BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of	DOCKET NO. 991854-TP
PETITION OF BELLSOUTH TELECOMMUNICATIONS, INC. FOR A SECTION 252(B) ARBITRATION OF INTERCONNECTION AGREEMENT WITH INTERMEDIA COMMUNICATIONS, INC.	

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VOLUME 1
PAGES 1 THROUGH 156

PROCEEDINGS:	HEARING
BEFORE:	COMMISSIONER E. LEON JACOBS, JR. COMMISSIONER LILA A. JABER
DATE:	Monday, April 10, 2000
TIME:	Commenced at 9:30 a.m.
PLACE:	Betty Easley Conference Center Room 148 4075 Esplanade Way Tallahassee, Florida
REPORTED BY:	JANE FAUROT, RPR Chief, Bureau of Reporting Official FPSC Reporter

APPEARANCES:

LANGLEY KITCHINGS and MICHAEL GOGGIN, BellSouth Telecommunications, Inc., 675 West Peachtree Street, Atlanta, Georgia 30375, representing BellSouth Telecommunications, Inc.

JONATHAN E. CANIS and ENRICO C. SORIANO, Kelley Drye & Warren, LLP, 1200 19th Street, S.W., Suite 500, Washington, D.C. 20036 and CHARLIE PELLEGRINI, Wiggins & Villacorta, P. A., Post Office Drawer 1657, 2145 Delta Boulevard, appearing on behalf of Intermedia Communications, Inc.

TIM VACCARO, Florida Public Service Commission, Division of Legal Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, appearing on behalf of the Commission Staff.

I N D E X

WITNESSES

EXHIBITS

P R O C E E D I N G S

COMMISSIONER JACOBS: We will go on the record. Call this hearing to order.

Counsel, read the notice, please.

MR. VACCARO: Pursuant to notice, this time and place have been designated for a formal hearing in Docket Number 991854-TP, Petition of BellSouth Telecommunications, Inc. for Section 252(B) arbitration of interconnection agreement with Intermedia Communications, Inc.

COMMISSIONER JACOBS: We will take appearances.

MR. KITCHINGS: Mr. Commissioner, on behalf of BellSouth Telecommunications, I am Langley Kitchings. My address is 675 West Peachtree Street, Atlanta, Georgia, 30375. And with me today is Michael Goggin of our Florida office.

COMMISSIONER JACOBS: And for Intermedia?

MR. CANIS: My name is Jon Canis of Kelley, Drye, and Warren in Washington, D.C., appearing here on behalf of Intermedia Communications. I am joined by my colleague, Eric Soriano, also from Kelley, Drye, and Warren in Washington, D.C.

MR. PELLEGRINI: Commissioner, Charles Pellegrini, Wiggins and Villacorta on behalf of Intermedia Communications.

COMMISSIONER JACOBS: Could I get your last name again, please.

MR. CANIS: My names is Canis, C-A-N-I-S.

COMMISSIONER JACOBS: And Eric Soriano?

MR. SORIANO: Soriano, S-O-R-I-A-N-O.

COMMISSIONER JACOBS: I almost had it right. Great.

MR. VACCARO: And Tim Vaccaro on behalf of Commission staff.

COMMISSIONER JACOBS: All right. Are there any preliminary matters that we can take up?

MR. VACCARO: We have a few preliminary matters. There are a few confidentiality requests which I will go through, along with some staff exhibits. And we also have settlement of some additional issues. With regard to the confidentiality matters, BellSouth filed a request for confidential classification of Varner Rebuttal Exhibit AJV-2. An order has been granted, and that material should be treated as confidential.

We also have some pending matters. BellSouth filed a notice of intent to request confidential classification for a response to Intermedia's request for Production of Documents Number 48. And we also have an Intermedia claim of confidentiality for Jackson Rebuttal Exhibit JCJ-3 and for its responses to Staff's First Request for

Production of Documents. We don't have rulings on those last three matters, but those will be maintained as confidential pending rulings after the hearing.

We also have some exhibits. We sent notice out to the parties last week regarding these exhibits. And to the best of my knowledge both parties are in agreement with staff's desire to place these into the record. The first exhibit is Staff's Stip 1, which is the official recognition list, which I guess should be marked as Exhibit 1 in this proceeding.

COMMISSIONER JACOBS: Show it marked as that.

(Exhibit Number 1 marked for identification.)

MR. VACCARO: And then Staff's Exhibit Stip 2 is Intermedia's responses to Staff's First Request for Production of Documents.

COMMISSIONER JACOBS: Show it marked as Exhibit 2.

(Exhibit Number 2 marked for identification.)

MR. VACCARO: Okay. Exhibit Stip 3 is BellSouth's responses to Staff's First Set of Interrogatories and Request for PODs.

COMMISSIONER JACOBS: Show it marked as Exhibit 3.

(Exhibit Number 3 marked for identification.)

MR. VACCARO: And then Staff's CONF-1 is

Intermedia's confidential responses to Staff's First Request for Production of Documents, and those have been filed under a claim of confidentiality by Intermedia.

COMMISSIONER JACOBS: What was the identification for that again?

MR. VACCARO: That is CONF-1, C-O-N-F-1, which I guess should be Exhibit 4.

COMMISSIONER JACOBS: Show it marked as Exhibit 4.

(Exhibit Number 4 marked for identification.)

MR. VACCARO: And, finally, the parties informed me just prior to the start of today's hearing that two additional issues have been settled, and those issues are Issues, I believe, 7 and 38.

COMMISSIONER JACOBS: Now, are we clear on the list of issues that are now settled?

MR. VACCARO: Yes.

COMMISSIONER JACOBS: We don't need to derive that, then.

MR. VACCARO: No. And staff is unaware of any other preliminary matters, unless there are any matters that the parties wish to raise at this point.

MR. KITCHINGS: BellSouth has no preliminary matters.

MR. CANIS: None for Intermedia, Your Honor.

COMMISSIONER JACOBS: Very well. Does that take care of any preliminary matters?

MR. VACCARO: Yes, sir.

COMMISSIONER JABER: Let me ask a question for my own clarification. In the prehearing order, all of the issues that are left with the exception of 7 and 38 are not settled?

MR. VACCARO: That is correct, Commissioner.

COMMISSIONER JABER: Thank you.

COMMISSIONER JACOBS: Off the record for a moment.

(Off the record briefly.)

COMMISSIONER JACOBS: Back on the record. That being the case, we are prepared to swear the witnesses. All the witnesses that will testify today, will you stand and raise your right hand.

(Witnesses sworn collectively.)

COMMISSIONER JACOBS: That is my first time so -- great. We were prepared to take the first witness?

MR. KITCHINGS: Yes.

COMMISSIONER JACOBS: I show that BellSouth is going first.

MR. KITCHINGS: Yes. Witness Varner.

COMMISSIONER JACOBS: Mr. Varner.

MR. KITCHINGS: May I proceed?

COMMISSIONER JACOBS: Mr. Kitchings.

MR. KITCHINGS: Thank you, Mr. Commissioner.

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ALPHONSO J. VARNER

was called as a witness on behalf of BellSouth Telecommunications, Inc. and, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KITCHINGS:

Q Would you please state your name and business address?

A My name is Alphonso Varner. My business address is 675 West Peachtree Street, Atlanta, Georgia.

Q By whom are you employed, Mr. Varner?

A BellSouth Telecommunications.

Q Are you the same Al Varner who caused to be filed some 56 pages of direct testimony?

A Yes.

Q And three exhibits.

A Yes.

Q Do you any additions, deletions, or corrections to your testimony?

A Yes, I do.

Q Would you please give those at this time?

A All right. On the direct testimony, at Page 2,

Line 25, the word transport should be inserted after the word dedicated. And in the rebuttal testimony --

Q We will confine just to direct at this time, Mr. Varner.

A Oh, I'm sorry.

Q That's all right. Any other corrections to the direct testimony?

A No, there aren't.

Q Okay. Subject to that one correction, Mr. Varner, if I were to ask the same questions as contained in the prefiled direct testimony, would your answers be the same?

A Yes, they would.

Q Do you have a summary of your testimony?

A Yes.

Q Would you please give that at this time?

A All right. Good morning. While BellSouth and Intermedia made significant progress on resolving issues, at my count anyway, there are 21 that remain. And my testimony addresses 17 of them. And these issues can be grouped into six general categories. Definitions, interconnection, the rates for unbundled network elements, enhanced extended links, reciprocal compensation, and packet switching. And I will briefly discuss each of these.

First, with regard to definitions, BellSouth simply wants to clearly state that ISP-bound traffic is not to be considered as local traffic as a definitional matter. In numerous orders, the FCC has already made this clear. Now, the parties also differ on the appropriate compensation mechanism that should apply to ISP traffic, and I will talk about that later. However, regardless of the compensation mechanism, this traffic is simply not local traffic and should be excluded from that definition.

Next, the parties disagree on the appropriate definition for intraLATA toll. BellSouth's position is that such traffic should be defined as any telephone call that is not local or switched access as those terms are defined in the interconnection agreement.

Now, Intermedia's position is that intraLATA toll traffic should be defined so as to include non-local packet data messages as well as voice traffic. This is inappropriate to expand the reciprocal compensation obligation to intraLATA toll traffic.

The final definitional issue is switched access. And we propose that switched access is appropriately defined by the existing tariffs, and there is no need to include a specific definition in a local interconnection agreement. However, BellSouth believes that it is important to specify that long distance telecommunications

using Internet protocol, or IP Telephony, is switched access service.

Our intent is to avoid a repeat of what has occurred because the definition of local traffic in earlier agreements did not explicitly address how ISP traffic would be handled. But let me be clear, though, IP Telephony and ISP-bound traffic represent two entirely different types of traffic. IP Telephony is clearly a technology used to transmit long distance telecommunications. It is not ISP.

Indeed, the FCC views ISP-bound traffic differently from Internet protocol telephony. Neither ISP-bound traffic nor IP Telephony is local traffic. However, the FCC has treated the two types differently. They have exempted ISP from payment of access charges and no such exemption applies to IP Telephony.

The next area is interconnection, and the issue here deals with a disagreement with respect to interconnection of the parties' frame relay networks. For interconnection purposes only, BellSouth agrees to treat frame relay traffic as local if it originates and terminates in the same LATA. However, BellSouth does not agree that such traffic is local for any other purpose, including compensation.

The other issue regarding interconnection of the

parties' frame relay networks is that -- well, I think that one was resolved. The percent local circuit use.

MR. CANIS: That is right.

THE WITNESS: Next, I would like to address NPA-NXX assignment. BellSouth is indifferent to the manner in which Intermedia defines its local calling area for its own end users. However, if the same NPA-NXX applies inside and outside the BellSouth local calling areas, it is impossible for BellSouth to determine whether its end users are making local or long distance calls. Consequently, we can't tell whether access charges or reciprocal compensation would apply.

In addition, BellSouth is concerned that calls be successfully routed, completed, and billed. And this cannot be accomplished without Intermedia informing BellSouth and other service providers of how and where to deliver and receive traffic to and from their customers.

The next area I wanted to discuss is rates. BellSouth has proposed rates for several new UNEs required by the FCC's UNE remand order. Because this Commission is conducting a generic UNE proceeding this year, Bellsouth is proposing interim rates subject to true-up based on the outcome of that proceeding.

Enhanced extended links is the next category, and there are two issues before this Commission. One, whether

BellSouth should be required to provide access to EELs at UNE rates, and whether Intermedia should be allowed to convert existing special access services to EELs at UNE rates. BellSouth agrees that it is required to provide access to enhanced extended links at cost-based rates where the combination currently exists in our network. The issue of conversion of special access service to EELs at UNE rates is a subject of a proposed rulemaking at the FCC. Until that rulemaking is complete, ALECs may not convert special access to combinations of UNEs unless the ALEC uses the UNE combination to provide a significant amount of local service in addition to exchange access service to a particular customer.

Reciprocal compensation. The parties differ on appropriate intercarrier compensation mechanism to apply to apply to ISP-bound traffic. BellSouth disagrees that reciprocal compensation is an appropriate intercarrier compensation mechanism for such costs. Reciprocal compensation applies only where local traffic is terminated on either parties' network. In its August 1996 order, the FCC made it clear that reciprocal compensation rules do not apply to interstate or interLATA traffic such as ISP-bound traffic. Since ISP-bound calls are interstate calls, no local -- not local traffic, it is not subject to the reciprocal

compensation obligations under the Act.
The interstate access connection that permits an ISP to communicate with its subscribers falls within the scope of exchange access and, accordingly, constitutues an access service as defined by the FCC. The local exchange rates paid by end user customers were never intended to cover costs associated with providing access service. Basic local exchange service customers buy access to -- customers who are basic local exchange customers of the LEC buy their access to the Internet directly from the ISP.
BellSouth's end user customers for local service are customers of the ISP for access to the Internet. This is the very same arrangement that you might have when an end user places a long distance call. They are a customer of the local company for their local service, but they are a customer of the IXC for their long distance service.
COMMISSIONER JACOBS: Did I understand that there are instances where ISPs pay local access? I saw that and I was confused by that.
THE WITNESS: I just missed the first part of --
COMMISSIONER JACOBS: Are there instances where an ISP pays some kind of local access charge?
THE WITNESS: Well, they don't pay switched access charges. But what they get is access service. And

what they pay for that access service by mandate of the FCC is the local exchange rate, whatever an end user would pay.

COMMISSIONER JACOBS: Oh.

THE WITNESS: They pay that same price, but they pay that price for access service whereas an end user pays that price for local service.

COMMISSIONER JACOBS: I see.

THE WITNESS: The access service they could get, though, permits their customers, the ISP's customers, to connect to the Internet through the ISP. In addition to the compensation Intermedia receives directly from the ISP customer, that is the business exchange rate as required by the FCC, Intermedia wants additional compensation from BellSouth, even though BellSouth doesn't collect revenues for this service. We request that this Commission find that traffic to ISPs, which is jurisdictionally interstate traffic and is access traffic, is not subject to reciprocal compensation.

Another reciprocal compensation issue deals with the applicability of the tandem switching rate. Carriers should only be compensated for tandem switching if they perform that function for local traffic and actually serve an area comparable to the area served by a BellSouth tandem switch. Intermedia has not demonstrated

that it meets either of these requirements. Specifically, a tandem switch connects one trunk to another trunk and is an intermediate switch used in the routing of a call. The tandem switch connects the switch where the call originates to the switch where the call terminates. The customer's local loop terminates in an end office switch and enables calls to be originated or terminated to that customer.

Intermedia's switch is an end office switch that is handling calls originating from or terminating to customers served by that local switch. It may function as a tandem switch for long distance calls, but that is irrelevant to whether they should receive reciprocal compensation at the tandem rate for local calls. Intermedia is seeking to be compensated for the cost of equipment it does not own and for functionality it does not provide. Intermedia claims that its switches are capable of serving areas comparable to BellSouth's tandems. However, that finding is insufficient. Any modern switch is capable of doing this. The issue is does it actually serve customers in an area that is comparable. And I submit that Intermedia's switches do not.

The next area is packet switching. In regards to whether BellSouth is required to provide access to unbundled

packet switching capacities, we contend that neither the act nor the FCC's rules requires it to do so. In its UNE remand order, the FCC expressly declined to, "Unbundle specific packet switching technologies incumbent LECs may have deployed in their networks." While the FCC adopted one limited exception this rule, the FCC specifically ically rejected, "E.spire/Intermedia's request for a packet switching or frame relay unbundled element." Indeed, the FCC concluded that E.spire and Intermedia have not provided any specific information to support a finding that requesting carriers are impaired without access to unbundled frame relay. The same is true in this case. Even assuming that a state commission is authorized to alter conditions established by the FCC for the unbundling of packet switching. Intermedia has not provided any evidence in this case that would demonstrate that it is impaired.

In conclusion, I request that the Commission adopt BellSouth's positions proposed in my direct testimony to resolve the issues that remain in this case.

That concludes my summary.

MR. KITCHINGS: Commissioner Jacobs, we would move the admission of Mr. Varner's testimony into the record and ask that the exhibits attached thereto be marked for identification.

COMMISSIONER JACOBS: Show Mr. Varner's testimony moved into the record as though read. And you are moving the exhibits, as well?

MR. KITCHINGS: Moving that they be marked for identification. We will move them at the conclusion of cross.

COMMISSIONER JACOBS: Just one comprehensive exhibit?

MR. KITCHINGS: I believe there is three separate exhibits attached to his testimony.

COMMISSIONER JACOBS: Show those as 5, 6, and 7.

(Exhibit Number 5, 6, and 7 marked for identification.)

BELLSOUTH TELECOMMUNICATIONS, INC.

DIRECT TESTIMONY OF ALPHONSO J. VARNER

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 991854-TP

February 14, 2000

Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC. ("BELLSOUTH") AND YOUR BUSINESS ADDRESS.

A. My name is Alphonso J. Varner. I am employed by BellSouth as Senior Director for State Regulatory for the nine-state BellSouth region. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR BACKGROUND AND EXPERIENCE.

A. I graduated from Florida State University in 1972 with a Bachelor of Engineering Science degree in systems design engineering. I immediately joined Southern Bell in the division of revenues organization with the responsibility for preparation of all Florida investment separations studies for division of revenues and for reviewing interstate settlements.

Subsequently, I accepted an assignment in the rates and tariffs organization with responsibilities for administering selected rates and tariffs including

preparation of tariff filings. In January 1994, I was appointed Senior Director of Pricing for the nine-state region. I was named Senior Director for Regulatory Policy and Planning in August 1994, and I accepted my current position as Senior Director of Regulatory in April 1997.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to present BellSouth's position on many of the unresolved issues in the negotiations between BellSouth and Intermedia Communications, Inc. ("Intermedia"). On February 10, 2000, the Florida Public Service Commission ("Commission") issued its Order Establishing Procedure in this docket. In that Order, the Commission listed the issues that are to be addressed in this arbitration. My testimony addresses Issues 2, 3, 4, 7, 12, 13, 15, 17, 18, 22, 25, 26, 31, 32, 35, 36, 37, 38, 39, 45 and 46. Mr. Keith Milner's testimony addresses Issues 10, 17, 27, 29 and 30.

Q. IN THIS PROCEEDING, DOES BELLSOUTH PROPOSE RATES FOR ANY UNBUNDLED NETWORK ELEMENTS ("UNEs")?

A. Yes. In this proceeding, BellSouth proposes interim rates for the following UNEs:

- Sub-loop Feeder per 2-Wire Analog Voice Grade Loop
- Loop Channelization and CO Interface (Inside CO)
- High Capacity Unbundled Local Loop – DS3, OCn, STS-1
- Local Channel Dedicated Transport – DS3, OCn, STS-1

- Interoffice Dedicated Transport – DS3, OCn, STS-1
- Dark Fiber

BellSouth also proposes interim rates for Unbundled Loop Modification, which provides for conditioning (i.e., equipment and bridged tap removal) of unbundled copper loops. BellSouth has not yet conducted a cost study for these elements in Florida. However, BellSouth recently submitted a TELRIC study and proposed rates for these elements in the Intermedia arbitration in North Carolina. BellSouth proposes that the North Carolina cost study be used to establish interim rates in Florida. These rates, shown on Exhibit AJV-1, would be subject to true-up when Florida-specific rates, to be proposed in April, are adopted by the Commission.

Q. WHY DOES BELLSOUTH PROPOSE INTERIM PRICES SUBJECT TO TRUE-UP FOR THESE ELEMENTS?

A. The Commission has set a procedural schedule in Docket No. 990649-TP that requires UNE cost studies be filed on April 17, 2000. As part of that filing, BellSouth will sponsor a cost study for the elements listed above. BellSouth believes it is appropriate to set interim prices subject to true-up pending the Commission's determination of the appropriate permanent prices in Docket No. 990649-TP.

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

(a) ISP traffic,

(b) False traffic deliberately generated for the sole purpose of obtaining increased reciprocal compensation (e.g., Router-Router traffic)?

Q. WHAT IS BELLSOUTH'S PROPOSED DEFINITION OF LOCAL TRAFFIC?

A. BellSouth proposes the following definition of local traffic for inclusion in the Interconnection Agreement with Intermedia:

> 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**[1] 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. As further clarification, Local Traffic does not include calls that do not transmit information of the user's choosing. In any event, neither Party will pay reciprocal compensation to the other if

[1] Reflects clarification of the local traffic definition as proposed by BellSouth. The proposed interconnection agreement between the parties should also be amended to reflect this clarification.

> the "traffic" to which such reciprocal compensation would otherwise apply was generated, in whole or in part, for the purpose of creating an obligation on the part of the originating carrier to pay reciprocal compensation for such traffic.

This basic definition appears in several places in the proposed agreement, including the General Terms and Conditions – Part B and Section 6.1.1 of Attachment 3.

Q. HOW DO THE ACT AND THE FCC'S FIRST REPORT AND ORDER IN CC DOCKET 96-98 ADDRESS RECIPROCAL COMPENSATION?

A. Reciprocal compensation applies only when local traffic is terminated on either party's network. One of the Act's basic interconnection rules is contained in 47 U.S.C. § 251(b)(5). That provision requires all local exchange carriers "to establish reciprocal compensation arrangements for the transport and termination of telecommunications." Section 251(b)(5)'s reciprocal compensation duty arises, however, only in the case of local calls. In fact, in its August 1996 Local Interconnection Order (CC Docket No. 96-98), paragraph 1034, the FCC made it perfectly clear that reciprocal compensation rules do not apply to interstate or interLATA traffic such as interexchange traffic:

> *We conclude that Section 251(b)(5), reciprocal compensation obligation, should apply only to traffic that originates and terminates within a local area assigned in the following paragraph. We find that*

reciprocal compensation provisions of Section 251(b)(5) for transport and termination of traffic do not apply to the transport and termination of interstate or intrastate interexchange traffic.

This interpretation is consistent with the Act, which establishes a reciprocal compensation mechanism to encourage local competition.

Further, in Paragraph 1037 of that same Order, the FCC stated:

We conclude that section 251(b)(5) obligations apply to all LECs in the same state-defined local exchange areas, including neighboring incumbent LECs that fit within this description.

The FCC's interpretation of reciprocal compensation applying only to local traffic is consistent with the Act, which established a reciprocal compensation mechanism to encourage local competition.

Q. WHAT IS BELLSOUTH'S POSITION ON THE APPLICABILITY OF RECIPROCAL COMPENSATION TO ISP-BOUND TRAFFIC?

A. Because ISP-bound traffic is interstate traffic, not local traffic, it is not subject to the reciprocal compensation obligations contained in Section 251 of the Act. Payment of reciprocal compensation for ISP-bound traffic is inconsistent with the law and is not sound public policy.

Q. IS BELLSOUTH'S POSITION REGARDING JURISDICTION OF ISP-BOUND TRAFFIC CONSISTENT WITH THE FCC'S FINDINGS AND ORDERS?

A. Absolutely. BellSouth's position is supported by, and is consistent with, the FCC's findings and Orders which state that, for jurisdictional purposes, traffic must be judged by its end-to end nature, and must not be judged by looking at individual components of a call. Therefore, for purposes of determining jurisdiction for ISP-bound traffic, the originating location and the final termination must be looked at from an end-to-end basis. BellSouth's position is consistent with long-standing FCC precedent.

In its Declaratory Ruling in Docket Nos. 96-98 and 99-68, dated February 25, 1999, the FCC noted that it would refer to providers of enhanced services and providers of information services as ESPs, a category which includes Internet Service Providers, which the FCC refers to in its order as ISPs (fn 1). The FCC once again confirmed that ISP-bound traffic is access service subject to interstate jurisdiction and is not local traffic when it concluded that "ISP-bound traffic is non-local interstate traffic." (fn 87) The FCC noted in its decision that it traditionally has determined the jurisdiction of calls by the end-to-end nature of the call. In paragraph 12 of this same order, the FCC concluded "that the communications at issue here do not terminate at the ISP's local server, as CLECs and ISPs contend, but continue to the ultimate destination or destinations, specifically at an Internet website that is often located in another state." Further, in paragraph 12 of its Declaratory Ruling, the FCC finds that

"[a]s the Commission stated in *BellSouth MemoryCall,* the Commission has jurisdiction over, and regulates charges for, the local network when it is used in conjunction with the origination and termination of interstate calls."

The FCC's decision makes plain that no part of an ISP-bound communication terminates at the facilities of an ISP. Once it is understood that ISP-bound traffic "terminates" only at distant websites, which are almost never in the same exchange as the end-user, it is evident that these calls are not local.

Q. DOESN'T AN ISP PAY BASIC LOCAL EXCHANGE RATES FOR THE ACCESS SERVICE IT RECEIVES?

A. Yes. However, the fact that the FCC has exempted enhanced service providers, including ISPs, from paying interstate switched access charges does not alter the fact that the connection an ISP obtains is an access connection. The FCC confirmed this fact in its Declaratory Ruling, at paragraph 16: "The fact that ESPs are exempt from access charges and purchase their PSTN links through local tariffs, does not transform the nature of traffic routed to ESPs." Instead, the exemption limits the compensation that an ILEC in providing such a connection can obtain from an ISP. Further, under the access charge exemption, the compensation derived by an ILEC providing the service to an ISP has been limited to the rates and charges associated with business exchange services. Nevertheless, the ISP's service involves interstate communications. The ISP obtains access service that enables a communications path to be established by its subscriber. The ISP, in turn,

recovers the cost of the telecommunications services it uses to deliver its service through charges it assesses on the subscribers of the ISP's service.

The interstate access connection that permits an ISP to communicate with its subscribers falls within the scope of exchange access and, accordingly, constitutes an access service as defined by the FCC:

Access Service includes services and facilities provided for the origination or termination of any interstate or foreign telecommunications. (47 CFR Ch. 1 §69.2(b)) (emphasis added)

Q. HAS THIS COMMISSION PREVIOUSLY RULED ON THE INCLUSION OF ISP-BOUND TRAFFIC IN THE DEFINITION OF LOCAL TRAFFIC SUBJECT TO RECIPROCAL COMPENSATION?

A. Yes. In its Order No. PSC-00-0128-FOF-TP dated January 14, 2000, in the ICG/BellSouth Arbitration Case, Docket No.990691-TP, the Commission found that "the parties should continue to operate under the terms of their current contract until the FCC issues its final ruling on whether ISP-bound traffic should be defined as local and whether reciprocal compensation is due for this traffic." (p. 5). The Commission noted that it reached this same decision in its Order No. PSC-99-2009-FOF-TP dated October 14, 1999 in the MediaOne/BellSouth Arbitration Case, Docket No. 990149-TP.

BellSouth recognizes that the Commission has established a docket (Docket No. 000075-TP) to consider the appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Act. Depending on the scope of that docket, this issue may be better addressed there. However, BellSouth reiterates its position that Section 251 of the Act does not require development of a compensation mechanism for this traffic.

Q. WHY IS IT NECESSARY TO INCLUDE IN THE DEFINITION OF LOCAL TRAFFIC AN EXCEPTION FOR "FALSE TRAFFIC" DELIBERATELY GENERATED FOR THE SOLE PURPOSE OF OBTAINING INCREASED RECIPROCAL COMPENSATION?

A. Although this type of traffic has not yet been addressed in a case before this Commission, it has been addressed in a complaint proceeding by another state commission in BellSouth's region. Generally speaking, the "traffic" at issue in that proceeding is false traffic created for the sole purpose of generating reciprocal compensation for which BellSouth was billed. Router-to-router connections were established on a 24-hour/7-days-per-week basis on BellSouth's network by a company who had entered into a reciprocal compensation sharing arrangement with a particular ALEC. That ALEC agreed to share with the originating party the reciprocal compensation it received from BellSouth for this "false traffic." Irrespective of any actual use of the network connections established by its routers, the originating party kept these connections open between the BellSouth network and the ALEC's network on essentially a 24 hour-a-day basis so as to generate reciprocal

compensation payments from BellSouth to the ALEC for that entire period. In effect, the originating party and the ALEC established a private network, and reciprocal compensation obligations under the Act do not extend to such private networks.

That complaint was heard in August 1999, has been extensively briefed by the parties, and a decision is pending. By proposing to specifically exclude such traffic from the Parties' definition of local traffic, BellSouth has attempted to describe, albeit in a shorthand fashion, the type of traffic the third party originated--either for itself or on behalf of its other customers--on BellSouth's network and for which the ALEC attempted to collect reciprocal compensation from BellSouth. BellSouth's position, of course, is that such "traffic" is not local traffic subject to payment of reciprocal compensation. In fact, it isn't traffic at all. It is important to specify at this time that such traffic is not local traffic subject to payment of reciprocal compensation should it become an issue in Florida at some point in the future.

Q. WHAT DOES BELLSOUTH REQUEST OF THIS COMMISSION?

A. BellSouth respectfully requests that this Commission find BellSouth's proposed definition of Local Traffic to be consistent with the parties' reciprocal compensation obligations under Section 251(b)(5) of the Act. In order to avoid potential future disputes between the parties concerning the applicability of reciprocal compensation to ISP-bound traffic, BellSouth requests the Commission find that the definition of Local Traffic should

expressly exclude traffic to Internet Service Providers. Further, BellSouth asks the Commission to find it appropriate to include in the definition of Local Traffic an exception for "false traffic" deliberately generated for the sole purpose of obtaining increased reciprocal compensation.

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

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

A. BellSouth agrees that Intermedia should be compensated for the functions that its switches provide. In its Order No. PSC-96-1579-FOF-TP, dated December 31, 1996, the Commission established reciprocal compensation rates for end office switching and tandem switching. In that same order, the Commission determined rates for common transport.

Intermedia proposes that a composite rate be calculated and applied in every instance, regardless of which actual elements are used to terminate and transport the local traffic. However, BellSouth's position is that elemental rates are the appropriate rates to use because they more closely represent the costs incurred to transport and terminate such local traffic.

BellSouth contends that carriers should be compensated only for those functions they actually perform. If a call is not handled by a switch on a tandem basis, it is not appropriate to pay reciprocal compensation for the

tandem switching function. A tandem switch connects one trunk to another trunk and is an intermediate switch or connection between an originating telephone call location and the final destination of the call. An end office switch is connected to a telephone subscriber and 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 is seeking to be compensated for the cost of equipment it does not own and for functionality it does not provide.

Q. HOW DO THE FCC'S RULES DEFINE LOCAL TANDEM SWITCHING?

A. In its recently released Order No. FCC 99-238, the FCC's rules at 51.319(c)(3) state:

> *Local Tandem Switching Capability.* The tandem switching capability network element is defined as:
>
> (i) Trunk-connect facilities, which include, but are not limited to, the connection between trunk termination at a cross connect panel and switch trunk card;
>
> (ii) The basic switch trunk function of connecting trunks to trunks; and
>
> (iii) The functions that are centralized in tandem switches (as distinguished from separate end office switches), including but not limited, to call recording, the routing of calls to operator services, and signaling conversion features.

Q. DOES INTERMEDIA'S SWITCH SERVE A GEOGRAPHIC AREA COMPARABLE TO BELLSOUTH'S TANDEM?

A. Without additional information, it is not possible to determine whether Intermedia's switch would actually serve a geographic area comparable to BellSouth's tandem. Even if one were to assume that Intermedia's switch covers a geographic area similar to BellSouth's tandem, unless Intermedia's switch is performing tandem functions, which the FCC has indicated is one of the required criteria that an ALEC's switch must meet, Intermedia is not eligible for the tandem switching element of reciprocal compensation.

Q. HAS THE FCC ADDRESSED TRANSPORT AND TERMINATION?

A. Yes. In paragraph 1039 of the FCC's First Report and Order, the FCC clearly defines transport:

> "We conclude that transport and termination should be treated as two distinct functions. We define 'transport' for purposes of section 251(b)(5), as the transmission of terminating traffic that is subject to section 251(b)(5) from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party (or equivalent facility provided by the non-incumbent carrier)."

Further, in paragraph 1040 of the FCC's First Report and Order,

> "We define "termination" for purposes of section 251(b)(5), as the switching of traffic that is subject to section 251(b)(5) at the

terminating carrier's end office switch (or equivalent facility) and delivery of that traffic from that switch to the called party's premises."

Additionally in that same paragraph, the FCC states:

"As such, we conclude that we need to treat transport and termination as separate functions – each with its own cost."

Clearly, the FCC recognized that transport and termination charges should apply only if those functions are provided. Transport includes any flat-rated dedicated services, tandem switching function and "common" transport between the tandem switch and end office switch necessary to transport the call from the interconnection point to the end office. Intermedia's switch is not providing a common transport or tandem function, but is switching traffic through its end office for delivery of that traffic from that switch to the called party's premises.

Q. IS INTERMEDIA'S POSITION CONSISTENT WITH WHAT THE FCC DETERMINED TO BE THE "ADDITIONAL COST" OF TERMINATING A CALL?

A. No. In paragraph 1057, the FCC clearly indicates what should be charged for terminating a call:

"We find that, once a call has been delivered to the incumbent LEC end office serving the called party, the 'additional cost' to the LEC of terminating a call that originated on a competing carrier's network

primarily consists of the traffic-sensitive component of local switching. The network elements involved with the termination of traffic include the end-office switch and local loop. 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."

Obviously, the FCC intends for the terminating LEC to recover its loop costs from the end user customer, not the originating LEC. Intermedia is clearly attempting to recover its loop costs from BellSouth by inappropriately classifying its end office switch as a tandem switch.

Q. HAS THIS COMMISSION PREVIOUSLY RULED ON THE ISSUE OF APPLICABILITY OF RECIPROCAL COMPENSATION TO TANDEM SWITCHING?

A. Yes. Most recently, in its January 14, 2000 Order No. PSC-00-0128-FOF-TP in Docket No. 990691-TP (ICG/BellSouth Arbitration), this Commission found that "the evidence of record does not provide an adequate basis to determine that ICG's network will fulfill this geographic criterion." (p. 10) Therefore, this Commission has determined that BellSouth is not required to compensate ICG for the tandem switching element.

Earlier, the Florida Public Service Commission, in Order No. PSC-97-0294-FOF-TP, Docket 961230-TP, dated March 14, 1997, concluded at pages 10-11:

> "We find that the Act does not intend for carriers such as MCI to be compensated for a function they do not perform. Even though MCI argues that its network performs 'equivalent functionalities' as Sprint in terminating a call, MCI has not proven that it actually deploys both tandem and end office switches in its network. If these functions are not actually performed, then there cannot be a cost and a charge associated with them. Upon consideration, we therefore conclude that MCI is not entitled to compensation for transport and tandem switching unless it actually performs each function."

Similarly, Florida Order No. PSC-96-1532-FOF-TP, Docket No. 960838-TP, dated December 16, 1996, states at page 4:

> "The evidence in the record does not support MFS' position that its switch provides the transport element; and the Act does not contemplate that the compensation for transporting and terminating local traffic should be symmetrical when one party does not actually use the network facility for which it seeks compensation. Accordingly, we hold that MFS should not charge Sprint for transport because MFS does not actually perform this function."

Reinstatement of the FCC's rules previously vacated by the Eighth Circuit Court of Appeals does not alter the correctness of this Commission's conclusions.

Q. WHAT DOES BELLSOUTH REQUEST OF THIS COMMISSION?

A. BellSouth urges this Commission to find that an elemental rate structure, rather than a composite rate structure, is appropriate for compensation of end office switching, tandem switching and common transport. BellSouth proposes that the rates ordered by this Commission for these elements in its December 31, 1996 Order No. PSC-96-1579-FOF-TP are the appropriate rates for inclusion in the new interconnection agreement. Further, BellSouth requests this Commission find that Intermedia's end office switches do not perform the same function as BellSouth's tandem switches, nor do they serve the same geographic area. Subsequently, Intermedia is not due compensation for the tandem switching element.

Issue 4: Should BellSouth be required to pay for additional transport charges where Intermedia has configured its network in such a way that its switch is in a different LATA than Intermedia's end user customer?

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

A. This issue appears to consist of two parts:

(1) BellSouth's ability to designate a Point of Interface ("POI") for the traffic that BellSouth originates to Intermedia, and

(2) having established the POI, whether each party is obligated to provide the facilities necessary to transport traffic from that POI to end users on its network.

Q. DO THE PROVISIONS OF THE ACT LIMIT BELLSOUTH'S ABILITY TO DESIGNATE A POI FOR THE TRAFFIC THAT BELLSOUTH ORIGINATES TO INTERMEDIA?

A. No, nothing in the Act limits BellSouth's ability to designate a Point of Interface for traffic it originates to Intermedia. As clarification, the term Point of Interface is synonymous with the term Point of Interconnection as used by the FCC.

Q. WHAT IS THE FCC'S REQUIREMENT REGARDING POINTS OF INTERFACE?

A. The FCC addresses the Point Of Interface (i.e., Point Of Interconnection as defined by the FCC) in its First Report & Order, CC Docket 96-98, dated August 1, 1996, in Section IV, Interconnection. In that section, the FCC established the concept that, due to reciprocal compensation being paid by the originating company, the originating company may seek to determine its POI in order to minimize its reciprocal compensation obligation to the terminating company. For example, in Subsection F, Technically Feasible Points Of Interconnection, ¶ 209, the FCC states:

> *"We conclude that we should identify a minimum list of technically feasible points of interconnection that are critical to facilitating entry by competing local service providers. Section 251(c)(2) gives competing carriers the right to deliver traffic terminating on an incumbent LEC's network at any technically feasible point on that*

network, rather than obligating such carriers to transport traffic to less convenient or efficient interconnection points. Section 251(c)(2) lowers barriers to competitive entry for carriers that have not deployed ubiquitous networks by permitting them to select the points in an incumbent LEC's network at which they wish to deliver traffic. Moreover, because competing carriers must usually compensate incumbent LECs for the additional costs incurred by providing interconnection, competitors have an incentive to make economically efficient decisions about where to interconnect."

This ruling only specifies that the ALEC must establish a POI on the incumbent LEC's network for traffic originated by the ALEC. It does not obligate the incumbent LEC to specify a POI on the ALEC's network for traffic originated by the incumbent LEC.

Q. IS THERE A DISPUTE AS TO INTERMEDIA'S ABILITY TO DESIGNATE A POI FOR ITS ORIGINATING TRAFFIC TERMINATING ON BELLSOUTH'S NETWORK?

A. No. As is clear from the language quoted above, an ALEC may designate a POI for its originating traffic at any technically feasible point on BellSouth's network.

Q. HAS THE FCC RULED ON AN ILEC'S ABILITY TO DESIGNATE A POI WHEN THE TRAFFIC ORIGINATES FROM THE ILEC'S NETWORK?

A. Yes. In the FCC's Order 96-325, MCI attempted to have the FCC limit the ability of incumbent LECs to specify a POI for their originating traffic. In paragraph 214 of that Order, the FCC states:

> *"MCI also urges the Commission to require incumbents and competitors to select one point of interconnection (POI) on the other carrier's network at which to exchange traffic. MCI further requests that this POI be the location where the costs and responsibilities of the transporting carrier ends and the terminating carrier begins."*

In paragraph 220, the FCC rejected MCI's request, stating:

> *"We also conclude that MCI's POI proposal, permitting interconnecting carriers, both competitors and incumbent LECs, to designate points of interconnection on each other's networks, is at this time best addressed in negotiations and arbitrations between parties."*

By this conclusion, the FCC refused to limit the incumbent LEC's ability to designate a POI with the interconnecting carrier, and left it up to the negotiation and arbitration process.

Q. PLEASE EXPLAIN FURTHER BELLSOUTH'S POSITION.

A. As the originating company, BellSouth simply seeks the option to determine at which points in the network it is more cost effective to deliver BellSouth's originating traffic to an ALEC based upon 1) providing its own transport, or 2) purchasing transport from a third party or 3) paying the terminating ALEC transport reciprocal compensation. In turn, Intermedia must make these same

economic decisions for traffic it originates to BellSouth. Not having the option to designate POIs based on such economic analyses would, by default, place BellSouth and its end users at the mercy of delivering BellSouth originating traffic to any ALEC-designated POI notwithstanding the detrimental economic impact on BellSouth's network. The significant economic impact this issue has on BellSouth is clearly demonstrated by the fact that during 1999, region-wide, BellSouth originated and delivered to ALECs 49 billion minutes of use compared to 2 billion minutes of use that ALECs originated and delivered to BellSouth.

Taken to the extreme, Intermedia might want BellSouth to designate only one POI per LATA; whereas, the most efficient option for BellSouth would be to designate a POI at every end office and remote terminal. In the interest of fairness and equity, a middle ground between the two extremes would appear to be the most reasonable. At most, BellSouth wants to designate no more than one POI in each local calling area. That POI could be at a tandem or at an end office.

Q. HAVING ESTABLISHED THE POI, IS EACH PARTY OBLIGATED TO PROVIDE THE FACILITIES NECESSARY TO TRANSPORT TRAFFIC FROM THAT POI TO END USERS ON ITS NETWORK?

A. BellSouth's position is that each party is obligated to provide facilities necessary to transport traffic from the established POI to end users on that party's network. Intermedia's position appears to be that it is not required to

provision facilities to locations not on its network to provide transport service to BellSouth. However, as explained above, BellSouth is not required to establish the POI for BellSouth originated traffic at a point on Intermedia's network.

BellSouth contends that if Intermedia wants to establish a presence in a particular local serving area, it should invest in the facilities and transport to interconnect with BellSouth in that local serving area. However, this doesn't necessarily mean that Intermedia should construct new transport facilities within that area. If BellSouth facilities exist, BellSouth may provide the transport facilities, but Intermedia should compensate BellSouth for the transport from the BellSouth established Point of Interface to the point where Intermedia wants the traffic transported.

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

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

A. The issue of appropriate rates for physical collocation, including space preparation charges, has been addressed by this Commission in its Order No. PSC-98-0604-FOF-TP, dated April 29, 1998, wherein the Commission found that it was appropriate to determine space preparation charges on an Individual Case Basis ("ICB"). BellSouth proposes that it is appropriate for space preparation charges to continue to be determined on an ICB until such time as this Commission determines otherwise.

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

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

A. BellSouth has proposed the following language to Intermedia:

> Consistent with 47 C.F.R. § 51.315(b), Intermedia may request access to existing combinations of network elements in BellSouth's network, and BellSouth shall not separate requested network elements that BellSouth currently combines in its network, but shall provide such currently combined elements to Intermedia in the existing combination. For purposes of this Section, "currently combined" and "currently combines" mean that such elements are in fact combined by BellSouth in BellSouth's network to provide service to a particular customer at a particular location. Such currently combined network elements shall be made available at cost-based rates and shall be used by Intermedia to provide a significant amount of local exchange service to a particular end user.

Q. DOES BELLSOUTH BELIEVE THAT INTERMEDIA IS AGREEABLE TO THE LANGUAGE PROPOSED BY BELLSOUTH?

A. Not entirely. The dispute centers around the meaning of "currently combined" and "currently combines." BellSouth's position is that it will provide combinations to Intermedia at cost-based prices if the elements are already

combined and providing service to the customer. In other words, if BellSouth does not have to perform any physical work to effect the combination, then the combination will be provided at cost-based prices. However, Intermedia apparently considers "currently combined" and "currently combines" to refer to any service that BellSouth offers in its tariffs, whether or not the elements are physically combined and serving the particular customer in question.

Q. WAS THIS ISSUE ADDRESSED IN THE FCC'S UNE REMAND ORDER?

A. Yes. The FCC confirmed that BellSouth presently has no obligation to combine network elements for ALECs, 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). For example, when a loop and a port (at least for certain customers with fewer than four access lines) are currently combined by BellSouth to serve a particular customer, that combination of elements must be made available to requesting carriers.

The FCC 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." (Para. 480 – emphasis added) However, the FCC 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.*

Issue 13: Should BellSouth be required to:

a) provide access to enhanced extended links ("EELs") at UNE rates; and

b) allow Intermedia to convert existing special access service to EELs at UNE rates?

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

A. First, the FCC declined to define the EEL as a separate network element in its UNE Remand Order. (Para 478) Accordingly, except to the extent where currently combined elements in BellSouth's network that comprise an EEL are located, BellSouth currently has no obligation to provide ALECs with the EEL. However, it is virtually impossible to separate Part a) of this issue from Part b).

On the surface, it would appear that when an ALEC has purchased currently combined elements that may comprise the EEL, the ILEC would have to provide that combination at cost-based prices. However, an ALEC's ability to convert special access facilities to unbundled elements is constrained at least until the FCC completes its Fourth Notice of Proposed Rulemaking. (Para. 489) The FCC ordered such constraints in order to allow the FCC to develop an adequate record to examine the concern "that allowing requesting carriers to obtain combinations of loop and transport unbundled network elements based on forward-looking cost would provide opportunities for arbitrage of special

access services," and thereby negatively impact universal service. (UNE Remand Order, Para. 494; November 24, 1999 Supplemental Order, Para 4) Until that rulemaking is complete, the FCC has made clear that carriers may not convert special access services to combinations of unbundled network elements unless the carrier uses combinations of network elements to provide a significant amount of local exchange service, in addition to exchange access service to a particular customer. (November 24, 1999 Supplemental Order Paras. 2 & 4)

Q. HAS THIS COMMISSION PREVIOUSLY RULED ON THIS ISSUE?

A. Yes, in its Order No. PSC-00-0128-FOF-TP, dated January 14, 2000, the Commission determined that EELs are not required to be made available to ICG in the interconnection agreement as UNEs. (p. 9)

Issue 15: Should BellSouth be required to condition loops in accordance with the FCC's most recent ruling?

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

A. BellSouth has proposed the following language, which is consistent with §51.319(a)(3) of the FCC's UNE Remand Order and with Intermedia's proposed language:

Subject to applicable and effective FCC rules and orders, BellSouth shall condition loops, as requested by Intermedia, whether or not BellSouth offers advanced services to the End User on that loop.

Loop conditioning is defined as the removal from the loop of any devices that may diminish the capability of the loop to deliver high-speed switched wireline telecommunications capability, including xDSL service. Such devices include, but are not limited to, bridge taps, low pass filters, and range extenders.

BellSouth shall recover the cost of loop conditioning requested by Intermedia through a nonrecurring charge set forth in this Attachment.

To the extent technically feasible, BellSouth, using testing equipment that is owned and operated by BellSouth, shall test and report trouble for all the features, functions, and capabilities of conditioned loops, and may not restrict testing to voice-transmission only.

As I previously explained, BellSouth is proposing interim rates for loop conditioning. These rates, shown on Exhibit AJV-1, would be subject to true-up when Florida-specific rates, to be proposed in April, are adopted by the Commission.

Issue 17: Should BellSouth be required to offer subloop unbundling and access to BellSouth-owned inside wiring in accordance with the UNE Remand Order and FCC Rule 319(a)?

Q. WHAT IS BELLSOUTH'S POSITION ON PROVISIONING OF ACCESS TO SUBLOOP UNBUNDLING?

A. Please see Mr. Milner's testimony for a discussion of the technical aspects of this issue. BellSouth has proposed the following language, which is consistent with §51.319(a)(2) of the FCC's UNE Remand Order and with Intermedia's proposed language:

> Where facilities permit and subject to applicable and effective FCC rules and orders, BellSouth shall offer access to its Unbundled Sub Loop (USL), Unbundled Sub Loop Concentration (USLC) System and Unbundled Network Terminating Wire (UNTW) elements. BellSouth shall provide nondiscriminatory access, in accordance with § 51.311 and section 251(c)(3) of the Act, to the subloop, including inside wiring owned or controlled by BellSouth, if any, on an unbundled basis pursuant to the following terms and conditions and at the rates set forth in this Attachment.
>
> The subloop network element is defined as any portion of the loop that is technically feasible to access at terminals in BellSouth's outside plant, including inside wire owned and controlled by BellSouth, if any. An accessible terminal is any point on the loop where technicians can access the wire or fiber within the cable without removing a splice case to reach the wire or fiber within. Such points may include, but are not limited to, the pole or pedestal, the network interface device, the minimum point of entry, the single point of interconnection, the main

distribution frame, the remote terminal, and the feeder/distribution interface.

Technical feasibility. Subject to applicable and effective FCC rules and orders, if the Parties are unable to reach agreement, pursuant to voluntary negotiations, as to whether it is technically feasible, or whether sufficient space is available, to unbundle the subloop at the point where a carrier requests, BellSouth shall have the burden of demonstrating to the Commission, pursuant to state arbitration proceedings under section 252 of the Act, that there is not sufficient space available, or that it is not technically feasible, to unbundle the subloop at the point requested

Best practices. Once any state commission has determined that it is technically feasible to unbundle subloops at a designated point, BellSouth shall have the burden of demonstrating, pursuant to state arbitration proceedings under section 252 of the Act, that it is not technically feasible, or that sufficient space is not available, to unbundle its own loops at such a point.

Subloop access via collocation. Where requested by Intermedia, BellSouth shall provide access to the subloop in accordance with the FCC's collocation rules, 47 C.F.R. §§ 51.321-323.

Single point of interconnection. Subject to applicable and effective FCC rules and orders, BellSouth shall provide a single point of interconnection at multi-unit premises that is suitable for use by multiple carriers. This obligation is in addition to BellSouth's obligation to provide nondiscriminatory access to subloops at any technically feasible point. If the Parties are unable to negotiate terms and conditions regarding a single point of interconnection, issues in dispute, including compensation due BellSouth under forward-looking pricing principles, shall be resolved under the dispute resolution processes set forth in this Agreement.

BellSouth will provide Intermedia with the ability to concentrate its sub-loops onto multiple DS1s back to the BellSouth Central Office. The DS1s will then be terminated into Intermedia's collocation space. TR-008 and TR303 interface standards are available.

This Commission has already established rates for sub-loop distribution in Order No. PSC-98-0604-FOF-TP, dated April 29, 1998. As I previously indicated, BellSouth is proposing interim rates for sub-loop feeder and Loop Channelization. These rates, shown on Exhibit AJV-1, would be subject to true-up when Florida-specific rates, to be proposed in April, are adopted by the Commission.

Q. WHAT IS BELLSOUTH'S POSITION ON PROVISIONING OF BELLSOUTH-OWNED INSIDE WIRING?

A. Again, please see Mr. Milner's testimony for a discussion of the technical aspects of this issue. In order to provide Intermedia with access to unbundled Network Terminating Wire, BellSouth has proposed the following language to Intermedia:

> BellSouth will provide Intermedia with access to its Unbundled Network Terminating Wire (UNTW) pursuant to the following terms and conditions at rates as set forth in this Attachment, and in a manner consistent with applicable and effective FCC rules and decisions, including, but not limited to C.F.R § 51.319.
>
> BellSouth will offer spare pairs that are available to an end user's premises to Intermedia. Available spare pairs are defined as pairs that are not being utilized by BellSouth or by a third party to provide an end user with working service at the time of Intermedia's request for UNTW. If BellSouth has relinquished the first pair to Intermedia and the end user decides to change local service providers to BellSouth, Intermedia will relinquish the first pair back to BellSouth. Notwithstanding the foregoing, should BellSouth subsequently require the use of additional pair(s) to provide for the activation of additional lines in an end user's premises in response to a request from such end user and no additional pairs are available, Intermedia agrees to surrender its spare pair(s) upon request by BellSouth, provided that Intermedia is not using such spare pair(s) to provide service to the end user.

If an end user of Intermedia desires to receive local exchange service from a service provider who is not a Party to this Agreement, and such third party service provider needs access to the BellSouth UNTW to provide local exchange service to the end user, then Intermedia agrees to surrender the requisite number of its inactive spare pair(s) if no other spare pair is available and upon request by BellSouth.

If Intermedia has placed NTW at a location and an end user desires to receive local exchange service from BellSouth and BellSouth needs access to Intermedia's NTW to provide local exchange service to the end user, then Intermedia agrees to surrender the requisite number of its spare pair(s) upon request by BellSouth.

In new construction, where possible, both Parties may at their option and with the property owner's agreement install their own NTW. In existing construction, BellSouth shall not be required to install new or additional NTW beyond existing NTW to provision the services of Intermedia.

This Commission approved rates for UNTW in Order No. PSC-99-2009-FOF-TP issued October 14, 1999 in the MediaOne/BellSouth Arbitration proceeding. Those rates are the appropriate rates to charge any ALEC in Florida.

Issue 18: 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?

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

A. BellSouth contends that neither the 1996 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 incumbents LECs may have deployed in their networks." (Para. 311) While the FCC adopted "one limited exception" to this rule , which I will discuss below, the FCC specifically rejected "e.spire/Intermedia's request for a packet switching or frame relay unbundled element." (Para. 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* Therefore, the Commission should not require BellSouth to offer access to packet switching capabilities on an unbundled basis.

Q. PLEASE EXLAIN THE "LIMITED EXCEPTION" TO WHICH YOU EARLIER REFERRED.

A. Basically, in its Rule 51.319(c)(5), the FCC identified four conditions that, if each condition were satisfied, would result in an ILEC having to unbundle packet switching. Each of these conditions do not exist in BellSouth's network. BellSouth has taken the necessary measures to ensure that ALECs

have access to necessary facilities so that BellSouth is not required to unbundle packet switching.

Q. WHAT DID THE FCC FIND IN ITS DETERMINATION OF WHETHER ACCESS TO UNBUNDLED PACKET SWITCHING MET THE FCC's "NECESSARY" STANDARD?

A. The FCC stated 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)." (Para. 305) The FCC found it appropriate to examine packet switching under the "impair" standard of section 251(d)(2)(B).

Q. WHAT DID THE FCC FIND IN ITS DETERMINATION OF WHETHER ACCESS TO UNBUNDLED PACKET SWITCHING MET THE FCC's "IMPAIR" STANDARD?

A. The FCC determined that competing carriers would not be impaired without unbundled access to the incumbent LEC's packet switching functionality. (Para. 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.*

Q. DID THE FCC EMPOWER STATE COMMISSIONS TO REQUIRE INCUMBENT LECs TO UNBUNDLE SPECIFIC NETWORK ELEMENTS USED TO PROVIDE FRAME RELAY SERVICE?

A. Yes, but only to the extent that a competing carrier convinces the state commission that it is impaired without access to such unbundled network elements - a showing the FCC found that Intermedia failed to make. (UNE Remand Order, Para. 312) In its UNE Remand Order, the FCC established the "impair" standards by which it would determine if a network element should be unbundled.

The FCC concluded that

> "the failure to provide access to a network element would 'impair' the ability of a requesting carrier to provide the services it seeks to offer if, taking into consideration the availability of alternative elements outside the incumbent's network, including self-provisioning by a requesting carrier or acquiring an alternative from a third-party supplier, lack of access to that element materially diminishes a requesting carrier's ability to provide the services it seeks to offer." (Para. 51)

The FCC went on to say that a materiality component "requires that there be substantive differences between the alternative outside the incumbent LEC's network and the incumbent LEC's network element that, collectively, 'impair'

a competitive LEC's ability to provide service within the meaning of section 251(d)(2)." *Id.*

Even assuming a state commission is authorized to alter the conditions established by the FCC for the unbundling of packet switching, Intermedia has the burden of proof concerning whether it is impaired by not having access to BellSouth's packet switching functionality on an unbundled basis. BellSouth contends that Intermedia has not provided any evidence in this case that would satisfy this burden. For the Commission's convenience, I have attached to my testimony as Exhibits AJV-2 and AJV-3 the pertinent excerpts from BellSouth's Comments and Reply Comments filed with the FCC in CC Docket No. 96-98.

Q. HAS THIS COMMISSION PREVIOUSLY RULED ON THIS ISSUE?

A. Yes, in its Order No. PSC-00-0128-FOF-TP, dated January 14, 2000, the Commission determined that BellSouth was not required to offer ICG access to packet switching capabilities as UNEs. (p. 7)

Issue 22: Should BellSouth be required to provide nondiscriminatory access to interoffice transmission facilities in accordance with, and as defined in, the FCC's UNE Remand Order?

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

A. BellSouth has proposed the following language, which is consistent with §51.319(d) of the FCC's UNE Remand Order and with Intermedia's proposed language:

> BellSouth shall provide nondiscriminatory access, in accordance with FCC Rule 51.311 and Section 251(c)(3) of the Act, to interoffice transmission facilities on an unbundled basis to Intermedia for the provision of a telecommunications service at the rates set forth in this Attachment.
>
> Interoffice transmission facility network elements include:
>
> (i) Dedicated transport, defined as BellSouth's transmission facilities, including all technically feasible capacity-related services including, but not limited to, DS1, DS3 and OCn levels, dedicated to a particular customer or carrier, that provide telecommunications between wire centers or switches owned by BellSouth, or between wire centers and switches owned by BellSouth and Intermedia;
>
> (ii) Dark Fiber transport, defined as BellSouth's optical transmission facilities without attached multiplexing, aggregation or other electronics;
>
> (iii) Shared transport, defined as transmission facilities shared by more than one carrier, including BellSouth, between end office switches, between

end office switches and tandem switches, and between tandem switches, in BellSouth's network.

BellSouth shall:

(i) Provide Intermedia exclusive use of interoffice transmission facilities dedicated to a particular customer or carrier, or shared use of the features, functions, and capabilities of interoffice transmission facilities shared by more than one customer or carrier;

(ii) Provide all technically feasible transmission facilities, features, functions, and capabilities that Intermedia could use to provide telecommunications services;

(iii) Permit, to the extent technically feasible, Intermedia to connect such interoffice facilities to equipment designated by Intermedia, including but not limited to, Intermedia's collocated facilities; and

(iv) Permit, to the extent technically feasible, Intermedia to obtain the functionality provided by BellSouth's digital cross-connect systems in the same manner that BellSouth provides such functionality to interexchange carriers.

As I previously explained, BellSouth is proposing interim rates for high capacity facilities and dark fiber. These rates, shown on Exhibit AJV-1, would

be subject to true-up when Florida-specific rates, to be proposed in April, are adopted by the Commission.

Issue 25: Should BellSouth be required to furnish access to the following as UNEs: (i) User to Network Interface ("UNI"); (ii) Network-to-Network Interface ("NNI") and (iii) Data Link Control Identifiers ("DLCI"), at Intermedia-specified committed information rates ("CIR")?

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

A. This issue addressed specific components of Frame Relay service, and whether BellSouth is required to furnish access to these components as UNEs. As I discuss in more detail below, Frame Relay is a form of packet switching. Of course, I explained in my response to Issue 18 that 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 to BellSouth. Therefore, BellSouth requests this Commission 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 available for interconnection of the parties' frame relay networks.

Q. WHAT IS FRAME RELAY?

A. Frame Relay is a type of packet switching that allows the transfer of variable length frames (packets of customer data) across large geographical areas to

provide LATA-wide, interLATA, interstate and international connectivity. Frames are relayed from the source to the desired destination by means of virtual connections. Bandwidth and switch capacity within the network are only allocated to a virtual connection when frames are transported. Virtual connections can be established and deleted either through administrative procedures (referred to as Permanent Virtual Connections (PVCs)) or via network signaling.

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?

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

A. BellSouth's position it that Intermedia should use its NPA/NXXs in such a way that BellSouth can distinguish local traffic from intraLATA toll traffic and interLATA toll traffic for BellSouth originated traffic. When an ALEC 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, if not impossible, for BellSouth to determine whether BellSouth's end users are making a local or a long distance call when BellSouth's end user calls the ALEC's end user. This situation is addressed in Florida Statute 364.16(3)(a) wherein it states that:

> No local exchange telecommunications company or alternative local exchange telecommunications company shall knowingly deliver traffic,

for which terminating access service charges would otherwise apply, through a local interconnection arrangement without paying the appropriate charges for such terminating access service.

Intermedia should not be permitted to violate this statute.

Q. IS BELLSOUTH ATTEMPTING TO LIMIT INTERMEDIA'S ABILITY TO ESTABLISH ITS OWN LOCAL CALLING AREAS?

A. No. BellSouth is indifferent to the manner in which Intermedia defines its local calling areas for its own end users. However, in order to properly route traffic, any telecommunications service provider such as BellSouth or an ALEC 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. Telecommunications service providers then build translations and routing instructions based on that information. For example, the ALEC may, if it chooses, interconnect at the local tandem for exchange of local traffic. Where more than one local tandem exists in a local calling area, the ALEC must designate a "home" local tandem for its NPA/NXX codes and interconnect at that tandem. The ALEC may deliver local traffic to all BellSouth NPA/NXX codes in the local calling area by connecting to any one of the local tandems. Alternatively, the ALEC may choose to establish trunk groups directly between its switch(es) and each of the other local service providers' switch(es) instead of delivering its traffic via the tandem. BellSouth's interest in knowing Intermedia's NPA/NXX code homing arrangements is in no way an effort to limit Intermedia's flexibility in how it

designs and operates its network. BellSouth's interest is simply in ensuring that calls are successfully routed, completed and billed. This can not be accomplished without Intermedia's informing BellSouth and other service providers of how and where to deliver and receive traffic to and from Intermedia's customers.

Issue 31: For purposes of compensation, how should IntraLATA Toll Traffic be defined?

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

A. BellSouth has proposed the following language to Intermedia:

> IntraLATA Toll Traffic is defined as any telephone call that is not local or switched access per this Agreement.

The intent of BellSouth's definition is to identify the traffic specific to BellSouth's General Subscriber Service Tariffs A18 and A19 as IntraLATA Toll Traffic.

Issue 32: How should "Switched Access Traffic" be defined?

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

A. BellSouth has proposed the following language for inclusion in the Interconnection Agreement:

Switched Access Traffic is as defined in the BellSouth Access Tariff. Additionally, IP Telephony traffic will be considered switched access traffic.

BellSouth believes that it is not necessary to provide a detailed definition of "switched access traffic" in a local interconnection agreement. The Access Tariff is the document that defines such traffic.

Q. WHY HAS BELLSOUTH INCLUDED IN ITS PROPOSED DEFINITION OF SWITCHED ACCESS TRAFFIC THE STATEMENT THAT INTERNET PROTOCOL TELEPHONY ("IP TELEPHONY") IS SWITCHED ACCESS TRAFFIC?

A. Due to the increasing use of IP technology mixed with traditional analog and digital technology to transport voice long distance telephone calls, BellSouth's position is that it is important to specify in the agreement that such traffic is switched access traffic rather than local traffic, the same as any other long distance traffic is not local traffic.

Q. WHAT IS IP TELEPHONY?

A. IP Telephony is telecommunications service that is provided using Internet Protocol for one or more segments of the call. IP Telephony is, in very simple and basic terms, a mode or method of completing a telephone call. The word "Internet" in Internet Protocol Telephony refers to the name of the protocol; it does not mean that the service uses the World Wide Web. Currently there are

various technologies used to transmit telephone calls, of which the most common are analog and digital. In the case of IP Telephony originated from a traditional telephone set, the local carrier first converts the voice call from analog to digital. The digital call is sent to a gateway that takes the digital voice signal and converts or packages it into data packets. These data packets are like envelopes with addresses which "carry" the signal across a network until they reach their destination, which is known by the address on the data packet, or envelope. This destination is another gateway, which reassembles the packets and converts the signal to analog, or a plain old telephone call to be terminated on the called party's local telephone company's lines.

To explain it another way, Phone-to-Phone IP Telephony is where an end user customer uses a traditional telephone set to call another traditional telephone set using IP Telephony. The fact that IP technology is used, at least in part, to complete the call is transparent to the end user. Phone-to-Phone IP Telephony is identical, by all relevant regulatory and legal measures, to any other basic telecommunications service, and should not be confused with calls to the Internet through an ISP. Characteristics of Phone-to-Phone IP Telephony are:

- IP Telephony provider gives end users traditional dial tone (not modem buzz);
- End user does not call modem bank;
- Uses traditional telephone sets (vs. computer);
- Call routes using telephone numbers (not IP addresses);
- Basic telecommunications (not enhanced);
- IP Telephone providers are telephone carriers (not ISPs).

Phone-to-Phone IP Telephony should not be confused with Computer-to-Computer IP Telephony, where computer users use the Internet to provide telecommunications to themselves.

Q. WHAT IS INTERNET PROTOCOL?

A. Technically speaking, Internet protocol, or any other protocol, is an agreed upon set of technical operating specifications for managing and interconnecting networks. In the above example, I referred to the gateways which convert the digital carrier voice signal into data packets and then from data packets back to a digital carrier. The Internet protocol is the language, or signaling, that these gateways use to talk to each other. It has nothing to do with the transmission medium (wire, fiber, microwave, etc.) that carries the packets between the gateways, but rather the gateways, or switches, that are found on either end of that medium.

Q. HOW ARE IP TELEPHONY CALLS DIFFERENT FROM INTERNET SERVICE PROVIDER (ISP) BOUND TRAFFIC?

A. Even though IP Telephony and ISP traffic both have the word "Internet" in their name, they are completely different services and should not be confused. The FCC's April 10, 1998 Report to Congress states: "The record... suggests... 'phone-to-phone IP telephony' services lack the characteristics that would render them 'information services' within the meaning of the statute, and instead bear the characteristics of 'telecommunication services'." Further,

Section 3 of the Telecommunications Act of 1996 defines "telecommunications" as the "transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." Thus, IP Telephony is telecommunications service, not information or enhanced service.

Q. DOES THE FCC VIEW ISP-BOUND TRAFFIC DIFFERENTLY THAN IP TELEPHONY IN TERMS OF APPLICABLE CHARGES?

A. Yes. Neither ISP-bound traffic nor IP Telephony traffic is local traffic; however, the FCC has treated the two types of traffic differently in terms of the rates that such providers pay for access to the local exchange company's network. ESPs, or ISPs, have been exempted by the FCC from paying access charges for use of the local network in order to encourage the growth of these emerging services – most specifically access to the Internet. The FCC has found that ESPs and ISPs use interstate access service, but are exempt from switched access charges applicable to other long distance traffic. Instead, ISP-bound traffic is assessed at the applicable business exchange rate. On the other hand, the transmission of long-distance voice services – whether by IP telephony or by more traditional means -- is not an emerging industry. In fact, it is a mature industry – one that is not exempt from paying access charges for the use of the local network. These same access charges are currently paid by all other long-distance carriers. BellSouth is required to assess access charges on long distance calls. To do otherwise would be to discriminate between long-distance carriers utilizing IP telephony and those who do not.

Issue 35: How should Wireless Type 1 and/or Type 2A traffic be treated purposes of the Parties' interconnection agreement?

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

A. This issue deals with whether wireless traffic should be treated as transit traffic for routing and billing purposes. "Transit traffic" is traffic that originates on one Party's network, is switched and transported by a second Party and then is sent to a third Party's network. The Party that switches the call from the first Party to the third Party is due payment for that function. However, in many cases, when a wireless company is one of the three Parties, neither BellSouth, the wireless company nor the ALEC has the necessary system capabilities required to bill each other using the normal Meet Point Billing process. In addition, as discussed below, for Wireless Type 1 traffic, BellSouth is unable to determine whether or not the transiting function is being performed. As a result, BellSouth simply proposes that traffic involving wireless carriers be treated as if it were land-line traffic originated by either BellSouth or the ALEC until the involved parties have the necessary Meet Point Billing system capabilities.

Q. PLEASE PROVIDE ADDITIONAL EXPLANATION OF WIRELESS TYPE 1 AND TYPE 2A TRAFFIC.

A. Wireless Type 1 traffic is wireless traffic that uses a BellSouth NXX. In other words, the wireless carrier does not have its own NXX, but uses an NXX

assigned to BellSouth's land-line service. In this case, the Wireless Type 1 Traffic is indistinguishable from BellSouth-originated or BellSouth-terminated traffic from a Meet Point Billing perspective. Therefore, for routing and billing purposes, BellSouth is proposing to treat this transit traffic as BellSouth-originated or terminated traffic. In reality, there is very little of this type traffic, since most wireless carriers have distinct NXXs assigned.

Wireless Type 2A traffic is wireless traffic that is distinguishable from BellSouth-originated or terminated traffic because the wireless carrier has distinct NXXs assigned for its use. However, most wireless carriers have not yet established Meet Point Billing arrangements with BellSouth. Such arrangements are necessary in order for BellSouth to send the appropriate billing records to the wireless carrier and to the ALEC. Therefore, until such agreements with Type 2A wireless companies subtending BellSouth switches are executed, BellSouth must treat Wireless Type 2A transit traffic as BellSouth-originated or terminated traffic.

Issue 36: What should the appropriate compensation mechanism for transit traffic be for purposes of the Parties' interconnection agreement?

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

A. The appropriate compensation for transit traffic depends on whether the call is a local call or a long distance call. If it is a local call, then reciprocal compensation is the appropriate compensation mechanism. If it is a long

distance call, then the applicable rate from either the state or the federal access service tariff is the appropriate compensation mechanism.

The appropriate compensation mechanism for transit traffic involving a wireless carrier is as I described in my discussion of Issue 35. Wireless Type 1 traffic will be compensated as local traffic. Wireless Type 2A traffic will be compensated as local traffic until the wireless provider executes a meet-point billing arrangement with BellSouth. Once that arrangement is established, such traffic will be compensated as is any other transit traffic depending on whether the call is local or long distance.

Issue 37: Should all framed packet data transported within a Virtual Circuit ("VC") that originate and terminate within a LATA be classified as local traffic?

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

A. BellSouth has proposed the following language to Intermedia:

> Frame Relay framed packet data is transported within Virtual Circuits ("VC"). If all the data packets transported within a VC originate and terminate within the LATA, then for purposes of establishing interconnections between the Parties, such traffic will be treated the same as local circuit switched traffic ("Local VC"). This traffic will not be treated as Local Traffic for any other purpose under this Agreement, including but not limited to reciprocal compensation.

BellSouth has proposed this language to facilitate the process of interconnecting the two carriers' networks. However, frame relay traffic originated and terminated in the LATA is not subject to reciprocal compensation.

Issue 38: If there are no Virtual Circuits on a frame relay interconnection facility when it is billed, should the parties deem the Percent Local Circuit Use to be zero?

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

A. BellSouth's position is that, if there are no Virtual Circuits on a frame relay interconnection facility when it is billed, then the PLCU should be zero. Conversely, Intermedia contends the PLCU should be 100% in this situation.

Q. WHAT IS THE IMPLICATION OF THE PLCU BEING ZERO VERSUS ITS BEING ONE HUNDRED PERCENT?

A. Upon request from an ALEC such as Intermedia, BellSouth establishes interconnection trunks between the two parties' frame relay networks. When the trunks have been installed, BellSouth bills Intermedia a nonrecurring charge as well as a monthly recurring charge. Once frame relay traffic is flowing over the trunks, Intermedia advises BellSouth of the PLCU; that is, Intermedia advises BellSouth what percent of the traffic is expected to be local versus interLATA long distance. BellSouth reimburses Intermedia for a portion of the interconnection trunk charges based on the PLCU. For example,

if the PLCU is 10%, then BellSouth reimburses Intermedia for 5% of the charges (PLCU / 2). However, to the extent that the trunks are used for interLATA frame relay, as is generally the case, Intermedia is solely responsible for the trunk charges.

The limited situation addressed by this issue occurs when a frame relay interconnection trunk is turned up for service, but no traffic has begun to flow over the trunk. If, during this interim period of time, the PLCU is deemed to be zero, as BellSouth proposes, then BellSouth does not reimburse Intermedia for any trunk charges. On the other hand, if the PLCU is deemed to be 100%, as Intermedia proposes, then BellSouth would have to reimburse Intermedia for half of the trunk charges. BellSouth believes Intermedia's position is inappropriate for two reasons. One, Intermedia requested the trunk, and Intermedia controls when traffic begins to flow over the trunk. Therefore, BellSouth should not incur any charges until Intermedia begins to flow traffic over the trunk. Second, based on experience, frame relay interconnection trunks primarily carry traffic outside the LATA. Therefore, once traffic is flowing over the trunks and an accurate PLCU can be established, the PLCU is likely to be much closer to zero than to 100%.

As a compromise, BellSouth has recently offered language to Intermedia proposing that the PLCU be determined in aggregate by dividing the total number of Local VCs in a given LATA by the total number of VCs in that LATA. This language would result in the same PLCU being applied to all Local VCs in a given LATA, even if there are no Virtual Circuits on a

particular frame relay interconnection facility when it is initially turned up for service.

Issue 39: What are the appropriate charges for the following:

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")), and

d) requests to change a PVC segment or PVC service order record?

Q. WHAT IS BELLSOUTH'S POSITION ON PART A?

A. 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. 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 service any differently.

Q. WHAT IS BELLSOUTH'S POSITION ON PART B?

A. BellSouth's position is that the appropriate charges for the frame relay NNI ports are from BellSouth's Access Tariff because frame relay is typically transporting interLATA traffic.

Q. WHAT IS BELLSOUTH'S POSITION ON PART C?

A. The DLCI and the CIR are two components of frame relay that Intermedia proposes BellSouth must provide on an unbundled basis. As I explained in my discussion of Issue 18(c), BellSouth is not obligated to unbundle packet switching, of which frame relay is a subset. Therefore, BellSouth's position is that the appropriate charges for the DLCI and the CIR are found in BellSouth's Interstate Access Tariff FCC No. 1.

Q. WHAT IS BELLSOUTH'S POSITION ON PART D?

A. Again, BellSouth's position is that the appropriate charges for all aspects of Frame Relay Interconnection and Service, including changes to existing service, are found in BellSouth's Interstate Access Tariff FCC No. 1.

Issue 45: Should the interconnection agreement specifically state that the agreement does not address or alter either party's provision of Exchange Access Frame Relay Service or interLATA Frame Relay Service?

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

A. BellSouth has proposed the following language for inclusion in the Interconnection Agreement:

> Except as expressly provided herein, this Agreement does not address or alter in any way either Party's provision of Exchange Access Frame

Relay Service or interLATA Frame Relay Service. All charges by each Party to the other for carriage of Exchange Access Frame Relay Service or interLATA Frame Relay Service are included in the BellSouth access tariff BellSouth Tariff FCC No. 1.

The purpose of this language is to make clear that the parties' obligations with respect to access service are not affected by this local interconnection agreement.

Issue 46: Should Intermedia's obligation to identify and report quarterly to BellSouth the PLCU of the Frame Relay facilities it uses cease when BellSouth obtains authority to provide in-region interLATA service?

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

A. BellSouth's obtaining authority to provide in-region interLATA service would have no impact on Intermedia's obligation to identify and report to BellSouth the PLCU of the Frame Relay facilities it uses. As discussed earlier, the PLCU is used to report what portion of the interconnection trunk is transporting local versus interLATA traffic. This information is then used by BellSouth to reimburse, to the extent the trunk is being used to transport local frame relay traffic, a portion of the trunk charges to Intermedia. Regardless of the parties' positions on this issue, BellSouth has proposed the following language be included in the Frame Relay section of the Interconnection Agreement:

If during the term of this Agreement, BellSouth obtains authority to provide interLATA Frame Relay in any State, the Parties agree to

renegotiate this arrangement for the exchange of Frame Relay Service Traffic within one hundred eighty (180) days of the date BellSouth receives interLATA authority. In the event the Parties fail to renegotiate this Section 8 within the one hundred eighty day period, they will submit this matter to the appropriate State commission(s) for resolution.

BellSouth believes that this language should resolve the situation addressed by Issue 46.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

DOCs # 196847

MR. KITCHINGS: And with that, Mr. Varner is available for questioning.

COMMISSIONER JACOBS: You may proceed.

MR. CANIS: Commissioner, as a point of order is staff going to go first, or shall Intermedia go first?

COMMISSIONER JACOBS: Generally, the company goes first and staff follows.

CROSS EXAMINATION

BY MR. CANIS:

Q Hi, Mr. Varner. I'm Jon Canis with Intermedia. I would like to start by talking about some of the issues involving BellSouth's proposed definition of local traffic. And I actually -- let me refer you to Page 4 of your direct testimony, and specifically Lines 13 through 21. Actually, I think we have two issues. The first one I think we can resolve pretty quickly.

On Line 13, it states local traffic is -- or this is BellSouth's proposal -- local traffic is defined as any telephone call that originates in one exchange and terminates in either the same exchange or another exchange within the same local calling area. Are you aware that Intermedia takes issue with the fact that the word "telephone call" as part of that definition?

A Yes, I believe they do.

Q And let me just characterize what I believe

Intermedia's position is, is that telephone call sounds like it means circuit switched voice call. And Intermedia because it carries a lot of data, a lot of frame relay traffic, wants to make sure we have a broad definition that includes data traffic, such as frame relay as well as circuit switched voice traffic. Is it BellSouth's position that data traffic, including frame relay, can be local service?

A Yes, it can be.

Q In light of that --

A If it fits the other criteria here that the transmission, if you will, both originates and terminates within the same local calling area.

Q Understood. Given that, can we agree to change that word "telephone call" so that a more neutral term that includes both data and voice telephony, can we call that perhaps telecommunications?

A I'm not sure. The reason for that is that when you say -- if you just put the word telecommunications in there it may broaden it too far. I don't know what you would include. The intent of this is to follow the terminology that the FCC has typically used in defining the types of traffic. And we want to be sure that it is only covering telephone exchange service as defined in the Act, and that is the terminology that is used. And the

FCC has been very clear that it doesn't have to terminate in a telephone set in order to be considered telephone exchange service.

Q Okay. Well, I just want to make sure that we agree for the record. Let me restate this and please correct me if I'm wrong. BellSouth agrees that data traffic such as frame relay service, may be local traffic if it meets the other criteria, it originates and terminates in the same exchange or same local calling area?

A Yes.

Q Thank you. Now, the other issue is something that I think we are going to disagree on, and that is whether traffic bound to an Internet service provider falls within the definition of local traffic. In your testimony here and throughout you rely very heavily on an order by the Federal Communications Commission declaring that dial-up traffic, when people use modems to call up their ISP, that such traffic is jurisdictionally interstate.

Are you aware that that order by the FCC has been reversed and vacated by the D.C. Circuit Court of Appeals and remanded back to the FCC?

A Yes, I am. However, in my testimony I think I quoted from that order. However, that order did not make

any new findings. I also rely on the previous orders that the FCC had issued on this subject, and also on an order that they issued subsequent to the one that was vacated, the one that was issued in late 1999 in the advanced services docket. So all the findings that I am referring to, even though I utilized that order, were previous findings and subsequently reconfirmed by the FCC in other orders, as well.

Q I'm sorry, I think you mentioned there was an order subsequent to the order in January of '99. Did you make reference to a subsequent order by the FCC?

A Yes.

Q Could you identify that, please?

A Yes, I believe I could. It is Order Number 99-413.

Q Could you read the caption?

A Yes. It is in the matter of deployment of wire line services offering advanced telecommunications capability.

Q Okay. And just so I understand, what is BellSouth's position as to the significance of that order?

A The significance of that order is it is another order where the FCC has stated its view that ISP-bound traffic is not local. It is, in fact, exchange access. In Paragraph 35, for example, they say, "We conclude that

service provided by the local exchange carrier to the ISP is ordinarily exchange access service because it enables the ISP to transport communications initiated by the end user's subscriber."

Q Do you know what happens when a court of appeals vacates a finding by the Federal Communications Commission?

A Well, it kind of varies. But in this case what has happened -- I guess generally if it is vacated it is no longer in effect. It is as if it never existed.

Q Okay. If a court of appeals, as in this case, vacates -- and I agree with your interpretation -- vacates the Commission's January order so that its finding that ISP traffic is interstate has no force and effect, do you believe that the court action also casts doubt on the effectiveness of other Commission decisions that have reached similar conclusions?

A No. In fact, in the court's order it mentioned that the FCC -- one of the things I disagreed with with respect -- or had a problem with is that the February order did not address, at least to the court's satisfaction, the rationale for whether the service was telephone exchange service or exchange access service.

It recognized that the FCC had, in fact, made arguments to do that, but it just didn't include them in

the record in that proceeding, didn't include them in that order. So the fact that it vacated that order doesn't mean that it vacated other orders wherein the same findings were made. And there are numerous ones in '83, '87, '89, and the other one I talked about in '99, for example, where they made the same findings and those orders are still in effect.

Q Now, let's talk about the effect of the court of appeals decision on some of the decisions that the Florida Public Service Commission has made. Are you aware that on July 23rd, 1998, the Florida Commission ordered BellSouth to pay Intermedia reciprocal compensation for ISP-bound traffic?

A Well, in part. They ordered it to be done up until such time as the FCC issues a ruling. As a matter of fact, no, they did not. What they said was that we were to continue to operate under the current contract until the FCC rules, and to continue to abide by whatever those provisions were.

Q And are you aware that on September 15th, 1998, this Commission issued a second order ordering BellSouth to pay reciprocal compensation to Intermedia for ISP-bound traffic?

A You say 1998?

Q I believe that is right.

A I'm not familiar with that order.

Q Yes. Order Number PSC-98-1216-FOF-TP issued September 15th, 1998.

A I just don't recall it. There were some orders in 1998, and this may very well be one of them, that dealt with the interpretation of the existing contract between various parties. But that was trying -- those issues resulted from complaints about a contract interpretation. Here what we are dealing with is what the contract should say, not trying to interpret what a previous contract might have said. I don't know whether that is one of those orders or not, but that time frame indicates that's probably what it is.

Q Now, to your knowledge has this Commission found that ISP-bound traffic is local traffic for purposes of reciprocal compensation under the Communications Act?

A I don't recall that they have. They have in instances determined that ISP-bound traffic under the terminology and the wording of the agreements that existed at the time were to be treated as local traffic, that that was the parties intent for that language when it was put in. They have made that finding. Which is precisely why we want to be sure that there is absolutely no doubt about the status of that traffic in the agreement going forward.

Q Now, in your response to the question by

Commission Jacobs earlier, you confirmed that Internet service providers don't pay access charges. Just to confirm that, access charges are typically charges about a penny and a penny and a half a minute that long distance carriers pay, isn't that correct?

A Yes, those are the switched access charges, typically. And ISPs don't get charged those because they were exempted by the FCC from paying those. They still receive access service. The service they get is still access service, they just pay a different rate for it. And the rate they pay by mandate of the FCC is the rate for business local exchange service.

Q Because access charges don't apply, as a result of that people don't pay on a per minute basis for the time that they use the Internet, isn't that true?

A When you say people, I'm assuming you mean ISPs as opposed to end users.

Q No, actually I mean end users. When I use America Online I don't pay per minute for every minute that I use the Internet.

A Actually, some ISPs do have usage-sensitive Internet charges. The great majority of them, I think, are flat rate. Many of them do have per minute. Especially if, in fact, you have to dial an 800 number to get to them, they will add a per minute charge. And then

some of them have a threshold type charge where they give you so many hours at a set price and then you pay an additional amount for hours over that threshold.

Q I think I heard you say that the great majority of ISPs do not charge per minute or per time that people are on the net?

A The ones that I am familiar with, that is correct.

Q Does that include BellSouth.net?

A I'm not familiar with all of their offerings. The one that I have is a flat rate unlimited use offering. I don't recall whether they have other offerings that are different from that.

Q Let me refer you to Page 8 of your direct testimony, and I'm looking at Lines 6 and 7, where you state that once it is understood that ISP-bound traffic terminates only at distant websites which are almost never in the same exchange as the end user, it is evident that these calls are not local. And let me just put this in context. Are you saying that if I'm on America Online and I'm surfing the net, that if I call up one website -- let's say I want to check car prices, that website may come out of a place in Detroit and so that is not a local website, it makes my call a long distance transaction, is that your point?

A Yes. And that is what the FCC confirmed in the way that they defined it. Historically the way they have defined it for at least the last 50 years.

Q Now, on Page 8, Line 7, you say, once it is understood that ISP-bound traffic terminates only at distant websites, which are almost never in the same exchange as the end user. On what do you base that statement?

A Well, on a number of things. Just looking at the way that the Internet functions. Actually that statement also comes from the FCC in the way that they have defined this traffic. They say the same thing. And just looking at the way that the Internet functions in that when people call the Internet just like you described, they pick up websites anywhere in the world. The likelihood of them picking up a website that happens to be located in the same exchange or same local calling area where they are is relatively small.

Q Let me just give you an example. This is an example of myself, and my office is in Washington, D.C., and most of the time that I am on the Internet I am accessing the Federal Communications Commission's website, which is also based in Washington, D.C.

And, you know, as with this Commission, they post orders and rulings, and a lot of other information.

And I find maybe about 60 or 70 percent of the time that I am on the Internet I'm accessing the FCC website. Is that a local transaction?

A It depends on where you are located.

Q D.C. is 10 miles square. It is only one exchange. My office is in D.C., the FCC is in D.C.

A Yes, that would be local. That would be an instance wherein in you are actually getting local access to a website.

Q And if I lived in downtown Tallahassee and accessed the Florida PSC's website, would that be a local transaction?

A Yes, it would be. Again, as the FCC when they looked at this, they did not determine that each and every transaction with the Internet or call to the Internet would be local. However, if you were to look at the way in which customers utilize it, they said it was predominately or almost entirely non-local. So as a result, they exerted jurisdiction over it as interstate.

However, that is not really the important point. The important point is not whether it is interstate or intrastate. The important point is whether it is access service or whether it is, in fact, local exchange service. Regardless of where it terminates, whether it terminates within the exchange or not, it is still access service.

That doesn't make it local. That doesn't make it exchange service, telephone exchange service. It is exchange access.

Q Are you familiar with the term local caching?

A Yes.

Q Could you -- well, I'm sorry, before we do this let me just clarify one other thing. You stated your description of what is local when I am on the Internet and what is not local. Let me make clear. Is that your interpretation of what you believe the FCC said, or is that based on any of your own knowledge, or your own experience, or your own analysis of Internet usage?

A It is both.

Q Okay. Could you elaborate a little bit on your own personal knowledge and experience of the Internet?

A Well, I use it all the time. You know, I subscribe to an ISP and I use it for a number of different things.

Q But you have not conducted studies of usage on various networks or anything like that?

A Of my own. I mean, I am familiar with the way in which I use it. And hardly ever do I end up accessing somebody who is in the same exchange where I am. I'm not even sure that anybody exists in my exchange that does provide websites.

Q I'm sorry, are you finished?

A Yes.

Q Outside of your personal experience, though, you have not conducted any studies, anything like that?

A With regard to the jurisdictional nature of this traffic?

Q Or actual traffic usage and traffic patterns on the Internet.

A No. No, I have not. I'm aware of some, but I have not.

Q Let me just get back real quick to the issue of local caching. You indicated you are familiar with it. Can you tell me what you understand that term to mean?

A Generally it is a way that ISPs use to reduce the amount of long-haul type access they have to do. They will take information that is sort of maybe, frequently, accessed, and they will store it in a server that is closer to where the end user is so that when they access it they actually don't go all the way to that website, they just access the information at that server.

COMMISSIONER JABER: Mr. Canis, may I ask a question here?

MR. CANIS: Sure.

COMMISSIONER JABER: Before you leave this point. Mr. Varner, in response to Mr. Canis' question

about the scenarios, the hypotheticals, let me go back to the Tallahassee scenario. If I am accessing the PSC home page, you agree that that is accessing the local exchange system? Did I hear you correctly?

THE WITNESS: No, that would be a local -- let's say a local call to the Internet, if you will. But under no circumstances is the traffic that is sent to an ISP exchange service. It is access service, even though it may terminate locally, which is fairly rare. But even if it does, it is still access service. And that is the important point. Because reciprocal compensation only applies to telephone exchange service, it doesn't apply to access service.

COMMISSIONER JABER: Reciprocal compensation applies to local exchange service?

THE WITNESS: Local exchange service, not exchange access service.

COMMISSIONER JABER: Okay. How would we get local exchange service, what scenario in your mind, tell me in your mind what would result in local exchange service?

THE WITNESS: The typical call you would make to another end user that is located in your same local calling area. And it doesn't have to just be voice transaction, it could be a fax. You sent a fax here in

Tallahassee, that would be local exchange service. You call a car dealership, or the power company, or a friend, relative that lives in the Tallahassee local calling area.

COMMISSIONER JABER: All right. But the distinction in your mind is that an Internet call is one of access?

THE WITNESS: Yes, it is. Because the FCC has defined the ISPs to be users of access service, which means that they are treated as far as the FCC -- for this purpose, as far as the FCC is concerned, just like an interexchange carrier. They purchase access service from the local exchange customer -- from the local exchange company. The end user isn't billed for that, the carrier, if you will, being the ISP, in this case is. They are the ones that have the relationship and the billing relationship with the local exchange company.

COMMISSIONER JABER: Let's go back to the fact scenario. What is the difference between my faxing something from my house to the office and my getting on America Online from my house to access the Tallahassee Democrat on-line? Aren't those both local calls?

THE WITNESS: One is, in fact, a local call. The other one is -- the other one would be a local access to the Internet. And the difference between the two is that by going through that ISP, what you done is you have

inserted an intermediate carrier. And as a result of that, the ISP is the person that is responsible for paying for you collecting that traffic from your office to them. So when you do that, you have inserted an intermediate carrier between you and, let's say, that website that you are trying to get to.

And the important point is that in that instance it is that carrier that has a relationship with the local exchange company. That is access service, reciprocal compensation doesn't apply to that type of service.

COMMISSIONER JACOBS: But doesn't that add to the -- I'm sorry to cut you off, Commissioner -- but doesn't that add to the rationale that it is not an interLATA call. Because at the point where you do -- you do deliver that to the ALEC that is serving the ISP, okay, at that moment things begin to happen to that call that transform its nature.

And so isn't that some way adding to the idea that the original -- the original telecommunications transaction was the call that went from the originating customer to the ALEC?

THE WITNESS: No. Because what happens is the nature of that transaction is access from the beginning. What happens is that when you call that number to get to the ISP, you dial that one number. It's the ISP's number.

And whether that call goes through -- I don't know, entirely by BellSouth or goes through the ALEC, there is no separate number. You don't make a call to the ALEC and then the ALEC makes a call to the ISP. The end user just dials up the number for the ISP, regardless of whether there happens to be two local exchange companies involved or one. So there is not sort of a demarcation or an ending and then a restarting, if you will.

COMMISSIONER JABER: Give me an example of when reciprocal compensation would apply in your mind. And try to keep it close to the hypothetical we are asking you about.

THE WITNESS: Okay. Reciprocal compensation would apply for any of those situations that I described that were local calls. And I can't remember the first example that you used where you made the call from.

COMMISSIONER JABER: My house using America Online service to reach the Tallahassee Democrat on-line.

THE WITNESS: Okay. No, in that case -- there was another one where you --

COMMISSIONER JABER: Faxing from the house to the office.

THE WITNESS: Yes, to the office. In that case, let's say you are sending the call from your house to the office. Let's assume that the office was served by an

ALEC, okay. When you sent that call from your house to the office, reciprocal compensation would be due the ALEC for that call because they are providing the service to the office.

And the reason for that is that local exchange service is predominantly flat-rated service. If when you make that call you paid Sprint, you know, your local bill. The ALEC incurs costs in sending that call to the office. They have got nobody to bill. You know, they are not going to send you a bill for that call. The only person you are going to pay is Sprint, but the ALEC incurred a cost. So Sprint settles up with the ALEC to reimburse them for the costs that they have incurred in handling that call.

On that call that goes from the ISP to the Tallahassee Democrat, actually what has happened is that the ISP, if they are served by an ALEC, is paying the ALEC. The ALEC is the one that is collecting all the money. Sprint is not collecting anything from you for that call, because it is access service. So the only person who gets money for that is the person who is providing the access service, which in that case is the ALEC. So by right, the ALEC should be paying Sprint in that example as opposed to Sprint paying the ALEC more money over and above what they are already getting from the ISP.

MR. CANIS: Thanks, Commissioners. And I thought that was a very helpful discussion. I won't go much further on that, but I just wanted to clarify one thing, Mr. Varner.

BY MR. CANIS:

Q In terms of -- back to the example. I'm dialing up America Online and then I'm surfing the net and going to various websites, some are local, some are long distance. Isn't it true that there are two components to that transaction? When I dial up I use my phone through a modem, I dial it up from my house. Isn't that a telephony call; isn't that a circuit switched call that looks like a regular local phone call; and aren't I currently -- don't I pay for that out of my local phone usage? And then once it gets to the Internet service provider, doesn't the Internet service provider then take that call, do Internet protocol conversion, pass it through its router and then on over to the worldwide web. Isn't that a separate transaction which is not telephony, but, in fact, is defined under the Communications Act as information service, an enhanced service? Aren't there two different things going on here?

A No. In fact, that sort of scenario, I guess, has been commonly called a two-call model, which the FCC has rejected every time it has looked at it. It rejected

that first back in 1944. And every time they have looked at it since including '83, '87, '89, and '99 they have rejected that model, that you don't divide up a transmission based on intermediate points, that is it the end points that define it.

Another thing that just occurred to me in the examples we were talking about, like in your accessing the FCC website and Ms. Jaber's access to the Tallahassee Democrat, what matters is where that website is. Just because it is the Tallahassee Democrat doesn't mean that that website is located in Tallahassee. That website could be in New York. They could be paying somebody in New York to maintain their website for them. And even though you are getting the Tallahassee Democrat, you are actually going to New York to get it. And it could be the same thing with the FCC. Just because it is a local concern that is labeled on it doesn't mean that that is where the transmission is, in fact, ending up at that place.

Q Let me go back and talk to you about your interpretation of what the FCC said. And, of course, under the understanding that this is the order that has been vacated by the D.C. Circuit. Well, let me start by asking you this. Internet service, when I am surfing on the Internet, is that telephony service, is that a

regulated telephone service?

A The exchange access service is.

Q No. I mean, when I am surfing the net, when an Internet service providers take the signals from my computer and then sends them out over to the worldwide web, and I'm not addressing telephone numbers anymore, I'm addressing URL website things, and it is all Internet protocol. Is that a regulated telecom service, or is that an enhanced unregulated information service?

A It is the latter. The exchange access service, however, that is provided to that ISP to enable the ISP to provide that enhanced service is, in fact, a regulated telecommunications service.

Q So, in other words, when I use my BellSouth local service to access BellSouth.net as my Internet service provider, there are two different things going on here, right? Isn't BellSouth carrying my telephone call which comes from my phone and it is a regulated service to the Internet service provider, that is to BellSouth.net, and then doesn't BellSouth.net take those signals and send them out over the worldwide web, and it does that as an unregulated Internet carrier doing an enhanced service, isn't that the case?

A Not entirely.

Q Could you explain that?

A Yes. The latter part of the way you described the information service is correct. But you began by saying that you were using your local exchange service to access BellSouth.net, that is not what you are doing in no more than you are using your local exchange service to access AT&T when you make a long distance call. When you make that call to establish that website, you first contact the ISP, make the connection through the ISP.

At that point what you are doing for that service, you are not using your local exchange service, you are using exchange access service that has been provided to the ISP by the local exchange company to allow that ISP to collect traffic, to allow you to make that connection to them. Just like if you make a long distance call through AT&T, AT&T uses exchange access service provided by the local exchange company to allow you to connect to their POP so you can make a long distance call.

So you are not using your local exchange service, you are using exchange access service that the ISP has purchased. And if that ISP is served by Intermedia, they purchased that exchange access service from Intermedia.

Q Okay. Well, when I make a long distance call using AT&T, I pay as part of that access charges which is why I pay AT&T per minute for every time that I am making

a long distance call. But when I am dialing up BellSouth.net, the only charge that I pay is my local phone bill that I pay to BellSouth.

A You pay your local phone bill in both cases. You don't pay access charges when you make that connection through AT&T. AT&T pays access charges to the carrier, you pay AT&T a long distance bill. The same thing works with the ISPs. The ISP pays a basic exchange rate as their price for access to the local exchange company, the ISP, in turn, turns around and charges you a bill for access to the Internet, whatever the Internet access charge is that they have.

Q I just want to go back just one more time. The FCC's order -- and, again, this is the order that has been remanded and reversed. But that order -- did the FCC in that order recognize that a call to an ISP and an Internet surfing session afterwards consists of two segments, a regulated telephony segment and an unregulated Internet enhanced service segment?

A No, no. What they recognized is that the call, the total transmission is an information service. And included in that information service are a group, the thing that is an information service is the access to the website provided by the ISP which is nonregulated. That is non-regulated. However, the ability to access that is

exchange access service. That is why the connection from the end user to the ISP is considered exchange access service because the ISP is treated as a carrier, or an enhanced service provider that is providing an information service.

Consequently, the link from the end user to that ISP is considered exchange access service instead of exchange service. Again, and that is not just the finding of the order that was vacated, that is a finding that has been made in several orders.

Q Has this Commission found in the past that when I dial up an Internet service provider and then surf the web that transaction has two different components, a telephone, a telephony segment, which is a regulated segment, and an information enhanced service segment, the Internet segment, which is unregulated?

A I believe this Commission did apply the two-call model, as you described it. However, as you well know, the FCC confirmed and has confirmed several times that that is not the proper model to apply to this. That it is a single transmission from the end user to wherever the website is located. I believe this Commission did, in fact, use the two-call model at one time. But the FCC has numerous times said that that model is not the proper model to apply to these calls.

Q All right. Well, let me ask you a hypothetical and then I will finish this line of questions. Let's assume that six months from now the FCC comes out with an order on remand. And it does what the D.C. Circuit told it do. It comes out with an order gives a further explanation of its position on reciprocal compensation, and it finds that ISP-bound traffic, dial-up traffic is fully subject to reciprocal compensation, and that BellSouth, or all incumbent LECs need to pay that. Will BellSouth, if the FCC does come out with an order like that, will BellSouth immediately abide by that order?

A You are asking me to speculate on something. We will abide by any effective order that a Commission issues. So if they issue an order and it becomes effective, yes, we will abide by it.

Q Will BellSouth -- because I know we have done a little back and forth about this overtime. Is BellSouth's current position that it is obligated to abide by orders that are currently effective, or is its position that it is obligated to abide by orders that are final and nonappealable?

A We have to abide by any effective order.

Q Thank you.

A That doesn't mean we won't appeal it, but if it is in effect we'll abide by it.

Q Understood. I would like to talk now about not ISP recip comp, but recip comp in general. And when BellSouth is obligated to pay reciprocal compensation to Intermedia, what rate must it pay. Does it pay a lower rate, typically called the end office rate, or does it pay a higher rate, typically called the tandem rate. I take it that it is BellSouth's position that the lower end office rate applies, is that correct?

A No, that is not entirely correct.

Q Okay.

A There is no end office rate or tandem rate, per se. There are rates for reciprocal compensation to compensate the carriers for the functions they provide. If Intermedia only provides end office switching, then they would be entitled to only be compensated for end office switching. If they are providing completion of those calls on a tandem switch basis, they will be entitled to tandem switching, end office switching, and transport, just like BellSouth. So our position is simply that Intermedia should be compensated for only the functions it performs.

Q Do you know what kind of switches Intermedia deploys in its network?

A Just from what was filed in Mr. Jackson's testimony.

Q Well, what does that mean?

A There were some DMS -- I can't remember, I think it was 250 or 500 switches, if I remember correctly.

Q Are you aware -- and I believe you are correct, that Intermedia uses both, but its big switches are the DMS 500s. Are you aware that the technical specs by DMS in the DMS switch identified the switch as functioning as both as an end office switch and a tandem switch?

A No, I'm not. It identifies the switch as being capable of functioning both as an end office switch and as a tandem switch. However, what the switch actually does and how it actually functions is up to the purchaser of the switch and how they configure it when they install it.

And in the case of Intermedia, their switch can't be performing a local tandem because they have only got one in each local calling area, at least from the testimony of Mr. Jackson. They have got a switch in, if I remember, Jacksonville, Orlando, Miami, and Tampa. There is no way they could be performing a tandem function if they only have one switch in the local calling area.

Q Now, I would like to elaborate a little bit with you on that. What we talked about, how these switches are configured, and if you said it only has one switch in a local area, what is your concern there? Is your concern that the switch doesn't have loops on one side, trunks on the other side; is it a configuration issue; is it how

Intermedia structures its network? What is the concern that leads you to conclude that even though the DMS 500 is capable of doing local and long distance switching it, in fact, is only acting as a local switch?

A I'm not -- that is not the conclusion I'm reaching. I don't know -- I assume that it is a long distance switch as well as a local switch. But the issue here has nothing to do with long distance. What it does for long distance is irrelevant. What we are looking at here is whether or not they are providing a local tandem function; that is, are they taking local calls and providing a tandem function on those local calls.

So if they only have one switch in the local calling area, then they can't be doing that. And my concern is that Intermedia is asking BellSouth to pay them reciprocal compensation as if they were performing that tandem function on local calls when they are not. And we shouldn't be required to pay Intermedia for a function it is not performing.

Q I have just been informed by my colleague that Intermedia, in fact, maintains two DMS 500 switches in Orlando. Does this cause BellSouth then to change its position and to find that at least in the Orlando area Intermedia is due compensation at the tandem rate?

A No, it does not. What would have to happen is

that if Intermedia is, in fact, handling traffic on a tandem basis in the Orlando area, then yes. The reason I brought up the fact that the issue of the one local switch in each local calling area is if that is all you have, the answer is very obvious. It is impossible to be doing tandem switching. Now if you have more than one switch it is possible that you could, but that doesn't mean that you, in fact, are.

And typically we have numerous local calling areas where we have more than one switch, but we don't have local tandem switching because it is just not economical to handle the traffic that way. We typically have local tandems in very, very large calling areas where we have many switches.

Q Now, in the way that BellSouth configures its network, doesn't it generally have local switches in end offices that are close to the end users and they feed loops to individual end users, and then tandem switches at separate offices that are used to aggregate traffic from all the different end offices?

A Separate switches. Sometimes they are in the same building, you know, as an end office switch. But it is a separate switch that aggregrates traffic from a number of end office switches, that is what the tandem does.

Q Let me give you a hypothetical. Let's just say that Commissioner Jaber is an end office switch, and that from her it runs out a little loop and it serves the end user which is over there at the staff bench. Let's say that Commissioner Jaber's chair is an end office. Let's say Commission Jacobs is a tandem switch and that his chair is a tandem office.

Now, under that situation, is it BellSouth's position that that scenario and traffic that goes over this arrangement is subject to the higher tandem recip comp rate?

A Well, you've kind of got an incomplete scenario, but what would have to happen is from -- if Commissioner Jacobs' chair is a tandem, there would have to be another switch, another end office switch somewhere where to call, and the end user, let's say, it is back out here. If that is the scenario that is used in the call then, yes, tandem switching is provided and BellSouth would be willing to compensate for the tandem switching and the transport from Commissioner Jaber to Commissioner Jacobs to -- let's say where you are sitting is the other switch.

Q Okay. And let's do that -- let's put me into the equation here. I am another end office switch. My chair here is another end office. So Commissioner Jacobs is aggregating traffic as the tandem from myself and

Commissioner Jaber, right?

A Yes, he is aggregating. But more importantly, and this is the distinction, the important distinction. When you have that scenario, the tandem is connecting one switch to another switch. It is connecting trunks from a switch to trunks to another switch, and that is sort of the defining function of a tandem to do that.

The only reason you do that is because of the fact that you have so many switches that it is more economical to run those through a tandem switch than it is to have direct trunking from, let's say, your chair to Commissioner Jaber's chair. When you have a large number of switches, instead of having direct trunks from each one of those switches to each other, you take them and divide them up and you say, okay, for calls from, let's say, this half of the area to this half of the area, I'm not going to run direct trunks from all of the switches on, let's say, the north side of town to all the switches on the south side of town. I will take all of the traffic that is destined for the south side of town, run them through a switch, and just have one trunk group that goes to the tandem switch on the south side of town and runs the traffic out to them. It is a transport.

Actually tandem switching, even though it is a switch, is transport. It is a means of transporting

traffic. It is a substitute for having direct trunks from all of those, between all of those wire centers.

Q Now, by the way, when you talked about that, the direct trunking and the big number of switches and all of that, you are talking about BellSouth and how BellSouth configures its network, isn't that right?

A No, that is the economics that would work for any network.

Q Do you know any ALEC that has the same number of switches that BellSouth has?

A No, I don't.

Q Now, that was scenario number one. Let me continue with my hypothetical and talk about scenario number two. Let's say, that Commissioner Jaber moves over and sits right next to Commissioner Jacobs, I move over, I sit right next to the two of them. So we have still got an end office over here, but it doesn't have a switch. We have still got an end office over here, but it doesn't have a switch. What happens is all the local and tandem switching functions are aggregated in one space around the tandem office. So there I'm still performing my local switching functionality, except I'm doing it in the tandem office right next to the tandem switch. The same with this end office switch.

Instead of doing the switching in the end office

there and this end office here, what we have is just a multiplexer. I'm collocated. I put in a multiplexer. I'm buying loops from BellSouth. I'm taking that traffic and I'm routing it to one point, one tandem office where all of my switching takes place at once. Local and long distance, end office and tandem switching, all in the same functionality. In this scenario, don't I still perform the same functions as those three independent switches individually?

A I need to make sure I understand the scenario, because it sounds like you changed it. You have got two different scenarios combined here. If the scenario is that you still have these two end office switches that we had earlier, you have just now changed the location of them such that they are, you know, all in the same building, let's say, okay. Then in that case, then you are still performing the tandem function, there is still transport, and you would be entitled to it.

But it sounds like what you were saying is that what you have done is -- but the important thing there is you have still got the three switches, even though they happen to all be in the same building.

COMMISSIONER JACOBS: If this is an okay breaking point, the court reporter has been going for a good while. We will take a ten-minute break and we will

come back at -- well, I guess according to that clock a little bit longer, but we will come back at 11:00.

(Brief recess.)

COMMISSIONER JACOBS: Go back on the record.

BY MR. CANIS:

Q Mr. Varner, just to wrap up real quickly on our last item of discussion. Let me categorize and please tell me if I'm incorrect, but I believe you stated that if the scenario where we had three different switches and two different end offices and a tandem office, if we pushed all of those three switches into the same building, that we would still be providing local and tandem functionality and that it would -- in that case it would be appropriate for us to claim the higher tandem reciprocal compensation rate. Is that a fair characterization?

A Almost. The reason -- and, again, what we are talking about here is reciprocal compensation rates for the functions. There is a rate for tandem switching, a rate for end office switching, a rate for transport. If, in fact, all three of those switches happened to be located in the same building, then all the elements would apply. And I'm not sure how much transport there would be, because if they are all in the same building, I don't think there is any transport. But you would have tandem switching, you would have end office switching.

However, that is not the scenario that we are facing. When you gave me the example, what you described is the scenario which is what Intermedia has, is that they have multiplexing at some place, no switching. They only have one switch. They don't have three. So they have multiplexing here, it comes into the switch, and then it goes back out from the switch to another multiplexing location.

In that case there is only one switching function being performed, and that is an end office switching function. Because when you only have the one switch and you are connecting one line to another line, or connecting one line to a trunk, that is what an end office does. There is no tandem switching involved in that situation.

Q And, I guess, going back to the first scenario where you questioned whether there was transport, well, remember we still have our connection from the multiplexer and the end offices, so that traffic is being hauled to the tandem. So would you agree that transport would be involved there?

A That is not transport. All that is a long loop, if you will. The analogous situation to that is that, for example, BellSouth puts remote terminals out in the field to aggregate loops onto bigger facilities to get them to

its switch. That doesn't make that remote terminal a switch, all it is is a multiplexer.

What Intermedia has done is gotten collocation space in BellSouth's end offices to put its multiplexing equipment. It is just doing the same type thing that we do out in the field, they are just using our end office the same way that we use a remote terminal.

Q And I guess -- let me just clarify. When I am buying a loop, and, again, the loop would be going from Commissioner Jaber's end office to the staff, which is the end user, I am buying that loop at a flat, what, $17, something like that a month. The transport that I am buying from Commissioner Jaber's end office to Commissioner Jacobs' tandem office, that I am buying as an interoffice transport UNE which is priced on a per mile basis, is that correct?

A That's correct. But, see, that assumes that you have both of the switches. If, in fact, you wanted to provide a loop that went from where Commissioner Jacobs is all the way over to the staff, you could buy the facilities to do that, which is more like the situation that Intermedia has.

Q Okay. So when Alcatel comes out and says ALECs, we have got a major advancement in technology, rather than having you go out and buy a big old end office switch and

a big old tandem switch, we are going to give you a smaller, smarter scalable product that combines the functionality of both into one. Or when Lucent comes out with its Class 5 port ESS that does exactly the same thing, you are telling me that because those functions are put into one machine instead of being in two different or three different machines, that ALECs that use those machines can never get the higher tandem recip comp rate?

A No, that is not correct at all. And, again, you have combined two scenarios here. If Alcatel comes out with a switch that says, okay, you can do end office switching and tandem switching in the same switch; if Intermedia is, in fact, doing that, is, in fact, utilizing that switch to provide tandem switching, then, yes, Intermedia would be entitled to the tandem switching rate. But just because the switch is capable of doing that doesn't mean that Intermedia is making use of that function and is, in fact, providing that function.

Now, the second scenario you describe, the Lucent Class 5/Class 4, is really irrelevant. And, in fact, throughout Mr. Jackson's testimony when he talks about their switches performing tandem functions, he is talking about toll tandems.

COMMISSIONER JABER: Mr. Varner, do you know for a fact whether Intermedia uses those functions or not?

THE WITNESS: They can't be. Because in order to be providing local tandem switching, you have to have at least two switches in the local calling area. And if you only have one, it is not possible. Now, he has just informed me that they did have two in Orlando. In that case, you just have to look at the switches to determine. But typically if you only have two switches you don't do local tandem switching. Now, these switches that they have do toll tandem switching, but that is irrelevant. Because what we are looking at is what reciprocal compensation should apply on local calls, not long distance calls.

So the fact that they toll calls or long distance calls on a tandem basis has no bearing on whether they should get tandem switching reciprocal compensation for handling local traffic. And if you have only got the one switch in the local calling area, it is impossible. If you have got two, it is possible, but highly, highly unlikely. I know of no situation. Well, there is no situation where we have only have two switches and one of them functions as a local tandem because it is just not economical to do it that way.

BY MR. CANIS:

Q Mr. Varner, are you aware that Intermedia is a full service carrier that provides local telephone

service, intrastate toll, and long distance service?

A Yes.

Q Now, we talked about functionality, and I think you can tell from my line of questioning and from Mr. Jackson's testimony, Intermedia is confident that it functions as both a local as well as a tandem switch. But, isn't the bottom line of all of this that under Section 51.711(a)(3) of the FCC's rules there is really only one determinative test for a finding whether a carrier gets paid at the higher tandem rate, and that is whether the ALEC serves, quote, a geographic area comparable to the area served by the incumbent LEC's tandem switch. Isn't that the case?

A No, that is not correct. I think the way the rule reads, it says that the ALEC's switch serves an area comparable. And when you look at the language, or I guess the part of the order that describes that rule, what you find there is that when they say switch, they are talking about a switch that provides the function.

And, in fact, the Illinois court in a case involving MCI specifically described the test that the FCC applied under that rule as a functionality and geography test. So they view -- and their understanding of the FCC's order is the same as mine. The switch that they are referring to refers to a switch that performs the

function. And if you have a switch that performs that function, then you have to be serving an area that is comparable to the area that BellSouth's tandem serves. So just serving the area is not sufficient.

Q Mr. Varner, are you aware that about a month ago, on March 15th of this year, this Commission ruled in a case involving ITC/DeltaCom that DeltaCom was entitled to a tandem reciprocal compensation rate?

A Yes. My understanding of that case, though, to the extent that DeltaCom was performing the function they would be entitled to that rate. It was not they were entitled to it regardless of whether they were performing the function or not.

Q Do you agree that ITC/DeltaCom served -- performed the function of a tandem switch?

A No, they did not. And in that case they would not be able to get that rate. It presents a bit of a problem with the way the rates were established in that docket, which will be addressed by the Commission on a later day.

Q Are you aware that Intermedia is the largest ALEC in Florida?

A I don't know.

Q Do you know of any larger one in Florida?

A I don't know the relative size of the ones

operating in Florida.

Q Okay. If Intermedia under your interpretation is not subject to the tandem rate, can you name any ALEC in this state that is eligible for the tandem rate?

A I don't know. I mean, it is very simple. If the ALEC is performing the tandem switching function they are entitled to be compensated for it and we will do it. I haven't looked at, you know, all of their serving arrangements to see if, in fact, any of them do. If they do, however, then they are entitled to compensation for that function.

Q But is it possible that under the rule that you just enunciated and that BellSouth has proposed that under those standards that you were proposing no ALEC will ever qualify for tandem recip comp in Florida?

A No, I can't say that. I mean, if, in fact, they perform the function, they they would be entitled to it. If they don't, then they won't.

Q And you cannot identify at this time any ALEC that is performing the function under your interpretation?

A No, I cannot, nor can I say that none of them do. It is simply a matter of whether or not they are providing that function. Which is -- and the only reason for that is they are supposed to be being compensated for the cost that they are incurring to transport and

terminate staff traffic as defined by the FCC. If they are not performing that function, they are not entitled to be compensated for something they are not doing.

Q Okay. I would like to turn the discussion now to EELs, or enhanced extended links. And I'm looking at Pages 25 through 27 of your direct testimony.

COMMISSIONER JACOBS: Before you do that, rather than provide a tandem rate, you are suggesting elemental rate structure that is a composite, and I wasn't quite sure what that would entail. So if you were to go to the local reciprocal comp calculation, how would we derive this particular element?

THE WITNESS: If you wanted to do a composite?

COMMISSIONER JACOBS: Yes.

THE WITNESS: Well, I would think that the cleanest way to do it would be to not do that. The Commission has already established rates for reciprocal comp, separate rates for end office switching, tandem switching, and transport. And I would suggest you just use those. And in the cases where tandem switching is being provided, then we would pay the tandem switching and transport in addition to the end office. Where it is not being provided, then we would just pay the end office. But it would be the rates the Commission approved back in the AT&T arbitration, I think is when they were approved,

and they are being readdressed in the upcoming cost docket.

If you wanted to do a composite rate, then what you have to do there is go in and say, okay, what proportion of the traffic that they handle -- you have to do some sort of a traffic estimate. And let's say if 10 percent of the traffic that they handle is handled on a tandem basis, you would say, okay, for 90 percent of the traffic, it is end office, whatever that rate is. And then say for 10 percent of the traffic, you add in the other two elements and you come up with a composite that is weighted 90 percent one way, 10 percent the other way. Which is more complicated to do. And that changes from month-to-month. So I think the cleanest way to do it is just apply the elemental rates the Commission has already approved and not worry about all that.

COMMISSIONER JACOBS: I'm sorry, that was your testimony. I flipped it around on you, but to be clear your testimony does say you prefer the elemental rate structure rather than the composite.

THE WITNESS: Yes. Because the composite really gets a lot more complicated. And it is, I think, an unnecessary complication since the Commission already has elemental rates in place. You just apply those and you don't have to get into this business of trying to do

traffic studies and weight one versus the other in order to figure out what a composite rate would be.

COMMISSIONER JACOBS: Okay. Thank you.

BY MR. CANIS:

Q Actually, Mr. Varner, before we proceed to EELs, let me do just one quick follow-up on geographic coverage. Is it BellSouth's position that Intermedia does not -- Intermedia switches do not serve the same geographic area as BellSouth switches and, therefore, do not merit the tandem rate?

A No, that is not really our position. What our position is is that Intermedia has provided no evidence that would enable you to conclude that they are doing that. The information that Intermedia has provided doesn't allow you to determine one way or another.

Q Now, Intermedia has provided maps of the service areas that it covers, is that true?

A Yes, they provided maps of the service area. But those maps do not indicate what service they are actually providing. They are just -- they said, okay, these are the maps of our service territory, this is what we -- where we say we offer service. But there is nothing in there that says what service they are providing and whether they are actually providing service in an area that is comparable to our tandem, which is an important

point that the Illinois court relied upon with MCI. You see, MCI could be. But the evidence that they provided doesn't allow you to indicate that. And it is the same type of evidence that Intermedia has provided in this case.

Q Well, doesn't Intermedia's tariff identify the services that it provides in this state?

A It provides -- it says the services that it offers. But, again, to make this determination, you have to know what service they are actually providing. Are they actually providing service, not whether they are capable of, or they hold themselves out to, but are they, in fact, doing it. And that is what you can't tell from the information that they have provided.

Q And for the test that you are proposing, how many customers does Intermedia have to serve in the area?

A I wouldn't know. I don't think there is a specific customer count or bogey, if you will, that says that that is it. It is a matter of are they providing service to customers, you know, in a comparable area to the tandem.

Q Okay. Let's proceed to our discussion of EELs, then. Does BellSouth have a current obligation to provide -- and just so we get the term, we have a common understanding as to the term enhanced extended link. The

way Intermedia typically uses that is a combination of a couple of different elements, most typically unbundled loops combined with interoffice transport. Is that your understanding of the term, as well?

A Yes.

Q Is BellSouth under a current obligation to provide EELs?

A In some circumstances, yes. Where they are currently combined in our network, which means that this connection already exists, this transport loop connection already exists for a particular end user. And in that case, if it is already there, then we are obligated to provide that combination as an EEL.

Q Is BellSouth currently providing EELs to ILECs in Florida?

A I don't believe that we are. If we are, it is a relatively small number that has been recently requested. Because -- I should have said something else on that. Whether they are currently combined or not, there is also a limitation on the extent to which special access can be converted. It has to be used for a significant amount of local service, it can't be just special access service.

Q Is BellSouth currently processing requests to convert special access services to EELs?

A I don't know whether we are or not, no. No, not

special access service. I'm sorry, I didn't hear part of your question. But, no.

COMMISSIONER JABER: Can you repeat the question. Actually, I didn't hear it.

MR. CANIS: Sorry, Commissioner.

BY MR. CANIS:

Q Is BellSouth currently processing requests by ALECs to convert existing special access services to EELs?

A No, we are not. The FCC, as you know, in their supplement to their UNE remand order said that until they finish their rulemaking, that we would not have to do that. And they are in the process of conducting a rulemaking now to determine under what circumstances special access services can be converted to EELs. Until they finish that, they have said that we don't have to do that.

COMMISSIONER JACOBS: Is it clear that in every instance where a customer has an existing special access arrangement that they are eligible, that the ALEC that serves them is eligible to get that as an EEL?

THE WITNESS: No. In fact, it is the opposite. It is clear that in most cases they are not. Because it's special access. And the fact that it is special access means that it has been predominantly used for long distance. And what the FCC has said is that, okay,

special access service -- we are not going to require special access to be converted to EELs until we finish this rulemaking so that we can establish what the consequences of that are and under what conditions that that can occur.

BellSouth made a proposal to the FCC. In fact, BellSouth and a number of other parties, in fact, including Intermedia, made a proposal to the FCC as to what the appropriate conditions should be, and that is pending before the FCC.

COMMISSIONER JACOBS: I guess I was speaking more on technical terms. Given that all of those issues are addressed, and it is then the stated policy that that will happen. Are there any particular barriers or impediments that would prevent someone who now has a special access arrangement and the ALEC that comes in to serve them from getting that as an EEL?

THE WITNESS: No. If you assume that the policy decision has been made, you know, that yes, this is going to happen. The only thing you have to do is come up with an ordering mechanism in order to make it happen.

COMMISSIONER JACOBS: Is this one of those -- well, let me not go off in that direction. We could go off on another whole new discussion about OSS. Okay, thank you.

BY MR. CANIS:

Q Mr. Varner, let me just clarify your position. Your position is that it is very unlikely that special access circuits can be converted to EELs?

A No. As of today they can't, because we are not offering that and we are not obligated to offer that.

Q Isn't the FCC's currently effective rule that if a carrier, if an ALEC certifies that it is carrying a significant amount of local traffic that it can convert existing special access circuits to EELs?

A Yes, it is. However, what is happening is that the FCC is now trying to make a determination as to how do you find that out. There is one instance that is very clear, and that is that if the ALEC is providing all of the customers local service then obviously it is predominantly local. So under that instance, then, yes, I believe that it could be, but that is really the only instance that has been resolved.

Q Actually, isn't the current state of the law under the FCC rules that you can -- an ALEC can obtain an EEL as long as it certifies that it is carrying a, quote, significant amount of local traffic?

A That is correct. However, the FCC has not yet been able to make a determination as to what constitutes a significant amount of local traffic in order to effect

that rule. That is what they are in the process of doing now.

Q And is it BellSouth's position that until the FCC does come out and clarify what it means, BellSouth is not obligated to convert special access to EELs?

A Not to clarify what it means, but in order to be able to effect that rule.

Q Is it BellSouth's position that it is not now obligated to convert special access circuits to EELs?

A That's correct. Except for obviously the exception that I talked about.

Q Let me refer you to BellSouth's response to Intermedia's first set of interrogatories. It is Item Number 44, dated March 13th, 2000.

A I don't have that one.

Q If your counsel doesn't object, I could share my copy with you.

And for the record, I would also like to bring your attention to Item Number 41 also in response to Intermedia's first set of interrogatories, also dated March 13th, 2000.

Mr. Varner, I'm going to show you these questions and answers. Responses were provided by Mr. Jerry Hendrix of BellSouth, and I would like for you to read both the request and the response to Item Number

41 and 44 into the record of the proceeding.

A All right. "Has BellSouth converted existing special access circuits to EELs for an ALEC in Florida?"

Response, "BellSouth is currently working with MCI to convert existing special access circuits to EELs."

And 44, "If the answer to Interrogatory Number 41 is in the affirmative, what proof does BellSouth require the ALEC to submit to demonstrate that it uses the UNE combinations to provide a significant amount of local traffic?" MCI certified that the EELs were being used to transport local traffic."

Yes, that is consistent with what I have said earlier. MCI has asked for them, we are working with them to determine whether and how they would be provided. But that hasn't been completed yet. And one of the problems is how to determine whether it is not -- it is providing a significant amount of local service.

MCI, at least for some, apparently has said that they were being used to transport local traffic. If they are being used only for local, then obviously there is no problem. If, in fact, they are not, then we are hung up on how to determine whether it is a significant amount, which is what the FCC is currently assessing.

Q Mr. Varner, are you aware that BellSouth and Intermedia both signed and coauthored a proposal to the

FCC for defining what significant amount of local usage is?

A Yes. In fact, that was provided in response to Interrogatory Number 40.

Q In the three different options that were proposed in that joint filing, do any of those require that an ALEC can only convert to an EEL if it only provides local service and nothing but?

A Oh, no. In fact, the purpose for that was to try to define situations where the special access circuit is carrying both local and long distance, to what magnitudes of the two different types have to be provided in order to allow that service to be converted to EELs. That was the purpose for the letter is to try to find how you can determine a significant amount of local service on a facility that is providing both local and long distance.

Q Now, with the understanding that the FCC is considering that filing and other filings by other carriers in that proceeding, let's assume that it takes the FCC some time to come out with a decision on this. Let's say, let's assume it takes them six months. Under that hypothetical, if Intermedia today filed a request to convert special access circuits to EELs, and with that request issued a certification to BellSouth that those circuits carried a significant amount of local traffic,

would BellSouth convert or would it refuse?

A I don't have enough information with just that to be able to answer it. If, in fact, it met those criteria that we have agreed to propose to the FCC, I believe we would allow it, we would go into the process of figuring out how to convert them.

Q By the way, does --

COMMISSIONER JABER: Excuse me, can you elaborate on that. Ask your question again, and if I'm not mistaken your answer is you don't have enough information. So my question to you is what additional information would you need?

THE WITNESS: Information in order to be able to establish whether the conditions that were in the letter were, in fact, met. The conditions that are in the letter deal with relative proportions of traffic, and how you determine for certain types of facilities how much is local and how much is long distance, and that is the information that we would need.

COMMISSIONER JABER: Knowing that, Mr. Canis, would you ask your question again.

MR. CANIS: Yes, Your Honor.

BY MR. CANIS:

Q Assuming that the FCC is not going to come out with an order clarifying its position on what a

significant amount of local traffic is for another six months, if Intermedia today submitted a request to BellSouth and simply said we want to convert a special access circuit to an EEL, we hereby certify that this circuit carries a significant amount of local traffic, would BellSouth process the request or would it refuse?

A That's what I said. If that is all we had, then what we would enter into is a discussion with Intermedia to see if, in fact, it met the criteria or the standards that are in the letter that we both provided. If you just said that, then I guess the answer would be that we would refuse.

COMMISSIONER JABER: You would refuse?

THE WITNESS: Yes. If that is all we knew. What would actually happen is we would then contact Intermedia and say, okay, we need to figure out what is here and whether or not it meets the criteria or not.

BY MR. CANIS:

Q Mr. Varner, has BellSouth established a position on what kind of nonrecurring charges apply upon conversion of a special access circuit to an EEL?

A Have we reached a decision, did you say?

Q Yes.

A Yes.

Q And what is BellSouth's position on that?

A We have proposed some rates to Intermedia, if I remember right, for conversions. I don't remember what the numbers are.

Q Was this a party-specific thing, or has BellSouth taken a broader position where it has identified what kind of nonrecurring charges might apply before this Commission or the FCC?

A What we offered to Intermedia was party-specific, but the same rates would be offered to anybody. We have offered them party-specific because they have been part of individual contract negotiations, but the numbers would be the same for anybody.

Q And you don't recall what those rates are?

A I don't, no. There were a number of them. I could submit them. In fact, Intermedia has them. We transmitted them, I think, on the 5th, I believe it was.

Q Okay. Do you happen to know if those rates were the rates that apply for new installations of a special access circuit or an unbundled network element?

A It was actually both. There were rates for conversions as well as rates for new.

Q Do you know the circumstances under which new installation rates would apply?

A I really don't remember.

Q Are there cases in which BellSouth will make

available new combinations of UNEs that have not been previously combined?

A Oh, yes, there are. We have been offering professional service arrangements for some time where we will do that. But let me be clear, we don't -- those are not subject to the pricing standards and so forth under the Act. They are done outside of the normal 251/252 process.

Q Are there any circumstances under which BellSouth will provide new combinations of UNEs that are subject to the pricing rules of Section 251 and 252 of the Communications Act?

A No, I don't believe there are any such situations.

Q I'm sorry --

A That there are any such situations. We are not obligated to provide new combinations under the Act. We will do it, but we do it as a separate commercial undertaking, not an obligation under the Telecom Act.

Q Will BellSouth provide new combinations in the top 50 MSAs in the country in Zone Ones, in cases where customers have four lines or greater in areas where it wishes to eliminate local switching as an unbundled network element?

A Yes. I'm sorry, I had forgotten about that.

That is loop port. We were talking about EELs, that is a loop port combination. And, yes, we will do that in order to enable us to avail ourselves of the exemption from local switching as an unbundled network element in those areas.

Q And for those new combination EELs, are those priced in accordance with the rules, with section -- the price guidelines of Section 252 of the Communications Act?

A I don't remember in that instance whether they are or they aren't. I know we have to do it in order to get the exemption, but I don't remember what the pricing rules were for it.

MR. CANIS: You Honor, as a point of order, may I make an on-the-record request that BellSouth identify what its position is on that issue, and that is specifically if it does order new combinations of EELs in order to -- as a trade-off for eliminating local switching as an unbundled network element, is it obligated to provide those combinations, those new combination EELs in accordance with the pricing rules of Section 252 of the Communications Act?

COMMISSIONER JACOBS: Well, I think the best we can do now is you can ask the question and get the answer from this witness in terms of BellSouth's position if is not misstated in the prehearing statement, I assume it

hasn't.

MR. VACCARO: I'm sorry, would you repeat that, Commissioner?

COMMISSIONER JACOBS: If they haven't stated a formal position in the prehearing statement for this case, then it stands merely as a matter of a question from the witness, isn't that correct?

MR. VACCARO: I believe that is the case.

COMMISSIONER JACOBS: So if it is within the expertise or the knowledge of this witness, then you can elicit that.

MR. CANIS: Very good.

MR. VARNER: I don't remember.

BY MR. CANIS:

Q Okay. So this is not -- you don't recall or is it not within your expertise?

A I just don't recall. So I guess it is not within my expertise, because I don't know.

COMMISSIONER JACOBS: Well said.

MR. CANIS: Your Honor, as a procedural matter is there any way to get a clarification of that?

COMMISSIONER JABER: I think what he is asking for perhaps is a late-filed exhibit.

COMMISSIONER JACOBS: You can do a late-filed request.

MR. CANIS: Very good. Thank you.

COMMISSIONER JABER: Put on the record -- you need to ask your question on the record, which you did, and he has said he doesn't recall, and you ask for a late-filed exhibit with a response to your question.

MR. CANIS: Very good. Thank you. We will do that. Thank you.

COMMISSIONER JABER: Chairman, we need to identify the number of the late-filed exhibit.

COMMISSIONER JACOBS: Thank you. We will give that as Exhibit Number 8.

(Late-Filed Exhibit Number 8 identified.)

MR. CANIS: And, I'm sorry if I'm missing the procedure here, then we just submit that written data request after the proceeding and that will be identified as Exhibit Number 8?

COMMISSIONER JACOBS: Well, the record can serve as a written request. You are free to enunciate it in writing to be clear what you are asking for, but the request is taken from the record.

MR. VACCARO: Commissioner, can we get a suggested title for that exhibit?

COMMISSIONER JACOBS: Yes. Would you give us a title for that?

MR. CANIS: We could call that pricing rules for new combination EELs.

MR. KITCHINGS: Commissioner Jacobs, for BellSouth we would note for the record we are not going to object to that request, however, we do not believe that it is one of the issues as stated in the prehearing order that is to be considered here today. But, again, we will not object to the late-filed data request.

COMMISSIONER JACOBS: Okay. It is noted.

MR. CANIS: Thank you.

BY MR. CANIS:

Q And just finally on this topic, Mr. Varner, are you aware that the Georgia Public Utilities Commission recently in Docket Number 10692-U, came out with an order that finds that, quote, "Currently combines for defining an ILEC's obligation to provide EELs, means ordinarily combined within the BellSouth network in the manner in which they are typically combined"?

A Yes, I am. That finding by the Georgia Commission, as you know, is at odds with the way the FCC has defined it. And that issue is the one that is currently before the Eighth Circuit Court of Appeals. That will get resolved when the Eighth Circuit rules. So right now, yes, the Georgia Commission took that position, it is at odds with what the FCC has said, and it is

currently before the Eighth Circuit Court of Appeals and they will make a determination about whether that is a proper way to apply that terminology.

Q I would like to talk with you now briefly about frame relay. And as we discussed earlier, frame relay is a data service, and it is my recollection that BellSouth agrees that frame relay can be a local service as well as an interstate service, is that correct?

A Yes, it can be.

Q To the extent that frame relay is a local service, is BellSouth obligated to provide interconnection to ALECs for this service?

A Yes, we are.

Q Now, for other services, like voice grade services, when we do interconnection for local service, the carriers compensate each other at a reciprocal compensation rate which is based on long-run incremental costs, is that the case?

A Not really. There is kind of like two parts when you talk about interconnection. You have the interconnection facility that actually connects the two networks, okay. And then you have transport and termination of traffic once the traffic gets onto the other party's network. And the reciprocal compensation in many cases -- depending on how the interconnection is

worked out determines whether that is part of the reciprocal compensation or not. Reciprocal compensation applies to the cost that the ALEC incurs from its switch out to the switch that serves its end user. Whether reciprocal compensation applies to the interconnection facility is dependent on how the interconnection facility was provided.

Q And when that reciprocal compensation rate does apply, that is set at a long-run incremental cost standard, right?

A Yes, it is.

Q Is it BellSouth's position that when Intermedia and BellSouth interconnect for purposes of passing frame relay traffic back and forth that the appropriate level of compensation is at BellSouth's tariffed rates?

A No, that's why I was making that distinction. What we are proposing is to provide the facility, if I remember correctly, at tariffed rates because of the -- yes. On frame relay service, the service is almost entirely interLATA. That has been our experience in providing that. The interLATA part will be provided at access tariffed rates, or the intraLATA non-local part would also be provided at access tariffed rates.

And in our experience, the part that is local, if there is any, is so small until it doesn't make sense

to try to go and figure out an amount, that a local separate local interconnection would apply. And when I say so small, we have these percent local circuit usage that carriers are supposed to provide to us in order to get reimbursed for interconnection costs. Nobody has ever given us one in Florida. So it must be pretty small if nobody has ever even asked for the money.

Q If Intermedia were to provide a percent local usage report that identified, oh, I don't know, let's say 25 percent of the traffic as local, would transport and termination rates be appropriate when that traffic is passed between the two carriers' networks?

A No. On framed relay there really is no -- you can't apply these transport and termination -- well, if you tried to apply them, the answer would always be zero. Because the reason is this, remember frame relay is packet switched. There aren't any minutes of use to measure in order to apply a per minute charge to.

So, I mean, even though you have got a per minute charge there is nothing to multiply it by in order to come up with a number, because it sends packets, there are no minutes.

Q By the way, let me absolutely agree with you there. I agree that per minute use of rates are not appropriate for frame relay. And that it is true -- well,

is it true that BellSouth, like Intermedia, prices frame relay on a flat monthly rate when it provides it in its tariff?

A Well, there is a combination of rates. We have the rate for the line, we also have rates which are for committed information rates and the DELCs (phonetic) and so forth. I think -- I was trying to remember, I don't remember whether -- I know all of those are flat, and I don't remember whether -- no, we don't have any per packet charges. All of our charges are flat rate charges.

Q But to establish long-run incremental cost rates for frame relay that comply with Section 252 of the Communications Act, I'm assuming that BellSouth would need to submit cost studies and the Commission would need to analyze it, analyze the costs unique to frame relay just as they have done with switched services. Do you agree with my assumption?

A Well, in part. But before you ever got there, what you would have to do is to figure out, okay, how are we going to determine this. I mean, right now nobody even measures this stuff. I'm not sure what it is we would measure to form the basis for it. So our suggestion, our proposal is that, one, since the local part of this is so small, and, two, since there is no way to measure it, let's just treat it on a bill and keep basis for that part

that is local.

Q And that is both for the transport, meet type transport between the carriers as well as transport and termination on each carriers' network?

A No, the meet type transport I thought we had resolved. That was the issue we resolved this morning.

Q Thank you, yes. So to clarify BellSouth's position would be to pursue a bill and keep arrangement for the transport and termination of frame relay traffic on each others network?

A Yes, beyond the facility where we are actually connect the network.

Q Okay. And my final line of questioning is on the definition of local traffic. I would refer you to Pages 44 through 46 of your direct testimony.

A Yes.

MR. KITCHINGS: Excuse me, Mr. Canis, did you say local traffic, definition of local traffic, or definition of switched access traffic?

MR. CANIS: I'm sorry, I misspoke. Switched access. Thank you.

BY MR. CANIS:

Q And let me refer you to Lines 1 and 2 on Page 44, where BellSouth proposes that switched access traffic is as defined in the BellSouth access tariff; and, two,

additionally, IP Telephony will be considered switch accessed traffic. I believe Intermedia does not object to BellSouth defining -- sorry, let's strike that question.

Isn't it true that the FCC has exclusive jurisdiction in defining switched access?

A Yes.

Q Isn't it true that the FCC has exclusive jurisdiction over identifying whether a service is an enhanced service and whether a high level protocol conversion, such as Internet protocol, makes a service enhanced?

A Yes, that is true, also.

Q On Page 46 you identify the FCC's -- on Line 22 you refer to the FCC's April 10th, 1998 report to Congress talking about phone-to-phone IP Telephony. Was that report to Congress about the application of access charges or was that report to Congress about the potential application of universal service subsidy payments?

A I'm not sure what the distinction is that you are making. The report was a report to Congress concerning universal service. And in the report they discussed a number of things, including circumstances under which access charges would apply and what services were access and which were not. All of that a part of trying to define what services are subject to universal

service support. So it kind of covered both of those areas.

Q Is there any currently effective rule or has there been a rule in the past by the FCC that has ever identified any form of IP Telephony as a regulated telecom service subject to access charges?

A Yes, I believe there is. There are access charge rules. If you look at their access charge rules, Part 69 at the definition of access, it clearly includes this service. Our only reason for asking for this to be stated in the agreement is so that it is clear how it is to be handled. We believe that not having that statement in there doesn't change the fact that this is, in fact, switched access.

But we learned through negotiations that some carriers were trying to have this traffic somehow not treated as switched access and wanted to be sure that there was complete understanding as to what our intent was, which is to follow the FCC's rules so we don't have a situation like what happened in old agreements with ISP traffic. Since we didn't say that ISP traffic was non-local, even though we believed that it was, we had this dispute about whether it was or wasn't. We don't want to have that dispute with respect to this traffic.

Q Mr. Varner, did you just tell me that Part 69 of

the FCC's rules expressly states that phone-to-phone voice over IP Telephony is an access service subject to access charges?

A No, I was only trying to say that that language, those words where they specifically identify IP Telephony is in the rule. But if you read the rule, the traffic for which access charges apply in the rule clearly includes this traffic. I mean, they don't list in the rule what type of technology has to be used in order to complete the long distance call. They just say it has to be a long distance call. And all this is is a form of technology. They don't list all the different types of technology.

Q So you are asking this Commission to make a statement of what interstate access charges are and whether a service is an enhanced service or not based solely on BellSouth's interpretation of the FCC's Part 69 rules?

A No, I'm not asking them to make a determination on what is interstate. I'm asking them to simply adopt the FCC's definition of access which is what is reflected in our tariff. So adopt the definition in our tariff. And also to specifically state that this traffic is, in fact, included in switched access, which is really a redundant statement, because it is. But we want to make sure that this agreement very clearly points out that it

is to avoid the potential for a later dispute about whether it is or it isn't.

Q Although you cannot identify to me or to this Commission any rule by the FCC where it expressly identifies that phone-to-phone IP Telephony is an access, is a regulated access service?

A Not with those words. However, the access charge rules, as I stated, clearly include this traffic. If you read the access charge rules it doesn't say, for example, that wire line, regular voice grade wire line technology qualifies as access service. It doesn't specify any technology. It specifies the type of service and it is technology neutral. So just because you use this particular technology as opposed to another technology to complete a long distance call doesn't change the fact that it is access service.

MR. CANIS: Thank you, Mr. Varner. Thank you, Commissioners. I have no further questions on the direct.

MR. VACCARO: Yes, I have got just a few questions for Mr. Varner.

CROSS EXAMINATION

BY MR. VACCARO:

Q I would like to go ahead and start off with the line of questioning that Mr. Canis just concluded.

Is switched access traffic defined in the current BellSouth/Intermedia agreement?

A I don't remember. I don't know whether it is or not.

Q Okay. Do you know if IP Telephony is currently treated or considered in the current agreement?

A It is not specified in the current agreement. Again, here we are talking about switched access service. And typically in a local interconnection agreement you wouldn't even address switched access service.

Q Let me go ahead and back up to Issue 3, which we had quite a bit of discussion on earlier regarding the comparison of Intermedia's switches with BellSouth's tandem switches. We have some confidential documents here that Intermedia has filed in its supplemental response to staff's first request for production of documents.

Now, as I understand it, is it correct that you have entered into a protective agreement so that you can view those materials?

A Yes, that is correct.

Q What we are going to do is we are going to ask you to look at this.

COMMISSIONER JABER: Mr. Vaccaro, which exhibit is this?

MR. VACCARO: This comes under Exhibit -- I

believe it is Exhibit 4. Yes, that is correct. It is marked CONF-1, but it is Exhibit 4.

BY MR. VACCARO:

Q I am going to ask you to review the documents, but I will go ahead and let you know what the questions are I'm going to ask first. I think it will make it easier that way, then you can take your time in looking at the documents.

Specifically what I'm going to ask you is whether or not the -- what I'm going to ask you is whether or not the confidential documents provided by Intermedia show that Intermedia -- I want you to look for the Miami and Orlando area, and let me know whether or not in looking at this material it indicates whether Intermedia's switch serves a geographic area comparable to that of BellSouth's tandem switch in those areas. And then I'm going to ask you the same question again for the Jacksonville area. So if you can just review those, and then whenever you are ready.

MR. CANIS: Just as a point of order, I understand that we are looking at some proprietary materials. It is my understanding that we are not intending to go off the record or onto a proprietary record. And it is my understanding that people will discuss this stuff at a kind of 5,000-mile level so that

we don't disclose proprietary information.

MR. VACCARO: Yes, that is correct. Thank you.

MR. CANIS: Thank you.

MR. VACCARO: Mr. Varner, try and be as nondescript as possible.

COMMISSIONER JACOBS: That is a hard task, I'm sure, but --

MR. VACCARO: I will go ahead and repeat the questions for you.

BY MR. VACCARO:

Q The first question is in your opinion did the confidential documents provided by Intermedia for the Miami and Orlando areas show that Intermedia's switch serves a geographic area comparable to that served by BellSouth's tandem switch in those areas?

A No, they do not.

Q Okay. Can you explain why in generic terms, if at all possible?

A Yes. For one thing, all three of these maps really show an area that Intermedia says that it is willing to provide service or offer service in. It doesn't identify where they are actually providing service, whether they are actually providing service to customers in those areas. And in a couple of them it is actually obvious from the map, when they laid down the

territory that they serve, that it doesn't even cover the entire local serving area. The parts that are in white are areas that they are not serving that are within the local serving area served by the tandem.

Q And will you please answer the same question with respect to the Jacksonville area?

A The same thing. You have got -- it shows the same type of information.

Q Okay, thank you. And, finally, I would like to ask you some questions regarding Issue 26, which is the issue that asked whether the parties should be allowed to establish their own local calling areas and assign numbers for local use anywhere within such area.

Do you know of any statute, rule, or law, or any other authority that would prohibit an ALEC from assigning NPA-NXXs to ALEC local calling areas that may exceed the boundaries of the ILEC local calling area?

A No, I do not. And we are not suggesting that Intermedia not be able to do that. We are not attempting to try to confine or control how they utilize their NXX codes. Our concern is really two-fold. We want to be able to bill our customers properly when they make a call to an Intermedia customer. We need to know whether that is a local or a long distance call for billing our customers and whether access or reciprocal compensation

applies. They can use their NXX codes however they want as long as we have the ability to resolve those two issues.

Q If Intermedia were able to provide the billing information such that BellSouth would be able to determine whether calls to a particular number are local or toll, would BellSouth be satisfied with that?

A Yes. Unfortunately, through all the discussions that we have had with Intermedia there has been no mechanism that has been identified that would enable that to take place.

MR. VACCARO: Thank you very much. I have no further questions.

COMMISSIONER JACOBS: Commissioner?

COMMISSIONER JABER: No questions.

COMMISSIONER JACOBS: Redirect.

MR. KITCHINGS: Commissioner Jacobs, before I begin redirect, just in the interest of time, you had mentioned earlier perhaps discussing whether we could complete the proceeding today or not. And I realize that the order as it is currently set would require Mr. Varner to take a seat and then come back again for cross examination on his rebuttal testimony, but BellSouth would be amenable to allowing Mr. Varner to continue and take cross examination on his rebuttal testimony now, and then

deal with Mr. Milner in like fashion so that we could just redirect him once, just cross-examine him once in an effort to attempt to complete closure of this today.

COMMISSIONER JACOBS: I had intended to ask that at the beginning of it. How long do you think your cross would be for rebuttal?

MR. CANIS: Your Honor, I think on the reply for Mr. Varner, I don't think it will run more than about 30 minutes, and I think total for Mr. Milner I think it is about the same for both direct and rebuttal.

COMMISSIONER JACOBS: How about you, staff?

MR. VACCARO: I may have at most one question, I think, at this point.

COMMISSIONER JACOBS: If that is okay with the parties?

COMMISSIONER JABER: To do rebuttal together, to do rebuttal now?

COMMISSIONER JACOBS: Yes.

COMMISSIONER JABER: No, I would prefer to do it separately, but it is your call. I would prefer on this case to do it separately.

COMMISSIONER JACOBS: All right.

COMMISSIONER JABER: But I also don't mind trying to finish the hearing today, if we need to go later, but --

COMMISSIONER JACOBS: Why don't we do this, let's go ahead and do it with this witness because I think -- if we can -- I will be honest with you, I think the attraction of lunch waiting would be of some use and then we see where we go after that.

MR. KITCHINGS: Commissioner Jacobs, if it is all right, if witnesses would be split apart, we would just as soon have Mr. Varner be split apart, as well, so that all witnesses are treated in like fashion. I don't mean to be difficult.

COMMISSIONER JACOBS: Okay. Well, that is certainly fine with me. I would want to make sure that we can keep the rebuttal as concise as possible. And if that is the case, that is fine with me.

MR. KITCHINGS: Thank you. And I do have one or two redirect questions of this witness.

COMMISSIONER JACOBS: Okay.

REDIRECT EXAMINATION

BY MR. KITCHINGS:

Q Mr. Varner, you recall, do you not, that you had several questions from Mr. Canis and Commissioner Jaber regarding calls that are to Internet service providers. And specifically you will remember you had some questions about accessing local web pages. Do you recall those series of questions?

A Yes. They were not calls to Internet service, but they were through -- they were actually calls to websites.

Q Right. And there was a discussion about in Mr. Canis' case going to the FCC's web page and in Commissioner Jaber's case going to either the Commission web page or the local newspaper. Do you recall those questions.

A Yes, I do.

Q My question to you, Mr. Varner, is if I am surfing the web, to use that term as it is commonly used, and I go from one site to another, such as the FCC web page to perhaps the California Public Service Commission web page. Is there any way that you are aware of to break apart those calls so that you could find which ones are local, to local pages and which ones are to pages that are on distant servers?

A No, there isn't. And that was one of the problems that the FCC cited in trying to look at is there some kind of way to divide up an Internet session. That is a subject of their notice of proposed rulemaking. But I know of no way you could do that; and they didn't, either.

And that is one of the problems is that you get on the Internet, you know, in the same session through the

same connection you could access a website that is in your same exchange, it could be in the same state, another state, or anywhere across the world and you just kind of, you know, go around to them. And in some cases you might even have some stuff, you know, that you minimize and then go to another one. So it is impossible to able to tell.

One other clarification I wanted to make is that when we were talking about like the FCC's web page and the Tallahassee Democrat web page early on, I was answering those from the assumption that the website was located within that local calling area. That may are may not be the case, which is another problem.

You really don't know where the call goes when you go onto the Internet. Just because you are accessing something that is a local business or a local concern doesn't mean that you are doing a local call. And, in fact, you can go to two different places when you are using -- going to the same place. For example, the Tallahassee Democrat. Whoever provides their web pages could have them stored on several servers. And let's say there is a server here in Tallahassee and you would normally go there. If that one is congested, they may send you to a server in California that has the same content on it as the one in Tallahassee. So even for the same website, you may go to different servers and you

don't have any control over any of that.

Q And in that case, Mr. Varner, it would be one provider but it would be separate locations for those various websites?

A Right, just depending on what the congestion is and the traffic patterns are on that provider's network at that time.

MR. KITCHINGS: Thank you, Mr. Varner. Thank you, Commissioner Jacobs. I don't have any other redirect.

COMMISSIONER JACOBS: Okay. The exhibits we have are AJV-1, 2, 3 by BellSouth. Would you move those?

MR. KITCHINGS: Yes, we would move those into the record, and I believe they would be Exhibits 5, 6, and 7.

COMMISSIONER JACOBS: Yes, 5, 6 and 7. Show them admitted. And the Intermedia Late-filed Exhibit, Exhibit 8, the pricing rules, without objection show that admitted.

(Exhibit 5, 6, 7 and 8 received in evidence.)

MR. VACCARO: And, Commissioner Jacobs, can we get a filing date for that exhibit?

COMMISSIONER JACOBS: Yes.

MR. KITCHINGS: I'm not sure, Commissioner

Jacobs, how long it is going to take us to run that down. I guess I would turn to Mr. Varner.

MR. VARNER: It won't take long.

MR. KITCHINGS: Could we have ten days on that?

MR. CANIS: Yes, sir.

COMMISSIONER JACOBS: That sounds sufficient. Very well. Anything else?

You may step down, but I guess we will see you back again, soon.

COMMISSIONER JACOBS: .

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(Transcript continues in sequence in Volume 2.)

STATE OF FLORIDA)

: CERTIFICATE OF REPORTER

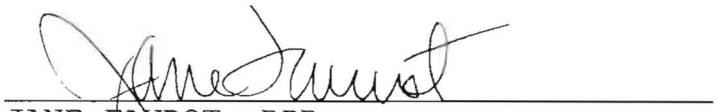
COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, FPSC Bureau of Reporting, Official Commission Reporter, do hereby certify that the Hearing in Docket No. 991854-TP was heard by the Florida Public Service Commission at the time and place herein stated.

It is further certified that I stenographically Reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript, consisting of 156 pages, Volume 1 constitutes a true transcription of my notes of said proceedings and the insertion of the prescribed prefiled testimony of the witness(s).

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 17TH DAY OF APRIL, 2000.



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