

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

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|                                 |   |                      |
|---------------------------------|---|----------------------|
| 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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\* AND DO NOT INCLUDE PREFILED TESTIMONY. \*

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VOLUME 3  
PAGES 242 THROUGH 375



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

## I N D E X

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## P R O C E E D I N G S

COMMISSIONER JACOBS: You are on, Intermedia.

MR. CANIS: I would like to call to the stand  
Mr. Carl Jackson, witness for Intermedia.

- - - - -

CARL JACKSON

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

## D I R E C T   E X A M I N A T I O N

BY MR. CANIS:

Q     Mr. Jackson, would you state and spell your name  
for the record, please?

A     Yes. My name is J. Carl Jackson, Jr., and the  
spelling of the first and last name, Carl, C-A-R-L,  
Jackson, J-A-C-K-S-O-N.

Q     And by whom are you employed?

A     I am employed by Intermedia Communications,  
which is a Florida-based company based and headquartered  
in Tampa, Florida. My business address in Atlanta, I work  
in Atlanta, is 360 Interstate North Parkway, Suite 500,  
Atlanta, Georgia.

Q     Now, have you prepared or caused to be prepared  
a document entitled direct testimony of J. Carl Jackson,  
Jr., dated February 14th, 1999, and consisting of 49 pages

1 and two exhibits?

2 A Yes, I have.

3 Q Do you have any corrections you would like to  
4 make to that document?

5 A Yes, I do. First of all, on my direct testimony  
6 on Page 1, on Line 4, we had a bit of a Y2K problem. It  
7 should read February 14th, 2000 as opposed to 1999. On  
8 Page 12, Line 9, it should read, "Areas we serve in  
9 Jacksonville, Tampa, and Miami are each served by a single  
10 switch." Following that, we insert, "Orlando is served by  
11 two Intermedia switches." And then finally on Page 13,  
12 Line 1, it should read, "Five switches in Florida," as  
13 opposed to four.

14 Q Does that conclude your corrections and changes?

15 A Yes, it does.

16 Q With those changes, is this document true and  
17 correct to the best of your knowledge and belief?

18 A Yes, it is.

19 Q And if asked these questions today, would your  
20 answers be the same?

21 A They would.

22 Q Have you prepared a summary of your direct  
23 testimony?

24 A Yes, I have.

25 Q May I ask you to give that summary now, please.

1           A     Yes, I will be glad to.

2                   Good afternoon, Commissioners. My name is Carl  
3 Jackson and I work for Intermedia Communications, which I  
4 mentioned earlier is a Tampa, Florida-based company  
5 employing several thousand employees, including several  
6 thousand here in the State of Florida.

7                   I am Senior Director of Industry Policy, and I  
8 work out of Intermedia's Atlanta office. And I am here  
9 today as Intermedia's policy witness on all of the  
10 remaining open issues that are here and up for  
11 arbitration.

12                   Let me note at the beginning that I am not a  
13 lawyer nor am I network engineer, but I have spent 22  
14 years in the telecommunications field, 18 of them at  
15 BellSouth in various managerial positions. So I think it  
16 is fair to say I am very familiar with the key issues that  
17 the Commission has to determine in this proceeding.

18                   I am here to represent Intermedia's policy  
19 positions, and to ask this Commission to help us obtain  
20 the conditions that we need in order to do business in  
21 Florida. Intermedia is a competitive local exchange  
22 carrier, or ALEC, that offers a wide variety of voice and  
23 data products in many different jurisdictions throughout  
24 the United States. Although we are doing well, I think it  
25 will surprise no one when I say that we can't compete in

1 terms of size and in market power with the large  
2 established carriers, such as BellSouth. We have to  
3 compete on other bases.

4           For example, we do our best to be very  
5 innovative. We offer products that you just can't get  
6 from BellSouth, or that you can't get in quite the same  
7 way. Where possible we also try to offer a better price.  
8 Intermedia wants to offer our customers in Florida a  
9 slightly different look, different attitude, and a  
10 different mix of products and services. This is how we  
11 distinguish ourselves in the marketplace.

12           Now, when we began the negotiation process with  
13 BellSouth, the parties had a large number of issues on  
14 which we disagreed. I think out of the 48 issues that we  
15 had set forth in the matrix, we have been able to get down  
16 to approximately half of those through our negotiations,  
17 which is, I think, good. That leaves us the other half,  
18 and not all of the other half of the remaining issues are  
19 created equal. So I would like to summarize our position  
20 on some of the key ones for just a moment if I could  
21 highlight those.

22           First, Intermedia needs it recover the cost of  
23 its network facilities by obtaining full and fair  
24 compensation when they are used by BellSouth or by other  
25 parties. So Intermedia's switch, which is a large and

1 capable switch that covers a large geographic area, should  
2 receive full compensation, importantly including the  
3 tandem rate of compensation. It doesn't matter if our  
4 switch or network is configured similarly to BellSouth's.

5           As the Commission is aware, there is an FCC rule  
6 directly on point here, and that is Rule 51.711(a)(3). If  
7 our switch covers an area comparable in geographic scope,  
8 not identical, but comparable to BellSouth's tandems, then  
9 we are entitled to be compensated at the tandem rate, in  
10 addition to the other rate elements associated. My  
11 supplemental testimony also includes maps that show the  
12 areas in and around our five Florida switches and their  
13 coverage areas, as well. There is no question that the  
14 areas that we cover are comparable to the areas covered by  
15 BellSouth's local tandems, and in some cases even larger.

16           Second, the Commission should be aware that  
17 frame relay service is a very important part of  
18 Intermedia's business, and we need to obtain fair  
19 treatment for this telecommunications service in our  
20 interconnection agreement. For example, when data  
21 messages are transmitted across virtual circuits from one  
22 point in a LATA to a recipient in another point in the  
23 same LATA, this is a local call.

24           BellSouth, I think, agrees that this is a local  
25 call, but it inexplicably doesn't want to pay reciprocal

1 compensation for Intermedia's termination of BellSouth  
2 originated calls on Intermedia's frame relay network.

3 Intermedia is asking this Commission to  
4 determine that a local call is just that, a local call,  
5 subject to compensation, whether it is POTS or a packet of  
6 data messages. This is the point of Issue Number 37.

7 Likewise, BellSouth's attempt to define away the  
8 problem by excluding message traffic from the definition  
9 of intraLATA toll and defining switched assess in a  
10 restrictive fashion, such as Issues 31 and 32, should be  
11 denied.

12 Third, Intermedia should be compensated for the  
13 transport and termination of ISP traffic. The recent D.C.  
14 Circuit's decision mandates this conclusion. Other issues  
15 are equally important to Intermedia. For example, it is  
16 critical that Intermedia retain the flexibility to assign  
17 NPA-NXXs as we see fit, as well as to define our own  
18 calling areas. It is also important that Intermedia have  
19 access to combinations of UNEs, unbundled network  
20 elements, including but not limited to EELs, as well as  
21 those UNEs that BellSouth typically combines. These UNEs  
22 and UNE combinations must be priced consistent with the  
23 pricing standards of the Communications Act.

24 Finally, Intermedia should not be required to  
25 mimic BellSouth's network, and moreover should not be

1 required to perpetuate the inefficiencies that are  
2 inherent in BellSouth's Legacy network, which developed  
3 over 100 years. Accordingly, Intermedia respectfully  
4 requests that this Commission rule in favor of Intermedia  
5 on each of these issues.

6 That concludes my summary. Thank you.

7 MR. CANIS: Thank you, Mr. Jackson. Your Honor,  
8 I would just to mark the two exhibits to Mr. Jackson's  
9 testimony as Intermedia exhibits.

10 COMMISSIONER JACOBS: Show Exhibit -- and I  
11 assume those are not composite, they are each individual?

12 MR. CANIS: I believe that is right.

13 COMMISSIONER JACOBS: Okay. Show JCJ-1 as  
14 Exhibit 10, and JCJ-2 as Exhibit 11.

15 (Exhibit 10 and 11 marked for  
16 identification.)

17 MR. CANIS: Thank you, Your Honor. With that,  
18 the witness is available for cross examination.

19 COMMISSIONER JACOBS: Did we move his testimony  
20 in?

21 MR. CANIS: Oh, I'm sorry, yes.

22 COMMISSIONER JACOBS: We would just move his  
23 testimony in as though read.

24 MR. CANIS: Okay. And we will need to mark the  
25 testimony as an exhibit, as well.

1           COMMISSIONER JACOBS: No, we don't mark that as  
2 an exhibit, we just move it into the record.

3           MR. CANIS: Thanks. We would just move that  
4 into the record. Thank you.

5           COMMISSIONER JACOBS: Good. And the witness is  
6 tendered for cross.

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**INTERMEDIA COMMUNICATIONS INC.  
DIRECT TESTIMONY OF J. CARL JACKSON JR.  
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION  
FEBRUARY 14, 1999**

**Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, TITLE AND THE NATURE OF YOUR POSITION WITH INTERMEDIA COMMUNICATIONS INC. ("INTERMEDIA").**

**A.** My name is J. Carl Jackson Jr. . My office is located at 360 Interstate North Parkway, Atlanta, Georgia 30339. I am Senior Director – Industry Policy for Intermedia. My responsibilities include regulatory policy administration, including the negotiation of interconnection agreements with incumbent local exchange companies throughout the country.

**Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.**

**A.** I have more than 21 years of experience working in the Telecommunications industry. I graduated from Georgia State University in 1978 with a Bachelor of Arts degree. I began my career at BellSouth (Southern Bell) as a Business Office Supervisor in 1978. Altogether, I spent 18 years at BellSouth, from 1978 - 1996, in positions of increasing responsibility. Key positions held were:

- Manager, Regulatory
- Product Manager, Emergency Services
- Product Manager, Long Distance.

1 I completed BellSouth's "Strategic Professional Development Program" in 1996. This is  
2 a one year program developed and taught at Georgia Tech and University of Alabama,  
3 Birmingham, for selected high potential BellSouth Managers.

4  
5 After leaving BellSouth, I have spent more than 3 years working in the competitive local  
6 exchange industry. I held the following positions:

7  
8 -Director, Local Exchange Service - Intermedia Communications, 1996 - 1997  
9 -Senior Director, Regulatory - ICG, 1997 - 1999  
10 -Senior Director, Industry Policy - Intermedia Communications, August 1999  
11 to present.  
12

13 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY BEFORE THE**  
14 **COMMISSION?**

15  
16 A. I am appearing before the Commission as a policy witness to present the positions of  
17 Intermedia with respect to the substantive issues that Intermedia and BellSouth have not  
18 reached agreement on in Section 251 interconnection negotiations.  
19

20 **Q. WERE YOU PERSONALLY INVOLVED IN THE NEGOTIATION OF THE**  
21 **INTERCONNECTION AGREEMENT WHICH IS THE SUBJECT OF THIS**  
22 **ARBITRATION?**

23  
24 A. Yes.  
25  
26

1 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

2  
3 A. The issues which are set for arbitration generally include: (I) the provision and pricing of  
4 local interconnection (reciprocal compensation); (II) collocation, including conversion of  
5 virtual collocation arrangements; (III) access to unbundled network elements (“UNEs”)  
6 (including loops, interoffice transport, frame relay elements, combinations of elements,  
7 subloop elements, dark fiber and BellSouth-owned inside wiring); and (IV) performance  
8 measures and associated penalties for non-performance. The precise issues outstanding  
9 between the parties are identified in the Issues Matrix that Intermedia attached as “Exhibit  
10 1” to its Answer to BellSouth’s Petition for Arbitration. That Issues Matrix has been revised  
11 to reflect the results of ongoing negotiations between the Parties.  
12

13 **Q. WHY DOES INTERMEDIA’S ISSUES MATRIX CONTAIN SO MANY MORE**  
14 **ISSUES THAN BELL SOUTH’S MATRIX AS FILED WITH ITS ARBITRATION**  
15 **PETITION?**  
16

17 A. As BellSouth pointed out in its Petition, Intermedia raised a number of issues in the  
18 discussions between the parties prior to BellSouth’s filing. Some of these issues were  
19 merely issues that have been the subject of prior discussions with BellSouth, in this and  
20 other jurisdictions. But most of the issues added by Intermedia resulted from of the issuance  
21 by the Federal Communications Commission (“FCC”) of its Third Report and Order and  
22 Fourth Further Notice of Proposed Rulemaking in Docket No. 96-98 (known as the “UNE  
23 Remand Order”) on November 5, 1999. The UNE Remand Order clarifies a number of

1 issues concerning the types of network elements that incumbent local exchange carriers  
2 (“ILECs”) such as BellSouth are required to provide on an unbundled basis. Intermedia  
3 believes that the parties’ agreement should reflect these clarified regulatory requirements.  
4

5 **Q. HAVE THE PARTIES CONTINUED TO WORK ON ISSUE RESOLUTION**  
6 **SINCE THE FILING OF THE PETITION FOR ARBITRATION AND ANSWER?**  
7

8 A. Yes. The Parties have held negotiation sessions and conference calls, and have exchanged  
9 proposed language aimed at settling some of the outstanding issues. Some issues  
10 determined to have some overlap have been consolidated by agreement of the Parties. In  
11 addition, the Parties have agreed in some cases to defer the resolution of issues raised in this  
12 proceeding to ongoing generic proceedings that concern the same subject matter.  
13

14 **Q. WHAT IS THE CURRENT STATUS OF THE PARTIES’ EFFORTS TO**  
15 **RESOLVE ISSUES?**  
16

17 A. The arbitration issues matrix originally filed by Intermedia contained 48 distinct issues. As  
18 of the date this testimony was completed, the Parties have succeeded in closing 21 of these  
19 issues, leaving only 27 of them open. And we have hopes that some of the 27 remaining  
20 issues can be settled prior to the date of hearing in this proceeding. Intermedia on its part  
21 has made every effort to be flexible where possible, although it seems apparent that there are  
22 some issues on which the Parties will not be able to agree.  
23

1 **Q. HAVE THE ISSUES AS SET FORTH IN THE MATRIX ORIGINALLY FILED**  
2 **BEEN RENUMBERED?**

3  
4 A. For the most part, no. The Parties considered that it would be overly confusing in light of  
5 the fact that issues were being resolved and consolidated. Although the Parties have agreed  
6 to re-word some of the issues, the numbering of the issues is largely the same. When an  
7 issue was eliminated, we shaded it out in the arbitration matrix, and marked it closed, but did  
8 not renumber it. For purposes of my testimony, which is organized by numbered issue, I  
9 have taken the same approach. Where an issue has been settled by the Parties, I have so  
10 indicated, and I have not offered any testimony on it.

11  
12 **Issue 1: Should the parties wait for final and nonappealable legislative, regulatory,**  
13 **judicial or other legislation before amending the contract to implement such**  
14 **actions?**

15  
16  
17 **THIS ISSUE HAS BEEN SETTLED BY AGREEMENT OF THE PARTIES**  
18  
19

20 **Issue 2: Should the definition of “local traffic” for purposes of the parties’ reciprocal**  
21 **compensation obligations under Section 251(b)(5) of the 1996 Act include the**  
22 **following: (a) ISP traffic? (b) False traffic deliberately generated for the sole**  
23 **purpose of obtaining increased reciprocal compensation (e.g., Router-Router**  
24 **traffic)?**

25  
26  
27 **Q. WHAT IS INTERMEDIA’S POSITION WITH RESPECT TO THE DEFINITION**  
28 **OF “LOCAL TRAFFIC” IN THE PARTIES’ AGREEMENT?**  
29

1 A. Intermedia's position is that the definition of local traffic should include traffic that  
2 originates from or is carried to an Enhanced Service Provider (ESP) or Information Service  
3 Provider (ISP). Sections 251(b)(5), 251(c)(2) and 252(d)(2) of the 1996 Act establish the  
4 obligation of ILECs to interconnect with competitive carriers and to provide reciprocal  
5 compensation for the exchange of traffic. The 1996 Act defines the interconnection  
6 obligations of ILECs in very broad terms and does not exclude local calls to ISPs from  
7 interconnection and reciprocal compensation arrangements.

8  
9 While the FCC has issued a Declaratory Ruling<sup>1</sup> in which it declared ISP-bound traffic to be  
10 "jurisdictionally mixed" in nature, that same decision expressly confirmed that state  
11 commissions may entertain disputes over compensation for ISP-bound traffic, and, more  
12 importantly, that they may order that reciprocal compensation be paid for the transport and  
13 termination of such traffic. Accordingly, the Commission is free to require BellSouth to  
14 compensate Intermedia for providing these services, and it should do so.

15  
16 **Q. WHY SHOULD BELL SOUTH BE REQUIRED TO PAY RECIPROCAL**  
17 **COMPENSATION FOR CALLS FROM ITS CUSTOMERS TO AN ISP SERVED**  
18 **BY INTERMEDIA?**

19  
20 A. Compensating Intermedia is sensible, because Intermedia is providing a valuable service to  
21 BellSouth and its customers by helping BellSouth complete calls placed by BellSouth end-

---

<sup>1</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996: Inter-Carrier Compensation*, CC Docket Nos. 96-98 and 99-68, Declaratory Ruling and Notice of Proposed Rulemaking (released Feb. 26, 1999).

1 users to ISPs served by Intermedia. In such cases, BellSouth cannot reach the ISPs served  
2 by Intermedia directly, but must hand off the call to Intermedia at the point where the parties  
3 have interconnected, leaving Intermedia to carry the call the rest of the way over its own  
4 local network to the ISP. Because Intermedia is providing a service to BellSouth in helping  
5 to complete these calls, BellSouth must compensate Intermedia in the same manner as it  
6 does for every other 7-digit dialed call placed by a BellSouth customer that is handed off for  
7 delivery to one of Intermedia's customers. If such compensation is not paid by BellSouth to  
8 Intermedia, Intermedia would be forced to terminate service to its customers or provide  
9 service to BellSouth for free. Such an outcome would be patently unfair to Intermedia, and  
10 would violate the Communications Act of 1934, as amended, and the Fifth Amendment of  
11 the U.S. Constitution.

12  
13 **Q. DOES BELL SOUTH AGREE WITH INTERMEDIA'S POSITION AS TO THE**  
14 **DEFINITION OF LOCAL TRAFFIC?**

15  
16 **A.** No. BellSouth's proposal includes language that would define local traffic as not including  
17 traffic that originates from or terminates to an ESP or an ISP. If BellSouth's language is  
18 adopted, Intermedia would have to carry BellSouth's customer's calls without being  
19 compensated for this service.

20  
21 **Q. WHY SHOULD THE COMMISSION FIND FOR PURPOSES OF THIS**  
22 **INTERCONNECTION AGREEMENT THAT ISP-BOUND TRAFFIC IS SUBJECT**  
23 **TO RECIPROCAL COMPENSATION AS LOCAL TRAFFIC?**

1 A. The Commission should continue to consider ISP-bound traffic as local traffic for purposes  
2 of compensation because a contrary decision would result in a class of calls for which no  
3 compensation is provided to the CLEC. This result is inconsistent with the carefully-drawn  
4 compensation scheme articulated in the 1996 Act, which contemplates that carriers will  
5 receive compensation for the use of their respective networks through either access charges  
6 or reciprocal compensation. Since CLECs do not receive access charges for transporting  
7 and terminating BellSouth-originated calls to CLEC ISP customers, it simply makes sense  
8 that reciprocal compensation should apply. A ruling that ISP traffic is not subject to  
9 reciprocal compensation could have a detrimental effect on local competition. Without  
10 compensation for the carriage of local ISP traffic, CLECs will find that the cost of offering  
11 Internet service becomes increasingly prohibitive. This will have the perverse effect of  
12 fewer carriers providing Internet service and a dramatic increase in the cost of Internet  
13 service to customers. Finally, compelling CLECs to provide service to BellSouth free of  
14 charge (in essence subsidizing BellSouth's operations) would have negative financial and  
15 other anticompetitive effects on the CLECs, and would violate the Communications Act of  
16 1934, as amended, and the Fifth Amendment of the U.S. Constitution.

17  
18 **Q. DOES INTERMEDIA AGREE THAT THE DEFINITION OF LOCAL TRAFFIC**  
19 **SHOULD EXCLUDE FALSE TRAFFIC DELIBERATELY GENERATED SOLELY**  
20 **TO INCREASE RECIPROCAL COMPENSATION?**

21  
22 A. Yes. Although Intermedia certainly wants to be compensated fairly for the traffic it carries  
23 on its facilities, including ISP traffic originated by BellSouth's customers, Intermedia's



1 focus is on serving its customers, not on manipulating the system just to gain additional  
2 reciprocal compensation. Since Intermedia would not engage in the types of practices  
3 BellSouth seeks to exclude (*i.e.*, deliberately generating false traffic that carries no useful  
4 information and has no other purpose than skewing the reciprocal compensation ratio),  
5 Intermedia has no objection in principle to excluding such traffic from the definition of local  
6 competition in the interconnection agreement. Having said this, however, it is important not  
7 to cast the net too wide. Intermedia wants to be assured that the “local traffic” definition is  
8 not worded in a such a way that it penalizes Intermedia for inadvertent actions, or practices  
9 of third parties that Intermedia does not know about, or cannot control.

10  
11 As of this writing, the Parties are still working on appropriate language that will yield  
12 BellSouth appropriate protection without being overly broad. It is entirely possible that at  
13 least this subissue (b) of Issue 2 will be settled by the time the hearing is convened in this  
14 proceeding.

15  
16 **Issue 3: Should Intermedia be compensated for end office, tandem, and transport**  
17 **elements, for purposes of reciprocal compensation?**

18  
19  
20 **Q. WHAT IS THE POSITION OF INTERMEDIA WITH RESPECT TO THE**  
21 **FOREGOING ISSUE?**

22  
23 **A.** Intermedia’s position is that it is entitled to compensation at BellSouth’s tandem  
24 interconnection rate if Intermedia’s switch serves a geographic area comparable to the  
25 area served by BellSouth’s tandems. This position is fully supported by Section

1 51.711(a)(3) of the FCC's rules, which states that the ILEC's tandem interconnection rate  
2 is the appropriate rate to employ where a CLEC's switch "serves a geographic area  
3 comparable to the area served by the incumbent LEC's tandem switch."  
4

5 **Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?**  
6

7 A. BellSouth apparently considers that, if (due to differences in the way the parties'  
8 networks are configured) Intermedia's switch is not actually utilized in precisely the same  
9 manner as BellSouth's tandems, Intermedia should not be compensated for its use at the  
10 tandem rate. If I understand this position correctly, BellSouth contends that it makes no  
11 difference whether Intermedia's switch serves a geographic area comparable to that  
12 served by BellSouth's tandem switch: either it is used in the precise same manner as  
13 BellSouth's tandems switches are used, or it isn't.  
14

15 **Q. BUT IF INTERMEDIA'S SWITCH ISN'T USED IN PRECISELY THE SAME**  
16 **MANNER THAT BELL SOUTH'S TANDEMS ARE USED, WHY SHOULD THE**  
17 **TANDEM RATE BE PAID?**  
18

19 A. The simple answer is that the FCC mandates this treatment in its rules – and the U.S.  
20 Supreme Court's January 25, 1999 decision in *AT&T Corp. v. Iowa Utilities Board*  
21 upheld the FCC's pricing rules, including the rule applicable here. According to the  
22 FCC's very clearly stated rule, the question is not whether the switch is used in the  
23 precise same manner that an ILEC uses its tandem switches, but rather whether a CLEC

1 switch serves an area comparable in geographic scope to BellSouth's tandem. Moreover,  
2 although Intermedia's switch may not be networked in precisely the same manner as  
3 BellSouth's switches, Intermedia's switch does perform the same essential function as  
4 BellSouth's tandem switches, that of aggregating traffic from widespread, remote  
5 locations. Intermedia is a full-service company, providing dial tone, intraLATA toll and  
6 interLATA toll services, using very sophisticated and capable switches to combine all of  
7 these functions, thereby performing the same duties as BellSouth tandems and end office  
8 switches: Intermedia should be compensated accordingly. BellSouth has not even  
9 attempted to argue that the area serviced by Intermedia's switch is not geographically  
10 comparable. Essentially, BellSouth is just focusing on a legally immaterial distinction  
11 between its tandem switches and Intermedia's more capable switch, and asking the  
12 Commission to ignore the valid and applicable federal rule.

13  
14 **Q. WHAT FACTUAL BASIS IS THERE FOR DETERMINING THAT**  
15 **INTERMEDIA'S SWITCHES COVER GEOGRAPHIC AREAS COMPARABLE**  
16 **IN SCOPE TO BELL SOUTH'S TANDEMS?**

17  
18 A. First of all, without even looking at the areas served by Intermedia's switches, it is safe to  
19 say that they cover area's comparable in scope to BellSouth's tandems, because  
20 Intermedia's network design is entirely different than BellSouth's. Instead of deploying a  
21 multiplicity of switches to cover an area, as is BellSouth's custom, Intermedia deploys a  
22 single switch to cover a very large area. Intermedia can do this because the switches it  
23 deploys are very capable and have a very large capacity. As noted above, they perform

1 both the functions of a tandem, such as remote traffic aggregation, and the functions of  
2 end office switches, such as providing dial tone. Because of this different network  
3 design concept, Intermedia's single switches have to perform all of the relevant functions,  
4 including the function BellSouth assigns to its tandem switches.

5  
6 To illustrate this point, I have attached two exhibits to my testimony, Jackson Exhibit No.  
7 1 and Jackson Exhibit No. 2. The first of these exhibits is a map that shows the location  
8 of Intermedia's switches on a nationwide basis. From this map, it is clear that all of the  
9 areas we serve in Jacksonville, Orlando, Tampa and Miami are each served by a single  
10 switch. This is a great deal of territory, all covered by four Intermedia switches. My  
11 Exhibit No. 2 contains maps that show the local, extended and toll calling areas in  
12 various Florida jurisdictions that are covered by Intermedia's large and capable switches.  
13 It is unquestionable that Intermedia's switches cover areas that are comparable in scope  
14 or, frankly, exceed in scope, those covered by BellSouth's tandems.

15  
16 **Q. DOES INTERMEDIA HAVE ANY EXHIBITS TO PRESENT SHOWING**  
17 **BELLSOUTH'S TANDEM COVERAGE?**

18  
19 A. We recently requested that information from BellSouth, but we received in response only  
20 a spreadsheet containing information that is relevant, but difficult to correlate with the  
21 type of graphical showing we are making. Intermedia will continue to seek graphical  
22 information from BellSouth that will facilitate the Commission's review, and if any is  
23 received, we will make sure the Commission has the benefit of it. However, if BellSouth

disputes Intermedia's representation that its four switches in Florida cover geographic areas comparable to BellSouth's tandems, Intermedia invites BellSouth to prove such a proposition with its own exhibits. Obviously, BellSouth is in the best position to compose such exhibits if BellSouth feels it can show that its tandems cover areas that are so much larger than those served by Intermedia's switches that they are not geographically comparable. Such a showing would be the only evidence that could sustain BellSouth's position that it need not compensate Intermedia at the tandem rate under the FCC's rules.

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

**Q. WHAT IS THE POSITION OF INTERMEDIA WITH RESPECT TO THE FOREGOING ISSUE?**

A. First of all, I should state that I am surprised to see BellSouth frame the issue this way. This is not at all consistent with my understanding of the parties' discussions related to Attachment 3, Section 6.1.6 of the draft interconnection agreement. Referring to BellSouth's proposed language, and Intermedia's counterproposal for that section, it is clear that the question is not whether BellSouth should have to pay for transport to Intermedia's switch if that switch happens to be located outside a LATA in which BellSouth originates traffic. The only question is how that payment will be calculated. BellSouth's position, as set forth in its proposed language, is that in such cases, BellSouth will pay no more than the airline miles related to such transport, at rates set forth in

1 Exhibit A to attachment 4. Exhibit A to Attachment 4 sets forth rates that BellSouth uses  
2 for its own comparable transport.  
3

4 **Q. HOW DOES INTERMEDIA'S STATED POSITION DIFFER FROM**  
5 **BELLSOUTH'S?**  
6

7 A. Intermedia's proposed language also states that airline miles can be used as a basis for  
8 figuring distances, and includes the thought that the distances shall be calculated in the  
9 same fashion that BellSouth calculates comparable distances. But instead of referring to  
10 Exhibit A to determine the rates to be used, Intermedia proposes that the rates will be set  
11 by Intermedia.  
12

13 **Q. WHY IS THIS A MATERIAL DIFFERENCE?**  
14

15 A. The rates paid to compensate for interoffice transport should be designed to recover the  
16 carrier's cost. The rates proposed by BellSouth reflect BellSouth's costs, and are not  
17 appropriate for compensating Intermedia. Because Intermedia is a competitive carrier  
18 without the ability to exert market pressure, it is driven by competitive forces to set its  
19 transport rates at levels that appropriately reflect its costs. The rates set by Intermedia for  
20 its tariffed transport services are therefore the appropriate measure of compensation for  
21 the transport Intermedia provides to BellSouth.  
22

1   **Q.     BUT WHAT ABOUT BELL SOUTH'S STATED QUESTION AS TO WHETHER**  
2       **IT HAS TO PAY FOR THIS TRANSPORT AT ALL?**

3  
4   A.    As I stated previously, this is a new one from my point of view. The way the question is  
5       stated essentially implies that BellSouth believes Intermedia should transport BellSouth  
6       calls for free across LATA boundaries to Intermedia's switch wherever that is necessary  
7       -- on the basis that Intermedia should have designed its network differently, so as to be  
8       more "efficient" -- or more convenient -- to BellSouth. This was never the issue. But to  
9       the extent that this is a new position raised by BellSouth, it does not make sense. First,  
10       Intermedia has designed its network efficiently to serve its own business purposes, and to  
11       provide the best possible service to its customers, and not primarily to reduce costs for  
12       BellSouth. Presumably, BellSouth also designed its own network and business operations  
13       not primarily to be convenient and cost-effective for its competitors, but to serve other  
14       purposes of its own. In this case, BellSouth is seeking to avoid certain potential expenses  
15       associated with interconnecting with, and handing traffic off to, Intermedia by claiming  
16       that Intermedia should have designed its network differently. But allowing BellSouth to  
17       dictate the configuration of a competitive carrier's network would have implications that  
18       are detrimental to the development of innovative, robust competition in this state.

19  
20   **Q.     WHAT DETERMINATION SHOULD THE COMMISSION MAKE IN THIS**  
21       **INSTANCE?**

1 A. Section 251(c)(2)(B).of the 1996 Telecommunications Act requires BellSouth to afford  
 2 Intermedia interconnection with BellSouth's network at "any technically feasible point.  
 3 The Commission should understand that, given the configuration of Intermedia's network  
 4 – which is established at Intermedia's sole option, and not subject to redesign by its  
 5 competitors -- BellSouth may find itself in a situation where it has to incur additional  
 6 expense to interconnect and share traffic. The type of expense that this Issue 4 relates to  
 7 is the cost of transporting BellSouth's traffic to Intermedia's switch, and in this case  
 8 BellSouth is undeniably the cost-causer. As such, the Commission should find that  
 9 BellSouth must compensate Intermedia for the transport.

10  
 11 The alternative would be for BellSouth to pay nothing, on the theory that Intermedia  
 12 should have designed its network differently. This not only causes Intermedia to incur  
 13 costs that it is not compensated for, but it helps to create a bad precedent, possibly  
 14 opening the door to myriad other claims that other CLEC services provided should be  
 15 free because they would not be necessary if the CLEC had just put in a different piece of  
 16 equipment, or had placed it in a different spot, or had designed a network differently.  
 17 Accordingly, it is sensible to require compensation for this service afforded to BellSouth,  
 18 and to allow it to be priced at rates set by Intermedia itself rather than dictated by the  
 19 monopoly carrier based on its own internal costs (which have absolutely nothing to do  
 20 with Intermedia's costs or prices).

21  
 22 **Issue 5:** Should Intermedia be allowed to assign NPA/NXX's in such a way so as to  
 23 make it impossible for BellSouth to distinguish local from non-local traffic  
 24 for BellSouth originated traffic?  
 25



**THIS ISSUE HAS BEEN CONSOLIDATED INTO  
ISSUE 26 BY AGREEMENT OF THE PARTIES**

**Issue 6: For the purposes of collocation, should intervals be measured in business days or calendar days?**

**THIS ISSUE HAS BEEN SETTLED BY AGREEMENT OF THE PARTIES BY  
DEFERRING IT TO AN ONGOING GENERIC PROCEEDING**

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

**Q. ARE BELL SOUTH'S CHARGES FOR SPACE PREPARATION FOR PHYSICAL COLLOCATION REASONABLE?**

A. No. To the extent that these rates have been approved by the Commission, Intermedia believes that they should be revisited. For example, it would appear that BellSouth is charging a minimum of \$2,400 for HVAC/Mechanical regardless of what is actually necessary for the space. And it would also seem that BellSouth wants to charge a flat "Project Management" fee of \$1,675 without any regard to what the difficulty of preparing the space may be. These rates appear to be inherently unreasonable, and subject to challenge. Moreover, each of these functions should be fully recovered in the space preparation charge. These separate charges for HVAC and Project Management appear to be a clear case of "double-dipping."

1 But the specified rates are not the only problem. In fact, many of the rates are not  
2 specified at all, such as “cable racking/fiber duct,” “frame/aisle lighting,” and  
3 “framework ground conductors,” all of which are specified in unit costs of “per  
4 arrangement, per square foot,” but all of which are designated “ICB” or “Individual Cost  
5 Basis.” This is a little like going to a restaurant where there are no prices on the menu:  
6 you have the feeling that when the bill comes, you won’t like it. BellSouth should be  
7 required to state reasonable prices for elements of collocation such as this one, and the  
8 use of ICB ratemaking should be limited to those extraordinary arrangements where it  
9 truly cannot be predicted in advance. Since the foregoing items are quoted in per  
10 arrangement, per square foot units, it would stand to reason that BellSouth could find out  
11 what it costs per unit to provide these items, and set them forth so that Intermedia can  
12 consider whether those prices are realistic. In fact, other ILECs have established per-foot  
13 rates for similar functions, making it clear that BellSouth can do the same. In addition, it  
14 is my understanding is that the FCC has forbidden the use of “ICB” pricing for items that  
15 have costs that are reasonably determinable. It’s one thing to price an item such as  
16 “Extraordinary Modifications” using ICB pricing – arguably, some truly unexpected  
17 space preparation issues might arise in a given context that will require an on-the-spot  
18 determination of costs. But this should be the exception rather than the rule: if CLECs  
19 such as Intermedia constantly make provision for factoring in “unknown” costs, it greatly  
20 interferes with their ability to compete.

21  
22 **Issue 8: Is BellSouth’s interval for responding to Intermedia’s bona fide collocation**  
23 **requests appropriate?**  
24  
25

**THIS ISSUE HAS BEEN SETTLED BY AGREEMENT OF THE PARTIES BY  
DEFERRING IT TO AN ONGOING GENERIC PROCEEDING**

**Issue 9: Is BellSouth's interval for physical collocation provisioning appropriate?**

**THIS ISSUE HAS BEEN SETTLED BY AGREEMENT OF THE PARTIES BY  
DEFERRING IT TO AN ONGOING GENERIC PROCEEDING**

**Issue 10: Are BellSouth's policies regarding conversion of virtual to physical collocation reasonable?**

**Q. WHAT DIFFICULTIES DOES INTERMEDIA HAVE WITH BELL SOUTH'S  
PROPOSED LANGUAGE CONCERNING CONVERSION OF VIRTUAL  
COLLOCATION TO PHYSICAL COLLOCATION?**

**A.** BellSouth's proposed language seems to miss the point of converting virtual to physical collocation. The most likely scenario is the conversion of such a virtual arrangement to a cageless physical collocation arrangement. This transition in practice is a minor change, and should not normally involve moving the CLEC equipment out of the ILEC's equipment room, or any disruption in service. Since the FCC's March 31, 1999 Advanced Service Order<sup>2</sup> was issued, it has been clear that, subject only to technical feasibility and permissible security arrangements (as outlined by the FCC), ILECs must make available "any unused space" in their offices -- including space immediately adjacent to the ILECs' own equipment -- for cageless collocation use. In addition, CLEC

<sup>2</sup> *Deployment of Wireline Services Offering Advanced Telecommunications Capability, First Report and Order, CC Docket No. 98-147 (rel. March 31, 1999) ("Advanced Services Order").*

equipment in the cageless collocation regime cannot be “unreasonably segregated” from ILEC equipment, nor may it be unnecessarily relocated in a separate room. Thus, the situation in which Intermedia’s equipment must be moved away from where it currently resides ought to be the extraordinary situation rather than the rule. (For example, if BellSouth’s own equipment is commingled with a CLEC’s equipment on the same equipment rack or bay.) If this is necessary, it is almost certain to be for BellSouth’s own purposes rather than for any technical reason; accordingly, BellSouth should take care not to disrupt service to Intermedia’s customers, and BellSouth should bear the costs of any relocation.

**Issue 11: Should BellSouth be required to provide reasonable and non-discriminatory access to UNEs in accordance with all effective rules and decisions by the FCC and this Commission?**

**THIS ISSUE HAS BEEN SETTLED BY AGREEMENT OF THE PARTIES**

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

**Q. DO BELLSOUTH AND INTERMEDIA DISAGREE AS TO BELLSOUTH’S DUTY TO PROVIDE INTERMEDIA ACCESS TO EXISTING COMBINATIONS OF ELEMENTS IN BELLSOUTH’S NETWORK AT UNE RATES?**

**A.** The disagreement appears to be somewhat more subtle. As I understand it, BellSouth recognizes its responsibility under law to furnish existing combined elements at UNE rates to Intermedia, since this is required by the FCC’s rules (47 C.F.R. 51.315(b)) and

1 the FCC's UNE Remand Order. But BellSouth wants to limit this as much as possible;  
2 so BellSouth is not willing to provide to Intermedia at UNE rates elements that can be  
3 ordered, for example, on a combined basis from BellSouth's special access tariff if those  
4 elements are not actually already combined. Intermedia seeks a more expansive  
5 approach: if combinations of elements can be ordered as a service from BellSouth,  
6 Intermedia considers that these elements are customarily combined and should be  
7 available as UNEs.

8  
9 **Q. MAY THIS COMMISSION TAKE A MORE EXPANSIVE VIEW WITH RESPECT**  
10 **TO THE OFFERING OF COMBINATION OF ELEMENTS AS UNES?**

11  
12 A. Yes. This Commission could decide that certain combinations, for example, the loop-  
13 transport combination that EELs comprise, are so crucial to the development of competition  
14 in Florida that they should be offered as UNEs without restrictions.

15  
16 **Issue 13: Should BellSouth be required to: (a) provide access to enhanced extended**  
17 **links ("EELs") at UNE rates; and (b) allow Intermedia to convert existing**  
18 **special access services to EELs at UNE rates?**

19  
20  
21 **Q. WHAT IS THE POSITION OF INTERMEDIA WITH RESPECT TO THE**  
22 **FOREGOING ISSUE?**

23  
24 A. Intermedia has proposed language in accordance with Paragraph 480 of the UNE Remand  
25 Order, which clarifies that, pursuant to 47 C.F.R. Section 51.315(b), CLECs may  
26 purchase already-combined loop and dedicated transport network elements at UNE

1 prices. Intermedia's language very closely tracks the mandates in the Order, and it  
2 should be non-controversial – unless of course BellSouth wishes to argue that the Order  
3 should not be given effect.

4  
5 **Q. WHAT IS BELL SOUTH'S APPARENT POSITION?**

6  
7 **A.** My understanding is that BellSouth wants to strictly limit EELs to those combinations that  
8 are already combined and in use for a particular customer. So if BellSouth has a special  
9 access arrangement with a given customer that combines the loop and transport elements,  
10 Intermedia could convert that existing arrangement to a UNE EEL, but Intermedia would  
11 not be able to order another UNE EEL for that same customer, or for another customer that  
12 did not have an existing special access arrangement.

13  
14 **Q. DOES INTERMEDIA WANT THE RIGHT TO ORDER LOOP AND TRANSPORT**  
15 **COMBINATIONS AS UNE EELS IF BELL SOUTH CUSTOMARILY COMBINES**  
16 **LOOP AND TRANSPORT ELEMENTS IN ITS SPECIAL ACCESS TARIFF?**

17  
18 **A.** Yes. Intermedia would like the Commission to consider making UNE EELs more readily  
19 available to CLECs in Florida so that CLECs can compete effectively with BellSouth. If a  
20 loop-transport arrangement that is essentially identical to a UNE EEL can be ordered as a  
21 special access service, Intermedia believes that BellSouth "currently combines" those  
22 network elements for itself, and should be required to make them available as a combination  
23 to Intermedia at UNE prices.

**Issue 14: Should the parties utilize the FCC's most recent definition of "local loop"?**

**THIS ISSUE HAS BEEN SETTLED BY AGREEMENT OF THE PARTIES**

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

**Q. WHY HAS INTERMEDIA PROPOSED NEW LANGUAGE CONCERNING THE  
CONDITIONING OF LOOPS?**

A. Intermedia's proposed language, set forth in items 2.4 *et seq.*, seeks to address issues raised (and disposed of) by the UNE Remand Order.

**Q. WHAT WAS THE FCC'S DETERMINATION WITH RESPECT TO THE  
CONDITIONING OF LOOPS?**

A. In Paragraph 173 of the UNE Remand Order, the FCC determined that "loop conditioning, rather than providing a 'superior quality' loop, in fact enables a requesting carrier to use the basic loop." The FCC reasoned that, because a CLEC cannot obtain access to the loop "with all its native 'features, functions, and capabilities'" unless it has been suitably conditioned by having accreted devices (such as bridged taps and load coils) removed, loop conditioning is inherent in the definition of the loop network element itself, pursuant to the requirements of 47 U.S.C. Section 251(c)(3).

1 **Q. DOES BELLSOUTH DISPUTE THE INCLUSION OF LANGUAGE IN THE**  
2 **PARTIES' AGREEMENT THAT TRACKS THIS REQUIREMENT?**

3  
4 A. No. It seems that the Parties are fairly close to resolving this issue. BellSouth and  
5 Intermedia are presently exchanging language on this issue, and trying to come to  
6 agreement. It is entirely possible that this issue will be closed by the time the hearing in  
7 this proceeding is commenced.

8  
9 **Issue 16: Should the parties utilize the FCC's most recent definition of network**  
10 **interface device ("NID")?**

11  
12  
13 **THIS ISSUE HAS BEEN SETTLED BY AGREEMENT OF THE PARTIES**  
14  
15

16 **Issue 17: Should BellSouth be required to offer subloop unbundling and access to**  
17 **BellSouth-owned inside wiring in accordance with the FCC's most recent**  
18 **ruling?**

19  
20  
21 **Q. WHAT HAS INTERMEDIA PROPOSED IN ITS NEW LANGUAGE**  
22 **CONCERNING SUBLOOP UNBUNDLING AND ACCESS TO BELLSOUTH-**  
23 **OWNED INSIDE WIRING?**

24  
25 A. In its proposed language modifications for various portions of the agreement ranging  
26 from items 6.1 through 6.6.5, Intermedia has attempted to capture the intent of the FCC's  
27 UNE Remand Order, which has stated some very definite positions with regard to the  
28 unbundling and availability of ILEC subloop elements. Specifically, the FCC found that  
29 competitors' lack of access to unbundled subloops materially diminishes their ability to



1 provide services, and in particular broadband services.<sup>3</sup> Accordingly, the FCC now  
2 requires that ILECs make unbundled subloop elements available on a nationwide basis,  
3 where technically feasible.

4  
5 **Q. HOW DOES THE FCC DEFINE THE SUBLOOP ELEMENTS FOR PURPOSES**  
6 **OF THIS ANALYSIS?**

7  
8 A. The FCC has adopted a very broad view of what constitutes a subloop element, including  
9 new as well as current technologies: essentially, subloops are “portions of the loop that  
10 can be accessed at terminals in the incumbent’s outside plant.”<sup>4</sup> If a technician can  
11 access wire or fiber within the cable without removing a splice case to reach the wire or  
12 fiber within, this is an accessible terminal. By using this definition, technically feasible  
13 points of access include points near the customer’s premises, including (but not limited  
14 to) the pole or pedestal, the NID, or the minimum point of entry (“MPOE”) to the  
15 premises. Other possibilities would be the feeder distribution interface (“FDI”),  
16 regardless of whether it is in a utility room in an apartment building, or a remote terminal,  
17 or a controlled environmental vault (“CEV”).

18  
19 **Q. DID THE FCC SPECIFY ANY OTHER IMPORTANT POINTS WHERE THE**  
20 **SUBLOOP ELEMENT COULD BE ACCESSED BY CLECS?**

---

<sup>3</sup> *Id.* at ¶ 205.

<sup>4</sup> *Id.* at ¶ 206.

1 A. Yes. The FCC stated that the subloop could also be accessed at the ILEC's main  
2 distribution frame ("MDF").  
3

4 **Q. WHO DETERMINES WHETHER IT IS TECHNICALLY FEASIBLE UNDER**  
5 **THE FCC'S RULES TO ACCESS A SUBLOOP ELEMENT?**  
6

7 A. The FCC realized that the question of technical feasibility of accessing a given subloop  
8 element may vary somewhat from state to state, so in the UNE Remand Order, a  
9 rebuttable presumption was established that the subloop can be unbundled at any  
10 accessible terminal in the outside loop plant. Thus, if the parties negotiating an  
11 interconnection agreement fail to reach a meeting of the minds concerning the types of  
12 access that will be made available, the ILEC has the burden of demonstrating to the state  
13 commission in the context of a section 252 arbitration proceeding, that the type of access  
14 being requested by the CLEC is not technically feasible, or that space in a given setting  
15 does not permit such access.<sup>5</sup>  
16

17 **Q. DOES BELLSOUTH OPPOSE THE INCLUSION OF INTERMEDIA'S**  
18 **PROPOSED LANGUAGE IN ITS AGREEMENT, OR CLAIM THAT THE TYPE**  
19 **OF ACCESS SOUGHT BY INTERMEDIA IS NOT TECHNICALLY FEASIBLE?**  
20

21 A. BellSouth and Intermedia are working together to draft mutually acceptable language that  
22 is faithful to the FCC's UNE Remand Order. BellSouth's initial position was somewhat

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<sup>5</sup> *Id.* at ¶ 227.

inconsistent with that Order. However, at this point, I would speculate that this issue may be settled by the time a hearing in this proceeding is convened.

**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. WHY HAS INTERMEDIA PROPOSED TO INCLUDE PACKET SWITCHING CAPABILITIES AS AN UNBUNDLED NETWORK ELEMENT IN THE PARTIES' AGREEMENT?**

A. Intermedia seeks to specify in the clearest possible fashion its right to obtain access to this element in direct response to the FCC's ruling in the UNE Remand Order. In that Order, the FCC found that ILECs must make packet switching capabilities available in certain situations. Intermedia's proposed language changes seek to conform the terms of the parties' agreement to the FCC's rulings, and to the terms of Rule 51.319, including the use of the applicable definition of packet switching.

**Q. UNDER WHAT CIRCUMSTANCES HAS THE FCC MADE IT MANDATORY FOR AN ILEC TO PROVIDE CLECS ACCESS TO PACKET SWITCHING AS AN UNBUNDLED NETWORK ELEMENT?**

A. The FCC has stated that ILECs must provide requesting carriers with access to unbundled packet switching in situations in which the incumbent has placed its digital subscriber

line access multiplexer (“DSLAM”) in a remote terminal.<sup>6</sup> This is to permit competitive carriers to provide services such as xDSL broadband technology to customers that otherwise might be practically unavailable to them due to the restrictive architecture of the ILEC’s network. For example, the use of Integrated Digital Loop Carriers or “IDLCs,” which are used to remotely aggregate end users’ copper loops, multiplex them and transmit them over glass fibers directly to an ILEC switch may make it impossible for a CLEC to install its own packet switching equipment (such as a DSLAM). In this case, the ILEC is required to give the CLEC access to its own packet switches unless the ILEC allows the CLEC to collocate its own DSLAM at the ILEC’s remote terminal.

**Q. HAS THE FCC LIMITED THE STATES’ AUTHORITY TO TAKE A MORE EXPANSIVE POSITION WITH REGARD TO THE TREATMENT OF PACKET SWITCHING AS AN UNBUNDLED NETWORK ELEMENT?**

A. No, quite the contrary. The FCC expressly determined that state commissions could add to the list of mandatory UNEs as they consider appropriate.<sup>7</sup> As I note later in my testimony, the Commission should affirmatively determine that certain specific types of packet switching technologies – frame relay elements – should be treated as UNEs in the context of the parties’ agreement, and BellSouth should be required to make them available to Intermedia at TELRIC prices.

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<sup>6</sup> *Id.* at ¶ 313.

<sup>7</sup> *E.g.*, UNE Remand Order at ¶ 312.

1 **Q. HAS BELL SOUTH STATED WHY IT OPPOSES INCLUSION OF**  
2 **INTERMEDIA'S LANGUAGE CONCERNING PACKET SWITCHING UNES?**

3  
4 A. My understanding of BellSouth's position is that BellSouth will not be required to offer  
5 packet switching capability as a UNE, because it will furnish CLECs access to its  
6 facilities in a manner that will avoid any duty to make packet switching available as a  
7 UNE. For this reason, BellSouth considers that even the inclusion of language that  
8 defines packet switching, or the circumstances in which it must be made available, is  
9 unnecessary.

10  
11 **Q. WHAT RESPONSE DOES INTERMEDIA HAVE TO THIS?**

12  
13 A. First, Intermedia cannot fathom why BellSouth resists inclusion of language in its  
14 agreement that states the circumstances in which it must make the packet switching  
15 capability available as a UNE. If those circumstances never occur, this language will be  
16 entirely inactive. However, if those circumstances do occur for some reason, perhaps a  
17 reason that BellSouth has not anticipated, Intermedia believes that it is useful to have  
18 Intermedia's rights spelled out in the agreement.

19  
20 Moreover, Intermedia believes that this Commission can and should require BellSouth to  
21 make packet switching available as a UNE on a routine basis, without the current  
22 restrictions. This advanced technology is becoming more and more essential to  
23 competing with the incumbent as it customer usage patterns change. Even if the FCC has

not yet made it fully mandatory in every situation, this Commission may do so if it chooses. This would be good for competition in Florida.

**Issue 19:** Should the parties utilize a definition of local tandem switching capability consistent with the FCC's most recent ruling?

**THIS ISSUE HAS BEEN SETTLED BY AGREEMENT OF THE PARTIES**

**Issue 20:** Should the parties utilize a definition of local circuit switching capability consistent with the FCC's most recent ruling?

**THIS ISSUE HAS BEEN SETTLED BY AGREEMENT OF THE PARTIES**

**Issue 21:** Should the parties utilize a definition of packet switching capability consistent with the FCC's most recent ruling?

**THIS ISSUE HAS BEEN SETTLED BY AGREEMENT OF THE PARTIES**

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

**Q. WHAT IS THE POSITION OF INTERMEDIA WITH RESPECT TO THE FOREGOING ISSUE?**

**A.** Intermedia strongly agrees with the FCC's analysis in the UNE Remand Order that interoffice transport facilities maintained by ILECs must be made available to competitive providers in order for satisfactory competition to develop. This includes

1 both dedicated and shared transport (where unbundled local circuit switching is  
2 provided), as well as dark fiber.

3  
4 **Q. WHAT IS THE STATUS OF THIS ISSUE AT PRESENT?**

5  
6 A. The Parties are exchanging language on this issue, and it is hoped that a settlement can be  
7 reached prior to hearing.

8  
9 **Issue 23:** Should the parties utilize a definition of interoffice transmission facilities,  
10 consistent with the FCC's most recent ruling, that includes dark fiber, DS1,  
11 DS3, and OCn levels, and shared transport.

12  
13  
14 **THIS ISSUE HAS BEEN SETTLED BY AGREEMENT OF THE PARTIES**  
15  
16

17 **Issue 24:** Should BellSouth provide nondiscriminatory access to operations support  
18 systems ("OSS") and should the parties utilize a definition of OSS consistent  
19 with the FCC's most recent ruling?

20  
21  
22 **THIS ISSUE HAS BEEN SETTLED BY AGREEMENT OF THE PARTIES**  
23  
24

25 **Issue 25:** Should BellSouth be required to furnish access to the following as UNEs: (i)  
26 User to Network Interface ("UNI"); (ii) Network-to-Network Interface  
27 ("NNI") and (iii) Data Link Control Identifiers ("DLCI"), at Intermedia-  
28 specified committed information rates ("CIR")?  
29

30  
31 **Q. WHAT IS THE POSITION OF INTERMEDIA WITH RESPECT TO THE**  
32 **FOREGOING ISSUE?**  
33

1 A. Intermedia has asked BellSouth to establish the frame relay components UNI, NNI, and  
2 DLCI at CIR as unbundled network elements, priced at TELRIC-based rates. To date,  
3 BellSouth has refused to do so, although it has entered into an interconnection agreement  
4 with Intermedia that provides for the interconnection of BellSouth's and Intermedia's  
5 frame relay traffic.

6  
7 The FCC has not yet mandated frame relay UNEs. This does not prevent this  
8 Commission from doing so, however. In fact, in Paragraph 153 of the UNE Remand  
9 Order, the FCC made it clear that the federal Communications Act empowers state  
10 regulators "to impose additional obligations upon incumbent LECs beyond those imposed  
11 by the national [UNE] list. . ." The Commission should establish these frame relay  
12 elements as distinct UNEs because they reflect a vital element of modern, digital  
13 networks that is becoming increasingly important. While Intermedia is one of the  
14 Nation's largest facilities-based frame relay carriers, its frame relay networks do not  
15 reach everywhere. And just as CLECs need access to ILEC loops and transport to  
16 supplement their own networks and expand their reach to provide traditional telephone  
17 service, data-oriented CLECs increasingly need access to ILEC frame relay loops and  
18 transport in order to extend the reach of their competitive data services. Pursuant to  
19 Section 252 of the federal Communications Act, the rates for these UNEs must be set at  
20 TELRIC-based levels. For the reasons I discuss below, the Commission should establish  
21 interim rates for these frame relay UNEs at 50% of BellSouth's currently effective  
22 tariffed rates for UNIs, NNIs and DLCIs at CIR. These rates may be subject to true-up  
23 after the Commission has had time to complete a rate inquiry.



Moreover, even if this Commission does not require BellSouth to establish the new frame relay UNEs discussed above, it must still require BellSouth to establish TELRIC-based rates for frame relay interconnection. As I noted above, Intermedia already has an interconnection agreement for frame relay with BellSouth; however, the rates charged in that agreement reflect BellSouth's tariffed rates, which are not set at TELRIC-based levels. Intermedia was willing to accept these rates as part of the negotiating process that resulted in the currently effective BellSouth/Intermedia interconnection agreement – which was negotiated, not arbitrated. Now, however, Intermedia wishes to exercise its rights under Sections 251 and 252 of the Communications Act, and the FCC's rules that implement the Act. These call for reciprocal compensation for local frame relay traffic – based on TELRIC. Because there have been no cost studies on reciprocal compensation for frame relay, the Commission should mandate bill and keep for local frame relay traffic as an interim rate. The Commission may subject this rate to true-up after a full rate inquiry is completed. Finally, the Commission should mandate a TELRIC-priced meet-point arrangement for the high capacity transport link between Intermedia's and BellSouth's respective frame relay switches. Because this transport is generally provided over standard dedicated special access or private line facilities (such as DS1 or DS3), the TELRIC-based rates for this form of interoffice transport should apply, with each party sharing the cost of the line according to the percent of traffic that it carries over it.

**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?

1 **Q. WHAT IS THE POSITION OF INTERMEDIA WITH RESPECT TO THE**  
2 **FOREGOING ISSUE?**

3 A. The heart of this controversy is really whether Intermedia must physically locate its  
4 NPA/NXXs in the rate center with which those numbers are associated. This would force  
5 Intermedia to define its local calling areas the same way that BellSouth does, and would  
6 prevent Intermedia from offering innovative rate structures and calling plans to its  
7 customers. Because Intermedia wishes to have more flexibility with regard to defining its  
8 rate centers, Intermedia proposed language which does not have the “physically located”  
9 requirement. Intermedia’s language does, however, propose the exchange of CPNI data,  
10 which would allow identification of a call; and where CPNI is not available, each party  
11 would provide the other a Percent Local Use (“PLU”) report that would separate the local  
12 and the intraLATA toll traffic. This jurisdictional reporting requirement is widely used  
13 among carriers today, and completely addresses BellSouth’s concern that it will not be  
14 able to distinguish between local and non-local traffic. The Commission should therefore  
15 favor Intermedia’s language, which does not place unnecessary and burdensome  
16 restrictions on the assignment of NPA/NXXs, potentially interfering with Intermedia’s  
17 business plan and stifling competition.

18  
19 **Q. WHAT ADDITIONAL CONCERNS DOES INTERMEDIA HAVE REGARDING**  
20 **THIS ISSUE?**

21  
22 A. Basically, Intermedia is concerned that BellSouth is attempting to impose restrictions on  
23 how Intermedia may interconnect with BellSouth, and that such restrictions will prevent

Intermedia from configuring and deploying its network in an efficient manner. Some of the most onerous provisions can be found in Attachment 3, Sections 1.2, 1.2.1, 1.9, 1.10 and 1.10.2. Of course, Intermedia agrees to reasonable requirements on how it interconnects – it will establish at least one Point of Presence, Interface and Interconnection in every LATA, and will take responsibility to enter its NPA/NXX information into the Local Exchange Routing Guide. But BellSouth is attempting to compel Intermedia to interconnect at multiple access and local tandems, and to define its local calling area served by its NPA/NXX codes to the same local service area defined by BellSouth, and to place limits on the types of traffic Intermedia may carry over these collocated facilities. These restrictions are in clear violation of Section 251(c)(2)(B) of the Communications Act, which requires BellSouth to provide interconnection with Intermedia “at any technically feasible point within the carrier’s network.” Moreover, BellSouth’s attempt to force Intermedia to align its NPA/NXXs to the same local service areas defined by BellSouth would prevent Intermedia from offering its customers larger local calling areas, and would force Intermedia to charge toll rates in areas where it otherwise would choose not to do so.

**Issue 27:      Should Intermedia be permitted to establish Points of Presence (“POP”) and Points of Interface (“POI”) for delivery of its originated interLATA toll traffic?**

**Q.      WHAT IS THE POSITION OF INTERMEDIA WITH RESPECT TO THE FOREGOING ISSUE?**

**A.**      BellSouth may not prevent Intermedia from interconnecting for the transport and termination of interLATA toll traffic. The interconnection provisions of BellSouth’s

proposed Interconnection Agreement are contained in Attachment 3, which is titled “Local Interconnection.” In the sections that provide for the establishment of Intermedia’s Points of Presence and Points of Interface, BellSouth limits the provisions to interconnection for local and intraLATA toll traffic. (See Attachment 3, § 1.6. This is a clear violation of § 251(c)(2)(A) of the federal Communications Act, which requires BellSouth to provide interconnection for the “transmission and routing of telephone exchange service and exchange access . . . .” The Act requires that BellSouth recast its Attachment 3 to provide for interconnection for all kinds of traffic, including interLATA and interstate exchange access service, and transit service. One way of accomplishing this is to strike the Attachment 3 references to “intraLATA toll” and convert them to “exchange access and transit traffic.”

**Issue 28: Should the parties include language requiring BellSouth to designate Points of Presence and Points of Interface for delivery of its originated *interLATA* toll traffic?**

**THIS ISSUE HAS BEEN SETTLED BY AGREEMENT OF THE PARTIES**

**Issue 29: In the event Intermedia chooses multiple tandem access (“MTA”), must Intermedia establish points of interconnection at all BellSouth access tandems where Intermedia’s NXXs are “homed”?**

**Q. WHAT IS THE POSITION OF INTERMEDIA WITH RESPECT TO THE FOREGOING ISSUE?**

**A.** Any requirement that Intermedia establish a POI at every tandem where its NXXs are homed would effectively eliminate the usefulness of MTA altogether. This is yet another

attempt by BellSouth to force Intermedia to configure its network to look like BellSouth's network, for the convenience of BellSouth. In order to provide the maximum in service choices to customers, at the most competitive prices available, Intermedia must have the freedom to configure its network and to assign NXXs in the most efficient manner possible, and to define local calling areas as it chooses.

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

**Q. WHAT IS THE POSITION OF INTERMEDIA WITH RESPECT TO THE FOREGOING ISSUE?**

A. Intermedia seeks simple and straightforward language that guarantees that Intermedia can interconnect where it is efficient to do so, and without restricting the types of traffic Intermedia can carry over the interconnected facilities. This can be accomplished by eliminating the heavily restrictive language in Sections 1.10, 1.10.1 and 1.10.2 of Attachment 3, and replace it with a simple confirmation that states:

**Local Tandem Interconnection.** This interconnection arrangement allows Intermedia to establish a Point of Interconnection at BellSouth local tandems for either party's delivery of traffic to the other party.

This simple statement assures that Intermedia can interconnect "at any technically feasible point" on the BellSouth network for the "transmission and routing of telephone exchange service and exchange access," as required by the federal Communications Act. As I have discussed above, any restrictions that would force Intermedia to define its local

1 service area the same way that BellSouth defines its local exchange, and any limitation  
2 that would prohibit Intermedia's ability to interconnect in the BellSouth office of its  
3 choice, would be a disservice to the public interest, and would violate the  
4 Communications Act.

5  
6 **Issue 31: For purposes of compensation, how should IntraLATA Toll Traffic be**  
7 **defined?**

8  
9  
10 **Q. WHAT IS THE POSITION OF INTERMEDIA WITH RESPECT TO THE**  
11 **FOREGOING ISSUE?**

12  
13 A. The language proposed by Intermedia should be adopted. It appears that the language  
14 proposed by BellSouth in Section 6.7.1 would limit the type of toll traffic that may be  
15 carried over an interconnection agreement. Intermedia's definition would ensure that toll  
16 traffic cannot be limited to traffic that uses one type of equipment, such as analog circuit  
17 switches, but will include non-local traffic carried over facilities that employ new  
18 technologies, such as packet switching.

19  
20 **Issue 32: How should "Switched Access Traffic" be defined?**

21  
22  
23 **Q. WHAT IS THE POSITION OF INTERMEDIA WITH RESPECT TO THE**  
24 **FOREGOING ISSUE?**

25  
26 A. Intermedia proposes that Switched Access Traffic be defined as "telephone calls  
27 requiring local transmission or switching services for the purpose of the origination or

1 termination of Telephone Toll Service,” including Feature Groups A, B and D, 800/888  
2 access, and 900 access (and their successors or similar Switched Exchange Access  
3 Services).

4  
5 **Q. HOW DOES THIS DIFFER FROM BELL SOUTH’S LANGUAGE?**

6  
7 A. BellSouth wants to define Switched Access Traffic by referring to its access tariff,  
8 additionally excluding IP telephony. The essential difference is that Intermedia believes  
9 that this term should be defined in the parties’ agreement: BellSouth’s tariff language  
10 changes from time to time, and referring to its tariff allows BellSouth to define this  
11 crucial term any way it wishes, perhaps in ways that Intermedia might consider adverse.  
12 In addition, Intermedia does not believe that it is appropriate for BellSouth to attempt  
13 unilaterally to assign a regulatory status to “IP Telephony.” This matter is exclusively  
14 within the jurisdiction of the FCC.

15  
16 **Issue 33: Should BellSouth and Intermedia be liable to each other for lost switched**  
17 **access revenues due to lost or damaged billing data?**

18  
19  
20 **Q. WHAT IS THE POSITION OF INTERMEDIA WITH RESPECT TO THE**  
21 **FOREGOING ISSUE?**

22  
23 A. This refers to Attachment 3, section 6.8.6 of the parties’ draft interconnection agreement.  
24 As a general principle, if conduct of one of the parties involved in a service mutually  
25 provided proximately causes a revenue loss for the other party, it would seem sensible for

1 the party causing the loss to compensate the other. In this case, Intermedia proposes a  
2 reciprocally-applicable provision that institutes sound practices for addressing lost and  
3 damaged billing data, and holds the party responsible for the loss financially responsible.  
4 It should be pointed out that Intermedia presently proposes a cap on reimbursement of  
5 \$100,000 per episode.

6  
7 **Q. HAS BELL SOUTH REJECTED THIS APPROACH?**

8  
9 A. BellSouth is considering Intermedia's language, but has rejected the \$100,000 cap on  
10 liability. The Parties are continuing to discuss this issue to determine whether a  
11 compromise position can be reached.

12  
13 **Issue 34: Should the parties determine the rates to be used for intraLATA toll and**  
14 **Switched Access transit traffic, or shall rates from BellSouth's tariffs be**  
15 **utilized?**

16  
17  
18 **THIS ISSUE HAS BEEN SETTLED BY AGREEMENT OF THE PARTIES**  
19  
20  
21

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

24  
25  
26 **Q. WHAT IS THE POSITION OF INTERMEDIA WITH RESPECT TO THE**  
27 **FOREGOING ISSUE?**

28  
29 A. BellSouth seeks to exclude wireless Type 1 traffic Type 2A traffic from the definition of  
30 transit traffic, and I do not believe that such action is justifiable. The Communications



Act does not restrict the types of traffic that can be carried over interconnection arrangements, and sound public policy should not allow restrictions on the carriage of wireless traffic. This applies to the outright prohibition and restrictions in Section 6.9 of BellSouth's proposed Attachment 3, and in Section 6.9.1's requirement that this type of traffic may not be carried over interconnected facilities until agreements or service orders are established with BellSouth.

**Q. WHAT IS THE CURRENT STATUS OF THIS ISSUE?**

A. The Parties are exchanging proposed language on this issue in the hopes of settling it prior to hearing.

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

**Q. WHAT IS THE POSITION OF INTERMEDIA WITH RESPECT TO THE FOREGOING ISSUE?**

A. A detailed and easily understood compensation provision for Transit Traffic will ensure that all types of telecommunications are accounted for in the interconnection agreement, and that no particular types of traffic will be excluded. The compensation structure proposed by Intermedia clarifies BellSouth's and Intermedia's rights and obligations in carrying such traffic, and provides reasonable compensation. Accordingly, Intermedia's language should be adopted.

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

**Q.**      WHAT IS THE POSITION OF INTERMEDIA WITH RESPECT TO THE FOREGOING ISSUE?

**A.**      Intermedia's position is that if frame relay data packets carried over a virtual circuit ("VC") originate and terminate in the same LATA, they should be considered local traffic. The parties are discussing this issue, and have proposed draft language with the aim of reaching some agreement prior to hearing.

**Issue 38:**      If there are no VCs 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 THE POSITION OF INTERMEDIA WITH RESPECT TO THE FOREGOING ISSUE?

**A.**      Intermedia's position is that the Percent Local Circuit Usage ("PLCU") should be 100% in cases where there are no virtual circuits at the time the facility is billed. Any other conclusion could unreasonably impose higher rates on Intermedia, even though BellSouth was not incurring higher costs in providing the facility.

**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 points; (c) permanent virtual circuit ("PVC") segments (i.e., Data Link Connection Identifier ("DLCI") and Committed Information Rates ("CIR")); (d) requests to change a PVC segment or PVC service order record?

1  
2 **Q. WHAT IS THE POSITION OF INTERMEDIA WITH RESPECT TO THE**  
3 **FOREGOING ISSUE?**  
4

5 A. The rates and charges for interconnection and compensation for local traffic must reflect  
6 incremental cost, as mandated by Sections 251(c)(2) and 252(d)(1) of the  
7 Communications Act and the FCC's rules. The FCC has defined the incremental costing  
8 methodology that must be used as Total Long Run Incremental Cost ("TELRIC"). While  
9 the FCC's existing TELRIC rules are subject to appeal before the 8<sup>th</sup> Circuit Court of  
10 Appeals, the Supreme Court recently confirmed that the FCC has the discretion to  
11 establish the costing rules that must apply to interconnection and reciprocal  
12 compensation. In any event, this Commission has employed its own long run  
13 incremental costing model in setting rates for interconnection and reciprocal  
14 compensation in the past, and this model should also apply to the frame relay traffic  
15 arrangements now under discussion. BellSouth has not shown that its tariffed frame relay  
16 rates are based on long run incremental cost, and I believe that it is unlikely that they are.  
17 As such, it is inappropriate to use BellSouth's tariffed rates for the frame relay  
18 interconnection arrangement under discussion. Intermedia suggests that one-half of  
19 BellSouth's tariffed frame relay rates should apply as an interim rate, until such time as  
20 the Commission may complete a rate inquiry and determine the appropriate incremental  
21 cost-based rates. Setting interim rates at 50% of BellSouth's tariffed frame relay rates is  
22 reasonable because that is typically the difference between BellSouth's UNE rates (which  
23 are based on incremental costs) and the tariffed rates for services that provide the

equivalent functionality. Intermedia would not object to having the interim rates subject to true-up at the time final rates are established.

**Issue 40:** Should compensation for the parties' use of frame relay NNI ports be determined by the parties, or be based on recurring and non-recurring rates in BellSouth's interstate access tariff?

**THIS ISSUE HAS BEEN SETTLED BY AGREEMENT OF THE PARTIES**

**Issue 41:** Should compensation for the PVC segment between the parties' frame relay switches be determined by the parties, or based on recurring and non-recurring rates in BellSouth's interstate access tariff?

**THIS ISSUE HAS BEEN SETTLED BY AGREEMENT OF THE PARTIES**

**Issue 42:** Should compensation between the parties for local PVC be based on each party's portion of the non-recurring charge for a DLCI, or on the non-recurring and recurring PVC charges associated with the PVC segment?

**THIS ISSUE HAS BEEN SETTLED BY AGREEMENT OF THE PARTIES**

**Issue 43:** Should compensation between the parties for interLATA PVCs be based on the non-recurring charge for a DLCI or on the non-recurring and recurring PVC and CIR charges associated with that PVC segment?

**THIS ISSUE HAS BEEN SETTLED BY AGREEMENT OF THE PARTIES**

**Issue 44:** Should the parties' compensation to each other for requests to change a PVC segment or PVC service order record be determined by the parties or should it be based on BellSouth's interstate access tariff?

**THIS ISSUE HAS BEEN SETTLED BY AGREEMENT OF THE PARTIES**

**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 THE POSITION OF INTERMEDIA WITH REGARD TO THE FOREGOING QUESTION?**

**A.** This refers to Attachment 3, section 7.9.6. Intermedia has proposed deleting this language, because Intermedia believes that this interconnection agreement should specify what the relationship is between the parties with regard to the above services. In fact, if the changes proposed by Intermedia are adopted, it is possible that there may be some changes to the manner in which these services are provided by the parties, and this type of "catch-all" disclaimer is inappropriate.

The Parties are exchanging language to clarify this provision, and perhaps eliminate the disagreement. For the moment, however, the issue remains open.

**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 THE POSITION OF INTERMEDIA WITH RESPECT TO THE FOREGOING ISSUE?**

A. Intermedia has proposed language in Attachment 3, section 7.10, that relieves it of the duty to report quarterly PLCUs for the frame relay equipment it uses if BellSouth obtains the authority to provide in-region interLATA service. The costs of transporting and terminating frame relay traffic is the same, whether it is intraLATA or interLATA. When BellSouth obtains authority to provide interLATA services under Section 271 of the Communications Act, it will be trading both types of traffic with Intermedia. At that point, maintaining the distinction between inter- and intraLATA frame relay service – and the compensation rates for the two types of traffic – simply does not make sense, and the practice should be eliminated. This will ensure appropriate compensation to both carriers without the burdensome obligation to measure and report percentages of local traffic.

**Issue 47**      **Should BellSouth be required to offer frame relay interconnection at TELRIC rates, and should there be a true-up if it is subsequently found during the term of the agreement that BellSouth's rates were in excess of TELRIC?**

**THIS ISSUE HAS BEEN SETTLED BY AGREEMENT OF THE PARTIES**

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

**Q.      WHAT IS THE POSITION OF INTERMEDIA WITH RESPECT TO THE FOREGOING ISSUE?**

1 A. Intermedia proposes that penalties be established for failure of BellSouth to meet  
2 mutually established performance standards. The purpose of the penalties would be to  
3 secure performance, not to establish damages for breach of contract. Obviously,  
4 Intermedia cannot make a business out of collecting damages from BellSouth for faulty  
5 performance – what Intermedia is seeking is an enforceable assurance of satisfactory  
6 performance from BellSouth so that it can serve its customers. Penalties are appropriate  
7 to secure performance precisely because damages would likely not be adequate to cure  
8 both the business injury to Intermedia and the anticompetitive consequences of non-  
9 performance. In addition, penalties create a direct and tangible incentive for management  
10 of BellSouth to meet performance standards, where the generalized obligations of the  
11 company (based on results) do not.

12  
13 **Q. AREN'T PENALTIES FOR NON-PERFORMANCE INCOMPATIBLE WITH**  
14 **TRADITIONAL ILEC TARIFF PROVISIONS THAT LIMIT LIABILITY FOR**  
15 **NON-PERFORMANCE?**

16  
17 A. No. Limitations of liability provisions limited the LEC's exposure to consequential  
18 damages for failure to provide the promised telephone service. For example, if the LEC  
19 negligently failed to provide a business service when promised and that failure bankrupt  
20 the company, under the limitation of liability clause limited the LEC's damages to the  
21 allocable price of the undelivered service. As I understand, the policy behind the  
22 limitation of liability provisions was designed to keep local rates down. As a monopoly  
23 common carrier, the LEC would have certain exposure to catastrophic consequential

1 damages for its negligence because of the large numbers of retail customers it served.  
2 Holding the LEC liable for such damages would require that it self-insure against that  
3 possibility by charging higher rates to all of its customers.  
4

5 A penalty for non-performance is different, however. Here Intermedia is a single  
6 wholesale customer of the LEC depending on timely and satisfactory performance to  
7 compete in the market. Again the purpose of the penalty provisions is to create  
8 meaningful incentives to perform satisfactorily and a mechanism to inform BellSouth's  
9 management when the company fails to so perform.  
10

11 **Q. IN VIEW OF THE FACT THAT PERFORMANCE MEASURES ARE SO**  
12 **COMPLEX, AND INCLUDE SO MANY DIVERSE ELEMENTS THAT MUST BE**  
13 **MONITORED AND ENFORCED, HOW DOES INTERMEDIA RECOMMEND**  
14 **THAT THE COMMISSION PROCEED?**  
15

16 A. Intermedia considers that, for the most part, this work has been painstakingly done  
17 already – by the Texas Public Utility Commission in its performance measures and  
18 penalties imposed on Southwestern Bell Telephone (“SWBT”) Intermedia believes that,  
19 as a shortcut, the Texas scheme could be imported into Florida and used. If BellSouth  
20 can convincingly demonstrate that its provision of service in Florida in certain discrete  
21 instances is materially divergent from SWBT’s practices in Texas, perhaps the plan could  
22 be modified slightly and customized for Florida. However, it is very likely, in my  
23 opinion, that this plan could be adopted “in whole cloth” so that Florida and its



1 consumers can benefit from the work already carefully performed in Texas. After all, the  
2 public benefits directly from having certainty as to BellSouth's performance, whether for  
3 its own customers or on behalf of customers who have chosen competitive carriers for  
4 their service.

5  
6 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

7  
8 **A.** Yes. I would like to reserve the right, however, to amend or modify my testimony, as  
9 appropriate.

10  
11 **END OF TESTIMONY**

1 MR. KITCHINGS: May I proceed?

2 COMMISSIONER JACOBS: Please proceed.

3 MR. KITCHINGS: Thank you, Commissioner Jacobs.

4 CROSS EXAMINATION

5 BY MR. KITCHINGS:

6 Q Good afternoon, Mr. Jackson.

7 A Good afternoon.

8 Q A couple of brief background questions. I  
9 believe you stated this in your summary, but just for  
10 confirmation, you are neither a network engineer nor an  
11 attorney by training, is that correct?

12 A That's correct.

13 Q And did you -- you mentioned you had some time  
14 with BellSouth. Did you have any network experience in  
15 those days?

16 A No, I did not.

17 Q Have you ever worked in a central office?

18 A No, I haven't.

19 Q Okay. Let's talk real briefly about reciprocal  
20 compensation, Mr. Jackson. And I know that you are not an  
21 attorney, but I believe you stated that the recent  
22 District of Columbia District Court decision mandates that  
23 this Commission find reciprocal compensation for ISP-bound  
24 traffic. Is it your understanding from that order that  
25 they, the D.C. Circuit ordered state commissions to find

1 that reciprocal compensation was due on ISP-bound traffic?

2 A I don't think that is exactly the  
3 characterization, Mr. Kitchings I was making. I think our  
4 point is that since the District Court has vacated the  
5 FCC's order, to me that reinstates exactly what this  
6 Commission did earlier, Commissioners, and that was the  
7 two-call theory would apply and that this is obviously  
8 local traffic for compensation purposes.

9 Q So it is Intermedia's position that the two-call  
10 theory has been resuscitated, is that correct?

11 A I think for purposes of compensation, yes. I  
12 think this Commission was correct.

13 Q Okay. A hypothetical, Mr. Jackson. If I have a  
14 cellular telephone -- I, of course, live in Atlanta, as  
15 you do, and my cellular telephone happens to have an area  
16 code of 770, and I have need to call Mr. Vaccaro here of  
17 the Commission staff, and I do it in this room. And so  
18 the call starts with me and ends with me, but Mr.  
19 Vaccaro's cellular phone, of course, is an 850 exchange.  
20 Is that a local call or is that a long distance call?

21 A With you sitting here in this room and you are  
22 calling him also here through your Atlanta-based  
23 cellphone?

24 Q Correct.

25 A You know, honestly I don't know what -- I would

1 characterize it as local from the standpoint that you are  
2 right next to each other. But because you have got an  
3 Atlanta-based number, I don't know how the network switch  
4 would work. I just don't know.

5 Q Would that call -- well, I will ask this  
6 question, I guess. I presuppose your answer will be you  
7 don't know, but would reciprocal compensation apply to  
8 that call if it were carried over different networks?

9 A I don't know.

10 Q Okay. Mr. Jackson, are you familiar with the  
11 principle of cost causation?

12 A Yes. I assume you mean where the cost causer  
13 pays basically on the telecommunications world?

14 Q That is correct.

15 A Yes.

16 Q And do you, as Intermedia's representative,  
17 agree with that concept?

18 A Yes, we do. I do.

19 Q Are ALECs in general, and Intermedia in  
20 particular, prohibited from charging access charges on  
21 ISP-bound calls?

22 A Since we treat ISP traffic as local, to my  
23 knowledge we wouldn't charge access on that. We would  
24 charge reciprocal compensation for it and expect to be  
25 charged for that.

1           Q     I understand, but my question is are you  
2 prohibited from charging access charges on ISP-bound calls  
3 by any law, or Commission rule, or otherwise?

4           A     I'm not aware. We have always considered it to  
5 be local traffic, so I am not aware if there are any other  
6 rulings on that.

7           Q     So your answer is you don't know if you are  
8 prohibited or not from charging access?

9           A     No. We just perceive it to be local traffic.

10          Q     Okay. All right, Mr. Jackson, another  
11 hypothetical. Let's say I call a friend back in  
12 Birmingham, Alabama utilizing a credit card or dialing  
13 collect, and I use AT&T as an interexchange carrier. In  
14 doing so, whose customer am I when I make that call?

15          A     You are making a land line call from here, let's  
16 say, back or --

17          Q     Yes.

18          A     Let's see. From a local perspective, you would  
19 be whatever local carrier you uses customer. If you  
20 picked AT&T and using their network, I would assume you  
21 are AT&T's customer for long distance service,  
22 interexchange service.

23          Q     And if I call the Internet, there was a great  
24 deal of discussion this morning about America Online. I  
25 assume you were here to hear that. And assuming for the

1 purposes of this hypothetical that I am an Internet  
2 subscriber of AOL. And when I get home hopefully this  
3 evening and turn on the computer and get on the Internet  
4 to surf a little bit, whose customer am I when I call the  
5 Internet?

6 A I would assume you are BellSouth's customer. If  
7 your local provider is BellSouth you would be BellSouth's  
8 customer.

9 Q In that instance when I am calling the Internet  
10 subscribing through or going through AOL, which stands for  
11 America Online, I am BellSouth's customer, is that your  
12 testimony?

13 A That's correct. It would be much like calling a  
14 travel agency, or somewhere else, or another business of  
15 some sort. I would assume that ISP or that AOL is a local  
16 exchange customer of whichever carrier they subscribe to.  
17 So therefore I would assume you are BellSouth's customer  
18 for a local basis and it is not an interexchange carrier  
19 involved there.

20 Q All right. So for purposes of this hypothetical  
21 which I have put together now, the long distance  
22 hypothetical that you answered earlier wherein I was  
23 AT&T's customer, and the Internet example that I just gave  
24 you where I am a subscriber of AOL, you would consider me  
25 not a customer of AOL, but a customer of BellSouth, is

1 that correct?

2 A For telecommunications purposes you are a  
3 customer of BellSouth. You are subscribing to a service  
4 or whatever that is provided by AOL, but they are not in  
5 that case acting as an interexchange carrier.

6 COMMISSIONER JABER: Mr. Kitchings, do you mind  
7 if I ask a question to follow-up from this morning?

8 MR. KITCHINGS: Please do, Commissioner.

9 COMMISSIONER JABER: For the sake of  
10 consistency, let me keep with my hypothetical so I can  
11 keep the flow of the conversation in my head. AOL is my  
12 Internet service, Sprint is my local provider, AT&T is my  
13 long distance carrier. This morning Mr. Varner said that  
14 getting on America Online is local access as opposed to  
15 the local exchange service.

16 If I understand your testimony correctly you  
17 disagree with that and you are saying -- is it correct  
18 that your testimony is that my provider is Sprint?

19 THE WITNESS: For your local service, yes.

20 COMMISSIONER JABER: And is it your testimony  
21 that that is local exchange and not just local access?

22 THE WITNESS: Commissioner, yes, that would be a  
23 local call, because I assume you are dialing seven or ten  
24 digits on a local basis, so it would be a local call and  
25 there wouldn't be an interexchange carrier involved. It

1 would be a call to AOL just like it would be to any other  
2 business or residential customer in that local area.

3 COMMISSIONER JABER: Explain the difference with  
4 your own words why that is not local access. Where is Mr.  
5 Varner incorrect?

6 THE WITNESS: It would not be interexchange  
7 access from my standpoint. That call originates and  
8 terminates within the same local area. And thus by  
9 definition it is local exchange service, period. The call  
10 is not being sent to an interexchange carrier to take it  
11 all over the country and transmit a voice call or a data  
12 call from one place to the other. It originates and  
13 terminates because you dial a seven-digit local number and  
14 there is something on the end of that local number where  
15 the call terminates which answers the phone.

16 COMMISSIONER JABER: How do you know it  
17 terminates at a local number? I mean, I am assuming you  
18 heard Mr. Varner's testimony, and he stated that you  
19 really can't be sure that Tallahassee Democrat's website  
20 terminates here in Tallahassee?

21 THE WITNESS: I think he is taking it a step  
22 further, I think, to prove his side of the argument, which  
23 I believe is wrong. When you pick up your phone and dial  
24 seven digits to dial AOL, there is a modem bank or a  
25 server in many cases located in the calling area. The



1 call originates from your telephone and goes through  
2 Sprint's local network and stops at that local server,  
3 from my perspective. It doesn't go any further.

4           The transactions that happen past that local  
5 server are nontelecommunications-oriented and thus not a  
6 part of the call. And so, therefore, we believe that it  
7 stops right there. And I think that is one of the reasons  
8 that the court probably saw the flaw in the argument. I'm  
9 not a lawyer, and maybe can't analyze it legally. But I  
10 think that supports all along what we have said. The call  
11 originates and terminates in the same local calling area.

12           I think what Mr. Varner's point was, there has  
13 been arguments made that many times, even assuming that  
14 you don't accept my argument and you accept his, that many  
15 times calls go to different websites. In Atlanta, for  
16 instance, I access a lot of Atlanta-specific websites with  
17 a local web hoster and my calls, even including the  
18 portion that is nontelecommunications-oriented, that  
19 interacts with the Internet, so to speak, is all locally.  
20 Maybe the Atlanta Journal Constitution in my area or  
21 Georgia Tech Football scoreboard, or whatever, or  
22 chatline, or whatever, it is all housed there locally.

23           Some calls once they get to the Internet and  
24 become nontelecommunications-oriented can go local or out  
25 to the world. And frankly, I don't know what happens

1 except on a case-by-case basis there, but many do reside  
2 locally once they hit the web.

3 COMMISSIONER JABER: Okay.

4 MR. KITCHINGS: Thank you, Commissioner.

5 BY MR. KITCHINGS:

6 Q Mr. Jackson, just a quick follow-on onto what  
7 you just said about the D.C. Circuit opinion. Realizing  
8 you are not a lawyer, and I'm not asking you here at all  
9 for a legal conclusion, did you read the opinion of the DC  
10 Circuit?

11 A I have read portions of it, and I have read some  
12 summaries on it. I haven't -- and it has been several  
13 weeks, but, yes.

14 Q Well, from the portions and the summaries, I am  
15 going to characterize, make a characterization and ask you  
16 if you agree or disagree with my characterization of that  
17 opinion.

18 Is it fair to say that the D.C. Circuit sent the  
19 case back to the FCC because in their view the FCC had not  
20 explained itself well enough on the end-to-end  
21 transmission analysis? Is that a fair characterization of  
22 why they sent the case back to the FCC?

23 A It is my understanding that the court found that  
24 the FCC's rationale for what they said was flawed. I  
25 guess inherently that is what it was based on, or the way

1 they presented it or didn't present it. So from that  
2 perspective, that is all I can tell you, it was flawed and  
3 they sent it back to the FCC, I guess to be redone,  
4 remanded, whatever the term is.

5 Q So would you disagree with my characterization,  
6 then, sir?

7 A I don't inherently disagree with it, no.

8 Q Just a couple more questions on reciprocal  
9 compensation and we will move on from here. The situation  
10 with which we disagree, I'm going to try to generally  
11 characterize, and that is the situation where a BellSouth  
12 end user makes a call to the Internet through an ISP who  
13 is a customer of Intermedia's. Is that your understanding  
14 of where we got a little disagreement and where reciprocal  
15 compensation applies, is that one scenario?

16 A I believe that is one scenario. The other piece  
17 is a tandem rate issue.

18 Q Agreed. We will put the tandem rate aside for  
19 just a minute, we are coming right to that in just a  
20 second.

21 A Okay.

22 Q In the instance where a BellSouth end user  
23 makes a call to the Internet through the ISP, who is the  
24 customer of Intermedia -- well, is the ISP Intermedia's  
25 customer in that situation, or is the end user of

1 BellSouth Intermedia's customer?

2 A In that situation the ISP would be the end user,  
3 or the local service customer belonging to Intermedia. So  
4 it would be our customer. And -- yes.

5 Q And I believe you stated earlier that you are  
6 not aware of whether or not ALECs are prohibited from  
7 charging access on ISP-bound calls, is that correct?

8 A That is correct. We don't, but I don't know  
9 whether it is a requirement.

10 Q All right. And given that it is Intermedia's  
11 position in this case that it is not recovering its costs  
12 if those calls go without reciprocal compensation, isn't  
13 it true that Intermedia in order to recover its costs  
14 could raise the rates it charges to ISP providers?

15 A If we did, I believe we would lose those  
16 customers. You had mentioned cost causer pays earlier.  
17 In our view, BellSouth's end user is causing a cost on our  
18 network. We are providing a valuable service for you for  
19 your end user to get to my end user, and therefore part of  
20 that compensation should be borne by the cost causer. I'm  
21 getting something from the ISP, but it is market-based.  
22 And I assume if I raise that rate to compensate for  
23 somebody else's cost I could well lose a customer.

24 Q So your position, Intermedia's position is that  
25 in that scenario the cost causer to Intermedia is not the

1 ISP provider that is Intermedia's customers, but is, in  
2 fact, BellSouth's end user?

3 A That is correct. I'm terminating your end  
4 user's calls, correct.

5 Q Let's talk about the tandem switching, Mr.  
6 Jackson. I believe, and you may correct me on this, I'm  
7 sure counsel will if I state it incorrectly, but I believe  
8 that in responses to data requests initially Intermedia  
9 stated that it had four switches in the State of Florida,  
10 and then last week or towards the end of the week  
11 corrected that to say five, is that accurate?

12 A Yes, sir; it is.

13 Q All right. When did Intermedia discover that it  
14 had five switches?

15 A Well, I think Intermedia has always known that.  
16 I'm not sure that in the preparation of the testimony that  
17 we had captured that properly. In Orlando, I believe, is  
18 what you are referring to; and we do have two switches  
19 there. We purchased a company's network sometime back and  
20 had just inadvertently left it out of what we had provided  
21 earlier.

22 Q All right. Well, it goes to more than just the  
23 testimony, Mr. Jackson. Again, I'm referring to data  
24 responses. Are both of the switches in Orlando in service  
25 today?

1 A Yes, sir, they are.

2 Q And have they been for some period of time?

3 A It is my understanding that they have, yes.

4 Q This second switch, the switch that was  
5 inadvertently omitted, to your knowledge is it serving  
6 customers today?

7 A To my understanding it is, yes.

8 Q And what do you base that understanding upon?

9 A In talking with our network folks.

10 Q Okay. Mr. Jackson, do you have a copy of the  
11 April 3rd response to staff's first request of production  
12 of documents that has been labeled confidential?

13 A I believe I do. Let me check and see.

14 Mr. Kitchings, what was the date on that,  
15 please?

16 Q It was a letter from Mr. Pellegrini to Ms. Bayo  
17 dated April 3rd. And then attached there was a -- it is  
18 Staff Exhibit 4 as currently entered into this record.  
19 The actual response itself is also dated April 3rd, and  
20 then there is three pages. Mr. Varner was subject to  
21 some cross-examination on them earlier.

22 A I am looking, and I see dates of March 22nd.  
23 I'm still looking for April 3rd. Mr. Kitchings, I may not  
24 have that.

25 Q Okay. We will come back to it in just a minute.

1 Mr. Pellegrini has gotten a copy of it. I will give you  
2 just a minute to take a look at it.

3 A Yes, I am familiar with this.

4 Q Okay. I'm going to be as careful as I can, and  
5 would ask counsel opposite to keep me straight on this so  
6 that I don't go over the line on the confidential  
7 treatment of this document. But I would ask you, sir, to  
8 look at the first page, which is a map of the Miami --  
9 generally speaking, the Miami area.

10 A Is it one that is entitled BellSouth southeast  
11 LATA, local access, and then it says Intermedia's switched  
12 serving area to the right at the top?

13 Q Correct.

14 A I have that, yes.

15 Q Okay. Now, there are a number of lines that  
16 delineate either calling areas or counties on that map, do  
17 you see those?

18 A Yes, I do.

19 Q Are those calling areas or are they counties?

20 A I don't know whether they are entire counties or  
21 not, to be honest. I would assume they are one or the  
22 other. It looks like it stops over somewhere along Power  
23 Line Road on the left side, a kind of a straight line at  
24 the Everglades there. But I don't know whether it  
25 encompasses the entire counties or not.

1           Q     Well, I guess what I'm asking is, are these  
2 divisions that are reflected on the Intermedia side of the  
3 map, are they calling areas?

4           A     No, I think -- it is my understanding that this  
5 map is an overlay of BellSouth's calling area with our  
6 Intermedia calling area. So I think we took a map of  
7 yours and overlaid our calling area on top of that for  
8 South Florida. And the blue area would represent the  
9 areas that are in our serving area on that map, which  
10 would be a preponderance of this area.

11          Q     I appreciate those comments, Mr. Jackson, but I  
12 think you are going beyond what I'm asking. I'm asking a  
13 very simple question, and I'm just trying to get to the  
14 subdivisions within each one of these maps. Each one has  
15 a title, and I'm trying to determine whether those are  
16 counties or calling areas?

17          A     I don't think they are counties. I think there  
18 are only two counties in South Florida, there is Dade and  
19 then there is -- whichever one, I can't remember off the  
20 top of my head, north of there. But Fort Lauderdale and  
21 that area is another county. And to me these CLLI codes,  
22 and I'm having a little trouble. The copy I've got is a  
23 little fuzzy, but it looks like CLLI codes for each of  
24 those divisions, so I would assume they are calling areas  
25 of some sort.



1           Q     Okay. Your understanding comports with mine,  
2 and mine is a little fuzzy, as well, so maybe we can work  
3 our way through this.

4                     Now, it is my understanding from your prior  
5 comment and from testimony that the blue area designates  
6 areas that are served by Intermedia and the white area  
7 designates areas that are within BellSouth's calling areas  
8 but are not served by Intermedia, is that correct?

9           A     That would be basically correct, yes. The blue  
10 area is Intermedia's serving area, so all of that area  
11 that is outlined, all of South Florida to -- well, I can't  
12 really -- it looks like Boca maybe, and then it narrows  
13 down some. There is some white in there. But, yes, all  
14 the way up through Boca in that area is all Intermedia's  
15 serving area in blue.

16          Q     Okay. But the white, Intermedia doesn't serve  
17 customers in the white area?

18          A     To my knowledge, no, we are not currently  
19 serving that area.

20          Q     Okay. Now, I'm not going to go through each one  
21 of these CLLI codes for each one, there is probably 20 or  
22 more within the blue area. But confining my question to  
23 just the blue area, is it your testimony from your own  
24 personal knowledge or from any other knowledge, Mr.  
25 Jackson, that Intermedia is serving customers today in

1 each one of these particular calling areas on this map?

2 A It is my understanding that we are serving, and  
3 in talking with our people internally, that we are serving  
4 customers throughout this blue area. That doesn't mean  
5 that I have way over towards the far left by the green  
6 line a customer out in the swamp someplace. But where the  
7 population centers are, yes, we are serving customers  
8 throughout that region. And I have collocations in this  
9 area, as well, with end user customers there.

10 Q Well, my question is -- well, let's go through  
11 it one at a time, then. Look at the farthest south area  
12 at the bottom before you start into the Florida Keys area.  
13 Do you see that where it is in blue?

14 A Yes, I do.

15 Q Is it your testimony today that Intermedia is  
16 serving customers in that calling area?

17 A That is my understanding, yes.

18 Q Is it your testimony that Intermedia is serving  
19 customers in the area immediately to the north of that  
20 area?

21 A Mr. Kitchings, again, and I think I'm trying to  
22 answer the question properly, it is my understanding from  
23 what I know internally that we are serving customers  
24 throughout the area. I don't know whether we have one  
25 there or 50. In some cases I might have way down on the

1 south end zero, perhaps, because it may be a rural area  
2 and there are no business customers out there that we  
3 typically target.

4 I can tell you that we serve customers  
5 throughout the area and have collocations throughout the  
6 area and serve Miami as a -- and Fort Lauderdale and Boca  
7 with one switch, with collocations, with direct trunks to  
8 a number of offices and whatnot. I don't know where every  
9 specific customer is located. So to save maybe you some  
10 time, if you asked me by CLLI code, I don't know by CLLI  
11 code how many we have there, whether it is zero or 1,000,  
12 I don't know.

13 Q Well, if it is zero you are not serving that  
14 area, are you?

15 A Yes, we could terminate a call there, too, for  
16 instance. And just because if I didn't have a customer  
17 there today doesn't mean that I don't have the facilities  
18 to serve them there tomorrow. We are a company that is  
19 three years old, and we have put hundreds of thousands of  
20 customers on our network. But I may not have a customer  
21 somewhere in here. So, I want to be totally honest about  
22 it. I just don't know the numbers by these geographic  
23 divisions.

24 Q And I'm not asking you numbers by geographic  
25 division, but I am asking you to state today that you do,

1 in fact, have at least one customer in each one of these  
2 areas?

3 A I don't know the answer to that.

4 Q Okay. And to save us both time, I would ask you  
5 the same question for the second page map and then the  
6 third page map. The second page map is your Orlando area,  
7 the third page map is the Jacksonville area. Would your  
8 answers be the same if I were to ask you about serving  
9 customers in each of the blue delineated areas there?

10 A Again, I can't tell you whether we have zero or  
11 a 100 per geographic area. But I think two important  
12 points, Mr. Kitchings, on these two maps, if you look at  
13 the blue area, I'm serving an area and have customers in  
14 areas outside BellSouth's calling area. So not only  
15 serving the preponderance of the BellSouth area, I am also  
16 providing service in GTE and adjoining Sprint areas as  
17 well in both, you know, in both of these other cases that  
18 you mentioned. So my calling area there may well be  
19 larger than BellSouth's in serving customers in that  
20 manner.

21 Q We will let the maps stand for themselves, Mr.  
22 Jackson, as to whether or not you have a larger area than  
23 BellSouth's or not, but your answer would be the same to  
24 my question on each of these blue delineated areas, you  
25 don't know if you have a customer in each of those areas,

1 do you?

2 A No, but I have thousands of access lines  
3 throughout those areas, I just don't know where they are  
4 located specifically.

5 COMMISSIONER JABER: It would help me to know  
6 what your definition of service is. By this map were you  
7 trying to show areas where you could provide service, or  
8 areas where you were currently providing service? I think  
9 the crux of the question is if you serve a customer, you  
10 are providing service. If you are not, if you don't have  
11 a customer then you are not providing service.

12 THE WITNESS: Commissioner, to answer your  
13 question specifically, let's take South Florida, for  
14 instance, I'm serving thousands of access lines there. I  
15 have a number of collocations there. I wouldn't build a  
16 quarter to half-million dollar collocate without having  
17 customers in place.

18 Now, I'm sure there are areas where we have  
19 larger aggregations of customers than others. We  
20 typically serve small, mid, and large-sized business  
21 customers, so there would be some area here where I might  
22 not specifically even have a customer to serve, unlike  
23 BellSouth, which is the incumbent carrier and they serve  
24 basically everybody.

25 COMMISSIONER JABER: You have the facilities

1 available, but not necessarily a customer?

2 THE WITNESS: Yes. And even if my -- I have  
3 got, you know, dozens and hundreds of miles of fiber route  
4 in Florida, for instance, but I might -- you know, I might  
5 have customers off that fiber route that I bill to even  
6 though they are not a target. If they are viable for us  
7 economically, you know, we would certainly serve them. So  
8 I have a number of ways to get to those customers  
9 throughout the region. I'm serving customers throughout  
10 this blue footprint. And as a mentioned, in a lot of  
11 cases well outside the BellSouth area.

12 In GTE and Sprint, such as in Orlando, for  
13 instance, where you have got other ILECs around there, I'm  
14 serving customers over there that, of course, they can't  
15 serve.

16 COMMISSIONER JABER: Right. But I would be  
17 correct in stating that in some of these areas you have  
18 designated that you are serving you have the  
19 infrastructure and you might have facilities in place, but  
20 you may not necessarily have a customer?

21 THE WITNESS: For probably a small number of  
22 those, that would be correct. In most of these areas,  
23 since South Florida, in particular, is so densely  
24 populated, it is likely I'm serving someone throughout  
25 there from my guess. I just don't know specifically from

1 my knowledge.

2 COMMISSIONER JABER: Okay.

3 BY MR. KITCHINGS:

4 Q Mr. Jackson, how many collocation arrangements  
5 does Intermedia have in Florida?

6 A I currently have 17 collocations. And the  
7 information I have from our folks internally is 11 of  
8 those are in the BellSouth serving area. I have a couple  
9 of them in GTE, and then four in Sprint.

10 Q Mr. Jackson, you were here earlier for the  
11 discussion with Mr. Varner about tandem switching. Moving  
12 away from the geographic aspect of it. Can we agree that  
13 tandem switches connect one trunk to another trunk?

14 A No, I don't think so. I think that probably  
15 would be a technical definition of it. Tandem switching  
16 in our point, from our perspective is being able to get  
17 calls just like you, from one end user through our network  
18 to another end user somewhere else.

19 So your network does it that way. My network  
20 doesn't have to make it necessarily trunk-to-trunk because  
21 my network is a newly built network, it hasn't just  
22 evolved over a long period of time.

23 Q Mr. Jackson, can we agree that the FCC has  
24 defined tandem switching?

25 A I don't know what the FCC's definition of it is.

1 I think it is important, too, though, that functionality  
2 of -- the functionality issue here, Mr. Kitchings, is not  
3 the key issue, it is geographic comparability. We perform  
4 the same function, we don't necessarily do it in your  
5 manner, though.

6 Q Mr. Jackson, can we agree that the FCC has  
7 defined tandem switching?

8 A I'm sure they have. I am not familiar with the  
9 reference you are referring to.

10 Q Will you accept, sir, subject to check that at  
11 Rule 51.319(c)(2), the FCC defined local tandem switching  
12 as, "A, trunk connect facilities which include but are not  
13 limited to the connection between trunk termination at a  
14 cross-connect panel and switching trunk card; B, the basic  
15 switched trunk function of connecting trunks to trunks;  
16 and, C, the functions that are centralized in tandem  
17 switches as distinguished from separate end office  
18 switches, including local trunk-to-trunk must be named  
19 between end office switches."

20 A Subject to check, yes.

21 Q Okay. Regarding Item B, the basic switch trunk  
22 function of connecting trunks to trunks, can we agree that  
23 a tandem switch would connect one trunk to another trunk  
24 given that definition?

25 A Given that definition, yes. Not in the context



1 of our network. My switches, Mr. Kitchings, have the  
2 capability to do end office and tandem resident in my  
3 entire network. I don't have to have an aggregator switch  
4 plus end office switches. My network is typically an  
5 overlay of your network with collocates in some of your  
6 central offices and direct facilities to other end user  
7 customers.

8 And my switch, because of the way is set up,  
9 doesn't have to perform a tandem function in exactly the  
10 way your does. It still performs the same function,  
11 because my call flows through the network just like it  
12 does yours. If that helps clarify it.

13 Q We understand that your switch is a very capable  
14 switch, and I will grant you that. But my question to  
15 you, sir, is do your switches connect one trunk to another  
16 trunk for local tandem interconnection?

17 A Since we have one switch -- I'm not an engineer,  
18 so I don't know how technically it is hooked up. But I  
19 will grant you, you know, if your definition says that it  
20 has to be trunk-to-trunk, you know, from that context I  
21 don't know whether we do or not.

22 Q Okay. Can we agree that a tandem switch is an  
23 intermediate switch or connection between an originating  
24 telephone call and the final destination of the call?

25 A In the context of your network, yes.

1           Q     It doesn't have to be narrowly construed to my  
2 network. Just generally speaking is a tandem switch an  
3 intermediate switch or connection between origination and  
4 final destination of a call?

5           A     In your network that would be separate switch,  
6 in my network it would be part of the same switch.

7           MR. KITCHINGS: Commissioner Jacobs, would you  
8 indulge me just a minute, I need to pull a transcript out.  
9 Thank you.

10           COMMISSIONER JACOBS: Let's go off the record  
11 for a moment.

12           (Off the record briefly.)

13           MR. KITCHINGS: May I proceed, Commissioner  
14 Jacobs?

15           COMMISSIONER JACOBS: Please proceed. Do you  
16 have much longer? Not to rush you, but I just want to see  
17 if we need to take a break now.

18           MR. KITCHINGS: This would be a good time to  
19 take a break.

20           COMMISSIONER JACOBS: Okay, why don't we take a  
21 break and come back in 15 minutes.

22           (Recess.)

23           COMMISSIONER JACOBS: We can proceed.

24           MR. KITCHINGS: Thank you, Commissioner Jacobs.

25 BY MR. KITCHINGS:

1           Q     Mr. Jackson, just a couple of more questions on  
2 tandem switching. We were speaking a moment ago about  
3 what a tandem switch does. And isn't it true, that  
4 BellSouth and Intermedia has already held its arbitration  
5 in North Carolina?

6           A     Yes, we have.

7           Q     And you were Intermedia's witness there, were  
8 you not?

9           A     Yes, I was.

10          Q     Okay. Do you recall that I, as BellSouth's  
11 counsel, asked you the following question, "Can we agree  
12 that a tandem switch is an intermediate switch or  
13 connection between an originating telephone call location  
14 and the final destination of that call"?

15          A     Yes, sir, I recall that.

16          Q     Do you recall what your answer was?

17          A     I can tell you what my answer is today. I  
18 assume that I would answer it the same way. I don't think  
19 I have learned anything differently.

20          Q     Okay. So if I were to tell you, subject to  
21 check, that your answer was, "Again, I would suppose so.  
22 Yes, I would think that is one way you could characterize.  
23 It," you would not disagree with that answer?

24          A     No, I would not disagree with that answer.

25          Q     Okay. Thank you. One final question on tandem

1 switching. I ask you to turn to your direct testimony,  
2 Page 11. Are you there?

3 A Yes, I am.

4 Q Look at Line 18. Can you tell me -- well, would  
5 you read that sentence beginning at Line 18, please?

6 A That is the beginning of my answer there?

7 Q Correct.

8 A "First of all, without evening looking at the  
9 areas served by Intermedia's switches, it is safe to say  
10 that they cover areas comparable in scope to BellSouth  
11 tandems, because Intermedia's network design is entirely  
12 different than BellSouth's."

13 Q Now, is it correct that Intermedia's position is  
14 that as long as its switch serves a geographic area that  
15 is comparable to BellSouth's tandem switch for local  
16 purposes that you are entitled to the tandem  
17 interconnection rate?

18 A Yes.

19 Q All right. With that as Intermedia's position,  
20 how would you be able to ascertain that you meet the  
21 requirement without even looking at the area served by  
22 Intermedia's switches?

23 A Because as Director of Marketing of Intermedia,  
24 and actually leading Intermedia into the local exchange  
25 business, I am intimately aware of where we place

1 switches, where we had customers, and understanding what  
2 our targets were from 1996 forward. So just immediately  
3 I'm sure because that is the way we designed ourselves to  
4 compete directly with BellSouth head-to-head throughout  
5 the region.

6 Q So that answer that begins there at Line 18 is  
7 applicable to yourself, and you are not suggesting to this  
8 Commission that they shouldn't look at any maps, are you?

9 A I'm not sure I heard the last part of that  
10 question, I'm sorry.

11 Q Okay. I will rephrase.

12 Are you suggesting by that statement that the  
13 Commission should not look at maps of what Intermedia --  
14 what areas are served by Intermedia?

15 A No, sir, not at all. And I would hope the  
16 Commissioners would look carefully at that.

17 Q Thank you. Let's move to Issue 10, Mr. Jackson,  
18 which is the issue regarding BellSouth's policies on  
19 conversion of virtual to physical collocation. Can we  
20 agree that the FCC has ordered or given incumbent local  
21 exchange carriers, such as BellSouth, the right to reserve  
22 space for its own use in the future?

23 A That is my understanding, yes.

24 Q And didn't the FCC also grant ILECs the right to  
25 take appropriate steps to ensure the security of its own

1 equipment?

2 A As I recall, yes, that is correct.

3 Q Also, within that order, Mr. Jackson, BellSouth  
4 was given the ability to enclose its equipment in its own  
5 cage, is that correct? In other words, it could put a  
6 cage around its equipment as opposed to the ALEC doing  
7 such.

8 A That is my recollection, yes.

9 Q All right. Practically speaking, how can that  
10 be accomplished if Intermedia's equipment is in the same  
11 line-up and is literally bolted together with BellSouth's  
12 network equipment?

13 A Not working in a central office and  
14 understanding -- I have a general idea of how the racks  
15 are and kind of a general picture in mind, Mr. Kitchings.  
16 I would assume that if you wanted to create some sort of  
17 walled space, you would have to move your equipment  
18 somewhere and place it somewhere. I'm not sure that you  
19 absolutely need to. You may perceive the need to do so.  
20 I'm not sure there is any technical reason, though, why  
21 you would have to unless there was some concern for  
22 security.

23 Q Okay. But if our network or switching equipment  
24 was literally bolted together, you couldn't set up a cage  
25 between the two, could you, without separating the

1 equipment?

2 A I don't think you could, no.

3 Q Okay. Does Intermedia in requesting a  
4 conversion in place agree that there should be no change  
5 in the amount of equipment and that there should be no  
6 change to the arrangement of the equipment? And I will  
7 give you an example when I say a change in the arrangement  
8 of the equipment. I mean, for example, recabling the  
9 equipment.

10 A I want to understand the context of your  
11 question. Are you asking if you made a change, or if you  
12 -- I'm sorry, maybe I didn't understand your question.

13 Q I will try to rephrase.

14 A Okay.

15 Q Let's put it in the context of a hypothetical.  
16 If Intermedia were to request a conversion in place from  
17 virtual to physical collocation, does Intermedia agree or  
18 disagree that by ordering or requesting a conversion in  
19 place that there should be no change in the amount of  
20 equipment that is there and that there should be no change  
21 in the arrangement of the equipment?

22 A I would think if you are going to leave it in  
23 the line-up where it is today, there is no need to  
24 necessarily make a change from our perspective. As long  
25 as it is working right now, there is no reason it would

1 not work if we request that change.

2 Q Okay. So a conversion in place would literally  
3 be just that, there would be no change to the equipment  
4 that is there?

5 A Yes. From my perspective, a lay perspective,  
6 but as I understand it, yes.

7 Q Thank you. Moving to Issue 12, which is the  
8 appropriate definition of currently combined. And I'm not  
9 presupposing that you don't know what these issues are,  
10 but I'm just trying to keep it in context.

11 A Sure.

12 Q Can we agree or will you agree, subject to  
13 check, that the FCC in Rule 51.315(b) reads as follows,  
14 "Except upon request, an incumbent LEC shall not separate  
15 requested network elements that the incumbent LEC  
16 currently combines." Will you accept that subject to  
17 check?

18 A Sure.

19 Q Can we also agree that the FCC in its UNE remand  
20 order clarified that its Rule .315(b) applies only to  
21 elements that are, in fact, combined?

22 A Yes.

23 Q Okay. Can we also agree that the FCC has  
24 declined to adopt a definition of quote, "currently  
25 combined," close quote, that would include all elements



1 that are quote, "ordinarily combined," close quote?

2 A It is my interpretation from what I understand  
3 that from my perspective that currently combined could be  
4 any service that is currently offered in your tariff, not  
5 just to a specific end user customer.

6 So from my perspective of reading it, that is  
7 the way certainly that I would interpret it.

8 Q I'm sorry, I didn't understand the last part of  
9 your answer.

10 A I'm sorry. What I'm saying is that I don't  
11 believe that currently combined, based on what the FCC has  
12 said, has to be for an existing customer at an existing  
13 location that that service is currently combined. It is  
14 my interpretation, and I think rightfully so, that  
15 currently combined could mean any service offering that  
16 you have that is combined that is offered, not just on a  
17 customer-specific basis.

18 In other words, if it is in your tariff and you  
19 offer it as a service, it ought to be currently combined,  
20 not just if it is at a customer's location on a  
21 situation-by-situation basis. I think that is probably  
22 where we differ.

23 Q All right. I'm going to read you what I purport  
24 to be a section of the FCC's UNE remand order.  
25 Specifically, Paragraph 480, and I'm going to ask you the

1 same question I asked you before after you hear this  
2 portion that I read to you.

3 "To the extent an unbundled loop is, in fact,  
4 connected to unbundled dedicated transport, the statute  
5 and our Rule 51.315(b), require the incumbent to provide  
6 such elements to requesting carriers in combined form.  
7 Thus, although in this order we need to define the EEL as  
8 a separate unbundled network element, nor interpret  
9 51.315(b) as requiring incumbents to combine unbundled  
10 network elements that are," quote, "ordinarily combined,"  
11 close quote, "we note that in specific circumstances the  
12 incumbent is presently obligated to provide access to the  
13 EEL. In particular, the incumbent LECs may not separate  
14 loop and transport elements that are currently combined  
15 and purchase them through the special access tariff.  
16 Moreover, requesting carriers are entitled to obtain such  
17 existing loop transport combinations at unbundled network  
18 element prices."

19 So, Mr. Jackson, given the phrase that the FCC  
20 neither defines the EEL as a separate UNE nor interprets  
21 Rule 51.315(b) as requiring incumbents to combine  
22 unbundled network elements that are, quote, ordinarily  
23 combined, close quote, is it still your position that  
24 BellSouth is required to provide unbundled network  
25 elements that are ordinarily combined?

1 MR. CANIS: Your Honor, I'm going to have to  
2 object to that. That was a really long question and a  
3 really long quote. And I would at least like to ask if  
4 BellSouth would like to ask Mr. Jackson to really answer  
5 that question, could he at least have the rule in front of  
6 him so he can read it and not rely on his recollection of  
7 Mr. Kitchings' dissertation on that, please.

8 MR. KITCHINGS: I have no problem letting him  
9 take a look at the paragraph that I am reading, that might  
10 make things easier.

11 COMMISSIONER JACOBS: That sounds like a  
12 reasonable result.

13 MR. KITCHINGS: Do have you a copy of the order,  
14 Mr. Canis, that you can share with your witness?

15 MR. CANIS: I'm sorry, I don't.

16 MR. KITCHINGS: Okay. May I approach the  
17 witness?

18 COMMISSIONER JACOBS: Sure.

19 MR. KITCHINGS: Thank you.

20 THE WITNESS: If I could have just a second to  
21 read it, Commissioner.

22 COMMISSIONER JACOBS: By all means.

23 THE WITNESS: Thank you.

24 (Pause.)

25 MR. KITCHINGS: Thank you, Mr. Jackson. I

1 apologize for being obtuse earlier and reading too fast.

2 BY MR. KITCHINGS:

3 Q The bottom line question, based on Paragraph 480  
4 that you have just reviewed, can we agree that the FCC  
5 declined to adopt a definition of currently combined that  
6 would include all elements that are ordinarily combined?

7 A I would agree. I think my point is that  
8 Intermedia would like a reading of that that is a bit more  
9 expansive and it would allow us to have the ability to do  
10 as I had just described.

11 MR. KITCHINGS: If I may approach the witness, I  
12 need to get my order back. Thank you.

13 BY MR. KITCHINGS:

14 Q Mr. Jackson, same order. Can we agree that the  
15 FCC declined to define the EEL as a separate network  
16 element in its UNE remand order?

17 A Yes.

18 Q So, BellSouth has no current obligation to  
19 provide ALECs with an EEL under the FCC's order and rules,  
20 is that correct?

21 A Yes.

22 Q As to Issue 13B, which has to do with conversion  
23 of special access, isn't it true that the FCC also  
24 concluded that the record was insufficient to make a  
25 finding regarding the conversion of special access

1 facilities?

2 A I don't remember the specific wording of that;  
3 but subject to check I will agree with you, yes.

4 Q Okay. For purposes of the record, Mr. Jackson,  
5 I would refer you to Paragraphs 489 and 494 of that order  
6 and Supplemental Order Paragraph 4.

7 Mr. Jackson, has the Florida Public Service  
8 Commission ruled on this issue before, the issue of EELs?

9 A I don't know.

10 Q Would you accept, subject to check, that they  
11 issued an order on January 14th in the BellSouth/ICG  
12 arbitration on this issue?

13 A Subject to check, yes.

14 Q And would you agree, subject to check, that in  
15 that order the Florida Commission held that EELs are not  
16 required to be made available to ICG as a UNE?

17 A Subject to check, yes.

18 Q Thank you.

19 MR. KITCHINGS: Commissioner Jacobs, again I  
20 need permission to approach the witness.

21 COMMISSIONER JACOBS: You may.

22 MR. KITCHINGS: Thank you.

23 BY MR. KITCHINGS:

24 Q Mr. Jackson, have you had an opportunity to take  
25 a look at this letter?

1           A     I have had a chance to just briefly look at it;  
2     it is several pages long.

3           Q     Okay.  Without getting into detail at this  
4     point, could you please identify it?

5           A     It is a letter written to the Commissioners of  
6     the Federal Communications Commission, and it is from a  
7     variety of -- let's see, parties that would have signed  
8     it, including a number of different telecom companies  
9     concerning the implementation of the local competition  
10    provisions of the Telecommunications Act of 1996, Docket  
11    Number 96-98.

12               MR. KITCHINGS:  Commissioner Jacobs, we would  
13    request that this be marked for identification at this  
14    point as, I guess, Cross Examination Exhibit 1, or perhaps  
15    the next exhibit in line, which would be Exhibit 12.

16               COMMISSIONER JACOBS:  Show it marked as Exhibit  
17    12.  It's title will be letter from industry to FCC.

18               MR. KITCHINGS:  That's fine.

19                               (Exhibit 12 marked for  
20                               identification.)

21    BY MR. KITCHINGS:

22           Q     Mr. Jackson, if you would, once you have had an  
23    opportunity to review this letter let me know, and I've  
24    got just a couple of quick questions for you.

25           A     Okay, just a moment.  Mr. Kitchings, I have had

1 a chance to do a quick read of it.

2 Q Okay. I appreciate it. For purposes of the  
3 record, Mr. Jackson, would you read the first paragraph  
4 there on the first page under Dear Chairman Kennard and  
5 Commissioners?

6 A Sure. "The Third Report and Order, as modified  
7 by the Supplemental Order, addressed the circumstances  
8 under which carriers may purchase loop/transport  
9 combinations as unbundled network elements (UNEs). The  
10 undersigned believe that the industry could benefit from a  
11 further clarification of that order. Based on the text  
12 and the intent of the Third Report and Order, and the  
13 Supplemental Order, as well as the ex parte referenced in  
14 the footnote nine of the Supplemental Order, the  
15 undersigned believe that under existing rules and policies  
16 reflected in those Orders, a requesting carrier may  
17 purchase loop/transport combinations only if one of the  
18 three options described below is met."

19 Q Thank you. And the next page delineates the  
20 three options referenced there, is that correct?

21 A Yes.

22 Q And then the final page sets forth, in essence,  
23 an audit sort of procedure between the ILEC and the CLEC  
24 as is noted here, is that accurate?

25 A Yes.

1           Q     Look at the last page, if you would, please, Mr.  
2 Jackson. And the copy I have handed you has not -- well,  
3 let me ask a preliminary question. Look at the signature  
4 lines, and do you see a signature line for Ms. Heather B.  
5 Gold, Vice President of Industry Policy, Intermedia  
6 Communications?

7           A     Yes, I do.

8           Q     Do you know whether or not Ms. Gold signed this  
9 document?

10          A     I don't have any knowledge that she has. I  
11 don't know.

12          Q     Okay. Did you hear your counsel's  
13 cross-examination of Mr. Varner in this morning regarding  
14 this letter?

15          A     About this letter? Not all of it, no.

16          Q     Okay. But did you hear any of it?

17          A     A small portion.

18          Q     Do you have any reason to doubt that this letter  
19 was not filed with the FCC?

20          A     No, I don't.

21          Q     Is it fair to characterize this letter, Mr.  
22 Jackson, as saying that -- the letter sets forth  
23 approximately eight carriers' position on the purchase of  
24 loop/transport combinations as UNEs and setting forth  
25 conditions under which that should be done?



1           A     From a quick read of it, yes.

2           Q     And, in fact, BellSouth signed that letter, too,  
3 assuming that we had a copy with signatures as far as you  
4 know, right?

5           A     Yes.

6           Q     In other words, there is a spot for Mr. Blau's  
7 signature there, is there not, BellSouth, Vice President  
8 Executive and Federal Regulatory Affairs?

9           A     Yes, there is.

10           MR. KITCHINGS: Commissioner Jacobs, we would  
11 move the admission of this letter into the record as  
12 Exhibit 12.

13           COMMISSIONER JACOBS: Without objection, Show  
14 Exhibit 12 entered into the record. We need a copy for  
15 the court reporter.

16                               (Exhibit 12 received in evidence.)

17 BY MR. KITCHINGS:

18           Q     Mr. Jackson, let's move on to Issue 22. I'm  
19 sorry, Issue 18, packet switching. Isn't it true that the  
20 FCC expressly declined to unbundled packet switching  
21 technologies incumbent LECs may have legalized?  
22 Legalized, that's not the right word. Excuse me, strike  
23 that question. Let me try it another way, Mr. Jackson.

24                       Can we agree that the FCC has declined to  
25 unbundle packet switching?

1           A     Yes, I believe they left it to the states to do  
2 so if they desire to do so.

3           Q     Didn't the FCC, in fact, specifically reject  
4 Intermedia's request to unbundle packet switching or frame  
5 relay?

6           A     It was my understanding that they declined to  
7 order the ILECs to do so. It is also my understanding  
8 that it is left to the state commissions to make that  
9 determination that is, therefore, requesting an unbundling  
10 of it.

11          Q     Well, let me try this another way, Mr. Jackson.  
12 I am going to ask you if you will accept, subject to  
13 check, the following as being read to you from Paragraph  
14 312 of the FCC's UNE order. "We reject  
15 E.spire/Intermedia's request for a packet switching or  
16 frame relay unbundled network element." Do you accept  
17 that that is in Paragraph 312 of the FCC order?

18          A     Yes.

19          Q     Thank you. Can we agree -- you have said that  
20 it was left up to the states in your answer. Can we agree  
21 that the FCC's order requires that Intermedia must  
22 convince the state commission that it is impaired without  
23 access to such an element before it is entitled to it?

24          A     I'm not sure that the state commission is bound  
25 to an impair standard. So, no, I couldn't agree with

1 that.

2 Q You cannot agree with that.

3 A It is my understanding that the state  
4 commissions, if they so desire to unbundle frame relay,  
5 can do so. And I think that is what we are simply  
6 requesting here. It is important to us from a business  
7 perspective. We have a large frame relay network, and  
8 frame relay is an important piece of our business, and  
9 that's why it is an issue.

10 MR. KITCHINGS: Well, I had hoped to avoid this,  
11 Commissioner Jacobs, but I'm going to have to ask Mr.  
12 Jackson to read portions of the FCC's order and ask him<sup>o</sup>  
13 the same question after he reads those sections.

14 COMMISSIONER JACOBS: Okay.

15 BY MR. KITCHINGS:

16 Q Mr. Jackson, would you please read Paragraphs  
17 306 and 312 of the FCC's UNE remand order?

18 A Yes. "We decline at this time to unbundle the  
19 packing switching functionality except in limited  
20 circumstances. Among other potential factors, we  
21 recognize that the presence of multiple requesting  
22 carriers providing service with their own packet switches  
23 is probative of whether they are impaired without access  
24 to unbundled packet switching. The record demonstrates  
25 that competitors are actively deploying facilities used to

1 provide advanced services to serve certain segments of the  
2 market, namely medium and large business. And, hence,  
3 they cannot be said to be impaired in their ability to  
4 offer service at least to these segments without access to  
5 the incumbents' facilities. In other segments of the  
6 market, namely residential and small business, we conclude  
7 that competitors may be impaired in their ability to offer  
8 service without access to incumbent LEC facilities due in  
9 part to the cost and delay of obtaining collocation in  
10 every central office where the requesting carrier provides  
11 service using unbundled loops. We conclude, however, that  
12 given the nascent nature of the advanced services  
13 marketplace, we will not order unbundling of the packet  
14 switching functionality as a general matter."

15 Q And that was Paragraph 306?

16 A Yes, that was Paragraph 306.

17 Q Would you please read Paragraph 312?

18 A Sure. "We reject E.spire/Intermedia's request  
19 for a packet switching or frame relay unbundled network  
20 element. First, as discussed above, we will define  
21 unbundled network elements to the extent practicable in a  
22 technologically neutral manner so as not to favor one  
23 particular packet switching technology over another.  
24 Defining an unbundled network element according to a  
25 particular packet switching technology, such as frame

1 relay, violates this principle of technological  
2 neutrality. Furthermore, defining packet switching  
3 elements according to a specific technology creates the  
4 possibility that as innovative packet switching  
5 technologies are deployed, they may or may not fall within  
6 the definition of packet switching.

7 "Second, E.spire/Intermedia have not provided  
8 any specific information to support a finding that  
9 requesting carriers are impaired without access to  
10 unbundled frame relay. We note, however, that  
11 E.spire/Intermedia are free to demonstrate to a state  
12 commission that lack of unbundled access to an incumbent's  
13 frame relay network element impairs their ability to  
14 provide the services they seek to offer. A state  
15 commission is empowered to require incumbent LECs to  
16 unbundle specific network elements used to provide frame  
17 relay service consistent with the principles set forth in  
18 this order."

19 Q Given those two paragraphs, Mr. Jackson, is it  
20 still your testimony that this Commission does not have to  
21 make a decision based on the impair standard?

22 A From having read this to you, I haven't had a  
23 chance to really sit and think about it. But, again, we  
24 certainly would request that the Commission do so and  
25 order the LEC to give us access to those unbundled network

1 elements.

2 Q My question to you, sir, is is this Commission  
3 able to make that decision without regard to the impair  
4 standard?

5 A Again, having just read this here in the public  
6 forum, I haven't had a chance to think about it. So from  
7 this particular wording here, I don't know.

8 Q Okay. Are you familiar with whether this  
9 Commission has addressed this issue before, specifically  
10 in the ICG/BellSouth arbitration?

11 A I'm sorry, I don't recall.

12 Q Would you accept, subject to check, that it did?

13 A Yes.

14 Q Would you accept, subject to check, that it did  
15 not require BellSouth to provide packet switching to ICG  
16 as requested?

17 A Subject to check, yes.

18 Q Let's move on to Issue 22. This is the issue  
19 regarding nondiscriminatory access to interoffice  
20 transmission facilities.

21 A Sure.

22 Q Are you aware BellSouth has proposed language to  
23 address this issue in the interconnection agreement?

24 A As I recall, I believe so, yes.

25 Q And are you aware BellSouth has proposed interim

1 rates which would remain in effect and be subject to  
2 true-up when the Florida-specific rates are adopted by the  
3 Commission?

4 A Yes. And I believe our point is that we want to  
5 make sure that they are TELRIC based.

6 Q You want to be sure that the interim rates are  
7 TELRIC based?

8 A Long-term rates are TELRIC based. And as I  
9 understand it, if you provided interim rates that the  
10 long-term rates would be subject to a true-up based on  
11 whatever this Commission adopts as being TELRIC based, I  
12 suppose.

13 Q I guess I'm struggling, Mr. Jackson. What is  
14 the problem then with BellSouth's proposal, is it simply a  
15 question of wanting to assure that the permanent rates are  
16 TELRIC based?

17 A Well, to make sure that the interim rates, and  
18 cash is kind of hard to come by, and I want to make sure  
19 I'm not paying too much in the interim before those rates  
20 are approved. So I just want to make sure that the rates  
21 I pay on an interim basis are correct.

22 Q Has Intermedia provided any cost studies in this  
23 proceeding for these facilities?

24 A No.

25 Q So, is the only evidence in the record on rates

1 for these facilities that provided by BellSouth?

2 A Yes.

3 Q Moving forward, Mr. Jackson, to Issue 25. Can  
4 we agree that frame relay is a form of packet switching?

5 A Yes.

6 Q And the elements that are included in Issue 25,  
7 UNI, NNI, and DLCI, those are all parts of frame relay,  
8 are they not?

9 A Yes, they are.

10 Q Okay. and we talked about packet switching  
11 earlier in the context of, I believe it is Issue 18, is  
12 that correct?

13 A I remember talking about it earlier, yes.

14 Q And, again, the FCC declined to unbundle packet  
15 switching functionality except in limited circumstances,  
16 didn't it?

17 A That is my understanding, yes.

18 Q Let's move to 26, regarding parties establishing  
19 local calling areas and assigning numbers. Now, this  
20 issue originally was kind of set out in two of our issues  
21 in the matrix, Issues 5 and 26, and then we collapsed it  
22 into Issue 26, isn't that correct?

23 A Yes.

24 Q And wasn't this issue voluntarily withdrawn in  
25 North Carolina by Intermedia?



1           A     Yes. I believe we agreed not to arbitrate it in  
2 North Carolina, yes.

3           Q     Why would you do so in North Carolina and not  
4 withdraw it here?

5           A     I think part of that is that we have a different  
6 business situation here. And I think we have learned some  
7 things internally from our last hearing that this is still  
8 a key issue for us. Therefore, we elected to continue the  
9 arbitration of it here in this forum.

10          Q     The issue was not addressed in North Carolina,  
11 was it?

12          A     As I recall, we withdrew it prior to the  
13 arbitration there. And then subsequent to that, in  
14 talking with our folks, management has decided to leave  
15 this as an arbitration issue here in Florida.

16          Q     Let's talk hypothetically, Mr. Jackson. I will  
17 try to be brief. Let's take a hypothetical Miami local  
18 calling area as established by BellSouth. We don't need  
19 to refer to maps, but just think in general terms of a  
20 local calling area established by BellSouth. And let's  
21 assume for purposes of this hypothetical that there is a  
22 larger local calling area established by Intermedia.  
23 Let's say you go all the way out to the LATA just for  
24 purposes of this discussion. And let's say that  
25 Intermedia sets forth an NPA-NXX of 305-555, okay?

1           A     Okay.

2           Q     So you would utilize that both inside and  
3 outside the BellSouth local calling area. Isn't it true,  
4 Mr. Jackson, that if Intermedia uses the same NPA-NXX  
5 outside the BellSouth calling area that BellSouth when it  
6 receives the traffic won't know whether it is local or  
7 intraLATA traffic?

8           A     Let me clarify part of your question,  
9 Mr. Kitchings. Did you say that Intermedia had a larger  
10 calling scope in that area than BellSouth did, if you  
11 overlay the two together?

12          Q     Yes.

13          A     And your question to me then is, again, I'm  
14 sorry?

15          Q     My question to you is if you had an NPA-NXX of  
16 305-555, fill in the blank after that, and you utilized  
17 305-555 both inside BellSouth's local calling area and  
18 outside BellSouth's local calling area, but still within  
19 your local calling area, which again goes all the way out  
20 to the LATA boundary. Isn't it true that BellSouth  
21 without more information would not know whether a call is  
22 local or intraLATA toll?

23          A     I don't know that to be true. I don't know. I  
24 just want to be sure that I can assign my NPA-NXX based on  
25 my needs. I'm not sure what -- not being a network

1 engineer, I don't know.

2 Q Isn't it true that switches route calls based on  
3 the NPA-NXX and not the entire telephone number?

4 A I know that certainly a portion of that is. You  
5 have tables and different switches that have NPAs and NXXs  
6 in them, but that is about the extent of my knowledge on  
7 it from a technical perspective.

8 Q Well, can we agree that switches route calls  
9 based on NPA-NXXs and not the entire telephone number?

10 A Yes. Generally, yes.

11 Q And isn't it also true hypothetically -- we will  
12 keep this the hypothetical world -- that if BellSouth  
13 can't determine the jurisdictionality of a call, it won't  
14 know whether to apply access charges or reciprocal  
15 compensation for a call?

16 A From an NPA-NXX perspective, I would assume so.  
17 I don't know whether there are other ways to accomplish  
18 that or not.

19 Q Okay. But to take this beyond the realm of  
20 BellSouth and Intermedia, if this were true for Carrier A  
21 and Carrier B. Those carriers wouldn't know how to bill  
22 those calls either, would they? Say independent  
23 companies, for example?

24 A Again, if you are only using the NPA-NXX, you  
25 may not be able to, but I don't know what other recourse

1 there is, so I don't know.

2 Q Okay. Let's move to Issues 29 and 30. What is  
3 homing?

4 A It is my understanding in a generic sense if I  
5 had an NPA-NXX, I basically choose where to -- I think in  
6 terminology homing means where that NPA-NXX resides, so to  
7 speak, I guess, so that calls can get to that end user or  
8 whatever.

9 Q What is multiple tandem access or MTA?

10 A My understanding from MTA, basically is that I  
11 can access multiple tandems, I can interconnect at one  
12 point of your network and then have access, I guess, to  
13 multiple tandems throughout your network.

14 Q Is it fair to say that MTA alleviates the need  
15 for an ALEC to establish interconnecting trunks at access  
16 tandems where the ALEC has no NPA-NXX codes homed, is that  
17 fair?

18 A I guess in some sense that is probably true.  
19 But from the standpoint if there was a great deal of  
20 traffic and you needed to direct trunk because of network  
21 blockage or whatever, there would maybe be a need to  
22 direct trunk to those other tandems.

23 Q Sure. But MTA is an option, it is not something  
24 that you have to do, is it?

25 A From my understanding that is what I understand.

1 Q What is the LERG?

2 A The local exchange routing guide, I believe, is  
3 what that stands for.

4 Q What does a carrier do with the LERG?

5 A I suppose on one hand a carrier, if they have  
6 NPAs and NXXs would somehow load information into that  
7 LERG saying that, you know, we have a CLLI code and an NPA  
8 and NXX here in this particular location based on VNH  
9 coordinates. And I assume it is used -- it says it is a  
10 routing guide, so it is used to route traffic.

11 Q Okay. So NPA-NXX codes are published in the  
12 LERG, aren't they?

13 A It is my understanding, yes.

14 Q Okay. And that is done so that all  
15 telecommunications companies in the industry will know  
16 where in the network to send calls and to know where the  
17 calls originated from, right?

18 A Yes.

19 Q Again, if BellSouth and other local exchange  
20 companies, independent companies, Intermedia to the extent  
21 it is operating as a local exchange, if they don't know  
22 where an NPA-NXX is homed, how can the traffic be  
23 delivered?

24 A I am not an engineer, I don't know.

25 Q Mr. Jackson, do you know what happens if calls

1 aren't appropriately routed?

2 A I guess they go somewhere else.

3 Q Well, I have had the experience. You get this  
4 nasty little recording that says your call cannot be  
5 completed as dialed. Please hang-up and dial again. If  
6 BellSouth customers get that sort of recording, isn't it  
7 fair to say they are not going to be very happy with  
8 BellSouth?

9 A Sure.

10 Q Again, much like the similar issues, weren't  
11 Issues 29, 30A and 30B withdrawn by Intermedia in North  
12 Carolina?

13 A I believe they were, yes.

14 Q Why were they not done so here?

15 A Again, upon review of what we did in North  
16 Carolina, and what I think that we are trying to  
17 accomplish, we to make sure that we have as much  
18 flexibility as possible in assigning our customers a  
19 telephone number that we need to for business reasons.  
20 Some customers prefer to have certain NPAs and NXXs and we  
21 want that type of flexibility.

22 Not being an engineer, I can't tell you whether  
23 SS7 allows you to accomplish something that maybe isn't a  
24 hard coded LERG routing guide today, but I want that  
25 flexibility. And I think we recognize a need for that and

1 that is why it is still here in Florida. We also have a  
2 lot more switches in Florida and different business needs  
3 here, and that may well play into some of it, too.

4 Q So is it more important in Florida than in North  
5 Carolina?

6 A I think it is important, period. I can't tell  
7 you whether it is more important or not. But I think we  
8 made a business decision that it is important enough to  
9 leave on the table here in Florida, it is important to us  
10 here.

11 Q Let's shift to Issue 32, the switched access  
12 traffic definition. Does Intermedia believe that IP  
13 Telephony should not be subject to switched access charges  
14 when those calls are interLATA in nature?

15 A I think our point is, frankly, that there has  
16 been no specific policy set on voice over IP as of yet,  
17 and that we don't believe that BellSouth is in the  
18 unilateral position to make that particular policy. And  
19 until such time as the FCC reviews it, we don't think that  
20 you should be making that determination.

21 Q What is Intermedia's position on it?

22 A I'm not sure at this point that we have a  
23 specific policy on it yet, and I think we are looking to  
24 see where the industry is headed and the regulatory bodies  
25 are headed.

1           Q     So it is Intermedia's position that the FCC has  
2 not spoken to this, is that correct?

3           A     It is my understanding that there hasn't been a  
4 specific categorization of voice over IP as of yet.

5           Q     Please look at Page 39 of your direct testimony,  
6 Line 8. Are you there?

7           A     Yes, I am.

8           Q     Is it your understanding that BellSouth wants to  
9 exclude or include IP Telephony in the definition of  
10 switched access?

11          A     Well, let me take a quick look. Hang on a  
12 second. Referring to the arbitration matrix that we used,  
13 and I'm reviewing both of the definitions for switched  
14 access traffic, and our definition was switched access  
15 traffic should be defined as telephone calls requiring  
16 local transmission of switching surfaces for the purpose  
17 of origination or termination of telephone toll service,  
18 including Feature Groups A, B, D, 800, 900, and their  
19 successors.

20               According to the arbitration matrix that we  
21 developed, it says here switched access traffic -- for  
22 BellSouth's position, switched access traffic should be  
23 defined in accordance with BellSouth's access tariff and  
24 should exclude IP Telephony, is what it says here.

25          Q     Would you accept, subject to check, that the



1 language that BellSouth has actually proposed, which is, I  
2 believe, restated in Mr. Varner's testimony, would include  
3 IP Telephony for purposes of access charges?

4 A Yes.

5 Q Okay. Moving to Issue 37, virtual circuits. We  
6 can agree that BellSouth can't carry traffic across LATA  
7 boundaries, can't we?

8 A Yes.

9 Q Now, Intermedia, I believe you said before  
10 that -- or maybe it was your counsel -- Intermedia acts as  
11 a local intraLATA and interLATA long distance carrier, is  
12 that correct?

13 A Yes. We provide both local and long distance  
14 service.

15 Q Can you explain what a virtual circuit is?

16 A I think in the terms of -- and, again, from a  
17 high level perspective, because I'm not an engineer, but  
18 it is my understanding that a hard circuit or a permanent  
19 circuit would be one that was in place constantly at all  
20 times. A virtual circuit is a circuit or a facility that  
21 would actually be created on, I guess, an as-needed basis.  
22 So if you wanted to send a burst of something from Point A  
23 to Point B, there would be a path for it. And once that  
24 burst of information has gone through, then it wouldn't  
25 necessarily still be resident as far as a permanent

1 circuit, or the way a permanent circuit would be.

2 Q Right. So there is no constant connection, is  
3 that correct, between the two?

4 A That is my understanding, yes.

5 Q So in the traditional sense, there are no  
6 minutes of use as such, right?

7 A That is my understanding, yes.

8 Q Okay. Now, who uses frame relay generally, Mr.  
9 Jackson, is it business or residence?

10 A I think typically it would be, Mr. Kitchings, a  
11 business customer, perhaps a bank that has a home office  
12 in a town and lots of branches around it. It needs to be  
13 transporting information on accounts back and forth  
14 between different branches. That would be on a local  
15 situation.

16 On a national scope, it could be the same kind  
17 of businesses that transmit a lot of information back and  
18 forth between branches, or locations, or even customers.

19 Q So we could agree, I assume, that frame relay is  
20 generally used for the high speed exchange of large  
21 amounts of data?

22 A Yes.

23 Q That lends itself, at least in my view, to being  
24 a business application. Using your hypothetical of a  
25 bank, wouldn't banks generally be transmitting data like

1 that all over to all of its various branches, perhaps  
2 throughout the state, throughout the region, throughout  
3 the country even?

4 A Yes, depending on whether it was a local, or a  
5 regional, or a national bank, yes. A local bank would  
6 probably predominantly transmit over on a local basis, a  
7 national one would have traffic over a national scope.

8 Q Okay. Let's go to the hypothetical realm again  
9 using a national bank instead of a local bank, but a  
10 national bank as a customer. Using that hypothetical bank  
11 as an example, can we agree that most of the traffic, the  
12 frame relay traffic would be interLATA in nature?

13 A Depending upon its business mix, it could be,  
14 certainly. If they had a lot of branches nationally and  
15 only a handful that would be resident within a particular  
16 local area, then perhaps, yes.

17 Q Now, Issue 38 has to do only with trunks that  
18 have been installed but there is no traffic flowing over  
19 those trunks, is that correct?

20 MR. CANIS: We closed that one.

21 MR. KITCHINGS: I apologize, I have gone beyond  
22 what I needed to on that. Strike that question, please.

23 Commissioner Jacobs, that concludes my cross  
24 examination of Mr. Jackson on direct.

25 Mr. Jackson, thank you very much.

1 THE WITNESS: Thank you.

2 COMMISSIONER JACOBS: Very well. Staff.

3 MR. VACCARO: Hi, Mr. Jackson. I'm Tim Vaccaro.  
4 Just a few questions.

5 CROSS EXAMINATION

6 BY MR. VACCARO:

7 Q Going back to Issue 26. If Intermedia plans to  
8 establish it's own local calling area and assign NPA-NXXs  
9 within that local calling area, does Intermedia have plans  
10 to provide information to LECs that will enable them to  
11 route and rate calls correctly?

12 A If we did that, I am sure that we would work  
13 with them to make sure the calls got routed properly. It  
14 wouldn't be good for either one of us if they didn't.

15 Q Okay. But you have no specific plans at this  
16 time?

17 A Not at this time. We just want to make sure we  
18 keep our options open on it.

19 Q And that goes for rating, also?

20 A Yes.

21 Q Okay. And then finally, I asked Mr. Milner a  
22 couple of questions earlier regarding Issue 10, and in  
23 particular I brought up the Commission's generic  
24 collocation proceeding, 981834. Were you here when I was  
25 discussing that with him?

1           A     Yes, sir, I was.

2           Q     Okay. And Intermedia is a party to that docket,  
3 also?

4           A     Yes.

5           Q     And, subject to check, you are aware that one of  
6 the issues asked what are the terms and conditions to  
7 apply for conversion of virtual to physical collocation?

8           A     Yes.

9           Q     And, in your opinion, will the Commission's  
10 decision on that issue have an effect on Issue 10 in this  
11 case?

12          A     It could well. I was just trying to think back,  
13 I was here for the collocation hearing back a couple of  
14 months ago, I suppose, and I was trying to remember  
15 whether this was an exact issue. But I assume that  
16 anything you did in that particular hearing or as a result  
17 of that hearing certainly could have an impact on this.

18               MR. VACCARO: No further questions.

19               COMMISSIONER JACOBS: Commissioner.

20               COMMISSIONER JABER: No.

21               COMMISSIONER JACOBS: One brief question. Would  
22 you -- are you proposing that in all traffic in every  
23 instance be subject to the tandem switching rate?

24               THE WITNESS: Yes, Commissioner, I am, because  
25 the way we have designed our network, our network

1 inherently performs an end office and tandem function, so  
2 in virtually all cases, since they can't be divorced, then  
3 all calls would be subject to that because we actually  
4 perform that function.

5 COMMISSIONER JACOBS: In earlier discussion,  
6 though, it sounds like there are instances where while it  
7 has the capability of performing that function, it won't  
8 do it for particular traffic, is that a correct analysis?

9 THE WITNESS: I'm trying to think of an instance  
10 where that would be the case, and I'm not sure you can  
11 divorce it. Whether it is our switch sitting in a  
12 geographic area overlaying, or our network overlaying  
13 BellSouth's, we have really two types of customers, there  
14 are two or three different ways we can get to customers,  
15 Commissioner Jacobs.

16 One would be where we have our switch and we  
17 have transport to collocations in end offices where we are  
18 operating in Bell territory, let's say. And in all cases  
19 where calls came from end user customers through our  
20 collocation point, through our switch, and then routed out  
21 to other local carriers, whether it be Bell or Sprint or  
22 GTE, all of those would have a tandem function performed  
23 from our perspective because that is inherent in our  
24 network.

25 I can't think even on customers that may be

1 collocated, I can't think of a situation where we don't  
2 take traffic in and route it such a way that we get it the  
3 right end user. Our switches perform, you know, both  
4 functions simultaneously and there is cost there  
5 associated with it. And so I can't think of an instance  
6 where it wouldn't apply.

7 COMMISSIONER JACOBS: Okay. I had intended to  
8 ask this question, and if need be we can deal with it on  
9 rebuttal for Mr. Milner. But in your testimony you  
10 referenced with regard to collocation charges, the charges  
11 for space preparation for physical collocation. And  
12 specifically on Page 17 of your direct it talks about what  
13 the proper charges should be. And you reference the fact  
14 that the current arrangements may not be equitable. Could  
15 you walk me through that.

16 THE WITNESS: Yes, sir, I can. I think in a  
17 nutshell, Commissioner Jacobs, what we are looking for  
18 here is when we go out to do a collocation -- I guess from  
19 a planning perspective we need to have a really good grasp  
20 of how much it is going to cost us from a planning  
21 perspective, because each one of them could be different  
22 or whatever. So I think we are looking for some ways to  
23 plan long-term.

24 So I think we would want to be able, first of  
25 all, to ensure that we have a price list, so to speak, in

1 all instances that tells us exactly what we could expect.  
2 I think we use the restaurant analogy at some point where  
3 we are talk about going into a restaurant and not knowing  
4 what different types of food would cost. The same things  
5 here, we just need -- from a planning perspective we don't  
6 want to be a in a situation where there is no way to  
7 determine that up front, and then we get the bill after we  
8 have already made the request. So I think we want to be  
9 very clear about that.

10 I think that perhaps you could take on a square  
11 footage basis and maybe prorate it out and come up with a  
12 common type of a charge. But for planning we need to be  
13 able to be pretty specific up front about the costs.

14 COMMISSIONER JACOBS: So, am I to take it then  
15 that regardless of what you are looking to do in terms of  
16 collocation, your estimate is automatically going to be  
17 this minimum fee? I guess it will vary according to what  
18 particular services or functions are going to be prepared,  
19 but let's look at the one that you reference here on Page  
20 17, which would be the HVAC mechanical.

21 Do I understand that what you are saying is what  
22 happens today is that if you ask for collocation and this  
23 service is required, that you automatically are going to  
24 get a bill for this amount regardless of what amount of  
25 work in that service was called for?



1           THE WITNESS: Yes, sir, I believe that is what  
2 we are trying to point out here. It seems like we are  
3 going to have a minimum for HVAC, you know, each time  
4 whether there is actually a necessity to do additional  
5 heating and air conditioning and ventilation for that  
6 area, so --

7           COMMISSIONER JACOBS: Once you go in and you  
8 actually confirm what the final requirements will be, can  
9 this be negotiated away, does that happen?

10          THE WITNESS: We have got a number of  
11 collocations that are in the process now, and I don't know  
12 whether that is actually happening. Again, I think the  
13 key point for us is charge us what is appropriate. Let's  
14 just make sure we are paying for the right thing every  
15 time and that we know how much we might have to -- if HVAC  
16 is on the list of things BellSouth has to do to prep that  
17 space, I will be glad to pay it, I just want to make sure  
18 that I know how much it is going to cost every time and  
19 that I'm not being billed for it when it is not  
20 necessarily needed.

21          And I think that was our point here. And if  
22 there is a project management charge, some may be larger  
23 than -- some situations, I think, this \$1,675 some project  
24 management fees may be appropriate at that rate, others  
25 may not. And I would just like to know I'm paying for

1 exactly what I'm getting. And I think that was our point  
2 here.

3 COMMISSIONER JACOBS: Okay. Let's see. That's  
4 it. Redirect.

5 MR. CANIS: Thank you.

6 REDIRECT EXAMINATION

7 BY MR. CANIS:

8 Q Mr. Jackson, I want to talk a little bit about  
9 the coverage area maps that you discussed with  
10 Mr. Kitchings, the ones that had the blue and the shaded  
11 areas and such. And I think Mr. Kitchings made the point  
12 with you that in some cases Intermedia's service area did  
13 not meet the entire scope of the BellSouth service area,  
14 is that true?

15 A Yes, I recall that.

16 Q Were there some other circumstances, though,  
17 where the Intermedia actually footprint went beyond the  
18 BellSouth service area?

19 A Yes. Again, in certain -- and particularly in  
20 places like Orlando, for instance, where there are other  
21 incumbent local exchange carriers, you know, as a part of  
22 that basic local calling area, we are serving Sprint  
23 areas, we are serving GTE areas, areas in which BellSouth  
24 may not serve. So, in fact, in some cases we are actually  
25 serving larger areas than their tandem may. And certainly

1 that meets the standards of geographic comparability.

2 Q And that was my next question. If we look at  
3 that rule of the FCC that determines whether you get paid  
4 at the tandem rate, Rule 51-711(a)(3), does that require  
5 that you serve exactly the same service territory as  
6 BellSouth?

7 A No, it does not. It talks about geographic  
8 comparability. And there is a difference between  
9 comparability and identicality. Like I said, in some  
10 cases we may have a hole here or there that we don't  
11 serve, but in many cases we serve areas that they don't.  
12 I think the standard is comparability, and I think we meet  
13 that in every instance in Florida.

14 Q The next issue I want to raise with you is the  
15 questions of unbundled network elements. And specifically  
16 do you recall your discussion with Mr. Kitchings where he  
17 walked you through an FCC rule, Rule 51.319(c)(2), where  
18 tandem switching was defined?

19 A Yes, I recall reading that.

20 Q I would like to ask you to read the text of some  
21 of this rule.

22 MR. CANIS: Your Honor, I only have one copy of  
23 this. May I approach the witness to have him read that?

24 COMMISSIONER JACOBS: Sure.

25 BY MR. CANIS:

1           Q     Now, Mr. Jackson, let me ask you to just read  
2 the title of that rule?

3           A     Yes. That is 51.319, that is specific  
4 unbundling requirements.

5           Q     And then could I ask you to read the first -- it  
6 is a fairly long rule. Could you read just the first  
7 sentence there?

8           A     Yes. "An incumbent LEC shall provide  
9 nondiscriminatory access in accordance with 51.311 of this  
10 part, and Section 251(c)(3) of the act to the following  
11 network elements on an unbundled basis to any requesting  
12 telecommunications carrier for the provision of a  
13 telecommunications service."

14          Q     Now, is it your understanding that Mr. Kitchings  
15 walked you through that, through that rule and the FCC's  
16 definition of tandem switching in order to say that  
17 Intermedia's switches have to do exactly what the FCC  
18 defined as tandem switching there in order to be  
19 functionally the same as a tandem switch and so you can  
20 get the tandem recip comp rate?

21          A     Yes.

22          Q     Do you know what the purpose of that rule is?

23          A     This is talking about incumbent LECs, and I  
24 don't know that it would pertain to CLECs at all.

25          Q     Well, and again, let me refer you back to that

1 first sentence. Could you read that to me one more time,  
2 please?

3 A Yes, sir. It says, "An incumbent LEC shall  
4 provide nondiscriminatory access in accordance with 51.311  
5 of this part, and Section 251(c)(3) of the act."

6 Q Now, the incumbent LEC is BellSouth, right?  
7 Intermedia is not an incumbent LEC, right?

8 A No, we are an ALEC as it is termed here in  
9 Florida, or a competitive LEC.

10 Q And also in that first sentence it talked about  
11 unbundling per Section 251(c) of the Communications Act.  
12 Isn't that the part of the act that applies only to the  
13 unbundling requirements of incumbent LECs and does not  
14 apply to CLECs or ALECs?

15 A I think, yes, certainly, yes.

16 Q So, in fact, would you accept, subject to check,  
17 that that rule is the FCC's rule whereby the FCC walks  
18 through the ILEC networks and defines how the incumbent  
19 LECs must break up their networks in order to provide  
20 different unbundled network elements?

21 A Yes. All the references here surrounding this  
22 Section 2 are referring to incumbent LECs.

23 Q So the definition -- is the Commission's  
24 definition of tandem switching as it applies in the rule  
25 that tells incumbent LECs how they must unbundle their

1 network relevant at all to Intermedia and its network?

2 A From my perspective it would not be.

3 Q I would like to talk a little bit about  
4 collocation, and specifically security issues involving a  
5 situation where Intermedia is virtually collocated, its  
6 equipment is in a bay right next to a BellSouth bay, and  
7 the issue here is can we convert that arrangement as is to  
8 a physical collocation arrangement, allow Intermedia's  
9 folks to come in and work on that equipment, or does that  
10 raise security concerns for BellSouth.

11 Do you recall Mr. Kitchings' question to you of  
12 how can BellSouth put a cage around its equipment when the  
13 equipment is bolted -- when the Intermedia equipment and  
14 the incumbent LEC equipment is bolted together, do you  
15 recall that?

16 A Yes, I do.

17 Q Are you aware of any situation in which a piece  
18 of Intermedia network equipment would actually be bolted  
19 together to a piece of BellSouth network equipment?

20 A No. I have walked through a number of collos  
21 and I have never seen that, but -- it's a no.

22 Q Have you seen carriers put enclosures, that is  
23 locked cabinet doors that cover one equipment bay and one  
24 equipment bay only?

25 A Yes, I have.

1           Q     So in that situation you can have one equipment  
2 bay, you can have one right here and one right here,  
3 loaded with Intermedia equipment here and BellSouth  
4 equipment here. You can leave the Intermedia equipment  
5 open and put a security door that just spans the bay  
6 housing the BellSouth equipment, isn't that the case?

7           A     Sure.

8           Q     Are you aware of any security concerns that  
9 would prevent Intermedia from taking a virtually  
10 collocated equipment where its equipment is in the bay  
11 next to BellSouth's and converting that to physical  
12 collocation so your technicians can go in and work on your  
13 equipment without putting the BellSouth equipment in  
14 jeopardy?

15          A     No. And conversely I'm not concerned about  
16 BellSouth, you know, hampering or bothering my equipment,  
17 either. I think, you know, that it has worked so far, I  
18 don't see there would be any problem with it.

19          Q     Now, I remember he had a couple of questions  
20 about the point of interconnection issue and why  
21 Intermedia agreed to withdraw that issue in North  
22 Carolina. Let me ask you very candidly, if you had it to  
23 do all over again would Intermedia have withdrawn that  
24 issue, or would it have continued to arbitrate that issue  
25 in North Carolina?

1           A     No, we would have left it as an arbitration, I  
2 think, in North Carolina.

3           Q     And what is it about the POI that has Intermedia  
4 concerned and why Intermedia is arbitrating that in this  
5 hearing?

6           A     That we want as much flexibility, first of all,  
7 as possible to build and locate our network and our  
8 assignment of telephone numbers as we can, and have that  
9 type of flexibility that we need to meet our business  
10 plans. So, I think that is why it is key here. It was  
11 key there, too.

12          Q     Also, isn't a new obligation to establish points  
13 of interconnection at every major access tandem and to  
14 trunk out to local tandems, isn't that a very expensive  
15 proposition for Intermedia?

16          A     Yes.

17          Q     Is that cost that Intermedia can avoid now  
18 because it doesn't have language like this in its existing  
19 interconnection agreement?

20          A     Yes, I think so.

21          Q     Do you know how long Intermedia has been  
22 interconnected with and passing traffic back and forth  
23 with BellSouth?

24          A     As I recall it was probably at least since 1996.  
25 It was after the act and after our first switches, which



1 incidentally were built here in Florida, went into effect.  
2 So probably Fall of '96.

3 Q Do you recall Mr. Kitchings referenced those  
4 nasty little signals you get when you pick up a phone call  
5 where the NPA-NXX has been mislabeled in the LERG and it  
6 says the call can't be completed as dialed?

7 A Yes, I recall that.

8 Q To your knowledge have there been a whole lot of  
9 those kinds of messages that have applied to Intermedia or  
10 BellSouth calls after the two companies started  
11 interconnecting?

12 A No, sir. And certainly not for routing issues  
13 to my knowledge, no.

14 Q So you guys -- in short, can you say you guys  
15 have been interconnected for going on four years now and  
16 it hasn't been a catastrophe?

17 A From that perspective, no.

18 Q One final question on frame relay. Mr.  
19 Kitchings talked to you about a large bank with a national  
20 presence. You are in Georgia, I guess it used to be the  
21 headquarters of NationsBank before it got bought out?

22 A I think everything got bought and headquartered  
23 in North Carolina now.

24 Q So NationsBank or whatever the bank is now, a  
25 very big bank, national, international presence, right?

1           A     Yes.

2           Q     Does NationsBank in Georgia have offices with a  
3 whole bunch of ATM machines scattered around the  
4 neighborhood?

5           A     Yes. In fact, I used those. And I have got  
6 some of their credit cards. And they seem to be on just  
7 about every corner in Atlanta.

8           Q     Does NationsBank use frame relay connections to  
9 connect its ATM machines back to its main office?

10          A     I would assume so.

11          Q     Are these local?

12          A     Well, certainly in Atlanta -- you used Atlanta  
13 as an example, but I live there, it is a big place. And  
14 there is a lot of local calling, I would assume, back and  
15 forth between those machines and the NationsBank Building  
16 downtown if that is where their computer resides. So, I  
17 would assume yes.

18          Q     So even big national banks and businesses can  
19 have a lot of local traffic, is that the case?

20          A     Yes. And I think that's a point I was trying to  
21 make earlier that, yes, there would be a mix in that case.  
22 Some business would have purely local, some may have no  
23 local at all, but many will have a mixture. And certainly  
24 many would have just a local presence.

25               MR. CANIS: Thank you, Mr. Jackson. Thank you,

1 Commissioners. No further redirect.

2 COMMISSIONER JACOBS: I show Exhibits 10, JCJ-1,  
3 and Exhibit 11, JCJ-2 have been marked. Without objection  
4 we will move those into the record.

5 MR. KITCHINGS: No objection.

6 (Exhibit 10 and 11 received in  
7 evidence.)

8 COMMISSIONER JACOBS: Great. You are dismissed,  
9 Mr. Jackson.

10 THE WITNESS: Thank you, Commissioners.

11 COMMISSIONER JACOBS: That completes your direct  
12 case, so I guess we are on rebuttal now. BellSouth.

13 - - - - -

14 (Transcript continues in sequence in Volume 4)

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1 STATE OF FLORIDA)

2 : CERTIFICATE OF REPORTER

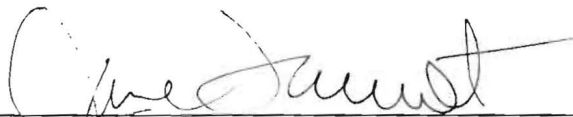
3 COUNTY OF LEON )

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

10 It is further certified that I stenographically  
11 reported the said proceedings; that the same has been  
12 transcribed under my direct supervision; and that this  
13 transcript, consisting of 134 pages, Volume 3 constitutes a  
14 true transcription of my notes of said proceedings and the  
15 insertion of the prescribed prefiled testimony of the  
16 witness(s).

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

22 DATED THIS 17TH DAY OF APRIL, 2000.

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JANE FAUROT, RPR  
FPSC Division of Records & Reporting  
Chief, Bureau of Reporting  
(850) 413-6732