BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of BellSouth Telecommunications, Inc. for Section 252(b) arbitration of interconnection agreement with Intermedia Communications, Inc.	DOCKET NO. 991854-TP ORDER NO. PSC-00-1519-FOF-TP ISSUED: August 22, 2000

The following Commissioners participated in the disposition of this matter:

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FINAL ORDER ON ARBITRATION

BY THE COMMISSION:

I. CASE BACKGROUND

On December 7, 1999, BellSouth Telecommunications Inc. (BST or BellSouth) filed a Petition for Arbitration pursuant to 47 U.S.C. 252(b) seeking arbitration of certain unresolved issues in the interconnection negotiations between BST and Intermedia Communications, Inc. (Intermedia). BST's petition enumerated ten issues. On January 3, 2000, Intermedia filed its response which contained an additional 38 issues to be arbitrated. At the issue identification meeting, the parties notified Commission staff that some of the 48 issues had been resolved and that many were under "active discussion." Additional issues were resolved prior to hearing. An administrative hearing was held on April 10, 2000 on the remaining issues. Subsequent to the hearing an additional issue was resolved by the parties. This Order sets forth our decisions on the remaining issues.

II. SUPPLEMENTAL AUTHORITY

On June 16, 2000, Intermedia filed a Motion for Leave to Submit Supplemental Authority. In particular, Intermedia seeks to introduce an order of the North Carolina Utilities Commission (NCUC), *In the Matter of Petition of BellSouth Telecommunications, Inc. For Arbitration of Interconnection Agreement with Intermedia Communications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket No. P-55, Sub 1178, Recommended Arbitration Order (rel. June 13, 2000) (NCUC Order). Intermedia states that by its order, the NCUC held in favor of Intermedia on several issues identical to those issues in Docket No. 991854-TP.

On July 12, 2000, Intermedia filed a Second Motion for Leave to Submit Supplemental Authority. In particular, Intermedia seeks to introduce an unreleased decision of the Georgia Public Service Commission (GPSC) in GPSC Docket No. 11644-U for the same purpose for which it filed its first motion regarding the NCUC Order. Intermedia attached the GPSC staff's recommendation upon which the GPSC's decision is based.

On June 23, 2000, BellSouth timely filed a response to Intermedia's first motion. BellSouth states that it does not object to Intermedia's submission of the NCUC Order, provided that we consider the order itself and not Intermedia's characterization of the order. BellSouth adds that we should look at the facts particular to Docket No. 991854-TP and states that we are not controlled by the NCUC Order. On July 18, 2000, BellSouth timely responded to Intermedia's second motion, basically reiterating the positions set forth in its response to Intermedia's first motion. BellSouth adds that we should not consider the implied assertion that the GPSC recommendation represents legal authority and notes that the GPSC has not yet issued a written order in that case.

Section 120.569(2)(i), Florida Statutes, provides that "[w]hen official recognition is requested, the parties shall be notified and given an opportunity to examine and contest the material." Intermedia has afforded BellSouth an opportunity to examine and contest the NCUC Order and the GPSC decision, and BellSouth does not object to permitting Intermedia to submit either item into this proceeding. Based on the foregoing, we hereby grant Intermedia's Motions for Leave to Submit Supplemental Authority. The NCUC Order and GPSC decision shall be given the weight they deserve.

III. ISP TRAFFIC

The issue before us is to determine if ISP-bound traffic should be included in the definition of "Local Traffic" for purposes of reciprocal compensation.

A. Analysis

BellSouth witness Varner states that "BellSouth simply wants to clearly state that ISP-bound traffic is not to be considered as local traffic as a definitional matter." Witness Varner contends that "this traffic is simply not local traffic and should be excluded from that definition." He offers the following definition of local traffic for inclusion in the Interconnection Agreement with Intermedia:

> Local Traffic is defined as any telephone call that originates in one exchange and terminates in either the same exchange, or other exchange within the same local calling area associated with the originating exchange as defined and specified in Section A3 of BellSouth's General

> Subscriber Service Tariff. As clarification of this definition and for reciprocal compensation, Local Traffic does not include traffic that originates from or is directed to or through an enhanced service provider or information service provider. As further clarification, Local Traffic does not include calls that do not transmit information of the user's choosing. In any event, neither Party will pay reciprocal compensation to the other if the "traffic" to which such reciprocal compensation would otherwise apply was generated, in whole or in part, for the purpose of creating an obligation on the part of the originating carrier to pay reciprocal compensation for such traffic.

Intermedia witness Jackson argues that "the definition of local traffic should include traffic that originates from or is carried to an Enhanced Service Provider (ESP) or Information Service Provider (ISP)." He contends that if BellSouth's definition of local traffic is adopted, Intermedia will have to terminate BellSouth's calls without being compensated. Witness Jackson explains:

> Because Intermedia is providing a service to BellSouth in helping to complete these calls, BellSouth must compensate Intermedia in the same manner as it does for every other 7-digit dialed call placed by a BellSouth customer that is handed off for delivery to one of Intermedia's customers. If such compensation is not paid by BellSouth to Intermedia, Intermedia would be forced to terminate service to its customers or provide service to BellSouth for free.

BellSouth witness Varner argues that "Intermedia's desire to be compensated for delivery of traffic to ISPs it serves should be addressed separately from the issue of defining local traffic." However, witness Varner contends that BellSouth disagrees that reciprocal compensation is the appropriate intercarrier compensation mechanism for ISP-bound traffic. He states that "[R]eciprocal compensation applies only where local traffic is terminated on either party's network." Witness Varner argues that

reciprocal compensation rules do not apply to ISP-bound traffic, citing FCC 96-325, ¶1034 which reads in part:

> We conclude that section 251(b)(5), reciprocal compensation obligation, should apply only to traffic that originates and terminates within a local area assigned in the following paragraph. We find that reciprocal compensation provisions of section 251(b)(5) for transport and termination of traffic do not apply to the transport and termination of interstate or intrastate interexchange traffic.

Intermedia witness Jackson argues that, "The 1996 Act defines the interconnection obligations of ILECs in very broad terms and does not exclude local calls to ISPs from interconnection and reciprocal compensation arrangements." BellSouth witness Varner, however, contends that these calls are not local traffic, and are therefore not subject to the reciprocal compensation obligations contained in Section 251 of the Act. Witness Varner asserts that, "Payment of reciprocal compensation for ISP-bound traffic is inconsistent with the law and is not sound public policy."

Intermedia witness Jackson contends that we should consider ISP-bound traffic as local for purposes of reciprocal compensation because "a contrary decision would result in a class of calls for which no compensation is provided to the CLEC." Witness Jackson argues that this finding would be inconsistent with the Act, which contemplates that carriers will receive compensation for the use of their networks either through access charges or reciprocal compensation. He states that, "Since CLECS do not receive access charges for transporting and terminating BellSouth-originated calls to CLEC ISP customers, it simply makes sense that reciprocal compensation should apply."

Witness Jackson argues that a ruling that ISP-bound traffic is not subject to reciprocal compensation would have an adverse effect on local competition, due to the increased costs of providing this service. He asserts:

> This will have the perverse effect of fewer carriers providing Internet service and a dramatic increase in the cost of Internet service to customers. Finally, compelling

> CLECS to provide service to BellSouth free of charge (in essence subsidizing BellSouth's operations) would have negative financial and other anticompetitive effects on the CLECS, and would violate the Communications Act of 1934, as amended, and the Fifth Amendment of the U.S. Constitution.

BellSouth witness Varner argues that for ISP-bound traffic, Intermedia is not providing service to BellSouth. He contends that Intermedia is providing service to the ISP, and the ISP pays Intermedia for that service. Witness Varner explains:

> The ALECs' ISP customers compensate the ALECs for services that are provided just like an ILEC's ISP customer compensates the ILEC. The ALECs' request for reciprocal compensation on ISP-bound traffic simply provides ALECs with unearned windfall revenues and further increases the unreimbursed cost of the ILEC.

Witness Varner likens ISP-bound traffic to long distance calls routed to an Interexchange Carrier (IXC), explaining:

> BellSouth's end user customers for local service are customers of the ISP for access to the Internet. This is the very same arrangement that you might have when an end user places a long distance call. They are a customer of the local company for their local service, but they are a customer of the IXC for their long distance service.

Witness Varner contends that just as an end user purchases its long distance service separately from its local service, so too does the end user purchase its ISP service separately from its local service. He states that "[T]he ISP, in turn, uses the revenues collected from their end users to pay for the exchange access service that the ISP gets from the local exchange company."

In addition, BellSouth witness Varner argues that the awarding of reciprocal compensation for ISP-bound traffic would create huge distortions in the marketplace. He states that paying reciprocal compensation for ISP-bound traffic would reduce the incentive for ALECs to serve residential and business customers that subscribe to

Internet service; it would result in a substantial subsidy to the ALEC; and it would distort the pricing of services to ISPs by allowing the ALEC to charge the ISP lower rates.

B. Decision

On February 26, 1999, the FCC released order FCC 99-38, its Declaratory Ruling in CC Docket Nos. 96-98 and 99-68, in which the FCC addressed to some degree the issue of inter-carrier compensation for ISP-bound traffic. Both parties cite to FCC 99-38 in framing their arguments on this issue. However, on March 24, 2000, the United States Court of Appeals for the District of Columbia Circuit vacated FCC 99-38 and remanded it back to the FCC. The Court found in part:

> Because the Commission has not provided a satisfactory explanation why LECs that terminate calls to ISPs are not properly seen as "terminat[ing] ... local telecommunications traffic," and why such traffic is "exchange access" rather than "telephone exchange service," we vacate the ruling and remand the case to the Commission. Bell Atlantic Telephone Companies v. Federal Communications Commission, 2000 U.S. App. LEXIS 4685, 26 (D.C. Cir. Mar. 24, 2000)

As a result of the Court vacating FCC 99-38, we did not consider testimony directly related to this Declaratory Ruling in forming our decision on this issue.

The parties have, however, raised several arguments as a result of FCC 99-38 being vacated. For example, Intermedia witness Jackson argues that "Intermedia should be compensated for the transport and termination of ISP traffic. The recent D.C. Circuit's decision mandates this conclusion." Witness Jackson contends that because the Court vacated FCC 99-38, it reinstates the two-call theory which affirms Intermedia's assertion that reciprocal compensation is due for ISP-bound traffic.

BellSouth witness Varner contests these conclusions, stating that "vacating the declaratory ruling does not resuscitate the two-call model. That model has been deemed inapplicable by several other FCC orders that remain in effect."

Section 252(d)(2) of the 1996 Act sets forth the conditions a state commission may use to determine whether the terms and conditions for reciprocal compensation are just and reasonable. Whether reciprocal compensation is appropriate for ISP-bound traffic, however, is still a matter of contention. Although we have the authority to act on this issue absent a decision by the FCC, we find that the lack of compelling evidence prevents us from making a determination of whether or not ISP-bound traffic should be included in the definition of "Local Traffic" for purposes of reciprocal compensation. Therefore, the parties shall continue to operate under the terms of their current interconnection agreement as it relates to this issue until the FCC issues its final ruling on whether ISP-bound traffic should be defined as local or whether reciprocal compensation is due for this traffic. We note that this issue is currently being investigated on a generic level in Docket No. 000075-TP, In re: Investigation into appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Telecommunications Act of 1996 and hope to have some resolution of this matter in the near future.

IV. COMPENSATION FOR END OFFICE, TANDEM AND TRANSPORT ELEMENTS

The issue before us is to determine if Intermedia should be compensated for the end office, tandem and transport rate elements, for purposes of reciprocal compensation. In contention is the appropriate application of 47 C.F.R. § 51.711(Rule 51.711) and the related discussion within the FCC's First Report and Order issued in CC Docket No. 96-98(FCC 96-325). Rule 51.711 reads in part:

> Where the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate. 47 C.F.R. § 51.711 (a)(3).

FCC 96-325 reads in part:

> We find that the "additional costs" incurred by a LEC when transporting and terminating a call that originated on a competing carrier's network are likely to vary depending on whether tandem switching is involved. We, therefore, conclude that states may establish

> transport and termination rates in the arbitration process that vary according to whether the traffic is routed through a tandem switch or directly to the end-office switch. In such event, states shall also consider whether new technologies (e.g., fiber ring or wireless networks) perform functions similar to those performed by an incumbent LEC's tandem switch and thus, whether some or all calls terminating on the new entrant's network should be priced the same as the sum of transport and termination via the incumbent LEC's tandem switch. Where the interconnecting carrier's switch serves a geographic area comparable to that served by the incumbent LEC's tandem switch, the appropriate proxy for the interconnecting carrier's additional costs is the LEC tandem interconnection rate. FCC 96-325, ¶1090.

A. Analysis

Intermedia witness Jackson states that "Intermedia's position is that it is entitled to compensation at BellSouth's tandem interconnection rate if Intermedia's switch serves a geographic area comparable to the area served by BellSouth's tandems." Witness Jackson argues that this position is supported by FCC Rule 51.711.

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

> A tandem switch connects one trunk to another trunk and is an intermediate switch or connection between an originating telephone call location and the final destination of the call. An end office switch is connected to a telephone subscriber and allows the call to be originated or terminated. If Intermedia's switch is an end-office switch, then it is handling calls that originate from or terminate to customers served by that local

> switch, and thus Intermedia's switch is not providing a tandem function.

Witness Varner states that "Intermedia's switch is not providing a common transport or tandem function, but is switching traffic through its end office for delivery of that traffic from that switch to the called party's premises." He contends that Intermedia seeks to be compensated for equipment it does not own and for functions it does not perform.

Intermedia witness Jackson argues that Intermedia performs the same functions, but not necessarily in the same manner in which BellSouth does. Witness Jackson contends that newer technologies such as fiber optic and multi-functional switching platforms have allowed Intermedia to serve large areas with fewer switches than would be necessary under the older technology. He states that, "These switches perform the same functions of traditional tandem switches, including aggregation. In addition, Intermedia's switching platforms meet the definition and perform the same functions identified within the Local Exchange Routing Guide (LERG) for tandem offices and for Class 4/5 switches."

BellSouth witness Varner counters, stating that "just because the switch is capable of doing that doesn't mean that Intermedia is making use of that function and is, in fact, providing that function." He argues that "Intermedia's switch is an end office switch that is handling calls originating from or terminating to customers served by that local switch."

While maintaining the position that similar functions are performed by Intermedia's switch, Intermedia witness Jackson contends that "a showing of functional similarity is not required in order for a competitor to demonstrate that it is entitled to reciprocal compensation at the tandem level under the FCC's rules." He states:

> According to the FCC's very clearly stated rule [51.711], the question is not whether the switch is used in the precise same manner that an ILEC uses its tandem switches, but rather whether a CLEC switch serves an area comparable in geographic scope to BellSouth's tandem.

Witness Jackson further asserts that "as demonstrated by Intermedia, its switches serve a geographic area comparable to that served by BellSouth's tandem switches, Intermedia should be compensated at the composite tandem rate."

BellSouth witness Varner argues that when the FCC is speaking of a switch in Rule 51.711, it is talking about a switch that provides the tandem function. He argues that just serving the area is not sufficient. When answering questions regarding maps provided by Intermedia depicting geographic areas served by Intermedia's switches, however, witness Varner argues that "all three of these maps really show an area that Intermedia says that it is willing to provide service or offer service in. It doesn't identify where they are actually providing service, whether they are actually providing service to customers in those areas." Witness Varner asserts:

> Intermedia claims that its switches are capable of serving areas comparable to BellSouth's tandems. However, that finding is insufficient. Any modern switch is capable of doing this. The issue is does it actually serve customers in an area that is comparable. And I submit that Intermedia's switches do not.

Witness Varner further states:

> Even if one were to assume that Intermedia's switch covers a geographic area similar to BellSouth's tandem, unless Intermedia's switch is performing tandem functions, which the FCC has indicated is one of the required criteria that an ALEC's switch must meet, Intermedia is not eligible for the tandem switching element of reciprocal compensation.

B. Decision

In evaluating this issue, we are presented with two criteria set forth in FCC 96-325, ¶1090, for determining whether symmetrical reciprocal compensation at the tandem rate is appropriate: similar functionality and comparable geographic areas.

Witness Jackson claims that Intermedia's switch performs the functions of both an end office and tandem switch. Describing the capabilities of its single-switch network, Intermedia witness Jackson states:

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

Witness Jackson further explains that the larger capacity of Intermedia's switch and its newer network architecture negate the need for a separate tandem switch. We do not believe that this equates to performing a tandem function. Because a tandem switch functions by connecting one trunk to another trunk as an intermediate switch between two end office switches, we agree with BellSouth witness Varner who states that "[S]ince Intermedia has only one local switch in each local calling area, these end office switches cannot be performing a local tandem function."

Intermedia provides evidence that there are two switches operating within its network in the Orlando area. There is, however, no evidence that either of these switches functions as a local tandem. Based on the foregoing, we find that the evidence of record shows that Intermedia's switch does not perform the function of a local tandem switch, but rather serves as an end office switch connected to telephone subscribers allowing calls to be originated or terminated.

Referring to FCC Rule 51.711, Intermedia witness Jackson argues that "a showing of functional similarity is not required in order for a competitor to demonstrate that it is entitled to reciprocal compensation at the tandem level under the FCC's rules." He argues that Rule 51.711 clearly states that the question is not whether the switch is used in the precise manner of a tandem switch, but rather if it serves a comparable geographic area as that of a tandem switch. In support of its position, Intermedia provides as evidence, maps depicting the local calling areas of Intermedia's switches overlaid against the local calling areas served by BellSouth's tandem switches.

These maps indicate that Intermedia has established local calling areas that are comparable to those of BellSouth. We have difficulty, however, assessing from these maps whether Intermedia's switch actually serves these areas. We find BellSouth's argument more compelling, as witness Varner contends:

> Intermedia claims that its switches are capable of serving areas comparable to BellSouth's tandems. However, that finding is insufficient. Any modern switch is capable of doing this. The issue is does it actually serve customers in an area that is comparable. And I submit that Intermedia's switches do not.

We find the evidence of record insufficient to determine if the second, geographic criterion is met. We are unable to reasonably determine if Intermedia is actually serving the areas they have designated as local calling areas. As such, we are unable to determine that Intermedia should be compensated at the tandem rate based on geographic coverage.

As mentioned above, neither do we find sufficient evidence in the record indicating that Intermedia's switch is performing similar functions to that of a tandem switch. Therefore, we are unable to find that Intermedia should be compensated at the tandem rate based on similar functionality as well. This is consistent with past decisions of this Commission.

In Order No. PSC-96-1532-FOF-TP, issued December 16, 1996, in Docket No. 960838-TP, we stated at page 4 that "the Act does not contemplate that the compensation for transporting and terminating local traffic should be symmetrical when one party does not actually use the network facility for which it seeks compensation." Again, in Order No. PSC-97-0294-FOF-TP, issued March 14, 1997, in Docket No. 961230-TP, we concluded at page 10:

> We find that the Act does not intend for carriers such as MCI to be compensated for a function they do not perform. Even though MCI argues that its network performs 'equivalent functionalities' as Sprint in terminating a call, MCI has not proven that it actually deploys both tandem and end office switches in its network. If these functions are not

> actually performed, then there cannot be a cost and a charge associated with them. Upon consideration, we therefore conclude that MCI is not entitled to compensation for transport and tandem switching unless it actually performs each function.

FCC 96-325 states in part:

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

Based on the foregoing, we find that Intermedia does provide transport from the interconnection point between the two carriers to its end office switch, and as such, is entitled to be compensated at the transport and end office rates, for purposes of reciprocal compensation. Nevertheless, we do not find support in the record that Intermedia should be compensated at the tandem rate for purposes of reciprocal compensation.

V. CONVERSION OF VIRTUAL TO PHYSICAL COLLOCATION

The collocation policies which appear to be at issue here are those that concern the conversion of virtual collocation to physical collocation without moving the equipment from one point in a BellSouth central office to another point.

A. Analysis

BellSouth witness Milner indicates that the terms and conditions that should apply for converting virtual to physical collocation should be consistent with the terms and conditions of the assessment and provisioning of physical collocation. Thus, an application for a conversion would be evaluated just as an application for physical collocation. He explains that this conversion process gives BellSouth the ability to manage its space in the most efficient manner possible and allows BellSouth to handle each request for a physical collocation arrangement in the

same non-discriminatory manner as required by the Telecommunications Act of 1996.

BellSouth allows the conversion of a virtual collocation arrangement to a physical collocation arrangement without requiring the relocation of the equipment when three conditions are met. According to witness Milner, those conditions are:

> (1) there is no change to the arrangement; (2) the conversion of the virtual arrangement would not cause the arrangement to be located in the area of the premises reserved for BellSouth's forecast of future growth; and (3) due to the location of the virtual collocation arrangement, the conversion of said arrangement to a physical arrangement would not impact BellSouth's ability to secure its own facilities.

Witness Milner explains that there is one additional caveat: "Notwithstanding the foregoing, if the BellSouth premises is at or nearing exhaust, BellSouth may authorize the conversion of the virtual arrangement to a physical arrangement even though BellSouth could no longer secure its own facilities."

Intermedia indicates that conversions of virtual collocation arrangements to physical collocation arrangements should not give rise to additional costs, delays, and service interruptions. According to witness Jackson:

> 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.

Based on the cross-examination of witness Jackson and Intermedia's post-hearing brief, it appears that Intermedia agrees with BellSouth on two points. First, witness Jackson agrees that the FCC has given incumbent LECs the right to reserve space for their own future use. Second, the witness agrees that the FCC also granted incumbents the right to take appropriate steps to ensure the security of their own equipment, including allowing the incumbent to enclose its equipment in its own cage. In its brief

Intermedia states: ". . . Intermedia is willing to agree that "in place" conversions will be allowed if (a) Intermedia does not increase the amount of space it occupies, and (b) any changes to the arrangement can be accommodated by existing power, HVAC, and other requirements."

Intermedia disagrees with BellSouth on two points, however. First, BellSouth witness Milner states that conversion in place is contingent upon there being ". . . no extenuating circumstances or technical reasons that would make the arrangement a safety hazard . . . ." Intermedia believes these contingencies are ambiguous. Second, Intermedia believes that by suggesting it is impossible to secure BellSouth's equipment if it is bolted to an ALEC's virtually collocated equipment, BellSouth is suggesting that conversion of virtual collocation arrangements to physical collocation arrangements will always necessitate relocation of the ALEC's equipment.

B. Decision

The identical issue to be decided here was recently decided in our generic collocation proceeding, by Order No. PSC-00-0941-FOF-TP, issued May 11, 2000, in Dockets Nos. 981834-TP and 990321-TP. The parties in this docket were also parties in the generic collocation proceeding. When witness Milner was asked if a decision by the Commission on Issue 5 in the generic collocation docket would resolve the issue in this proceeding, he replied:

> . . . I will say that the issue and the factors affecting the outcome of the issue are identical in the generic collocation case as we are discussing here. . . . all the facts, I believe, and the situation is exactly the same.

In response to the same question witness Jackson replied: ". . . I assume that anything you did in that particular hearing or as a result of that hearing certainly could have an impact on this."

By Order No. PSC-00-0941-FOF-TP, issued May 11, 2000, we concluded the following regarding generic policies for conversion of virtual to physical collocation at pages 29-31:

- There should be minimal interruption to the ALEC's services during a conversion and that the ownership and maintenance responsibilities should be changed when a collocation

conversion is requested by an ALEC, because in a virtual collocation arrangement, the ALEC has no access to the ILEC's premises, unlike a physical collocation arrangement. Therefore, the ILEC would transfer its ownership and responsibilities of the collocation arrangement to the ALEC;

- The terms and conditions for converting virtual collocation to either physical caged or physical cageless collocation should be differentiated. In addition, the conversions should be evaluated as to whether there are extenuating circumstances or technical reasons that would cause the arrangement to become a safety hazard within the premises or otherwise conflict with the terms and conditions of the collocator's collocation agreement;

- A collocation "conversion" or "rearrangement" application (CCA) should be submitted in order to keep a record of what has been requested by the ALEC, and the acceptance or denial response by the ILEC;

- Changes such as administrative, billing, and engineering record updates are necessary changes that are required to effectuate the conversion from virtual to physical collocation, be it a change in place or otherwise;

- If there are no physical changes required by the ILEC to the collocation arrangement, the only charges that should apply are for the administrative, billing, and engineering record updates. Further, when converting from virtual to caged physical collocation, additional space and construction considerations must be taken into account. Administrative costs should be negotiated in an interconnection agreement;

- If there are changes to the collocation configuration being requested, an application fee is appropriate. The ILEC must inform a requesting ALEC within 15 calendar days of its request whether its collocation conversion application is accepted or denied, and provide sufficient information for the ALEC to place a firm order;

- ILECs cannot require that all physical collocation arrangements be located in a segregated collocation area. The ILECs must utilize any unused space for physical collocation. The ALEC's equipment may remain in place even if it is in the

ILEC's equipment line-up when converting from virtual to cageless physical collocation and no changes are required;

- When converting from virtual to cageless physical collocation and the ALEC is asking to place additional equipment, acquire additional space, or the ILEC must perform work on the equipment to effectuate the conversion, these situations should be handled on a case-by-case basis to be negotiated by the parties; and

- When converting from virtual to caged physical collocation, the ALEC equipment should be relocated because construction of a cage will require additional space.

We find that the evidence supports application of our decisions in the generic collocation dockets in this proceeding. By our decisions, we have established the policies which BellSouth must adopt and apply consistently with regard to conversion of virtual to physical collocation. To apply a different standard in the present docket would be inconsistent, unduly burdensome and would make little sense. We do note that parties in the generic collocation docket have sought reconsideration of Order No. PSC-00-0491-FOF-TP. Nevertheless, the ultimate outcome will be the same -- establishment of generic policies applicable to physical collocation in Florida. Therefore, we find it appropriate to adopt in this proceeding our final decisions in Dockets Nos. 981834-TP and 990321-TP.

VI. DEFINITION OF "CURRENTLY COMBINES"

The issue before us is to determine the appropriate definition of "currently combines" pursuant to FCC Rule 51.315(b). FCC Rule 47 C.F.R. §51.315(b) reads:

> Except upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines.

The parties dispute whether the definition of "currently combines" pursuant to FCC Rule 51.315(b) should be limited to those combinations that currently exist in BellSouth's network to serve a particular customer at a particular location or, more expansively, whether the definition of "currently combines" should be construed to include all of the UNE combinations that BellSouth customarily combines to provide services to its customers.

A. Analysis

BellSouth witness Varner argues that BellSouth is only obligated to provide combinations to Intermedia at TELRIC-based prices if the elements are already combined and providing service to the customer. He further clarifies this to mean that if the combination is to be provided at TELRIC-based prices, then no physical work would have to be performed to effect the combination. Therefore, BellSouth's definition of "currently combines" is limited to combinations that currently exist to serve a particular customer at a particular location. Accordingly, BellSouth proposed the following language to Intermedia which includes its definition of "currently combines":

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

Intermedia witness Jackson argues that BellSouth should be required to make available to Intermedia all UNEs that BellSouth customarily combines as a matter of course in providing service to its own customers. He further argues that if a retail customer can order a service from BellSouth that is essentially equivalent to a combination of UNEs, BellSouth should also make that combination available to Intermedia as a UNE combination. Therefore, Intermedia's definition of "currently combines" in FCC Rule 51.315(b) includes all of the UNE combinations that BellSouth "customarily combines" which can yield any service currently

offered in BellSouth's tariff, not just a specific end use customer. He states:

> . . .I don't believe that currently combined, based on what the FCC has said, has to be for an existing customer at an existing location that service is currently combined. It is my interpretation, and I think rightfully so, that currently combined could mean any service offering that you have that is combined that is offered, not just on a customer-specific basis.

Witness Jackson further asserts:

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

He further adds:

> 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 the FCC's UNE Remand Order. But BellSouth wants to limit this as much as possible so BellSouth is not willing to provide to Intermedia at UNE rates elements that can be ordered, for example, on a combined basis from BellSouth's special access tariff if those elements are not actually already combined.

Witness Jackson indicates that we should also take a more expansive view with respect to the offerings of combinations of elements as UNEs. He states that this Commission could decide that certain combinations, for example the loop and transport combination that enhanced extended links (EELs) comprise, are so crucial to the development of competition in Florida that they should be offered as UNEs without restrictions.

BellSouth witness Varner argues that Intermedia has not offered any evidence to support its positions. He states:

> Ordering BellSouth to provide combinations of elements to ALECs when such combinations do not already exist is unsupported by the Act or by the FCC's rules. As I stated in my direct testimony, the FCC confirmed that BellSouth presently has no obligation to combine network elements for ALECs, when those elements are not currently combined in BellSouth's network. The FCC made clear in its UNE Remand Order that Rule 315(b) applies to elements that are "in fact" combined. The FCC declined to adopt a definition of "currently combined" that would include all elements "ordinarily combined" in the incumbent's network, which is the definition advocated by Intermedia.

Witness Varner further argues:

> The FCC also confirmed that "except upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines." 47 C.F.R. §51.315(b). For example, when a loop and a port (at least for certain customers with fewer than four access lines) are currently combined by BellSouth to serve a particular customer, that combination of elements must be made available to requesting carriers.

B. Decision

We agree that the FCC declined to comment on what is specifically meant by its Rule 51.315(b). In paragraphs 479 and 480 of the UNE Remand Order, the FCC states:

> A number of commenters argue that we should reaffirm the Commission's decision in the *Local Competition First Report and Order*. In that order the Commission concluded that the proper reading of "currently combines" in rule 51.315(b) means "ordinarily combined within their network, in a manner which they are typically combined." Incumbent LECs, on the

> other hand, argue that rule 51.315(b) only applies to unbundled network elements that are currently combined and not to elements that are "normally" combined. Again, because this matter is currently pending before the Eight Circuit, we decline to address these arguments at this time. FCC 99-238, ¶479.

The FCC further states:

> . . .To the extent an unbundled loop is in fact connected to unbundled dedicated transport, the statute and our rule 51.315(b) require the incumbent to provide such elements to requesting carriers in combined form. Thus although in this Order, we neither define the EEL as a separate unbundled network element nor interpret rule 51.315(b) as requiring incumbents to combine unbundled network elements that are "ordinarily combined," we note that in specific circumstances, the incumbent is presently obligated to provide access to the EEL. In particular, the incumbent LECs may not separate loop and transport elements that are currently combined and purchased through the special access tariffs. Moreover, requesting carriers are entitled to obtain such existing loop-transport combinations at unbundled network element prices. FCC 99-238, ¶480.

In addition, we note that in AT&T Corp. v. Iowa Utils. Bd., 525 U.S. 366 (1999), the Supreme Court ruled that FCC Rule 51.315(b) is a reasonable interpretation of Section 251(c)(3) of the Act, which establishes the duty to provide access to network elements on nondiscriminatory rates, terms, and conditions and in a manner that allows requesting carriers to combine such elements. However, the Supreme Court provided no guidance on how "currently combines" should be interpreted. AT&T Corp. at 393-395.

As discussed above, the appropriate definition of "currently combines" pursuant to FCC Rule 51.315(b) is currently pending before the Eighth Circuit Court. Until the Eighth Circuit Court renders its decision, where combinations are in fact already

combined and existing within BellSouth's network, we find, at a minimum, that BellSouth shall be required to make those combinations available to requesting telecommunications carriers in that combined form at UNE rates.

VII. ACCESS TO ENHANCED EXTENDED LINKS (EELS) AT UNE RATES

The issue before us is to determine whether BellSouth should be required to provide Intermedia with EELS at UNE rates. Intermedia witness Jackson states that Intermedia has proposed language in accord with Paragraph 480 of the UNE Remand Order, which clarifies that, pursuant to 47 C.F.R. Section 51.315(b), ALECs may purchase already-combined loop and dedicated transport network elements at UNE prices.

According to the testimony of BellSouth witness Varner, BellSouth realizes its responsibility to provide access to EELs. Witness Varner states that BellSouth agrees that it is required to provide access to enhanced extended links at cost-based rates where the combination currently exists in BellSouth's network. He states:

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

Witness Varner adds:

> First, the FCC declined to define the EEL as a separate network element in its UNE Remand Order. (Para 478) Accordingly, except to the extent where currently combined elements in BellSouth's network that comprise an EEL are located, BellSouth currently has no obligation to provide ALECs with the EEL.

Intermedia, on the other hand, wants the right to order loop and transport combinations as UNEs if BellSouth "customarily combines" loop and transport elements in its special access tariff. Intermedia witness Jackson states:

> If a loop-transport arrangement that is essentially identical to a UNE EEL can be ordered as a special access service, Intermedia believes that BellSouth "currently combines" those network elements for itself, and should be required to make them available as a UNE combination to Intermedia at UNE prices.

Intermedia witness Jackson contends that BellSouth wants to strictly limit EELs to those combinations that are already combined and in use for a particular customer. He explains:

> So if BellSouth has a special access arrangement with a given customer that combines the loop and transport elements, Intermedia could convert that existing arrangement to a UNE EEL, but Intermedia would not be able to order another UNE EEL for that same customer, or for another customer that did not have an existing special access arrangement.

Witness Jackson also contends that we should consider making UNE EELs more readily available to ALECs in Florida so that ALECs can compete effectively with BellSouth.

BellSouth witness Varner counters:

> Intermedia uses the same argument it made in the previous issue to support its contention that BellSouth must provide Intermedia with combinations of loop and transport at UNE rates anywhere in BellSouth's network. The fact that BellSouth offers tariffed special access service does not entitle Intermedia to order new installations of such service as combinations at UNE rates. In any event, as I explained in my direct testimony, the FCC specifically constrained the ALECs' ability to even convert special access facilities to unbundled elements.

Witness Varner further contends that, at a minimum, it would be "nonsensical" to think that this constraint does not extend to new

installations of special access service. He asserts that BellSouth is not obligated to combine UNEs for ALECs.

B. Decision:

In regard to Intermedia witness Jackson's contention that BellSouth must provide Intermedia with combinations of loop and transport at UNE rates anywhere in BellSouth's network, BellSouth witness Varner argues that BellSouth is not obligated to combine UNEs for ALECs. We note that FCC rules 51.315(c)-(f) did require incumbent LECs to combine unbundled network elements in any manner, even if those elements are not currently combined. However, as discussed in the UNE Remand Order, FCC Rules 51.315(b)-(f) regarding incumbent LEC provisioning of combinations were vacated by the Eighth Circuit Court and remain vacated, except for rule 315(b), which was reinstated by the Supreme Court. FCC 99-238, ¶475. Although reconsideration may be given to these rules, at this time incumbent LECs are not required to combine network elements for other telecommunications carriers. Furthermore, we note that in its UNE Remand Order, the FCC declined to define the EEL as a separate network element.

Paragraph 480 of the FCC's UNE Remand Order reads:

> We note that in the *Local Competition First Report and Order*, and again in this proceeding, we identify the loop and dedicated transport as separate unbundled network elements. . . .To the extent an unbundled loop is in fact connected to unbundled dedicated transport, the statute and our rule 51.315(b) require the incumbent to provide such elements to requesting carriers in combined form. Thus although in this Order, we neither define the EEL as a separate unbundled network element nor interpret rule 51.315(b) as requiring incumbents to combine unbundled network elements that are "ordinarily combined," we note that in specific circumstances, the incumbent is presently obligated to provide access to the EEL. In particular, the incumbent LECs may not separate loop and transport elements that are currently combined and purchased through the special access tariffs. Moreover,

> requesting carriers are entitled to obtain such existing loop-transport combinations at unbundled network element prices. FCC 99-238.

The UNE Remand Order clearly outlines the terms and conditions under which an incumbent LEC must provide access to EELs. That is, an incumbent LEC is required to provide access to EELs and combinations that comprise the EEL that are currently combined and existing in its network. The Order makes no reference to combining unbundled network elements in order to form an EEL for requesting telecommunications carriers.

We have addressed the issue of EELs being made available as UNEs in Dockets Nos. 990691-TP and 990750-TP. Subsequently, in Orders Nos. PSC-00-0128-FOF-TP and PSC-00-0537-FOF-TP, we found that, as a general matter, BellSouth was not required to provide EELs as UNEs.

Witness Jackson agrees that BellSouth has no current obligation to provide ALECs with an EEL under the FCC's Orders and Rules.

> Q: Mr. Jackson, same order. Can we agree that the FCC declined to define the EEL as a separate network element in its UNE remand order?
>
> A: Yes.
>
> Q: So, BellSouth has no current obligation to provide ALECs with an EEL under the FCC's order and rules, is that correct?
>
> A: Yes.

Intermedia has not demonstrated that BellSouth is required to provide access to EELs formed by combining loop and transport network elements customarily combined in BellSouth's special access tariff at UNE rates. Witness Jackson's arguments were unsubstantiated and unpersuasive. The FCC's UNE Remand Order clearly states the circumstances under which an incumbent LEC is required to provide access to the EEL at UNE rates to requesting telecommunications carriers. Moreover, witness Jackson agrees that the state of the law does not impose a requirement on incumbent LECs to provide ALECs with EELs nor does it define the

EEL as a separate network element. Therefore, per FCC Order No. 99-238, BellSouth shall be required to provide access only to EELs that are "currently combined" within its network at UNE rates.

VIII. CONVERSION OF SPECIAL ACCESS SERVICES TO EELS

This issue requires us to determine whether BellSouth should be required to allow Intermedia to convert existing special access services to EELs at UNE rates.

A. Analysis

Neither party presented much testimony on this issue. BellSouth witness Varner states that the issue of conversion of special access service to EELs at UNE rates is the subject of a proposed rulemaking at the FCC. He further states that until that rulemaking is complete, ALECs may not convert special access to combinations of UNEs unless the ALEC uses the combination to provide a significant amount of local exchange service, in addition to exchange access service, to a particular customer. He explains:

> On the surface, it would appear that when an ALEC has purchased currently combined elements that may comprise the EEL, the ILEC would have to provide that combination at cost based prices. However, an ALEC's ability to convert special access facilities to unbundled elements is constrained at least until the FCC completes its Fourth Notice of Proposed Rulemaking. (Para. 489) The FCC ordered such constraints in order to allow the FCC to develop an adequate record to examine the concern "that allowing requesting carriers to obtain combinations of loop and transport unbundled network elements based on forward-looking cost would provide opportunities for arbitrage of special access services," and thereby negatively impact universal service. (UNE Remand Order, Para 494; November 24, 1999 Supplemental Order, Para 4) Until that rulemaking is complete, the FCC has made clear that carriers may not convert special access services to combinations of unbundled network elements unless the carrier uses combinations of network elements to provide a significant

> amount of local exchange service, in addition to exchange access service to a particular customer. (November 24, 1999 Supplemental Order Paras. 2 & 4)

Intermedia witness Jackson states that BellSouth wants to limit EELs strictly to those combinations that are already combined and in use for a particular customer. He clarifies that if BellSouth has a special access arrangement with a given customer that combines the loop and transport elements, BellSouth would allow Intermedia to convert that existing arrangement to a UNE EEL, but Intermedia would not be able to order another UNE EEL for that same customer, or for another customer that did not have an existing special access arrangement.

Witness Varner responds that in every instance where a customer has an existing special access arrangement, the ALEC serving that customer is not automatically eligible to obtain that arrangement as an EEL. He explains:

> In fact, it is the opposite. It is clear that in most cases [the ALEC(s)] are not. Because it's special access. And the fact that it is special access means that it has been predominantly used for long distance. And what the FCC has said is that, okay, special access service -- we are not going to require special access to be converted to EELs until we finish this rulemaking so that we can establish what the consequences of that are and under what conditions that can occur.

Witness Varner further explains that as of today, BellSouth is not obligated to convert special access circuits to EELs, unless the ALEC certifies that it is carrying a significant amount of local traffic. In regard to what constitutes a significant amount of local traffic, he states:

> However, the FCC has not yet been able to make a determination as to what constitutes a significant amount of local traffic in order to effect that rule. That is what they are in the process of doing now.

Witness Varner gives an example of one exception where it is clear that an ALEC is providing a significant amount of local traffic, in which case BellSouth is willing to convert special access service arrangements to EELs.

> There is one instance that is very clear, and that is that if the ALEC is providing all of the customers [sic] local service then obviously it is predominantly local. So under that instance, then, yes, I believe that it could be, but that is really the only instance that has been resolved.

In the meantime, for all other instances, BellSouth, Intermedia and a number of other parties have submitted a proposal to the FCC as to what the appropriate conditions should be for defining a significant amount of local traffic. The joint filing outlines three different options that the parties believe constitutes a significant amount of local traffic. The proposal is currently pending before the FCC. In regard to the proposal, BellSouth witness Varner states:

> . . .[T]he purpose for that was to try to define situations where the special access circuit is carrying both local and long distance, to what magnitudes of the two different types have to be provided in order to allow that service to be converted to EELs. That was the purpose for the letter is to try to find how you can determine a significant amount of local service on a facility that is providing both local and long distance.

Intermedia witness Jackson agrees that the letter sets forth approximately eight carriers' positions on the purchase of loop/transport combinations as UNEs and sets forth conditions under which that should be done.

B. Decision

We agree with witness Varner's testimony that the FCC's Supplemental Order places restrictions on the conversion of special access services to combinations of unbundled network elements pending the resolution of the FCC's Fourth FNPRM. Further, the current state of the law provides that an incumbent LEC is not

obligated to convert special access circuits to EELS unless the ALEC is providing all of the customer's local exchange service or a "significant amount of local exchange service."

The constraints imposed by the FCC on the conversion of special access services to EELs in its Supplemental Order stem from the discussion on EELs in the FCC's UNE Remand Order. In its UNE Remand Order, the FCC stated that incumbent LECs are required to provide, to requesting telecommunications carriers, unbundled loop and unbundled dedicated transport elements in combined form at UNE prices, if the combination is currently combined and presently existing within the LEC's network. The FCC also stated that its interpretation of FCC Rule 51.315(b) does not require LECs to combine unbundled network elements that are "ordinarily combined," as this matter is currently pending before the Eighth Circuit Court. The FCC noted that while it does not define the EEL as a separate unbundled network element, it acknowledged that there are specific circumstances where the incumbent LEC is presently obligated to provide access to the EEL at UNE prices. It is clear that one of those circumstances occurs where a combination that comprises the EEL is currently combined and existing within a LEC's network. FCC 99-238, ¶480.

The FCC's Supplemental Order further clarifies the circumstances under which special access services may be converted to EELs. In this Order, the FCC currently limits the ability to convert special access services to EELs to those telecommunications carriers that provide a "significant amount of local traffic." However, a definition of "significant amount of local traffic" has not yet been determined. Until the FCC defines what is meant by "significant amount of local traffic," the rule is ambiguous, and can only be clearly applied in one instance. We agree with BellSouth witness Varner that in the instance where an ALEC is providing all of a customer's local service, it is obvious that the ALEC is providing a "significant amount of local traffic," and therefore the FCC's Order indisputably requires the incumbent to convert existing special access services to EELs.

Based on the foregoing, we find that the circumstances under which incumbent LECs are required to convert existing special access circuits to EELs and provide them to ALECs as UNEs have been set forth by the FCC. Therefore, BellSouth shall be required to allow Intermedia to convert existing special access services to EELs at UNE rates if Intermedia is providing a "significant amount of local traffic" to the customer. At a minimum, if Intermedia is

providing all of a customer's local service, the ALEC is carrying a "significant amount of local traffic" for that customer, and therefore BellSouth shall be required to convert existing special access services to "EELs" at UNE rates.

IX. PACKET SWITCHING CAPABILITIES

The issue before us is to determine whether BellSouth should be required to provide Intermedia with access to packet switching capabilities as an unbundled network element (UNE).

A. Analysis

The FCC declined to unbundle packet switching capabilities in the UNE Remand Order, FCC 99-238, issued in CC Docket No 96-98. The UNE Remand Order, however, outlined a limited exception where BellSouth would be required to unbundle packet switching. Intermedia seeks to insert the conditions outlined in the exception into the agreement. Intermedia also asserts that we have the authority to require ILECs to unbundle additional network elements as deemed appropriate. Intermedia Witness Jackson states:

> . . . 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 at TELRIC prices.

BellSouth witness Varner contends that this Commission determined that BellSouth should not be required to unbundle packet switching in the BellSouth/ICG Telecom arbitration, Order No. PSC-00-0128-FOF-TP, issued January 14, 2000. According to witness Varner, neither the Telecommunications Act nor the FCC's rules require BellSouth to offer packet switching as a UNE. He notes that the FCC specifically rejected "e.spire/Intermedia's request for a packet switching or frame relay unbundled element" with "one limited exception." In regards to the limited exception, the witness notes that FCC Rule 51.319 identifies four conditions that, if satisfied, would result in the ILEC having to unbundle packet switching. FCC Rule 51.319(c)(5) states:

> An incumbent LEC shall be required to provide nondiscriminatory access to unbundled packet switching

capability only where each of the following conditions are satisfied. The requirements in this section relating to packet switching are not effective until May 17,2000.

> (i) The incumbent LEC has deployed digital loop carrier systems, including but not limited to, integrated digital loop carrier or universal digital loop carrier systems; or has deployed any other system in which fiber optic facilities replace copper facilities in the distribution section (e.g., end office to remote terminal, pedestal or environmentally controlled vault);
>
> (ii) There are no spare cooper loops capable of supporting xDSL services the requesting carrier seeks to offer;
>
> (iii) The incumbent LEC has not permitted a requesting carrier to deploy a Digital Subscriber Line Access multiplexer in the remote terminal, pedestal or environmentally controlled vault or other interconnection point, nor has the requesting carrier obtained a virtual collocation arrangement at these subloop interconnection points as defined by paragraph (b) of this section; and
>
> (iv) The incumbent LEC has deployed packet switching capability for its own use.

According to witness Varner, we must apply the "impair" standard of 251(d)(2)(B) in determining whether network elements should be unbundled. In support, he references the FCC UNE Remand Order, FCC 99-238:

> No party alleged that packet switching was proprietary within the meaning of section 251(d)(2). We find that the record provides no basis for withholding packet switching from competitors based on proprietary considerations or subjecting packet switching to the more demanding "necessary" standard set forth in section 251(d)(2)(A). Instead we examine packet switching under the "impair"

> standard of section 251(d)(2)(B). (FCC 99-238, ¶305)

Witness Varner states that Intermedia has the burden of proof concerning whether it is impaired by not having access to BellSouth's packet switching functionality on an unbundled basis. Moreover, he states that BellSouth will comply with the requirements of Rule 51.319(c)(5) which relieves the ILEC from unbundling packet switching if the ILEC "permits a requesting carrier to collocate its DSLAM in the incumbent's remote terminal, on the same terms and conditions that apply to its own DSLAM."

Intermedia witness Jackson indicates that although BellSouth intends to comply with Rule 51.319(c)(5), the agreement should include language which outlines the circumstances in which packet switching would be available to Intermedia as an UNE. He indicates that it is necessary to include such language in the agreement, to clarify under what conditions Intermedia would have access to BellSouth's packet switching. He states:

> Intermedia cannot fathom why BellSouth resists inclusion of language in its agreement that states the circumstances in which it must make the packet switching capability available as a UNE. If those circumstances never occur, this language will be entirely inactive.

BellSouth witness Varner indicates that the language is unnecessary due to the fact BellSouth will comply with FCC Rule 51.319.

B. Decision

In its July 21, 1999, ex parte filing with the FCC, Intermedia requested that the FCC require incumbent LECs to unbundle, among other things, packet switching technology. The FCC responded to this specific request in its UNE Remand Order by stating:

> . . . e.spire/Intermedia have not provided any specific information to support a finding that requesting carriers are impaired without access to unbundled frame relay. We note, however, that e.spire/Intermedia are free to demonstrate to a state commission that lack of unbundled access to the incumbent's frame relay network element impairs their ability to provide the services they seek to offer. FCC 99-238, ¶312.

We agree with Intermedia witness Jackson that this Commission has the ability to more precisely interpret FCC rules as they apply in Florida. Nevertheless, witness Jackson presented no information in his testimony to demonstrate that Intermedia would be "impaired" without access to BellSouth's packet switching capabilities as UNEs. Therefore, we find that BellSouth shall only be required to unbundle its packet switching capabilities under the limited circumstances identified in FCC Rule 51.319(c)(5). Because BellSouth is bound by FCC Rules, we find it unnecessary to include the language of FCC Rule 51.319(c)(5) in the agreement.

X. INTEROFFICE TRANSMISSION FACILITIES

We are asked to determine whether BellSouth should be required to provide Intermedia with non-discriminatory access to BellSouth interoffice transmission facilities as defined in the FCC UNE Remand Order, FCC 99-238, issued in CC Docket No 96-98.

A. Analysis

The parties appear to agree on which elements of interoffice transport BellSouth should offer to Intermedia on an unbundled basis. It appears that Intermedia sought to expand the issue to include pricing as indicated in its position on the issue. Further, during cross examination, Intermedia witness Jackson testified that he was aware that BellSouth had proposed language to address this issue in the interconnection agreement and that he was aware that BellSouth had proposed interim rates subject to true-up. The witness added that Intermedia simply wants to make sure that the rates are TELRIC based. Witness Jackson's position is that BellSouth's interim rates may be above the forthcoming Commission adopted rates in the UNE Pricing Docket No. 990649-TP. Therefore, Intermedia may initially be financially impaired.

B. Decision

BellSouth's proposed language for the agreement is consistent with language in the FCC's Remand Order. A determination regarding the reasonableness of BellSouth's interim rates is beyond the scope of this issue as phrased. Based on the foregoing, BellSouth shall be required to provide non-discriminatory access to interoffice transmission facilities, in accordance with, and as defined in, the FCC's Remand Order.

XI. ACCESS TO USER TO NETWORK INTERFACE (UNI), NETWORK-TO-NETWORK INTERFACE (NNI) AND DATA LINK CONTROL IDENTIFIERS (DLCI)

The issue presented is whether BellSouth should be required to furnish access to UNI, NNI and DLCI as UNEs.

A. Analysis

The parties appear to agree on three important points:

1) Frame relay is a form of packet switching and UNI, NNI, and DLCI are all components of frame relay;

2) The FCC has not mandated, except in very limited circumstances, that packet switching be unbundled;

3) The state commission has the authority to require incumbent LECs to unbundle specific network elements.

Therefore, the real issues to be decided by us are: 1) whether BST should be required to offer unbundled access to its frame relay components under the limited circumstances outlined by the FCC; and 2) whether we should exercise our authority and expand the list of UNEs to include the frame relay components requested by Intermedia if those limited circumstances do not apply.

According to Intermedia witness Jackson, the FCC has not yet mandated frame relay UNEs. He states, however, that this does not prevent us from doing so based on ¶ 153 of the FCC's UNE Remand Order. Witness Jackson believes that we should establish UNI, NNI, and DLCI as "distinct UNEs because they reflect a vital element of modern, digital networks that is becoming increasingly important." Witness Jackson also asserts that as distinct UNEs the rates for these components must be set at TELRIC-based levels. Witness Jackson suggests that we set interim rates for these frame relay components at 50% of BST's currently effective tariffed rates. He believes these rates should be subject to true-up after we have had time to complete a rate inquiry.

We note that within its testimony, Intermedia raised several other issues: reciprocal compensation for local frame relay traffic; bill and keep for local frame relay; a meet-point arrangement for high capacity transport links between Intermedia's and BST's frame relay switches; and TELRIC-based rates for high capacity interoffice transport with each party sharing the cost of

the line according to the percent of traffic that it carries over it. Because the testimony on these matters goes well beyond the scope of this issue, we have not addressed them.

According to BST's witness Varner, frame relay is a form of packet switching and the FCC has declined to require the unbundling of the packet switching functionality except in limited circumstances. With regard to these limited circumstances, the witness notes that the FCC identified four conditions set forth in FCC Rule 51.319 that, if each condition were satisfied, would result in the ILEC having to unbundle packet switching. Nevertheless, he states that "BellSouth has taken the necessary measures to ensure that ALECs have access to necessary facilities so that BellSouth is not required to unbundle packet switching." Furthermore, the witness notes that it is the obligation of the competing carrier to convince the state commission that it is impaired without access to such unbundled network elements.

Intermedia witness Jackson does not specify in his testimony that Intermedia should have access to UNI, NNI, and DLCI as UNEs based upon the applicability of the limited circumstances set forth in FCC Rule 51.319. Witness Jackson does state ". . .Intermedia cannot fathom why BellSouth resists inclusion of language in its agreement that states the circumstances in which it must make packet switching capability available as a UNE. If those circumstances never occur, this language will be inactive. However, if those circumstances do occur for some reason . . . it is useful to have Intermedia's rights spelled out."

B. Decision

Both BST and Intermedia agree that UNI, NNI, and DLCI are components of frame relay, and that frame relay is a type of packet switching. With regard to packet switching, FCC Rule 51.319 (c)(5)(i)-(iv) states:

> An incumbent LEC shall be required to provide nondiscriminatory access to unbundled packet switching capability only where each of the following conditions are satisfied. The requirements in this section relating to packet switching are not effective until May 17,2000.
>
> (i) The incumbent LEC has deployed digital loop carrier systems, including but not limited to, integrated digital loop carrier or universal digital loop carrier systems;

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

The evidence of record does not demonstrate that the limited circumstances under which the FCC requires the incumbent LEC to unbundle its packet switching capabilities exist. Therefore, we find that BST is not required to provide access to UNI, NNI, and DLCI as UNEs under the limited circumstances outlined in the FCC's UNE Remand Order.

The focus of this issue now shifts to whether we should expand the list of required UNEs to include UNIs, NNIs, and DLCIs and price them at TELRIC-based rates. Intermedia witness Jackson and BST witness Varner agree that the state commission may impose additional unbundling obligations on incumbent LECs. Witness Varner, however, notes that it is the obligation of the competing carrier to convince the state commission that it is impaired without access to such unbundled network elements. Paragraph 154 of the UNE Remand Order states, in pertinent part:

> We believe that Section 251(d)(3) grants state commissions the authority to impose additional obligations upon incumbent LECs beyond those imposed by the national list, as long as they meet the requirements of section 251 and the national policy framework instituted in this Order. FCC 99-238.

As discussed in Section IX of this Order, Intermedia submitted a July 21, 1999, ex parte filing with the FCC, requesting that the FCC require incumbent LECs to unbundle, among other things, packet switching technology, especially frame relay. In its UNE Remand Order the FCC responded to this specific request and stated:

> . . . e.spire/Intermedia have not provided any specific information to support a finding that requesting carriers are impaired without access to unbundled frame relay. We note, however, that e.spire/Intermedia are free to demonstrate to a state commission that the lack of unbundled access to the incumbent's frame relay network element impairs their ability to provide the services they seek to offer. FCC 99-238, ¶ 312.

Accordingly, the burden is on Intermedia to demonstrate to us that lack of unbundled access to the frame relay network elements impairs its ability to offer this service. We do not find that Intermedia's assertion, that establishing UNI, NNI, and DLCI as "distinct UNEs because they reflect a vital element of modern, digital networks that is becoming increasingly important," is sufficient to demonstrate that Intermedia is impaired in its ability to provide the services it seeks to offer. In Order No. PSC-00-0128-FOF-TP, issued January 14, 2000, we rejected a similar argument and concluded:

> We do not believe that ICG's argument that innovation and competition necessitate TELRIC-based pricing of packet-switching capabilities sufficiently demonstrates that these capabilities are intended under the Act to be provided as UNEs. ICG has only argued its value to ICG's own business plan. Therefore, the evidence of record indicates that packet-switching capabilities are not UNEs. Order No. PSC-00-0128-FOF-TP, p. 7.

We find this reasoning equally applicable in the current case. Accordingly, the list of UNEs shall not be expanded to include UNIs, NNIs, and DLCIs.

XII. LOCAL CALLING AREAS AND ASSIGNMENT OF NUMBERS

The issue before us is to determine if parties should be allowed to establish their own local calling areas and assign numbers for local use anywhere within such areas, consistent with applicable law.

A. Analysis

Intermedia witness Jackson states that "[T]he heart of this controversy is really whether Intermedia must physically locate its NPA/NXXs in the rate center with which those numbers are associated." Witness Jackson contends that being required to physically locate NPA/NXXs within the BellSouth local calling areas would "prevent Intermedia from offering innovative rate structures and calling plans to its customers." He argues:

> 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.

Witness Jackson contends that there is no legitimate reason why Intermedia should not be able to assign NPA/NXXs in areas that are traditionally associated with different NPA/NXXs. Witness Jackson asserts that BellSouth is attempting to impose restrictions on how Intermedia may interconnect, preventing Intermedia from configuring its network in what they consider to be the most efficient manner.

BellSouth witness Varner counters that "BellSouth is indifferent to the manner in which Intermedia defines its local calling areas for <u>its own end users</u>." He contends, however, that "Intermedia should use its NPA/NXXs in such a way that BellSouth can distinguish local traffic from intraLATA toll traffic and interLATA toll traffic for BellSouth originated traffic." Witness Varner explains:

> If Intermedia were to assign numbers having the same NPA/NXX to its customers both inside and outside the BellSouth local calling area where the NPA/NXX is homed, it would be extremely difficult, if not impossible, for BellSouth to determine whether BellSouth's end users are making a local or a long distance call when BellSouth's end user calls Intermedia's end user. Consequently, BellSouth cannot tell whether access or reciprocal

compensation should apply to the resulting traffic.

Witness Varner contends that the general consensus within the industry is that when a NPA/NXX is assigned to an exchange rate center, numbers out of that NPA/NXX will be assigned to customers physically located within that rate center. He states that "the industry assumes that the call is delivered to an end user in the rate center to which the end user's telephone number is assigned." Witness Varner explains:

> BellSouth's concern is that Intermedia and other ALECs are associating their NPA/NXXs to established BellSouth exchange rate centers, but then are assigning numbers out of a particular NPA/NXX on a wholesale basis to end users outside the rate center to which that NPA/NXX is homed, and in some cases, even in different LATAs. When this occurs, BellSouth routes its originating traffic to the ALEC assuming it is a local call (due to the originating and terminating NPA/NXXs being assigned to the same exchange rate center.) However, the ALEC delivers the traffic to an end user located outside the local calling area, and possibly in a different LATA. This causes BellSouth and other local exchange carriers to lose valid toll and/or switched access revenue, to incur costs that are not recovered and to inappropriately pay reciprocal compensation as if the traffic were indeed local.

Witness Varner contends that BellSouth is in no way trying to limit Intermedia's flexibility in designing its network. He states that "BellSouth's interest is simply in ensuring that calls are successfully routed, completed and billed." Witness Varner argues that this cannot be accomplished without being informed of how and where to deliver and receive traffic to and from these NPA/NXXs.

Intermedia witness Jackson states that, "Certainly we will not do anything that would jeopardize Bell's delivery of calls or our delivery of calls to Bell. It wouldn't be in either parties' interest to do so. We just want to make sure we have options available as we explore ways to do so." Witness Jackson further states that although they have no plans for providing this

information presently, "I am sure that we would work with them to make sure the calls got routed properly."

Witness Jackson contends that Intermedia has proposed measures to distinguish local from toll traffic for billing purposes. He states that Intermedia's language proposes the exchange of Customer Proprietary Network Information (CPNI) data for the identification of the call. Where this is unavailable, parties would provide Percent Local Use (PLU) reports that separate the local and toll traffic.

BellSouth witness Varner argues that, "Knowing the CPNI is not the issue. The issue is knowing whether the call is local or not." Witness Varner contends that the PLU will not solve the problem either, stating that "PLU reporting enables the two carriers - BellSouth and Intermedia - to bill each other appropriately for interconnection, but it has no effect on determining what type of call BellSouth's end user has just initiated to Intermedia's end user."

Witness Varner cites Section 364.16(3)(a), Florida Statutes, to show that the difficulty with rating calls to NPA/NXXs assigned outside the BellSouth local exchange boundaries to which they are homed should preclude Intermedia from assigning NPA/NXXs in such manner. He asserts that "Intermedia should not be permitted to violate this statute."

Section 364.16(3)(a), Florida Statutes, states:

> No local exchange telecommunications company or alternative local exchange telecommunications company shall knowingly deliver traffic, for which terminating access service charges would otherwise apply, through a local interconnection arrangement without paying the appropriate charges for such terminating access service.

Intermedia witness Jackson challenges witness Varner's citation, stating that, "This argument is a red herring. In addition, the argument simply does not make sense." Witness Jackson argues that the clear use of the terms "knowingly" and "terminating access service charges," indicates that this statute addresses companies deliberately or fraudulently misclassifying traffic to avoid payment of access charges. Witness Jackson

contends that this situation does not exist here, stating that "neither Intermedia nor BellSouth is attempting to pass access calls as if they were local calls." Witness Jackson asserts that "BellSouth's argument is *nonsequitur*, and its reliance on Section 364.16(3)(a) is misplaced."

B. Decision

As stated previously, the issue to be determined is whether parties should be allowed to establish their own local calling areas and assign numbers for local use anywhere within such areas, consistent with applicable law. The only law cited is Section 364.16(3)(a), Florida Statutes. We agree with Intermedia witness Jackson's statement that the statute is inapplicable There is no evidence indicating that either party is, or has been, misclassifying traffic.

While BellSouth witness Varner cites no law that would prohibit Intermedia from assigning NPA/NXXs outside of BellSouth's local calling areas, he does raise certain concerns. First, BellSouth wants to be able to bill its customers properly when they call an Intermedia end user; second, they need to know whether that call is a local or long distance call. While there is no evidence in the record indicating that there has been any problem thus far with the classification of calls to Intermedia's end users, we share BellSouth's concerns.

If Intermedia intends to assign numbers outside of the areas with which they are traditionally associated, Intermedia must provide information to other carriers that will enable them to properly rate calls to those numbers. We find no evidence in the record indicating that this can be accomplished.

Based on the foregoing, we find it appropriate that the parties be allowed to establish their own local calling areas. Nevertheless, the parties shall be required to assign numbers within the areas to which they are traditionally associated, until such time when information necessary for the proper rating of calls to numbers assigned outside of those areas can be provided.

XIII. MULTIPLE TANDEM ACCESS (MTA)

The issue before us is whether Intermedia must establish points of interconnection (POI) at all BellSouth access tandems

where Intermedia's NXX's are homed, in the event Intermedia chooses MTA.

A. Analysis

MTA is an interconnection option in which an ALEC establishes a POI at one or more BellSouth access tandems within a Local Access and Transport Area (LATA). BellSouth will then route traffic from other access tandems to the tandem containing the ALEC's POI. This technique is designed to alleviate the need to establish a POI at every access tandem within the LATA. BellSouth witness Milner describes "homing" as the practice of "designating the relationship between switches as to how traffic will be routed between them." In other words, by "homing" NPA/NXXs at a particular tandem, a company is designating that calls to these NPA/NXXs are to be routed to that tandem.

BellSouth witness Milner states that "if Intermedia elects BellSouth's MTA offer, Intermedia must designate for each of Intermedia's switches the BellSouth tandem at which BellSouth will receive traffic originated by Intermedia's end user customer." Witness Milner asserts that "[T]he MTA option alleviates the need for the ALEC to establish interconnecting trunks at access tandems where the ALEC has no NPA/NXX codes homed." Witness Milner contends, however, that the ALEC must interconnect to the access tandem in which it has homed its NPA/NXX codes. Witness Milner explains:

> NPA/NXX code homing arrangements are published in the Local Exchange Routing Guide (LERG) so that all telecommunications companies in the industry will know where in the network to send calls to the designated NPA/NXX code and where in the network calls from the designated NPA/NXX code will originate....For example, if Intermedia assigns its NPA/NXX to a BellSouth Exchange Rate Center, Intermedia must home such NPA/NXXs on the BellSouth access tandem serving that BellSouth Exchange Rate Center. Correspondingly, in order for BellSouth to deliver terminating IXC switched access traffic to the Intermedia switch serving those Intermedia NPA/NXXs, Intermedia must establish a trunk group to that BellSouth access tandem switch.

Witness Milner asserts that this procedure "is normal NPA/NXX homing and network traffic routing practice within the industry."

Intermedia witness Jackson contends that, "Any requirement that Intermedia establish a POI at every tandem where its NXXs are homed would effectively eliminate the usefulness of MTA altogether." Witness Jackson asserts that "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." Witness Jackson states that "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."

BellSouth witness Milner responds by stating that "BellSouth does not attempt to limit Intermedia's flexibility regarding the design or operation of its network." Witness Milner contends, however, that other telecommunications providers must install translations and routing instructions to ensure the correct handling of calls to and from Intermedia's end users. To do this, they must know where Intermedia's NPA/NXX codes are homed.

B. Decision

While BellSouth's MTA offer obviates the need for an ALEC to interconnect at every access tandem within a calling area, it does not necessarily obviate the need to interconnect at access tandems to which they choose to home their NPA/NXX codes. BellSouth witness Milner contends that "NPA/NXX code homing arrangements are published in the [LERG] so that all telecommunications companies in the industry will know where in the network to send calls to the designated NPA/NXX code and where in the network calls from the designated NPA/NXX code will originate." He further states that "[T]he ALEC must interconnect where its NPA/NXX codes home." We find this to be reasonable. While BellSouth's MTA option allows an ALEC to establish trunking to only one access tandem within a LATA, it only seems reasonable that this access tandem be the one to which the ALEC has homed its NPA/NXX codes.

Intermedia witness Jackson states that "Intermedia must have the freedom to configure its network and to assign NXXs in the most efficient manner possible." We agree that Intermedia should configure its network in the most efficient manner; however, there are interconnection concerns that should affect the manner in which Intermedia chooses to configure its network. There are certain

industry standards that must be adhered to in order to enable interconnection to occur in the most efficient manner possible. Industry standards are established to create certain efficiencies, which enable cooperation between companies that must interconnect their networks and exchange traffic. The information Intermedia places in the LERG establishes routing instructions that enable other carriers to handle calls to and from Intermedia's NPA/NXXs correctly. Intermedia chooses the access tandem to which its NPA/NXXs are to be routed, or homed. We find that the evidence supports that it is reasonable to require Intermedia to interconnect at that access tandem. Intermedia has presented no evidence that demonstrates this to be unreasonable. Based on the foregoing, in the event Intermedia chooses MTA, Intermedia shall be required to establish points of interconnection at all BellSouth access tandems where Intermedia's NPA/NXXs are homed.

XIV. DESIGNATION OF, AND INTERCONNECTION TO, "HOME" LOCAL TANDEM

The issue before us is to resolve whether Intermedia should 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 local access and transport area (LATA) on which Intermedia has NPA/NXXs homed.

A. Analysis

BellSouth proposes the following language defining local tandem interconnection in the agreement.

> Local Tandem Interconnection. This interconnection arrangement allows Intermedia to establish a Point of Interconnection at BellSouth local tandems for: (1) the delivery of Intermedia-originated local traffic transported and terminated by BellSouth to BellSouth end offices within the local calling area as defined in BellSouth's GSST, section A3 served by those BellSouth local tandems, and (2) for local transit traffic transported by BellSouth for third party network providers who have also established Points of Interconnection at those BellSouth local tandems. Petition, Attachment 3, p. 6, ¶1.10.

Intermedia witness Jackson believes, however, that BellSouth's proposed agreement language is unduly restrictive. Intermedia proposes the following language:

> 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.
>
> Intermedia witness Jackson states:
>
> > 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.

Witness Jackson believes that according to the Telecommunications Act, Intermedia should be allowed to interconnect "at any technically feasible point" in BellSouth's network for the transmission and routing of calls. He states:

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

BellSouth witness Milner argues that the local tandem language will not limit Intermedia's ability to interconnect at any technically feasible point. The language is intended to clarify the minimum requirements of interconnection based on BellSouth's network design. During cross examination, Intermedia witness Jackson acknowledged the LERG as the industry-wide routing document where NPA/NXX codes are published. Moreover, he agreed that without the LERG, carriers would not know where to send calls or where calls originated. When asked how companies including Intermedia would deliver calls without knowledge of the "home" NPA/NXX, he replied "I don't know."

Witness Milner explains that interconnecting at a local tandem allows Intermedia the ability to deliver its local traffic intended not only for BellSouth's end offices, but for other ALECs and independent companies as well. He states:

> If more than one BellSouth local tandem serves a particular BellSouth local calling area, then Intermedia must tell the industry which of the local tandems it intends to send and receive traffic for a given NPA/NXX.

Witness Milner clarifies that during the past three and a half years Intermedia has been interconnected with BellSouth, there has been no confusion routing calls. However, Intermedia clearly notified BellSouth to which tandems NPA/NXXs would be homed.

Intermedia witness Jackson indicates that establishing a POI at each tandem where NPA/NXXs are homed defeats the effectiveness of MTA. BellSouth witness Milner contends that BellSouth does not require Intermedia to interconnect at each access tandem. The MTA option was meant to alleviate carriers' need to interconnect at each tandem. In a scenario where there are multiple local tandems, Intermedia may choose to interconnect at one tandem in a local calling area, and BellSouth will route all traffic to that tandem. Witness Milner explains, however, that for each access tandem that Intermedia has an NPA/NXX "homed," it is necessary to have a physical network presence in order to establish a transfer point.

B. Decision

We do not find, as Intermedia contends, that BellSouth's proposed agreement language defining "local tandem interconnection" is unduly restrictive. We do, however, find that the definition is one-sided. At the POI, traffic is mutually exchanged between carriers. BellSouth's proposed language does not reflect a mutual exchange of traffic; therefore, we find it appropriate to make the following changes in the agreement language defining Local Tandem Interconnection:

> (1) the exchange of local traffic between Intermedia and BellSouth end offices within the local calling area as defined in BellSouth's GSST, section A3 served by those BellSouth local tandems, and (2). . .

While Intermedia is correct that the Telecommunications Act of 1996 requires BellSouth to allow interconnection "at any technically feasible point within the carrier's network," there are minimum requirements of interconnection created by the telecommunications industry. We find that BellSouth's agreement

language outlines these minimum requirements. BellSouth witness Milner states:

> We are not insisting that Intermedia establish points of interconnection at more than one tandem. In fact, we are saying that you could do that with as few as one interconnection point, that is what MTA is all about.

We are not persuaded that BellSouth is violating the Telecommunications Act of 1996 by requiring Intermedia to interconnect at a minimum of one tandem in a local calling area for the mutual exchange of traffic. Intermedia presented no evidence that BellSouth precluded Intermedia from interconnecting at additional points in BellSouth's network.

Intermedia witness Jackson indicates that requiring Intermedia to designate a "home" local tandem for its NPA/NXXs restricts Intermedia's "freedom to configure its network and to assign NXXs in the most efficient manner possible." BellSouth witness Milner explains:

> NPA/NXX code homing arrangements are published in the Local Exchange Routing Guide (LERG) so that all telecommunications companies in the industry will know where in the network to send calls . . . .

The Central Office Code (NXX) Assignment Guidelines, Document No. INC 95-0407-008, issued January 10, 2000, outlines the procedure for activating NXX codes in paragraph 6.2.2.:

> Before a CO code (NXX) can become active, all code holders are responsible for providing the information shown in Part 2 of the CO Code (NXX) Assignment Request Form that includes routing information for entry into the RDBS [Routing Database System] and rating information into BRIDS [Bellcore Rating Input Database System].

The LERG contains the routing information from RDBS, and current network configuration. Based on the foregoing, Intermedia shall be required to designate a "home" local tandem for each assigned NPA/NXX.

We agree with Intermedia witness Jackson that establishing a POI at each access tandem within a LATA is not necessary. In order to exchange traffic, however, Intermedia must have trunking to/from those specific locations in the network where traffic is to be exchanged. Access tandems eliminate a carrier's need for direct trunking to/from every location, but they do not eliminate a carrier's obligation to transport its traffic to/from the transfer point. We agree with witness Milner that if there is no physical presence by Intermedia where its NPA/NXXs are homed, there is no physical way to transfer the traffic from BellSouth's network to Intermedia's. Therefore, Intermedia shall be required to establish a point of interconnection to each of BellSouth's local and switched access tandems within the LATA to which Intermedia has NPA/NXXs homed.

XV. DEFINITION OF INTRALATA TOLL TRAFFIC

This issue before the Commission is to determine how intraLATA toll should be defined for purposes of compensation. The dispute between the parties appears to center on BellSouth's use of the term "telephone call" in its definition. BellSouth proposes the following language for the agreement:

> IntraLATA Toll Traffic is defined as any telephone call that is not local or switched access per the parties' agreement.

Intermedia proposes:

> IntraLATA Toll Traffic is defined as all basic IntraLATA message services calls other than Local Traffic. Petition, Attachment 3, p. 16, ¶ 6.7.1.

A. Analysis

Intermedia witness Jackson asserts that BellSouth proposes language that would limit the type of toll traffic that may be carried. He testifies:

> Intermedia's definition would ensure that toll traffic cannot be limited to traffic that uses one type of equipment, such as analog circuit switches, but will include non-local traffic

> carried over facilities that employ new technologies, such as packet switching.

BellSouth witness Varner explains:

> To the extent that BellSouth's definition places any limitation on traffic, such limitations would be related to compensation, and IntraLATA Toll Traffic is not subject to the reciprocal compensation obligations of Section 251(b)(5) of the Act.

B. Decision

The FCC defines telephone toll service as:

> The term *telephone toll service* refers to telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts for exchange service. CFR 47 §51.5

The FCC's definition of telephone toll service does not appear to limit the type of calls to analog circuit switched calls. We note that BellSouth witness Varner acknowledged that BellSouth agrees that data traffic such as frame relay service, may be local traffic if it meets the other criteria, it originates and terminates in the same exchange or same local calling area.

Moreover, BellSouth witness Varner testifies that the term "telephone call," as applied by BellSouth, includes data traffic including frame relay. The term "telephone call" in BellSouth's proposed agreement does not appear to exclude data. Therefore, we find that the term "telephone call" is appropriate.

Intermedia's concern that BellSouth's definition could restrict what constitutes intraLATA toll traffic to circuit-switched traffic, appears unfounded. As noted above, however, BellSouth witness Varner asserted that BellSouth's definition at most imposed limitations on the form of compensation to be applied, not to the technology deployed. Accordingly, since it appears there is no fundamental difference between the parties, it remains to select which proposed definition is preferable. Of the two options, BellSouth's definition is the clearest and most straightforward, and shall be included in the parties' agreement.

XVI. DEFINITION OF SWITCHED ACCESS TRAFFIC

This issue addresses the appropriate definition of switched access traffic and whether or not that definition should include phone-to-phone Internet Protocol (IP) telephony.

A. Analysis

Intermedia proposes that switched access traffic be defined as telephone calls requiring local transmission or switching services for the purpose of the origination or termination of Telephone Toll Service, including Feature Groups A, B, and D, 800/888 access, and 900 access, and their successors or similar Switched Exchange Access Services. Furthermore, Intermedia indicates that phone-to-phone IP telephony should not be included in this definition because "the FCC clearly did not make any determination on the regulatory classification of phone-to-phone IP telephony..." in its April 10, 1998 Report to Congress.

BST believes that switched access traffic is appropriately defined by its existing tariff[1], and there is no need to include a specific definition in a local interconnection agreement. Specifically, BST proposed the following language for inclusion in the Interconnection Agreement: "Switched Access Traffic is as defined in the BellSouth Access Tariff. Additionally, IP Telephony traffic will be considered switched access traffic." According to witness Varner, BST's current agreement with Intermedia does not specify how phone-to-phone IP Telephony traffic is treated. The witness states: "here we are talking about switched access service, and typically in a local interconnection agreement you wouldn't even address switched access."

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[1]Section E6.1 of BST's Access Services Tariff provides the following definition of BST's switched access service (SWA). BellSouth SWA service, which is available to interexchange carriers (IXC) for their services to end users, provides a two-point electrical communications path between an IXC terminal location and an end user's premises. It provides for the use of common terminating, switching and trunking facilities, and both common subscriber plant and unshared subscriber plant of the Company. BellSouth SWA service provides for the ability to originate calls from an end-user's premises to an IXC's terminal location, and to terminate calls from an IXC's terminal location to an end-user's premises in the LATA where it is provided. BST's SWA service is provided in nine service categories, four service categories of standard and optional features called BellSouth SWA FGs, BellSouth SWA Service, BellSouth SWA 8XX Toll Free Dialing Ten digit Screening Service, BellSouth SWA 900 service, and two unbundled basic service arrangements. (Each service arrangement is describe more completely in the tariff.)

Except for whether or not to include phone-to-phone IP Telephony traffic within the definition of switched access traffic, neither party provided specific testimony addressing why the language proposed by one party was preferable to the language proposed by the other party. For example, when witness Jackson was asked: "How does Intermedia's language differ from BellSouth's language?" he replied:

> The essential difference is that Intermedia believes that this term should be defined in the parties' agreement. BellSouth's tariff language changes from time to time, and referring to its tariff allows BellSouth to define this crucial term any way it wishes, perhaps in ways that Intermedia might consider adverse. In addition, Intermedia does not believe that it is appropriate for BellSouth to attempt unilaterally to assign a regulatory status to "IP Telephony." This matter is exclusively within the jurisdiction of the FCC.

Therefore, it appears that the primary controversy is not the definition of switched access, but rather how phone-to-phone IP Telephony traffic should be handled for the purpose of this agreement.

In order for us to determine if phone-to-phone IP Telephony should or should not be included in the definition of switched access traffic it is important that the term "IP Telephony" be further explained. According to BST witness Varner:

> IP Telephony is telecommunications service that is provided using Internet Protocol for one or more segments of the call. IP Telephony is, in very simple and basic terms, a mode or method of completing a telephone call. The word "internet" in Internet Protocol Telephony refers to the name of the protocol; it does not mean that the service uses the World Wide Web. Currently there are various technologies used to transmit telephone calls, of which the most common are analog and digital. In the case of IP Telephony originated from a traditional telephone set, the local carrier first converts the voice from analog to digital. The digital call is sent to a gateway that takes the digital voice signal and converts or packages it into data packets. These data packets are like envelopes with addresses which "carry" the signal across a network until they reach their destination,

> which is known by the address on the data packet, or envelope. This destination is another gateway, which reassembles the packets and converts the signal to analog, or a plain old telephone call to be terminated on the called party's local company's lines. To explain it another way, Phone-to-Phone IP Telephony is where an end user customer uses a traditional telephone set to call another traditional telephone set using IP Telephony. The fact that IP technology is used, at least in part, to complete the call is transparent to the end-user. Phone-to-Phone IP Telephony is identical, by all relevant regulatory and legal measures, to any other basic telecommunications service, and should not be confused with calls to the Internet through an ISP.

Witness Varner goes on to clarify that phone-to-phone IP Telephony and ISP-bound traffic represent two entirely different types of traffic. He states: "IP Telephony is clearly a technology used to transmit long distance telecommunications." He explains that, technically speaking, Internet Protocol, like other types of protocol, is an agreed upon set of technical operating specifications for managing and interconnecting networks. The Internet Protocol is the language, or signaling, that the gateways use to talk to each other. Phone-to-phone IP telephony has nothing to do with the transmission medium, such as wire, fiber, microwave and so forth, that carries the packets between the gateways, but rather the gateways, or switches, that are found on either end of that medium. Intermedia witness Jackson did not provide any testimony to contradict witness Varner's technical description of Internet Protocol, nor did he provide any technical descriptions in his testimony.

Witness Varner's primary argument for including phone-to-phone IP Telephony within the definition of switched access traffic is that it is a telecommunications service, not an information or enhanced service. The witness states: "Even though IP Telephony and ISP traffic both have the word "Internet" in their name, they are completely different services and should not be confused." In support of his position the witness notes that the FCC's April 10, 1998, Report to Congress states: "the record . . . suggests . . . 'phone-to-phone IP telephony' services lack the characteristics that would render them 'information services' within the meaning of the statute, and instead bear the characteristics of 'telecommunication services'." Furthermore, witness Varner notes that Section 3 of the Telecommunications Act of 1996 defines

"telecommunications" as the "transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received."

Witness Varner notes that Enhanced Service Providers (ESPs) or ISPs, have been exempted by the FCC from paying access charges for use of the local network in order to encourage the growth of these emerging services - - most specifically, access to the Internet. Furthermore, the witness notes:

> The FCC has found that ESPs and ISPs use interstate access service, but are exempt from switched access charges applicable to other long distance traffic. Instead, ISP-bound traffic is assessed at the applicable business exchange rate. On the other hand, the transmission of long-distance voice services-- whether by IP telephony or by more traditional means--is not an emerging industry. In fact, it is a mature industry--one that is not exempt from paying access charges for the use of the local network. These same access charges are currently paid by all other long distance carriers. BellSouth is required to assess access charges on long distance calls. To do otherwise would be to discriminate between long-distance carriers utilizing IP telephony and those who do not.

When asked if the FCC's rules expressly state that phone-to-phone voice over IP Telephony is an access service subject to access charges, witness Varner replied:

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

The witness clarifies that he is not asking us to make a statement of what interstate access charges are; instead, the witness explains:

> I'm asking them to simply adopt the FCC's definition of access which is what is reflected in our tariff. So adopt the definition in our tariff. And also to specifically state that this traffic is, in fact, included in switched access, which is really a redundant statement, because it is. But we want to make sure that this agreement very clearly points out that it is to avoid the potential for a later dispute about whether it is or it isn't.

Intermedia witness Jackson disagrees with witness Varner's claim that phone-to-phone IP telephony is a telecommunications service; however, he does agree with witness Varner that the FCC stated in its Report to Congress that the record before it suggests that certain forms of phone-to-phone IP telephony services lack the characteristics that would render them "information services." Witness Jackson notes, however, that in its Report to Congress the FCC explicitly stated that it did not believe that it was "appropriate to make any definitive pronouncements in the absence of a more complete record focused on individual service offerings."

When asked if Intermedia believes that phone-to-phone IP Telephony should not be subject to switched access charges when those calls are interLATA in nature, witness Jackson replied:

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

B. Decision

We find that the appropriate definition of switched access traffic is that found in BST's existing access tariff. We agree with BST witness Varner that it is not necessary to include a specific definition of switched access traffic in a local interconnection agreement. Witness Jackson expresses concern that BellSouth's tariff language changes from time to time, which could allow BellSouth to define this term any way it wishes. Witness Varner argues, however, that "'switched access traffic' is defined by the FCC. BellSouth could not unilaterally modify the definition of 'switched access traffic' in its tariff."

With regard to phone-to-phone IP Telephony, witness Jackson provided no persuasive testimony to support his contention that BellSouth's attempt to include phone-to-phone IP Telephony within the definition of switched access is improper and contrary to law, nor did he cite any specific law which will be violated. The witness argued that because the FCC has not made a determination on the regulatory classification of phone-to-phone IP Telephony, any suggestion that phone-to-phone IP Telephony is a telecommunications service is premature. We disagree, because as BST's testimony indicates, phone-to-phone IP Telephony is technology neutral. A call provisioned using phone-to-phone IP Telephony but not transmitted over the internet, to which switched access charges would otherwise apply if a different signaling and transmission protocol were employed, is nevertheless a switched access call. Except for, perhaps, calls routed over the internet, the underlying technology used to complete a call should be irrelevant to whether or not switched access charges apply. Therefore, like other telecommunications services, it would be included in the definition of switched access traffic. Therefore, we find that switched access traffic shall be defined in accordance with BellSouth's existing access tariff and include phone-to-phone internet protocol telephony.

XVII. FRAMED PACKET DATA

The issue presented for our consideration is whether all framed packet data transported within a Virtual Circuit that originate and terminate within a LATA should be classified as local traffic.

A. Analysis

According to BellSouth witness Varner, if all data packets transported within a virtual circuit originate and terminate within the LATA, then for purposes of establishing interconnection between the parties, such traffic will be treated the same as local circuit switched traffic -- or "Local VC." Witness Varner indicates that this traffic will not be treated as local traffic for any other purpose under this Agreement, including but not limited to reciprocal compensation.

According to Intermedia witness Jackson, "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. Intermedia is asking this Commission to determine that a local call is just that, a local call, subject to compensation, whether it is POTS or a packet of data messages." We note that neither party provided any pre-filed testimony that specifically addressed reciprocal compensation for frame relay traffic, nor did either party file rebuttal testimony on this issue.

On cross examination, witness Varner was asked whether the appropriate level of compensation when Intermedia and BellSouth interconnect for purposes of passing frame relay traffic back and forth is at BellSouth's tariffed rates. He replied:

> . . . On frame relay service, the service is almost entirely interLATA. That has been our experience in providing that. The interLATA part will be provided at access tariffed rates, or the intraLATA non-local part would also be provided at access tariffed rates. And in our experience, the part that is local, if there is any, is so small until it doesn't make sense to try to go and figure out an amount . . . . And when I say so small, we have these percent local circuit usage that carriers are supposed to provide to us in order to get reimbursed for interconnection costs. Nobody has ever given us one in Florida. So it must be pretty small if nobody has ever even asked for the money.

Witness Varner notes that because frame relay is packet switched, there are no minutes of use to measure; therefore, per minute charges, such as transport and termination rates, are not applicable. Intermedia witness Jackson agrees there are no minutes of use to measure, because there is no constant connection associated with a virtual circuit. BST proposed that "one, since the local part of this is so small, and, two, since there is no way to measure it, let's just treat it on a bill and keep basis for that part that is local."

B. Decision

The record on this issue is insufficient for us to determine whether reciprocal compensation is due for this traffic. In its position statement Intermedia makes reference to "applicable law," but it does not cite or discuss these laws in its testimony. Witness Jackson's pre-filed testimony on this issue was no more than five sentences. Intermedia expanded its discussion on this

issue in its brief but did not cite to anything dispositive elsewhere in the record. Accordingly, because Intermedia did not provide persuasive evidence regarding this issue, we are unable to conclude that the frame relay traffic at issue is subject to the reciprocal compensation provision in the Telecommunications Act of 1996[2]. Similarly, although BST witness Varner makes it clear that he believes any amount of local traffic at issue here is very small and that there is no meaningful way to measure this traffic, he too provides inadequate evidence that would lead us to make a finding as to whether or not framed packet data transported within a virtual circuit should be subject to reciprocal compensation obligations.

Therefore, framed packet data transported within a virtual circuit, that originate and terminate within a LATA, shall be classified as local traffic only for the purpose of establishing interconnection between the parties.

XVIII. FRAME RELAY RATE ELEMENTS -- APPROPRIATE CHARGES

While Section XI pertains to whether various frame relay components should be considered as unbundled network elements (UNEs), the issue presented in this section requires us to determine what are the appropriate charges for BellSouth to assess Intermedia for frame relay elements.

A. Analysis

BellSouth witness Varner states that BellSouth agrees to treat frame relay traffic as local if it originates and terminates in the same LATA, but solely for purposes of interconnection. BellSouth does not agree, however, that such traffic is local for any other purpose, including for compensation.

As discussed in detail in Section XI of this Order, BellSouth disputes the need to consider frame relay components as unbundled network elements. Accordingly, BellSouth proposes that the appropriate rates and charges for the aforementioned frame relay

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[2]Section 251(b)(5) of the Telecommunications Act of 1996 specifies that each local exchange carrier has the duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications. Section 252(d)(2) of the 1996 Act sets forth the conditions a state commission may use to determine whether the terms and conditions for reciprocal compensation are just and reasonable. However, whether reciprocal compensation is appropriate for frame relay traffic is unknown.

elements should be those contained within their Interstate Access Tariff FCC No. 1.

In contrast, while he acknowledges that the FCC has declined to deem frame relay an unbundled network element, Intermedia witness Jackson nevertheless asserts that we should conclude that the provision of frame relay in Florida is a UNE. Based on his assertion that frame relay is a UNE, witness Jackson testifies that the rates and charges for these network elements must be based on incremental cost as mandated by Sections 251(c)(2) and 252(d)(1) of the Telecommunications Act. More specifically, prices for frame relay elements would be required to be derived using the FCC's incremental costing methodology, Total Element Long Run Incremental Costs (TELRIC).

Witness Jackson observes that we have employed a long-run incremental costing methodology in setting rates for interconnection and reciprocal compensation; he contends that this approach should also apply to the frame relay traffic arrangement now under discussion. Witness Jackson does not believe that BellSouth has demonstrated that its interstate tariffed frame relay rates are based on long run incremental cost. He opines that he doubts that the rates are based on such cost. As an alternative, witness Jackson suggests that interim rates equal to one-half of BellSouth's tariffed frame relay rates should be established, and should remain in force until such time as this Commission has completed a rate inquiry and determined appropriate incremental cost-based rates. The witness asserts that setting interim rates at 50% of BellSouth's interstate tariffed frame relay rates is reasonable based on his belief that 50% is typically the difference between BellSouth's UNE rates and the tariffed rates for services that provide the equivalent functionality. Witness Jackson states that Intermedia would agree to having these interim rates subject to true-up at the time final rates are established.

B. Decision

We have concluded under Section XI that Intermedia has failed to demonstrate that it would be impaired in its ability to provide the services it chooses to offer if it is denied access to unbundled frame relay elements. Consequently, because there is no finding that frame relay is a UNE, there is no obligation for a LEC to set TELRIC-based prices for frame relay service.

Intermedia witness Jackson proposes interim frame relay rates for purposes of their agreement equal to 50% of BellSouth's interstate tariffed rates. The apparent basis for this proposal is his unsubstantiated allegation that BellSouth's tariffed rates are typically twice the rates for the associated UNEs. There is no record evidence, however, that could lead one to draw inferences as to the mark-up over cost reflected in BellSouth's tariffed frame relay offering; conceivably, a 50% reduction below tariffed rates could just as easily yield prices that are below BellSouth's costs.

In the absence of any viable alternative proposal, we find that the appropriate charges for the frame relay rate elements identified in this issue are the rates contained in BellSouth's interstate access tariff as proposed by BellSouth.

XIX. EXCHANGE ACCESS FRAME RELAY SERVICE/ INTERLATA FRAME RELAY SERVICE

The parties presented testimony on the issue of whether the interconnection agreement should 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. The parties indicated in their briefs that this issue was resolved following completion of the hearing in this docket. Therefore, we did not make a decision on this issue.

XX. CONCLUSION

We have conducted these proceedings pursuant to the directives and criteria of Sections 251 and 252 of the Act. We believe that our decisions are consistent with the terms of Section 251, the provisions of the FCC's implementing Rules that have not been vacated, and the applicable provisions of Chapter 364, Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the specific findings set forth in this Order are approved in every respect. It is further

ORDERED that the issues for arbitration identified in this docket are resolved as set forth within the body of this Order. It is further

ORDERED that the parties shall submit a signed agreement that complies with the Commission's decisions in this docket for approval within 30 days of issuance of this Order. It is further

ORDERED that this docket should remain open pending our approval of the final arbitration agreement in accordance with Section 252 of the Telecommunications Act of 1996.

By ORDER of the Florida Public Service Commission this 22nd day of August, 2000.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review in Federal district court pursuant to the Federal Telecommunications Act of 1996, 47 U.S.C. § 252(e)(6).