BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE
JUNE 25, 2001

IN RE:	)	
	)	
PETITION FOR ARBITRATION OF THE	)	DOCKET NO. 99-00948
INTERCONNECTION AGREEMENT BETWEEN	)	
BELLSOUTH TELECOMMUNICATIONS, INC.	)	
AND INTERMEDIA COMMUNICATIONS, INC.	)	
PURSUANT TO SECTION 252(b) OF THE	)	
TELECOMMUNICATIONS ACT OF 1996	)	

INTERIM ORDER OF ARBITRATION AWARD

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On February 6, 2001, this matter came before the Directors of the Tennessee Regulatory Authority ("Authority") acting as Arbitrators pursuant to Section 252 of the Telecommunications Act of 1996 ("Act") upon the filing of a petition of BellSouth Telecommunications, Inc. ("BellSouth") for arbitration of an interconnection agreement between it and Intermedia Communications, Inc. ("Intermedia").

I. Factual and Procedural History

BellSouth filed its petition for arbitration ("Petition") on December 7, 1999 pursuant to Section 252 of the Act. The Petition contained ten (10) issues with additional sub-issues. Intermedia responded on January 3, 2000 and listed forty-eight (48) issues for arbitration. The Directors appointed a Pre-Arbitration Officer at the January 25, 1999 Authority Conference to address certain procedural questions in advance of the Authority determining whether to accept the Petition.

The Pre-Arbitration Officer held a Pre-Arbitration Conference on March 2, 2000. Counsel for BellSouth and Intermedia attended the Pre-Hearing Conference. The Pre-Hearing Officer issued the *Report and Recommendation of Pre-Hearing Officer* ("Report") on March 6, 2000. The Pre-Hearing Officer concluded that BellSouth timely filed the Petition. In addition, the Pre-Hearing Officer noted that the parties agreed to: 1) waive the statutory period indefinitely for resolution of the issues; 2) participate in substantive mediation; and 3) file an updated joint matrix. The Pre-Hearing Officer concluded the Report by recommending that the Directors accept the Petition, appoint arbitrators, appoint a pre-arbitration officer, and direct the parties to go forward with mediation.

At the March 14, 2000 Authority Conference, the Pre-Hearing Officer summarized the Report, and the Directors determined there were no objections to the Report. Thereafter, the Directors voted unanimously to accept the Report.

The parties participated in mediation on April 19, 2000 and a telephonic status conference on June 2, 2000. The Arbitrators conducted a hearing in this matter on September 19 and 20, 2000. As a result of these three events, the parties resolved all issues except issues 2(a), 3, 6(a), 6(b), 7, 10, 12, 13(a), 18(c), 25, 26, 29, 20(a), 30(b), 39(a) – (d), and 48. The Arbitrators deliberated the merits of all outstanding issues, except Issue 48, immediately following the regularly scheduled Authority Conference on February 6, 2001.

II. Issue 2(a) – Should the definition of "local traffic" for purposes of the parties' reciprocal compensation obligations under Section 251(b)(5) of the Act include Internet Service Provider ("ISP")-bound traffic?

A. Positions of the Parties

BellSouth maintains that ISP-bound traffic is jointly provided access traffic within the exclusive jurisdiction of the FCC and is not an appropriate issue for arbitration under Section 252 of the Act. BellSouth argues that the definition of "local traffic" for purposes of the parties' reciprocal compensation obligations under Section 251(b)(5) of the Act, should not include ISP-bound traffic. BellSouth proposes the following definition for "local traffic":

> Local Traffic is defined as any telephone call that originates in one exchange and terminates in either the same exchange, or other **exchange within the same** local calling area associated with the originating exchange as defined and specified in Section A3 of BellSouth's General Subscriber Service Tariff. As clarification of this definition and for reciprocal compensation, Local Traffic does not include traffic that originates from or is directed to or through an enhanced service provider or information service provider. Local traffic does not include calls placed to an end user customer, or placed on behalf of an end user customer, to establish or maintain a network connection if:
>
> (a) for minute of use rated traffic to be billed by the terminating carrier as a result of the call, such call is not recognized by industry practice to constitute traffic which results from a telephone call; or
>
> (b) the end user customer does not control the destination and the content of the call; or
>
> (c) the traffic (i.e., minutes of use) to be billed by the terminating carrier does not serve any legitimate purpose unrelated to the receipt of reciprocal compensation or other benefit that may be derived solely from establishing or maintaining the network connection.[1]

BellSouth maintains that the above definition is necessary to specify that ISP-bound traffic is not included in the definition of "local traffic."

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[1] Cynthia K. Cox, Pre-Filed Direct Testimony, p. 5-6 (July 18, 2000) (footnote omitted).

Additionally, BellSouth argues that the FCC clearly provided that reciprocal compensation rules do not apply to interstate or interLATA traffic such as interexchange traffic.[2] BellSouth also contends that the FCC has held that no part of an ISP-bound traffic terminates at the ISP. Instead, BellSouth argues, the FCC concluded that ISP-bound traffic terminates at websites that are often located in areas outside the originating calling area and, therefore, is interstate for jurisdictional purposes. BellSouth further argues that the FCC has established a rulemaking procedure to determine the appropriate mechanism for inter-carrier compensation for traffic of this type.

BellSouth states that the payment of reciprocal compensation for ISP-bound traffic is not good public policy and/or business sense. BellSouth maintains that providing the local service provider with reciprocal compensation for ISP-bound traffic creates a windfall to the local service provider who has the ISP as a customer. Although BellSouth acknowledges that the Authority has previously found that ISP-bound traffic is subject to reciprocal compensation in other arbitrations, BellSouth disagrees with those decisions. BellSouth states that it is willing, in this arbitration, to abide by the Authority's ruling on this issue in other arbitrations with the understanding that payment of reciprocal compensation for ISP-bound traffic is an interim compensation mechanism that will be trued-up on a retroactive basis when the FCC establishes its mechanism for compensating such traffic.

Intermedia acknowledges that Incumbent Local Exchange Carriers ("ILECs") and Competing Local Exchange Carriers ("CLECs") appealed the *Declaratory Ruling* to the U.S. Court of Appeals for the District of Columbia Circuit.[3] In that appeal, contends Intermedia, the

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[2] BellSouth relies on the FCC's decision in *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 99-38, 14 FCC Rcd. 3689, ¶¶ 25-26 (1999) (Declaratory Ruling in CC Doc. No. 96-98) (hereinafter *Declaratory Ruling*).

[3] *See Bell Atl. Tel. Cos. v FCC*, 206 F.3d 1 (D.C. Cir. 2000).

ILECs challenged the determination that ISP-bound traffic could qualify for reciprocal compensation under interconnection agreements, and CLECs challenged the decision that ISP-bound traffic is not "local" and does not qualify for reciprocal compensation under Section 251(b)(5) of the Act. Intermedia argues that, although the Court did not reject the "end-to-end" analysis for the purposes of establishing jurisdiction, it held that the analysis has no relevance in determining whether ISP-bound traffic is "local" for reciprocal compensation purposes. Intermedia contends that the resulting conclusion is that even if ISP-bound calls are jurisdictionally interstate they can still be subject to reciprocal compensation under Section 251(b)(5) of the Act. Further, contends Intermedia, state commissions may continue to exercise jurisdiction over reciprocal compensation for ISP-bound traffic.

Intermedia maintains that the definition of "local traffic" in the parties' agreement should include traffic that originates from or is carried to an ISP. Intermedia argues that the Act defines the obligations of carriers to provide reciprocal compensation for the exchange of traffic and does not exclude local calls to ISPs from interconnection and reciprocal compensation arrangements. Intermedia also maintains that if the Arbitrators adopt the language proposed by BellSouth, the Arbitrators will force Intermedia to carry a call from a BellSouth customer to an ISP customer belonging to Intermedia without being compensated. Intermedia further argues that the U.S. Court of Appeals for the Fifth Circuit issued a decision which affirmed the holding that dial-up calls to ISPs are local calls for purposes of reciprocal compensation.[4] Finally, Intermedia argues that the Authority has consistently required the payment of reciprocal compensation for ISP-

[4] *See Southwestern Bell Tel. Co. v. Public Util. Comm. Of Texas*, 208 F.3d 475 (5th Cir. 2000).

bound calls in other arbitrations and contends there is no reason to depart from that requirement in this case.

B. Deliberations and Conclusions

The Arbitrators recognize that they have decided this same issue in two other arbitrations.[5] In *Time Warner*, the Arbitrators concluded "that compensation should be paid for the carriage of ISP-bound traffic and that, in the absence of a federal rule governing intercarrier compensation for ISP-bound traffic, reciprocal compensation is an appropriate mechanism to effect that recovery."[6] In *DeltaCom*, the Arbitrators relied on their decision in *Time Warner*.

Consistent with their previous decisions, the Arbitrators voted unanimously that the definition of local traffic, for the purposes of reciprocal compensation under Section 251(b)(5) of the Act, should include ISP-bound traffic. Thus, the Arbitrators directed the parties to arrive at a new definition of local traffic that allows for the payment of reciprocal compensation for ISP-bound traffic.[7]

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[5] *See In Re: Petition for Arbitration of the Interconnection Agreement Between BellSouth Telecommunications, Inc. and Time Warner Telecom of the Mid-South, L.P. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket No. 99-00797, *Final Order of Arbitration Award*, 3-5 (Aug. 4, 2000) (hereinafter *Time Warner*); *In Re: Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996*, Docket No. 99-00430, *Interim Order of Arbitration Award*, 31-34 (Aug. 11, 2000) (hereinafter *DeltaCom*).

[6] *Time Warner*, *Final Order of Arbitration Award*, p. 4.

[7] The Arbitrators did not order that previous reciprocal compensation arrangements be trued-up.

III. Issue 3 - Should Intermedia be compensated for end office, tandem, and transport elements, for the purpose of reciprocal compensation?

A. Positions of the Parties

BellSouth argues: "In order for Intermedia to appropriately charge tandem switching rate elements, Intermedia must demonstrate to the Authority that: 1) its switch serves a comparable geographic area to that served by BellSouth's tandem switch and that 2) its switch performs local tandem functions. Intermedia should only be compensated for the functions that it actually provides."[8]

BellSouth describes a tandem switch as a connection between one trunk and another trunk and as an intermediate switch or connection between an originating telephone call location and the final destination of the call. BellSouth describes the end office switch as a connection to a telephone subscriber that allows the call to be originated or terminated. If Intermedia's switch is an end office switch, then it is handling calls that originate from or terminate to customers served by that local switch, and thus, Intermedia's switch is not providing a tandem function.

Intermedia counters "that it is entitled to compensation at BellSouth's tandem interconnection rate if Intermedia's switch serves a geographic area comparable to the area served by BellSouth's tandems."[9] Intermedia contends that Section 51.711(a)(3) of the FCC Rules, which states that the ILEC's tandem interconnection rate is the appropriate rate to employ where a CLEC's switch "serves a geographic area comparable to the area served by the incumbent LEC's tandem switch,"[10] fully supports this position. Intermedia maintains it meets this

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[8] Cynthia K. Cox, Pre-Filed Direct Testimony, p. 13 (July 18, 2000). BellSouth relies on *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 95-185, FCC 96-325, 11 FCC Rcd. 15,499, ¶ 1090 (First Report and Order) (hereinafter *First Report and Order*) to support its argument. *See* Cynthia K. Cox, Pre-Filed Direct Testimony, p. 14-15 (July 18, 2000).

[9] J. Carl Jackson, Jr., Pre-Filed Direct Testimony, p. 15 (July 18, 2000).

[10] *Id.* (quoting 47 C.F.R. § 51.711(a)(3)).

requirement, but did not address whether its switches perform the tandem functions. Intermedia also states that it has employed two sophisticated, multifunctional switches in Tennessee and that the advent of fiber optic technologies and multi-functional switching platforms have allowed Intermedia to serve large geographic areas with fewer switches.

B. Deliberations and Conclusions

The *First Report and Order* contains two criteria pertaining to tandem switching compensation. The first criterion is that the CLEC's technology must "perform functions similar to those performed by an [ILEC's] tandem switch."[11] The FCC intended states to "consider new technologies" when evaluating the first criterion.[12] The second criterion is that the CLEC's switch must serve "a geographic area comparable to that served by the [ILEC's] tandem switch."[13] The FCC intended states to consider the second criterion as a yardstick for determining if the appropriate proxy for the interconnecting carrier's additional tandem cost should be equal to the ILEC's tandem interconnection rate, i.e., rate symmetry. The Arbitrators find that the FCC intended states to consider both criteria when determining whether the CLEC should receive the proxy tandem switching rate.

Section 51.711 of the FCC Rules, which deals with symmetrical reciprocal compensation and addresses symmetrical rates and rate structure as they apply to reciprocal compensation, further supports this interpretation because of the equal proportionality described therein.[14] Adoption of this Rule by the FCC demonstrates that the FCC did not intend for the decision on whether to pay tandem interconnection compensation to be based solely on whether Intermedia's

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[11] *First Report and Order*, ¶ 1090.
[12] *Id.*
[13] *Id.*
[14] *See* 47 C.F.R. § 51.711.

switch serves the same geographical area as BellSouth's tandem.

The Arbitrators find that Intermedia did not demonstrate that it performs the tandem switching function at this time, thus, Intermedia has failed to meet the first criterion.[15] Therefore, the Arbitrators voted unanimously that Intermedia may only receive tandem reciprocal compensation at BellSouth's tandem interconnection rate if Intermedia begins providing the tandem switching function per Section 51.319(c)(2) of the FCC Rules[16] and serves a geographic area comparable to the area served by BellSouth's tandem switch.[17,18]

[15] Because Intermedia failed to meet the functional equivalency criterion, it was not necessary for the Arbitrators to rule on the geographic area comparability criterion.

[16] *See id.* § 51.319(c)(2).

[17] If the parties disagree that this has occurred, the parties may petition the Authority for enforcement of the interconnection agreement.

[18] Subsequent to the Arbitrators' deliberations, the FCC released a *Notice of Proposed Rulemaking* related to this issue. *See In re: Developing a Unified Intercarrier Compensation Regime*, CC Docket no. 01-92, FCC 01-132 (April 27, 2001) (*Notice of Proposed Rulemaking*). However, the instant order reflects only the decisions of the Arbitrators rendered on February 6, 2001 and in no way interprets the FCC's most recent pronouncement. Any party desiring further consideration of this issue should file a motion for reconsideration as provided for in Rule 1220-1-2-.20(1) of the Rules of the Tennessee Regulatory Authority.

IV. Issue 6 - (a) Are BellSouth's proposed collocation intervals appropriate and (b) should they be measured in business or calendar days?

A. Positions of the Parties

BellSouth proposes thirty (30) business days to respond to Intermedia's request regarding the availability of collocation space. BellSouth argues that it must assess information such as existing building configuration, space usage, future space requirements, building codes, and regulatory requirements before responding to any CLEC request. BellSouth proposes ninety (90) business days under normal conditions and one hundred and thirty (130) business days under extraordinary conditions to provision collocation arrangements to Intermedia. BellSouth lists the controlling factors in the overall provisioning interval as the time required to complete the space conditioning; add to or upgrade the heating, ventilation, and air conditioning system; add to or upgrade the power plant capacity and power distribution mechanism; and build out network infrastructure components.

BellSouth states that its employees and contractors, such as architects, builders, and skilled craftsmen, who typically work during normal business hours of 8:00 a.m. to 5:00 p.m., Monday through Friday perform much of the work involved in provisioning collocation space. As a result, BellSouth argues that any calculation for provisioning intervals should be in business days.

Intermedia contends that adoption of BellSouth's proposal would not be efficient. Under the worst case scenario, Intermedia argues, it could take as long as eight weeks to find out whether collocation space is available and six months to collocate. These intervals are not acceptable when one considers that Intermedia has a business plan to execute and customers to serve. Intermedia argues that the inability to collocate efficiently and relatively quickly is a severe

detriment to the growth of competition in the state. Intermedia states that it would be appropriate for the Arbitrators to adopt the same intervals here as the Arbitrators adopted in *DeltaCom*.

B. Deliberations and Conclusions

In the Act, Congress explicitly recognized the importance of collocation arrangements in bringing competition to the telecommunications industry. Section 251(c)(6) of the Act requires ILECs to provide collocation to requesting carriers "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory."[19] In its *Order on Reconsideration*, the FCC determined that there was a need for national collocation standards.[20] In rendering its ruling, the FCC recognized that new entrants suffer harm if they "must wait as long as six to eight months after their initial collocation requests before collocation space becomes available."[21] Thereafter, the FCC found that "[t]imely provisioning of physical collocation space is critically important to telecommunications carriers' ability to compete effectively in the markets for advanced services and other telecommunication services."[22] Additionally, the FCC found that "incumbent LECs can provision collocation arrangements in significantly less than six to eight months after receiving initial collocation requests."[23]

Based on these findings, the FCC adopted national standards for the provisioning of collocation arrangements. The national standards apply in the absence of state standards or the

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[19] 47 U.S.C. §251(c)(6).

[20] *See In re Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, FCC 00-297, 15 FCC Rcd. 17, 806, ¶¶ 14 - 23 (August 10, 2000) (Order on Reconsideration and Second Further Notice of Proposed Rulemaking in CC Docket No. 98-147) (hereinafter *Order on Reconsideration*).

[21] *Id.* ¶ 14.

[22] *Id.* ¶ 22.

[23] *Id.* ¶ 20-21.

parties mutual agreement.[24] According to the *Order on Reconsideration*, the national standards are as follows: 1) "an incumbent LEC must tell the requesting telecommunications carrier whether a collocation application has been accepted or denied within **ten calendar days** after receiving the application";[25] 2) "the requesting carrier should be able to inform the incumbent LEC that physical collocation should proceed within **seven calendar days** after receiving the incumbent LECs price quotation";[26] 3) "an incumbent LEC should be able to complete any technically feasible collocation arrangements, whether caged or cageless, no later than **90 calendar days** after receiving an acceptable collocation application, where space, conditioned or unconditioned, is available in the incumbent LEC premises . . . ."[27]

In *DeltaCom*, the Arbitrators adopted DeltaCom's final best offer, with the exception of a statement regarding adjacent collocation, on a similar issue.[28] The final best offer provided that BellSouth should provision cageless collocation to DeltaCom within thirty (30) calendar days after DeltaCom places the firm order when there is conditioned space and DeltaCom installs the bays/racks.[29] In no event, should the provisioning interval for cageless collocation exceed sixty (60) business days from the date of the firm order.[30]

Based on the FCC's *Order on Reconsideration* and the Arbitrators' previous ruling, the Arbitrators voted unanimously to adopt the following collocation intervals:

1) BellSouth shall inform Intermedia whether collocation space is available within **ten (10) calendar days** of receiving Intermedia's application for collocation. The

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[24] *See id.* ¶ 23.
[25] *Id.* ¶ 24 (emphasis added).
[26] *Id.* ¶ 26 (emphasis added).
[27] *Id.* ¶ 27 (emphasis added).
[28] *See DeltaCom, Second Interim Order of Arbitration Award*, p. 5-6 (Aug. 31, 2000).
[29] *See DeltaCom, Final Best Offer of ITC^DeltaCom Communications, Inc.*, Issue 4(a) (May 4, 2000).
[30] *See id.*

Arbitrators agree with the FCC that ILECs, such as BellSouth, have had the opportunity since the enactment of the Act to develop internal procedures to meet this deadline.[31]

2) BellSouth shall provision cageless collocation to Intermedia within **thirty (30) calendar days** after Intermedia places the firm order when there is conditioned space and Intermedia installs the bays/racks. In no event, should the provisioning interval for cageless collocation exceed **ninety (90) calendar days** from the date of the firm order.

3) BellSouth shall provision caged physical collocation arrangements requested by Intermedia, provided collocation spaces are available in BellSouth facilities, within **ninety (90) calendar days.**

[31] *See Order on Reconsideration*, ¶ 24

V. Issue 7 - What charges should Intermedia pay to BellSouth for space preparation for physical collocation?

A. Positions of the Parties

BellSouth explains it is now in a better position to estimate average costs/rates for the components of space preparation that BellSouth had previously priced using Individual Case Basis ("ICB rates") because it has since completed hundreds of collocation arrangements for CLECs. BellSouth proposes that the Authority adopt on an interim basis the rates that BellSouth filed in Florida, pending a true-up following the completion of Docket No. 97-01262, "the Permanent Prices Docket."[32] It asserts that the Florida rates are based on a TELRIC-compliant cost study. BellSouth argues that Intermedia must choose either the proposed interim rates or ICB rates. BellSouth takes the position that if Intermedia selects the proposed interim rates, then it cannot request ICB rates and then pay the lesser of the two.

Intermedia objects to the rate schedule BellSouth initially proposed, alleging that the proposed charges are unreasonable. Intermedia further complains that many of BellSouth's charges for space preparation are not stated at all, but instead, are designated as ICB rates. Intermedia argues that BellSouth should be required to state reasonable prices for elements of collocation, such as space preparation, and that the use of ICB rates should be limited to those extraordinary arrangements that cannot be predicted in advance. Intermedia asserts that BellSouth should be able to determine its costs per unit to provide these items and set the rates so that Intermedia can consider whether the prices are realistic.

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[32] *See Petition of BellSouth Telecommunications Inc. to Convene a Contested Case to Establish "Permanent Prices" for Interconnection and Unbundled Network Elements*, Docket No. 97-01262 (hereinafter *Permanent Prices*).

In rebuttal testimony, Intermedia contends that the Florida costs upon which BellSouth has based its proposed interim rate schedule may not reflect Tennessee costs. It believes that Tennessee's costs may be lower than those in Florida, and thus using these rates would have the effect of granting BellSouth an interest-free loan until the Authority adopts permanent rates and the true-up is complete. Intermedia also contends that regardless of which rates the Authority adopts, the rates should be subject to a true-up once BellSouth's Tennessee cost studies have been subjected to public scrutiny and comment in the normal course of the Authority's processes.

B. Deliberations and Conclusions

Since the hearing of this matter on September 19 and 20, 2000, the Authority rendered a final ruling in *Permanent Prices*.[33] As a result, the Authority has established permanent cost-based rates for collocation space preparation. In light of this intervening ruling and the parties agreement that the rates adopted in *Permanent Prices* would apply, the Arbitrators voted unanimously to adopt the rates established in *Permanent Prices* for collocation space preparation.[34]

[33] *See Permanent Prices*, Docket No. 97-01262, *Final Order* (February 23, 2000).
[34] *See Permanent Prices, First Interim Order*, p. 41 (Jan. 25, 1999).

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

A. Positions of the Parties

BellSouth alleges that it is obligated by the Act to treat requesting collocators in a non-discriminatory manner. Thus, it contends that it must handle each request for physical collocation in the same manner, whether it is a physical collocation request or a request for a conversion from virtual to physical collocation. BellSouth considers the provisioning of both services as similar. BellSouth claims that it should evaluate requests for in-place conversions on an individual case basis. BellSouth states that it will allow in-place conversions when (1) there is no change to the arrangement; (2) the conversion of the virtual arrangement would not cause the arrangement to be located in an area reserved for BellSouth's forecasted future growth; and (3) the conversion of the virtual arrangement would not impact BellSouth's ability to secure its own facilities. Notwithstanding the foregoing, BellSouth states that if the BellSouth premises is at or nearing space exhaustion, BellSouth may authorize the conversion of the virtual arrangement to a physical arrangement even though BellSouth could no longer secure its own facilities.[35] In support of its position, BellSouth quotes a portion of the Georgia Public Service Commission ("GPSC") staff recommendation, which the GPSC adopted on July 5, 2000:

> The staff recommends that virtual collocation may be converted to 'in place' physical collocation according to the following criteria: 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 virtual collocation arrangement the converted

[35] J. Carl Jackson, Pre-Filed Direct Testimony, p. 41-42 (July 18, 2000).

> arrangement does not limit BellSouth's ability to secure its own equipment and facilities; 4) any changes to the arrangement can be accommodated by existing power, HVAC and other requirements . . . ."[36]

Intermedia asserts that BellSouth's requirements are ambiguous. It claims that it is not entirely clear what would constitute "extenuating" circumstances or what BellSouth considers to be "technical reasons." Intermedia asserts that BellSouth's requirements are overly broad and susceptible to multiple interpretations thereby allowing BellSouth to alter its requirements at any time.

Intermedia understands that BellSouth will not agree to install lockable cabinet doors on equipment bays. Intermedia argues that BellSouth's contention that it is impossible to secure BellSouth's equipment from a CLEC's equipment implies that conversions of virtual to physical collocation arrangements will always require relocation of the CLEC's equipment. Intermedia does not accept this result.

Intermedia agrees that BellSouth should be able to reserve space for future use, as long as it is reasonable. Intermedia further agrees that BellSouth can prohibit the conversion of virtual to physical collocation where the collocated equipment would be located in an area reserved for BellSouth's future growth. Intermedia is willing to agree that in-place conversion of virtual to physical collocation will be allowed only if: 1) Intermedia does not increase the number of bays it occupies and 2) any changes to the arrangement can be accommodated by existing power, HVAC, and other facilities.

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[36] W. Keith Milner, Pre-Filed Direct Testimony, p. 14-15 (July 18, 2000) (quoting *In re: Petition of BellSouth Telecommunications, Inc. for Arbitration of an Interconnection Agreement With Intermedia Communications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket No. 11644-U, *Order*, p. 8 (GA Pub. Serv. Comm'n Sept. 28, 2000) (hereinafter *GPSC Order*)).

Intermedia opines that very little work is required to convert a collocation arrangement from virtual collocation to in-place, cageless physical collocation. It claims that BellSouth should charge very little for this service and that the charge should represent only the cost of actually transferring control. This transfer should require only minimal paperwork and, perhaps, the re-routing of an alarm function from BellSouth to Intermedia. Intermedia asserts that most conversions of virtual to physical collocations should be conversions in-place. Intermedia argues that BellSouth's insistence that there are technical difficulties or security concerns associated with leaving it in-place are suspect, because the CLEC equipment in the virtual arrangement has been functioning for some time in-place already. Intermedia opines that when BellSouth insists on moving a CLEC's equipment, it is likely to reflect a preference on BellSouth's part rather than an unavoidable technical requirement. In that case, Intermedia declares BellSouth should bear the costs, along with a guarantee of minimal disruption to the CLEC's customers.[37]

In its post-hearing brief, Intermedia does not object to the four criteria established by the GPSC. However, Intermedia takes issue with BellSouth's desire to further condition its acceptance of in-place conversions on the absence of extenuating circumstances or technical reasons. Furthermore, Intermedia contends that BellSouth cannot support its contention that an in-place conversion of a virtual to physical collocation arrangement should incur the same application fee and require the same amount of time as the processing and provisioning of a new request for physical collocation. Intermedia proposes a time frame of seven calendar days for in-place, virtual conversions.[38]

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[37] J. Carl Jackson, Jr. Pre-Filed Rebuttal Testimony, p. 12 (Sept. 5, 2000).

[38] *Post-Hearing Brief of Intermedia Communications, Inc.*, p. 26 (Nov.8, 2000).

B. Deliberations and Conclusions

The GPSC adopted the following six (6) rules to govern the conversion of an existing virtual collocation arrangement to a physical collocation arrangement:

(1) There is no change in the amount of equipment or the configuration of the equipment that was in the virtual collocation arrangement;
(2) The conversion of the virtual collocation arrangement will not cause the equipment to be located in the space that BellSouth has reserved for its own future needs;
(3) The converted arrangement does not limit BellSouth's ability to secure its own equipment and facilities due to the location of the arrangement;
(4) Any changes to the arrangement can be accommodated by existing power, HVAC and other requirements;
(5) The conversion must be handled by BellSouth in thirty (30) calendar days; and
(6) The interim application fee for such conversion from virtual to physical is $1,000.[39]

The first four rules are criteria that a potential conversion must meet before BellSouth must convert a virtual collocation arrangement to an in-place, physical collocation arrangement. If a virtual collocation arrangement meets all four of these criteria, then the fifth rule provides the timetable for implementation and the sixth rule sets forth the maximum application fee that BellSouth may charge for in-place, physical conversions.

BellSouth introduced only the first four rules adopted by the GPSC. Instead of the fifth and sixth rules, BellSouth proposed that in-place conversion of virtual to physical collocation should incur the same application fee and take the same amount of time as the processing of an entirely new request for physical collocation. BellSouth also proposed to condition conversions from virtual collocation to in-place, physical collocation on the absence of "extenuating

[39] *See GPSC Order*, p. 8.

circumstances" or "technical reasons."[40] Intermedia expressed its disagreement with only these last three conditions of BellSouth's proposal.[41]

In *DeltaCom*, the Arbitrators ordered a thirty (30) calendar day interval with a sixty (60) business day maximum to allow time for extraordinary circumstances for the provisioning of cageless, physical collocation.[42] The provisioning of a new cageless, physical collocation arrangement does require physical work and BellSouth could encounter "extraordinary" circumstances that cause delay. In contrast, Intermedia testified that the conversion of a virtual arrangement to an in-place, physical arrangement requires almost no work, other than the re-routing of an alarm function. Furthermore, Intermedia suggested a conversion interval of only seven (7) calendar days. BellSouth introduced no evidence to support its contention that conversion of a virtual arrangement to an in-place, physical arrangement should take as long as provisioning a new, physical collocation space. In *DeltaCom*, there was a need to allow for extraordinary circumstances, but here, compliance with the GPSC's rules one through four would ensure that the arrangement has already passed the "extraordinary" test.

The Arbitrators find they should adopt the GPSC's $1,000 rate for the application fee. As stated by the GPSC, the normal application fee for physical collocation is $3,850; however, the costs of many of the tasks and functions that comprise that fee are not applicable to in-place conversion.[43] Intermedia did not suggest a specific fee, but rather contended that very little work should be required to convert a virtual collocation arrangement to an in-place, physical arrangement and, therefore, the cost should be low. BellSouth introduced no evidence to support

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[40] W. Keith Milner, Pre-Filed Direct Testimony, p. 11-12 (July 18, 2000).
[41] *Post-Hearing Brief of Intermedia Communications, Inc.*, p. 23-36 (Nov.8, 2000).
[42] *See DeltaCom, Second Interim* Order, 5 (Aug. 31, 2000).
[43] *See GPSC Order*, p. 8.

its contention that it should charge the same application fee to convert a virtual arrangement to a physical arrangement as it charges to initiate a new, physical arrangement.

Based on the foregoing, the Arbitrators voted unanimously to adopt the rules set forth by the GPSC with the exception that the provisioning interval shall be thirty (30) calendar days instead of sixty (60) calendar days. Thus, a virtual collocation arrangement shall be converted to an in-place, physical collocation arrangement if the potential conversion meets the following four criteria:

1. There is no change in the amount of equipment or the configuration of the equipment that was in the virtual collocation arrangement;
2. The conversion of the virtual collocation arrangement will not cause the equipment or the results of that conversion to be located in a space that BellSouth has reserved for its own future needs;
3. The converted arrangement does not limit BellSouth's ability to secure its own equipment and facilities due to the location of the virtual collocation arrangement; and
4. Any changes to the arrangement can be accommodated by existing power, HVAC, and other requirements.

If the potential conversion meets the above rules, then

5. The conversion must be handled by BellSouth in thirty (30) calendar days and
6. The interim application fee for the conversion from virtual to in-place, physical collocation may not exceed $1,000.

If the conversion request does not meet rules one through four listed above, then BellSouth may treat the conversion as it would a new, physical collocation arrangement. In this instance, BellSouth may impose the same conditions, including time frames and fees, as it would require for any new, physical collocation request.

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

A. Positions of the Parties

BellSouth states "that it will only provide combinations to CLECs such as Intermedia at TELRIC-based prices if the elements are, in fact, combined and providing service to a particular customer at a particular location."[44] BellSouth contends it is under no obligation to combine UNEs for CLECs and states that the FCC confirmed that ILECs presently have no obligation to combine network elements for CLECs when those elements are not currently combined in BellSouth's network.[45] Through testimony, BellSouth also notes that the Eighth Circuit Court of Appeals vacated Sections 51.315(c)-(f) of the FCC Rules,[46] which purported to require ILECs to combine unbundled network elements. BellSouth further notes that the parties did not appeal this decision and the Supreme Court did not reinstate the rule.

Intermedia contends that BellSouth is not willing to provide elements at UNE rates on a combined basis if those elements are not already combined. Intermedia insists that if combinations of elements can be ordered as a service from BellSouth, then the elements are customarily combined and should be available as UNEs. Intermedia further notes that the GPSC in Docket No. 10692 explicitly held that "currently combines" means "ordinarily combines" thereby rejecting BellSouth's narrow interpretation.[47] In addition, Intermedia relies on the

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[44] Cynthia K. Cox, Pre-Filed Direct Testimony, p. 23 (July 18, 2000).

[45] In support of its argument, BellSouth cites *In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 99-238, 15 FCC Rcd. 3696 (November 5, 1999). (*Third Report and Order and Fourth Further Notice of Proposed Rulemaking*) (hereinafter *UNE Remand Order*).

[46] *See* 47 C.F.R. § 51.315(c)-(f).

[47] *In re: Generic Proceeding to Establish Long-Term Pricing Policies for Unbundled Network Elements*, Docket No. 10692-U, *Order*, 11 (GA Pub. Serv. Comm'n Feb. 1, 2000) (hereinafter *GPSC February 2000 Order*).

GPSC's statement "that Rule [51.]315(b), by its own terms, applies to elements that the incumbent 'currently combines,' not merely elements which are 'currently combined.'"[48]

B. Deliberations and Conclusions

Rules governing combinations of network elements have been the subject of continuous litigation since their introduction in 1996. The Eighth Circuit of the United States Court of Appeals vacated Section 51.315 (b) through (f) of the FCC Rules in 1997.[49] The Eighth Circuit stated that subsection (b) "is contrary to § 251(c)(3) because the rule would permit the new entrants access to the incumbent LEC's network elements on a bundled rather than unbundled basis" and that the subsection (c) – (f) could not "be squared with the terms of subsection 251(c)(3)."[50] The Supreme Court overruled the Eighth Circuit's decision as to Section 51.315(b) and held that the FCC's interpretation of Section 251(c)(3) was "entirely rational" and "well within the bounds of the reasonable."[51] On remand, the Eighth Circuit recognized that the Supreme Court reversed the Eighth Circuit's decision to vacate Section 51.315(b) and, therefore, only discussed Section 51.315(c)-(f), the "Additional Combinations Rule."[52]

Section 51.315(b) provides: "Except upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines."[53] The Arbitrators agree with the GPSC's conclusion that Section 51.315(b) applies to elements that BellSouth currently combines, not only those elements that are currently combined.[54] In the *First Report and Order*,

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[48] *Id.*

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

[50] *Id.*

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

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

[53] 47 C.F.R § 51.315(b).

[54] *See GPSC February 2000 Order*, p. 11.

the FCC stated that the proper reading of "currently combines" is "ordinarily combined within their network, in the manner which they are typically combined."[55] In the *UNE Remand Order*, the FCC declined to further elaborate on the meaning of "currently combines" after noting that the matter was pending in the Eighth Circuit Court of Appeals.[56] Therefore, the only FCC interpretation of "currently combines" is the interpretation in the *First Report and Order*.

The Authority has addressed this same issue and the Directors acting as Arbitrators have addressed a similar, related issue in other dockets. In the Permanent Prices Docket, the Authority held that "ILECs are now prevented from separating network elements that are already combined before leasing them to a competitor."[57] In a later Order, the Authority affirmed this holding by ruling that "BellSouth must provide the combination throughout its network as long as it provides this same combination to itself anywhere in its network."[58]

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

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[55] *First Report and Order*, ¶ 296.

[56] *See UNE Remand Order*, ¶ 479.

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

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

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

VIII. Issue 13(a) - Should BellSouth be required to provide access to Enhanced Extended Links ("EELs") at UNE rates?

A. Positions of the Parties

BellSouth maintains that it has no obligation to combine network elements for CLECs, when those elements are not currently combined in BellSouth's network. BellSouth contends that the Eighth Circuit Court of Appeals' decision supports BellSouth's position that it has no general obligation to provide CLECs with EELs. In particular, BellSouth objects to combining UNEs with tariffed services. BellSouth argues that even if it offers tariffed services, this does not entitle Intermedia to order new installations of such services as combinations at UNE rates. BellSouth contends it should only be required to provide combinations that currently exist to serve a particular customer at a particular location.

Intermedia believes that it should be allowed to purchase UNE combinations that are already physically combined, as well as UNE combinations that BellSouth ordinarily combines, such as those that make up an EEL. Intermedia contends that a variety of combinations already exist in BellSouth's network, including special access arrangements that are essentially identical to EELs. Hence, the TRA should require BellSouth to offer Intermedia access to EELs. Intermedia also argues that without EELs, CLECs must either pay rates so high for the elements in question that it is difficult or impossible to offer competitive service or they must collocate in every end office where they have a customer, which is a very expensive and time consuming. Consequently, Intermedia contends that requiring BellSouth to offer EELs at UNE rates would promote competition.

B. Deliberations and Conclusions

In *ICG Telecom* the Authority addressed this same issue.[59] In that arbitration, the Authority made the following findings:

> FCC rules governing combinations of network elements have been the subject of continuous litigation since the FCC first introduced the rules in 1996. When ILECs first challenged the rules, the Eighth Circuit vacated Rules 51.315 (b) through (f). That Court stated that the rules could not "be squared with the terms of subsection 251(c)(3)" of the Telecommunications Act of 1996. *See Iowa Utils. Bd.*, 120 F.3d at 813. The Supreme Court overruled this decision and held that the FCC's interpretation of Section 251(c)(3) was "entirely rational" and "well within the bounds of the reasonable." *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 395, 119 S.Ct. 721, 737-38 (1999). As a result of this decision, the FCC issued an order that includes an extensive discussion on enhanced extended links. The FCC concluded that "under existing law, a requesting carrier is entitled to obtain existing combinations of loop and transport between the end user and the [ILEC's] serving wire center on an unrestricted basis at unbundled network element prices." *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, 15 FCC Rcd. 3696, ¶ 486 (Nov. 5, 1999) (Third Report and Order and Fourth Further Notice of Proposed Rulemaking). The FCC based its ruling on the reinstatement of Rule 51.315(b) by the Supreme Court and the fact that ILECs combine loop and transport for themselves to provide services to their customers. The FCC also held that requesting carriers are entitled to obtain the current combinations at UNE prices. *See id.* ¶ 480.
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> In addition, BellSouth has not denied that it can perform combinations of network elements referred to as extended links. In fact, BellSouth admitted that it has inadvertently performed such combinations on behalf of CLECs. Clearly, this affirms the statement made by the FCC that ILECs routinely combine loop and transport in their networks.
>
> Finally, it is appropriate public policy to order BellSouth to provide EELs to ICG based on BellSouth's prevailing experience in the telecommunications market. If ICG is unable to receive EELs from BellSouth, it must either install its own switches, trunks, and loops or collocate in BellSouth owned and operated central offices. Either of these options demands ICG to expend a substantial amount of money in the form of fixed or sunk costs. As a result, ICG will be forced to incur a significantly higher per-customer cost of providing services than BellSouth, which has a larger customer base over which to spread its fixed or sunk costs. This result will necessarily impair ICG's ability to expand its telecommunications services throughout Tennessee. Moreover, telephone customers of Tennessee, both business and residential, will greatly benefit if ICG

[59] *See ICG Telecom, Final Order of Arbitration*, p. 4-6.

> is allowed to obtain combinations of loop and transport in BellSouth's network. Evidence suggests that the availability of EELs to CLECs is the key factor in opening the residential market to competition. According to the FCC, "[s]ince these combinations of [UNEs] have become available in certain areas, [CLECs] have started offering service in the residential mass market in those areas." *Id.* ¶ 12.
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> . . . .
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> Given the above discussion, the Arbitrators have determined that it is reasonable to require BellSouth to offer ICG extended loop links consisting of combinations of unbundled local loops that are cross-connected to interoffice transports pursuant to applicable FCC orders and federal rulings. Furthermore, BellSouth should not charge a monopoly price to combine these elements, but should charge the sum of their prices at TELRIC rates.[60]

In a clarification order entered on November 27, 2000 in *ICG Telecom*, the Authority affirmed the above conclusion and stated:

> The interconnection agreement should reflect, as does the *Final Order of Arbitration*, that BellSouth will provide ICG with EELs throughout BellSouth's Tennessee network. Further, BellSouth shall provide the EELs, in all instances, to ICG at the sum of the TELRIC rates for each individual element.[61]

The Arbitrators find that neither party has presented any basis for departing from this holding. Therefore, consistent with *ICG Telecom* and the Arbitrators' ruling herein on Issue 12, the Arbitrators voted unanimously to require BellSouth to provide access to EELs to Intermedia at the sum of the TELRIC rates for each individual element.

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[60] *Id.* at 4-7.

[61] *ICG Telecom, Clarification of Final Order*, p. 3 (Nov. 27, 2000) (footnote omitted).

IX. 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?

A. Positions of the Parties

BellSouth contends that neither the Act nor the FCC's Rules require it to unbundle packet switching aside from one exception, which does not apply to Intermedia. According to BellSouth, the determination of whether to unbundle packet switching requires application of the "impair" standard of Section 251(d)(2)(B) of the Act. BellSouth agrees that a state commission can alter the conditions set by the FCC for unbundling of packet switching, but that "Intermedia still must prove that it is impaired by not having access to BellSouth's packet switching functionality on an unbundled basis."[62] BellSouth insists that "the FCC specifically rejected 'e.spire/Intermedia's request for a packet switching or frame relay unbundled element.'"[63] BellSouth continues: "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."[64] BellSouth argues that the FCC declined to unbundle the packet switching functionality, except in limited circumstances, and that BellSouth has taken the necessary measures to ensure that CLECs have access to required facilities so that BellSouth is not required to unbundle packet switching.[65]

Intermedia requests language in the parties' agreement that conforms to the FCC's rulings and to the terms of Section 51.319 of the FCC Rules, including the applicable definition of packet

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[62] Cynthia K. Cox, Pre-Filed Direct Testimony, p. 34 (July 18, 2000).

[63] *Id.* at 31 (citing *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Cc. Docket No. 96-98, FCC 99-238, 15 FCC Rcd 3696, ¶ 312 (Nov. 5, 1999) (Third Report and Order and Fourth Further Notice of Proposed Rulemaking)).

[64] *Id.*

[65] Cynthia K. Cox, Pre-Filed Direct Testimony, p. 31 (July 18, 2000).

switching.[66] Intermedia contends that the FCC found that ILECs must make packet switching capabilities available in certain situations in the *UNE Remand Order*. Intermedia argues that the FCC:

> explicitly found that an ILEC must provide nondiscriminatory access to unbundled packet switching capability where: (a) the ILEC has deployed digital loop carrier ("DLC") systems, including integrated digital loop carrier or universal digital loop carrier systems, or has developed any other system in which fiber optic facilities replace copper facilities in the distribution section; (b) there are no spare copper loops capable of supporting xDSL services the requesting carrier seeks to offer; (c) the ILEC has not permitted a requesting carrier to deploy a DSLAM in the remote terminal, pedestal or environmentally controlled vault of other interconnection point, nor has the requesting carrier obtained a virtual collocation arrangement at these subloop interconnection points; and (d) the ILEC has deployed packet switching capability for its own use.[67]

Intermedia also argues that, because packet switching is an essential element of competition, CLECs should be able to purchase it from BellSouth as a UNE at cost-based rates. Moreover, Intermedia contends that "BellSouth must make an *affirmative showing* that it complies with the FCC's rules before it can state that it is not required to offer packet switching as a UNE."[68]

B. Deliberations and Conclusions

The issue before the Arbitrators is the determination of whether the Act or FCC Rules and Orders require BellSouth to provide Intermedia with access to packet switching capabilities as an unbundled network element. In the *UNE Remand Order*, the FCC declined to order unbundling of the packet switching functionality except in limited circumstances.[69] In making this determination, the FCC considered the issues of whether denial of access to packet switching functionality will impair a CLEC's ability to offer advanced services and whether unbundling will

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[66] *See* J. Carl Jackson Jr., Pre-Filed Direct Testimony, p. 49-50 (July 18, 2000).
[67] *Id.* at 50.
[68] J. Carl Jackson, Jr., Pre-Filed Rebuttal Testimony, p. 14 (September 5, 2000) (emphasis in original).
[69] *UNE Remand Order*, ¶ 306.

foster competition.[70] Thereafter, the FCC stated the following findings with respect to the limited circumstances:

> When an incumbent has deployed DLC systems, requesting carriers must install DSLAMs at the remote terminal instead of at the central office in order to provide advanced services. We agree that, if a requesting carrier is unable to install its DSLAM at the remote terminal or obtain spare copper loops necessary to offer the same level of quality for advanced services, the incumbent LEC can effectively deny competitors entry into the packet switching market. We find that in this limited situation, requesting carriers are impaired without access to unbundled packet switching. Accordingly, incumbent LECs must provide requesting carriers with access to unbundled packet switching in situations in which the incumbent has placed its DSLAM in a remote terminal. . . . The incumbent will be relieved of this unbundling obligation only if it permits a requesting carrier to collocate its DSLAM in the incumbent's remote terminal, on the same terms and conditions that apply to its own DSLAM.[71]

In regards to e.spire/Intermedia, the FCC determined that e.spire/Intermedia's request focused on frame relay service.[72] The FCC next rejected e.spire/Intermedia's request for packet switch or frame relay unbundled network elements for two reasons.[73] First, the FCC refused to define an unbundled network element according to frame relay, a particular packet switching technology.[74] Second, the FCC concluded that e.spire/Intermedia failed to establish that CLECs would be impaired without access to unbundled frame relay.[75] The FCC further noted that e.spire/Intermedia "are free to demonstrate to a state commission that the lack of unbundled access to the incumbent's frame relay network element impairs their ability to provide the services they seek to offer."[76] Lastly, the FCC stated that "[a] state commission is empowered

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[70] *See id.* ¶ 309.
[71] *Id.* ¶ 313.
[72] *See id.* ¶ 311. Frame relay service is designed to transmit high volumes of data traffic between geographic locations at high speeds.
[73] *See id.* ¶ 312.
[74] *See id.*
[75] *See id.*
[76] *See id.*

to require incumbent LECs to unbundle specific network elements used to provide frame relay service, consistent with the principles set forth in this order."[77]

The Arbitrators find that Intermedia failed to demonstrate that it would be impaired without access to unbundled packet switching capabilities. Intermedia claims that the Arbitrators should unbundle packet switching to create competition. Nevertheless, Intermedia did not convince the Arbitrators that the lack of access to BellSouth's packet switching capabilities on an unbundled basis materially diminishes its ability to provide the services it seeks to offer in Tennessee.

Additionally, Intermedia's witness stated that he has no evidence that BellSouth has refused to permit collocation of DSLAMs at remote terminal locations in Tennessee.[78] Indeed, BellSouth affirmed that it will "do what it takes" to meet the requirements necessary to avoid unbundling packet switching, but acknowledged that "to the extent that those four conditions are not found in [its] network, then the requirement to unbundle packet switching could still become an issue."[79]

The Arbitrators recognize that the requirements of Section 51.319(c)(5) were effective as of May 17, 2000, approximately six months after the release of the *UNE Remand Order*. Section 51.319(c)(5) requires ILECs to provide packet switching as a UNE if the following conditions are met:

> (i) The incumbent LEC has deployed digital loop carrier systems, including but not limited to, integrated digital loop carrier or universal digital loop carrier systems; or has deployed any other system in which fiber optic facilities replace copper facilities in the distribution section (e.g., end office to remote terminal, pedestal or environmentally controlled vault);

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[77] *Id.*

[78] *See* Transcript of Proceedings, September 20, 2000, v. II, p. 68.

[79] *See id.* September 19, 2000, v. ID. p. 60.

> (ii) There are no spare copper loops capable of supporting xDSL services the requesting carrier seeks to offer;
> (iii) The incumbent LEC has not permitted a requesting carrier to deploy a Digital Subscriber Line Access multiplexer in the remote terminal, pedestal or environmentally controlled vault or other interconnection point, nor has the requesting carrier obtained a virtual collocation arrangement at these subloop interconnection points as defined by paragraph (b) of this section; and
> (iv) The incumbent LEC has deployed packet switching capability for its own use.[80]

The Arbitrators find that Section 51.319 is consistent with the FCC's holdings in the *UNE Remand Order*.

Based on the foregoing, the Arbitrators voted unanimously to require BellSouth to provide access to packet switching capabilities as an unbundled network element only when the limited circumstances identified in FCC Rule 51.319(c)(5)(i) – (iv) exist.

[80] 47 C.F.R. § 51.319(c)(5)(i)-(iv).

X. **Issue 25 - Should BellSouth be required to furnish access to the following 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;**

(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?**

A. Positions of the Parties

BellSouth reiterates that, as in Issue 18(c), the FCC declined to require the unbundling of the packet switching functionality, of which frame relay is a type, except in limited circumstances. BellSouth insists that Intermedia continue to buy access to these elements at BellSouth's tariffed rates and requests that the Arbitrators find that BellSouth is not required to provide access to frame relay elements at TELRIC-based rates. BellSouth notes that a state commission can require an ILEC to unbundle packet switching only when a CLEC convinces the state commission that it is impaired without that access. BellSouth maintains that Intermedia has not provided any evidence to the Authority in this proceeding to support a finding that Intermedia would be impaired without access to frame relay UNEs. Specifically, BellSouth claims that it provides spare copper loops where available and that BellSouth has not refused to allow CLECs to deploy DSLAMs at remote terminals. According to BellSouth, unless these conditions are shown to be prevalent in its network, BellSouth is not obligated to provide CLECs, such as Intermedia, with unbundled access to its frame relay facilities.

Intermedia states that although BellSouth has entered into an interconnection agreement with Intermedia that provides for the interconnection of BellSouth's and Intermedia's frame relay traffic, BellSouth still charges frame relay elements at tariffed rates which are not TELRIC-based rates. Intermedia admits that the FCC has yet to mandate frame relay UNEs, but notes that in the

UNE Remand Order, "the FCC made it clear that the Communications Act empowers state regulators 'to impose additional obligations upon incumbent LECs beyond those imposed by the national [UNE] list . . . .'"[81] According to Intermedia, the Arbitrators should establish UNEs for frame relay because "they reflect a vital element of modern, digital networks that is becoming increasingly important."[82]

Intermedia further states that its access to frame relay at UNE rates "is critical" and that "there is no question that Intermedia's business is impaired by BellSouth's requirement that Frame Relay facilities be obtained only under the terms of BellSouth's access tariff."[83] Intermedia recommends that the Arbitrators: 1) establish interim rates for frame relay UNEs at fifty percent (50%) of BellSouth's currently effective tariffed rates for UNIs, NNIs, and DLCIs at CIR, subject to true-up after the Arbitrators have completed a rate inquiry; 2) require BellSouth to establish TELRIC-based rates for frame relay interconnection; 3) mandate bill and keep for local frame relay traffic as an interim rate subject to true-up after a full rate inquiry is completed; and 4) mandate a TELRIC-priced meet-point arrangement for the high-capacity transport link between Intermedia's and BellSouth's respective frame relay switches, with each party sharing the cost of the line.[84]

B. Deliberations and Conclusions

The UNEs requested by Intermedia constitute frame relay service, which is a packet switching technology. In the *UNE Remand Order*, the FCC declined to require the unbundling

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[81] J. Carl Jackson Jr., Pre-Filed Direct Testimony, p. 56 (July 18, 2000).
[82] *Id.*
[83] *Id.* at 16.
[84] *See id.* at 57-58.

of packet switched services.[85] The FCC did state, however, that state commissions are empowered to require the unbundling of packet switched services such as frame relay provided that the state's decision to do so is consistent with the principles set forth in the *UNE Remand Order*.[86] One of the determinations the FCC relied on in deciding whether to unbundle packet switching was whether the CLEC's ability to compete is impaired without such access to the ILEC's facilities. Part of the FCC's reasoning in declining access to these UNEs was its recognition that the CLECs were providing service with their own packet switches, which the FCC determined was probative of whether they are impaired without access to unbundled packet switching.[87]

In this case, the Arbitrators are of the opinion that Intermedia failed to provide sufficient evidence to support a finding that its ability to compete will be impaired without unbundled access to BellSouth's frame relay facilities. Intermedia admits that it is one of the nation's largest facilities-based frame relay carriers and that it has an established frame relay network in Tennessee.[88] The record contains no evidence that BellSouth refused to permit Intermedia to install Intermedia's DSLAM at a remote terminal or that Intermedia has been unable to obtain spare copper loops necessary to offer the same level of quality of service for advanced services.[89] Accordingly, pursuant to the record in this proceeding, the *UNE Remand Order*, and the Arbitrators' ruling herein on Issue 18(c), the Arbitrators voted unanimously to not require BellSouth to unbundle the requested elements or to provide the requested UNEs at TELRIC rates.

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[85] *See UNE Remand Order*, ¶¶ 306-312.
[86] *See id.* ¶ 312.
[87] *See id.* ¶ 306.
[88] Intermedia characterized its Tennessee network as "modest." J. Carl Jackson Jr., Pre-Filed Direct Testimony, p. 57 (July 18, 2000).
[89] *See UNE Remand Order*, ¶ 313.

XI. 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?

A. Positions of the Parties

While BellSouth maintains that it is indifferent to the manner in which Intermedia defines its local calling areas for Intermedia's endusers, BellSouth argues that the real dispute is whether or not reciprocal compensation is due when a call is actually non-local. BellSouth states that it is extremely difficult to determine whether BellSouth endusers are making a local or a long distance call when a BellSouth enduser calls a CLEC enduser located outside a BellSouth local calling area that has a number with an NPA/NXX that is the same as the NPA/NXX assigned to endusers located inside the same local calling area. BellSouth claims this causes BellSouth and other local exchange carriers to: (1) lose valid toll and/or switched access revenue; (2) incur costs that are not recovered; and (3) inappropriately pay reciprocal compensation as if the traffic were local. BellSouth also maintains that the FCC has made it clear that traffic jurisdiction is determined by the originating and terminating points of a call and not the NPA/NXXs of the respective numbers.

Intermedia argues that it should have the ability and discretion to assign NPA/NXXs to customers not physically present in rate centers with which BellSouth associates the NPA/NXX. Additionally, Intermedia maintains that BellSouth previously allowed Intermedia to assign numbers as Intermedia requests in this arbitration, but now wants to restrict that activity. Intermedia further argues that BellSouth has done for years what it attempts to prevent Intermedia from doing today through BellSouth's FX service.[90] BellSouth FX service allows subscribers to have local presence and two-way communications in an exchange different from their own.

Intermedia avers that if the Arbitrators adopt the language proposed by BellSouth, then Intermedia would not be able to offer FX type service and, as a result, would be at a significant disadvantage relative to BellSouth.

B. Deliberations and Conclusions

The Arbitrators' review of this Issue reveals that there are actually four issues presented for consideration. First, the Arbitrators must determine whether either party has a right to assign an NPA/NXX to an enduser not physically located in the local calling area in which the NPA/NXX is typically homed. The second issue is whether calls made from one local calling area to a completely different local calling area are local or non-local? The third and fourth determinations are whether intercarrier compensation should be paid for these types of calls, and, if so, whether reciprocal compensation is the proper type of intercarrier compensation.

As to whether both parties have the right to assign an NPA/NXX to an enduser not physically located in the calling area in which the NPA/NXX is typically homed, the Arbitrators are persuaded by Intermedia's position that assigning NPA/NXXs across multiple rate centers is beneficial because it helps alleviate numbering resource problems. This benefit, along with the fact that BellSouth has engaged in this same practice for years through its FX service, convinces the Arbitrators that Intermedia should be allowed to engage in this practice as well. Therefore, the Arbitrators find that both parties should have the right to assign NPA/NXXs to customers not physically located in the local calling area to which the NPA/NXXs are typically homed. The Arbitrators also notify the parties that this arrangement shall not prevent calls made between two points in the same county in Tennessee from being toll-free as required by Tenn. Code Ann. § 65-21-114.

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[90] The acronym FX stands for "Foreign Exchange."

The Arbitrators can best answer the question of whether calls made from one local calling area to a completely different local calling area are local or non-local by utilizing the FX service analogy presented by Intermedia. BellSouth subscribers have historically used FX service as a mechanism to call adjacent or non-adjacent local calling areas without incurring a toll or long distance charge. The FX subscriber does not have to use FX service, but has other alternatives such as accepting collect calls from its customers or subscribing to WATS.[91] The decision to utilize FX service is a business decision based upon the number of long distance calls the subscriber receives from customers each month and which service is more economical. BellSouth charges its FX service subscribers $87.00 per month for the first mile and $1.45 for each additional mile of interexchange channel associated with each FX subscriber's service. The fees BellSouth collects from the FX subscribers each month is revenue BellSouth uses to offset the loss of toll revenue that BellSouth would normally collect from customers calling the FX service subscriber. Based on this characterization, the Arbitrators find that FX service is no different than an intrastate, interexchange service.

The Arbitrators find that the scenario described above will exist when Intermedia assigns a telephone number to an enduser physically located in a different local calling area than in the local calling area where the NPA/NXX is homed or assigned. In the *First Report and Order*, the FCC stated that state commissions have the authority to determine what geographic areas should be considered "local areas" for the purpose of applying reciprocal compensation obligations under Section 251(b)(5) of the Act.[92] The Arbitrators find that calls to a NPA/NXX in a local calling area outside the local calling area where the NPA/NXX is homed, should be treated as intrastate,

[91] The acronym WATS stands for "Wide Area Telephone Service."
[92] *First Report and Order*, ¶ 1035.

interexchange traffic and, therefore, agree with BellSouth that calls to and from such calling areas are non-local.

Having answered this question, the next issues are whether intercarrier compensation should be paid for these types of calls and, if so, whether reciprocal compensation is the proper type of intercarrier compensation. Intermedia points out that BellSouth has admitted that it charged Intermedia and other CLECs reciprocal compensation for calls made to BellSouth FX service subscribers. This indicates that BellSouth considers or did consider such traffic as local. After careful examination of Intermedia's FX service analogy, the Arbitrators are convinced that BellSouth is wrong to do so. The FCC has found that the reciprocal compensation provisions of Section 251(b)(5) for the transport and termination of traffic do not apply to the transport and termination of interstate or intrastate, interexchange traffic.[93] Thus, because BellSouth is completing the equivalent of an intrastate, interexchange call over a BellSouth interexchange facility that terminates on BellSouth's local network and originates on Intermedia's local network, BellSouth should actually pay Intermedia originating access charges for a call of this type. Likewise, Intermedia should pay BellSouth originating access charges if the FX service subscriber is Intermedia's customer, the interexchange facility belongs to Intermedia, and a BellSouth local customer places the call. This position is supported by the FCC's statement that "[t]raffic originating or terminating outside of the applicable local area would be subject to interstate and intrastate access charges."[94]

Based on the above findings and conclusions, the Arbitrators voted unanimously that the parties may establish their own local calling areas and assign numbers for local use anywhere

[93] *See id.* ¶ 1034.
[94] *Id.* ¶ 1035.

within such areas as long as the parties properly rate, time, and compensate each other and other carriers for the mutual exchange of such traffic. Additionally, the Arbitrators voted unanimously that calls to an NPA/NXX in a local calling area outside the local calling area where the NPA/NXX is homed shall be treated as intrastate, interexchange toll traffic for purposes of intercarrier compensation and, therefore, are subject to access charges. Finally, the Arbitrators voted unanimously that nothing in this ruling exempts either party or any other carrier from the provisions of Tenn. Code Ann. § 65-21-114 which requires all carriers to provide county-wide calling.

XII. Issue 29 - In the event Intermedia chooses multiple tandem access ("MTA")[95], must Intermedia establish points of Interconnection at all BellSouth access tandems where Intermedia's NXXs are "homed?"

A. Positions of the Parties

BellSouth claims that the MTA option obviates the need for Intermedia to establish an interconnecting trunk at access tandems where Intermedia has no NPA/NXX codes homed. BellSouth maintains that Intermedia must interconnect at each tandem to which Intermedia has NPA/NXX codes homed. BellSouth justifies this assertion by claiming that it is normal industry practice. BellSouth also claims that it does not want to restrict Intermedia's network design, but it "should not be required to provide additional tandem switching on behalf of Intermedia without being paid for doing so."[96] BellSouth also argues that MTA forces it to incur extra costs from routing traffic from an access tandem to another tandem where Intermedia has interconnected when a LATA has more than one access tandem.

Intermedia claims that BellSouth wants Intermedia to interconnect at every tandem where Intermedia homes an NPA/NXX, even where Intermedia elects to use MTA. Intermedia asserts that requiring it to interconnect at each BellSouth tandem where Intermedia homes an NPA/NXX effectively eliminates the usefulness of MTA altogether.

B. Deliberations and Conclusions

The Arbitrators find that, as evidenced by BellSouth's testimony, there is no technical consideration that forces Intermedia to interconnect at each tandem in the rate center where they have NPA/NXXs homed. Moreover, the Arbitrators find that requiring Intermedia to interconnect at each access tandem where Intermedia NPA/NXXs are homed would eliminate the benefits of

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[95] Multiple tandem access ("MTA") is an interconnection arrangement that allows CLECs to serve customers connected to end offices subtending BellSouth's tandems by interconnecting at only one or less than all tandems.
[96] Transcript of Proceeding, September 19, 2000, v. IA, p. 21.

MTA. Nevertheless, Intermedia must interconnect in at least one tandem in the local calling area where its NPA/NXX is homed. The Arbitrators also find that the evidentiary record clearly demonstrates that BellSouth may incur additional switching and transports costs not included in the proposed reciprocal compensation rate if Intermedia elects to use MTA.

Given these findings, the Arbitrators voted unanimously that there is no need to restrict Intermedia's network design by requiring them to interconnect at all tandems where Intermedia NPA/NXXs are homed, but Intermedia must interconnect in at least one tandem in the rate center where its NPA/NXX is homed. The Arbitrators further voted unanimously that Intermedia must pay BellSouth just and reasonable compensation for additional tandem switching and transport charges not included in the negotiated reciprocal compensation rate if Intermedia utilizes MTA.

XIII. Issue 30(a) - Should Intermedia be required to designate a "home" local tandem for each assigned NPA/NXX?

A. Positions of the Parties

BellSouth contends that Intermedia must designate a home local tandem for each Intermedia NPA/NXX so that BellSouth and other carriers will be able to correctly route traffic to Intermedia endusers. BellSouth claims that all other telecommunications providers must know where Intermedia homes its NPA/NXX codes so that necessary translations and routing instructions can be installed to guarantee delivery of calls to Intermedia's endusers.

Intermedia asserts that BellSouth's proposed language would restrict Intermedia's network design by requiring Intermedia to designate home local tandems for each NPA/NXX and to establish points of interconnection at all access tandems where Intermedia homes NPA/NXXs. Intermedia claims that BellSouth seeks to restrict Intermedia's network design in the aforementioned manner because this interconnection arrangement is the most convenient and cost-effective for BellSouth. Intermedia further avers that Intermedia and BellSouth have had no problem completing calls to each other without the imposition of the aforementioned interconnection arrangement.

B. Deliberations and Conclusions

In resolving Issue 26, the Arbitrators determined that calls to a NPA/NXX in a local calling area outside the local calling area where the NPA/NXX is homed should be treated as intrastate, interexchange access. The Arbitrators now find that Intermedia must designate a home local tandem for each NPA/NXX so that the parties can utilize the call rating solution ordered in Issue 26. The designation of home local tandem for each Intermedia NPA/NXX is necessary to allow the parties to require reciprocal compensation payments, which are appropriate if a call terminates

in the local calling area where the NPA/NXX is homed, or access charges, which are appropriate if the traffic terminates in a local calling area other than where the NPA/NXX is homed. The choice of a home local tandem necessarily defines a BellSouth local calling area, which in turn will define whether reciprocal compensation or access charges are due for a call, even when Intermedia uses the same NPA/NXX codes in several BellSouth local calling areas. Based on these findings, the Arbitrators voted unanimously to require Intermedia to designate a home local tandem for each assigned NPA/NXX.

XIV. Issue 30 (b) - Should Intermedia be required to establish points of interconnection to BellSouth access tandems within the LATA on which Intermedia has NPA/NXXs homed?

A. Positions of the Parties

BellSouth contends that Intermedia must designate a home local tandem for each Intermedia NPA/NXX so that BellSouth and other carriers will be able to correctly route traffic to Intermedia's endusers. BellSouth further contends that it "should not be obligated to handle Intermedia's traffic on a tandem basis without being paid to do so."[97]

Intermedia asserts that BellSouth's proposed language restricts Intermedia's network design by requiring Intermedia to designate home local tandems for each NPA/NXX and to establish points of interconnection at all access tandems where Intermedia homes NPA/NXXs. Intermedia claims that BellSouth seeks to restrict Intermedia's network design in the aforementioned manner because this interconnection arrangement is the most convenient and cost-effective for BellSouth. Intermedia further avers that Intermedia and BellSouth have had no problem completing calls to each other without the imposition of the aforementioned interconnection arrangement.

B. Deliberations and Conclusions

The Arbitrators find that Issue 30(b) is materially similar to Issue 29. Accordingly, the Arbitrators adopt the same conclusions. Requiring Intermedia to interconnect to each access tandem in the rate center where Intermedia homes NPA/NXXs renders MTAs effectively useless.

[97] Transcript of Proceeding, September 19, 2000, v. IA, p. 23.

As previously stated, Intermedia should have flexibility in designing its network, but BellSouth should receive just and reasonable compensation for the cost of providing interconnection services to Intermedia. Thus, the Arbitrators voted unanimously that Intermedia should not be required to interconnect at each access tandem in the rate center where Intermedia NPA/NXXs are homed. Moreover, if Intermedia does not interconnect at each BellSouth access tandem within the LATA on which Intermedia homes NPA/NXXs, BellSouth should receive just and reasonable compensation for additional tandem switching and transport costs incurred that are not reflected in the negotiated reciprocal compensation rate.

XV. Issue 39(a) - What are the appropriate charges for Interconnection trunks between the parties' frame relay switches?

(b) What are the appropriate charges for frame relay network-to-network Interface ("NNI") ports?

(c) What are the appropriate charges for permanent virtual circuit ("PVC") segments (i.e., Data Link Connection Identifier ("DLCI") and Committed Information Rates ("CIR"))?

(d) What are the appropriate charges for requests to change a PVC segment or PVC service order record?[98]

A. Positions of the Parties

BellSouth maintains that the appropriate charges for all aspects of frame relay interconnection and service, including changes for existing service, are found in BellSouth's Interstate Access Tariff. Additionally, BellSouth claims that the parties agreed that Intermedia would provide BellSouth with a factor representing the Percent Local Circuit Use ("PLCU"), which indicates the percentage of traffic expected to be local versus long distance. BellSouth agreed to reimburse Intermedia fifty percent (50%) of the PLCU to the extent that Intermedia uses the trunks, NNI ports, or DLCI and CIR entirely for intraLATA frame relay service. Otherwise, Intermedia is responsible for the entire trunk charges.

Intermedia states that the rates and charges for interconnection and compensation for local traffic must reflect incremental cost as mandated by the FCC Rules and Sections 251(c)(2) and 252(d)(1) of the Act. Intermedia notes that even though the TELRIC rules have been challenged in the courts, the Arbitrators have employed their own long-run incremental costing model in setting rates for interconnection and reciprocal compensation in the past and should do so for frame relay service. Intermedia argues that it is inappropriate to use BellSouth's tariff rates for

[98] The aforementioned items are components of frame relay service, which is a form of packet switching. The trunks between frame relay switches and the NNI ports provide carrier-to-carrier connectivity of frame relay networks. The DLCIs and CIRs define the path and capacity of virtual circuits over which traffic (or frames of data) traverse the frame relay network.

frame relay interconnection and service. Instead, Intermedia suggests that the Arbitrators should set interim rates at fifty percent (50%) of BellSouth's tariffed frame relay rates, which is the difference between BellSouth's UNE rates and the tariff rates for services with equivalent functionality. Intermedia further suggests that the rates be subject to a true-up at the time final rates are established.

B. Deliberations and Conclusions

When ruling on Issue 25, the Arbitrators determined that Section 251(c)(3) of the Act does not require BellSouth to provide frame relay elements at TELRIC rates. Absent an affirmative finding that frame relay elements, such as those addressed in Issue 25, are network elements subject to the provisions of Section 251(c)(3) of the Act, TELRIC rates are neither required nor appropriate. Accordingly, the Arbitrators voted unanimously to adopt BellSouth's current tariff rates as the charges for interconnection trunks, NNI ports, PVC segments, DLCI, and CIR. The Arbitrators also agreed that the parties may voluntarily negotiate rates for frame relay elements that differ from existing tariff rates.

XVI. Ordered

The foregoing Interim Order of Arbitration Award reflects resolution of Issues 2(a), 3, 6, 7, 10, 12, 13(a), 18(c), 25, 26, 29, 30, and 39. The Arbitrators will address the only outstanding issue, Issue 48, at a later date.[99] All resolutions contained herein comply with the provisions of the Telecommunications Act of 1996 and are supported by the record in this proceeding.

TENNESSEE REGULATORY AUTHORITY,
BY ITS DIRECTORS ACTING AS
ARBITRATORS

Sara Kyle, Chairman

H. Lynn Greer, Jr., Director

Melvin J. Malone, Director

ATTEST:

K. David Waddell, Executive Secretary

[99] Since the February 6, 2001 deliberations, BellSouth has settled an issue regarding performance measurements and enforcement mechanisms with ITC^DeltaCom Communications, Inc. *See DeltaCom, Joint Motion for the TRA to Approve the Parties Settlement of Petition Issue 1(a).* Also, BellSouth, MCIMetro Access Services, LLC, and Brooks Fiber Communications of Tennessee, Inc. agreed in a Pre-Arbitration Conference that they would defer a similar issue to the Generic Docket on Performance Measurements (Docket No. 01-00193). Neither Intermedia nor BellSouth have, to date, informed this agency of any similar actions occurring in this Docket. *See In re: Petition of MCI Metro Access Services, LLC, and Brooks Fiber Communications of Tennessee, Inc. for Arbitration of Certain Terms and Conditions of Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996*, Docket No. 00-00309, Transcript of Proceedings, March 20, 2001, p.4.