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November 9, 2000

**ORIGINAL**

**BY HAND DELIVERY**

Blanca Bayó  
Director, Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399

Re: Docket No. 000649-TP

Dear Ms. Bayó:

Enclosed for filing on behalf of MCImetro Access Transmission Services, LLC and MCI WORLDCOM Communications, Inc. (collectively "WorldCom") is their Post Hearing Brief. This Brief is also on the diskette which is enclosed for your convenience.

By copy of this letter, this document has been furnished to the parties on the attached service list.

Very truly yours,

Richard D. Melson

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

In re: Petition by MCImetro Access )  
Transmission Services LLC and MCI )  
WorldCom Communications, Inc. for )  
arbitration of certain terms and conditions )  
of a proposed agreement with BellSouth )  
Telecommunications, Inc. concerning )  
interconnection and resale under the )  
Telecommunications Act of 1996. )  
\_\_\_\_\_ )

Docket No. 000649-TP

Filed: November 9, 2000

**POST-HEARING BRIEF OF WORLDCOM**

**I. INTRODUCTION**

COME NOW, MCI MetroAccess Transmission Services, LLC (“MCImetro”) and MCI WorldCom Communications, Inc. (“MCIW”) pursuant to the Commission’s Procedural and Scheduling Order in this Docket and hereby file their Post-Hearing Brief.<sup>1</sup> This case presents the Commission with many issues of critical importance to the future of competition in Florida’s local exchange markets. Over the course of their negotiations, WorldCom has endeavored to negotiate with BellSouth Telecommunications, Inc. (“BellSouth”) to resolve as many issues as possible without arbitration. Since the hearing in this docket, the parties have resolved six additional issues, numbers 7A, 9, 11 and 90-92. WorldCom has presented those issues which could not be closed by mutual agreement in a narrow and clear manner.

The issues discussed in this brief present the Commission with an opportunity to continue to establish strongly competitive conditions in Florida. This Commission has worked hard over the last five years. This case presents an opportunity to continue that hard work and sustain the Commission’s strong record in a way that will finally bring to Florida

<sup>1</sup> MCImetro and MCIW are referred to collectively herein as WorldCom.

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consumers the benefits of competition that were promised with the passage of the Telecommunications Act of 1996.

## II. DISCUSSION AND CITATION TO AUTHORITY

### LEGAL ISSUES RAISED BY STAFF

#### ISSUE A: What is the Commission's jurisdiction in this matter?

**WORLDCOM:** \*\*\*The Commission has jurisdiction over this arbitration under both the Telecommunications Act of 1996 and under Chapter 364, Florida Statutes. The Commission must resolve issues in conformance with federal law, but can impose additional standards under state law so long as they are not inconsistent with federal law.\*\*\*

Under Section 252(b)(1) of the Act, the Commission is empowered to arbitrate any open issue involving a proposed interconnection agreement on which the parties have been unable to reach agreement. In arbitrating these issues, the Commission is required by Section 252(c) to ensure that the arbitrated provisions comply with the requirements of the Act and of any applicable rules adopted by the Federal Communications Commission under its authority to adopt rules implementing and interpreting the Act. To the extent the FCC does not have rules in place and there is no controlling judicial precedent, the Commission has the authority to independently construe the requirements of the Act, subject of course to appropriate judicial review.

In addition to exercising its authority under the Act, the Commission can exercise its independent state law authority under Chapter 364. Section 252(e)(3) of the Act specifically provides that nothing in the Act precludes a state commission from establishing or enforcing other requirements under state law, so long as those requirements are not inconsistent with those imposed by the Act. Further, Section 261(c) expressly provides that "[n]othing in this part precludes a State from imposing requirements on a telecommunications carrier for

intrastate services that are necessary to further competition in the provision of telephone exchange service or exchange access, so long as the State's requirements are not inconsistent with this part or the [FCC's] regulations to implement this part."

The Florida Commission has broad authority under Chapter 364 to set prices, terms and conditions for unbundled elements and for resale. §364.161, 364.162, Fla.Stat. The Commission in this arbitration can exercise its authority under Chapter 364 to impose additional obligations on BellSouth where it determines that such obligations represent good public policy for Florida consumers and are not inconsistent with the Act or FCC Rules.

While BellSouth's witness Cox has urged the Commission not to require BellSouth to do more than the minimum required by federal law (T. 856), WorldCom believes that the Commission can and should exercise its state law authority to require more whenever it determines that doing so will hasten the day that Florida consumers can benefit from robust local competition.

**ISSUE B:** In light of WorldCom Telecommunications Corp. v. BellSouth Telecommunications, Inc., Order on the Merits, issued June 6, 2000, in Case No. 4:97cv141-RH, what are the Commission's authority and obligations relating to arbitration of Issues 107 and 108, liquidated damages and specific performance, respectively?

**WORLDCOM:** \*\*\* Under this order, the Commission is specifically authorized and obligated to arbitrate Issue 107 relating to liquidated damages. Although not specifically addressed in the order, the same legal principle authorizes and obligates the Commission to arbitrate any other issue, including Issue 108, properly raised by the Petition for Arbitration.\*\*\*

In the Order identified in this issue, Judge Hinkle held that the Commission was required by federal law to arbitrate the issue of liquidated damages in the prior WorldCom arbitration. Order at 33-44. The fact that the Commission concluded that it did not have independent state law authority to award damages did not detract from the Commission's

jurisdiction under the Act to arbitrate all issues properly presented to it for arbitration. Order at 35-37. While Judge Hinkle's order did not specifically address the Commission's obligation to arbitrate issues regarding specific performance, the same legal analysis would apply and require the Commission to arbitrate the question of what specific performance provision, if any, should be included in the agreement.

**ISSUE C: If Issues 107 and 108 are appropriate for arbitration, what legal standard should the Commission apply in resolving these issues?**

**WORLDCOM:** \*\*\*In the absence of specific provisions in the Act or FCC Rules regarding liquidated damages and specific performance, the Commission should apply a general standard of commercial reasonableness in determining what liquidated damages and specific performance provisions, if any, should be included in the interconnection agreement.

Judge Hinkle's order does not specify the legal standard that the Commission is to apply when arbitrating terms and conditions of an interconnection agreement that are not subject to specific standards in the Act or FCC Rules. The order does state that the standard of review to be applied by the District Court in the event the Commission's determination is appealed is whether the Commission's decision is contrary to the Telecommunications Act or is arbitrary and capricious. Order at 34.

In the absence of a federal law standard for the Commission's initial decision, the Commission's underlying goal should be to determine what type of provisions would best serve the public interest in promoting competition in Florida. When dealing with commercial terms such as limitations of liability and specific performance, WorldCom submits that the best way to promote competition is to ensure that the requirements of the interconnection agreement are commercially reasonable and provide appropriate incentives for all parties to

comply with the terms of the agreement. In this case, WorldCom believes that the provisions it has proposed under Issues 107 and 108 best meet this standard of commercial reasonability.

### **ARBITRATION ISSUES RAISED BY PARTIES**

#### **A. Pricing**

**ISSUE 1:** For purposes of the interconnection agreement between WorldCom and BellSouth, should the electronically ordered NRC apply in the event an order is submitted manually when electronic interfaces are not available or not functioning within specified standards or parameters?

**WORLDCOM:** \*\*\*Yes. When BellSouth provides an electronic interface to itself, but fails to provide an electronic interface to WorldCom, BellSouth should not be able to impose a manual ordering charge. \*\*\*

Issue 1 has been narrowed to address whether BellSouth should be permitted to charge a manual nonrecurring charge for service orders when BellSouth makes available to itself an electronic ordering process and makes available to ALECs a manual ordering process.

WorldCom's position, and the intent of the language it has proposed in Attachment 1, Section 2.9,<sup>2</sup> is that under those circumstances an electronic ordering charge should apply, while BellSouth's position is that it still should be permitted to apply the manual charge.

BellSouth is required by the Telecommunications Act of 1996 ("Act") to provide ALECs with access to operations support systems ("OSS") in substantially the same time and manner as BellSouth. *In re: Application by Bell Atlantic New York for Authorization Under Section 271 of the Communication Act to Provide In-Region, InterLATA Service in New York*, CC Docket No. 99-295, Memorandum Opinion and Order ¶ 44 (released Dec. 22, 1999) ("Bell Atlantic 271 Order"). The FCC has stated that "(o)bviously, an incumbent that

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<sup>2</sup> Exhibit 12 is a draft Interconnection Agreement which shows language to which the parties have agreed and, where there is no agreement, the competing language proposed by WorldCom and BellSouth. All references in this brief to proposed language in various Attachments refer to Exhibit 12.

provisions network resources electronically does not discharge its obligation under section 251 (c)(3) by offering competing providers access that involves human intervention.” *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order ¶ 523 (released Aug. 8, 1996) (“Local Competition Order”).

BellSouth assesses ALECs a higher nonrecurring charge for manual orders than it does for electronic orders. T.890-891. BellSouth should be given every incentive to provide ALECs with electronic access to its ordering systems when BellSouth provides itself with electronic access. At the least, that incentive should include not being able to charge a manual nonrecurring charge for such a service until BellSouth provides ALECs the option of obtaining electronic access so they can avoid the manual charge if they choose.

BellSouth contends that it does not require any additional incentive to provide ALECs electronic access to its ordering systems at parity with BellSouth. But the record demonstrates that BellSouth does need such an incentive because substantial disparities continue to exist today. For example, BellSouth representatives are able to order BellSouth’s MegaLink private line service using BellSouth’s ROS ordering system. For MegaLink circuits, BellSouth representatives are able to use point-and-click technology with pull-down screens to construct the order before electronically transmitting it to BellSouth’s provisioning systems. T.1119-1120; Ex. 5, Pate Dep. at 11-14, 24-25. MegaLink is functionally the same as a DS1 loop-transport combination (“DS1 combo”) that WorldCom orders to provide switched service to its customers.<sup>3</sup> T.1116; Ex. 5, Pate Dep. at 51. Effective September 5,

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<sup>3</sup> The Commission has held that the service WorldCom provides using DS1 combos does not recreate BellSouth’s MegaLink service. *In re: Request for Arbitration Concerning Complaint of MCImetro Access Transmission Services, LLC for Enforcement of Interconnection Agreement with BellSouth Telecommunications, Inc.*, Order No. PSC-99-1089-FOF-TP, May 27, 1999. The reason is that BellSouth uses MegaLink circuits to

2000, BellSouth stopped accepting orders for DS1 combos submitted via the electronic access service request ("ASR") process and began treating such orders as orders for special access circuits.<sup>4</sup> T.1126-1127; Ex. 32. If WorldCom wishes to order a DS1 combo, it now must do so via the manual local service request ("LSR") process. T.1123, 1128, Ex. 32. BellSouth switched WorldCom from the electronic ASR process to the LSR process before BellSouth had provided an electronic LSR process for ordering DS1 loop-transport combinations. T.1129-1130. Indeed, BellSouth witness Pate stated that BellSouth still could not commit to providing an electronic LSR process for DS1 combos. T.1129-1130.<sup>5</sup>

The ordering of services BellSouth deems "complex" provides another example of the lack of parity in access to OSS via electronic means. BellSouth retail representatives place orders for complex services via the ROS system, albeit without the point-and-click technology and pull-down screens. Once the order has been typed in, it is transmitted electronically to BellSouth's provisioning systems. T.1132-1133. In contrast, WorldCom must order most complex services manually. That is, a WorldCom representative must fill out a paper form and fax it to BellSouth. T.1133. The additional manual handling obviously gives rise to the potential for more human error in WorldCom orders.

BellSouth's handling of the ordering of DS1 combos and "complex" services provides ample evidence that it does indeed need incentives to provide parity with respect to electronic ordering. BellSouth should not be allowed to assess a manual ordering charge for such

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provide private line service, whereas WorldCom uses the DS1 combo in conjunction with its own switches to provide switch-based local exchange service.

<sup>4</sup> WorldCom is challenging BellSouth's position on DS1 combos in this proceeding. See Issue 80.

<sup>5</sup> BellSouth contends that the LSR process should be used because the LSR is the national standard for local orders. BellSouth acknowledges, however, that national business rules do not exist for using the LSR for DS1 combos. Instead, BellSouth uses special business rules that are proprietary to BellSouth. T.1120-1132; Ex. 5, Pate Dep. at 64-65.



services for which it provides an electronic ordering system available to itself but provides only a manual system to ALECs like WorldCom.

**ISSUE 2: For purposes of the interconnection agreement between WorldCom and BellSouth, what prices should be included in the Interconnection Agreements?**

**WORLDCOM:** \*\*\*WorldCom has agreed to include the rates proposed by BellSouth in the interconnection agreement on an interim basis. All rates, including rates for line sharing and collocation, should be interim, subject to true-up when the Commission establishes permanent rates in a generic proceeding. \*\*\*

The only remaining dispute regarding Issue 2 is whether BellSouth's proposed rates for line-sharing and collocation should be included in the interconnection agreement as permanent rates or whether they -- like the other UNE rates -- should be interim and subject to true-up once the Commission establishes rates for those elements in a generic proceeding. T.522, 537-541, 895. The Commission currently has a generic proceeding underway to set prices for most UNEs (Docket No. 990649-TP) and the parties have agreed that rates for the elements at issue in that proceeding will be interim, subject to true-up once that proceeding is concluded. The same treatment should be extended to the rates for line-sharing and collocation, since UNE rate issues are best resolved in generic dockets where all interested parties are allowed to participate and the Commission can weigh competing cost studies. T.539. In fact, the Commission has specifically kept the generic collocation docket open for purposes of setting rates, and the Commission-approved stipulation in the UNE docket provides that rates for line-sharing will be set in a separate proceeding. Order No. PSC-00-0941-FOF-TP at 108; Order No. PSC-99-2467-PCO-TP at 17. There is no reason that the rates set in this arbitration for these elements should not be subject to true-up once industry-wide permanent rates have been established in these generic dockets.

**B. Resale**

**ISSUE 3: For purposes of the interconnection agreement between WorldCom and BellSouth, should the resale discount apply to all telecommunication services BellSouth offers to end users, regardless of the tariff in which the service is contained?**

**WORLDCOM: \*\*\*Yes. Offering a retail service under a tariff other than the private line or GSST tariffs does not preclude it from the wholesale discount.\*\*\***

Issue 3 concerns whether any service BellSouth puts in its state and federal access tariffs is automatically exempt from the resale discount. WorldCom asserts that there should not be an automatic exemption, while BellSouth contends there should be. WorldCom has proposed language addressing this issue in Section 1.1.1 of Attachment 2 (see Ex. 12).

BellSouth generally must provide ALECs all telecommunication services that BellSouth offers to end users, at the applicable resale discount. The Act requires BellSouth “not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications services.” Act, § 251 (b)(1). More specifically, federal regulations require BellSouth to “offer to any requesting telecommunications carrier any telecommunications service that [BellSouth] offers on a retail basis to subscribers that are not telecommunications carriers for resale at wholesale rates.” 47 C.F.R. § 51.605(a). The distinction between wholesale services (which are not subject to the discounted resale obligations of section 251(c)(4)) and retail services offered to end users (which are subject to those obligations) was confirmed in the Bell Atlantic 271 Order at ¶¶ 392-93. There the FCC concluded that Bell Atlantic did not have to make the ADSL service in question available for the resale discount because it was a wholesale service. In contrast, the ADSL service that Bell Atlantic made available to its retail customers was offered to ALECs at the resale discount. The same principle should apply here. As a general rule, when BellSouth makes a

service offering available to its end user customers, the offering should be classified as a retail service and offered to ALECs at the resale discount.

The sole exception to this rule concerns “exchange access” services, which are not subject to the resale requirements of the Act. *See* Local Competition Order at ¶ 873. The Act defines “exchange access” as “the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services.” 47 U.S.C. § 153(40). Thus, it is clear that BellSouth is not required to provide special access circuits used to connect a customer’s premises to an interexchange carrier’s point of presence at the resale discount. It is equally clear, however, that when BellSouth includes in its access tariffs services that are available for use (or are in fact used) for purposes other than toll access, those services may be resold by ALECs at the resale discount.

BellSouth’s SmartRing service provides an example of a service that is included in state and federal access tariffs, but that should be subject to the resale discount. SmartRing plainly is available for purposes other than toll access. The SmartRing service not only appears in BellSouth’s access tariffs, but also in its private line tariff. SmartRing is the same service regardless of the tariff in which it appears; it cannot be an access service when it appears in an access tariff and a non-access service when it appears in the private line tariff.<sup>6</sup> T.450. Under the Act, therefore, BellSouth must offer all of these tariffed SmartRing services to ALECs at the resale discount.

This conclusion also is required as a matter of public policy because BellSouth should not be allowed to manipulate the pricing of its services and effectively avoid resale

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<sup>6</sup> The service descriptions in BellSouth’s access tariffs and private line tariffs are substantially the same. *Compare* Florida Private Line Services Tariff, § B7.7.1.A and Florida Access Services Tariff § E7.2.16.A. BellSouth points to no difference in the service offerings that would make one available to be used for toll access and the other not available to be used for toll access.

competition. The SmartRing example illustrates this point. BellSouth's pricing of SmartRing in its federal access tariff generally is lower than in its Florida access tariff and its private line tariff. As a result BellSouth can offer its end users a lower price than WorldCom can offer, even with the resale discount off the private line rate. T.451. The fact that BellSouth will allow WorldCom to use the federal access tariff rate (without a resale discount) does not rectify the problem because at best WorldCom only can break even when offering the service to its customers. T.451. If BellSouth's proposed blanket exemption for access tariff services were accepted, BellSouth could shelter services from the resale discount by putting them in its access tariffs rather than its private line and general service tariffs. Alternatively, BellSouth could include a service in its access tariffs and its private line and general service tariffs, but price the access tariff services lower, thus preventing WorldCom from competing against BellSouth as a practical matter. BellSouth should not be given the opportunity to execute such a price squeeze.

**C. Unbundled Network Elements**

**ISSUE 5: For purposes of the interconnection agreement between WorldCom and BellSouth, should BellSouth be required to provide OS/DA as a UNE?**

**WORLDCOM: \*\*\*Yes. BellSouth must provide OS/DA as a UNE until it complies with the FCC's UNE Remand Order by offering effective selective routing. This obligation should continue until BellSouth is able to route OS/DA traffic successfully to WorldCom's OS/DA platform using a compatible signaling protocol and without requiring WorldCom to install additional trunking.\*\*\***

BellSouth is required to provide operator services and directory assistance ("OS/DA") as an unbundled network element ("UNE") if it does not provide selective routing that would enable an ALEC to use an alternative OS/DA provider. *In re: Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third

Report and Order and Fourth Further Notice of Proposed Rulemaking ¶ 463 (released November 5, 1999) (“UNE Remand Order”). WorldCom submits that BellSouth cannot meet the FCC’s test by providing selective routing that fails to allow ALECs to obtain alternative OS/DA as a practical matter. To meet the test, BellSouth should be required to provide selective routing that uses a signaling protocol that is compatible with ALECs’ OS/DA platforms, that provides economical transport, that can be ordered electronically and that has been tested and proven under real-world commercial conditions. BellSouth fails to meet this test. Therefore, WorldCom has proposed in Attachment 3, Section 2.8 that BellSouth be required to provide OS/DA as a UNE.

When an ALEC serves a customer via UNE-P and does not use selective routing, an OS/DA call automatically is routed to BellSouth’s TOPS platform and branded as a BellSouth service.<sup>7</sup> T.1299. If the ALEC wishes to use an alternative OS/DA provider, it must choose one of two selective routing methods – the line class code method or the AIN hubbing method. The line class code method permits an ALEC to order line class codes that include selective routing to an alternative OS/DA platform. T.1296. Simply routing OS/DA traffic using the line class method without any enhancement is of no practical value to WorldCom because WorldCom uses the Feature Group D signaling protocol for its OS/DA traffic, while BellSouth uses the modified operator signaling (“MOS”) protocol for its OS/DA traffic. If BellSouth were to route OS/DA traffic to WorldCom using the MOS protocol, WorldCom would not be able to identify the caller, T.1301, which means it would not be able to bill for its services.

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<sup>7</sup> BellSouth plans by the end of this year or early in 2001 to offer OLNS, which would involve routing ALEC traffic to the TOPS platform over the same trunk groups used to transport BellSouth’s OS/DA traffic. Customer branding would be done at the TOPS platform. T.1327-30. OLNS does not involve selective routing and does not permit an ALEC to route OS/DA traffic to its own OS/DA platform. T.1328-29, 1337.

Using what BellSouth calls a “pseudo-code” technique, BellSouth can convert its MOS protocol to the feature group D signaling protocol at the BellSouth tandem and then route the call to the WorldCom OS/DA platform. T.1304. Although this approach appears to route calls correctly, it is beset by a number of practical problems. One major problem is that the line class code method and pseudo-code technique would not allow WorldCom to take advantage of the common transport trunk groups already in place between BellSouth end offices and tandems. T.1310. Instead, WorldCom would be required to build or lease dedicated transport from every BellSouth end office serving its customers to the corresponding tandems. T.1305. This is an extraordinarily inefficient and expensive way to provide OS/DA service, particularly for the statewide residential service that WorldCom plans to offer. Adding to this problem is the cost of selective routing, which is \$200-300 per line class code per end office. T.1321. Because ALECs typically use at least four or five line class codes, T.1320, the cost can be \$1000 or more for each end office. Moreover, BellSouth does not currently provide an electronic means for WorldCom to order selective routing to its OS/DA platform and BellSouth witness Milner could not say when electronic ordering would be available. T.1319. As a practical matter, therefore, the line class code method, even as enhanced by the pseudo-code technique, does not provide an effective means of selectively routing traffic to WorldCom’s OS/DA platform.

The AIN hubbing method of selective routing involves transporting OS/DA traffic from BellSouth end offices to a designated switch from which the traffic can be taken to the ALEC’s chosen OS/DA platform. T.1322-23. ALECs can share transport from the BellSouth end offices to the AIN hub, provided of course that more than one ALEC signs up to use this method. T.1323-24. If WorldCom wishes to use its own OS/DA platform, it must obtain

dedicated trunking from the AIN hub to its platform. T.1323. Also, direct trunking from certain end offices to the ALECs' OS/DA platform is required to obtain compatible feature group D signaling. T.1199; Ex. 4, Milner Dep. at 139. As with the line class code method, BellSouth does not currently provide the ability to order AIN hub selective routing electronically. T.1324. Although Mr. Milner could not confirm the AIN hubbing price tag of almost \$500,000 for initial start-up, he did not dispute that the price was substantially higher than for the line class code method. T.1326-27. Not surprisingly, no ALEC has signed up to pay that price. T.1324.

In short, neither BellSouth's line class code method nor its AIN hubbing method provides a practical, commercially effective method of selectively routing OS/DA traffic to an alternative OS/DA provider. WorldCom submits that BellSouth is therefore required to provide OS/DA as a UNE and that WorldCom's proposed language requiring BellSouth to do so should be adopted.

**ISSUE 6: For purposes of the interconnection agreement between WorldCom and BellSouth, should BellSouth be directed to perform, upon request, the functions necessary to combine unbundled network elements that are ordinarily combined in its network?**

**WORLDCOM: \*\*\*Yes. BellSouth should be directed to perform, upon request, the functions necessary to combine unbundled network elements that are ordinarily combined in BellSouth's network. \*\*\***

The parties agree that BellSouth is required to offer UNE combinations to WorldCom at UNE rates when those elements are in fact combined today to serve a particular customer. The parties disagree as to whether BellSouth is required to offer such combinations when the elements involved are "typically" combined in BellSouth's network, but are not today physically combined to serve the particular

customer that WorldCom wishes to serve. WorldCom has proposed the following language in Attachment 3:

2.4 ... At MCI's request, BellSouth shall provide Typical Combinations of Network Elements to MCI. Typical Combinations are those that are ordinarily combined within the BellSouth network, in the manner which they are typically combined. Thus, MCI may order Typical Combinations of Network Elements, even if the particular Network Elements being ordered are not actually physically connected at the time the order is placed.

WorldCom's proposed language should be adopted both as a matter of federal law and as a matter of state law. With regard to federal law, FCC Rule 51.315(b) requires that "[e]xcept upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently *combines*." (Emphasis added). There can be no dispute that BellSouth currently *combines* UNEs such as local loops and switch ports (creating a loop-port switch combination). Because BellSouth currently combines those elements of its network, pursuant to Rule 51.315(b), it must make those elements available to ALECs on a combined basis and at prices that reflect the cost that would be incurred to provide these network elements in combination (pursuant to Rules 51.501 through 51.513). The U.S. Supreme Court affirmed Rule 51.315(b) and that rule remains in effect today. *AT&T Corp. v. Iowa Utils. Bd.*, 119 S. Ct. 721 at 736-37 (1999).

In its UNE Remand Order issued on November 5, 1999, the FCC cited back to its intentions when drafting Rule 315(b), stating that in the First Report and Order, "the Commission [FCC] concluded that the proper reading of 'currently combines' in Rule 51.315(b) means 'ordinarily combined within their network, in the manner in which they are typically combined.'" Third Report and UNE Remand Order ¶ 479. Rule 51.315(b) uses the phrase "currently combines." Thus, the Commission should require BellSouth to provide



UNEs to WorldCom in combined form when those UNEs are ordinarily combined within BellSouth's network, and in the manner in which they are typically combined. In addition to citing back to its intentions when drafting Rule 51.315(b), the FCC went on expressly to decline to address the arguments put forward by incumbent LECs like BellSouth urging a new, more restrictive interpretation of Rule 51.315(b).

WorldCom recognizes that in the recent Intermedia/BellSouth arbitration the Commission declined to construe the term "currently combines," preferring to wait until that language has been construed by the 8th Circuit Court of Appeals. Order No. PSC-00-1519-FOF-TP at 23-24. Even if the Commission were to take the same approach in this arbitration with respect to interpreting federal law and Rule 51.315(b), the Commission should nevertheless exercise its state law authority to require BellSouth to offer "typically combined" elements as UNE combinations. The cross-examination of Ms. Cox revealed the absurd results that follow from BellSouth's approach of offering combinations only where a physical combination exists at the time the ALEC's order is placed. T.910-913. Even if BellSouth's interpretation of its obligations under federal law were correct, it is not "inconsistent" with federal law for the Commission to impose additional obligations on BellSouth utilizing its state law authority. *See* the discussion of Legal Issue A.

Under Section 364.161(1), Florida Statutes, the Commission has the authority to establish rates, terms and conditions for the offering of unbundled elements. As a matter of public policy for Florida, the Commission should establish terms and conditions that require BellSouth to offer combinations of UNEs that are "typically combined" in its network. This policy has several things to commend it. First, it ensures that when an ALEC enters the Florida market using the UNE platform, its service will be available to new customers and

new lines as well as to old customers and existing lines. This will hasten the spread of local competition. Second, it avoids the need for an ALEC to establish collocation in order to "combine" elements that can quickly and easily be combined by BellSouth. This not only saves the time and expense of collocation, it preserves space in central offices which is rapidly becoming a scarce resource. By adopting WorldCom's proposed language, the Commission will take a major step to promote the introduction of competition for Florida consumers.

**ISSUE 8: For purposes of the interconnection agreement between WorldCom and BellSouth, should UNE specifications include non-industry standard, BellSouth proprietary specifications?**

**WORLDCOM: \*\*\*No. Only industry standard specifications should be used.\*\*\***

Technical specifications provide technical parameters regarding a facility such as a loop so that people using it can design their products and networks knowing the facility's capabilities. T.1343. The parties have agreed to industry standard specifications for loops in Appendix 3 to Attachment 3. BellSouth wants to incorporate its own proprietary specification on loops for the stated purpose of informing ALECs of the loops' capabilities. T.1343-44. BellSouth witness Milner acknowledged, however, that if an ALEC's loop has its demarcation point at the main distribution frame, there is no difference between an unbundled loop and a loop in BellSouth's network. T.1344-45. Because there are not technical differences between unbundled loops and "ordinary" loops, WorldCom submits that there is no need for additional, proprietary specifications. Different services BellSouth offers in conjunction with its loops can be, and in fact are, described in the body of the parties' interconnection agreement. T.1344.

BellSouth's proposed technical specification ("TR 73600") would create mischief as well. For example, TR 73600 contains restrictions on WorldCom's access to the main distribution frame that are inconsistent with provisions in the interconnection agreement and federal law. T.111-12, 1345-46. TR 73600 also purports to give BellSouth the right to disconnect a WorldCom loop for failure to comply with the requirements outlined in the document. T.1347. For instance, BellSouth could disconnect a WorldCom loop if it determined that there was too much noise or foreign voltage on the loop. T.1347-48. TR 73600 does not give WorldCom reciprocal rights in the event there is a problem with a BellSouth loop. T.1348.

TR 73600 plainly contains more than just specifications to inform WorldCom about BellSouth's network. BellSouth is attempting to impose terms and conditions on WorldCom in the guise of specifications. BellSouth's tactics are inappropriate and its "specification" should not be referenced by or incorporated in the parties' agreement.

**ISSUE 15: For purposes of the interconnection agreement between WorldCom and BellSouth, when a WorldCom customer served via the UNE-platform makes a directory assistance or operator call, must the ANI-II digits be transmitted to WorldCom via Feature Group D signaling from the point of origination?**

**WORLD COM: \*\*\*Yes. This information is needed to alert WorldCom to the number of the calling party and calling restrictions on the line. \*\*\***

ANI-II digits provide WorldCom with the number of the calling party and of any calling restrictions on the line. T.115. The ANI-II digits enable carriers to bill for calls properly. Ex. 4, Milner Dep. at 138. WorldCom has proposed in Attachment 3, Section 7.2.1.16 that the Agreement provide in this respect that "[c]alls from Local Switching must pass the ANI-II digits unchanged." BellSouth has acknowledged that using the Line Class Code method of selective routing and the pseudo-code technique, BellSouth can pass the

ANI-II digits unchanged. T.1338-39. Likewise, BellSouth can pass the ANI-II digits unchanged using its AIN hubbing method, with the caveat that for one switch type direct trunking to the WorldCom OS/DA platform would be required. Ex. 4, Milner Dep. at 138-40. There is thus no dispute concerning the technical feasibility of providing what WorldCom has requested. WorldCom's proposed language therefore should be adopted.

**ISSUE 18: Is BellSouth required to provide all technically feasible unbundled dedicated transport between locations and equipment designated by WorldCom so long as the facilities are used to provide telecommunications services, including interoffice transmission facilities to network nodes connected to WorldCom switches and to the switches or wire centers of other requesting carriers?**

**WORLDCOM: \*\*\*Yes. BellSouth is required to provide dedicated interoffice transmission facilities (where such facilities exist today) to the locations and equipment designated by WorldCom, including network nodes connected to WorldCom switches and to the wire centers and switches of other requesting carriers.\*\*\***

FCC rules require BellSouth to provide nondiscriminatory access to interoffice transmission facilities on an unbundled basis to any requesting telecommunications carrier for the provision of a telecommunications service. 47 C.F.R. § 51.319(d). Dedicated transport is defined as

incumbent LEC transmission facilities, including all technically feasible capacity-related services including, but not limited to, DS1, DS3 and OCn levels, dedicated to a particular customer or carrier, that provide telecommunications between wire centers owned by incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers.

47 C.F.R. § 51.319(d)(1)(A). BellSouth is required to “[p]rovide all technically feasible transmission facilities, features, functions, and capabilities that the requesting telecommunications carrier could use to provide telecommunications services.” 47 C.F.R. §

51.319(d)(2)(B). BellSouth's unbundling obligation "extends *throughout* its ubiquitous transport network." Rule 319 Remand Order, ¶ 324 (emphasis added).

The parties' dispute has been clarified somewhat since WorldCom filed its petition. WorldCom has proposed revised language making it clear that BellSouth would not be required to build facilities for WorldCom where no facilities exist already. See revised Attachment 4, Section 10.1 included in Ex. 27. And BellSouth has clarified that it is willing to provide dedicated transport to or from nodes on WorldCom's network, provided that BellSouth has transport facilities in place to do so. T.926-927. The remaining areas of dispute concern (i) whether BellSouth must provide dedicated transport as a UNE when more than one transport link is involved; and (ii) whether BellSouth must provide dedicated transport from a point on WorldCom's network to the switch or other facilities of a third-party carrier.

Because BellSouth's unbundling obligation extends throughout its ubiquitous transport network, WorldCom is entitled to existing dedicated transport from a point on WorldCom's network to any technically feasible point on BellSouth's network. But BellSouth contends it only should be required to unbundle single dedicated transport segments, such as between a WorldCom end office and a BellSouth serving wire center or between two BellSouth serving wire centers. BellSouth concedes that it is technically feasible to link segments together to create a longer dedicated transmission path. T.931. BellSouth's contention that each segment constitutes a separate UNE is unsupported by the law and would contravene sound policy by undermining the utility of dedicated transport. Unless an ALEC's need for dedicated transport fit within BellSouth's narrow requirements, the ALEC would be forced either to build collocation spaces at each BellSouth end office in question in order to run short

"jumpers" to connect the various legs of the transport facility, or to negotiate with BellSouth for "professional service" charges that would not be cost-based, but rather based on BellSouth's monopoly bargaining leverage. Each dedicated transport link is not a separate UNE. Just as BellSouth connects its feeder facilities to its distribution facilities and provides ALECs with UNE loops, so BellSouth must provide ALECs with the transport segments necessary to provide a single point-to-point UNE.

In any case, BellSouth ordinarily combines dedicated transport channels in its network, for example in the provision of MegaLink private line service. WorldCom is not asking BellSouth to provide anything that BellSouth does not ordinarily do for itself. Thus, even if the Commission were to consider dedicated transport that includes more than one transport segment in BellSouth's network to be a UNE combination rather than a single UNE, WorldCom still would be entitled to obtain such dedicated transport at UNE pricing. *See* the discussion of Issue 6 above.

WorldCom also is entitled to obtain existing dedicated transport from its network to a third party's switch or to a meet point between BellSouth's network and the third-party's network. Again, BellSouth is required to provide dedicated transport throughout its ubiquitous network, which would include facilities that extend to third party carriers. Moreover, the definition of dedicated transport includes facilities between wire centers or switches owned by ILECs or requesting telecommunications carriers. 47 C.F.R. § 51.319(d)(1)(A). Obviously, "requesting telecommunications carriers" can include third party carriers and is not just limited to WorldCom. This analysis is confirmed by paragraph 440 of the Local Competition Order, which notes a number of locations to which BellSouth must provide unbundled transport, including interexchange points of presence. If BellSouth is

required to provide dedicated transport to a third party interexchange carrier, it is equally required to provide dedicated transport to a third party ALEC or independent telephone company.

The absurdity of BellSouth's position is shown by Ms. Cox' testimony that BellSouth would not provide dedicated transport facilities to connect a WorldCom switch to an AT&T switch, but would provide such facilities to connect a WorldCom switch to a WorldCom collocation cage located adjacent to the AT&T switch. T.939-930; Ex. 28. There clearly is no practical difference to BellSouth between these two scenarios. Instead, BellSouth's restrictive position is based on its interpretation that the Act requires it to provide transport only between two locations of the same "requesting carrier," not between locations of two different "requesting carriers." WorldCom submits that BellSouth's interpretation of the Act is incorrect. The FCC's definition of dedicated transport does not purport to limit the use of dedicated transport to connect two locations of the same carrier, and there is no policy ground for such a limitation. If WorldCom elects to use dedicated trunking to exchange traffic with a third party carrier, and BellSouth has facilities available to transport that traffic, WorldCom is entitled to lease that portion of BellSouth's network. Otherwise, WorldCom would be required to build duplicative facilities or lease them from BellSouth (provided it is willing to do so) at "market pricing," BellSouth's euphemism for any price it can command. Ms. Cox' overly narrow reading of the Act should be rejected.

Even if the Commission were to accept that narrow interpretation of federal law, however, sound public policy would justify the Commission in requiring BellSouth to provide such dedicated transport between two carriers as a matter of state law. The failure to do so

would only impose unnecessary costs on new entrants and hinder the development of local competition.

In short, WorldCom's proposed language on dedicated transport conforms to the applicable law and sound public policy, and it should be adopted.

**ISSUE 19: How should BellSouth be required to route OS/DA traffic to WorldCom's operator services and directory assistance platforms?**

**WORLD COM:** \*\*\*WorldCom should have the option of having OS/DA traffic delivered to its OS/DA platforms using either shared transport or dedicated transport. Under either option, BellSouth should use a compatible signaling protocol from the point of origination. \*\*\*

WorldCom has proposed a number of provisions concerning the routing of traffic from customers it serves with unbundled switching to WorldCom's OS/DA platforms via dedicated and shared transport. See Attachment 3, Sections 7.3.2, 7.3.2.2, 7.3.2.3, 7.6.4, 14.2.1.5, and 14.2.8; Attachment 9, Sections 2.8.1, 2.8.1.1, 3.2.1.1, 3.5.2 and 3.5.2.1. Initially, BellSouth opposed WorldCom's language, but since has acknowledged that it can accommodate almost all of what WorldCom is requesting. T.1339. The primary sticking point now is whether BellSouth must provide shared transport for WorldCom's OS/DA traffic over common transport trunk groups from BellSouth's end offices to its tandems. T.1340. WorldCom is requesting this shared transport to avoid having to lease dedicated transport from every BellSouth end office from which WorldCom serves customers. T.119. As discussed above with respect to Issue 5, the selective routing methods BellSouth employs today do not solve this problem.

FCC rules provide that ILECs must provide "all technically feasible transmission facilities, features, functions, and capabilities that the requesting telecommunications carrier could use to provide telecommunications services." 47 C.F.R. § 51.319(d)(2)(B). WorldCom



submits that it is technically feasible for BellSouth to convert its OS/DA signaling protocol at its end offices so that OS/DA signaling can be sent over shared transport. Possible methods include modifying the equal access tables in BellSouth's switches and employing an Advanced Intelligent Network ("AIN") solution. BellSouth should be required to implement such a solution. T.120. Accordingly, WorldCom submits that its proposed language should be adopted.

**ISSUE 22: For purposes of the interconnection agreement between WorldCom and BellSouth, should the Interconnection Agreements contain WorldCom's proposed terms addressing line sharing, including line sharing in the UNE-P and unbundled loop configurations?**

**WORLDCOM: \*\*\*Yes. The Interconnection Agreements should contain WorldCom's proposed terms addressing line sharing. In particular, an existing customer obtaining data service from a DSL provider via line-sharing with BellSouth should be able to retain that data service if WorldCom begins to provide voice service via UNE-P.\*\*\***

Both parties have proposed contract terms that address line sharing. WorldCom's most recent proposal is reflected in Exhibit 17. The most obvious difference between the parties' proposals is that, under WorldCom's proposal, BellSouth would be required to provision UNE-P to WorldCom in a manner that permits WorldCom's customer to retain data service from a data ALEC ("DLEC") that is already providing the customer service via line sharing with BellSouth. T.459, 939. Under BellSouth's position, if WorldCom were to win the customer's voice business, BellSouth would remove the line-sharing splitter, thereby disconnecting the customer's data service. T.460, 935. This is not only unnecessarily disruptive to the customer, it is also anti-competitive, since it means that BellSouth retains a practical monopoly over providing voice service to customers who want to use line sharing to meet their data needs.

The FCC labeled this issue “line splitting” in its decision on SBC’s 271 application for Texas. *Application by SBC Communications Inc. et. al Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas*, Memorandum Opinion and Order, CC Docket No. 00-65 at ¶ 323 (released June 30, 2000) (“Texas 271 Order”). In the line-splitting scenario, “both the voice and data service will be provided by competing carrier(s) over a single loop.” *Id.* at ¶ 324.

The FCC’s rules make clear that BellSouth should be required to provision UNE-P to WorldCom in a manner that permits line splitting between a WorldCom and a DLEC. When WorldCom obtains a loop via UNE-P, it acquires rights to the entire loop, including the portions used to provide voice service and the portions capable of providing advanced services. The FCC’s rules expressly state the purchase of a UNE includes “all of the unbundled network element’s features, functions, and capabilities” 47 C.F.R. § 51.307 (c). As the FCC stated, “as a result, incumbent LECs have an obligation to permit competing carriers to engage in line splitting over the UNE-P where the competing carrier purchases the entire loop . . .” Texas 271 Order at ¶ 325.

Another issue raised by WorldCom’s proposed language is whether BellSouth should be required to supply the splitter that is already in place on a line shared between itself and a DLEC. Under WorldCom’s proposal, BellSouth would be required to provide the splitter. Although the FCC does not require this of ILECs, Texas 271 Order at ¶ 325, states are free to decide this issue themselves. The first state to decide this issue, Texas, has ordered ILECs not to only permit line splitting via UNE-P but to provide the splitter as well. The Public Utility Commission of Texas decided as follows:

As noted above, the Arbitrators in this case find that SWBT is required to provide the splitter in order to allow AT&T to access the full functionality of

the loop. . . . the Arbitrators also believe that this decision will promote more rapid deployment of advanced services to a broader cross section of customers, as required by Section 706 of the FTA. The evidence in this case shows that SWBT's proposal requiring UNE-P CLECs to collocate in order to gain access to the high frequency portion of the loop [SWBT's proposal was what BellSouth is offering WorldCom], (1) unnecessarily increases the degree of coordination and manual work and accordingly increases both the likelihood and duration of service interruptions; (2) introduces unnecessary delays for space application, collocation construction, and splitter installation; and (3) unnecessarily wastes central office and frame space. Thus, the Arbitrators believe that SWBT's proposal significantly prohibits UNE-P providers from achieving commercial volume, not only because collocation is required but also because SWBT does not propose to prewire, or allow the CLEC to prewire, from the intermediate distribution frame (IDF) to the CLEC's splitter. Arbitrators presented with a scenario where the CLEC is not required to collocate and the ILEC is offering to prewire (or allow the CLEC to prewire) from the IDF to the CLEC splitter may very well reach a different conclusion than the Arbitrators reached in this case.

*Petition of Southwestern Bell Telephone Company for Arbitration with AT&T*

*Communications of Texas, L.P. et. al Pursuant to Section 252(B)(1) of the Federal*

*Communications Act of 1996, Arbitration Award, Docket No. 22315 at 19 (September 13, 2000) (footnote omitted).*

Because FCC rules require BellSouth to make line splitting available to WorldCom when WorldCom provides voice service to an end-user using UNE-P, the Commission should incorporate this requirement in the interconnection agreement. Additionally, because provisioning of the splitter by BellSouth is the only means to enable line splitting that is efficient, timely, and minimally disruptive to the retail customer, BellSouth should be required to provide the splitter to WorldCom.

**ISSUE 23: For purposes of the interconnection agreement between WorldCom and BellSouth, does WorldCom's right to dedicated transport as an unbundled network element include SONET rings?**

**WORLD COM: \*\*\*Yes. WorldCom's right to dedicated transport as an unbundled network element includes SONET rings that exist on BellSouth's network.\*\*\***

Issue 23 concerns the extent to which BellSouth's SONET rings must be unbundled as dedicated transport. SONET functionality provides a number of features not afforded by point-to-point dedicated transport. For example, SONET rings provide redundancy so that if a fiber is cut, service is not interrupted. T.462. Likewise, SONET ring architecture enables a carrier to add service at any node on the ring, and to provision service remotely, so that, for instance, additional capacity can be provisioned to a customer from a central location. T.462.

The FCC described ILECs' duty to unbundle SONET rings in its UNE Remand Order. Although the FCC rejected a specific proposal by Sprint which would have required ILECs to construct SONET ring facilities for ALECs, the FCC made clear that ILECs unbundling responsibilities extend to existing SONET rings:

Notwithstanding the fact that we require incumbents to unbundle high-capacity transmission facilities, we reject Sprint's proposal to require incumbent LECs to provide unbundled access to SONET rings. In the Local Competition First Report and Order, the Commission limited an incumbent LEC's transport unbundling obligation to existing facilities, and did not require incumbent LECs to construct facilities to meet a requesting carrier's requirements where the incumbent LEC has not deployed transport facilities for its own use. Although we conclude that an incumbent LEC's unbundling obligation extends throughout its ubiquitous transport network, including ring transport architectures, we do not require incumbent LECs to construct new transport facilities to meet specific competitive LEC point-to-point demand requirements for facilities that the incumbent LEC has not deployed for its own use.

UNE Remand Order, ¶ 324. This ruling means that BellSouth must provide unbundled access to SONET rings that exist on its network. That is what WorldCom is seeking here.

Since WorldCom filed its arbitration petition, the parties have defined their dispute more precisely. The parties agree that WorldCom may order point-to-point dedicated transport and that to the extent such transport traverses a SONET ring, BellSouth will provide SONET functionality. The parties further agree that BellSouth is not obligated to construct

fiber facilities to provide a SONET ring where those facilities do not currently exist.

WorldCom's revised language (Attachment 4, Section 10.2.) addressing that point is included in Exhibit 27. The parties disagree on two principal issues: (i) whether BellSouth must provide WorldCom with access to an entire existing SONET ring as opposed to segments used for particular point-to-point dedicated transport; and (ii) whether, when fiber facilities are in place but not used as a SONET ring, WorldCom may request that SONET functionality be added.

WorldCom seeks access to entire SONET rings so that it may obtain the same functionality and flexibility that BellSouth enjoys. For example, if WorldCom leased a portion of the capacity on an entire SONET ring, it could add and drop customers on the ring remotely, without having to order dedicated transport links from BellSouth. T.462.

WorldCom's request is based on the FCC's conclusion "that an incumbent LEC's unbundling obligation extends throughout its ubiquitous transport network, including ring transport architectures." UNE Remand Order ¶ 324. BellSouth's expressed concern that providing such access would involve changes to the existing electronics supporting BellSouth's SONET rings does not provide a basis for relieving BellSouth from unbundling access to SONET rings. As Mr. Varner acknowledged in his deposition, electronics are included in the price of transport. Ex. 2, Varner Dep. at 155. BellSouth thus is compensated for unbundling its SONET systems. Likewise, BellSouth's contention that modifications to SONET electronics constitute construction of facilities cannot be squared with the UNE Remand Order. If BellSouth could avoid unbundling its SONET rings any time modifications to its electronics were required, it effectively could circumvent the FCC's requirement that SONET rings be

unbundled. Where SONET rings exist in BellSouth's network, BellSouth must provide unbundled access.

WorldCom also has requested the ability to require BellSouth to add SONET functionality where transport facilities are in place but BellSouth's transport system does not provide SONET functionality. Pricing would be negotiated between the parties on a case-by-case basis. T.569-570. If the parties could not agree on a price, then BellSouth would not be required to make the upgrade. It is difficult to see why BellSouth would not agree to such an arrangement given the assurance that it would never have to commit to the upgrade unless it was comfortable that it was receiving an acceptable price. WorldCom submits that this proposal is reasonable and should be incorporated into the parties' interconnection agreement.

**ISSUE 28: For purposes of the interconnection agreement between WorldCom and BellSouth, should BellSouth provide the calling name database via electronic download, magnetic tape, or via similar convenient media?**

**WORLD COM: \*\*\*Yes. BellSouth should provide the calling name database via electronic download or on magnetic tape.\*\*\***

The calling name (CNAM) database is needed to provide a number of services to MCI WorldCom's customers, including Caller ID with Name service. T.373. WorldCom has proposed language in Attachment 3, Section 13.7 that would require BellSouth to provide a download of the CNAM database. The FCC has ruled that ILECs also must offer unbundled access to call-related databases, "including, but not limited to, the . . . Calling Name database . . ." UNE Remand Order ¶ 402.

The database should be provided via electronic download or on magnetic tape, which are the most efficient means of providing it. T.373-374. Electronic download is the most efficient, least costly means of providing the database. *Id.* It is technically feasible to provide

the information in this form, and indeed, the directory assistance database is provided via electronic download. *Id.* Industry standards require that WorldCom pass the calling party's name to the called party between the first and second ring on the called party's line. Ex. 9, Price Dep. at 90-92 Because of this extremely short time frame, WorldCom must have the most efficient means available to it to access the database. WorldCom engineers have determined that a database download would permit WorldCom to provide the calling name more reliably in compliance with industry standards. Ex. 9, Price Dep. at 93. Moreover, WorldCom is willing to compensate BellSouth for the work involved in arranging the database download. T.581. BellSouth makes no claim that providing the database would not be technically feasible, and in fact the current interconnection agreement between WorldCom and BellSouth requires a download of the RSAG database. *See* Order No. PSC-98-1484-FOF-TP.

Because the FCC requires unbundled access to the calling name database, because WorldCom believes it will require the information in database format in order to use it effectively, and because it is technically feasible to provide, the Commission should order BellSouth to make the CNAM database available to WorldCom via electronic download or on magnetic tape.

**D. Interconnection**

**ISSUE 29: Should calls from WorldCom customers to BellSouth customers served via Uniserve, Zipconnect, or any other similar service, be terminated by BellSouth from the point of interconnection in the same manner as other local traffic, without a requirement for special trunking?**

**WORLD COM: \*\*\*Yes. Calls from WorldCom customers to BellSouth customers served via Uniserve, Zipconnect, or any other similar service, should be terminated by BellSouth from the point of interconnection in the same**

manner as is other local traffic, without a requirement for special trunking.\*\*\*

Uniserv is a BellSouth retail service that allows BellSouth business subscribers to have their customers dial a single telephone number from anywhere in the LATA to call to a single service location. T.375, 1353-54. Uniserv might be used, for example, by a pizza delivery service that wanted its customers to be able to dial one number throughout the LATA in which it was located. T.1354; Ex. 4, Milner Dep. at 188. The problem with Uniserv from WorldCom's perspective is that unless WorldCom makes special arrangements, when customers served by a WorldCom switch call a BellSouth Uniserv customer, BellSouth will not complete the call. T.1357, 1360-61; Ex. 4, Milner Dep. at 189. BellSouth requires that WorldCom arrange for dedicated trunking from its switches to BellSouth's TOPS platforms before BellSouth will complete Uniserv calls. *Id.* This requirement for special, added trunking to the BellSouth TOPS platform adds cost unnecessarily for WorldCom. T.375. To resolve this problem, WorldCom has proposed the following language in Attachment 4, section 1.1.1:

BellSouth shall not require MCI to establish trunks for local interconnection to points other than the Point of Interconnection because of a particular service offered by BellSouth to its customers (e.g. Uniserv or ZipConnect).<sup>8</sup>

For the reasons noted below concerning Issue 36, WorldCom is entitled to choose the point of interconnection where the parties' traffic is to be exchanged. It is therefore BellSouth's responsibility to transport Uniserv calls from WorldCom customers from the point of interconnection to the intended BellSouth customer. By purporting to require WorldCom to route Uniserv calls to the TOPS platform, BellSouth is in effect attempting to

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<sup>8</sup> BellSouth has clarified that ZipConnect calls are processed differently than Uniserv calls, so ZipConnect calls are no longer at issue. Ex. 13, Milner Dep. at 187-88.



dictate the point of interconnection. Just because BellSouth has configured its network so that Uniserv calls from its customers are routed to the TOPS platform does not mean that BellSouth can require ALECs to interconnect there. Uniserv traffic is voice traffic, not OS/DA traffic. T.1359. BellSouth must bear the responsibility of transporting this traffic from the ALECs' chosen point of interconnection to the BellSouth customer.

BellSouth witness Milner did not contend that it would be technically infeasible for BellSouth to pick up Uniserv traffic at the point of interconnection. T.1360. BellSouth simply does not want the financial responsibility for picking these calls up at the point of interconnection and completing them. T.1404-05. Uniserv is BellSouth's retail service, for which BellSouth is compensated by its business customers. When a WorldCom customer makes a call to a BellSouth Uniserv customer, BellSouth charges WorldCom reciprocal compensation for completing the call. It is only fair that BellSouth to take responsibility for transporting and terminating this traffic from the point of interconnection.

**ISSUE 34: For purposes of the interconnection agreement between WorldCom and BellSouth, is BellSouth obligated to provide and use two-way trunks that carry each party's traffic?**

**WORLDCOM: \*\*\*Yes. Upon request by WorldCom, BellSouth must provide and use two-way trunks pursuant to FCC regulations. Two-way trunks are more cost efficient and make testing easier.\*\*\***

Issue 34 concerns whether BellSouth must provision and use two-way trunks upon request. Generally, two-way trunks are more efficient than one-way trunks for traffic that flows in both directions, such as local, intraLATA interexchange and transit traffic. T.238. BellSouth Witness Cox acknowledged that from a technical perspective two-way trunking involves the fewest possible number of trunks and trunk ports, and that two way trunking is always as efficient or more efficient than one-way trunking. T.944-945. As a practical

matter, engineers working for WorldCom and BellSouth will attempt to work out the best trunking arrangement in each case. *See* T.290-291. But in the event the engineers cannot agree, WorldCom should have the right to require two-way trunking. WorldCom thus has proposed in section 2.1.2 of Attachment 4 that “[t]he parties shall use either one-way or two-way trunking or a combination, as specified by WorldCom.”

WorldCom’s proposed language simply incorporates the FCC’s requirements on two-way trunking. The applicable FCC rule provides that “[i]f technically feasible, an incumbent LEC shall provide two-way trunking upon request.” 47 C.F.R. § 51.305(f). BellSouth witness Cox acknowledged that providing two-way trunks is technically feasible, and that BellSouth is willing to provide two-way trunks upon request, but stated that BellSouth is not necessarily willing to use those trunks.<sup>9</sup> T.942. If WorldCom orders a two-way trunk and BellSouth refuses to use that trunk for its traffic, the efficiencies of two-way trunking will be lost. T.239. Thus, if BellSouth’s position were accepted, the FCC’s two-way trunking rule would become meaningless.

The FCC’s Local Competition Order sheds further light on this issue. Paragraph 219 states:

We identify below specific terms and conditions for interconnection in discussing physical or virtual collocation (i.e., two methods of interconnection). We conclude here, however, that where a carrier requesting interconnection pursuant to section 251 (c)(2) does not carry a sufficient amount of traffic to justify separate one-way trunks, an incumbent LEC must accommodate two-way trunking upon request where technically feasible. Refusing to provide two-way trunking would raise costs for new entrants and create a barrier to entry. Thus, we conclude that if two-way trunking is

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<sup>9</sup> One issue BellSouth has raised concerns a situation in which BellSouth wants to use direct trunking from a BellSouth end office to the WorldCom switch rather than transporting that traffic via the BellSouth tandem. The parties have agreed upon language that would accommodate this concern. *See* Ex. 2, Varner Dep. at 212-14. It should be noted, however, that if WorldCom also wanted to use direct trunking between its switch and the BellSouth end office, WorldCom should have the right to have BellSouth provide and use two-way trunking for that traffic.

technically feasible, it would not be just, reasonable, and nondiscriminatory for the incumbent LEC to refuse to provide it.

One concern identified by the FCC was that an ALEC might not carry a sufficient amount of traffic to justify separate one-way trunks. Based on at least this concern, the FCC directed ILECs like BellSouth to provide two-way trunks. Obviously, the FCC's concern would not be addressed if BellSouth were not also required to use the two-way trunks it provides, because if BellSouth does not use those trunks the ALEC loses the benefits of two-way trunking. T.239. Moreover, the FCC did not give BellSouth the right to second guess an ALEC concerning whether two-way trunks ought to be used. Rather, the FCC concluded unequivocally that "if two-way trunking is technically feasible, it would not be just, reasonable, and nondiscriminatory for the incumbent LEC to refuse to provide it." BellSouth thus does not have the right, as it contends, to limit its use of two-way trunks to those circumstances in which BellSouth agrees that there is insufficient traffic to justify separate one-way trunks. The FCC hammered this point home in its final rule, which without qualification requires BellSouth to "provide two-way trunking upon request." 47 C.F.R. § 51.305(f).

The Commission should adopt the contract language proposed by WorldCom because it is consistent with WorldCom's right to choose either a one-way or two-way trunk set forth in the FCC's regulations.

**ISSUE 36:** For purposes of the interconnection agreement between WorldCom and BellSouth, does WorldCom, as the requesting carrier, have the right pursuant to the Act, the FCC's Local Competition Order, and FCC regulations, to designate the network point (or points) of interconnection at any technically feasible point?

**WORLDCom:** \*\*\*Yes. WorldCom has the right to designate the network point (or points) of interconnection at any technically feasible point. This includes WorldCom's right to designate a single point of

interconnection (such as at BellSouth's access tandem) for termination of traffic throughout the LATA.\*\*\*

Issue 36 concerns whether WorldCom should have the right to choose the point of interconnection for the exchange of local traffic between WorldCom and BellSouth. WorldCom's position is that it has that right both for its originating traffic and for BellSouth's originating traffic. WorldCom has proposed section 1.3 of Attachment 4, the key provision in question, which provides that "WorldCom will designate the point or points of interconnection and determine the method or methods by which the parties interconnect." BellSouth's position is that each party should have the right to choose the point of interconnection for its originating traffic. This issue is one of the most important in this arbitration and is one of the issues on which BellSouth is most clearly wrong.

Federal law establishes that WorldCom has the right to choose the point of interconnection for local traffic exchanged by WorldCom and BellSouth. The Act provides that BellSouth has the "duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network . . . at any technically feasible point within the carrier's network." 47 U.S.C. § 251(c)(2). The Act does not give BellSouth a choice as to where the interconnection point will be; BellSouth must allow the requesting carrier to interconnect at any technically feasible point. In implementing the Act, the FCC emphasized this point, stating:

The interconnection obligation of section 251(c)(2) . . . allows competing carriers to choose the most efficient points at which to *exchange traffic* with incumbent LECs, thereby lowering the competing carrier's costs of, among other things, transport and termination of traffic.

Local Competition Order ¶ 172 (emphasis added). The FCC also stated that "[o]f course, requesting carriers have the right to select points of interconnection at which to exchange

traffic with an incumbent LEC under section 251(c)(2).” Local Competition Order ¶ 220, n.464. These rulings make clear not only that WorldCom has the right to select the point of interconnection, but also that the point of interconnection is the point where the parties *exchange* traffic. Exchanging traffic involves each party sending traffic to the other. Thus, WorldCom is entitled to select the point of interconnection for both parties’ originating traffic.

More recently, the FCC has ruled that an ALEC may choose to interconnect with an ILEC at a single point in its Texas 271 Order. The FCC explained that:

Section 251, and our implementing rules, require an incumbent LEC to allow a competitive LEC to interconnect at any technically feasible point. This means that a competitive LEC has the option to interconnect at only one technically feasible point in each LATA.

Texas 271 Order at ¶ 77 (footnotes omitted). If an ALEC has the right to interconnect with the ILEC’s network at only one point, clearly the ILEC does not have the right to designate additional points for its own originating traffic. BellSouth’s position that it does have such a right cannot be squared with the Texas 271 Order.

WorldCom’s right under the Act to choose a single point of interconnection (and thus the point of interconnection for both parties’ traffic) has been affirmed by every court to review the issue. For example, the United States District Court for the Middle District of Pennsylvania affirmed a Magistrate’s decision establishing MCI’s right to interconnect at a single technically feasible point of interconnection and reversing a decision by the Pennsylvania Public Utility Commission specifying multiple points of interconnection. *MCI v. Bell Atlantic-Pennsylvania*, Civil No. 1:CV-97-1857, Memorandum and Order, p. 14 (U.S.D.C. for the Middle District of Pennsylvania, June 30, 2000). The Magistrate ruled as follows:

The PUC's decision to require MCI to interconnect with Bell Atlantic's network in every access tandem serving area is inconsistent with the Act and FCC regulations. In the absence of proof by Bell Atlantic that it is not technically feasible for MCI to have only one point of interconnection in each LATA, the agreement must permit MCI to establish a single point of interconnection per LATA consistent with the Act and FCC regulations. . . . As the FCC notes, under the FCC's interpretation new entrants may select the most efficient points at which to exchange traffic with incumbent LEC's thereby lowering the competing carrier's cost of, among other things, transportation and termination, citing FCC Order ¶ 172.

*MCI v. Bell Atlantic-Pennsylvania*, Civil No. CV-97-1857, Report and Recommendation, pp. 36-37, (U.S.D.C. for the Middle District of Pennsylvania, September 16, 1999). Similarly, the Ninth Circuit upheld provisions in an MFS contract permitting a single point of interconnection per LATA, citing Section 251 (c)(2) of the Act and noting that "[t]he plain language requires local exchange carriers to permit interconnection at any technically feasible point within the carrier's network." *US West v. MFS Intelenet*, 193 F.3d 1112 (9<sup>th</sup> Cir 1999).

ILEC positions similar to BellSouth's have been rejected by state public utility commissions as well. The Massachusetts DTE has rejected such a proposal by Bell Atlantic, noting that:

Regarding Bell Atlantic's request that the Department approve its proposal to require MediaOne and Greater Media to provide IPs at or near each of Bell Atlantic's tandems, neither the Act nor the FCC's rules requires MediaOne or any CLEC to interconnect at multiple points within a LATA to satisfy an incumbent's preference for geographically relevant interconnection points. See *Id.* at ¶¶ 198-199.

Therefore, we find that a CLEC may designate a single IP for interconnection with an incumbent even though that CLEC may be serving a large geographic area that encompasses multiple ILEC tandems and end offices. There is no requirement of even preference under federal law that a CLEC replicate or in a lesser way mirror an ILEC's network. Indeed, the Act created a preference for CLECs to design and engineer in the most efficient way possible, which Congress envisioned could be markedly different than the ILECs networks. *Id.* at ¶ 172.

Regarding Bell Atlantic's argument that if MediaOne and Greater Media do not establish "geographically relevant" IPs, they would be obligated to pay Bell Atlantic's transport costs, Bell Atlantic has pointed to nothing in the Act or FCC rules requiring CLECs to pay the transport costs that Bell Atlantic will incur to haul its traffic between Bell Atlantic's IP and the meet point. The FCC envisioned both carriers paying their share of the transport costs to haul traffic to the meet point under the interconnection rules. Bell Atlantic's cite to the FCC's language regarding "expensive interconnection" is not on point because the FCC there was referring to interconnection costs -- not transport costs.

*Petition of Media One, Inc. and New England Telephone and Telegraph, for arbitration, D.T.E 99-42/43, 99-52, p. 25 (Mass. DTE August 25, 1999).*

The Texas PUC has also affirmed an ALEC's right to designate a single point of interconnection per LATA. It found that a single point of interconnection is technically feasible, that technical feasibility refers solely to technical or operational concerns, rather than economic, space, or site considerations, and that SWBT (an ILEC) cannot compel AT&T (an ALEC) to interconnect at multiple points. Public Utility Commission of Texas, Revised Arbitration Award, Docket No. 22315 (September 27, 2000).

BellSouth cites no legal authority expressly stating that BellSouth is entitled to choose the point of interconnection for its originating traffic. BellSouth relies primarily on language from the Local Competition Order stating that ALECs have the right to deliver traffic terminating on an ILEC's network at any technically feasible point. T.746-747. (quoting Local Competition Order ¶ 209). BellSouth witness Cox infers from this passage that the ALECs' right to designate the point of interconnection is limited to cases in which ALECs are originating traffic. T.747. But the FCC has not stated that ALECs' right to choose the point of interconnection is so limited. To the contrary, it has stated in other parts of the Local Competition Order that ALECs may choose the point where the parties will *exchange* traffic.

Local Competition Order ¶¶ 172, 220 n.464. The only other authority BellSouth has cited to support its position is a portion of the Eighth Circuit's recent decision on TELRIC pricing that has been stayed. T.733-734; Ex. 2, Varner Dep. at 226.

Notwithstanding the law, the principal concern BellSouth expresses about WorldCom having the right to choose the point of interconnection regards situations in which WorldCom serves a customer in one local calling area with a switch in another local calling area. Under BellSouth's proposal, WorldCom at least in theory would be allowed to choose the point of interconnection for its originating traffic. T.738. Even in that case, however, BellSouth witness Cox stated that WorldCom would be responsible for establishing "interconnection trunks" (whether through BellSouth or another carrier) to the transport its customers' calls from the point of interconnection through BellSouth's network to the local calling area in question. T.873; Ex. 2, Varner Dep. at 233-39. Under this analysis, BellSouth in effect could establish the point of interconnection even for calls originated by WorldCom. For calls originated on BellSouth's network, BellSouth would be free to establish the point of interconnection for each local calling area in which WorldCom was offering local service. Again, WorldCom would be responsible for transporting that call back through BellSouth's network to WorldCom's network. T.745-746.

Even putting aside the law that establishes WorldCom's right to choose the point of interconnection, BellSouth's scheme cannot withstand analysis. BellSouth's proposal that WorldCom be required to transport its originating traffic beyond the point of interconnection to BellSouth's local calling areas violates BellSouth's duty under Section 251(b)(5) of the Act to "establish reciprocal compensation arrangements for the transport and termination of telecommunications." The FCC has defined "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. . . ." BellSouth's proposal ignores the Act's requirement that BellSouth transport and terminate traffic from the point of interconnection. Instead, BellSouth's proposal requires WorldCom to transport its traffic beyond the point of interconnection either by building its own facilities or by paying BellSouth (or a third party) for such transport.

BellSouth's proposal that it be able to designate the point of interconnection for its originating traffic and require WorldCom to transport that traffic through BellSouth's network to WorldCom's network is equally unlawful. FCC rules provide that "[a] LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network." 47 C.F.R. § 51.703(b). BellSouth's proposal would enable BellSouth to charge transport fees to WorldCom for BellSouth's originating traffic and fails for that additional reason.

In contrast to BellSouth's proposal, WorldCom's proposal complies with the law and is fair to both parties. Under WorldCom's proposal, WorldCom would be entitled to choose a point of interconnection, but of course would be required to do so on a point on BellSouth's network. WorldCom would establish an interconnection point in each LATA in which it originates traffic. Each party would be responsible for bringing its originating traffic to the point of interconnection and each party would be responsible for transporting and terminating the other party's traffic from the point of interconnection. Under this approach, WorldCom would not be required to arrange transport on BellSouth's side of the point of interconnection before it could serve customers in another local calling area, but could expand its network as

traffic volumes warranted. Thus, unlike BellSouth's proposal, WorldCom's proposal promotes local competition.

For all the foregoing reasons, WorldCom requests that the Commission adopt the contract language proposed by WorldCom stating that WorldCom has the right to designate any technically feasible point of interconnection.

**ISSUE 37: Should BellSouth be permitted to require WorldCom to fragment its traffic by traffic type so it can interconnect with BellSouth's network?**

**WORLDCOM: \*\*\*No. WorldCom should have the right to require the use of two-way trunks and to combine local, intraLATA and transit traffic on one trunk group.\*\*\***

Issue 37 concerns trunk fragmentation, which is the separation of different types of traffic onto different trunk groups. Specifically, WorldCom has requested that local, intraLATA toll and transit traffic be carried over the same interconnection trunk groups, for network efficiency reasons. T.249. WorldCom has proposed section 2.2.7 of Attachment 4, which would prohibit trunk group fragmentation by traffic types except as specified in the Agreement. BellSouth acknowledges that its supergroup trunks can accommodate this request. T.1363-64.

The three reasons BellSouth has given for opposing WorldCom's proposed language all are readily addressed. First, BellSouth witness Milner asserted that WorldCom's proposal would prevent BellSouth from using direct end office trunks. T.1204-05. At his deposition, Mr. Milner acknowledged that other language in the parties' draft interconnection agreement addressed that concern. Ex. 4, Milner Dep. at 198. Second, Mr. Milner raised the issue of one-way traffic such as 911 traffic and OS/DA traffic, T.1206, but agreed that concern could be dealt with by the parties. T.1362; Ex. 4, Milner Dep. at 201-02. That point is not in dispute, because WorldCom witness Olson acknowledged that special purpose traffic such as

911 traffic and OS/DA traffic would not be included in WorldCom's request that interconnection traffic not be fragmented. T.249, 273; Ex. 8, Olson Dep. at 135. Third, Mr. Milner argues that WorldCom should not be able to require BellSouth to provide and use two-way trunks. T.1206-07. If WorldCom prevails on Issue 34, that argument will be rendered moot. Because all of BellSouth's concerns can be addressed, assuming Issue 34 is resolved in WorldCom's favor, WorldCom submits that its proposed language should be adopted.

**ISSUE 39: For purposes of the interconnection agreement between WorldCom and BellSouth, how should Wireless Type 1 and Type 2A traffic be treated under the Interconnection Agreements?**

**WORLDCOM:** \*\*\* BellSouth should be required to turn over to the terminating carrier the reciprocal compensation payment that it receives from WorldCom for terminating this traffic. BellSouth is entitled to receive and retain a transiting fee; it is not entitled to retain the payment for reciprocal compensation.\*\*\*

Issue 39 concerns Wireless Type 1 and Type 2A traffic that transits BellSouth's network on its way to or from WorldCom's network. For both types of traffic, BellSouth currently treats the traffic as its own, meaning that it pays WorldCom for traffic that it terminates and bills WorldCom reciprocal compensation for traffic that transits BellSouth's network to the Wireless Type 1 or Type 2A carrier. T.376-377. WorldCom's concern about this arrangement is that BellSouth does not pass on WorldCom's reciprocal compensation payments to the wireless carriers, but instead pockets the money. T.377, 466. For that reason, WorldCom opposes BellSouth's proposed language on this issue. BellSouth's language should be modified to require BellSouth to pass on reciprocal compensation payments to the wireless carrier, or, at the least, indemnify WorldCom as to any claim the wireless carriers may raise concerning those reciprocal compensation payments. BellSouth witness Cox agreed that since BellSouth received the payment, BellSouth should protect

WorldCom from any liability to the wireless carrier in this situation. T.947-948. Considering that WorldCom is making the reciprocal compensation payments to BellSouth, and that the wireless carriers are entitled to the payments, this point is beyond dispute.

**ISSUE 40:** For purposes of the interconnection agreement between WorldCom and BellSouth, what is the appropriate definition of internet protocol (IP) and how should outbound voice calls over IP telephony be treated for purposes of reciprocal compensation?

**WORLDCOM:** \*\*\*The question of whether long-distance carriers should pay access charges when they utilize IP telephony is beyond the scope of this arbitration proceeding. The FCC has not imposed interstate access charges on IP telephony; the only available form of inter-carrier compensation for such services is reciprocal compensation.\*\*\*

Issue 40 deals primarily with how IP telephony calls should be treated with respect to reciprocal compensation and access charges. The FCC has defined IP telephony as “services [that] enable real-time voice transmission using Internet protocols.” Federal-State Joint Board on Universal Service, Report to Congress, CC Docket No. 96-45, FCC 98-67 at ¶ 83 (April 10, 1998). For the reasons summarized below, WorldCom submits that this issue is beyond the scope of this arbitration.

Because this issue concerns whether IP telephony calls should be classified as switched exchange access traffic, it is within the FCC’s, and not this Commission’s, jurisdiction. T.381. To date, the FCC has declined to impose access charges on IP telephony. T.381-382. Because federal law currently does not allow access charges to be imposed on IP Telephony, it would be contrary to federal law and this Commission’s jurisdiction for it to impose access charges on interstate long distance calls utilizing Phone-to-Phone IP Telephony. In any event, the FCC plans to address the issue of IP telephony soon, so the Commission should wait until the FCC’s decision before addressing the issue. T.382.

If the Commission were to address Issue 40 in this arbitration, it should not adopt the language advanced by BellSouth. BellSouth has proposed the following language as section 9.3.3 of attachment 4: "Switched Access Traffic is as defined in the BellSouth Access Tariff. Additionally, IP Telephony traffic will be considered switched access traffic." BellSouth has acknowledged that it is possible for an IP telephony call to be local, T.752, and that reciprocal compensation should apply to such calls, so by BellSouth's own admission its language is wrong and should be rejected.

While the Commission in the recent Intermedia/BellSouth arbitration approved language similar to what BellSouth is proposing in this case, the order did not focus on the fact that BellSouth's definition would inappropriately include local traffic handled via Phone-to-Phone IP telephony as switched access traffic. *See* Order No. PSC-00-1519-FOF-TP at 52-57. The Commission should therefore decline to follow its Intermedia decision in this docket.

**ISSUE 42: Should WorldCom be permitted to route access traffic directly to BellSouth end offices or must it route such traffic to BellSouth's access tandem?**

**WORLDCOM:** \*\*\*WorldCom should be permitted to route terminating switched access traffic directly to BellSouth end offices. Under BellSouth's proposed requirement for WorldCom to route all traffic to the BellSouth access tandem, WorldCom would be precluded from offering competitive tandem switching and transport services to other carriers.\*\*\*

Issue 42 concerns WorldCom's ability to provide exchange access service. "Exchange access" is defined by the Act as "the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services." 47 U.S.C. § 153(40). Under the Act, a "Local Exchange Carrier" is someone "that is engaged in the provision of telephone exchange service or exchange access." 47 U.S.C. § 153(44). Based on this definition, the FCC has concluded that "Congress intended to facilitate entry by

carriers offering either service” (that is, telephone exchange service or exchange access service). Local Competition Order ¶ 184.

The question here is whether WorldCom, as a local exchange carrier, may provide exchange access using interconnection trunks (or UNE facilities) from BellSouth, such as by providing a competitive access tandem service that would route IXCs’ long distance calls to BellSouth end offices. The answer is clearly “yes.” The Act imposes on BellSouth a duty to provide interconnection “for the transmission and routing of telephone exchange service and exchange access.” 47 U.S.C. § 251(c)(2)(A). Thus, if WorldCom wishes to provide exchange access service to IXCs, it is entitled to use interconnection trunks (or UNEs) to do so. This point was underscored by the FCC in its Local Competition Order when it concluded that even IXCs can be entitled to obtain interconnection under Section 251(c)(2) if they wish provide a competitive exchange access service:

We conclude that a carrier may not obtain interconnection pursuant to section 251(c)(2) for the purpose of terminating interexchange traffic, even if that traffic was originated by a local exchange customer in a different telephone exchange of the same carrier providing the interexchange service, if it does not offer exchange access services to others. As we stated above, however, providers of competitive access services are eligible to receive interconnection pursuant to section 251(c)(2). Thus, traditional IXCs that offer access services in competition with an incumbent LEC (*i.e.*, IXCs that offer access services to other carriers as well as to themselves) are also eligible to obtain interconnection pursuant to section 251(c)(2). For example, when an IXC interconnects at a local switch, bypassing the incumbent LECs’ transport network, that IXC may offer access to the local switch in competition with the incumbent. In such a situation, the interconnection point may be considered a section 251(c)(2) interconnection point.

Local Competition Order ¶ 191. If an IXC can provide this service, obviously so can a company like WorldCom that provides local exchange services.

BellSouth has not advanced any authority for the proposition that WorldCom may not use interconnection trunks to provide an exchange access service. BellSouth may contend (as

it did in its Georgia arbitration brief) that WorldCom's use of dedicated transport to provide exchange access service is limited to cases in which WorldCom is providing local service to a customer. This contention does not address the use of interconnection trunks, and, moreover, is wrong with respect to the use of dedicated transport. BellSouth's argument is based on the FCC's *Third Order on Reconsideration and Further Notice of Proposed Rulemaking*, CC Docket No. 96-98 and CC Docket 95-185 (Aug. 18, 1997) ("Third Order"). The question in the Third Order (as it relates to Issue 42 here) was whether an ALEC using an unbundled local loop and unbundled local switching to provide local exchange service is entitled to bill the IXC for the access services associated with those UNEs, and whether in that circumstance the ALEC could offer exchange access using dedicated transport. Third Order ¶ 17. The FCC answered in the affirmative, ruling that an ALEC may use dedicated transport to provide exchange access service to a customer to whom it also provides local exchange service, and that the ALEC in that case is entitled to assess originating and terminating access charges to IXCs. Third Order ¶ 38. The FCC's ruling thus did not purport to limit ALECs' use of dedicated transport, but rather clarified that ALECs could use dedicated transport to provide exchange access in the manner requested by ALECs in that proceeding.

The FCC made clear in its Local Competition Order and in the UNE Remand Order that generally there are no limitations on an ALEC's ability to use dedicated transport to provide exchange access. As the FCC stated in the UNE Remand Order:

In the *Local Competition First Report and Order*, the Commission found that section 251(c)(3) "permits interexchange carriers and all other requesting carriers, to purchase unbundled elements for the purpose of offering exchange access services, or for the purpose of providing exchange access services to themselves in order to provide interexchange services to consumers." In particular, the Commission found that its conclusion not to impose restrictions on the use of unbundled network elements was "compelled by the plain language of

the 1996 Act” because exchange access and interexchange services are “telecommunications services.” Moreover, in the *Local Competition First Report and Order*, the Commission found that “the language of section 251(c)(3), which provides that telecommunications carriers may purchase unbundled elements in order to provide a telecommunications service, is not ambiguous.” This conclusion that the Act does not permit usage restrictions was codified in Rule 51.309(a), which provides that “[a]n incumbent LEC shall not impose limitations, restrictions, or requirements on request for, or the use of, unbundled network elements that would impair the ability of a requesting telecommunications carrier to offer a telecommunications service in the manner the requesting carrier intends.” That rule was not challenged in court by any party.

UNE Remand Order ¶ 484. The only limitation on the use of UNEs to provide exchange access provided in the UNE Remand Order, as modified by the November 24, 1999 Supplemental Order (“Supplemental Order”) in the same docket, concerns the use of loop-transport combinations in lieu of special access circuits. UNE Remand Order ¶¶ 485-89; Supplemental Order ¶ 4. Since WorldCom would be using interconnection trunks (or UNEs) to provide switched access service, not special access service, this limitation is inapplicable.

BellSouth has proposed the following language in Attachment 4, Section 2.3.8: “MCIm agrees not to deliver switched access traffic to BellSouth for termination except over MCIm ordered switched access trunks and facilities.” As a legal matter, this language should be rejected because if adopted it would allow BellSouth to violate its duty to provide interconnection for the purpose of enabling WorldCom to provide exchange access. As a practical matter, if BellSouth were permitted to charge its tariffed rates for switched access trunks, WorldCom would be unable to compete against BellSouth for providing access services because it would be charged the same amount that BellSouth would charge WorldCom’s customers (i.e. the IXCs wishing to use WorldCom’s access service). Ex. 5, Price Dep. at 142-45.



BellSouth has misconstrued this issue by suggesting that WorldCom's opposition to the language proposed by BellSouth is an attempt to disguise switched access traffic as local traffic over local interconnection trunks. T.757. BellSouth's main complaint appears to be that it will be unable to bill for switched access if WorldCom delivers toll calls to a BellSouth end office via UNE facilities. This concern is misplaced. The real problem is that BellSouth is not willing to accept billing records from WorldCom that would provide the information needed to bill the IXC for the part of the access service BellSouth provided. T.471-472. BellSouth should not be allowed to use this excuse to avoid its duty to permit WorldCom to provide exchange access services via interconnection trunks and UNEs. Accordingly, BellSouth's proposed language should be rejected.

**ISSUE 45: For purposes of the interconnection agreement between WorldCom and BellSouth, how should third party transit traffic be routed and billed by the parties?**

**WORLDCOM: \*\*\*From a routing perspective, this traffic should be exchanged over the same logical trunk group as all other local and intraLATA toll traffic. BellSouth should bill the originating carrier consistent with the Ordering and Billing Forum (OBF) Meet Point Billing Guidelines (single bill/single tariff option).\*\*\***

Issue 45 deals with the routing and billing of local transit traffic. WorldCom's proposed language appears in Attachment 4, Section 9.7.1 and 10.7.1.1. The issue with respect to routing concerns whether BellSouth must put transit traffic over the same interconnection trunk groups as local and intraLATA toll traffic. BellSouth is capable of routing traffic in this manner on its supergroup trunks. T.1363-64. For the same reasons stated above in Issue 37, BellSouth should be required to route transit traffic using such trunk groups as WorldCom has requested.

WorldCom has raised the billing issue in an attempt to streamline the billing process for local transit calls. Examples of such calls include a WorldCom customer placing a local call that transits BellSouth's network and is terminated to another ALEC's customer or to the customer of an independent telephone company. For a local transit call placed today, BellSouth renders a bill to the originating carrier for its transiting service and provides billing records to the terminating carrier that enable that carrier to bill the originating carrier for reciprocal compensation. T.761. Under WorldCom's proposal, BellSouth would send a bill to the originating carrier for reciprocal compensation and the transit fee, the originating carrier would pay BellSouth, and BellSouth would pass along the reciprocal compensation to the terminating carrier and retain the transit fee. Ex. 5, Price Dep. at 131. This practice is consistent with the Ordering and Billing Forum (OBF) Meet Point Billing Guidelines (single bill/single tariff option). This approach reduces the number of trunk groups, record exchange, and number of bills (to render and to audit) for all carriers. T.387. Perhaps for this reason the approach WorldCom is recommending is used in more than half the country today. T.474.

It is not in the public interest for BellSouth to impose uneconomic or inefficient business practices on everyone in the industry, such as a requirement that all carriers must render bills to one another for small volumes of transit traffic. Moreover, having BellSouth render these bills makes sense in that BellSouth is interconnected with all other carriers and the transit traffic represents a small portion of the total traffic between BellSouth and the other carriers. T.583-584.

BellSouth plays a similar role today with wireless Type 1 and Type 2A wireless traffic. T.387-388. WorldCom acknowledges that the originating and terminating carriers would need to have an interconnection agreement, and that BellSouth would not be expected

to render payment to the terminating carrier when the originating carrier failed to pay. T.591; Ex. 5, Price Dep. at 132. WorldCom also acknowledges that BellSouth would be entitled to be paid for providing this service. In short, WorldCom submits that its proposed language will improve the billing process for local transit traffic, and therefore should be adopted.

**ISSUE 46: For purposes of the interconnection agreement between WorldCom and BellSouth, under what conditions, if any, should the parties be permitted to assign an NPA/NXX code to end users outside the rate center in which the NPA/NXX is homed?**

**WORLDCOM: \*\*\*The parties should be permitted to assign NPA/NXX codes to end users anywhere within the LATA. BellSouth does this today with respect to services such as foreign exchange (FX) services and its primary rate ISDN extended reach service (ERS). \*\*\***

Foreign exchange ("FX") service involves providing service to a customer physically located outside the rate center for which his or her NPA/NXX is assigned. For example, if a WorldCom customer in Miami is assigned an NPA/NXX from the Jupiter rate center, that customer is receiving a foreign exchange service. Customers from Jupiter may call the WorldCom customer's foreign exchange number and that call will be treated as a local call. Issue 46 concerns language proposed by BellSouth that would treat foreign exchange traffic in some respects as if it were intraLATA toll traffic. Specifically, when a BellSouth customer called a WorldCom foreign exchange customer, BellSouth would not be required to pay reciprocal compensation, but instead would be entitled to be paid access charges for originating and transporting the traffic to WorldCom. T.487. BellSouth's proposed language should be rejected for a number of reasons: (1) FX traffic is local and should be treated as such for all purposes; (2) BellSouth treats its own FX service as local; and (3) treating ALECs' FX service as a toll service would prevent competition for FX services. Each of these points is discussed below.

1. FX traffic is local and should be treated as such for all purposes

Whether a call is local or not depends on the NPA/NXX dialed, not the physical location of the customer. Jurisdiction of traffic is properly determined by comparing the rate centers associated with the originating and terminating NPA/NXXs for any given call, not the physical location of the end-users. Comparison of the rate centers associated with the calling and called NPA/NXXs is consistent with how the jurisdiction of traffic and the applicability of toll charges are determined within the industry today. T.476.

The standard industry practice of rating calls based upon the NPA-NXXs, rather than upon the physical location of the customer, is illustrated by a recent decision of the California PUC:

As discussed below, we conclude that the rating of calls as toll or local should be based upon the designated rate center of the NXX prefix of the calling and called parties' numbers. Even if the called party may be physically located in a different exchange from where the call is rated, the relevant rating point is the rate center of the NXX prefix.

We conclude that under a foreign exchange service arrangement, it is consistent with the applicable tariffs to rate calls in reference to the rate center of the assigned NXX prefix even though it is in a different exchange from where the called party is located.

Thus, foreign exchange service provides for a called party to reside in one exchange, but still have a telephone number rated as local served from a foreign exchange.

For purposes of considering the issue of call rating, it is not necessary to deliberate at length over whether Pac-West's service conforms to some particular definition of "foreign exchange service" based upon specific provisioning arrangements. Although the Pac-West form of service differs from certain other forms of foreign exchange service in how it is provisioned, the ultimate end-user expectation remains the same, namely to achieve a local presence within an exchange other than where the customer resides. From the end-use customer's perspective, Pac-West's service is a competitive alternative to other form of foreign exchange service.

*Order Instituting Rulemaking on the Commission's Own Motion Into Competition for Local Exchange Service*, Rulemaking 95-04-043 at 21, 23, 24 (California PUC, Sept. 2, 1999)(“California Order”). The California Commission thus held that it is the applicable rate center as identified by telephone number prefix, not the physical location of the calling or called party, that is used to rate calls. FX calls are local calls based upon the designated rate center of the assigned NXX prefix even if the customer is not physically located within the rate center.<sup>10</sup>

The treatment of FX calls as local calls for which reciprocal compensation is due is also illustrated by other currently existing arrangements. A service exists today, interstate foreign exchange service, in which an IXC can purchase an FX line from BellSouth in Miami, and assign the line to a customer located anywhere, in Denver for example. *See* T.614-18. Calls to that number from customers in the Miami calling area will be treated as local; and BellSouth will charge reciprocal compensation for calls to that number from the Miami calling area. It does not matter where the customer receiving the call is located; BellSouth will charge reciprocal compensation to ALECs whose customers dial the Miami number.

BellSouth points to the FCC's jurisdictional analysis based on the originating and terminating end points of a call as an example of using locations to determine jurisdiction. T.765. However, the FCC's analysis only has been utilized to determine whether or not particular traffic is *interstate or intrastate* and thereby within the FCC's jurisdiction. The FCC's attempt to apply this analysis to the question of whether a call is *local* was recently characterized as lacking “for want of reasoned decision making” by the District of Columbia

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<sup>10</sup> The California Commission noted that a carrier providing FX service has an obligation to negotiate reasonable intercarrier compensation for routing FX calls. The commission did not determine what such reasonable compensation would entail. For the reasons discussed below, WorldCom submits that it is reasonable for a carrier to charge reciprocal compensation for terminating FX traffic.

Circuit Court of Appeals in *Bell Atlantic Telephone Cos. v. FCC, et al.*, No. 99-1094 (March 24, 2000), when it vacated and remanded the FCC's order regarding inter-carrier compensation for ISP-bound traffic.

In short, FX traffic is local traffic. BellSouth may not treat such local traffic as local for some purposes and toll for others, but that is precisely what BellSouth is asking the Commission to permit BellSouth to do. BellSouth's proposal is that it would route the call as if it were local (using its own facilities rather than delivering the call to the caller's intraLATA toll provider), but charge WorldCom as if WorldCom were an intraLATA toll provider. BellSouth's proposal to assess charges on calls it originates to WorldCom's FX customers is prohibited by 47 C.F.R. § 51.703(b). That regulation provides that "[a] LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network." For this reason alone, BellSouth's proposed language should be rejected.

2. BellSouth treats its own FX service as local

BellSouth's proposal treats WorldCom's FX offering differently than BellSouth treats its own FX service. BellSouth offers FX service in Florida without imposing the very restriction it seeks to place on WorldCom's FX service. BellSouth's General Subscriber Service Tariff for Florida at A9.1.1.A specifies that "Foreign exchange service is exchange service furnished to a subscriber from an exchange other than the one from which the subscriber would normally be served, allowing subscribers to have local presence and two-way communications in an exchange different from their own." See T.393. When BellSouth provides retail FX service, NPA/NXXs are assigned to end users located outside the local calling area of the rate center with which the NPA/NXX has been associated, and the

jurisdiction (*i.e.*, local vs. toll) of traffic delivered from the foreign exchange to the end user is determined as if the end user were physically located in the foreign exchange. Calls from that foreign exchange to the foreign exchange customer will be local.

Under BellSouth's proposed contract language, if WorldCom provided the same FX service, that traffic would be classified as toll as far as WorldCom is concerned. The discriminatory nature of the contract language proposed by BellSouth was illustrated by the example of a BellSouth customer in the Jupiter local calling area who calls a WorldCom number in the Jupiter local calling area assigned to a WorldCom customer physically located in Miami. Ex. 20.<sup>11</sup> BellSouth's position is that this call should be treated as a toll call for intercompany billing purposes. Although in theory BellSouth states that WorldCom should be able to charge BellSouth access charges when BellSouth is providing an FX service for one of its customers, Ms. Cox acknowledges that today BellSouth does not pay WorldCom access charges for those calls (T.885), and instead charges WorldCom reciprocal compensation for terminating those calls. T.884, 886.

BellSouth asserts that when WorldCom assigns NXXs to provide FX service it is not seeking to define its own local calling area but rather is attempting to redefine the local calling area of BellSouth's customers. This argument is incorrect. Continuing with the Miami-Jupiter example, when WorldCom provides an NXX associated with the Jupiter rate center to WorldCom's customer located in Miami, WorldCom is providing its customer with a local presence in Jupiter because that is what the customer wants. WorldCom is providing the same type of service BellSouth offers its customer. When WorldCom does so it is not

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<sup>11</sup> In her prefiled direct testimony, Ms. Cox used a Key West/Miami example. This was changed to a Jupiter/Miami example by the time of the hearing because Key West and Miami actually enjoy ECS and therefore do not provide a good example of FX service. This brief will use the updated Jupiter/Miami example.

redefining the local calling area of BellSouth's customers in Jupiter. Just as when BellSouth provides an FX service allowing its end users in Jupiter to place local calls to customers located in Miami, the local calling scope of BellSouth's Jupiter customers is not changed. The expectation of BellSouth's customers that when they call a Jupiter exchange they are making a local call is not changed. WorldCom's FX service provides a local presence for the customer just as BellSouth's FX offering does. T.482-483.

3. Treating ALECs' FX service as a toll service will prevent competition for FX services

BellSouth's proposal to classify WorldCom's FX service as toll service and to impose access charges effectively will prohibit WorldCom from offering FX service in competition with BellSouth. This proposal is anti-competitive, limits choices available to consumers, and is inconsistent with the notion of parity. ALECs offer this service today in direct competition with the ILECs. BellSouth's position, if adopted, will raise WorldCom's cost of providing a competitive service to a level that would effectively eliminate WorldCom's ability to offer a competing FX service. T.392. This result is hardly in keeping with the Commission's prior decisions encouraging the development of a competitive environment that will allow consumers to have choices when shopping for FX and similar services.

If BellSouth is permitted to apply switched access charges to WorldCom's FX traffic, such above-cost pricing ultimately will make the offering of competitive alternatives by WorldCom infeasible. T.479, 481. This will limit BellSouth's end users to BellSouth's FX service and in the case of Internet access will force end users who currently access their ISP via FX service to seek another provider of Internet access (assuming such a choice of ISPs exists). The California Commission has recognized the anti-competitive effects of applying access charges to an ALEC's FX service:



The rating of a call, therefore, should be consistently determined based upon the designated NXX prefix. Abandoning the linkage between NXX prefix and rate center designation could undermine the ability of customers to discern whether a given NXX prefix will result in toll charges or not. Likewise, the service expectations of the called party (i.e., ISPs) would be undermined by imposing toll charges on such calls since customers of the ISPs would be precluded from reaching them through a local call. Consequently, the billing of toll charges for Internet access which is designed to be local could render an ISP's service prohibitively expensive, thus limiting the competitive choices for Internet access, particularly in rural areas.

California Order at 26. As the California Commission recognized, the retail offering of FX service and its associated rating (as a local call) based on the rate centers associated with the assigned NXXs must be applied to FX offerings from ALECs. Failure to do so distorts the way in which an ALEC can make a competitive FX offering available and, would in fact eliminate competition for this increasingly important service.

In addition to eliminating competition with BellSouth's FX service, BellSouth's proposal will also eliminate competition with BellSouth's Primary Rate ISDN Extended Reach Service (ERS). At Section A42.3.1.P. of the General Subscriber Service Tariff this service is described as follows:

ERS is designed to "extend the reach" of the Inward Data Option customer from a centrally located metropolitan local calling area into the areas of the LATA which are available on a foreign exchange basis. The ERS customer purchases telephone numbers within each desired foreign exchange area to allow their clients to call them at no charge.

T.394. When BellSouth offers this ERS service it engages in exactly the same practice (assigning NPA/NXXs to end users located outside the local calling area of the rate center associated with the NPA/NXX and classifying this traffic as local regardless of the actual end points) that it seeks to prohibit an ALEC from engaging in. BellSouth also has no problem determining jurisdiction of this traffic (local) by comparing the rate centers associated with

the originating and terminating NPA/NXXs regardless of the physical location of the end user.  
T.394.

Elimination of competition for the ERS service should be viewed as particularly troubling, as this is a service favored by Internet Service Providers (“ISP”). It allows ISPs to establish a point of presence in a single metropolitan area and then to have their customers reach them from foreign exchanges on a local call basis. T.384. BellSouth’s proposal ultimately will make this service available only from the monopoly ILEC, which has its own ISP. It will put upward pressure on rates and provide no incentive (and perhaps even a disincentive) for the ILEC to offer a high level of service and innovations. Such changes not only will result in upward pressure on rates for Internet access service in Florida but may well inhibit the availability of Internet access in the more remote and rural areas of the state. T.395-395. BellSouth’s proposal will change the treatment of many calls to the Internet, which are currently treated as local calls. Many customers reach the Internet via a local call by dialing their ISP’s FX number, which has been assigned by an ALEC. BellSouth’s proposal will, for the first time, assess access charges on these calls to the Internet. To allow BellSouth to burden an ALEC’s provision of this service with access charges while BellSouth provides ERS service will jeopardize the gains made by ISPs and by end users seeking competitive choices among ISPs.

In its attempt to justify the imposition of access charges on these local calls, BellSouth has tried to equate FX service by ALECs with Feature Group A or 800 service. Contrary to BellSouth’s implication, BellSouth is not providing Feature Group A service to an ALEC that is offering FX service. BellSouth’s Feature Group A service is a switched access service provided to requesting *interexchange* carriers. Feature Group A involves the assignment of a

*BellSouth* 10-digit telephone number to the interexchange carrier and provides for a variety of optional, BellSouth-provided features (e.g., hunt groups, uniform call distribution, service code denial) from a specific end office. Just like BellSouth and unlike an interexchange carrier, however, when an ALEC provides FX service it does so as a local service provider, assigning to the end user a 10-digit telephone number from the ALEC's own NXX. Additionally, because the ALEC has a local switch, it does not rely on the BellSouth local switch to provide additional features as an interexchange carrier would. T.479-480. BellSouth should not be allowed to re-categorize as toll, traffic historically viewed as local by pretending that an ALEC is an interexchange carrier.

BellSouth's suggestion that an ALEC's FX service is comparable to 800 service also is not correct. An 800 service allows toll free calling from callers in the LATA, the State, or indeed the entire country. FX service allows local calling limited to the rate center with which the NXX is associated. Calls to that NXX from anywhere else would not be local and would not be toll free. The California Commission noted this distinction in ruling that FX service provided by ALECs is not 800 service. T.480, 484.

In summary, BellSouth's proposal to treat WorldCom's FX service as a toll service is intended to accomplish several goals for BellSouth: it allows BellSouth to avoid paying reciprocal compensation, it allows BellSouth to assess access charges on local calls, and it shields BellSouth's service from competition. The Commission should reject BellSouth's proposal because FX calls are rated as local industry-wide and because BellSouth treats its own FX service as a local service. The Commission should affirm that the proper method for determination of traffic jurisdiction is to compare the rate centers associated with the originating and terminating NPA/NXXs. The Commission also should permit ALECs to offer

competitive FX service to their customers on non-discriminatory terms and require BellSouth to pay reciprocal compensation to ALECs for this local traffic. For all of these reasons, BellSouth's proposed language should be rejected.

**ISSUE 47: For purposes of the interconnection agreement between WorldCom and BellSouth, should reciprocal compensation payments be made for ISP bound traffic?**

**WORLD COM: \*\*\*Yes. Reciprocal compensation payments should be applicable to calls made from one carrier's customers to the ISP customer of the other carrier. The terminating carrier incurs the cost of termination for ISP-bound calls in the same way as for any other local call.\*\*\***

Issue 47 concerns the payment of reciprocal compensation for calls to ISPs. On every occasion where the Commission has considered this issue it has ruled either (a) that such calls are within the parties' definition of "local traffic" under existing interconnection agreements and therefore subject to reciprocal compensation; (b) that the provisions of those existing interconnection agreements, including reciprocal compensation, should be continued in newly arbitrated agreements pending a final ruling by the FCC on the jurisdictional nature of such traffic; or (c) that such traffic should be subject to reciprocal compensation under newly arbitrated agreements, regardless of whether or not such traffic is ultimately classified as local traffic by the FCC.

WorldCom submits that at a minimum, the Commission should continue the treatment of such traffic as subject to reciprocal compensation under the parties' current interconnection agreement. More properly, however, the Commission should follow the approach it adopted in the recent *Global NAPS* arbitration (Order No. PSC-00-1680-FOF-TP) and rule that ISP-bound traffic will be subject to reciprocal compensation under the new WorldCom/BellSouth interconnection agreement regardless of how such traffic is ultimately classified for jurisdictional purposes. T.487-488. This is the appropriate treatment, since the terminating

carrier incurs the cost of terminating calls to ISPs in the same way that it incurs the cost of terminating any other local call.

**ISSUE 51: Under what circumstances is BellSouth required to pay tandem charges when WorldCom terminates BellSouth local traffic?**

**WORLDCOM: \*\*\*BellSouth is required to pay tandem charges whenever WorldCom's network provides functionality equivalent to that of a tandem switch. In particular, such compensation is required when a WorldCom local switch covers a geographic area comparable to the area served by a BellSouth tandem.\*\*\***

This issue concerns the circumstances under which BellSouth is required to pay tandem interconnection rates when WorldCom terminates BellSouth's local traffic.

WorldCom's position, reflected in its proposed language for Section 10.4.2 of Attachment 4, is that WorldCom is entitled to the tandem rate when its switch covers a geographic area comparable to the area covered by a BellSouth tandem. As a factual matter, the evidence shows that WorldCom's existing Florida switches do cover geographic areas comparable to (or even larger than) BellSouth's local tandems, and that WorldCom is therefore entitled to the tandem interconnection rate under this test. T.489-494; Exs. 16, 18.

The operative legal question is whether FCC Rule 51.711(a) establishes an "either-or" test or a "two-prong" test for determining WorldCom's right to compensation at the tandem interconnection rate. The operative factual question under the "either-or" test is whether WorldCom's switches serve a geographic area comparable to BellSouth's local tandems. Under a "two-prong" test, the Commission also must consider the factual question of whether WorldCom's switches provide comparable functionality to a BellSouth tandem.

As BellSouth's witness Cox agreed, these legal and factual issues are identical to those under consideration by the Commission in Docket No. 991755-TP as the result of a complaint by WorldCom against BellSouth under the parties' current interconnection agreement.

Because there has been no change since the time of the hearing in that case in either the controlling law or the operative facts, the decision in this case should mirror the decision in the complaint docket.

WorldCom therefore will not reargue the case here, but will only note that given the geographic coverage of its switches, and the traffic aggregation function they perform, WorldCom is entitled to symmetrical compensation at the tandem rate regardless of whether the Commission adopts WorldCom's view that Rule 57.711(a) establishes an "either-or" test or BellSouth's view that the rule establishes a "two-prong" test. T.489-494, 637-643, 682-683; Exs. 16, 18.

**E. Collocation**

**ISSUE 56:** For purposes of the interconnection agreement between WorldCom and BellSouth, should BellSouth be required to provide DC power to adjacent collocation space?

**WORLD.COM:** \*\*\*Yes. BellSouth should be required to provide DC power to adjacent collocation space.\*\*\*

BellSouth should be required to provide WorldCom DC power to adjacent collocation space. T.127, Ex. 12, Attachment 5, section 3.4. WorldCom will provide the cabling to BellSouth's power distribution board, and BellSouth would provide the conduit to the adjacent collocation space. The pricing would be calculated pursuant to Attachment I of the interconnection agreement. T.132.

BellSouth responds that it should not be required to provide DC power to adjacent collocation space. BellSouth is not generally opposed to providing DC power to collocators; the issue has arisen with respect to adjacent collocation space, not with respect to collocating within the central office of BellSouth. BellSouth maintains that it provides AC to its remote spaces for its own purposes.

BellSouth supplies AC power to its adjacent facilities, which it then converts to DC power. T.1208; Ex. 4, Milner Dep. at 43. Moreover, BellSouth states that in making adjacent collocation available, it will do so in a nondiscriminatory manner. BellSouth proposes to treat WorldCom in the same fashion by requiring the latter to either provide its own AC power to, or convert AC power provided by BellSouth at, the adjacent site. Ex. 4, Milner Dep. at 50-51. BellSouth, however, has offered to provide DC power in other collocation arrangements outside the central office; namely, with respect to collocation at the remote terminal. Indeed, BellSouth admits that if an ALEC were collocated inside a BellSouth remote terminal, BellSouth would provide DC power to the ALEC upon request. T.1376. In other words, BellSouth will provide DC power to ALECs collocated inside a central office and inside a remote terminal, but BellSouth refuses to provide DC power to ALECs in adjacent collocation arrangements. T.1376-1377. There simply is no reason why BellSouth cannot similarly provide DC power to adjacent collocation space.

Thus, if BellSouth *categorically* refuses to provide DC power in adjacent collocation arrangements, ALECs will incur significant costs to accommodate AC power, provided by BellSouth or from some other source, and to convert that power to DC. These costs will be incurred, moreover, as a result of being relegated to collocate equipment *outside* of a BellSouth central office because space in BellSouth's central office is legitimately exhausted and because collocated telecommunications equipment runs on DC power. T.129. BellSouth has the motive and the opportunity to discriminate against ALECs in this situation.

BellSouth also states that the cabling used to house DC power is not "rated for outside use." BellSouth evidently purports to have some safety concerns about the use of DC power; however, the national electric codes do not specifically prohibit its provision by BellSouth.

BellSouth never cites the specific provision(s) of the code upon which it relies. T.129.<sup>12</sup> Moreover, BellSouth does not define what would constitute “outside use,” while apparently assuming that all cabling would be “outside”. Nor is BellSouth unconditionally willing to provide AC power to the adjacent location, since it also cites the unnamed “code” provision as a potential obstacle. Hence ALECs apparently would have to use batteries in an enclosed space to provide their own power. This would seemingly rebut BellSouth’s alleged safety concerns, since that result itself would introduce safety issues. T.129; Ex. 4, Milner Dep. at 53-54. Ironically, BellSouth concedes that it supplies DC power, albeit low voltage and amperage, through copper loops in its provision of telephone service. T.1408.

Moreover, this Commission’s earlier collocation order supports WorldCom’s position.

In Section IV, this Commission held that

When space legitimately exhausts within an ILEC’s premises, the ILEC shall be obligated to provide physical collocation services to an ALEC who collocates in a CEV or adjacent structure located on the ILEC’s property to the extent technically feasible, based on the FCC’s Advanced Services Order.

Order No. PSC-00-0941-FOF-TP. These services would include DC power, to the extent that its provision is technically feasible. T.131. There is nothing in BellSouth’s testimony that addresses, much less demonstrates, any technical infeasibility in the provision of DC power. Moreover, the FCC has cited with approval the Texas PUC, in particular, for its efforts with regard to collocation. Advanced Services Order, at ¶ 55. The Texas PUC has ordered that DC power must be made available to adjacent collocation space. T.131-132.

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<sup>12</sup> Instead, according to BellSouth the alleged applicable code sections apparently refer to types or gauges of cables that may be used outside the BellSouth central office. BellSouth has not researched whether these cables may be available from a manufacturer, because BellSouth does not believe itself to be obligated to extend DC power to the adjacent location. Ex. 4, Milner Dep. at 44-46, 57, 62-64.



What BellSouth really is telling the Commission here is that, as a practical matter, adjacent collocation for the most part will not be provisioned – despite the FCC’s mandate to provide “*power and physical collocation services and facilities* [to the adjacent collocation space], subject to the *same* nondiscrimination requirements as applicable to any other physical collocation arrangement.” T.165. 47 C.F.R § 51.323 (k)(3) (emphasis added). See Advanced Services Order, at ¶ 44. Even if BellSouth’s contentions regarding safety were generally valid (which they are not), the principle of “technical feasibility,” by which requests for physical collocation are considered, strongly suggests that BellSouth cannot *categorically* deny DC power – to do so would discriminate against ALECs. T.129-130.

BellSouth clearly is required to provide DC power to traditional collocation arrangements; it is therefore required by the non-discrimination standard to provide that power to adjacent collocation as well. There is no demonstrable or compelling reason why DC power should not be provided to ALECs.

**ISSUE 59: Should collocation space be considered complete before BellSouth has provided WorldCom with cable facility assignments ("CFAs")?**

**WORLDCOM:** \*\*\*No. Collocation space is unusable until CFAs have been provided and therefore should not be considered complete until they are provided.\*\*\*

CFAs – which pertain here to the naming and inventorying by an ILEC of cable facilities within a central office - are necessary for WorldCom to order service to a collocation arrangement. T.139. Collocation space is unusable unless an ALEC has been provided with CFAs. WorldCom contends that BellSouth should provide CFAs before the space is considered completed. T.139, 138, Ex. 12, Attachment 5, section 7.15.2.

BellSouth maintains that collocation space is “complete” once all construction work done by BellSouth or its certified vendors has been finished. T.139. Only when construction

of the collocation space has been finished, however, may WorldCom install its equipment and cable runs. T.166. Yet, despite the fact that CFAs are necessary for an ALEC to order service and may not have been conferred by BellSouth, BellSouth upon completion of construction will consider the space “available” and start billing WorldCom recurring charges for occupying the space. T.139. BellSouth apparently fears that an ALEC will not finish its own work, and thus that BellSouth might be unable to charge the ALEC until the latter advises as to certain frame locations and designations of cables. T.167.<sup>13</sup>

BellSouth is essentially suggesting a “Catch 22” scenario; i.e., BellSouth will not furnish CFAs until the ALEC is ready to connect, T.167, while the ALEC cannot connect without CFAs. But the collocation arrangement necessarily requires some “give and take.” The common sense meaning of “complete” is that everything that is necessary for the ALEC to occupy the space and turn up power has been done. The simple fact is that WorldCom cannot attach its equipment to BellSouth’s cables without knowing where on the frame to attach it. T.167, Ex. 4, Milner Dep. at 70. Cable assignments, in fact, are given early in the process (see the discussion of Issue 60), Ex. 4, Milner Dep. at 70, 72; typically, ALECs provide information as to what they intend to install, including the size of the tie cable and type of tie cable. T.1379. There is no reason why BellSouth cannot, early in the process, provide CFAs. T.167, 1379; Ex. 4, Milner Dep. at 68. CFAs should be made available and assigned to WorldCom as part of the response to its initial request for collocation. T.139, 140.

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<sup>13</sup> Yet BellSouth will furnish assignment information to an ALEC for the cables that connect the collocation space to the frame in the central office, almost immediately after the ALEC has accepted a price quote (see Issue 60).

Without CFAs WorldCom simply cannot use the space or provision service to its customers at a definite time, and thus the space cannot be considered “complete.” T.139, 167.

**ISSUE 60: Should BellSouth provide WorldCom with specified collocation information at the joint planning meeting?**

**WORLD COM:** \*\*\*Yes. The requested information (including information on power connectivity, cable type and termination requirements, and identification of technically feasible demarcation points) should be provided at the joint planning meeting.\*\*\*

WorldCom has proposed the language to reflect its position that it needs certain key information to begin its design plans for collocation and that this information should be provided at the joint planning meeting. T.140, Ex. 12, Attachment 5, sections 7.17.2, 7.17.4, and 7.17.10. This information includes (i) power connectivity information, including size and number of power feeders; (ii) the exact cable type and termination requirements for the WorldCom provided point of termination (“POT”) bays; and (iii) identification of technically feasible demarcation points. WorldCom also needs to know the size and number of power feeds and the designation of cable. T.141.

BellSouth concedes it is willing to provide the exact cable location termination requirements at the joint planning meeting, *or* within thirty days thereafter. T.140, 167; Ex 4, Milner Dep. at 72. Hence WorldCom’s proposed §7.17.2 appears to be acceptable to BellSouth. BellSouth states that “much of the [other] information” WorldCom seeks, however, is not available, or is “not required” to be provided. T.141. For example, BellSouth asserts that the information requested by WorldCom in proposed § 7.17.4 would be made available to WorldCom’s vendor, but not to WorldCom itself. T.1212. BellSouth in other respects does not state which information is allegedly not available, or states that it is not required to provide certain information.

As to information that BellSouth asserts it is not required to provide, despite the fact that the identification of demarcation points is key information for a collocator (as well as BellSouth) to know, to decide where and how it would like to interconnect, BellSouth asserts that this information has “nothing to do” with what is needed at the joint planning meeting. T.141. BellSouth does not want to identify technically feasible demarcation points because it denies that ALECs have any right to designate these points. Apparently BellSouth does not even want ALECs to know what options, if any, may be available to them. Hence BellSouth injects into this proceeding issues arising from *GTE Service Corporation, et al. v. Federal Communications Commission, et al.*, which dealt in relevant part with the designation of *space* for collocation within the central office. That decision, however, is not at issue here.<sup>14</sup> What is at issue, simply stated, is what information *should* be made available to a potential collocator; i.e., what information is relevant to the decision to collocate. This information would obviously assist both BellSouth and WorldCom; hence, there is no legitimate reason why it would be withheld.

As stated above, in the Advanced Services Order the FCC adopted collocation rules to serve as *minimum* standards. States are thereby permitted to adopt additional requirements, Advanced Services Order at ¶ 8, which can greatly assist in the development of competition. BellSouth, however, essentially advocates an individual-case-basis approach with regard to this issue, which would subject ALECs to uncertainty, expense and delay. T.168. WorldCom seeks to reduce, not to expand, uncertainty and opportunities for delay and litigation. Identification of key information, as found in WorldCom’s proposal, allows choices for

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<sup>14</sup> WorldCom disagrees with the Court of Appeals with regard to this and other issues involved in this decision, for which it fully reserves its rights; the Local Competition Order and Advanced Services Order, as well as 47 C.F.R. § 51.323, contemplate that the *ALEC* chooses the point of interconnection.

ordering and provisioning collocation space, and, more specifically, enables an ALEC to begin its design plans for collocation space. T.168. Knowing what cable requirements and technically feasible demarcation points BellSouth will identify assists an ALEC in ascertaining what equipment it needs. Unless the ALEC has the requested information, then it will not know how to complete collocation. T.169. As a practical matter, the providing of this information commences the period for the ALEC to do its engineering work; i.e., if the parties do not understand the other's needs or limitations, then the likelihood of delays and disputes is increased. T.141.

Both parties should walk away from the joint planning meeting knowing how to engineer their respective "ends" of the collocation process. In any event, the information is readily available to BellSouth, as it concedes. There is no reason that BellSouth could not provide it at the joint planning meeting. BellSouth should be required to provide the information as requested. Advanced Services Order, ¶ 23; Local Competition Order, ¶ 558; T.142.

**ISSUE 61:** For purposes of the interconnection agreement between WorldCom and BellSouth, should the per ampere rate for the provision of DC power to WorldCom's collocation space apply to amps used or to fused capacity?

**WORLDCOM:** \*\*\*The rate proposed by WorldCom in Attachment 1 to its proposed interconnection agreement should apply on a per used ampere basis, taking into account the rated capacity of the equipment actually installed in the collocation space. \*\*\*

WorldCom's proposal, simply stated, is based on the fact that the parties' original interconnection agreement, which was approved by the Commission, contemplates pricing power on a per *used* ampere basis. T.143. The Commission approved the parties' negotiated pricing terms when it approved that agreement. Thus the rate included in the new

interconnection agreement should apply on a per used ampere basis, taking into account the rated capacity of the equipment actually installed in the collocation space. T.143. It is clear from the previous agreement that BellSouth would measure how much power each ALEC was using and would bill the ALEC accordingly. Each piece of equipment WorldCom installs has an amperage rating associated with it. The aggregate of those ratings would comprise the power WorldCom uses. T.197-198. Consequently, the Commission should order that the rate proposed by WorldCom in the new interconnection agreement be applicable as between the parties. There is no reason to re-litigate this issue. T.143.

BellSouth concedes that the *rate* for DC power was established by the Commission on a per ampere basis, but argues that WorldCom should not be assessed based on what amperes WorldCom *uses*. Instead, BellSouth would engraft additional language onto the original interconnection agreement between WorldCom and BellSouth. BellSouth would require that its charges for power must be “based upon the certified vendor engineered and installed power feed *fused* ampere capacity” (emphasis added). Thus BellSouth has proposed rates on a per *fused* ampere capacity basis; i.e., based on its assessment as to the size of the fuse it may install. T.143.

BellSouth proposes to charge a large up-front non-recurring charge for construction of power supply plus a recurring rate that also will reflect the cost of the power supply. This method represents a double recovery of the costs by BellSouth, is obviously inconsistent with the approach taken by the Commission in establishing rates, and would allow BellSouth to recover from WorldCom more than WorldCom’s share of the costs. T.170. Moreover, WorldCom’s proposal permits BellSouth to recover from WorldCom over the life of the power supply equipment, WorldCom’s pro-rata share of the cost of power supply. T.143.

**ISSUE 63:** For purposes of the interconnection agreement between WorldCom and BellSouth, is WorldCom entitled to use any technically feasible entrance cable, including copper facilities?

**WORLDCOM:** \*\*\*Yes. WorldCom is entitled to use any technically feasible entrance cable, including copper facilities.\*\*\*

WorldCom is entitled to use any technically feasible entrance cable, including copper facilities. T.144, 145; Ex. 12, Attachment 5, section 7.21.1. Copper enables xDSL service to be provided by the ILECs' competitors, which will benefit consumers. *See* Ex. 7 at 109. Therefore, there should be a presumption that copper entrance facilities should be allowed. If BellSouth alleges space exhaustion, it may request the Commission to find that copper should not be placed. T.171; *see* Ex. 4, Milner Dep. at 94-95. The parties agree that the FCC's regulations specifically permit collocators to use copper cable if such interconnection is approved by the state commission. T.170.

BellSouth concedes that "some" copper cables enter BellSouth's central offices and, therefore, that copper entrance facility is technically feasible, *see* T.170, and that it has no plans to replace all the remaining copper facilities, Ex. 4, Milner Dep. at 94. Nonetheless, BellSouth insists that WorldCom should be restricted to the use of fiber entrance facilities *only*, except with respect to adjacent space collocation arrangements. T.1215; Ex. 4, Milner Dep. at 87.

This Commission addressed a similar issue in Section IV of its Collocation Order. Although the Commission clarified that its Order addressed the use of copper entrance cabling within the context of collocation outside of a central office but did not address other situations, nevertheless, the same basic principle should apply here. Copper entrance facilities should be permitted unless BellSouth proves that entrance facilities are at or near exhaustion in a particular central office.

As a matter of parity and nondiscriminatory treatment, WorldCom is clearly entitled to bring copper cable into the central office. T.171.<sup>15</sup> Copper entrance ducts merely present another factor in considering what space and facilities are available for collocation. Although ILECs should be allowed to reserve some space (central office or entrance ducts) for future needs, any such reservation should be supported on a competitively neutral basis, with forecasts and growth projections, and the ALEC should have the right to review what space exists and what future requirements an ILEC has when the latter contends there is a “near exhaust” situation. T.171.

**ISSUE 64A: Is WorldCom entitled to verify BellSouth's assertion, when made, that dual entrance facilities are not available?**

**WORLDCOM: \*\*\*Yes. WorldCom should be permitted to verify BellSouth's assertion that dual entrance facilities are not available. \*\*\***

WorldCom should be permitted to verify, through inspection of a central office if necessary, BellSouth's assertion that dual entrance facilities are not available. T.148, 149; Ex. 12, Attachment 5, section 7.21.2. “Dual entrances” are physically diverse entrances into a wire center; i.e., having dual entrances provides an opportunity to design “redundancy” and “survivability” into the network, thereby preventing some network failures (e.g., if there is a cable cut at one entrance facility, the overall service is not affected).

In many instances a physical inspection would not be necessary because one could look at architectural drawings. T.201. A visual inspection from the street may be acceptable in many situations; however, it is also possible that what would need to be inspected is underground and thus undetectable from the street. T.150-151. When a physical inspection

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<sup>15</sup> The FCC's regulations specifically permit collocators to use copper cable, and authorize the Commission to act to permit that use: “When an incumbent LEC provides physical collocation, virtual collocation, or both, the incumbent LEC shall: ... (3) permit interconnection of copper or coaxial cable if such interconnection is first approved by the state commission.” T.145. 47 C.F.R. § 51.323(d)(3).



is necessary, because, for example, the entrance facilities are below ground, WorldCom is *not* seeking a “formal tour” of the entire central office. Ex. 4, Milner Dep. at. 99-101. WorldCom simply is seeking an inspection of the ducts entering the cable vaults. T.202. A visual inspection less than a full “tour” to verify exhaust of an entrance facility will meet WorldCom’s needs. T.215. Moreover, BellSouth concedes that WorldCom could have limited visual verification of the cable vault to see which entrance facilities, including dual entrance facilities, are in use and which are spare. T.1384, 1380-1383.

**ISSUE 64B: Should BellSouth maintain a waiting list for entrance space and notify WorldCom when space becomes available?**

**WORLD COM:** \*\*\*Yes. BellSouth should maintain a waiting list for entrance space and notify WorldCom when space becomes available.\*\*\*

Just as BellSouth must indicate those of its premises that are full, 47 C.F.R. § 51.321(h), and should maintain a waiting list with respect to collocation space generally at a central office (see 2.2.3 of Attachment 5), it is reasonable to expect BellSouth to maintain a waiting list for dual entrance facilities. T.150. BellSouth also should offer space to the new entrants when it becomes available, based upon their position on the waiting list. BellSouth maintains that, should the fact that there is no entrance space available be the reason for denying a request for collocation, BellSouth will include that office on its space exhaust list, as required. BellSouth, however, states that it should not be required to incur the time and expense of maintaining a waiting list merely because dual entrance facilities may not be available. T.1217. BellSouth’s position appears to be simply that FCC rules do not require it to keep a waiting list. T.1264; Ex. 4, Milner Dep. at 105-06.

Since the lack of dual entrances, as a practical matter, will determine whether collocation is advisable at a given location, BellSouth should be required to maintain a

waiting list, because it is a reasonable and not overly burdensome requirement under the circumstances.

**ISSUE 65: What information must BellSouth provide to WorldCom regarding vendor certification?**

**WORLDCOM:** \*\*\*BellSouth must provide WorldCom sufficient information on the specifications and training requirements for a vendor to become BellSouth certified so that WorldCom can train its proposed vendors. The brochures that BellSouth has provided to WorldCom are not sufficient for this purpose.\*\*\*

BellSouth must provide WorldCom with sufficient information on the specifications and training requirements for a vendor to become BellSouth certified so that WorldCom knows what the requirements are and can train its proposed vendors to provision and maintain its collocation space. T.152.<sup>16</sup> BellSouth may approve the criteria by which these vendors are certified to perform such work, under 47 C.F.R. § 51.323(j), but it may not “unreasonably withhold approval of contractors.” Such approval must be based on the *same* criteria that BellSouth uses in approving vendors for its own purposes. T.152-153. In the absence of the sharing of information as to what these criteria are, BellSouth may try to change such requirements unilaterally. T.152; Ex.4, Milner Dep. at 111.

BellSouth maintains that it provides WorldCom with the same information it provides its *vendors* concerning the vendor certification process. T.172. Thus BellSouth has provided WorldCom with brochures that generally describe what BellSouth’s vendors are required to observe, for purposes of certification. T.172. BellSouth misses the point: although the brochures may be “precisely the same information that BellSouth provides its vendors,” as BellSouth insists, the information is not what *BellSouth* itself may require as part of its

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<sup>16</sup> “Q. And WorldCom itself could apply to become a BellSouth certified vendor? A. It could. COMMISSIONER JACOBS: That would solve the problem.” T.1389

approval process. T.173. It is not sufficient or reasonable, as a matter of contract between two competitors, to expect that WorldCom should content itself in having been invited informally to “contact the BellSouth vendor certification group for further information.” There must be contractual assurances that the same information that BellSouth uses to certify its vendors will, in fact, be provided to WorldCom. Otherwise, there is introduced into the interconnection agreement the opportunity for mischief and further litigation. It is reasonable and necessary that the Commission act consistently with the national rules to require BellSouth as a matter of contract to provide the information needed for certification. T.173.

Indeed, the brochure that BellSouth provided to WorldCom merely provides an overview of the process but not specific criteria upon which the vendor will be tested. Ex. 35; T.1392-1397. BellSouth concedes that if WorldCom sought to train its potential vendors prior to filing an application to become BellSouth certified, WorldCom would not have that information unless BellSouth provided it to WorldCom. T.1395, 1396. In fact, the brochure fails to describe how field trials will be done, or the criteria upon which the vendor will be tested, and even states that one reason for decertification is failure to have a current services or products contract in effect with BellSouth. T.1393, 1394; Ex. 35.

WorldCom has no problem with adhering to reasonable safety requirements, which should be the focus of certification requirements. Additional requirements – for example, that WorldCom or its vendors must perform installation work on behalf of BellSouth, or for a separate “contract” that BellSouth has proposed WorldCom’s vendors to enter into with it, are unreasonable and should not be sanctioned by the Commission.

**ISSUE 66: For purposes of the interconnection agreement between WorldCom and BellSouth, what industry guidelines or practices should govern collocation?**

**WORLDCOM:** \*\*\*The agreements should include the guidelines proposed by WorldCom in Attachment 5 to its proposed interconnection agreement, with updated references to GR-63 and GR-1275.\*\*\*

WorldCom wants BellSouth to comply with industry standards it has proposed in Attachment 5, with updated references to GR-63 and GR-1275. Ex. 12, Attachment 5, section 9. BellSouth cited only two standards with which it took issue. WorldCom updated the list of standards to replace these two items with more current references. T.154. BellSouth no longer appears to take issue that these are current industry standards. T.173.

BellSouth states that it is willing to comply with generally accepted industry practices to the extent it has control over the subject matter thereof. T.1218. Although BellSouth suggests that it will comply with “generally accepted industry practices” it has not provided with specificity to which requirements it refers. BellSouth objects to the inclusion of the proposed standards because it may cause it to incur responsibility for matters beyond its control. T.1266. WorldCom, however, is merely asking that BellSouth comply with industry standards with respect to matters within BellSouth’s responsibility or under its control. T.174. These standards deal with safety issues. Ex.4, Milner Dep. at 121. BellSouth appears to concede that standards governing safety would be agreeable. These recognized industry standards, if incorporated into the agreement, would reduce uncertainty and give the parties clear guidance with respect to what is expected under the agreement. Certainly the parties elsewhere in the agreement have incorporated by reference other industry standards. Ex.4, Milner Dep. at 117. There is no reason why collocation, in the wake of the Telecommunications Act and the FCC’s orders respecting it, cannot or should not be made predictable, specific and “user friendly.” *See* 47 C.F.R. § 51.323 (b); Advances Services Order, ¶ 23.

**F. Rights of Way**

**ISSUE 67: When WorldCom has a license to use BellSouth rights-of-way, and BellSouth wishes to convey the property to a third party, should BellSouth be required to convey the property subject to WorldCom's license?**

**WORLD COM: \*\*\*Yes. WorldCom should not be required to forfeit its license rights, and possibly strand facilities, when BellSouth conveys the underlying property.\*\*\***

The dispute before the Commission in Issue 67 centers on whether BellSouth should be permitted to put WorldCom in an impossibly compromised position by conveying to a third party property owned by BellSouth upon which WorldCom has facilities in such a manner so that WorldCom would have no right to continue to locate its facilities on the property. This issue would be crucial in a case where WorldCom has facilities located on BellSouth's property pursuant to a license agreement between BellSouth and WorldCom and BellSouth sells the property but does so in a way that WorldCom's right-of-way on the property is not preserved. BellSouth takes the hard-line position that it may convey property without any conditions whatsoever. All WorldCom requests (in Attachment 6, Section 3.6) is that BellSouth give it reasonable advance written notice of BellSouth's intent to convey the right of way, and that BellSouth convey the property subject to WorldCom's license.

BellSouth's proposal would allow it to discriminate against WorldCom by selling property conditional upon BellSouth facilities remaining on the property but not conditional upon WorldCom's facilities remaining on the property. Such a result would create a dangerous opportunity and incentive for anticompetitive behavior. The Commission must consider this issue in context. Even assuming no ill intent by BellSouth, by accepting BellSouth's position, WorldCom would be forced to negotiate a right of way agreement with the new owner of the property when WorldCom's facilities are already present on the

property. Of course, that would not be much of a negotiation at all. WorldCom would be put in the position of either paying whatever price is demanded by the new property owner or removing the WorldCom facilities.

BellSouth does not offer much justification for its hardline position, but rather asserts that it can do whatever it wants with its property. Indeed, during his deposition, BellSouth witness Varner would not even agree to provide notice to WorldCom that BellSouth intended to sell property upon which WorldCom facilities are located. Ex. 2, Varner Dep. at 108. Mr. Varner said that is something he “never thought through.” *Id.* 107. At bottom, it would be unconscionable for BellSouth to convey property in a way that undermines WorldCom’s ability to provide service in Florida. The only real protection from such an act is to require that any conveyance be made subject to WorldCom’s license rights. WorldCom has proposed language that will effectuate such protection WorldCom’s language should be adopted.

**ISSUE 68:** For purposes of the interconnection agreement between WorldCom and BellSouth, should BellSouth require that payments for make-ready work be made in advance?

**WORLDCom:** \*\*\*No. A requirement for advance payment would create delays and would not be commercially reasonable. It would be commercially reasonable for WorldCom to pay invoices for such work within 14 days of receipt.\*\*\*

This issue centers on whether BellSouth will begin work on WorldCom pre-license surveys and make-ready work prior to receipt of payment from WorldCom. There is no dispute that WorldCom is responsible for paying for such work; rather, the issue is the timing of the payment. BellSouth insists that payment be received in full prior to the initiation of any work, which would result in unnecessary delays in construction and installation. T.417. BellSouth’s proposed billing practice diverges from its standard practice of billing for

services after they are rendered, such as after UNEs are provisioned. T.686-87. This divergence cannot be justified. BellSouth does not suggest WorldCom has anything other than an excellent payment history, and the parties already have agreed to deposit and creditworthiness language, T.687; Ex. 4, Milner Dep. at 206-07. Moreover, WorldCom has offered to fax to BellSouth written confirmation that BellSouth shall begin work at WorldCom's expense and to make payments within fourteen days of the date an order is placed. T.418, 498. WorldCom's proposal is commercially reasonable and addresses BellSouth's concerns. WorldCom respectfully submits that its proposed language, with the modifications concerning payment within fourteen days and faxed confirmations, should be adopted.

**G. Local Number Portability**

**ISSUE 75: For purposes of the interconnection agreement between WorldCom and BellSouth, for end users served by INP, should the end user or the end user's local carrier be responsible for paying the terminating carrier for collect calls, third party billed calls or other operator assisted calls?**

**WORLDCOM: \*\*\*The end user should be responsible for payment. The terminating carrier can obtain billing information from the end user's local carrier.\*\*\***

Issue 75 concerns whether WorldCom or WorldCom's customer should be billed when a customer served via interim local number portability ("INP") makes a collect, third party billed or other operator assisted call. WorldCom submits that the customer should be the party billed. BellSouth asks the Commission to deviate from the industry practice and has proposed that language be inserted in the interconnection agreement stating that WorldCom should be responsible for and should be directly billed for all such calls made and received by WorldCom customers. It is noteworthy that the parties agree that this issue is relatively

limited because it only arises when a customer is served through INP, a practice that will become more rare with the advent of permanent local number portability. WorldCom requests that the Commission order the parties to follow the industry practice for these types of calls and require BellSouth to bill the customer and not WorldCom for these calls. T.499. The toll carrier should obtain the necessary billing information from the end-user's local carrier. Rather than going to the trouble of obtaining that information from WorldCom, BellSouth proposes instead to shift all responsibility and thus all risk of non-payment to WorldCom. But it is BellSouth that is providing the service, and it should be BellSouth that bills for the service. If BellSouth needs billing name and address information from WorldCom to render a bill, WorldCom will provide it in the same manner that BellSouth provides that information to ALECs. T.500.

#### **H. Business Process Requirements**

**ISSUE 80: For purposes of the interconnection agreement between WorldCom and BellSouth, should BellSouth be required to provide an application-to-application access service order inquiry process?**

**WORLDCOM: \*\*\*Yes. Such a process is needed to obtain pre-order information electronically for UNEs ordered via an access service request. BellSouth should be required to allow WorldCom to order DS1 loop-transport combinations using an electronic ASR.\*\*\***

Most of the local facilities WorldCom orders from BellSouth in Florida today to supply dial tone to its customers are DS1 combos, which until recently could be ordered using an ASR. WorldCom is seeking the ability to obtain pre-ordering information, such as address validation, service availability inquiry and cable facilities inquiry, for ASRs on an application-to-application basis. T.23-24. (See also WorldCom's proposed language in Attachment 8, Sections 2.1.1.2 and 2.2.3.) As Mr. Pate acknowledged during cross-examination, however, obtaining an application-to-application service inquiry process is of no



use unless WorldCom can use the ASR process to order a local product like the DS1 combo. T.1139. Issue 80 thus involves two interrelated subjects: (i) whether BellSouth must permit WorldCom to submit orders for DS1 combos using an ASR; and (ii) whether BellSouth must provide an application-to-application service order inquiry process.

As noted above in the discussion of Issue 1, BellSouth has informed WorldCom that as of September 5, 2000, BellSouth is requiring WorldCom to use the manual LSR process to order DS1 combos, and will treat ASR orders as special access requests. T.1126-27; Ex. 32. BellSouth's action is unlawful because BellSouth provides itself an electronic capability to order MegaLink circuits, which are functionally equivalent to DS1 combos. T.1116; Ex.5, Pate Dep. at 51. By preventing WorldCom from using a proven electronic interface and requiring it to shift to a manual interface, while BellSouth representatives are able to use an electronic interface, BellSouth violates the parity requirements of the Act.<sup>17</sup> As a practical matter, requiring WorldCom to use a manual process would be a major step backward that would lead to delays, errors and customer dissatisfaction. T.25. BellSouth should be required to permit WorldCom to use the ASR process for DS1 combos at least until BellSouth has made available a tested electronic LSR process for such orders.

WorldCom should be able to obtain pre-order information through an interface that can be integrated with the ASR interface. When BellSouth representatives order MegaLink circuits, for instance, they are able to obtain pre-order information electronically and have that information transmitted electronically into their service orders. T.1137-38; Ex. 5, Pate Dep. at 24-25. WorldCom should be able to develop the same capability. Initially BellSouth

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<sup>17</sup> BellSouth attempts to excuse its actions on the ground that it must treat all ALECs alike. But the ASR interface is available to all ALECs and therefore enabling ALECs to use the ASR process to order DS1 combos does treat all ALECs alike. The problem here is not treating all ALECs alike, but rather BellSouth treating itself better than it treats all ALECs.

contended that it did not have a pre-order interface that could be integrated with the ASR interface. Ex. 5, Pate Dep. at 67. At the hearing, Mr. Pate stated that BellSouth's TAG pre-order interface could be integrated with the ASR ordering interface. T.1138. Assuming that TAG can provide address validation, service availability inquiry and cable facilities inquiry, as WorldCom has requested, BellSouth would appear to have no reason to object to WorldCom's proposed language.

**ISSUE 81: For purposes of the interconnection agreement between WorldCom and BellSouth, should BellSouth provide a service inquiry process for local services as a pre-ordering function?**

**WORLD COM:** \*\*\*Yes. BellSouth should provide service inquiry as a pre-ordering function, not solely as an ordering function. WorldCom needs information on the availability of facilities at the pre-ordering stage in order to be able to effectively market its competitive local services.\*\*\*

A service inquiry process enables the sales representative to find out whether the facilities needed to serve the customer are available, and where they are located. T.1139-40. WorldCom's proposed language in Attachment 8, Section 2.2.1 states that "BellSouth shall perform service inquiry as a pre-ordering function as requested by WorldCom." WorldCom wants information about the availability of facilities so it can manage its customers' expectations and enable its customers to make plans based on when they can expect to receive the services they wish to order. T.26, 1140. Facilities location also is important because some customers have particular needs such as network redundancy. *Id.* But BellSouth does not make facilities availability and location information available on a pre-order basis. T.1142. As a practical matter, that means WorldCom cannot tell its customers about facilities availability and location while it is trying to make a sale to the customer. *Id.*

For BellSouth, the situation is much different. BellSouth maintains facilities availability and location information in electronic databases that can be accessed via a

computer terminal. T.1140-41. Although BellSouth contends that it provides service inquiry information to WorldCom in substantially the same time and manner as it does for itself, BellSouth witness Pate testified to the contrary on cross examination. He acknowledged that a BellSouth systems designer or services consultant working with a BellSouth account team can obtain facilities availability and location information on a pre-order basis for large business accounts. T.1142-43. The systems designer or services consultant simply sends a request to a BellSouth outside plant engineer who obtains the information for the account team. *Id.* Mr. Pate was not aware of any limitations on the system designer's or services consultant's ability to obtain such information. T.1144-45.

As a matter of parity, BellSouth should be required to provide WorldCom with the same access to facilities availability and location information as BellSouth has. At a minimum, BellSouth should provide the same unlimited access to this information that BellSouth sales teams enjoy for their large customer accounts. Even for other accounts, BellSouth outside plant engineers have access to facilities availability and location information electronically. T.1141. BellSouth should not be permitted to limit access to information based on how it chooses to distribute information within its own organization. The fact is that *BellSouth* has electronic access to this information and should provide access to ALECs, who can make their own decisions about when they need to access it. BellSouth's contention that WorldCom should use the change control process to obtain this facilities information falls short of resolving this issue. BellSouth fails to provide parity of access to facilities information *today* and should not be able to postpone indefinitely the time when it will conform its practices to the parity requirements of the Act.

**ISSUE 94: Should BellSouth be permitted to disconnect service to WorldCom for nonpayment?**

**WORLDCOM:** \*\*\*No. The parties should not disconnect for nonpayment. The appropriate remedy should be determined in dispute resolution.\*\*\*

BellSouth seeks the right to disconnect service to WorldCom in the extremely unlikely event WorldCom fails to pay BellSouth for its services absent a “good faith billing dispute.” WorldCom believes that the only appropriate way to resolve a dispute under the agreement is through dispute resolution, including civil remedies available for breaches of the agreement. T.504.

Under BellSouth’s proposed language, it would have the right to give WorldCom thirty days notice that it intends to terminate service to WorldCom for what BellSouth deems to be nonpayment of an amount not disputed in good faith. Under BellSouth’s proposal BellSouth would be the sole determiner of whether an unpaid amount is disputed in “good faith.” *See* T.959-960. BellSouth’s language permits it to bypass completely the Commission and any other dispute resolution mechanisms in the interconnection agreement and terminate service to WorldCom.

It is clearly inappropriate to permit BellSouth, a dominant competitor, to have the right to terminate all or some service to its dependent competitor (WorldCom) if, in BellSouth’s sole judgment, WorldCom has failed to make a “good faith” dispute of certain charges. Indeed, parties often differ in opinion as to whether a dispute is made in good faith. T.504. BellSouth’s proposal is draconian indeed, potentially resulting, for example, in the termination of WorldCom’s customers’ local service. BellSouth should not be allowed to obtain that power and the ability to use to exact settlement from WorldCom in instances in which WorldCom makes a legitimate, good-faith billing dispute. T.423.

BellSouth argues that it would not be a reasonable business practice for BellSouth to “operate ‘on faith’ that an ALEC will pay its bills.” T.791 Yet WorldCom’s proposed language would adequately protect *both* billing parties (BellSouth and WorldCom) against the risk of non-payment. T.503. Under WorldCom’s proposed language in Attachment 8, Section 4.2.18, either billing party may pursue all dispute resolution avenues available to it under the relevant provision in the agreement. WorldCom’s proposed language would not require BellSouth to operate “on faith” that it would be paid. The dispute resolution mechanisms in the contract are acceptable for resolving other disputes and should be employed to resolve billing disputes as well.

The Commission should adopt WorldCom’s proposed language because it gives both parties all appropriate recourse to take billing disputes to an appropriate forum and protects WorldCom from having its service (and, necessarily, service to its end users) disrupted because of a unilateral decision by BellSouth that an unpaid amount owed by WorldCom was not disputed in good faith.

**ISSUE 95: Should BellSouth be required to provide WorldCom with billing records with all EMI standard fields?**

**WORLDCOM:** \*\*\*BellSouth should be required to provide WorldCom with complete EMI billing records, not simply the subset of such information contained in ADUF, ODUF, and EODUF.\*\*\*

Issue 95 centers on whether BellSouth should be required to provide Exchange Message Interface (“EMI”) standard fields on the bills it sends to WorldCom. BellSouth should be contractually obligated to provide EMI billing records; otherwise, it could deviate from industry standards and develop proprietary standards. EMI is the industry standard. T.505. BellSouth proposes to provide billing records using its tariffed services known as access daily usage file (“ADUF”) and optional daily usage file (“ODUF”), which apparently

contain a subset of the fields contained in an EMI record. The current interconnection agreement, that was previously approved by the Commission as consistent with the public interest, requires that EMI records be used. BellSouth wants to change that requirement. EMI is used by all other Bell companies, T.505, and WorldCom should be allowed to receive complete billing records with all EMI fields.

WorldCom's language is clear and unequivocal. (*See Attachment 8, Section 5.2.17 of WorldCom's proposed interconnection agreement*). The language proposed by WorldCom is nearly identical to that previously approved by the Commission and clearly requires that BellSouth provide specific EMI records to WorldCom and that it do so in the EMI format. BellSouth's language merely requires that it provide billing information to WorldCom "consistent with EMI guidelines." BellSouth's language falls far short of the clarity its purports to seek. WorldCom's language is clear and certain. Accordingly, the Commission should adopt the language proposed by WorldCom that was previously approved by this Commission in the first interconnection agreement between the parties.

**ISSUE 96:**                    **For purposes of the interconnection agreement between WorldCom and BellSouth, should BellSouth be required to give written notice when a central office conversion will take place before midnight or after 4 a.m.?**

**WORLDCOM:**                **\*\*\*Yes. Because central office conversions can involve taking down an ALEC's switched services, WorldCom needs to receive specific written notice when such conversions will take place outside of the time window agreed to by the parties.\*\*\***

The parties have agreed that central office conversions will occur after midnight and before 4 a.m., unless WorldCom is notified to the contrary. The only dispute regarding the language in Attachment 8, Section 6.2.4 concerns whether notice of an unusually timed conversion will be given in writing or via web posting. Because central office conversions

can involve taking down ALECs' switched service, it is critical that WorldCom receive written notice if such a conversion is expected to take place outside the midnight to 4 a.m. timeframe. T.424-25. BellSouth witness Milner described a central office conversion as a "major event in the life of a switch" that is planned far in advance. T.1370. Yet if there is a change in schedule just days or weeks before the conversion that would cause the conversion to take place before midnight or after 4 a.m., under BellSouth's proposal the only notice an ALEC would receive would be via BellSouth's website. T.1370. Unless an ALEC is monitoring that website, it will be unaware that the conversion will take place during a time when traffic flow, and thus potential impact to consumers, is higher. T.1369-71. In such a case, BellSouth is unwilling even to provide notification via e-mail, T.1371, which clearly would not impose an undue burden on BellSouth.

Because the burden on BellSouth to notify WorldCom is small and because the consequences of not receiving such notice are great, WorldCom submits that the Commission should require BellSouth affirmatively to inform WorldCom of central office conversions set to take place outside of the standard hours.

**ISSUE 96A: For purposes of the interconnection agreement between WorldCom and BellSouth, should BellSouth be required to provide customer service record (CSR) information in a format that permits its use in completing an order for service?**

**WORLDCOM: \*\*\*Yes. BellSouth should either parse CSR information in accordance with industry standards or, if no industry standards exist, should address the parsing of CSR information through the established Change Control Process (CCP).\*\*\***

A customer service record ("CSR") contains customer information such as the customer's full name, address and features and services. T.35, 1156. An ALEC uses CSR information during the pre-ordering process to fill out an LSR. T.35. An LSR is the order

form ALECs are required to use to order most local services. The LSR contains blanks, also known as fields, that the ALEC must fill out (or, in the vernacular, “populate”) to request service. T.1157. WorldCom is asking that BellSouth be required to provide CSR information in a manner that will enable WorldCom to populate LSR fields automatically with data obtained from CSRs. If WorldCom does not obtain CSR data in this way, manual processing will be required that will increase error rates and result in a higher order rejection rate. T.36.

LSR fields call for information to be supplied in small pieces. For example, a simple street address such as “111 Maple Street NE” would be broken into four fields – street number, street name, street type and street direction. T.1158. BellSouth provides CSR data on a line-by-line basis that does not break down the information into the fields necessary to populate a CSR. T.1156. For example, “111 Maple Street NE” would appear as one block of data rather than being “parsed” or broken down into four pieces of data that could be placed automatically into the appropriate LSR fields. This method of providing CSR data is not a problem for BellSouth, because its legacy systems are designed to accommodate line-by-line blocks of data so BellSouth retail representatives can populate orders automatically. T.1157. Thus, while technically BellSouth may provide CSRs to ALECs in the same manner as to itself, as a practical matter BellSouth is providing itself information that it can use on an automated basis and that ALECs must use on a manual basis. That is not parity.

BellSouth witness Pate contended that ALECs could program their systems to parse BellSouth’s CSR data on a field-by-field basis, but he acknowledged that he was not aware of any ALEC that had ever succeeded in doing so. T.1160-61. Mr. Pate also claimed that BellSouth’s outside developer (Albion) had succeeded in parsing CSR data on a field-by-field basis. T.1161-62. This contention is directly contradicted by Mr. Pate’s deposition



testimony, in which he stated his understanding that Albion only had parsed CSRs on a line-by-line basis and that he was not aware of anyone who had parsed BellSouth CSRs at a more granular level.<sup>18</sup> T.1163. Mr. Pate's contention also makes no sense. If parsing CSR data were so easy, and in fact had already been done, BellSouth would have no reason to resist parsing CSR data for ALECs, or at least showing ALECs how to do so. But BellSouth has not agreed to parse CSRs for ALECs and has not provided information that would tell them how to do it themselves. T.1163-64, 1166. In short, there is no evidence that ALECs can program their systems to parse CSR data on a field-by-field basis using information BellSouth has supplied to date.

The CSR parsing issue was submitted to the change control process on August 12, 1999 and made ALECs' first priority on June 28, 2000. T.1165. Although BellSouth is investigating the possibility of providing parsed CSRs, as of the hearing BellSouth had not committed to doing so. T.1166. Meanwhile, Verizon already provides ALECs with parsed CSRs and SBC has committed to doing so by March 2001. T.94, 1164. BellSouth has dragged its feet long enough on this important issue. WorldCom respectfully submits that BellSouth should be required to provide CSR parsing at the field level, using the change control process to work through the details of implementation.

#### **I. Ancillary Services**

**ISSUE 100: For purposes of the interconnection agreement between WorldCom and BellSouth, should BellSouth operators be required to ask callers for their carrier of choice when such callers request a rate quote or time and charges?**

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<sup>18</sup> Moreover, BellSouth attempted to rely on the testing by Albion in its second Louisiana 271 application in 1998. The FCC rejected BellSouth's contention that the Albion testing demonstrated that BellSouth's pre-ordering and ordering interfaces were integratable. *In re: Second Application by BellSouth Corp., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Louisiana*, CC Docket No. 98-121, ¶ 102 (rel. Oct. 13, 1998).

**WORLDCOM:** \*\*\*Yes. BellSouth should be required to ask a caller for his or her carrier of choice if the caller requests a rate quote or time and charges.\*\*\*

WorldCom is requesting that when a WorldCom local customer is served by BellSouth for operator services, and that customer calls the operator for a rate quote or time and charges, the BellSouth operator should be required to ask for the caller's long distance carrier of choice and then transfer the customer to that carrier. T.428. Asking for a rate quote simply involves a request for how much a particular toll call will cost, while asking for time and charges involves a request for how long the customer spent on a long distance call and the cost of the call. T.428. WorldCom's concern is that that today, when the BellSouth operator does not know the customer's long distance carrier, BellSouth's practice is to quote BellSouth's rates. Ex. 4, Milner Dep. at 245. WorldCom's request is designed to address the potential for customer confusion inherent in BellSouth's current practice.

WorldCom understands that it must pay BellSouth for the time its operators spend handling calls from WorldCom's customers, which of course would include any extra time required to inquire about the customer's long distance carrier and to transfer the call. T.429. BellSouth's principal concern appears to be that because it is not always possible to identify the customer's local carrier, it would be required to make the requested inquiry of all customers, not just WorldCom customers. Ex. 4, Milner Dep. at 239. Currently, when an ALEC receives OS/DA service on an unbranded or BellSouth-branded basis, the BellSouth operator cannot identify the caller's local carrier. *Id.* at 244-45. But BellSouth's OLNS method, which BellSouth expects to make available by the first quarter of 2001, will solve this problem because it will enable BellSouth to determine the source of a call at the TOPS platform. T.1127-30. Thus, the BellSouth operator will know whether or not the caller is a

WorldCom customer and can handle WorldCom's customers' calls differently than calls from the customers of other carriers.

Another concern BellSouth has raised concerns its Operator Transfer Service ("OTS") for transferring calls to long distance companies. BellSouth has complained that if the WorldCom customer calling the operator is not served by a long distance carrier that subscribes to the OTS service, BellSouth would not be able to charge the carrier for the transfer. The simple response to this argument is that a large part of an operator's job description involves connecting callers to the people they are trying to reach. Ex. 4, Milner Dep. at 238. If a customer calls a BellSouth operator and provides the appropriate information for a long distance call, the operator will connect that customer to its chosen long distance carrier so the call can be completed. *Id.* at 249-50. It is difficult to see why the BellSouth operator would not provide essentially the same service when the WorldCom customer has requested a rate quote or time and charges. In either situation, BellSouth would be compensated for the time required for the operator to make the necessary connection. Not only would BellSouth receive full compensation, it would obtain a bonus when the long distance carrier involved subscribed to OTS, because BellSouth would receive payment from that carrier as well. In short, BellSouth's OTS argument is unfounded and WorldCom's proposed language in Attachment 9, Section 2.2.2.12 should be adopted.

**ISSUE 101: For purposes of the interconnection agreement between WorldCom and BellSouth, is BellSouth required to provide shared transport in connection with the provision of custom branding?**

**WORLD COM: \*\*\*BellSouth is required to provide shared transport as an unbundled network element and shared transport can be used in connection with the provision of custom branding. WorldCom is not required to purchase dedicated transport.\*\*\***

This issue concerns several proposed provisions regarding the routing of OS/DA traffic to BellSouth's OS/DA platform, known as the TOPS platform. (See Attachment 9, Sections 2.2.4.3.3, 2.8.1, 2.8.1.1, 3.2.1.1, 3.2.4.3.3, 3.5.2, and 3.5.2.1.) WorldCom is requesting that BellSouth provide OS/DA service with WorldCom branding via routing that uses shared transport. As a practical matter, it is important for WorldCom to have access to shared transport for OS/DA calls when there is not enough traffic coming from a particular BellSouth end office to justify dedicated trunking. T.432. WorldCom's request is authorized by FCC Rule 51.217(d), which provides as follows:

The refusal of a providing local exchange carrier (LEC) to comply with the reasonable request of a competing provider that the providing LEC rebrand its operator services and directory assistance, or remove its brand from such services, creates a presumption that the providing LEC is unlawfully restricting access to its operator services and directory assistance. The providing LEC can rebut this presumption by demonstrating that it lacks the capability to comply with the competing provider's request.

If WorldCom desires to have calls routed to the TOPS platform and branded "WorldCom" using one of the two selective routing methods BellSouth makes available today, some dedicated trunking must be used. If the line class code method is selected, dedicated trunking must be used from every end office WorldCom uses to serve its customers. T.1306. If the more expensive AIN hubbing method is used, shared transport can be employed from most end offices to the AIN hub, but then dedicated trunking is necessary from the hub to the TOPS platform. T.1323-24. Thus, neither solution accomplishes what WorldCom is requesting.

It is clear, however, that WorldCom's request is technically feasible. For example, both Bell Atlantic and SBC offer shared transport of branded OS/DA calls. T.432. More to the point, BellSouth is developing a method that would route OS/DA traffic over the same

trunks used to carry BellSouth's OS/DA traffic to the TOPS platform. Using this so-called "OLNS method," BellSouth will identify the source of the call at the TOPS platform and brand the call accordingly. T.1127-30. Witness Milner testified that he expects the OLNS method to be available by the end of the year 2000 or the first quarter of 2001. T.1330. Because BellSouth is capable of providing the routing method that WorldCom is requesting, WorldCom submits that its proposed language should be adopted.

**J. General Issues**

**ISSUE 107: For purposes of the interconnection agreement between WorldCom and BellSouth, should the parties be liable in damages, without a liability cap, to one another for their failure to honor in one or more material respects any one or more of the material provisions of the Agreements?**

**WORLDCOM: \*\*\*Yes. There should be no limitation of liability for material breaches of the Agreements.\*\*\***

Issue 107 involves the terms of the liability cap that will be incorporated into the agreement. The dispute is simple. BellSouth argues the liability cap should cover all breaches including material breaches. The language WorldCom proposes in Part A, Sections 11.1.1 and 11.1.2 would not apply the liability cap in such cases. BellSouth and WorldCom must be given strong incentives not to breach the interconnection agreement. Accordingly, there should be no cap on liability for "material" breaches of the interconnection agreement. If there was such a cap, BellSouth would have an incentive to breach the interconnection agreement when the benefit of the breach was greater than the maximum liability under the agreement. T.438, 512. The Commission should discourage such a perverse incentive.

BellSouth also argues this issue is not appropriate for arbitration. The question of what issues must be arbitrated is briefed separately under Legal Issue B.

**ISSUE 108: For purposes of the interconnection agreement between WorldCom and BellSouth, should WorldCom be able to obtain specific performance as a remedy for BellSouth's breach of contract?**

**WORLDCOM: \*\*\*Yes. Services under the Agreements are unique, and specific performance is an appropriate remedy for BellSouth's failure to provide the services as required in the Agreements.\*\*\***

Specific performance is a basic principle of law. A specific performance provision is standard for commercial contracts. In the most basic sense, the interconnection agreement resulting from this arbitration is nothing more than a commercial agreement obligating BellSouth and WorldCom to fulfill certain obligations created in contract. Specific performance by BellSouth of its obligations in the interconnection agreement is needed to ensure that BellSouth provides services that are necessary for WorldCom to conduct business.

WorldCom has proposed standard specific performance language in its proposed interconnection agreement. *See* Part A, Section 14.1 of WorldCom's proposed Interconnection Agreement. BellSouth has not offered any proposed language. Rather, BellSouth proposes a case-by-case resolution in every instance about whether specific performance should occur. WorldCom's position is simple and clear. The agreement will create contractual obligations and BellSouth must fulfill those obligations. There should be no *ex post facto* determination of whether BellSouth should fulfill its obligations under the Act.

**ISSUE 109A: Should BellSouth be required to permit WorldCom to substitute more favorable terms and conditions obtained by a third party through negotiation or otherwise, effective as of the date of WorldCom's request?**

**WORLDCOM: \*\*\*Yes. BellSouth should permit WorldCom to substitute more favorable terms and conditions effective as of the date of WorldCom's request.\*\*\***

With regard to the timing of WorldCom's rights to "pick and choose" terms and conditions from other interconnection agreements, the law is clear. Section 252(i) of the Act requires that BellSouth "make available any interconnection service, or network element provided" under an agreement approved by this Commission to any requesting carrier. This requirement under the law is not new and has been reaffirmed and clearly set forth in FCC Rule 51.809. Indeed, the agreement between BellSouth and WorldCom that was previously approved contained language which gave effect to the "pick and choose" requirement. BellSouth cannot object to the principle of the "pick and choose" rule and does not do so in this case. Rather, BellSouth argues that WorldCom may not exercise the "pick and choose" provision and have such provision go into effect until WorldCom and BellSouth have executed an amendment to the interconnection agreement. In contrast, WorldCom's proposed language (in Part A, Section 18) would have the provision go into effect when the language in question is requested by WorldCom. BellSouth's position promotes form over substance. More importantly, it creates an incentive for BellSouth to intentionally delay the formal amendment process by delaying execution of an amendment or filing of the amendment with the Commission. WorldCom's language removes the incentive for such gamesmanship from its rights under Section 252(i) of the Act.

**ISSUE 109B: Should BellSouth be required to post on its website all BellSouth's interconnection agreements with third parties within fifteen days of the filing of such agreements with the FPSC?**

**WORLDCOM:** \*\*\*Yes. Interconnection agreements should be posted on BellSouth's web site to facilitate access.\*\*\*

Section 252(i) is intended to ensure that BellSouth offers terms and conditions to ALECs such as WorldCom in a nondiscriminatory fashion. It would greatly facilitate the

important goal of Section 252(i) of the Act if BellSouth posted copies of its Florida interconnection agreements on its web page. BellSouth presumably has electronic versions of all of its interconnection agreements. There would be no significant cost to require that all of these agreements be posted in one place making them easy to access for the Florida ALEC community. In fact, such postings should be substantially easier than the requirement under the current agreement for BellSouth to provide WorldCom with paper copies of these agreements. T.964.

BellSouth objects to the web posting requirement stating that ALECs may obtain copies from the Commission. T.964-965. However, those copies are available only in paper format and making the Commission's Division of Records and Reporting the primary source for such agreements would be inefficient and wasteful of the Commission's resources. Many services are currently provided to the ALEC community through BellSouth's web site. ALECs have made good use of the BellSouth web site. BellSouth is a world-class communications company. There is simply no good reason for BellSouth to refuse to make available copies of its interconnection agreements on its web site. The Commission should direct it to do so.

**ISSUE 110: Should BellSouth be required to take all actions necessary to ensure that WorldCom confidential information does not fall into the hands of BellSouth's retail operations, and should BellSouth bear the burden of proving that such disclosure falls within enumerated exceptions?**

**WORLDCOM: \*\*\*Yes. BellSouth should take all measures necessary to protect WorldCom's confidential information from BellSouth's retail operations, and should bear the burden of proving that disclosure falls within enumerated exceptions.\*\*\***

Issue 110 relates to the treatment by BellSouth of confidential information provided to it by WorldCom. This issue is of great importance because WorldCom is both a customer



(in the wholesale markets) and a competitor (in the retail markets) of BellSouth. BellSouth's wholesale and retail divisions have the same goal – to increase the value of BellSouth Corp. shares. It is only natural that BellSouth's divisions would want to share all valuable information in a joint effort to achieve their common goal. Of course, employees of BellSouth's wholesale divisions and retail divisions likely know each other and may often interact. For these reasons, it is entirely appropriate for WorldCom to insist that BellSouth take all actions necessary to secure WorldCom's confidential information.

The central dispute between the parties is what is the appropriate presumption if WorldCom's confidential information falls into the wrong hands. Specifically, what presumption should be made if WorldCom's proprietary information is shared with BellSouth's retail units. WorldCom has proposed straightforward language that recognizes the importance of keeping its confidential information protected. In Part A, Attachment 19.1.2 of its proposed Interconnection Agreement, WorldCom proposes language that provides when WorldCom's proprietary information falls into the hands of BellSouth's retail units, BellSouth has the burden of showing that such information was not shared improperly. Assuming that the BellSouth retail unit obtained the information from a legitimate source, it should have no problem identifying that source. On the other hand, if the information were inappropriately shared, BellSouth's position would require WorldCom to "prove a negative" and show that BellSouth did not obtain the information by some permissible means.


BellSouth offers very little in response to WorldCom's language other than to promise it "takes seriously" this issue and that it will take all "reasonable" steps to ensure WorldCom's confidential information is not inappropriately shared. T.802 BellSouth's promises are

encouraging, but are simply not enough. The contract must set forth exactly what the presumption will be if WorldCom's confidentiality is breached.

### **III. CONCLUSION**

This Docket presents the Commission with issues that provide a clear choice between competitive policies and policies which will impede competition. WorldCom has offered legal and policy support as well as specific contract language for each pro-competitive position. WorldCom respectfully requests the Commission adopt the language described herein and set forth in the proposed Interconnection Agreement that accompanied its Petition for Arbitration.

RESPECTFULLY SUBMITTED this 9th day of November, 2000.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished to the following by U.S. Mail or Hand Delivery (\*) this 9th day of November, 2000:

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