYS 9MILNER DIRECT, PP. 27-28)? WHAT IS YOUR RESPONSE?

A: According to the *Order on Reconsideration*, the ILEC should complete any technically feasible physical collocation arrangement, whether caged or cageless, no later than ninety (90) 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.[6] The FCC's ninety (90) day interval is a national maximum standard that the FCC presumes ILECs are capable of meeting. See id. at ¶ 37. Although not articulated by BellSouth, its position has been that the provisioning intervals would commence from the receipt of a firm order from the CLEC. 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.

Moreover, because certain considerations related, for example, to space availability and configuration, as well as not having to construct a cage, are different for cageless collocation than for caged collocation, cageless collocation should be subject to a shorter interval. The Authority recognized this fact in its order, which I cite in my Direct Testimony, in the ITC^DeltaCom arbitration with BellSouth.

Although BellSouth goes to great lengths to justify its position, the *Order on Reconsideration* took into account what state commissions have done with regard to physical collocation provisioning intervals. See id. at ¶¶ 18-19.

[6] See footnote 4, supra, which recites 47 C.F.R. §51.323 (l). The FCC's interval assumes a firm order within seven days of the incumbent LEC's price quote.

Q: WHAT IS YOUR RESPONSE TO BELLSOUTH'S DISCUSSION OF "ORDINARY CONDITIONS" AND THE WAIVER PROCEDURE (MILNER DIRECT, P. 28)"

A: As I stated above, BellSouth will have to devote the necessary resources to providing nondiscriminatory collocation, and it is not a sufficient answer to every issue regarding intervals to state every conceivable issue that may occur to delay the process. This is why the FCC and state commissions have provided for a waiver process. With regard to BellSouth's discussion of circumstances that are "out of BellSouth's control", many of these are in fact within its control. Presumably BellSouth has already been remediating for environmental conditions, and is in substantial compliance with the Americans with Disabilities Act, since these laws and regulations have been in effect for years. As stated above, BellSouth already is embarked on a program to remove obsolete equipment; i.e., even in the absence of collocation, BellSouth in effect would be conditioning space for collocation.

ISSUE 63

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

Q: BELLSOUTH STATES THAT ILECS HAVE NO OBLIGATION TO "ACCOMMODATE NON-FIBER ENTRANCE FACILITIES" UNLESS AND UNTIL IT IS ORDERED BY THE AUTHORITY (MILNER DIRECT, P. 29). DO YOU DISAGREE WITH BELLSOUTH'S POSITION?

A: I do not disagree that the Authority must decide this issue. The difference is in the presumption and burden of proof that each party advocates. BellSouth would have the Authority categorically rule that copper shall not be used unless the

CLEC in a complaint proceeding proves that its use will not exhaust entrance facilities. WorldCom points to obvious problems with such a position: that BellSouth concedes that copper cables presently enter BellSouth's central offices (no matter what BellSouth chooses to call or how to use that entrance facility), that copper entrance facility is not only technically feasible, but a viable and significant means in the network today of providing entrance, that BellSouth has no plans to replace all the remaining copper facility, and that it would place an impossible burden on CLECs – whom BellSouth denies the right to inspect its central offices when BellSouth claims copper entrance facility would lead to exhaustion - to disprove a claim that, in a given instance, copper would not lead to exhaustion. In other words, the Authority should presume, as a matter of parity and nondiscriminatory treatment, that copper is an acceptable means of providing entrance facility; in a given instance, BellSouth may allege space exhaustion and prove that the use of copper is not technically feasible. Copper entrance ducts merely present another factor in considering what space and facilities are available for collocation.

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 IS THE "TOUR" THAT WORLDCOM IS PROPOSING (MILNER DIRECT, P. 30)?

A: If a central office does not have dual entrances (which permit the necessary diversity that a CLEC needs), a potential collocator needs to consider that

information in deciding whether to go forward with a firm order. Hence WorldCom's position is that it should be permitted a limited inspection of entrance facilities and ducts is necessary, to confirm BellSouth's assertion that dual entrance facilities are not available. In many instances a physical inspection would not be necessary because one could look at architectural drawings provided by BellSouth. Also, a visual inspection from the street may be acceptable in many situations, and in those situations WorldCom would not request a "tour"; however, it is quite possible, although BellSouth makes no mention of this, that what would need to be inspected is underground and thus undetectable from the street. An inspection may also be necessary when BellSouth states that it has dual entrances, but that one is (or both are) exhausted. In that instance architectural drawings may not suffice to confirm BellSouth's statements. 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 triggers the requirement of permitting verification of that claim. I do not believe that the parties are in disagreement on whether a CLEC has a right to a limited inspection of entrance ducts and facilities.

Q: WHY SHOULD THERE BE A WAITING LIST IN THE EVENT THAT DUAL ENTRANCE FACILITIES ARE NOT AVAILABLE?

A: Just as BellSouth must indicate those of its premises that are full, 47 C.F.R. §51.321 (h), and should maintain a waiting list with respect to collocation space generally at a central office (see § 2.2.3 of Attachment 5 to the parties' Agreement), it is reasonable to expect BellSouth, or any other ILEC, to maintain a waiting list for dual entrance facilities. BellSouth should also offer space to the

new entrants when it becomes available, based upon their position on the waiting list. This Authority certainly has the jurisdiction to require ILECs to engage in practices that are in addition to and consistent with the minimum standards that the federal rules require.

BellSouth maintains that, should the fact that there is no entrance space available be the reason for denying a request for collocation, BellSouth will include that office on its space exhaust list, as required. BellSouth, however, states that it should not be required to incur the time and expense of maintaining a waiting list merely because dual entrance facilities may not be available. Yet BellSouth has not attempted to quantify the costs that allegedly would be involved. BellSouth's position appears to be simply that FCC rules do not require it to keep a waiting list. This is no answer to the question whether BellSouth should provide such a list, or whether the Authority has the jurisdiction – which it does have - to require such a list. The lack of dual entrances, as a practical matter, will determine whether collocation is advisable or even viable at a given location; hence, the benefit to CLECs of a list is not outweighed by the alleged burden on the ILEC to maintain a list.

ISSUE 65

What information must BellSouth provide to WorldCom regarding vendor certification? (Attachment 5, Section 7.22. and new section 10.)

Q: WHY HAS WORLDCOM INSISTED THAT BELLSOUTH PROVIDE IT WITH THE SAME INFORMATION THAT IT USES TO CERTIFY ITS VENDORS?

A: BellSouth has provided WorldCom with brochures that generally describe what BellSouth's vendors are required to observe, for purposes of certification. BellSouth misses the point: Although the brochures may be "precisely the same information that BellSouth provides its vendors," as BellSouth insists, this 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 should content itself in having been invited informally to "contact the BellSouth vendor certification group for further information." In the absence of the sharing of this information, BellSouth may try to change such requirements unilaterally. There must be contractual assurances that the same information that BellSouth uses to certify its vendors will, in fact, be provided WorldCom. WorldCom also needs to know what BellSouth's requirements are so WorldCom can train its proposed vendors. Since the parties have not been able to agree on these seemingly basic points, WorldCom proposed the substituted language that is attached to my Direct Testimony.

ISSUE 66

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

Q: WHAT IS YOUR RESPONSE TO BELLSOUTH'S STATEMENT THAT IT IS ONLY ASKING FOR STANDARDS TO WHICH IT MUST COMPLY THAT RELATE TO THE RELATIONSHIP OF BELLSOUTH AND WORLDCOM (MILNER DIRECT, P. 32)?

A: WorldCom is merely asking that BellSouth comply with industry standards with respect to matters within its responsibility or under its control. These standards deal with safety issues. BellSouth appears to concede that standards governing safety would be agreeable. These recognized industry standards, if incorporated into the agreement, would reduce uncertainty and give the parties' clear guidance with respect to what is expected under the agreement.

The parties' Agreement needs to refer to certain industry guidelines, so that BellSouth and WorldCom know the standards by which their performance must be guided. The Agreement in other sections contains references to industry standards; Section 9 of Attachment 5 is no different in this respect. Hence WorldCom proposed several industry standards. BellSouth in response has proposed no standards. In negotiations BellSouth did point out that a couple of the WorldCom-proposed standards had changed, and WorldCom updated those standards in its proposal. BellSouth concedes that these are the current industry standards, and in fact has proposed in a different context the use of three of those standards for use in governing the relationship between it and CLECs.

For all these reasons, the standards proposed by WorldCom should be adopted.

Q: DOES THIS CONCLUDE YOUR TESTIMONY AT THIS TIME?

A: Yes.