

**BEFORE THE  
TENNESSEE REGULATORY AUTHORITY**

REC'D. TN  
REGULATORY AUTH.

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OFFICE OF THE  
EXECUTIVE SECRETARY

**In re:**

)  
)  
**Petition for Arbitration of the Interconnection** )  
**Agreement Between BellSouth** )  
**Telecommunications, Inc. and Intermedia** )  
**Communications Inc. Pursuant to Section 252(b)** )  
**of the Telecommunications Act of 1996** )

**Docket No. 99-00948**

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**PREFILED REBUTTAL TESTIMONY OF  
J. CARL JACKSON JR.  
ON BEHALF OF INTERMEDIA COMMUNICATIONS INC.**

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**September 5, 2000**

**POSTED**  
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3                   **ON BEHALF OF INTERMEDIA COMMUNICATIONS INC.**  
4                   **DOCKET NO. 99-00948**  
5                   **SEPTEMBER 5, 2000**  
6  
7  
8

9   **Q.     PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND EMPLOYMENT.**

10   **A.**    My name is J. Carl Jackson Jr. My business address is 360 Interstate North Parkway,  
11           Atlanta, Georgia 30339. I am employed by Intermedia Communications Inc.  
12           ("Intermedia") as Senior Director-Industry Policy.  
13

14   **Q.     ON WHOSE BEHALF ARE YOU TESTIFYING?**

15   **A.**    I am testifying on behalf of Intermedia.  
16

17   **Q.     HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS PROCEEDING?**

18   **A.**    Yes. I filed direct testimony in this proceeding on July 18, 2000.  
19

20   **Q.     WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

21   **A.**    The purpose of my testimony today is to rebut BellSouth Telecommunications, Inc.'s  
22           ("BellSouth's") witnesses' direct testimony. I wish to note that in this rebuttal testimony,  
23           I respond to some, but not all, of BellSouth's assertions and characterizations. My  
24           decision to selectively respond to certain of BellSouth's assertions should not be  
25           improperly construed as an acceptance of any of BellSouth's claims and arguments to  
26           which I do not specifically respond here. In some cases, BellSouth's Direct Testimony

1 has not added anything on a given issue that warrants submission of additional testimony  
2 on rebuttal.

3  
4 ***Issue 3: Should Intermedia be compensated for end office, tandem, and transport elements,***  
5 ***for purposes of reciprocal compensation?***  
6

7 **Q. MS. COX ASSERTS THAT INTERMEDIA IS NOT ENTITLED TO**  
8 **RECIPROCAL COMPENSATION AT THE TANDEM INTERCONNECTION**  
9 **RATE. IS THIS A VALID CLAIM?**

10 **A.** No. Contrary to Ms. Cox's mistaken belief, Intermedia is entitled to be compensated at  
11 the composite tandem interconnection rate (*i.e.*, including tandem switching, transport,  
12 and end-office switching) rather than at the lower, elemental end-office rate. I say this  
13 because Rule 51.711(a)(3) of the FCC's rules and regulations requires that, where the  
14 interconnecting carrier's switch serves a geographic area comparable to that served by the  
15 incumbent local exchange carrier's tandem switch, the appropriate rate for the  
16 interconnecting carrier's cost of transport and termination is the incumbent's tandem  
17 interconnection rate. Intermedia has deployed two sophisticated, multifunctional voice  
18 switches in Tennessee, one in Nashville and one in Memphis. The advent of fiber optic  
19 technologies and multi-functional switching platforms have allowed Intermedia to serve  
20 large geographic areas with fewer switches than would have been required under the old  
21 technology. These switches, together with Intermedia's network architecture, perform  
22 functions similar to those performed by traditional tandem switches, including  
23 aggregation of traffic from remote areas.

1   **Q.    BUT WHAT ABOUT MS. COX'S CITATION TO FCC RULE 51.319(c)(3) THAT**  
2       **DEFINES THE LOCAL TANDEM SWITCHING CAPABILITY NETWORK**  
3       **ELEMENT AS FACILITIES THAT CONNECT AND SWITCH TRUNKS?**

4   **A.**   Ms. Cox correctly sets forth the definition of this unbundled network element, but it has  
5       nothing whatsoever to do with the issue at hand. A closer look at the FCC's Rules will  
6       demonstrate that this rule appears in a subpart that deals only with the mandatory network  
7       element unbundling requirements for incumbent LECs, and has nothing to do with  
8       competitive LECs. BellSouth's attempt to take this unrelated rule and apply it to the  
9       situation at hand has the effect of prioritizing this irrelevant rule over the FCC's expressly  
10      applicable rule set forth in 47 CFR 51.711(a)(3). To do this is overreaching: it is clearly  
11      wrong. The issue that must be considered in this arbitration is not how the FCC defines a  
12      certain network element for the ILEC's unbundling purposes. Rather, the controversy  
13      here concerns how Intermedia should be compensated for the use of its multifunctional  
14      switch. Rule 51.711(a)(3) does not state that compensation at the tandem interconnection  
15      rate is due if a CLEC's switch mirrors the definition for this network element; nor is there  
16      anything in the rule that cross-references the rule that BellSouth wants to apply. Instead,  
17      rule 51.711(a)(3) states that if the CLEC's switch serves an area comparable to the  
18      ILEC's tandem, the appropriate compensation is the tandem interconnection rate. This is  
19      a simple matter: if Intermedia's switch coverage is comparable to that of a BellSouth  
20      tandem, the composite rate is to be applied. There is nothing more to this.

21  
22      On a logical basis, if Intermedia's switch mirrored the functionality of BellSouth's  
23      tandem precisely, as BellSouth wants the Authority to require in this proceeding, there

1 would be no reason to have FCC Rule 51.711(a)(3) at all, because it would be obvious  
2 that the composite rate should be paid. The FCC's rule is intended to take into account  
3 innovative, different network architectures and functionalities that perform not precisely  
4 the same, but "similar" functions. Any other result would force Intermedia to adopt the  
5 same network design approach as BellSouth, but this would be inefficient and would  
6 hamper competition.

7  
8 **Q. BUT WHAT ABOUT MS. COX'S REFERENCE TO THE FCC'S FIRST REPORT**  
9 **AND ORDER IN DOCKET NO. 96-98, PARAGRAPH 1090, THAT SEEMS TO**  
10 **OPEN THE POSSIBILITY OF A "TWO-PRONGED" SHOWING TO**  
11 **ESTABLISH ENTITLEMENT TO THE TANDEM INTERCONNECTION RATE?**

12 **A.** There are two basic problems in BellSouth's analysis. First, there is no reason to read  
13 Paragraph 1090 of the *First Report and Order* in Docket No. 96-98 at all, because the  
14 FCC promulgated a very clear rule to govern this situation: rule 51.711(a)(3), that  
15 expressly states that only a showing of geographic comparability is necessary to  
16 demonstrate a CLEC's entitlement to the tandem interconnection rate. Since the rule is  
17 clear on its face, there is no reason to try to "interpret" it. BellSouth is just not happy  
18 with what the rule clearly states, and therefore is seeking to resort to extrinsic evidence  
19 that it means something different than what its words denote. This type of approach  
20 should not generally be allowed as a matter of law or policy, because it erodes the  
21 effectiveness of rulemaking, and may distort the intention of the rulemaking body.

22

1 Second, even assuming *arguendo* that the Authority *should* apply Paragraph 1090 to  
2 determine Intermedia's entitlement to the tandem interconnection rate (something  
3 Intermedia emphatically opposes both as a matter of law and policy), Paragraph 1090  
4 really doesn't state what BellSouth wants it to state. Although in the first part of the  
5 paragraph there is some discussion of whether the competitive carrier's switch performs a  
6 function *similar to* (but not identical to) the function performed by an ILEC tandem, the  
7 last sentence of the paragraph states in very explicit terms that "[w]here the  
8 interconnecting carrier's switch serves a geographic area comparable to that served by the  
9 incumbent LEC's tandem switch, the appropriate proxy for the interconnecting carrier's  
10 additional costs is the LEC tandem interconnection rate." FCC *First Report and Order* in  
11 Docket No. 96-98, Paragraph 1090. This last sentence is NOT one of two separate  
12 requirements to demonstrate entitlement to the tandem interconnection rate, it is a  
13 *standalone* requirement.

14  
15 When the FCC wrote this language, it intended that a demonstration of comparable  
16 geographic coverage *per se* demonstrates that the CLEC switch incurs the sort of  
17 "additional costs" necessary to entitle the CLEC to be compensated at the tandem  
18 interconnection rate.

1 Q. BUT SINCE THE FCC MENTIONED BOTH "SWITCH FUNCTIONALITY"  
2 AND "GEOGRAPHIC COMPARABILITY" IN THE SAME PARAGRAPH, WHY  
3 ARE YOU SO CERTAIN THAT THE FCC INTENDED "GEOGRAPHIC  
4 COMPARABILITY" TO BE A STANDALONE REQUIREMENT THAT BY  
5 ITSELF ENTITLES A CLEC TO THE TANDEM INTERCONNECTION RATE?

6 A. The reason I am so certain is that the FCC promulgated a rule based on its discussion in  
7 Paragraph 1090 of the *First Report and Order*. That rule is set forth in 47 CFR  
8 51.711(a)(3), and the rule mentions only the "geographic comparability" showing  
9 discussed in Paragraph 1090. So, assuming that the FCC acts intentionally, the FCC  
10 intended to include only the "geographic comparability" showing in the rule. This action  
11 on the FCC's part is the very best proof that the last sentence in Paragraph 1090 was  
12 intended to be a "standalone requirement" – not only did the FCC intend this, it took  
13 action on that intention and wrote a rule that stated it expressly. As I noted in my Direct  
14 Testimony, the North Carolina Utility Commission recently found in a case involving  
15 ITC DeltaCom that the "switch functionality" issue is *subsumed* in the "geographic  
16 comparability showing. See Jackson Direct Testimony, Exhibit 6.

17  
18 So, even if the language of Paragraph 1090 is correctly applied the way the FCC  
19 obviously intended it to be, the result would be the same: geographic comparability is the  
20 only criterion that needs to be considered here.

21

1 Q. WHAT EMPHASIS, THEN, SHOULD THE AUTHORITY PLACE ON  
2 BELLSOUTH'S TESTIMONY CONCERNING THE FUNCTIONALITY OF  
3 INTERMEDIA'S SWITCHES?

4 A. None whatsoever, because this discussion is a "red herring" that BellSouth is attempting  
5 to use to distract the Authority's attention from the only real issue before it, viz.: has  
6 Intermedia shown that each of its switches serves a geographic area comparable to that  
7 served by *a single BellSouth tandem switch*?

8  
9 Q. DO YOU AGREE WITH MS. COX THAT THIS AUTHORITY SHOULD  
10 FOLLOW THE DECISIONS REACHED BY THE FLORIDA PUBLIC SERVICE  
11 COMMISSION RELATING TO TANDEM INTERCONNECTION?

12 A. No. Intermedia believes that the Florida Public Service Commission's (the "Florida  
13 Commission") decisions cited by Ms. Cox have no bearing on this proceeding. In fact,  
14 each competitive carrier that seeks compensation at the tandem interconnection rate must  
15 demonstrate that it meets the geographic comparability test, and therefore each decision  
16 is based on the facts set forth in that proceeding. As set forth above, Intermedia believes  
17 that the Florida Commission's focus on switch functionality as an essential prerequisite to  
18 entitlement to the tandem interconnection rate is misguided, because neither the FCC's  
19 rule nor the language in the *First Report and Order* in Docket 96-98 properly supports  
20 such an outcome.



1 Q. WHAT DOES INTERMEDIA ASK THE AUTHORITY TO DO IN REGARD TO  
2 THIS ISSUE?

3 A. Intermedia believes that this Authority should decide this issue based solely on the merits  
4 of the Intermedia showing of geographic comparability in Tennessee. Intermedia has  
5 demonstrated through its testimony and map exhibits that its voice switches cover a  
6 geographic area comparable in each case to one of BellSouth's tandem switches, and that  
7 showing fulfills all of the requirements set forth clearly and unequivocally in the only  
8 relevant rule applicable to this situation: FCC rule 51.711(a)(3). Accordingly,  
9 Intermedia submits that it should be granted the tandem interconnection rate for the use  
10 of its Northern Telecom DMS-500 switches in Nashville and Memphis.

11  
12 **Issue 6: Are BellSouth's proposed collocation intervals: (a) appropriate, and**  
13 **(b) should they be measured in business days?**  
14

15 Q. HAS THERE BEEN ANY CHANGE IN APPLICABLE LAW THAT SHOULD  
16 GOVERN BELL SOUTH'S COLLOCATION INTERVALS?

17 A. Yes. The FCC just issued on August 10, 2000 its *Order on Reconsideration and Second*  
18 *Further Notice of Proposed Rulemaking* in the advanced services proceeding, CC Docket  
19 No. 98-147. This Order establishes national minimum intervals for provisioning of  
20 collocation by ILECs. Intermedia requests that the Authority take judicial notice of this  
21 FCC Order, which sets forth the following intervals as a minimum requirement where a  
22 state regulatory commission has not already established mandatory deployment intervals  
23 for physical collocation:

- ILECs must confirm whether space is available in 10 *calendar* days after inquiry

- ILECs must provision collocation within 90 *calendar* days after CLEC order.

This recent FCC Order essentially puts to rest the issue of calendar days vs. business days in provisioning collocation.

**Q. SHOULD THE AUTHORITY ADOPT THE INTERVALS SET FORTH IN THE FCC ORDER FOR THIS ARBITRATION?**

A. Yes, at a minimum. However, the Authority may wish to adopt a shorter calendar day interval for provisioning of *cageless* collocation, such as the 60 calendar day interval adopted by the Georgia Commission. In addition, the Authority should keep in mind that the FCC's standards are *minimum* standards: the Authority may decide that the intervals are still *too long* to enable vibrant competition in the Tennessee local market.

***Issue 7: What charges should Intermedia pay to BellSouth for space preparation for physical collocation?***

**Q. SHOULD THE AUTHORITY ADOPT FLORIDA PROPOSED RATES FOR THE ICB COMPONENTS OF SPACE PREPARATION IN TENNESSEE?**

A. Almost anything is preferable to giving BellSouth free rein over the charges for space preparation, since it at least gives Intermedia some idea as to what charges will be applicable. However, Intermedia is wary of adopting rates proposed by BellSouth before they have been vetted by an appropriate process. In addition, Intermedia considers it likely that the Florida costs are considerably higher than the corresponding costs in Tennessee. So Intermedia is not entirely enthusiastic about adopting the Florida proposed rates on an interim basis: even if there is full true-up, it is very likely that the

1 permanent Tennessee rates will be much lower than the Florida rates, and this would  
2 have the effect of Intermedia's granting BellSouth an interest-free loan until permanent  
3 rates are adopted and true-up is complete.

4  
5 Intermedia would greatly prefer BellSouth to commit to producing TELRIC cost studies  
6 in Tennessee to support its space preparation charges in Tennessee. If BellSouth  
7 commits to producing these studies *immediately* (perhaps within 60-90 days of the  
8 hearing date in this proceeding), Intermedia will in turn consent to employing the Florida  
9 proposed rates until new proposed Tennessee rates are available, established using  
10 Tennessee-only inputs. Both the Florida proposed rates and the newly proposed  
11 Tennessee rates should be subject to true-up once BellSouth's Tennessee cost studies  
12 have been subjected to public scrutiny and comment in the normal course of the  
13 Authority's processes.

14  
15 **Q. WHAT IF THE FLORIDA COMMISSION ADOPTS PERMANENT RATES**  
16 **BEFORE THE TENNESSEE PROPOSED RATES ARE PREPARED?**

17 **A.** If the Florida Commission adopts permanent rates before proposed Tennessee rates are  
18 available, the permanent Florida rates should be substituted for the Florida proposed rates  
19 until the proposed Tennessee rates are available.

**Issue 10: What should BellSouth's policies be regarding conversion of virtual to physical collocation?**

**Q. HAS BELLSOUTH DEMONSTRATED THAT CONVERSION "IN PLACE" OF VIRTUAL ARRANGEMENTS SHOULD REQUIRE THE SAME PROVISIONING INTERVAL AND PRICING AS NEW CAGELESS COLLOCATION APPLICATIONS?**

**A.** No. Despite Mr. Milner's attempts to make the process of conversion of virtual collocation arrangements "in place" as complicated and difficult as provisioning a new cageless arrangement, it just defies common sense. The fact is that, assuming BellSouth is not going to move a virtual collocation arrangement, there is little to do other than some minimal paperwork and perhaps also the re-routing of an alarm function so that Intermedia, and not BellSouth, can be made aware of problems. So conversion of a virtual arrangement "in place" should have only a very minimal charge associated with it -- the actual cost of doing the transfer of control -- and it should not take 90 business days, or for that matter, 90 *calendar* days under the new FCC order. This just allows the ILEC to drag its feet at the inconvenience of the CLEC.

**Q. BUT WHY ARE THE INTERVAL AND PRICING OF VIRTUAL CONVERSION IN PLACE IMPORTANT HERE?**

**A.** They are important because *most of* the conversions of virtual collocation arrangements *should be* conversions in place. Since the CLEC equipment has been functioning for some time period *in place* already, ILEC insistence that there are technical difficulties or security concerns associated with leaving this equipment where it is are inherently

1 suspect. It is not *impossible* that a valid concern could be voiced, but the Authority  
2 should in general view with skepticism any BellSouth claims that it suddenly has security  
3 or technical feasibility concerns when a virtual collocation is converted. Accordingly,  
4 most conversions of virtual collocation arrangements to cageless physical arrangement  
5 should be very low cost, and very quickly implemented.

6  
7 On those rare occasions when BellSouth successfully insists on moving a CLEC's  
8 equipment, it is likely to reflect a preference on BellSouth's part rather than some  
9 unavoidable technical requirement, and therefore it should be at BellSouth's expense, and  
10 with a guarantee of minimal disruption to CLEC customers.

11  
12 ***Issue 12: What is the appropriate definition of "currently combines"***  
13 ***pursuant to FCC Rule 51.315(b)?***  
14

15 ***Issue 13: Should BellSouth be required to: (a) provide access to enhanced extended links***  
16 ***("EELs") at UNE rates***  
17

18 **Q. WHY ARE THESE TWO ISSUES COMBINED FOR DISCUSSION IN YOUR**  
19 **REBUTTAL TESTIMONY?**

20 **A.** First of all, I concur with Ms. Cox's direct testimony that issue 13(b), dealing with the very  
21 different issue of conversion of special access arrangements to UNE EELs, has been settled  
22 by the Parties. Issues 12 and 13(a) are combined here because they are very similar issues:  
23 they both deal with the question of whether this Authority should require BellSouth to offer  
24 CLECs such as Intermedia access to UNE combinations (of which EELs are one example) if  
25 such combinations are ordinarily combined in BellSouth's network. I think BellSouth does

1 not dispute that a variety of combinations already exist in its network, including special  
2 access arrangements that are essentially identical to EELs. The only real question is  
3 whether competitive carriers must purchase them from BellSouth pursuant to sky-high rates  
4 set forth in BellSouth's non-cost-based tariff, or whether it makes more sense in Tennessee  
5 for BellSouth to provide them to competitors at TELRIC-based prices.

6  
7 In the case of EELs, it is especially important for this Authority to consider whether it would  
8 be a good thing in Tennessee for competitors to have the option to forego collocation in  
9 every BellSouth end office that connects to a customer the particular CLEC needs to serve.  
10 The EEL provides flexibility, and a lower cost, while also preserving BellSouth office space  
11 for those competitors that may have a greater need to be collocated immediately adjacent to  
12 BellSouth's main distribution frame. Competitors can be more creative in designing their  
13 networks, and can offer more innovative "menus" to customers at better rates if this sort of  
14 flexibility is allowed. Without EELs and similar combinations at UNE rates, competitors  
15 must either pay rates so high for the elements in question that it is difficult or impossible to  
16 offer competitive service, or they must collocate in every end office where they have a  
17 customer – a very expensive and time-consuming proposition.

18  
19 This Authority can decide, as the Georgia Commission decided, that state policy favors  
20 making combinations, and in particular, EELs, available at UNE rates, regardless of whether  
21 the FCC has yet determined to mandate them on a national basis. After all, it is clear that the  
22 state commissions are not forbidden from creating additional UNEs, and Intermedia submits

1 that the requirement for BellSouth to offer combinations and EELs at UNE rates would be a  
2 large step in the right direction for local competition in Tennessee.

3  
4 ***Issue 18: Should BellSouth be required to provide access on an unbundled basis in***  
5 ***accordance with, and as defined in, the FCC's UNE Remand Order, to the following:***  
6

7 ***Subissue 18(c): packet switching capabilities?***  
8

9 **Q. DO YOU AGREE THAT BELL SOUTH NEED NOT OFFER PACKET**  
10 **SWITCHING IN TENNESSEE UNDER THE FCC'S RULES?**

11 **A.** No. The answer to this question is not obvious. As set forth in Ms. Cox's testimony,  
12 there are four conditions that, if satisfied in BellSouth's case, would require BellSouth to  
13 offer packet switching as a UNE. Ms. Cox blankly asserts, without any proof whatsoever,  
14 that not all of the conditions set forth by the FCC exist in BellSouth's network. However,  
15 I believe that BellSouth must make an *affirmative showing* that it complies with the  
16 FCC's rules before it can state that it is not required to offer packet switching as a UNE.  
17 For some reason, BellSouth believes that it can simply make the assertion that it is in  
18 compliance with the FCC's rules, but this is not enough. The Authority should require  
19 BellSouth to demonstrate with competent evidence that all four of the FCC's conditions  
20 are not existent in its network before allowing BellSouth to avoid offering packet  
21 switching as a UNE.

1 Q. EVEN IF BELL SOUTH IS ABLE, THROUGH COMPETENT EVIDENCE TO  
2 DEMONSTRATE CONCLUSIVELY THAT IT COMPLIES WITH THE FCC'S  
3 RULES, CAN THIS AUTHORITY STILL REQUIRE BELL SOUTH TO OFFER  
4 PACKET SWITCHING AS A UNE?

5 A. Yes. This Authority nevertheless can and should determine that packet switching is an  
6 essential element of competition, and that competitive carriers should be able to purchase  
7 BellSouth's packet switching network elements at cost-based rates. Packet switching is  
8 increasingly important as the use of data surges in the modern economy, and there is no  
9 suitable alternative in Tennessee for BellSouth's ubiquitous packet switched network.  
10 The Tennessee public will enjoy significant benefits if BellSouth's pricing stranglehold  
11 over these facilities is loosened.

12  
13 *Issue 25: Should BellSouth be required to furnish access to the following as UNEs: (i) User-*  
14 *to-Network Interface or "UNI," which provides connectivity between the end user and the*  
15 *frame relay network; (ii) Network-to-Network Interface or "NNI," which provides carrier-to-*  
16 *carrier connectivity to the frame relay network; and (iii) Data Link Control Identifiers or*  
17 *"DLCIs," at Intermedia-specified Committed Information Rates or "CIRs," which define the*  
18 *path and capacity of virtual circuits over which frame relay frames travel across the frame*  
19 *relay network?*

20  
21 Q. DO YOU AGREE THAT INTERMEDIA HAS FAILED TO MAKE THE  
22 SHOWING REQUIRED TO DEMONSTRATE THAT THIS AUTHORITY  
23 SHOULD REQUIRE BELL SOUTH TO MAKE CERTAIN FRAME RELAY  
24 ELEMENTS AVAILABLE AS UNEs?

25 A. No. In my Direct Testimony, I pointed out just how important the Frame Relay business  
26 is to Intermedia, and how essential it is to have access to BellSouth's Frame Relay  
27 facilities at TELRIC-based prices, the same as other facilities such as local loops. Access



1 by Intermedia to these facilities is critical, and there is no question that Intermedia's  
2 business is impaired by BellSouth's requirement that Frame Relay facilities be obtained  
3 only under the terms set forth in BellSouth's access tariff. This is quite a complicated  
4 subject, and not one that is as familiar as conventional circuit switching of voice calls, but  
5 it is nevertheless essential. Data applications such as Frame Relay are the wave of the  
6 future, and this Authority and others must find appropriate ways of balancing the  
7 monopoly carrier's desire to impede competition with the interests of the public in  
8 accessing crucial facilities.

9  
10 *Issue 26: Should parties be allowed to establish their own local calling areas and assign*  
11 *numbers for local use anywhere within such areas, consistent with applicable law?*  
12

13 **Q. WITNESS COX ASSERTS THAT INTERMEDIA SHOULD USE ITS NPA/NXXs**  
14 **IN SUCH A WAY THAT BELLSOUTH CAN DISTINGUISH LOCAL TRAFFIC**  
15 **FROM INTRALATA TOLL TRAFFIC AND INTERLATA TOLL TRAFFIC FOR**  
16 **BELLSOUTH-ORIGINATED TRAFFIC. DO YOU HAVE ANY COMMENT?**

17 **A.** Yes. This is yet another transparent attempt by BellSouth to control and dictate the  
18 manner in which CLECs may provide service to their subscribers. The real issue here is  
19 whether Intermedia should be allowed to assign NXX codes as it sees fit. The answer  
20 clearly is yes. There is simply no reason why Intermedia should not be able to assign  
21 NPA/NXXs that are different from the NPA/NXXs associated with the actual physical  
22 locations of its customers.  
23

1 The California Public Utilities Commission (the "California PUC") has squarely  
2 addressed this point. In *Order Instituting Rulemaking on the Commission's Own Motion*  
3 *into Competition for Local Exchange Service*, Rulemaking 95-04-043, Decision 99-09-  
4 029 (*Rating/Routing Order*), the California PUC found no basis

5 *to prohibit carriers from assigning NXX prefixes rated for one exchange*  
6 *to customers located in another exchange as a means of offering a local*  
7 *presence where such an arrangement is technologically and economically*  
8 *efficient, and where intercarrier compensation is fairly provided. We*  
9 *shall not prohibit [competing carriers] from designating different rating*  
10 *and routing points just because such an approach may differ from*  
11 *traditional methods used by ILECs. Such a prohibition could undermine*  
12 *the incentives for carriers to develop innovative service alternatives in the*  
13 *most economically and technologically efficient manner.*  
14

15 Just as the California PUC found that the rating and routing points for calls need not  
16 match, the Authority should not countenance BellSouth's attempts to restrict Intermedia's  
17 flexibility to assign NPA/NXXs as it deems technologically and economically sound.

18  
19 **Q. APART FROM INTERMEDIA'S NEED TO MAINTAIN FLEXIBILITY, IS**  
20 **THERE ANY OTHER REASON WHY INTERMEDIA SHOULD BE ALLOWED**  
21 **TO ASSIGN NPA/NXX CODES AS IT SEES FIT?**

22 **A.** Yes, there is a very good reason: conservation of scarce numbering resources.  
23 BellSouth's arbitrary requirement that Intermedia devote an entire NXX code to each rate  
24 center is exceedingly wasteful of scarce numbering resources. Allowing Intermedia to  
25 assign these codes across multiple rate centers would make far more efficient use of these  
26 numbering resources, and that is certainly in the public's interest.

1   **Q.    DOES BELLSOUTH ASSIGN NPA/NXX CODES BOTH INSIDE AND OUTSIDE**  
2       **OF THE LOCAL CALLING AREAS WHERE THOSE NPA/NXX CODES ARE**  
3       **“HOMED”?**

4   **A.    Yes, in fact, BellSouth has done for years what it is seeking to prevent Intermedia from**  
5       doing here: it's called Foreign Exchange or “FX” service. BellSouth's General  
6       Subscriber Service Tariff, Section A.9 (“Foreign Exchange Service and Foreign Central  
7       Office Service”) defines Foreign Exchange Service as follows:

8           A9.1.1.A—Foreign Exchange service is exchange service furnished to a  
9           subscriber from an exchange other than the one from which the subscriber  
10          would normally be served, allowing subscribers to have local presence and  
11          two-way communications in an exchange different from their own.

12       Using BellSouth's FX Service, a customer physically located far outside a given local  
13       calling area can “appear” to be within that calling area. In this way, a caller within a  
14       given local calling area can call, say, an automobile dealer in a distant location without  
15       paying a toll charge, because the number that caller places his call to “appears” to be  
16       local. If, however, that same originating caller called the beauty shop next door to the  
17       automobile dealer, the call would be toll (unless of course the beauty shop also had an FX  
18       number local to the originating caller). This FX service has been offered by BellSouth  
19       for many years, and it performs a function valuable to BellSouth's customers.

20  
21  
22   **Q.    IN THE PRECEDING EXAMPLE, WHEN THE ORIGINATING CALLER IS ON**  
23       **INTERMEDIA'S NETWORK, AND HE CALLS THE REMOTELY LOCATED**  
24       **AUTOMOBILE DEALERSHIP WITH A TELEPHONE NUMBER**  
25       **“APPARENTLY” IN THE SAME LOCAL CALLING AREA, WILL IT BE A**  
26       **LOCAL CALL?**

1 A. Yes. Despite the fact that the distance involved are normally associated with a toll call,  
2 the Intermedia customer, and Intermedia itself, will not notice that the actual calling  
3 distance takes the call outside the local calling area. The remote automobile dealer is  
4 local to Intermedia's customer in the same local calling area, although his physical  
5 location is not.

6  
7 **Q. BUT DOESN'T THIS MEAN THAT INTERMEDIA HAS NO WAY OF TELLING**  
8 **WHETHER THE CALL MADE BY ITS CUSTOMER IS LOCAL OR TOLL**  
9 **WHEN THE BELL SOUTH CUSTOMER IT IS CALLING USES FX SERVICE?**

10 A. Yes, that's right. Based on their relative physical locations, the call from Intermedia's  
11 customer to BellSouth's FX customer might well be a toll call, but the use of the FX  
12 number makes it appear to be a local call, so Intermedia does not charge its customer toll  
13 charges. The way the Parties do business at present, Intermedia would not know that the  
14 recipient of the call is in a remote location. However, since the Parties have traditionally  
15 rated calls based on their NPA/NXX codes and not on their actual physical location, this  
16 doesn't really matter. In addition, if BellSouth chooses to haul an "apparently" local call  
17 outside the local calling area to its FX customer without charging Intermedia switched  
18 access charges, that's BellSouth's business decision, just as it should be Intermedia's  
19 decision to assign a NPA/NXX code in a given local calling area for an Intermedia  
20 customer that is physically located outside that local calling area. As far as Intermedia  
21 knows, BellSouth is charging Intermedia reciprocal compensation for FX calls, based on  
22 the relative NPA/NXX codes of the originating and terminating caller.

1 Q. WOULD INTERMEDIA BE ABLE TO OFFER FX OR FX-TYPE SERVICE IF  
2 THE LANGUAGE PROPOSED BY BELL SOUTH ASSOCIATED WITH ISSUE  
3 26 IS ADOPTED?

4 A. Probably not. Since BellSouth would be charging its customers toll charges for calling  
5 an Intermedia customer physically located outside the BellSouth customer's local calling  
6 area, the Intermedia customer being called would not be able to have the same advantage  
7 as BellSouth's automobile dealer in the earlier example, *i.e.*, an "apparent" local presence  
8 that allows a person in the same local calling area to call toll free.  
9

10 Q. WOULDN'T ADOPTION OF BELL SOUTH'S PROPOSED LANGUAGE FOR  
11 ISSUE 26 PUT INTERMEDIA AT A SIGNIFICANT DISADVANTAGE  
12 RELATIVE TO BELL SOUTH IF BELL SOUTH CONTINUES TO OFFER FX  
13 SERVICE?

14 A. Absolutely, and that is one of the principal problems with the language. If the Authority  
15 takes a close look at what BellSouth proposes, it will be clear that it is UNILATERAL.  
16 BellSouth is seeking to restrict Intermedia from engaging in a practice that BellSouth has  
17 been engaging in for many years. This would be immensely damaging to Intermedia.  
18

19 Q. WHAT COULD BELL SOUTH HAVE HAD IN MIND WHEN IT PROPOSED  
20 THIS LANGUAGE?

21 A. It's difficult to know for sure, but it seems that BellSouth is concerned that Intermedia  
22 may be designing its local calling areas to enable a local presence for ISPs on  
23 Intermedia's network, allowing BellSouth customers to call the ISPs without a toll

1 charge. BellSouth probably figures that if it can assess toll charges on calls to ISPs on  
2 Intermedia's network that are not actually located in the same local calling area as the  
3 originating BellSouth caller, it can discourage BellSouth customers from calling  
4 Intermedia's ISPs, thereby reducing the reciprocal compensation it must pay to  
5 Intermedia. However, BellSouth probably also has ISPs on its network that want to  
6 establish a local presence in calling areas where it has no physical presence, to encourage  
7 both BellSouth customers and CLEC customers to call that ISP. If BellSouth's language  
8 is adopted, it would allow BellSouth to continue to engage in offering FX service to  
9 customers such as ISPs while preventing Intermedia from doing the same.  
10

11 **Q. IN LIGHT OF THIS ANALYSIS, WHAT DOES INTERMEDIA PROPOSE?**

12 **A.** Intermedia proposes that the Parties continue to do business as before, each retaining the  
13 flexibility to design their local calling areas, and assign their NPA/NXXs as they see fit.  
14 Calls should be rated based on their NPA/NXX codes without regard to the physical  
15 location of the terminating customer. This is the way it has been done throughout the  
16 relationship so far, and it hasn't created any problems. To adopt BellSouth's proposed  
17 unilaterally restrictive language would be anticompetitive, because it would allow  
18 BellSouth to engage in an activity forbidden to Intermedia.  
19

20 BellSouth would *never* consent to discontinuing FX service – a very valuable service to  
21 its customers – and Intermedia should not be compelled to give up its right to offer a  
22 comparable service. There is nothing in applicable law that requires this Authority to  
23 accept BellSouth's proposed language, and there is every reason not to do so.

1 ***Issue 29: In the event Intermedia chooses multiple tandem access ("MTA"), must Intermedia***  
2 ***establish points of interconnection at all BellSouth access tandems***  
3 ***where Intermedia's NXXs are "homed"?***  
4

5 ***Issue 30: Should Intermedia be required to: (a) designate a "home" local tandem for each***  
6 ***assigned NPA/NXX; and (b) establish points of interconnection to BellSouth access tandems***  
7 ***within the LATA on which Intermedia has NPA/NXXs homed?***  
8

9 **Q. WAS THE LANGUAGE PROPOSED BY BELL SOUTH FOR THESE ISSUES**  
10 **INCLUDED IN THE PARTIES' PRIOR INTERCONNECTION AGREEMENT ?**

11 **A.** No, it was not. And in my view, that's the key to deciding this issues. Despite all of the  
12 vaguely threatening testimony BellSouth has submitted on these issues, the fact remains  
13 that the Parties have had no trouble completing calls to each other without the imposition  
14 of these new requirements. This new language just isn't necessary. Nor is it required by  
15 applicable law. It is just something that BellSouth wants to impose on Intermedia for its  
16 own reasons.  
17

18 **Q. IF THIS LANGUAGE IS NOT NECESSARY, WHY DOES BELL SOUTH**  
19 **PROPOSE IT?**

20 **A.** Insofar as I am able to determine after litigating these issues in several prior proceedings,  
21 BellSouth wants Intermedia to designate "home" local tandems for each NPA/NXX, and  
22 establish Points of Interconnection ("POIs") at all access tandems where Intermedia  
23 "homes" NPA/NXX codes -- even if the MTA option is elected -- because this would be  
24 most convenient and cost-effective for BellSouth. And it would also be most expensive  
25 and inconvenient for Intermedia, an added anticompetitive bonus. BellSouth does not  
26 want to incur the costs associated with hauling Intermedia's traffic around on its network,

1 and therefore wants to impose network design restrictions on Intermedia that foists on  
2 Intermedia the costs that BellSouth would otherwise incur.

3  
4 **Q. WHY ISN'T BELL SOUTH'S PROPOSAL FAIR?**

5 **A.** Well, this is probably not the right question. The 1996 Act requires an incumbent LEC to  
6 allow a CLEC to interconnect at any "technically feasible" point. It does not require that  
7 a CLEC interconnect at *every point that is most convenient for the ILEC*. BellSouth  
8 doesn't want to haul CLEC traffic from tandem to tandem, even though it can do so. It  
9 prefers to demand that CLECs interconnect at every access tandem where NPA/NXXs  
10 are homed because this maximizes the CLEC's network engineering and implementation  
11 expenses, and it minimizes BellSouth's costs. So the question isn't whether it is *fair* or  
12 not for BellSouth to impose additional costs on the CLEC – the question is whether the  
13 law allows it. Intermedia should be able to interconnect at any technically feasible point,  
14 and (within reason) the BellSouth process of hauling traffic to and from this point should  
15 not be Intermedia's concern.

16  
17 **Q. BUT IF THIS LANGUAGE IS NOT INCLUDED IN THE PARTIES'**  
18 **AGREEMENT, WHAT IS THE GUARANTEE THAT CALLS WILL BE**  
19 **COMPLETED?**

20 **A.** BellSouth can, and presumably will, attempt to argue that something has changed in the  
21 last couple of years that suddenly requires such language to be imposed where it was not  
22 before. Based on experience in other jurisdictions with BellSouth, such assertions  
23 typically are vague and unsubstantiated. The real guarantee that calls will continue to be



1 completed without incident is that it is in both Parties' interest to see that it is done.  
2 Intermedia is absolutely dedicated to establishing a technical relationship with BellSouth  
3 that works for both sides, because that is in Intermedia's selfish interest. The Authority  
4 should not allow BellSouth to unilaterally impose restrictive requirements that raise  
5 Intermedia's costs unnecessarily unless they are required by law. The proposed language  
6 relating to these issues is not only NOT required by law, it has no support at all: it is just  
7 an attempt to impose unilateral anticompetitive restrictions on Intermedia that have little  
8 if anything to do with technical necessities. The Authority should strike BellSouth's  
9 language pertinent to issues 29 and 30.

10  
11 ***Issue 32: How should "Switched Access Traffic" be defined?***  
12

13 **Q. MS. COX CLAIMS THAT INTERNET PROTOCOL ("IP") TELEPHONY IS**  
14 **TELECOMMUNICATIONS (SWITCHED ACCESS) SERVICE, NOT**  
15 **INFORMATION OR ENHANCED SERVICE. DO YOU AGREE?**

16 **A.** No, I do not agree. Ms. Cox cites the FCC's April 10, 1998 Report to Congress (*see*  
17 *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report to  
18 Congress, 13 FCC Rcd 11501 (1998)) for the proposition that IP telephony is  
19 telecommunications service and not information or enhanced service. Ms. Cox  
20 misinterprets the Report, however.

21  
22 Ms. Cox is correct that the FCC stated in the Report that the record before it *suggests* that  
23 certain forms of phone-to-phone IP telephony services lack the characteristics that would  
24 render them "information services." Ms. Cox failed to mention, however, that the FCC

1       went on to explicitly state that it did *not* believe that it was “appropriate to make any  
2       definitive pronouncements in the absence of a more complete record focused on  
3       individual service offerings.”

4  
5       The FCC clearly did not make any determination on the regulatory classification of  
6       phone-to-phone IP telephony in the Report. Thus, any suggestion at this time that IP  
7       telephony is telecommunications service is wrong. Similarly, BellSouth’s attempt to  
8       include phone-to-phone IP telephony within the definition of switched access is improper  
9       and contrary to law.

10  
11   **Q.   DOES BELLSOUTH DEFINE SWITCHED ACCESS TRAFFIC IN ITS ACCESS**  
12   **TARIFF TO INCLUDE IP TELEPHONY?**

13   **A.**   No. Insofar as I am aware, BellSouth does not define “Switched Access Traffic” in its  
14       access tariff at all. But even if it were deemed valid to somehow “derive” a definition of  
15       “Switched Access Traffic” from a tariff that does not specify such a definition, that  
16       “derived” definition would not include IP telephony, because BellSouth does not include  
17       references to IP telephony in any of the language of its Switched Access Service  
18       offerings in its tariff. Of course, these tariffs are huge, full of “fine print” and constantly  
19       changing, and I admit that it is a little nerve-wracking to assert that something does or  
20       does not appear in a tariff. However, despite our repeated challenges, BellSouth has yet  
21       to point to a definition of Switched Access Traffic in their tariff, or anything including IP  
22       telephony as part of Switched Access Traffic. I feel a little safer making this assertion  
23       knowing that BellSouth’s representatives can’t find it, either.

1 I think the main point here is that if BellSouth feels so certain that it has the authority to  
2 legislate an outcome with respect to this issue prior to the FCC's determination, it should  
3 "step up to the plate" by attempting to include a definition of "Switched Access Traffic"  
4 in its access tariff that explicitly includes IP telephony. This tactic of going state-by-  
5 state, agreement-by-agreement rather than attempting to resolve this issue directly on a  
6 national basis seems to me to indicate that it is asking this Authority to "jump the gun" on  
7 an issue in the sole jurisdiction of the FCC before the FCC has acted.  
8

9 **Q. HAS BELL SOUTH INSISTED ON INCORPORATING IP TELEPHONY IN THE**  
10 **DEFINITION OF SWITCHED ACCESS TRAFFIC IN THE**  
11 **INTERCONNECTION AGREEMENTS OF OTHER CARRIERS?**

12 A. No, and this is the shocking thing: just a few days ago, when the interconnection  
13 agreement negotiated by BellSouth with e.spire was released for the first time to the  
14 public, it was became clear that BellSouth has been litigating this issue with Intermedia at  
15 great expense in every jurisdiction, *while at the same time* voluntarily compromising the  
16 very same issue with e.spire. The e.spire/BellSouth agreement is, by the way, operative  
17 in Tennessee as well as other jurisdictions. The compromise language uses a "work-  
18 around" arrangement that allows both parties to state their position without prejudice to  
19 an ultimate resolution by the FCC. I frankly don't think this puts BellSouth in a very  
20 favorable light, fighting tooth and nail to defend the issue against Intermedia while  
21 voluntarily surrendering it to e.spire at the same time. e.spire's agreement with BellSouth  
22 contains the following definition of "Switched Access Traffic":  
23

1        Switched Access Traffic. Switched Access Traffic is defined as telephone  
2        calls requiring local transmission or switching services for the purpose of  
3        the origination or termination of Telephone Toll Service. Switched  
4        Access Traffic includes the following types of traffic: Feature Group A,  
5        Feature Group B, Feature Group C, Feature Group D, toll free access (e.g.,  
6        800/877/888), 900 access, and their successors or similar Switched  
7        Exchange Access Services. *The Parties have been unable to agree as to*  
8        *whether "Voice-Over-Internet Protocol" transmissions ("VOIP"), which*  
9        *cross LATA boundaries constitute Switched Access Traffic.*  
10       *Notwithstanding the foregoing, and without waiving any rights with*  
11       *respect to either Party's position as to the jurisdictional nature of VOIP,*  
12       *the Parties agree to abide by any effective and applicable FCC rules and*  
13       *orders regarding the nature of such traffic and the compensation payable*  
14       *by the Parties for such traffic, if any.*

15  
16       e.spire/BellSouth Interconnection Agreement, Attachment 3 (Local Interconnection) at  
17       17, Section 6.9.1 (emphasis supplied). I should point out that "VOIP" is just another way  
18       of referring to IP Telephony. This language also demonstrates BellSouth's concession  
19       that the question of how to classify VOIP is a matter within the jurisdiction of the FCC,  
20       and not a state commission.

21  
22       **Q.    IT WOULD ALSO APPEAR FROM THE ABOVE EXCERPT THAT**  
23       **BELLSOUTH WAS ABLE TO DEFINE "SWITCHED ACCESS TRAFFIC"**  
24       **WITHOUT RESORTING TO ITS TARIFF.**

25       **A.**    Yes, that's right. After BellSouth has insisted in every jurisdiction that we refer this  
26       definition out to its tariff (which doesn't contain any definition of Switched Access  
27       Traffic), we found out recently that BellSouth had no trouble at all defining this term in  
28       e.spire's agreement. This is another indication that BellSouth is treating Intermedia in a  
29       discriminatory fashion, forcing us to litigate to obtain concessions readily provided to  
30       other carriers on a voluntary basis.

1 Q. IS THE DEFINITION OF SWITCHED ACCESS TRAFFIC IN E.SPIRE'S  
2 AGREEMENT WITH BELL SOUTH ACCEPTABLE TO INTERMEDIA?

3 A. Intermedia would prefer to strike the reference to IP Telephony altogether, but yes, this  
4 wording would be acceptable as a compromise position. The question is whether  
5 BellSouth will offer it to Intermedia now that Intermedia is aware of the fact that  
6 BellSouth has made available to another carrier. In my opinion, the right thing for  
7 BellSouth to do is to close this issue altogether by offering this language to Intermedia.  
8 Any other move on BellSouth's part reveals an intent to discriminate against Intermedia  
9 by driving up Intermedia's costs unnecessarily.  
10

11 *Issue 37: Should all framed packet data transported within a VC that originate*  
12 *and terminate within a LATA be classified as local traffic?*  
13

14 Q. HAS ANY STATE COMMISSION DETERMINED THAT FRAMED PACKET  
15 DATA ORIGINATING AND TERMINATING WITHIN A LATA SHOULD BE  
16 CLASSIFIED AS LOCAL TRAFFIC?

17 A. Yes. The North Carolina Utilities Commission recently determined this issue in favor of  
18 Intermedia, noting that reciprocal compensation would also have to be paid on local  
19 frame relay traffic, since the 1996 Act requires payment of reciprocal compensation on  
20 all classes of local traffic, without regard to whether it is voice or data. The North  
21 Carolina Commission required the Parties to establish a procedure for assessing  
22 reciprocal compensation due on such traffic.  
23

1 Q. HAVE THE PARTIES BEEN ABLE TO ARRIVE AT AN AGREED-UPON  
2 METHOD FOR ASSESSING THE RECIPROCAL COMPENSATION DUE ON  
3 LOCAL FRAME RELAY TRAFFIC?

4 A. The Parties have not reached agreement on a suitable method; however, it appears likely  
5 that the Parties will adopt an interim bill and keep method pending establishment of an  
6 acceptable mechanism for assessing reciprocal compensation due on local frame relay  
7 traffic.


8  
9 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

10 A. Yes. I would like to reserve the right, however, to amend, modify, or otherwise  
11 supplement my testimony, as appropriate.

12  
13 END OF TESTIMONY  
14

**CERTIFICATE OF SERVICE**

I hereby certify that on this 5th day of September, 2000, a true and accurate copy of the foregoing was served by hand delivery, overnight delivery or U. S. Mail, first class postage prepaid, to Guy Hicks, Esq., BellSouth Telecommunications, Inc., 333 Commerce Street, Suite 2101, Nashville, TN 37201-3300.

  
H. LaDon Baltimore