BellSouth Telecommunications, Inc.
333 Commerce Street
Suite 2101
Nashville, TN 37201-3300

guy.hicks@bellsouth.com

Guy M. Hicks
General Counsel
615 214-6301
Fax 615 214-7406

November 8, 2000

VIA HAND DELIVERY

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

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

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of BellSouth Telecommunications, Inc.'s Post-Hearing Brief. Copies of the enclosed are being provided to counsel of record.

Very truly yours,

Guy M. Hicks

GMH/jem

Enclosure

235545

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

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**

BELLSOUTH TELECOMMUNICATIONS, INC.'S POST-HEARING BRIEF

BellSouth Telecommunications, Inc. ("BellSouth") hereby files its Post-Hearing Brief in the above-referenced proceeding.

INTRODUCTION

Despite negotiations between BellSouth and Intermedia Communications, Inc. ("Intermedia"), the parties were unable to agree on certain issues. These issues were set forth in the Petition for Arbitration ("Petition") filed by BellSouth, and the Answer and New Matter ("Answer") filed by Intermedia. The parties have continued to negotiate concerning the outstanding issues, and the remaining matters in this docket represent a specific dispute between BellSouth and Intermedia as to what should be included in the Interconnection Agreement between the parties. It is these issues on which the parties seek a decision from the Tennessee Regulatory Authority ("TRA" or "Authority"). BellSouth respectfully requests that the Authority adopt BellSouth's position on each issue.

SUMMARY

The first issue between the parties, Issue 2(a)[1], concerns the appropriate definition of "Local Traffic." BellSouth asserts that traffic directed to Internet Service Providers ("ISPs") should not be included in the definition of "Local Traffic" for purposes of the parties' reciprocal compensation obligations. Not only did the Federal Communication Commission ("FCC") find this traffic to be jurisdictionally interstate in its Declaratory Ruling in CC Docket No. 96-98 on February 26, 1999, it has also established a rulemaking procedure (CC Docket No. 99-68) to determine the appropriate mechanism for inter-carrier compensation for interstate ISP-bound traffic.[2] Because ISP-bound traffic is interstate traffic, there is no reason to include such in the definition of "Local Traffic."

Concerning the issue of tandem switching (Issue 3), the Authority should conclude that Competitive Local Exchange Carriers ("CLECs") are entitled to the tandem switching elemental

---

[1] For convenience and ease of reference, BellSouth will use the Issue numbers as contained in the *Revised Joint Issues Matrix*, dated July 18, 2000, and adopted by the Pre-Arbitration Officer's "Adoption of Issues and Scheduling Order" dated September 14, 2000.

[2] On March 24, 2000, the United States Court of Appeals for the District of Columbia Circuit, in *Bell Atlantic Telephone Companies v. Federal Communications Commission*, Case No. 99-1094, 2000 WL 273383 (D.C. Cir. March 14, 2000), vacated and remanded the FCC's Declaratory Ruling. In its decision, the D.C. Circuit recognized that, under the FCC's regulations, reciprocal compensation is due on calls to the Internet if, and only if, such calls "terminate" at the ISP's local facilities. Slip Op. at 9-11. The D.C. Circuit held, however, that the FCC had not adequately explained its conclusion that calls to an ISP do not terminate at the ISP's local point of presence but instead at a distant website. It thus remanded the matter to permit the FCC to explain the point more fully. *See id.* at 15 (remanding the case to allow the FCC to provide a "satisfactory explanation.") BellSouth is confident that the FCC will provide such support, and the determination that ISP-bound calls are jurisdictionally interstate will stand. The FCC has already indicated informally that it believes that it can provide the needed clarification and reach the same conclusion that it has previously – that is, that Internet-bound calls do not terminate locally. *See* Telecommunications Report, "FCC Stands By Conclusion That Calls To ISPs Are Interstate, Despite Court's Nixing 1999 Order," March 27, 2000 (noting that FCC Common Carrier Chief Lawrence Strickling does not "read this decision as telling us we made a mistake," but only requiring that the FCC "take the confusing precedents and make clear to the court why [Internet traffic] is interstate traffic.")

rate only in those circumstances where the CLEC switch actually performs, for local traffic, a switching function similar to the Incumbent Local Exchange Carrier's ("ILEC") tandem switch and actually serves a geographic area comparable to the ILEC's tandem switch. Each CLEC must prove that its own switch(es) meet this test; therefore, prior determinations relating to other CLECs cannot be controlling. BellSouth submits that Intermedia's switch clearly fails this two-pronged test, and therefore, Intermedia's request for the tandem switching rate should be denied.

With regard to issues 6(a) and (b), the Authority should find that BellSouth's proposed collocation intervals are appropriate and that using business days for collocation intervals is entirely appropriate. BellSouth relies upon governmental authorities and skilled contractors in order to meet its collocation obligations; accordingly using calendar days to measure collocation intervals would unfairly shorten the timeframe in which to respond to CLECs. Similarly, thirty (30) business days is an acceptable interval for providing Intermedia with a substantive response to collocation requests. Finally, ninety (90) business days to provision space for physical collocation is also appropriate given the necessary reliance and dependence upon skilled contractors and BellSouth employees.

Issue 7 concerns rates for space preparation charges for physical collocation. This issue was previously addressed by the Authority in Docket No. 97-01262. As confirmed at the Authority's August 29, 2000, agenda, the Authority adopted AT&T and MCI's collocation model. Although the Authority's decision must be revisited due to the Eighth Circuit's July 18, 2000 ruling, BellSouth has proposed interim rates subject to true-up for components of space preparation in lieu of Individual Case Basis ("ICB") rates. The Authority should approve the proposed interim rates.

Issue 10 deals with the question of what BellSouth's policies should be regarding conversion of virtual to physical collocation. BellSouth believes that its policies regarding conversion of virtual to physical collocation are appropriate. The terms and conditions that should apply for converting virtual to physical collocation should be consistent with the terms and conditions for the assessment and provisioning of physical collocation. BellSouth's policies regarding this type of conversion are consistent, reasonable, non-discriminatory, and are in compliance with the FCC's collocation rules. The Authority should approve BellSouth's policies for inclusion in the Interconnection Agreement between BellSouth and Intermedia.

Issue 12 deals with the question of what is the appropriate definition of "currently combines." BellSouth believes that its obligation should be limited to combinations of unbundled network elements ("UNEs") that have already been connected to each other to serve a particular customer at a particular location. This position is fully consistent with the FCC's requirements.

Issues 13(a) and (b) concern the provision of access to enhanced extended links ("EELs") and the conversion of special access service to EELs at UNE rates. Again, BellSouth believes that its obligation should be limited to combinations of UNEs that have already been connected to each other to serve a particular customer at a particular location. BellSouth and Intermedia have resolved this issue relating to the conversion of existing special access service to EELs at UNE rates (Issue 13(b)). Therefore, BellSouth will not address this issue in this brief.

Issue 18(c) deals with the question of whether BellSouth should be required to provide access to packet switching on an unbundled basis. There is no requirement under the Telecommunications Act of 1996 (the "Act") or in FCC Orders which mandates the provision of packet switching on an unbundled basis as Intermedia advocates. To the contrary, the FCC, in

its UNE Remand Order, expressly declined to require the unbundling of packet switching unless four specific conditions are present. These four conditions are not present in BellSouth's network. Intermedia presented no evidence to the contrary.

Issue 25, which concerns access to certain components of Frame Relay Service, is straightforward. Frame Relay Service is a form of packet switching. As explained in Issue 18(c), BellSouth is not required to offer any components of Frame Relay Service as UNEs under the Act or any FCC Order. Again, Intermedia provided no evidence to the contrary. The Authority should decline to require BellSouth to provide any components of Frame Relay Service as UNEs to Intermedia.

Issue 26 deals with the parties' ability to establish their own local calling areas and assign numbers for local use. BellSouth agrees that each party may establish its own local calling areas and assign numbers within such areas. However, when a CLEC assigns numbers having the same NPA/NXX to customers both inside and outside the BellSouth local calling area where the NPA/NXX is homed, BellSouth knows of no way to determine whether BellSouth's end users are making a local or a long distance call when BellSouth's end user calls the CLEC's end user. A BellSouth end user calling an Intermedia end user will be billed a local call if the NPA/NXX assigned to the Intermedia end user appears to be a local telephone number. But, if BellSouth's customer and Intermeida's customer are in different local calling areas, the call should not be treated as a local call (*i.e.,* reciprocal compensation should not apply).

Issue 29 deals with situations wherein Intermedia selects multiple tandem access ("MTA"), and addresses whether Intermedia must establish points of interconnection at all BellSouth access tandems where Intermedia's NXX's are "homed." If Intermedia elects BellSouth's MTA offer, Intermedia must designate for each of Intermedia's switches the

BellSouth access tandem at which BellSouth will receive traffic originated by Intermedia's end user customers, and the access tandem at which Intermedia will receive traffic originated by BellSouth's end user customers. Failure to make this designation may result in incomplete calls, and inevitably will result in customer dissatisfaction.

Issue 30(a) concerns whether Intermedia must be required to designate a "home" local tandem for each of Intermedia's assigned NPA/NXXs. BellSouth maintains that, if more than one BellSouth local tandem serves a particular local calling area, Intermedia must establish one of the BellSouth local tandems as a home local tandem for each of Intermedia's NPA/NXXs. Again, failure to make this designation may result in incomplete calls, and inevitably will result in customer dissatisfaction.

Issue 30(b) is related to 30(a), but concerns the issue of whether Intermedia must establish points of interconnection at BellSouth access tandems within the LATA in which Intermedia has NPA/NXXs homed. Again, BellSouth maintains that Intermedia must interconnect at each access tandem where its NPA/NXXs are homed for Intermedia's exchange access traffic. Once again, failure to do so may result in incomplete calls, and inevitably result in customer dissatisfaction.

Issues 31, 32, 33 and 37 were resolved at the hearing of this matter, and will not be addressed further herein by BellSouth.

Issue 39(a)-(d) deals with the question of appropriate charges for various frame relay components. Because BellSouth is not obligated to make frame relay available as a UNE, TELRIC pricing is neither appropriate nor required for these components of frame relay. Therefore, BellSouth proposes the use of nonrecurring and recurring charges as set forth in its

interstate access tariff. If Intermedia is carrying any frame relay traffic, BellSouth will reimburse Intermedia for a portion of the charges.

The final issue, Issue 48, concerns the question of performance measurements and penalties. BellSouth has extensive performance measurements (known as "Service Quality Measurements" or "SQMs") that address the needs of the entire CLEC community. Moreover, BellSouth's SQMs are fully enforceable through the Authority's complaint process. BellSouth would also note that Intermedia, unlike DeltaCom, has asked the Authority to adopt the entire Texas proposal, rather than specific Texas measurements adopted by this Authority in the DeltaCom-BellSouth arbitration. BellSouth's proposed measurements are comprehensive and detailed. Intermedia's request should be rejected.

DISCUSSION

Issue 2(a) Should the definition of "Local Traffic" for purposes of the Parties' reciprocal compensation obligations under Section 251(b)(5) of the 1996 Act include ISP traffic?

With respect to the Issue 2(a), BellSouth asserts that ISP-bound traffic should not be included in the definition of "Local Traffic" for purposes of the parties' reciprocal compensation obligations. (BellSouth Exhibit 3, pp. 5-6). Not only has the FCC found this traffic to be jurisdictionally interstate on several occasions, including in its Declaratory Ruling in CC Docket No. 96-98 on February 26, 1999, it has also established a rulemaking procedure (CC Docket No. 99-68) to determine the appropriate mechanism for inter-carrier compensation for interstate ISP-bound traffic.[3]

Regardless of the foregoing, requiring payment of reciprocal compensation for ISP-bound traffic is not good public policy, and does not make good business sense. Two examples illustrate why it is not appropriate to require reciprocal compensation for ISP-bound traffic.

---

[3] *See* footnote 2 *supra*.

First, it is necessary to distinguish between local exchange service and exchange (or, switched) access service. Local exchange service represents telephone calls that originate and terminate in either the same exchange or another exchange within the same local calling area associated with the originating exchange. An exchange access (long distance) call, of course, terminates outside the local calling area from which the call originates.

Subscribing to local exchange service alone does not provide an end user customer with access to the Internet. The end user must also subscribe to an ISP and generally pay a monthly rate (generally flat-rated, sometimes usage-sensitive) to the ISP. In turn, the ISP pays its local service provider for the exchange (switched) access service it receives, albeit at local business exchange rates as ordered by the FCC in Access Reform Orders.[4]

Similarly, subscribing to local exchange service alone does not provide an end user with long distance service. The user must select a long distance carrier and pay per minute rates to that carrier in order to complete long distance (exchange access) calls. In turn, the long distance carrier pays the local service provider switched access charges.

In the examples above, exchange access service—not local exchange service—is being provided to the ISP and to the long distance carrier. The local service provider who has the ISP as a customer receives compensation for the exchange access service from the ISP. This is true whether BellSouth or a CLEC is providing the access service. Therefore, the local service provider has already been compensated for providing access service to ISPs. Inappropriately providing the local service provider with reciprocal compensation for ISP-bound traffic simply

---

[4] For example, MTS and WATS Market Structure, CC Docket No. 78-72, Phase I (1983) (Third Report and Order), Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, CC Docket No. 87-215 (1987) (Notice of Proposed Rule Making), Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, CC Docket No. 87-215 (1988) (Order) and Amendments of Part 69 of the Commission's Rules

creates an unearned windfall to the local service provider who has the ISP as a customer. (BellSouth Exhibit 4, p. 6). In fact, such treatment would only serve to further increase the unreimbursed costs of the co-carrier – i.e., the carrier who does not have the ISP as a customer but whose end users originate calls to the ISP. In this case, the co-carrier has no opportunity to recover its costs associated with carrying the ISP-bound traffic – the charges to the ISP or the end user do not cover these non-local calls.

BellSouth is cognizant of the Authority's decision in BellSouth's arbitrations with NEXTLINK, Time Warner, and ITC^DeltaCom. In its deliberations in those cases, the Authority determined that the parties are required to pay reciprocal compensation for ISP-bound traffic on an interim basis until the FCC issues rules establishing an inter-carrier compensation mechanism for such traffic. BellSouth respectfully disagrees with the Authority's prior decisions and renews its request that the Authority clarify its decisions to require a true-up once the FCC establishes its mechanism. (BellSouth Exhibit 3, p. 11; BellSouth Exhibit 4, pp. 2-3).

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

A tandem switch connects one trunk to another trunk and is an intermediate switch or connection between the switch where a telephone call originates and the switch that terminates the call. An end office switch, on the other hand, connects trunks to customer lines, and allows a call to be originated or terminated. (BellSouth Exhibit 3, p. 14). If a local 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 Exhibit 3, p. 14). Intermedia is seeking to be compensated for a functionality it does not provide (Id.).

Relating to the Creation of Access Charge Subelements for Open Network Architecture (1989) (Notice of Proposed Rule Making).

Under Section 251(b)(5) of the Act, all local exchange carriers are required to establish reciprocal compensation arrangements for the transport and termination of telecommunications. 47 U.S.C. § 251(b)(5). The terms and conditions for reciprocal compensation must be "just and reasonable," which requires the recovery of a reasonable approximation of the "additional cost" of terminating calls that originate on the network of another carrier. 47 U.S.C. § 252(d)(2)(A). According to the FCC, the "additional cost" of transporting terminating traffic varies depending on whether or not a tandem switch is involved. *See* First Report and Order, *In re: Implementation of Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, CC Docket No. 96-98, ¶ 1090 (Aug. 8, 1996) (hereinafter referred to as "*First Report and Order*"). As a result, the FCC determined that state commissions can establish transport and termination rates that vary depending on whether the traffic is routed through a tandem switch or directly to a carrier's end-office switch.

The FCC directed state commissions to consider two factors in determining whether a CLEC 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 incumbent LEC's tandem switch* and thus whether some or all calls terminating on the new entrant's network should be priced the same as the sum of transport and termination via the incumbent LEC's tandem switch." *First Report and Order* ¶ 1090 (emphasis added). Second, the FCC found that "[w]here the interconnecting carrier's switch serves a geographic area comparable to that served by the incumbent LEC's tandem switch, the appropriate proxy for the interconnecting carrier's additional costs is the LEC tandem interconnection rate." *Id.*

Further, the FCC stated that "symmetrical rates are rates that a carrier other than an incumbent LEC assesses upon an incumbent LEC for transport and termination of local telecommunications traffic equal to those that the incumbent LEC assesses upon the other carrier *for the same services*." *First Report and Order,* 47 C.F.R. 51.711(a)(1) (emphasis added). Also, the FCC stated that "[w]here the switch of a carrier other than

an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate." 47 C.F.R. § 51.711(a)(3). Therefore, in order to evaluate whether a CLEC should receive the same reciprocal compensation rate as would be the case if traffic were transported and terminated via the incumbent's tandem switch, *"it is appropriate to look at both the function and geographic scope of the switch at issue." See U.S. West Communications, Inc. v. Minnesota Public Utilities Commission*, 55 F. Supp. 2d 968, 977 (D. Minn. 1999) (emphasis added).

Turning first to the issue of geographic comparability, the evidence in this record (or lack thereof) on the question of whether Intermedia's voice switches, located in Nashville and Memphis (BellSouth Exhibit 4, p. 13), serve a comparable geographic area is similar to the record evidence analyzed by the federal court in *MCI Telecommunications Corp. v. Illinois Bell Telephone Company d/b/a Ameritech Illinois, Inc.*, 1999 U.S. Dist. LEXIS 11418, *19 (N.D. Ill, June 22, 1999). In that case, MCI argued that it should be compensated at the tandem rate for its switch in Bensonville, Illinois. The Illinois Commerce Commission ("ICC") rejected MCI's argument, finding that MCI had failed to provide sufficient evidence to support a conclusion that it was entitled to the tandem interconnection rate.[5]

[5] Although the ICC did not make express findings regarding the comparable functions of MCI's switch and Ameritech's tandem switches or the comparative geographical areas served by

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

> The "Chicago area" is large, yet MCI offered no evidence as to the location of its customers within the Chicago area. Indeed, an MCI witness said that he "doubted" whether MCI had customers in every "wire center territory" within the Chicago service area. MCI's customers might have been concentrated in an area smaller than that served by an Ameritech tandem switch or MCI's customers might have been widely scattered over a large area, which raises the question whether provision of service to two different customers constitutes service to the entire geographical area between the customers. These are questions that MCI could have addressed, but did not. . . . In short, *MCI offered nothing but bare, unsupported conclusions that its switch currently served an area comparable to Ameritech tandem switch or was capable of serving such an area in the future.* The ICC's determination that "MCI has not provided sufficient evidence to support a conclusion that it is entitled to the tandem interconnection rate" was not arbitrary and capricious.

Id. at *22-23 (emphasis added).

The district court's reasoning applies equally here. In an attempt to show geographic comparability with BellSouth, Intermedia's witness Jackson filed Intermedia's calling area maps, purporting to show present and planned geographic coverage in Tennessee (Exhibit 8, Pre Filed Direct Testimony of J. Carl Jackson, proprietary Jackson Exhibit 4; Later updated as Exhibit 9) as part of his testimony.

Intermedia did not, however, produce the exact location of its customers in Tennessee. During cross-examination, Mr. Jackson admitted that Intermedia could have done so, but did not.

---

the various switches, the ICC did discuss the evidence offered by each party on these issues. *Id.* at *20. According to the district court, "[t]he issue of comparable functionality apparently was not in serious dispute" as MCI presented evidence that its switch performed similar functions as Ameritech's tandem switches -- evidence that Ameritech did not dispute. *Id.* Indeed, Ameritech did not even raise the comparable functionality issue on appeal, which led the district court to conclude that "only at issue is the geographical areas served by the respective switches." *Id.*

(Tr. Vol. II, p. 56). Intermedia's failure to provide sufficient evidence on this point is fatal to its request to be awarded the tandem switching rate.

To illustrate the importance of this point, assume Intermedia has one hundred customers with one thousand access lines in Nashville, all of which are located in the central city section of metropolitan Nashville. Under no set of circumstances could Intermedia seriously contend that in such a case its switch serves a comparable geographic area to BellSouth's Nashville switch(es). *See* Decision 99-09-069, *In re: Petition of Pacific Bell for Arbitration of an Interconnection Agreement with MFS/WorldCom*, Application 99-03-047, 9/16/99, at 15-16 (finding "unpersuasive" MFS's showing that its switch served a comparable geographic area when many of MFS's ISP customers were actually collocated with MFS's switch). Absent such evidence, Intermedia has clearly failed to satisfy its burden of proof on this issue. Indeed, Intermedia's proof of geographic comparability is a classic *ipse dixit*. That is, Intermedia contends that it may meet the geographic comparability test simply by saying that it meets the test. Yet, the record evidence belies their contention.

Turning to the issue of functionality, Intermedia's witness claims that Intermedia's switch is not required to perform tandem switching functionality. (Tr. Vol. II, p. 46). Additionally, on cross examination, Mr. Jackson admitted that the switches do not send local traffic to each other (Tr. Vol. II, p. 37). Mr. Jackson did not know whether Intermedia's switches connect one trunk to another, which is a fundamental function of a tandem switch (Tr. Vol. II, pp. 37-38; FCC Rule 51.31(c)(3)). He also admitted that Intermedia's switches do not aggregate traffic from another switch and send it to an operator services or directory assistance platform, another fundamental function of a tandem switch. (Tr. Vol. II, p. 38; FCC Rule 51.319(c)(3)).

Several federal court and state commission decisions, however, plainly hold that the functions performed by another carrier's switch should be considered in determining whether that carrier is entitled to receive compensation for end-office, tandem, and transport elements in transporting terminating traffic. *See, e.g., U.S. West Communications, Inc. v. Minnesota Public Utilities Commission*, 55 F. Supp. 2d at 977; *U.S. West Communications, Inc. v. Public Service Commission of Utah*, 75 F. Supp. 2d 1284, 1289 (D. Utah 1999) (affirming commission requirement that U.S. West compensate Western Wireless at the tandem switching rate after concluding that Western Wireless's "switches perform comparable functions and serve a larger geographic area"); *MCI Telecommunications Corp. v. Illinois Bell Telephone Company d/b/a Ameritech Illinois, Inc., Supra.* (in deciding whether MCI was entitled to the tandem interconnection rate, the commission correctly applied the FCC's test to determine whether MCI's switch "performed functions similar to, and served a geographical area comparable with, an Ameritech tandem switch"). Indeed, the Ninth Circuit Court of Appeals viewed the FCC's rule in the same way, finding that "the Commission properly considered whether MFS's switch performs similar functions and serves a geographic area comparable to US West's tandem switch." *U.S. West Communications v. MFS Intelenet, Inc., et al.* 193 F.3d 1112, 1124 (9th Cir. 1999).

The functions the switch is actually performing is significant to this issue because reciprocal compensation is not paid for loop costs, but rather only for the cost of transporting and terminating local calls. Specifically, the FCC held that the "costs of local loops and line ports associated with local switches do not vary in proportion to the number of calls terminated over these facilities. We conclude that such non-traffic sensitive costs should not be considered

'additional costs' when a LEC terminates a call that originated on the network of a competing carrier." *First Report and Order*, ¶ 1057.

Indeed, the Florida Public Service Commission's Order in the MCI/Sprint arbitration case in Docket No. 961230-TP supports BellSouth's contention. (Order No. PSC-97-0294-FOF-TP, issued March 14, 1997.) The Florida Commission determined that "MCI is not entitled to compensation for transport and tandem switching unless it actually performs each function." Earlier, in its Order in the Metropolitan Fiber Systems of Florida, Inc. ("MFS") and Sprint arbitration case in Docket No. 960838-TP, the Florida Commission determined that "MFS should not charge Sprint for transport because MFS does not actually perform this function." (Order No. PSC-96-1532-FOF-TP, issued December 16, 1996.) Similarly, the evidence in this record does not support Intermedia's position that its switch actually provides the tandem switching function for local traffic, and the Act does not contemplate that compensation for transporting and terminating local traffic should be paid when one party does not actually provide the network functionality for which it seeks compensation.[6]

On June 29, 2000, the Florida Public Service Commission Staff made the same recommendation as advocated here by BellSouth in the arbitration between BellSouth and Intermedia. Importantly, Florida's Staff looked at both the geographic comparability test as well as the functionality test, and found Intermedia's evidence lacking on both:

> Staff believes that the evidence of record is insufficient to determine if the second, geographic criterion is met. Staff is unable to reasonably determine if Intermedia is actually serving the areas they have designated as local calling areas, and as such, staff is unable to recommend that Intermedia be compensated at the tandem rate based on geographic coverage.

---

[6] In the DeltaCom arbitration, a majority of the Directors found that DeltaCom had failed to carry its burden of demonstrating that its network and the configuration of its network provided the tandem function. (*See* August 11, 2000 Interim Order of Arbitration Award at p. 37).

> As mentioned above, neither does Staff believe there is sufficient evidence in the record indicating that Intermedia's switch is performing similar functions to that of a tandem switch. Therefore, Staff is unable to recommend Intermedia be compensated at the tandem rate based on similar functionality as well. This is consistent with past decisions of this Commission.
>
> Recommendation of Florida Public Service Commission Staff, June 29, 2000, Docket No. 991854-TP, p. 18.

The Florida Commission voted to adopt the Staff's Recommendation on August 1, 2000 and entered its Order of August 22, 2000. (Copy of the Order is attached as Attachment 1.)

The California Public Utilities Commission ("CPUC") also reached a conclusion similar to the Florida Commission on this issue. In an arbitration proceeding between MFS/WorldCom and Pacific Bell, the CPUC held that "a party is entitled to tandem and common transport compensation only when the party actually provides a tandem or common transport function." *See* Decision 99-09-069, *In re: Petition of Pacific Bell for Arbitration of an Interconnection Agreement with MFS/WorldCom*, Application 99-03-047, 9/16/99, at 16. The CPUC further found unpersuasive MFS/WorldCom's argument that its network served a geographic area comparable in size to that served by Pacific Bell's tandem switch.

For the foregoing reasons, the Authority should deny Intermedia's request for tandem switching compensation. Intermedia proved neither that its switch is actually performing local tandem switching nor that its switch serves a geographic area comparable to BellSouth's switch.

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

BellSouth's standard collocation intervals use business days. BellSouth uses business days to measure collocation intervals because of its necessary reliance upon BellSouth employees and various contractors. Both contractors and BellSouth employees typically work during normal business hours, Monday through Friday. (BellSouth Exhibit 1, p. 10).

BellSouth believes that 30 business days is a reasonable time frame within which to respond to a CLEC's request for collocation and to advise the CLEC what the cost will be. Within the 30 business day time frame, BellSouth advises CLECs within 10 business days as to whether space is available. (BellSouth Exhibit 1, p. 3).

As Mr. Milner pointed out in his testimony, there are numerous factors to be considered when evaluating a collocation request:

> First, the existing building configuration is considered. This entails consideration of the existing building configuration, location of doors, hallways, stairs, lounges, air handling equipment, the building outline and the physical capacity of the structure.
>
> Second, space usage and forecasted demand is considered. There are several steps in this review of the facility. These steps identify the amount of building space available for collocation. Space is categorized, then used space, occupied space, or reserved space is removed from consideration. Space available for collocation is then determined.
>
> Third, building code and regulatory requirements are considered. There are building codes at national, state, and local levels that affect space allocations. For example, the National Fire Protection Act provides minimum requirements, with due regard to function, for the design, operation, and maintenance of buildings and structures for safety to life from fire and similar emergencies. The Standard Building Code defines types and methods of construction for various functions to protect the occupants of the structure. Counties and municipalities often adopt the National Fire Protection Act and Standard Building Code, and may add new regulations, restrictions, and interpretations to these national codes.
>
> Fourth, BellSouth design practices act as another set of codes specifying space allocations that meet the safety needs for employees and vendors, as well as customer service needs provided by the building and its occupants. These practices detail maximum equipment line-up length, travel distances to exits, front and rear equipment aisle widths, and the size of various support components (such as air conditioning, house service panels, duct, conduit, ceiling rack heights, size and number of toilet facilities, lounges, storerooms, etc.). These practices also dictate the separation distances necessary to prevent service outages caused by grounding violations. These grounding violations are usually caused by people being able to work on one type of equipment and inadvertently touching another type. The solution is to separate the equipment by the type of grounding path required. This is referred to as integrated and isolated ground plane separation.

> Finally, when a collocation request has been determined to be feasible after all the above factors have been considered, the specific request must be further reviewed by cost analysts so that a price for providing the desired space may be quoted to the CLEC.
>
> (BellSouth Exhibit 1, pp. 4-6).

Moreover, the Authority should affirm that BellSouth will complete its construction and provisioning activities within 90 business days under normal conditions or 130 business days under extraordinary conditions. (BellSouth Exhibit 1, p. 3). Space preparation and network infrastructure work must be completed regardless of the type of arrangement selected. Therefore, BellSouth's provisioning intervals of 90 business days under normal circumstances or 130 business days under extraordinary conditions are appropriate whether applied to caged or cageless physical collocation. (BellSouth Exhibit 1, p. 8).

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

The Authority determined in its January 24, 1997 Order in Docket 96-01152 that it was appropriate to determine space preparation charges on an Individual Case Basis ("ICB") (BellSouth Exhibit 3, p. 21). There are numerous components of space preparation such as Mechanical/HVAC, Project Management, cable racking, fiber duct, framework, aisle lighting and framework ground conductors. BellSouth's Mechanical/HVAC charge recovers the start-up costs associated with the required mechanical engineering, obtaining permits, and other mechanical construction work to ensure that adequate cooling is provided to the collocator's equipment based on the heat load information provided in the application. BellSouth's Project Management charge recovers the cost of tracking the project, administering the contract, maintaining status reports, paying contractors, tracking permits and meeting with the collocator.

Generally, the charge for space preparation is still ICB.[7] Based on experience BellSouth has gained, it has been able to standardize certain components of space preparation such as Mechanical/HVAC and Project Management. BellSouth has determined interim standard costs for these components subject to true-up. For Mechanical/HVAC, the interim charge is $2,100 per ton, and for Project Management, the interim charge is $1,675. (BellSouth Exhibit 4, p. 19). Until the Authority establishes permanent collocation rates, BellSouth has proposed interim rates subject to true-up for components of space preparation in lieu of ICB as ordered by the Authority in Docket No. 96-01152. This proposal is made in response to Intermedia's concerns regarding ICB rates. (BellSouth Exhibit 4, p. 19).

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

BellSouth's policies regarding conversion of virtual to physical collocation are reasonable. The terms and conditions that should apply for converting virtual collocation to physical collocation should be consistent with the terms and conditions of the assessment and provisioning of physical collocation. (BellSouth Exhibit 1, p. 11). This is because an application for the conversion of virtual to physical collocation is evaluated by BellSouth in the same manner as an application for physical collocation. (*Id.*).

BellSouth allows conversion of virtual collocation arrangements to physical without requiring the relocation of the equipment where three conditions are met. Those conditions are: 1) that there is no change in the amount of equipment or the configuration of the equipment that was in the virtual collocation arrangement; 2) that the conversion of the virtual collocation arrangement would not cause the equipment or the results of that conversion to be located in the space that BellSouth has reserved for its own future needs; and 3) that due to the location of the

[7] As mentioned, space preparation charges are being addressed by the Authority in Docket

virtual collocation arrangement, the converted arrangement does not limit BellSouth's ability to secure its own equipment and facilities. (BellSouth Exhibit 1, pp. 11-12)

Given the foregoing, it is obvious that BellSouth's above-referenced collocation policies are reasonable, and BellSouth requests that the Authority should so find. Moreover, it is also clear that, if a collocator makes a request for conversion from virtual to physical collocation, the collocator should be responsible for any cost incurred by BellSouth. (BellSouth Exhibit 2, p. 7).

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

BellSouth will provide combinations to Intermedia at cost-based prices if the elements are already combined and providing service to a particular customer at a particular location. (BellSouth Exhibit 3, p. 23).[8] Intermedia contends that "currently combined" and "currently combines" refers to any service that BellSouth offers in its tariffs, whether or not the elements are physically combined and providing service to the customer in question. (BellSouth Exhibit 3, p. 24). In short, Intermedia contends that BellSouth is obligated to combine UNEs for Intermedia. Intermedia's position is overreaching, and goes beyond what the FCC and the Eighth Circuit require.

The FCC, in its UNE Remand Order, confirmed that BellSouth presently has no obligation to combine network elements for CLECs, when those elements are not currently combined in BellSouth's network. The FCC also confirmed that "except upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines." 47 C.F.R. § 51.315(b).

No. 97-01262.

[8] BellSouth acknowledges but respectfully disagrees with the Arbitrators' decision with respect to Issues 2(b)(ii) and 2(b)(iii) in the DeltaCom arbitration (Docket No. 99-00430).

The FCC also made clear in its UNE Remand Order that Rule 315(b) applies to elements that are "in fact" combined. In that Order, the FCC found that "to the extent an unbundled loop is in fact connected to unbundled dedicated transport, the statute and our rule 315(b) require the incumbent to provide such elements to requesting carriers in combined form." (¶ 480, emphasis added). Indeed, the FCC specifically declined to adopt a definition of "currently combined" that would include all elements "ordinarily combined" in the incumbent's network, which is apparently the definition advocated by Intermedia. *Id.*

Further, In the Eighth Circuit Court of Appeal's July 18, 2000 ruling, the Eighth Circuit stated that an ILEC is not obligated to combine UNEs, and it reaffirmed that the FCC's Rules 51.315(c)-(f) remain vacated. Specifically, referring to Section 251(c)(3) of the Act that requires ILECs to provide UNEs in a manner that allows requesting carriers to combine such telecommunications services, the Eighth Circuit stated: "[h]ere Congress has directly spoken on the issue of who shall combine previously uncombined network elements. It is the requesting carriers who shall 'combine such elements.' It is not the duty of the ILECs to 'perform the functions necessary to combine unbundled network elements in any manner' as required by the FCC's rule." Iowa Utilities Board v. FCC, ____ F. 3d ____, 2000 WL 979117, at *13 (8th Cir. July 18, 2000).

The TRA should not ignore the FCC's or Eighth Circuit's findings as outlined above. BellSouth urges the Authority to find that BellSouth is obligated to provide UNE combinations at TELRIC-based rates only where such combinations are in fact combined in BellSouth's network and providing service to a particular customer at a particular location.

Issue 13: Should BellSouth be required to: (a) provide access to enhanced extended links ("EELs") at UNE rates? (b) allow Intermedia to convert existing special access services to EELs at UNE rates?

This issue is similar to, and related to, Issue 12 as stated above regarding the definition of "currently combined."[9] The FCC declined to define the EEL as a separate network element in its UNE Remand Order. (¶ 478). Moreover, the rationale of the Eighth Circuit's ruling is equally applicable to this issue. Therefore, except where currently combined elements in BellSouth's network comprise an EEL, BellSouth currently has no general obligation to provide CLECs with the EEL. BellSouth will make new combinations that comprise EELs available to CLECs at cost-based rates consistent where it has opted to not offer unbundled local switching as permitted by the FCC's rules.

As stated earlier, BellSouth believes part (b) of this Issue to have been settled regionally, mooting the issue in Tennessee.

Issue 18(c): Should BellSouth be required to provide access on an unbundled basis in accordance with, and as defined in, the FCC's UNE Remand Order, to packet switching capabilities?

BellSouth contends that neither the Act nor the FCC's Rules require it to unbundle packet switching. In its UNE Remand Order, the FCC expressly declined "to unbundle specific packet switching technologies incumbent LECs may have deployed in their networks." (¶ 311). Although the FCC adopted "one limited exception" to this rule, the FCC specifically rejected "e.spire/Intermedia's request for a packet switching or frame relay unbundled element." (¶ 312). Indeed, the FCC concluded that "e.spire/Intermedia have not provided any specific information to support a finding that requesting carriers are impaired without access to unbundled frame relay." (Id.). In this proceeding, Intermedia has provided no additional support for its request;

therefore, the Authority should not require BellSouth to offer access to packet switching capabilities on an unbundled basis.

The "limited exception," as set forth in 47 C.F.R. § 51.319(c)(5), establishes four conditions. If each condition is satisfied, then an ILEC would be required to unbundle packet switching. Each of these conditions, however, do not exist in BellSouth's network. (BellSouth Exhibit 3, pp. 31-32).

The FCC went on to state in its UNE Remand Order that "no party alleged that packet switching was proprietary within the meaning of section 251(d)(2)" and "that the record provides no basis for withholding packet switching from competitors based on proprietary considerations or subjecting packet switching to the more demanding 'necessary' standard set forth in section 251(d)(2)(A)." (¶ 305). The FCC found it appropriate to examine packet switching under the "impair" standard of section 251(d)(2)(B). (Id.).

The FCC determined that competing carriers would not be impaired without unbundled access to the incumbent LEC's packet switching functionality. (¶ 306). The FCC recognized that there are numerous carriers providing service with their own packet switches, and that "competitors are actively deploying facilities used to provide advanced services to serve certain segments of the market—namely, medium and large business—and hence they cannot be said to be impaired in their ability to offer service." (Id.)

It is true that the FCC authorized state commissions to unbundle additional network elements, but only to the extent that a competing carrier proves to the state commission that it is impaired without access to those elements. Intermedia failed to make any such showing in this proceeding.

[9] As stated above, BellSouth acknowledges, but respectfully disagrees with the Authority's decision with respect to Issues 2(b)(ii) and 2(b)(iii) in the DeltaCom arbitration (Docket No. 99-

Indeed, Intermedia has not produced a single shred of evidence which would indicate that it is impaired without access to packet switching on an unbundled basis. Intermedia makes no showing of impairment in its testimony other than to assert that it would like to have such access. Because there is no record evidence indicating that Intermedia is impaired in its packet switching capabilities, the Authority should reject Intermedia's request to require BellSouth to provide access to packet switching on an unbundled basis unless and until the Authority finds that all four of the conditions established by the FCC are met.

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

This issue addresses specific packet switching components of Frame Relay Service, and whether BellSouth is required to furnish access to these components as UNEs. Intermedia does not dispute that Frame Relay switching is a form of packet switching. Each of the elements included in Issue 25 (UNI, NNI and DLCI) is a component of frame relay packet switching. As explained under Issue 18(c), the FCC declined to unbundle the packet switching functionality, of which frame relay is a type, except in limited circumstances. Those circumstances do not apply in BellSouth's network. Therefore, BellSouth requests that the Authority find that BellSouth is not required to provide access to these elements at TELRIC-based rates. BellSouth has a tariffed Frame Relay Service, which is currently purchased by Intermedia for interconnection of the parties' frame relay networks. (BellSouth Exhibit 3, p. 39).

00430).

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

BellSouth agrees that each party can establish its own local calling area and can assign telephone numbers for local use anywhere within such areas. Intermedia should, however, use its NPA/NXXs in such a way that allows BellSouth to distinguish local traffic from intraLATA toll traffic and interLATA toll traffic for BellSouth originated traffic. When a CLEC assigns numbers having the same NPA/NXX to customers both inside and outside the BellSouth local calling area where the NPA/NXX is homed, it would be extremely difficult to determine whether BellSouth's end users are making a local or a long distance call when BellSouth's end user calls the CLEC's end user. (BellSouth Exhibit 3, p. 39). Thus, if Intermedia assigns numbers with the same NPA/NXX both inside and outside the BellSouth local calling area, it would be difficult, if not impossible, for BellSouth to determine what type of call has been made and to determine what charges apply. Indeed, when this occurs, BellSouth routes its originating traffic to Intermedia assuming it is a local call and bills its end user as though he or she had made a local call (due to the originating and terminating NPA/NXXs being assigned to the same exchange rate center). However, Intermedia may deliver the traffic to an end user located outside the local calling area, and possibly in a different LATA. In this situation, under Intermedia's proposal, BellSouth would be required to pay reciprocal compensation for a non-local call.

Contrary to Intermedia's claim, BellSouth is indifferent to the manner in which Intermedia defines its local calling areas for its own end users. In order to properly route traffic, however, all telecommunications service providers must inform all other telecommunications service providers as to where traffic for a given NPA/NXX code should be delivered for completion of the calls.

An example that Ms. Cox gave in her rebuttal testimony is helpful in understanding the problem faced by BellSouth if Intermedia's position is adopted in this proceeding:

> For example, when Intermedia was assigned the 615/472 NPA/NXX, Intermedia would have told the administrator where 615/472 was assigned. Let's say Intermedia assigned the 615/472 code to the Nashville, Tennessee rate center. If a BellSouth customer in the Nashville local calling area called a number in the 615/472 code in this example, BellSouth would treat the call as a local call for purposes of billing its Nashville, Tennessee customer. Likewise, if a BellSouth customer in Memphis called a number in the 615/472 code, BellSouth would bill the customer for a long distance call.
>
> Let's continue to use the hypothetical case of the 615/472 code that Intermedia assigned to the Nashville, Tennessee rate center. Now, assume that Intermedia assigns the number 615/472-2000 to one of its customers in Memphis. If a BellSouth customer in Nashville calls 615/472-2000, BellSouth would treat the call as if its Nashville customer had made a local call. However, BellSouth would hand off the call to Intermedia at a BellSouth designated point of interconnection. Intermedia would then carry the call from that point of interconnection to its end user in Memphis. The end points of the call are in Nashville and Memphis. As a more extreme example, Intermedia could elect to assign another number, say 615/472-3000 to one of its customers who is physically located in New Orleans. A call from a BellSouth customer in Nashville, Tennessee to 615/472-3000 would be treated as if he made a local call, but the call would actually terminate in New Orleans. Intermedia proposes for BellSouth to pay reciprocal compensation on those calls from Nashville to Memphis or from Nashville to New Orleans that I have just described, even though such calls are clearly long distance calls.
>
> In addition to the long distance service described above that Intermedia could provide, they could also provide local service using that same 615/472 code. Intermedia could elect to assign another number, say 615/472-5555 to one of its customers who is physically located in Nashville, Tennessee. A BellSouth customer in Nashville who called 615/472-5555 would be making a local call. BellSouth agrees that appropriate reciprocal compensation should apply on that call.
>
> (BellSouth Exhibit 4, pp. 30-32).

Clearly, should Intermedia prevail on this issue, reciprocal compensation will be paid for calls that are clearly not local calls. Intermedia's position should be rejected.

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

MTA is an interconnection option available to all CLECs, including Intermedia. The MTA option obviates the need for a CLEC to establish interconnection trunking at access tandems where the CLEC has no NPA/NXX codes homing. (BellSouth Exhibit 1, p. 15). NPA/NXX code homing arrangements are published in the Local Exchange Routing Guide ("LERG"), so that all telecommunications companies in the industry will know where in the network to send calls and where the calls originate (Id.). To ensure proper routing of calls, the CLEC must interconnect with BellSouth's network at each access tandem where the CLEC's NPA/NXX codes home. *(Id.)*.

BellSouth is in no way attempting to limit Intermedia's flexibility regarding its network or numbering scheme. All telecommunications carriers, including BellSouth, must know where Intermedia's NPA/NXX codes are homed. If not, required translations and routing of calls will not be possible and calls will not be completed, which will inevitably lead to customer dissatisfaction. (BellSouth Exhibit 1, p. 16).

Issue 30: Should Intermedia be required to: (a) designate a "home" local tandem for each assigned NPA/NXX? (b) establish points of interconnection to BellSouth access tandems within the LATA on which Intermedia has NPA/NXX's homed?

With respect to part (a), BellSouth's local tandems were created for efficient tandem switching of local traffic served by those local tandems. By interconnecting to a BellSouth local tandem, Intermedia may deliver its originated local traffic to BellSouth end offices (and third party end offices) subtending that BellSouth local tandem. If more than one BellSouth local tandem serves a particular BellSouth local calling area, and Intermedia elects to interconnect at BellSouth's local tandem(s) for Intermedia's local traffic, Intermedia must establish one or more

of the BellSouth local tandems as a home local tandem for its NPA/NXXs and establish interconnection to the BellSouth local tandem(s) on which Intermedia homes its NPA/NXXs. (BellSouth Exhibit 1, p. 19). If telecommunications service providers do not know where Intermedia's NPA/NXX codes are homed, then it is impossible for proper translations and routing instructions to be created and implemented. As a result, calls to and from Intermedia's end user customers cannot be completed, and ultimately this will lead to customer dissatisfaction. (Id.)

As to part (b), BellSouth's position is that Intermedia may interconnect its network to BellSouth's network at one or more access tandems in the LATA for delivery and receipt of its access traffic. However, Intermedia must interconnect at each access tandem where its NPA/NXX codes are homed. As stated above (and as similar to Issue 29), telecommunications service providers inform all other telecommunications service providers where traffic for a given NPA/NXX code should be delivered for completion of calls. Telecommunications service providers then build translations and routing instructions based on that information to ensure the proper handling of calls. (BellSouth Exhibit 2, pp. 10-11). Again, as stated previously, if telecommunications service providers do not know where Intermedia's NPA/NXX codes are homed, then it is impossible for proper translations and routing instructions to be created and implemented, and calls to and from Intermedia's end user customers cannot be completed, which will ultimately lead to customer dissatisfaction.

Issue 39: What are the appropriate charges for: (a) interconnection trunks between the Parties' frame relay switches? (b) frame relay network-to-network interface ("NNI") ports? (c) permanent virtual circuit ("PVC") segments (i.e., Data Link Connection Identifier ("DLCI") and Committed Information Rates ("CIR")? (d) requests to change a PVC segment or PVC service order record?

Each of the items listed above in this issue are components of Frame Relay Service. As discussed under Issues 18(c) and 25, BellSouth is not required to unbundle packet switching under Section 251 of the Act, or by any FCC Order. Thus, the rates for these components are not subject to TELRIC pricing methodology.

BellSouth's position is that the appropriate charges for frame relay interconnection trunks are from BellSouth's Access Tariff because frame relay is typically transporting interLATA traffic. (BellSouth Exhibit 3, p. 54). Currently, charges for interconnection trunks that carry typical voice grade traffic on an interLATA basis are billed from the interstate access tariff, and there is no reason to treat frame relay traffic any differently. (Id.) Therefore, the appropriate charge for each of the components listed above are found in BellSouth's Interstate Access Tariff FCC No. 1 (BellSouth Exhibit 3, p. 56). If Intermedia is carrying local frame relay traffic, BellSouth will reimburse Intermedia for a portion of the tariffed charges.

Issue 48: Should the parties adopt the performance measures, standards, and penalties imposed by the Texas Public Utility Commission on Southwestern Bell Telephone?

As the Authority is well aware, BellSouth already has an extensive set of performance measurements (known as Service Quality Measurements or "SQMs"). BellSouth has spent over two years of work in establishing its performance measurements with input from the CLEC community as well as the FCC and several state commissions. (BellSouth Exhibit 5, p. 3). Although Intermedia claims that BellSouth's SQMs are inadequate as compared to the Texas plan, BellSouth is unaware of any comparison of the BellSouth and Texas measurements performed by Intermedia. (BellSouth Exhibit 6, p. 4). BellSouth has performed such a

comparison, and as Mr. Coon pointed out, there are very few differences between the two sets of measurements. (BellSouth Exhibit 6, p. 5, Rebuttal Exhibit DAC-1 attached thereto).

There is no need to change horses in the middle of the stream. This Authority is aware of the breadth and scope of BellSouth's SQMs. BellSouth acknowledged the TRA's vote to adopt 30 additional Texas Plan measurements. BellSouth, however, on August 28, 2000, filed a Motion for Reconsideration of that Order. BellSouth respectfully renews that request herein.

With respect to penalties, the FCC has expressed a preference for self-effectuating enforcement mechanisms. (BellSouth Exhibit 3, p. 60). Such enforcement measurements are appropriate in connection with obtaining Section 271 relief, and not before. BellSouth has prepared a Voluntary Self-Effectuating Enforcement Mechanisms ("VSEEMs") that has been adopted into numerous CLEC agreements and that adequately addresses Intermedia's concerns in this docket. (Id.). If the Authority chooses to adopt enforcement mechanisms, BellSouth submits that it should adopt those voluntary provisions contained in BellSouth Exhibit 3, Exhibit DAC-5, rather than adopting the Texas plan advocated by Intermedia.

Finally, it should also be noted that this Authority has many remedies available to it for carrying out its regulatory duties. There is, however, no provision that gives it authority to order parties to a contract to enter into a penalties provision. BellSouth's plan is voluntary, and its good faith proposal should not be interpreted as an acknowledgement that the Authority may impose self-effectuating penalties or liquidated damages without BellSouth's voluntary agreement. (BellSouth Exhibit 4, p. 45).

CONCLUSION

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

Respectfully submitted, this 8th day of Nov., 2000.

GUY M. HICKS
333 Commerce Street, Suite 2101
Nashville, Tennessee 37201-3300
(615) 214-6301

R. DOUGLAS LACKEY
A. LANGLEY KITCHINGS
T. MICHAEL TWOMEY
Suite 4300, BellSouth Center
675 West Peachtree Street, N.E.
Atlanta, GA 30375
(404) 335-0765

ATTORNEYS FOR BELLSOUTH
TELECOMMUNICATIONS, INC.

232655

CERTIFICATE OF SERVICE

I hereby certify that on November 8, 2000, a copy of the foregoing document was served on the parties of record, via the method indicated:

[ ] Hand
[X] Mail
[ ] Facsimile
[ ] Overnight

Carl Jackson, Senior Director
Intermedia Communications, Inc.
360 Interstate North Parkway, # 500
Atlanta, GA 30339

[ ] Hand
[X] Mail
[ ] Facsimile
[ ] Overnight

Scott Saperstein
Senior Policy Counsel
Intermedia Communications, Inc.
3625 Queen Palm Drive
Tampa, FL 33619

[ ] Hand
[X] Mail
[ ] Facsimile
[ ] Overnight

H. LaDon Baltimore, Esquire
Farrar & Bates
211 Seventh Ave. N, # 320
Nashville, TN 37219-1823

[ ] Hand
[X] Mail
[ ] Facsimile
[ ] Overnight

Enrico C. Soriano, Esquire
Kelley, Drye & Warren
1200 19th St., NW, #500
Washington, DC 20036