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RECORDS AND
REPORTING

November 9, 2000

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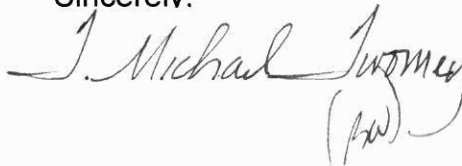
Re: Docket No. 000649-TP (MCI Arbitration)

Dear Ms. Bayó:

Enclosed please find an original and 15 copies of the Post-Hearing Brief of BellSouth Telecommunications, Inc., which we ask that you file in the above-referenced matter.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,



T. Michael Twomey

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**CERTIFICATE OF SERVICE
Docket No. 000649-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via

U.S. Mail this 9th day of November, 2000 to the following:

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006719

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by MCImetro Access)
Transmission Services LLC and MCI WorldCom)
Communications, Inc. for Arbitration of Certain) Docket No. 000649-TP
Terms and Conditions of a Proposed Agreement)
with BellSouth Telecommunications, Inc.)
Concerning Interconnection and Resale Under the)
Telecommunications Act of 1996.)

POST-HEARING BRIEF OF BELLSOUTH TELECOMMUNICATIONS, INC.

BellSouth Telecommunications, Inc. ("BellSouth") submits this post-hearing brief in support of its positions on the issues submitted to the Commission for arbitration in accordance with the Section 252 of the Telecommunications Act of 1996, 47 U.S.C. § 252. Considering the evidence and applicable law, the Commission should adopt BellSouth's position on each of the issues which remain in dispute.

INTRODUCTION

This arbitration proceeding was initiated by MCImetro Access Transmission Services, LLC and MCI WorldCom Communications, Inc, (collectively referred to as "WorldCom").¹ BellSouth has been negotiating the terms of a new interconnection agreement with WorldCom since September 1999. Although BellSouth and WorldCom were able to reach agreement on a number of issues, many issues remain unresolved.²

¹ WorldCom filed its petition for arbitration on May 26, 2000, raising certain disputed issues concerning the parties' proposed interconnection agreement. BellSouth filed its response to the petition on June 20, 2000. The Commission heard this matter on October 4, 5, and 6, 2000.

² The parties have resolved many of the issues originally in dispute, including certain issues that were resolved after the hearing in this case. The resolved issues in Florida are: 4, 7, 9, 10, 11, 12, 13, 14, 16, 17, 20, 21, 24, 25, 26, 27, 29, 30, 31, 32, 33, 35, 38, 41, 43, 44, 48, 49, 50, 52, 53, 54, 69, 70, 71, 72, 73, 74, 76, 77, 79, 82, 83, 84, 85, 86, 87, 88, 89, 90, 92, 93, 97, 98, 99, 102, 103, 104, 106, 111, and 112. Issue 105 was referred to a generic proceeding.

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The remaining issues that this Commission must resolve reach nearly every corner of the parties' interconnection agreement; they concern matters as varied as how interconnection facilities should be provisioned to how BellSouth should notify WorldCom of a central office conversion. But, there is a recurring theme that runs through this arbitration: WorldCom believes that it may demand any work process or arrangement from BellSouth, without regard to the requirements of the Telecommunications Act of 1996 ("the 1996 Act") or applicable rulings of the Federal Communications Commission ("FCC"), without regard to whether BellSouth makes available such processes or arrangements for itself, and without regard to the costs imposed on BellSouth. Indeed, according to WorldCom's own witness, its positions are not designed to ensure a level playing field, but rather would result in a "slanted" playing field designed to favor Alternative Local Exchange Carriers ("ALECs") such as WorldCom. Olson, Tr. Vol. 2 at 294. BellSouth's positions on the remaining unresolved issues in this arbitration are fully consistent with the 1996 Act and applicable rulings of this Commission and the FCC; the same cannot be said about the positions espoused by WorldCom.

In addition to being unconstrained by the law, in many instances the language proposed by WorldCom is fraught with ambiguity and is not even consistent with the testimony offered by WorldCom at the hearing. Adopting WorldCom's language would only ensure to embroil the parties and this Commission in disputes down the road, which is hardly in the public interest. For these reasons, as explained more fully below, based on the evidence introduced at the hearing and the applicable law, BellSouth respectfully submits that the Commission should adopt BellSouth's position on each of the remaining issues in dispute.

II. STATUTORY OVERVIEW

The 1996 Act provides that parties negotiating an interconnection agreement have the duty to negotiate in good faith.³ After negotiations have continued for a specified period, the 1996 Act allows either party to petition a state commission for arbitration of unresolved issues.⁴ The petition must identify the issues resulting from the negotiations that are resolved, as well as those that are unresolved.⁵ The petitioning party must submit along with its petition “all relevant documentation concerning: (1) the unresolved issues; (2) the position of each of the parties with respect to those issues; and (3) any other issues discussed and resolved by the parties.”⁶ A non-petitioning party to a negotiation under this section may respond to the other party’s petition and provide such additional information as it wishes within 25 days after the state commission receives the petition.⁷ The 1996 Act limits a state commission’s consideration of any petition (and any response thereto) to the unresolved issues set forth in the petition and in the response.⁸

Through the arbitration process, the Commission must now resolve the remaining disputed issues in a manner that ensures the requirements of Sections 251 and 252 of the 1996 Act are met. The obligations contained in those sections of the 1996 Act are the obligations that form the basis for negotiation, and if negotiations are unsuccessful, they then form the basis for arbitration. Once the Commission provides guidance on the unresolved issues, the parties will

³ 47 U.S.C. § 251(c)(1).

⁴ 47 U.S.C. § 252(b)(2).

⁵ *See generally*, 47 U.S.C. §§ 252(b)(2)(A) and 252 (b)(4).

⁶ 47 U.S.C. § 252(b)(2).

⁷ 47 U.S.C. § 252(b)(3).

⁸ 47 U.S.C. § 252(b)(4).

incorporate those resolutions into a final agreement that will then be submitted to the Commission for its final approval.⁹

ISSUES AND POSITIONS

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?

SUMMARY OF BELLSOUTH'S POSITION

*** BellSouth is not required to provide electronic ordering for all unbundled network elements. Manual ordering charges should apply when WorldCom places an order manually, either for its own business reasons or because BellSouth does not have an electronic interface that will allow WorldCom to place orders electronically. ***

DISCUSSION

The rates BellSouth proposes to charge WorldCom for Local Service Requests ("LSRs") submitted manually are the rates which the Commission will establish in Docket 990649-TP. Those rates should apply whenever WorldCom submits an LSR manually, regardless of whether WorldCom does so for its own business reasons or because an LSR cannot be placed electronically. BellSouth's proposed contractual language on this issue is clear: LSRs submitted via one of the electronic interfaces will incur an electronic ordering charge. LSRs submitted by means other than one of the electronic interfaces will incur a manual order charge.

This Commission should uphold BellSouth's right to recover Commission-approved manual ordering charges for orders WorldCom submits manually. BellSouth's obligation to

⁹ 47 U.S.C. § 252(a).

provide access to its Operational Support Systems (“OSS”) requires access “in substantially the same time and manner” that BellSouth provides to itself. *See First Report and Order, In re: Implementation of Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, CC Docket No. 96-98, ¶ 518 (Aug. 8, 1996), *vacated in part, Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *rev’d in part, aff’d in part sub nom. AT&T Corp. v. Iowa Utils. Bd.*, 119 S. Ct. 721 (1999) (hereinafter referred to as the “*First Report and Order*”). Notably, access to OSS includes *manual* systems, together with associated business processes. *See Third Report and Order and Fourth Further Notice of Proposed Rulemaking*, CC Docket 96-98, FCC Order No. 99-238, ¶ 425 (Nov. 5, 1999) (hereinafter referred to as the “*Third Report and Order*”).

WorldCom attempts to frame this issue as one of parity, claiming that it seeks to pay electronic ordering charges in circumstances when BellSouth does not provide an electronic interface to ALECs, but provides electronic ordering for itself. Price, Tr. Vol. 3, at 530. However, that is not what the language proposed by WorldCom actually says. Importantly, WorldCom’s proposed language does not distinguish between the circumstance in which no electronic ordering exists for either BellSouth or WorldCom. Rather, WorldCom’s language states only that the “electronically ordered nonrecurring charge will apply in the event LSRs are submitted manually when electronic interfaces are not available . . .” Price, Tr. Vol. 3, at 340.

Furthermore, while claiming that the issue is one of parity (a claim not supported by WorldCom’s proposed language), the only example of alleged disparity identified by Mr. Price was his reference to BellSouth’s Megalink® service and his comparison of that service to the DS1 loop and transport combinations WorldCom intends to order. Price, Tr. Vol. 3, at 533. Mr. Price’s identification of Megalink® service as a retail analogue for DS1 loop and transport

combinations is remarkable considering the sworn testimony of WorldCom's other policy witness, Ron Martinez (whose testimony Mr. Price adopted) in Docket 981182-TP. In that docket, Mr. Martinez testified that he "strongly disagree[d] that a Megalink circuit provided to an end user customer by BellSouth and a DS-1 loop, DS-1 dedicated transport combination used by MCImetro as part of an MCI switched base local service offering are in any way equivalent in the eyes of the customer." Hearing Exh. 19, at p. 2 If the Commission accepts WorldCom's prior sworn testimony that Megalink® is not "in any way" an appropriate retail analogue to the DS1 loop transport combinations, then the Commission should find that WorldCom presented no credible evidence that BellSouth provides itself with electronic ordering capability for comparable retail services which are unavailable to WorldCom.

Conditioning WorldCom's payment of electronic ordering charges for manually submitted LSRs to the concept of "parity," as proposed by WorldCom, would only ensure continued disputes between the parties about the appropriate ordering charges to be paid by WorldCom – disputes in which this Commission is certain to become embroiled. Price, Tr. Vol. 3, at 534-35. There is no reason why the parties should be required to include in their interconnection agreement language that is likely to be the source of ongoing controversy.

In the unlikely event WorldCom truly believes that BellSouth is not providing parity with respect to its electronic ordering interfaces, WorldCom should file a complaint with the Commission for appropriate relief. However, WorldCom should not be permitted to avoid paying Commission-approved manual ordering charges simply because an electronic ordering interface may not be "available," as WorldCom has proposed.

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

SUMMARY OF BELLSOUTH'S POSITION

*** BellSouth proposes that the rates contained in Exhibit CKC-1 be adopted as the appropriate rates to be included in the new interconnection agreement between BellSouth and WorldCom.. Unless otherwise indicated, rates are interim and subject to true-up upon establishment of permanent rates by the Commission. ***

DISCUSSION

BellSouth proposes that the rates contained in Exhibit CKC-1 be adopted as the appropriate rates to be included in the new interconnection agreement between BellSouth and WorldCom until such time as the Commission establishes permanent rates in Docket 990649-TP. At that point, the rates established in Docket 990649-TP will be incorporated into the new interconnection agreement and the rates will be trued up, if necessary. BellSouth submitted cost studies which adequately support the proposed rates. WorldCom offered no cost studies or testimony to rebut the reasonableness of BellSouth's rates. Price, Tr. Vol. 3, at 539.

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?

SUMMARY OF BELLSOUTH'S POSITION

*** BellSouth is required by 47 U.S.C. § 251(c)(4) and 47 CFR 51.605(a) to offer a resale discount on retail telecommunications services provided to subscribers who are not telecommunications carriers. Exchange access services are generally not offered at retail to subscribers who are not telecommunications carriers. Consequently, the resale discount does not apply to services in the access tariff. ***

DISCUSSION

Section 251(c)(4) of the 1996 Act obligates BellSouth to offer for resale at wholesale rates any telecommunications service that BellSouth provides at retail to subscribers who are not telecommunications carriers. The FCC has made clear that exchange access services are not subject to the resale requirements of the 1996 Act, even though such services are sometimes sold to end-users. See *First Report and Order*, ¶¶ 872-874. Mr. Price conceded that point. Price, Tr. Vol. 3, at 546.

In blatant disregard of the FCC's ruling, WorldCom has proposed language that would purport to obligate BellSouth to resell exchange access services at the resale discount. As WorldCom witness Price conceded on cross-examination:

Q. And you would agree that access services are available to parties other than telecommunications carriers?

A. That is my understanding. And, again, we are not trying to take anything away from the conclusion that the FCC reached with respect to access services, as I discussed previously.

Q. Well, I think you have also agreed with me that the language [WorldCom] has actually proposed in this proceeding could be read to require BellSouth to resell access services at the wholesale discount?

A. And that is certainly not our intent.

Price, Tr. Vol. 3, at 550. While insisting that WorldCom was only seeking to resell at a discount those exchange access services primarily being used by end users, WorldCom could not offer any "bright line test" to determine when the resale discount would apply to BellSouth's exchange access services and when the resale discount would not apply under WorldCom's proposal. Price, Tr. Vol. 3, at 550.

With this issue, WorldCom raises the specter of BellSouth attempting to circumvent its resale obligations under the 1996 Act by placing retail services into its access tariff. Yet, throughout this proceeding, WorldCom has been unable to offer any evidence that BellSouth has engaged or even intends to engage in such conduct. Although WorldCom pointed to two services that use the SMARTRing® service mark, one in BellSouth's Access Services tariff and one in the Private Line tariff, Mr. Price admitted on cross-examination that the services were not the same:

Q. Okay. So when you say on page 4 [of the pre-filed rebuttal testimony] that SmartRing is the same service regardless of the tariff in which it appears, there are differences actually between the services, correct?

A. I want to be real careful how I answer that. I am not disputing that there are differences. But by the same token, I don't want that to be interpreted as meaning that there are no similarities. And it is that extent that would be of concern to us.

Price, Tr. Vol. 3 at 548-49. In short, WorldCom has offered no evidence of the supposed problem its proposed language is intended to cure. On the other hand, the language proposed by WorldCom for this issue would purport to require BellSouth to resell at the wholesale discount all its access services in direct conflict with the FCC's ruling. In other words, WorldCom is asking this Commission to approve language that would permit WorldCom to order access services from BellSouth at a wholesale discount. Neither the 1996 Act nor any FCC order ever contemplated that interexchange carriers, such as WorldCom, would be permitted to obtain a discount on access services under the guise of a local interconnection agreement. In fact, the FCC specifically acknowledged that access services are wholesale services. Because there are no avoided retail costs, a resale discount on these services would be inappropriate. The Commission should reject WorldCom's language.

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

SUMMARY OF BELLSOUTH'S POSITION

*** BellSouth is not required to provide to provide operator services (OS) or directory assistance (DA) services because BellSouth provides customized routing in accordance with applicable FCC rules. ***

DISCUSSION

This issue concerns BellSouth's obligation to unbundle operator services ("OS") and directory assistance ("DA"). This issue is related to Issues 15, 19, and 101, following. The FCC's Rule 319(f) makes clear that BellSouth is not required to unbundle OS/DA where it provides ALECs "with customized routing or a compatible signaling protocol." 47 CFR § 319(f). BellSouth provides various methods of customized routing consistent with the requirements of the FCC and this Commission. These methods include a Line Class Code ("LCC") and Advanced Intelligent Network ("AIN") solution. Both the LCC and AIN methods of customized routing have been tested and are available for ALEC use in Florida and throughout the BellSouth region. Milner, Tr Vol. 8, at 1187-90. Therefore, BellSouth is not required to provide OS and DA on an unbundled basis.

At the hearing, WorldCom witness Messina, agreed that BellSouth provides ALECs with customized routing. Messina, Tr. Vol. 2, at 184-85. Thus, there appears to be no dispute between the parties that BellSouth is providing customized routing for WorldCom with a compatible signaling protocol. At the hearing, Mr. Messina expressed concern that WorldCom would have to establish dedicated transport from each end office that it wanted to serve to the BellSouth tandem in order to avail itself of customized routing from BellSouth. Messina, Tr. Vol. 2, at 184. On this point, WorldCom is attempting to elevate its preferred trunking

arrangement to an FCC requirement. However, nowhere in Rule 319(f) does the FCC dictate any particular trunking arrangement, much less the one advocated by WorldCom. In any event, what WorldCom appears to be seeking is shared or common transport from its end office. As Mr. Milner explained, BellSouth's AIN hub method of customized routing permits customized routing traffic to be carried over common trunk groups between the end office and the AIN hub. Milner, Tr. Vol. 8, at 1282-83. Such an arrangement should meet WorldCom's needs, since, as Mr. Price admitted, WorldCom does not require shared or common transport from the AIN hub to the WorldCom OS or DA platform. Price Dep. (Vol. 1), at 109-110.

In sum, BellSouth is not clear where the parties' dispute lies with respect to this issue. Although WorldCom has not demonstrated that BellSouth has failed to offer customized routing, WorldCom is apparently asking this Commission to order BellSouth to unbundle OS and DA in circumstances where the FCC has already determined that no such unbundling is required. Because the evidence in the record shows conclusively that BellSouth offers customized routing consistent with the FCC's rules, BellSouth is not obligated and cannot be required to offer OS and DA on an unbundled basis. The Commission should adopt BellSouth's position on this issue.

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?

SUMMARY OF BELLSOUTH'S POSITION

*** Neither the 1996 Act nor applicable FCC regulations require BellSouth to offer WorldCom combinations of network elements that are not currently combined in BellSouth's network. BellSouth is willing to negotiate a voluntary commercial agreement with WorldCom to perform certain services that are not subject to the requirements of the 1996 Act. ***

DISCUSSION

BellSouth will provide combinations to WorldCom at cost-based prices if the elements are already combined and providing service to a particular customer at a particular location. WorldCom, however, seeks to expand upon BellSouth's offer. Indeed, WorldCom contends that "currently combined" and "currently combines" refers to any service that BellSouth offers in its tariffs, whether or not the elements are physically combined and providing service to the customer in question. In short, WorldCom contends that BellSouth is obligated to combine UNEs for WorldCom. WorldCom's position is overreaching, and goes beyond what the FCC requires.

The FCC, in its *UNE Remand Order*, confirmed that BellSouth presently has no obligation to combine network elements for ALECs, when those elements are not currently combined in BellSouth's network. The FCC also confirmed that "except upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines." 47 C.F.R. § 51.315(b).

The FCC also made clear in its UNE Remand Order that Rule 315(b) applies to elements that are "in fact" combined. In that Order, the FCC found that "to the extent an unbundled loop is in fact connected to unbundled dedicated transport, the statute and our rule 315(b) require the incumbent to provide such elements to requesting carriers in combined form." (§ 480, emphasis added). Indeed, the FCC specifically declined to adopt a definition of "currently combined" that would include all elements "ordinarily combined" in the incumbent's network, which is apparently the definition advocated by WorldCom. *Id.*

Further, In the Eighth Circuit Court of Appeal's July 18, 2000 ruling, the Eighth Circuit stated that an ILEC is not obligated to combine UNEs, and it reaffirmed that the FCC's Rules

51.315(c)-(f) remain vacated. Specifically, referring to Section 251(c)(3) of the Act that requires ILECs to provide UNEs in a manner that allows requesting carriers to combine such telecommunications services, the Eighth Circuit stated: “[h]ere Congress has directly spoken on the issue of who shall combine previously uncombined network elements. It is the requesting carriers who shall ‘combine such elements.’ It is not the duty of the ILECs to ‘perform the functions necessary to combine unbundled network elements in any manner’ as required by the FCC’s rule.” Iowa Utilities Board v. FCC, __ F. 3d __, 2000 WL 979117, at *13 (8th Cir. July 18, 2000).

BellSouth urges the Commission to find that BellSouth is obligated to provide UNE combinations at TELRIC-based rates only where such combinations are in fact combined in BellSouth’s network and providing service to a particular customer at a particular location.

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

SUMMARY OF BELLSOUTH’S POSITION

*** Although industry standards provide useful guidance for the provision and maintenance of UNEs, there are no industry standards at present for every UNE. BellSouth has developed standards in cases where no industry standard exists which should be incorporated into the parties’ interconnection agreement. ***

DISCUSSION

Although industry standards provide useful guidance for the provision and maintenance of unbundled network elements, industry standards do not presently exist for each and every unbundled network elements, including unbundled loops. Milner, Tr. Vol. 8, at 1190-91. In the absence of industry standards, BellSouth has developed technical requirements describing the

unbundled loops offered by BellSouth and how these elements relate to any existing industry standards. Specifically, BellSouth has developed Technical Requirement 73600 (TR 73600) which provides details as to what BellSouth offers and how BellSouth's unbundled loops are related to any existing industry standards where industry standards exist. Milner, Tr. Vol. 8 at 1191. Inclusion of TR 73600 into the parties' interconnection agreement would help avoid disputes concerning the capabilities of any unbundled loops purchased from BellSouth. BellSouth's proposed technical requirements should be incorporated in the parties' interconnection agreement. Omitting these technical requirements would simply invite later disputes between the parties concerning the capabilities of the unbundled loops WorldCom purchases from BellSouth.

ISSUE 15: For purposes of the interconnection agreement between WorldCom and BellSouth, when an 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?

SUMMARY OF BELLSOUTH'S POSITION

*** BellSouth will provide Feature Group D signaling with customized routing to WorldCom when WorldCom acquires the so-called "UNE-platform" (UNE-P). ***

DISCUSSION

This issue is related to Issue 5, discussed above. BellSouth has agreed to provide Feature Group D signaling with customized routing to WorldCom. Milner, Tr. Vol. 8, at 1198. In fact, BellSouth has offered several alternatives to WorldCom to obtain the signaling it desires. *Id.* at 1198-99. As with Issue 5, the only dispute arises out of WorldCom's desire to avoid direct trunking arrangements from an end office to WorldCom's OS/DA platform. Deposition of Keith Milner at 141. As noted, the FCC does not require any particular trunking arrangement. In any event, BellSouth has offered shared transport arrangements to WorldCom in all technically

feasible circumstances. The only exception is where WorldCom has elected the AIN solution and the end office is served by a Lucent 5-ESS switch. *Id.* at 1199-1200. In this case, the direct trunking is necessary because of a technical limitation inherent in the Lucent switch. Thus, for the same reasons set forth in Issue 5, the Commission should adopt BellSouth's position on this issue.

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?

SUMMARY OF BELLSOUTH'S POSITION

*** The FCC's rules only require BellSouth to unbundle dedicated transport in BellSouth's network and specifically exclude transport between other carriers' locations. BellSouth is not required to offer or build dedicated transport facilities between WorldCom's network locations or between WorldCom's network and another carrier's network. ***

DISCUSSION

BellSouth is not required to build dedicated transport facilities between WorldCom's network locations, whether they be "nodes" or network switches or between WorldCom's network and another carrier's network. BellSouth is only required to provide transport between its central offices or between its central offices and those of competing carriers. *First Report and Order*, ¶ 440. This is consistent with the FCC's definition of "dedicated transport," which refers to the "incumbent LEC transmission facilities 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). Thus, WorldCom's attempt to

require BellSouth to provide interconnection facilities between WorldCom and another carrier's network under the guise of "dedicated transport" should be summarily rejected.

The FCC also has specifically addressed the issue of whether an incumbent's obligations include constructing facilities between locations where the incumbent has not deployed facilities for its own use. According to the FCC:

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. [Footnotes deleted] (emphasis added)

Third Report and Order, ¶ 324. The FCC's unbundling requirements refer to the existing dedicated transport facilities in BellSouth's network and cannot reasonably be read to require BellSouth to construct transport facilities between other carriers' locations.

At the hearing, WorldCom insisted that it was not seeking to require BellSouth to construct new fiber transport facilities where none presently exist. Price, Tr. Vol. 4 at 567. And, WorldCom apparently agrees that it cannot compel BellSouth to provide electronics for a fiber facility to make it SONET-capable. Price, Tr. Vol. 4 at 570. Nevertheless, the contract language proposed by WorldCom purports to require BellSouth to do precisely that. Requiring BellSouth to construct transport facilities – whether those facilities consist of fiber or electronics – would be inconsistent with the FCC's order.

WorldCom's proposed language on this issue also is inconsistent with the recent ruling of the United States Court of Appeals for the Eighth Circuit. If WorldCom's language were

adopted, it would require BellSouth to combine local channels and interoffice transport on WorldCom's behalf. However, in *Iowa Utils. Bd. v. FCC*, 219 F.3d 744, 750 (8th Cir. 2000), the Eighth Circuit vacated the FCC's rules that purported to obligate incumbents to combine previously uncombined network elements on behalf of a requesting carrier. In so doing, the Eighth Circuit noted that "Congress has directly spoken on the issue of who shall combine previously uncombined network elements. It is the requesting carriers who shall 'combine such elements.' It is not the duty of the ILECs to 'perform the functions necessary to combine unbundled network elements in any manner' as required by the FCC's rule." The Eighth Circuit reiterated its earlier decision to vacate the FCC rules. *See Id.*¹⁰

It appears that WorldCom has distanced itself from its proposed contract language on this issue. Nevertheless, the Commission should reject WorldCom's language and adopt BellSouth's position on this issue.

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

SUMMARY OF BELL SOUTH'S POSITION

*** BellSouth will route WorldCom's operator services and directory assistance traffic (when WorldCom acquires unbundled switching or the UNE platform (UNE-P)) in the same manner as BellSouth routes operator services and directory assistance traffic for its own end user customers. ***

¹⁰ On September 22, 2000, the Eighth Circuit stayed its mandate at it relates to the court's decision to vacate the FCC's pricing rules pending the disposition of any petitions for certiorari. *See Iowa Utils. Bd. v. FCC*, Docket No. 96-3321 (8th Cir. Sept. 22, 2000). However, no such stay was entered with respect to the Eighth Circuit's decision reaffirming its earlier ruling vacating the FCC's rules that purported to obligate incumbents to combine network elements on behalf of requesting carriers.

DISCUSSION

This issue is related to Issues 5 and 15, discussed above. The operator services and directory assistance end office functions require dedicated trunk groups from BellSouth end offices to the TOPS platform. Milner, Tr. Vol. 8, at 1201-02. As noted in the earlier discussions of Issues 5 and 15, BellSouth provides customized routing as required by and consistent with FCC rules and orders of the Commission. Moreover, BellSouth will route WorldCom's operator services and directory assistance traffic in the same manner as BellSouth routes operator services and directory assistance traffic for its own end user customers. *Id.* If WorldCom elects to use customized routing, calls from WorldCom's customers will be handled according to WorldCom's preferences. Accordingly, for the reasons set forth in Issue 5, the Commission should adopt BellSouth's proposed language on this issue as well.

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?

SUMMARY OF BELLSOUTH'S POSITION

*** BellSouth's proposed line sharing language should be included in the parties' interconnection agreement in favor of WorldCom's. Unlike WorldCom's proposal, BellSouth's proposed terms are consistent with the FCC's rules and are the product of numerous meetings among BellSouth and various ALECs. ***

DISCUSSION

In compliance with the FCC's Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98, (Dec. 9, 1999) (hereinafter referred to as "*Line Sharing Order*"), BellSouth offers line sharing to ALECs in Florida and throughout its

nine-state region. Cox, Tr. Vol. 5, at 715. BellSouth is willing to incorporate terms and conditions for line sharing in its interconnection agreements, including the agreement with WorldCom. *Id.* The dispute on this issue concerns whether BellSouth must provide line sharing when it is no longer providing voice (as distinct from data) services to the end user. Under WorldCom's proposed language, BellSouth would have to provide line sharing under such circumstances, even though the FCC has made abundantly clear that BellSouth has no obligation to do so.

The applicable FCC orders limit an incumbent's line sharing obligation only when the incumbent is providing voice services to the end user. *Line Sharing Order*, ¶ 4 (“[t]he provision of xDSL-based service by a competitive LEC and voiceband service by an incumbent LEC on the same loop is frequently called ‘line sharing.’”). In the *Line Sharing Order*, the FCC also stated “that incumbent LECs must make available to competitive carriers only the high frequency portion of the loop network element on loops *on which the incumbent LEC is also providing analog voice service.*” *Id.* ¶ 72 (emphasis added). The FCC reiterated its position in its Order dated June 30, 2000 in CC Docket No. 00-65 (SBC – Texas Section 271 Application). In that Order, the FCC explained that “the obligation of an incumbent LEC to make the high frequency portion of the loop separately available is limited to those instances in which the incumbent LEC is providing, and continues to provide, voice service on the particular loop to which the requesting carrier seeks access.” *Id.* ¶ 324.

The FCC's position makes sense because, as the name implies, “line sharing” concerns the sharing by the voice provider of the line with the data provider. Once BellSouth ceases to be the voice provider, it has nothing to share with an ALEC offering data services. If WorldCom seeks to offer data services to a customer who is served by another ALEC, then WorldCom

should make arrangements with the other ALEC to provide the data services. The Commission should adopt BellSouth's position on this issue.

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?

SUMMARY OF BELLSOUTH'S POSITION

*** If a SONET ring currently exists, BellSouth will provide WorldCom with dedicated transport over that ring. However, if a SONET ring does not currently exist, BellSouth is not obligated to construct one in order to provide WorldCom unbundled dedicated transport. ***

DISCUSSION

This issue is related to Issue 18, discussed above. There is no dispute that, if a SONET ring currently exists, BellSouth will provide WorldCom with dedicated transport over that ring. Price, Tr. Vol. 4, at 570. However, WorldCom wants more and has proposed language that would purport to extend BellSouth's obligation to provide unbundled dedicated transport via a SONET architecture beyond those SONET rings that presently exist in BellSouth's network.

Although Mr. Price testified that WorldCom did not expect BellSouth to construct new fiber facilities, he stated that BellSouth should be required to upgrade existing fiber transport facilities with electronics to make them SONET-capable, at WorldCom's request through the special construction process. Price, Tr. Vol. 4, at 570-71. However, Mr. Price could not confirm that WorldCom's proposed contract language makes any mention of the special construction process. *Id.*

Even though WorldCom's position cannot be reconciled with the testimony of its own witnesses, the resolution of this issue is relatively straightforward. Consistent with applicable FCC rulings, BellSouth should be required to provide WorldCom with unbundled dedicated

transport using BellSouth's transport facilities to the extent they exist. Nothing more, nothing less.

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?

SUMMARY OF BELLSOUTH'S POSITION

*** BellSouth is not required by the FCC's rules to provide a download, electronically or by any other media, of BellSouth's calling name ("CNAM") database, as WorldCom is requesting. BellSouth is only required to provide access to the data contained in the database, which BellSouth does. ***

DISCUSSION

This issue concerns WorldCom's request for a download of the CNAM or calling name database. CNAM is the database that allows carriers providing the Caller ID service to match the incoming caller's name with the telephone number. Cox, Tr. Vol. 5, at 719. This database contains calling name information for all BellSouth end users and the end users of any carrier that stores their customers' names in BellSouth's calling name database. *Id.*

The FCC only requires that BellSouth provide ALECs with *access* to its calling name database, which BellSouth does. In paragraph 402 of its *Third Report and Order*, the FCC states "we require incumbent LECs, upon request, to provide nondiscriminatory access to their call-related databases on an unbundled basis, for the purpose of switch query and database response through the SS7 network."

BellSouth provides ALECs with nondiscriminatory access to BellSouth's calling name database, regardless of whether the ALEC has its end user names stored in BellSouth's calling name database or whether the ALEC elects to maintain its own database for its end users' names.

In either situation, the ALEC would provision its switch to appropriately route calling name queries to BellSouth's calling name database in order to obtain access to the name of an originating caller whose name is stored in BellSouth's calling name database. Cox, Tr. Vol. 5, at 720.

For reasons that it has never adequately explained, WorldCom does not want the method of access to CNAM required by the FCC, but rather wants this Commission to require BellSouth to provide WorldCom with a download of the entire CNAM database. Nothing in the 1996 Act nor any FCC order can reasonably be read to obligate BellSouth to provide an electronic download of any call-related database, including CNAM. In fact, although the FCC has not addressed CNAM specifically, in its Second Louisiana Order, the FCC discussed access to BellSouth's directory assistance databases. According to the FCC, BellSouth must provide access to such databases either on a "read only" or "per dip" basis, or provide the entire database of subscriber listings." *In re: Application of BellSouth Corporation, et al., For Provision of In-Region, InterLATA Services In Louisiana*, CC Docket No. 98-121, ¶ 248 (Oct. 17, 1998). Thus, consistent with the FCC's analysis, when BellSouth provides access on a per query basis, as is the case with CNAM, no other form of access is required.¹¹

To fulfill WorldCom's demand for an electronic download of the CNAM database, BellSouth would have to develop new computer programs, address the issue of how to update the download, and perform whatever other work is necessary to make the data available to WorldCom. Even assuming that WorldCom was willing to compensate BellSouth for such work

¹¹ Mr. Price claimed that without a download of the entire CNAM database that accessing calling party number information from BellSouth would be delayed. Price, Tr. Vol. 4, at 579-80. However, WorldCom has presented no study or analysis that would quantify such alleged "delay," nor is there any verifiable evidence in this record to suggest that any such delay associated with per query dips into BellSouth's CNAM database are discernable to customers. WorldCom should not be permitted to impose upon BellSouth additional unbundling obligations based upon such speculative and unsupported theories.

(an issue that is not addressed in either WorldCom's proposed language or its testimony), there is no reason why BellSouth should be compelled to devote otherwise limited resources to provide WorldCom with something that is neither required nor necessary and doesn't currently exist.

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?

SUMMARY OF BELLSOUTH'S POSITION

*** BellSouth is only obligated to provide and use two-way local interconnection trunks where traffic volumes are too low to justify one-way trunks. In all other instances, BellSouth is able to use one-way trunks for its traffic if it so chooses. BellSouth supports the use of two-way trunks where it makes sense and the provisioning arrangements can be mutually agreed upon.

DISCUSSION

BellSouth's position is that the use of one-way trunking or two-way trunking is best determined by the parties on a case-by-case basis. Solely from an engineering perspective, two-way trunks should be used when the traffic patterns in both directions will result in a significant reduction of switch trunk ports over separate one-way trunks. Cox, Tr. Vol. 5, at 727. BellSouth is obligated to provide and use two-way local interconnection trunks where traffic volumes are too low to justify one-way trunks. *First Report and Order*, ¶ 219. In all other instances, BellSouth should be able to use one-way trunks for its own traffic if it so chooses.

However, WorldCom's position is that BellSouth should be required to interconnect via two-way trunks whenever WorldCom so requests. The net effect is that WorldCom would be in sole control of when and if BellSouth is able to use one-way trunking or two-way trunking to interconnect with WorldCom's network. WorldCom witness Olson admitted as much. Mr.

Olson also readily acknowledged that WorldCom can have one-way trunks if it wants, or it can have two-way trunks if it wants; however, under WorldCom's proposal, BellSouth would have no such flexibility in establishing such interconnection trunking arrangements. Olson, Tr. Vol. 2, at 289-90.

Two-way trunks may be more efficient than one-way trunks under certain circumstances. Accordingly, BellSouth offers two-way trunk interconnection in a variety of configurations to accommodate ALEC interconnection requests. However, WorldCom's claim that two-way trunks are always more efficient and always require fewer trunk terminations than one-way trunks is inaccurate. For example, if the busy hour traffic patterns in both directions are relatively similar, then there will be few, if any, trunk termination savings obtained by using two-way trunks in lieu of one-way trunks. Similarly, if the traffic is predominately in one direction, there are little to no savings in two-way trunk terminations over one-way trunk terminations. Cox, Tr. Vol. 5, at 727.

BellSouth will provide two-way trunks for WorldCom's use. Further, BellSouth has repeatedly informed WorldCom that BellSouth is willing to use two-way trunks for BellSouth traffic when it makes economic sense to do so. However, when there are no real efficiencies to be gained in using two-way trunks, BellSouth is entitled to use one-way trunking for its own traffic just as WorldCom is entitled to use one-way trunking for its own traffic and should not be required to provide inefficient trunk arrangements simply because WorldCom demands it. Accordingly, WorldCom's language should be rejected.¹²

¹² WorldCom has acknowledged elsewhere the need for mutual agreement on the types of trunks interconnecting WorldCom's and BellSouth's network. In particular, in language proposed by WorldCom on Issue 37, WorldCom's language refers to two-way trunking "where mutually agreed to." Olson, Tr. Vol. 2, at 300-01. It is not clear why, under Issue 34, WorldCom now seeks the right to dictate unilaterally the circumstances when two-way trunks will be used to interconnect BellSouth's and WorldCom's networks.

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?

SUMMARY OF BELLSOUTH'S POSITION

*** WorldCom has the right to designate the point of interconnection at any technically feasible point for its originating traffic. However, WorldCom should bear the cost of any facilities that BellSouth must provide on WorldCom's behalf in order to extend BellSouth's local network to the point of interconnection that WorldCom designates. ***

DISCUSSION

This issue requires a determination of whether WorldCom or BellSouth is going to be financially responsible for certain facilities needed to carry local traffic from a BellSouth local calling area to a distant single Point of Interconnection established by WorldCom in each LATA. The calls that utilize the facilities in question are calls that originate in one BellSouth local calling area and are intended to be completed in that same local calling area, but that have to be routed out of that local calling area because of WorldCom's network design.

This issue exists because WorldCom and BellSouth have each built and intend to utilize totally separate and different networks for the provision of local service in Florida. Each carrier's local network was designed to be the most efficient and cost-effective for that carrier. BellSouth's system consists of a number of local networks that have developed over time and each local network is generally characterized by the use of multiple local switches. Cox, Tr. Vol. 5, at 732-33. WorldCom, on the other hand, has a eight operating switches in Florida. Olson, Tr. Vol. 2, at 278.

To put this issue in perspective, Hearing Exhibit 15 is helpful. This exhibit is a representative drawing of BellSouth's and WorldCom's local networks. The exhibit shows two

BellSouth local networks located in the Jacksonville LATA. The exhibit also shows that WorldCom has a switch in Orlando that serves its customers in the Jacksonville LATA via long loops. That is, the exhibit shows that a WorldCom customer in the Jacksonville local calling area would draw dial tone from an Orlando switch as would a WorldCom customer in the Lake City local calling area. This arrangement is evidently economical for WorldCom because the cost of facilities, given the number of WorldCom customers, is cheaper than the cost of investing in a switch or multiple switches in the Jacksonville LATA.

On the other hand, the exhibit illustrates that BellSouth's customers located in the Jacksonville local calling area would draw dial tone from a switch located in Jacksonville, while BellSouth customers in Lake City would draw dial tone from a switch located in Lake City. Local calls from one BellSouth customer to another BellSouth customer in each local calling area are essentially contained within the involved local calling area.

Turning to the specifics of the dispute between WorldCom and BellSouth, and using the exhibit for illustrative purposes, WorldCom and BellSouth cannot agree on who should pay for the facilities necessary to get to or from BellSouth's customers in Lake City and the WorldCom Point of Interconnection in Jacksonville. That is, when WorldCom deliberately, and for its own purposes, chooses to have a single Point of Interconnection in a LATA as illustrated in Hearing Exhibit 3, the question is who should pay for the consequences of that decision. In the exhibit, these facilities are represented by the solid line running from the BellSouth Lake City local calling area to the WorldCom Point of Interconnection in Jacksonville. BellSouth asserts that these facilities are the responsibility of WorldCom. Cox, Tr. Vol. 5, at 739. Conversely, WorldCom maintains that BellSouth is responsible for collecting all of the originating BellSouth

local traffic, wherever that may be, and transporting such traffic at no cost to WorldCom to WorldCom's single Point of Interconnection. Olson, Tr. Vol. 2, at 312-13.

There are several matters related to this issue that are undisputed that should be noted at this point. First, it is undisputed that in order for a customer of one of the parties here, either BellSouth or WorldCom, to call a customer of the other, the two networks have to be interconnected. Moreover, it is also undisputed that the ALEC, here WorldCom, can choose to interconnect with BellSouth's network at any technically feasible point. It is also undisputed that WorldCom, even though its switch serving the Jacksonville LATA is in Orlando, must build its facilities to a point inside the Jacksonville LATA for the purpose of interconnecting with BellSouth in that LATA. This is the case because BellSouth remains barred at present from carrying calls on an interLATA basis.

The fact that WorldCom can determine its own local calling area for its subscribers is not at issue. This issue only involves facilities that are used to carry traffic between BellSouth's subscribers in a BellSouth local calling area and WorldCom's Point of Interconnection that is located in a different BellSouth local calling area in the LATA. WorldCom is free to designate its own local calling area for calls originated by its subscribers. That is, if WorldCom wishes to designate the entire Jacksonville LATA as the local calling area for its customers located in Lake City, that is WorldCom's prerogative. It can collect calls from its customers in Lake City, switch them in Orlando and then hand them off to BellSouth at the BellSouth Jacksonville tandem for completion anywhere in the LATA.

It would be convenient to point to a statute or to an FCC order or rule that resolves this issue, but the matter is not that clear. Both parties agree that, as a matter of law, WorldCom is entitled to interconnect where it wants and to deliver its originated traffic to BellSouth at that

point. WorldCom, in a proceeding at the FCC, however, attempted to get the FCC to declare that both the incumbent local exchange company and the competitive local exchange company had to declare a single point of interconnection on each other's network where its originating traffic would be delivered. *See First Report and Order*, ¶ 214. The FCC refused, leaving it to negotiation and arbitration to resolve the issue. Therefore, this Commission is essentially left to resolve this matter based on the evidence presented and the Commission's own sense of equity and fair play.

WorldCom suggests that the Commission resolve this issue by requiring BellSouth to bear the cost of any facilities used to haul BellSouth's traffic to one local calling area to another – facilities that are only necessary as a result of WorldCom's network design. Adopting WorldCom's position certainly would not make economic sense for Florida consumers served by BellSouth. WorldCom has chosen the most economical way for it to provide local service in Florida. WorldCom, understandably, has attempted to minimize its investment to provide local service in Florida, including attempting to shift costs WorldCom has caused onto BellSouth. BellSouth agrees that WorldCom's network design is a matter best left to WorldCom. Allowing it to shift costs to BellSouth as a result of that design, however, is neither equitable nor fair.

The central theme, embedded in WorldCom's proposed language, is that the carrier terminating the traffic gets to determine where the originating carrier will deliver the traffic. That is the practical impact of allowing WorldCom to designate the number of points of interconnection and requiring BellSouth to be financially responsible for delivering calls to those points of interconnection.

Part of WorldCom's argument is that adopting BellSouth's proposal would force WorldCom to build facilities to every BellSouth local calling area. Olson, Tr. Vol. 2, at 263.

That is absolutely inaccurate. As noted earlier, BellSouth acknowledges that WorldCom can establish a physical point of interconnection with BellSouth at any technically feasible point and if it chooses to have only a single such point in a LATA, that is WorldCom's choice. WorldCom can, however, purchase facilities from BellSouth or any other entity to collect traffic from local calling areas outside of the local calling area in which its Point of Interconnection is found. Cox, Tr. Vol. 5 at 744. Nothing in BellSouth's proposed solution to this issue would require WorldCom to build another foot of cable devoted to local service in Florida beyond that required to establish a single point of interconnection in the LATAs WorldCom chooses to serve.

Indeed, when viewing the equities of the situation, it is clear that BellSouth's position that WorldCom should be financially responsible for these facilities is the most equitable. WorldCom's long distance operation presently interconnects with almost every end office and certainly every access tandem in BellSouth's territory. Nevertheless, WorldCom's local operation has elected to build only a single point of interconnection in each LATA. The result, if WorldCom prevails on this issue, is that WorldCom will have succeeded in requiring BellSouth to subsidize WorldCom's entry into the local exchange market in Florida. WorldCom has created the need for these facilities and for this cost to be incurred. Therefore, it should pay for these facilities.

WorldCom's position presents another interesting dilemma that bears some consideration. BellSouth's position, obviously, is that its network is made up of a number of local networks. WorldCom's position now is that once it interconnects with BellSouth at any point, that's all it needs to do to be able to exchange local traffic anywhere in the LATA. Of course, as WorldCom witness Olson acknowledged, WorldCom's position has changed, since

WorldCom previously urged the FCC four years ago to require ALECs to establish a single point of interconnection in each local calling area. Olson, Tr. Vol. 2, at 319; Hearing Exhibit 26.

In evaluating WorldCom's current position, the Commission also should consider what happens absent LATA boundaries. Applying WorldCom's proposed principles, WorldCom could then assert, since the barrier posed by the LATA boundaries no longer exists, that BellSouth should deliver all of its traffic originating in Florida directly to WorldCom's switch in Orlando. This is nothing more than a logical extension of the argument WorldCom makes here. WorldCom could designate a point near its Orlando switch as the interconnection point for Lake City traffic. If WorldCom's position were accepted, BellSouth could be required to haul a call from one of its subscribers in Lake City that is destined to the WorldCom subscriber next door in Lake City all the way to Orlando. Where is the equity in such a position?

The Commission, in resolving this issue, should conclude that while WorldCom can have a single Point of Interconnection in a LATA if it chooses, it remains responsible to pay for the facilities necessary to carry calls from distant local calling areas to that single Point of Interconnection. That is the fair and equitable result.

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

SUMMARY OF BELLSOUTH'S POSITION

*** The parties generally agree on the different trunk groups that such should be used to interconnect their respective networks. This dispute concerns transit traffic, which BellSouth believes should be carried on separate trunk groups in order to ensure the correct billing of such traffic. ***

DISCUSSION

WorldCom has proposed language that purports to prohibit BellSouth from fragmenting trunk groups by traffic type. WorldCom's Attachment 4, Section 2.2.7. In other words, under WorldCom's proposal, BellSouth would be prohibited from having separate trunks that carry local and toll traffic, even though BellSouth maintains such separate trunk groups for itself. Milner, Tr. Vol. 8, at 1250. BellSouth should be allowed to provision its trunks in any technically feasible and nondiscriminatory manner without regard to the arbitrary conditions that WorldCom seeks to impose.

In particular, WorldCom's proposed language would prohibit BellSouth from maintaining a separate trunk group for transit traffic. Transit traffic is traffic that originates on one carrier's network, is switched and transported by BellSouth, and then is sent to another carrier's network. With respect to transit traffic, separate trunk groups are essential in order to ensure proper billing (absent use of the so-called super group trunking arrangement). With respect to transit traffic, BellSouth is neither the originating nor terminating carrier and thus must be able to segregate such traffic in order to ensure that it only bills the originating carrier for the transiting function performed by BellSouth. Of course, the proper billing of transit traffic is not a concern to WorldCom, because WorldCom has proposed that BellSouth serve as the "reciprocal compensation banker" for transit traffic (Issue 45).

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?

SUMMARY OF BELLSOUTH'S POSITION

*** For Wireless Type 1 traffic, BellSouth is unable to determine whether the transiting function is being performed. BellSouth proposes that traffic involving wireless carriers be

treated as land-line traffic originated by or terminated to BellSouth. For Type 2A traffic, this arrangement will continue until the involved parties have the necessary Meet Point Billing system capabilities. ***

DISCUSSION

This issue concerns the treatment of wireless traffic. Wireless traffic is “transit traffic” in that it originates on one party’s network, is switched and transported by a second party and then is sent to a third party’s network. Cox, Tr. Vol. 5 at 749. The party that switches the call from the first party to the third party is due payment for that function. However, wireless traffic is unlike other transit traffic in that, in many cases, when a wireless company is one of the three parties, neither BellSouth, the wireless company nor the ALEC has the necessary system capabilities required to bill each other using the normal Meet Point Billing process. *Id.* at 750. In addition, for Wireless Type 1 traffic, BellSouth is unable to determine whether or not the transiting function is being performed. As a result, BellSouth simply proposes that traffic involving wireless carriers be treated as if it were land-line traffic originated by or terminated to BellSouth. For Type 2A traffic, this arrangement will continue until the involved parties have the necessary Meet Point Billing system capabilities. *Id.*

Wireless Type 1 traffic is wireless traffic that uses a BellSouth NXX. Cox, Tr. Vol. 5, at 750. In other words, the wireless carrier does not have its own NXX, but uses numbers in an NXX assigned to BellSouth’s land-line service. In this case, the Wireless Type 1 Traffic is indistinguishable from BellSouth-originated or BellSouth-terminated traffic from a Meet Point Billing perspective. *Id.* Therefore, for routing and billing purposes, BellSouth proposes to treat this transit traffic as BellSouth-originated or terminated traffic.

Wireless Type 2A traffic is wireless traffic that is distinguishable from BellSouth-originated or terminated traffic because the wireless carrier has distinct NXXs assigned for its use. Cox, Tr. Vol. 5, at 751. However, as discussed above, the necessary system capabilities required to bill through the Meet Point billing process are not available. *Id.* Such arrangements are necessary in order for BellSouth to send the appropriate billing records to the wireless carrier and to the ALEC. Therefore, until such arrangements are available, BellSouth must continue to treat Wireless Type 2A transit traffic as BellSouth originated or terminated traffic.

It is not clear what the dispute really is between the parties with respect to this issue. WorldCom acknowledges that BellSouth does not have the capability today to distinguish Wireless Type 1 traffic from its own traffic and that the Meet Point billing capability for Wireless Type 2A traffic does not presently exist. Price, Tr. Vol. 4, at 594-95. BellSouth's proposal for the treatment of wireless traffic under these circumstances is reasonable, and WorldCom never articulates a satisfactory reason why that proposal should not be adopted.

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?

SUMMARY OF BELLSOUTH'S POSITION

*** IP Telephony is telecommunications service that is provided using Internet Protocol (IP) for one or more segments of the call. Reciprocal compensation should apply to local telecommunications provided via IP Telephony. However, long distance calls, irrespective of the technology used to transport them, constitute switched access traffic (not local traffic) for which access charges should apply. ***

DISCUSSION

This issue concerns the appropriate treatment of phone-to-phone Internet Protocol (“IP”) Telephony. IP Telephony is, in very simple and basic terms, a mode or method of completing a telephone call. The word “Internet” in Internet Protocol telephony refers to the name of the protocol; it does not mean that the service necessarily uses the World Wide Web. Internet protocol, or any other protocol, is an agreed upon set of technical operating specifications for managing and interconnecting networks. The Internet protocol is the language that gateways use to talk to each other. It has nothing to do with the transmission medium (wire, fiber, microwave, etc.) that carries the data packets between gateways, but rather concerns gateways, or switches, that are found on either end of that medium. Cox, Tr. Vol. 5, at 751-52.

BellSouth simply wants the Commission to determine that reciprocal compensation is not due for what is undeniably a long distance call. The type of network that is used to transport the call between the calling party and the called party is irrelevant. WorldCom agrees that switched access charges, and not reciprocal compensation, should apply to a phone-to-phone long distance call, regardless of whether the interexchange carrier is using IP Telephony to carry the long distance portion of the call. As Mr. Price explained:

Q. I want you to assume that you have a phone-to-phone call that originates somewhere in Florida and terminates somewhere in New York. Would you agree with me that that is a long distance telephone call?

A. Yes.

Q. And switched access charges would apply to that call?

A. Yes.

Q. And reciprocal compensation would not apply to that call?

A. Agreed.

Q. And does it make any difference whether the carrier or the Inter[exchange] carrier is using an Internet protocol for carrying that long distance portion of the call?

A. No. . . .

Price, Tr. Vol. 4 at 597-98. Thus, it is not clear what is in dispute, and the Commission should adopt BellSouth's language on this issue.

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?

SUMMARY OF BELL SOUTH'S POSITION

*** WorldCom should not be permitted to disguise switched access traffic as local traffic by routing such switched access traffic over local interconnection trunks. The handling of switched access traffic should be governed pursuant to switched access tariffs. ***

DISCUSSION

BellSouth has proposed language making clear that WorldCom will not "deliver switched access to BellSouth for termination except over WorldCom ordered switched access trunks and facilities." In other words, WorldCom should not be permitted to send access traffic under the guise of local traffic. WorldCom has objected to this language for reasons that are not readily apparent, except perhaps to the extent WorldCom wants to avoid paying access charges.

Notwithstanding WorldCom's claims to the contrary, this issue has only to do with ensuring the payment of switched access charges. BellSouth developed its existing switched access network configuration which is comprised of (1) access tandem switches and subtending end office switches (as reflected in the national Local Exchange Routing Guide (LERG),) (2) switched access interconnection facilities resulting from the FCC's Local Transport Restructure (LTR) and Access Reform orders, and (3) switch recordings and Carrier Access Billing System

(CABS) to ensure parity treatment of IXCs in ordering, provisioning, maintenance, transmission levels, and billing. Cox, Tr. Vol. 5, at 757-58. BellSouth's ability to properly route and bill switched access traffic between BellSouth and IXCs is dependent upon established switched access processes and systems. *Id.* at 758. Further, BellSouth's ability to properly route and bill switched access traffic between IXCs and Independent Telephone Companies and other ALECs subtending BellSouth access tandems also depends on these switched access processes and systems. *Id.*

Allowing WorldCom to terminate switched access traffic into BellSouth's network via non-access trunks and processes would eliminate BellSouth's ability to properly bill for this traffic. For example, BellSouth would not be able to properly bill and recover switched access traffic terminated to BellSouth and other subtending companies, if such traffic were routed via WorldCom's transit trunk groups. Scollard, Tr. Vol. 6 at 1021. At the hearing, Mr. Scollard explained the problems with WorldCom's proposal:

Q. Now, if WorldCom were to provide the same type of records, including the CIC code of the IXC to BellSouth that BellSouth would provide to WorldCom when BellSouth routes access traffic to WorldCom's end offices, wouldn't that information be sufficient for BellSouth to accurately bill access traffic that is sent to BellSouth via WorldCom's local interconnection facilities?

A. No.

Q. Why not?

A. Let me explain. As I mentioned in my summary, if [WorldCom] were to start mixing traffic on the local trunk group, everything gets tainted; local calls, access calls, everything, because BellSouth, all we know is that [WorldCom] provided us a call. So, therefore, [WorldCom] would have to replace all of those records, not just the access.

Now, in the case of a local record, I don't think it is possible for [WorldCom to provide us the information. And the reason is that [World-Com] will record a retail record. There is a lot of interconnection billing

type data elements that are not present on a retail type record. For example, carrier connect time is not recorded. That is a different timing of the call than the conversation time in a retail call, so that would be missing. There are other indicators, I can't really describe them right now, but at least the carrier connect time would be missing and so they really could not replace those records for us.

Scollard, Tr. Vol 6 at 1036-37. Additionally, BellSouth could not ensure parity of access traffic quality terminated to BellSouth via WorldCom's non-access connections. Cox, Tr. Vol. 5, at 758.

WorldCom insists that requiring it to route access traffic on switched access trunks will impair WorldCom's ability to offer competitive tandem services, which is simply not the case. The fact that WorldCom may want to offer a competitive tandem service does not entitle WorldCom to build out its interexchange access network at TELRIC-based unbundled network element prices. As the FCC has made clear, ALECs are entitled to use shared or dedicated transport as an unbundled network element to provide interstate exchange access services only to those customers to whom the ALEC "provides local exchange service." *Third Order on Reconsideration and Further Notice of Proposed Rulemaking*, CC Docket No. 96-98 and CC Docket 95-185, ¶ 38 (Aug. 18, 1997). Moreover, despite its reference to competition for the provision of access services, WorldCom admitted at the hearing that it has no access tandems in Florida, or even in the United States. Price, Tr. Vol. 4 at 602. In any event, WorldCom's ability to offer an interexchange access service has nothing to do with competition for the provision of local telecommunications service.

If WorldCom were to perform the tandem and transport functions for a number of carriers and send that access traffic to BellSouth via WorldCom's local interconnection trunks, how would BellSouth know which carriers to bill the appropriate access charges? WorldCom has no answer to this fundamental question and gives absolutely no assurances that BellSouth would be

able to bill access charges accurately under WorldCom's proposal. This is reason enough for the Commission to reject WorldCom's position and adopt BellSouth's proposed language.

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?

SUMMARY OF BELLSOUTH'S POSITION

*** While BellSouth is willing to route local transit traffic, WorldCom wants BellSouth to pay reciprocal compensation for such traffic terminating to WorldCom, which BellSouth is not obligated to do. WorldCom should seek such compensation from the originating carrier, which in this instance is not BellSouth. ***

DISCUSSION

This issue concerns the routing and billing of third party local transit traffic by the parties. While BellSouth is willing to route local transit traffic, WorldCom wants BellSouth to pay reciprocal compensation for such traffic, which BellSouth is not obligated to do. For example, when an AT&T customer calls an WorldCom customer and that call transits BellSouth's network, WorldCom wants BellSouth to pay WorldCom reciprocal compensation for the call on AT&T's behalf and then collect the money from AT&T. Likewise, when an WorldCom customer calls an AT&T customer and that call transits BellSouth's network, WorldCom wants BellSouth to pay AT&T on WorldCom's behalf and then collect the money from WorldCom. Price, Tr. Vol. 4, at 583-84. In other words, WorldCom wants BellSouth to finance all reciprocal compensation payments that may be owed to or by WorldCom by other carriers for traffic that BellSouth is neither originating nor terminating.

WorldCom wants this type of arrangement so WorldCom does not have to consummate an interconnection agreement with the third party carrier (AT&T in the example above).

However, Section 251(b) of the 1996 Act requires all LECs to negotiate interconnection contracts to set the terms and conditions of traffic exchange. If an ALEC desires that BellSouth perform the transit function, the ALEC is responsible for ordering from and payment to BellSouth for the applicable transiting interconnection charges. Additionally, the ALEC is responsible for negotiating an interconnection agreement with other ALECs with which they intend to exchange traffic. BellSouth should not be asked to relieve WorldCom of its obligations under the 1996 Act.

An additional problem with WorldCom's proposal relates to billing. As Mr. Scollard explained, routing traffic in the manner proposed by WorldCom would require the use of facilities which would not produce any call records. Scollard, Tr. Vol. 6 at 1023. This lack of call records would prevent BellSouth from billing WorldCom for transit traffic and would prevent BellSouth from providing meet point billing records to the third party carrier as required by BellSouth's contracts with those carriers. *Id.*

As WorldCom witness Price admitted on cross-examination, nothing in the 1996 Act requires BellSouth to become WorldCom's private reciprocal compensation banker, as WorldCom has proposed. Price, Tr. Vol. 4, at 585. There is no merit to Mr. Price's claim that requiring BellSouth to become WorldCom's private reciprocal compensation banker would be more efficient because BellSouth already has established "business relationships" with other carriers. *Id.* at 582. Mr. Price conveniently glosses over a host of problems presented by WorldCom's proposal that eliminate any claimed efficiencies. For example, WorldCom's language does not explain whether BellSouth must pay reciprocal compensation owed by the originating carrier before the originating carrier actually pays BellSouth. Similarly, WorldCom's language does not explain what would happen in the event the originating carrier disputed the

amount of reciprocal compensation at issue. Price, Tr. Vol. 4, at 592-93. Such shortcomings are fatal to WorldCom's proposal, even assuming WorldCom's proposal had any basis in law, which, as WorldCom admits, is not the case.

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?

SUMMARY OF BELLSOUTH'S POSITION

*** An ALEC may assign a telephone number to a customer who is physically located in a different local calling area than the local calling area where that NPA/NXX is homed. However, inter-carrier compensation for the origination and termination of telecommunications traffic should be determined by the physical location of the customers. ***

DISCUSSION

This issue concerns the inter-carrier compensation due when a telephone number which is associated with a particular rate center is assigned to a customer who is physically located outside that rate center or even outside of the state. Price, Tr. Vol. 4, at 607. Notwithstanding WorldCom's claims to the contrary, BellSouth is not attempting to restrict WorldCom's ability to allocate numbers out of its assigned NPA/NXX codes to its end users. However, WorldCom should use its NPA/NXXs in such a way that BellSouth can distinguish local traffic from intraLATA toll traffic and interLATA toll traffic for BellSouth originated calls. Cox, Tr. Vol. 5, at 762. Furthermore, WorldCom should not be permitted to collect reciprocal compensation for calls terminating to a customer physically located outside of the local calling area, since such a call would not "originate and terminate" within the local calling area so as to trigger the obligation to pay reciprocal compensation. *See* 47 C.F.R. § 51.701(a).

BellSouth is concerned that, through the NPA/NXX assignment issue, WorldCom will attempt to collect reciprocal compensation for calls that are not local and are in fact long distance. The clearest method of explaining the dispute is to use the illustration discussed by BellSouth witness Cox. Assume WorldCom is assigned NPA/NXX 561/336 and WorldCom has chosen to assign 561/336 to the Jupiter rate center. When a BellSouth end user in Jupiter calls a WorldCom customer in Jupiter, who has any number in the 561/336 code, the BellSouth customer is not charged for a long distance call. What if WorldCom gave telephone number 561/336-2000, for example, to its customer in Miami? When the BellSouth customer in Jupiter calls 561/336-2000, BellSouth would treat the call as if its Jupiter customer made a local call. However, in reality, BellSouth hands off the call to WorldCom and WorldCom carries the call to its end user in Miami. The end points of the call are in Jupiter and Miami. More extreme, WorldCom could assign another telephone number, 561/336-3000 to its customer in New York City. If a BellSouth customer in Jupiter were to call the 561/336-3000 number, the end points of the call are in Jupiter and New York. In neither case are these calls "local." Rather, these calls are long distance to which reciprocal compensation should not apply.

At the hearing, Mr. Price did not dispute that the call from Jupiter to Miami or the call from Jupiter to New York do not "originate and terminate" within the same local calling area:

Q. Now, in the example that we just described where the BellSouth end user picks up the phone in Jupiter calling the (561) 336-2000 number which has been assigned in Miami, would you agree that the call is originating in Jupiter and Terminating in Miami?

A. Yes.

Price, Tr. Vol. 4 at 612.

Q. ... Let's assume that [WorldCom] has assigned the (561) 336-3000 number to a customer in New York City. The BellSouth end user in Jupiter picks up the phone and dials the (561) 336-3000. In that scenario the call is originating in Jupiter and terminating in New York City, is that correct?

A. Yes.

Price, Tr. Vol. 4, at 615. Yet, even though the calls at issue do not originate and terminate in the same local calling area, WorldCom claims the calls are "local" for which reciprocal compensation should be paid. *Id.* at 612-13. WorldCom is mistaken.

According to WorldCom, the type of call at issue is akin to BellSouth's foreign exchange (FX) service. Price, Tr. Vol. 4 at 618. However, even assuming that were true, the FCC has firmly held that FX service, to the extent it involves a call originating and terminating in two different LATAs, is interstate in nature. *New York Telephone Co.--Exchange System Access Line Terminal Charge for FX and CCSA Service*, Memorandum Opinion and Order, 76 F.C.C. 2d 349 (1980). In that case, petitioners challenged an intrastate New York Telephone tariff imposing a charge on the local exchange service used by out-of-state customers of FX and Common Control Switching Arrangement (CCSA) services. The services allowed an end user in New York to call a customer located out of state by dialing a local number and paying local rates. For example, an FX service purchased by a Washington, D.C. business would allow a New York City resident to call that business's out-of-state premises by dialing the local New York City number associated with the local exchange portion of service. *Id.* at 351.

Notwithstanding the fact that the originating caller could access the service by dialing a local number and paying local charges, and despite the fact that the FX customer had to purchase local exchange service from New York Telephone, the FCC concluded that the service as a whole was interstate and thus subject to FCC jurisdiction. *Id.* at 352. Moreover, the FCC

concluded that the Communications Act did not “reserve to the state jurisdiction over the local exchange portion of interstate services.” *Id.* Thus, the fact that a New York customer can call a local number to reach an out-of-state business in Washington does not alter the interstate nature of the call.

More recently, in considering this same issue in a case involving one of WorldCom’s subsidiaries, the Maine Public Utilities Commission concluded that a service utilizing the assignment of NPA/NXX codes to customers outside the local calling area was plainly an interexchange service. Order, *In re: Investigation into Use of Central Office Codes (NXXs) by New England Fiber Communications, LLC d/b/a Brooks Fiber*, Docket No. 98-758 (Me. P.U.C. June 30, 2000), at p. 15.

Even more recently, two other state commissions have considered the issue and concluded that reciprocal compensation is not owed for calls made to telephone numbers associated with a particular rate center but assigned to customers physically located outside the local calling area of that rate center. For example, in a docket opened to consider several issues related to reciprocal compensation, the Texas Public Utilities Commission stated that reciprocal compensation is not due when the ALEC uses such an arrangement, which the Texas Commission equated to foreign-exchange or FX service: “The Commission finds that to the extent that FX-type and 8YY traffic do not terminate within a mandatory local calling scope, they are not eligible for reciprocal compensation.” Arbitration Award, *Proceeding to Examine Reciprocal Compensation Pursuant to Section 252 of the Federal Telecommunications Act of 1996*, Docket No. 21982 (T.P.U.C. July, 2000), at p. 17 (copy attached as Exhibit 1). The Illinois Commerce Commission has reached the same conclusion: “FX traffic does not originate and terminate in the same local rate center and therefore, as a matter of law, cannot be subject to

reciprocal compensation.” Arbitration Decision, *Level 3 Communications, Inc.’s Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois*, Docket No. 00-0332 (Ill. Commerce Comm’n Aug. 30, 2000), at p. 9 (copy attached as Exhibit 2).¹³

There is simply no authority, and WorldCom cites none, for the proposition that a telephone call originated in one local calling area that terminates outside that local calling area is subject to the payment of reciprocal compensation. Such calls are simply not “local,” as all the authorities to consider the issue uniformly hold.

Resolution of this issue has nothing to do with promoting local compensation, as WorldCom has suggested. Local service competition is only created when WorldCom is offering local service to its end users. Here, the service at issue is offered to BellSouth’s local service customers. When WorldCom allows a BellSouth customer in Jupiter to call toll free to a WorldCom customer in Miami who has been assigned a telephone number associated with Jupiter, no local competition is created in Jupiter. In such a case, WorldCom has no contact or business relationship with the BellSouth customer for use of this service. Even though WorldCom is not providing anything that even remotely resembles local service, WorldCom insists it should be paid reciprocal compensation for such an arrangement, which makes no legal or economic sense.

In short, the issue here is not whether WorldCom could offer an FX-type service to its own customers; it clearly can. The issue here is what will be the consequences of such an

¹³ Both the Illinois and Texas Commissions concluded that the service at issue was equivalent to FX service, while the Maine Commission held that the service was more closely akin to 800 service, even though it had parallels to FX service. However, this is a distinction without a difference. In either case, a call originated by a customer in one local calling area to another customer assigned a telephone number associated with that local calling

arrangement upon the compensation which WorldCom and BellSouth owe to each other. In no circumstance should such compensation involve the payment of reciprocal compensation.

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

SUMMARY OF BELLSOUTH'S POSITION

*** Reciprocal compensation should not apply to ISP-bound traffic because such traffic is largely interstate in nature. Nevertheless, without waiving its rights, BellSouth is willing to abide by the prior Commission decisions on this issue until the FCC establishes an inter-carrier compensation mechanism for ISP-bound traffic. ***

DISCUSSION

Given the Commission's prior rulings on this issue, BellSouth is willing to abide by the Commission's decision in the ITC^DeltaCom, Intermedia, and ICG arbitration proceedings, but reserves its right to seek judicial review of any order in this case which requires BellSouth to pay reciprocal compensation for ISP-bound traffic which is delivered to an ISP in the local calling area.

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

SUMMARY OF BELLSOUTH'S POSITION

*** WorldCom is only entitled to be compensated for the functions that it provides. WorldComm is not entitled to the tandem rate because its switches in Florida do not perform a local tandem function or cover a geographic area comparable to the area served by BellSouth's tandem. ***

area but physically located somewhere else does not "originate and terminate" in the local calling area so as to trigger the payment of reciprocal compensation.

DISCUSSION

The Commission has considered the issue of the tandem interconnection rate in several prior arbitrations. In its earlier decisions, the Commission applied the appropriate two-part test of functionality and comparable geographic scope to determine whether a carrier was entitled to the tandem interconnection rate. *E.g.*, August 22, 2000 Order, Docket No. 991854-TP (Intermedia arbitration). In this case, WorldCom's local switches in Florida do not perform the same functions or serve the same geographic area as BellSouth's tandem switches. Therefore, WorldCom is not entitled to reciprocal compensation at the tandem interconnection rate.

A tandem switch connects one trunk to another trunk and is an intermediate switch or connection between the switch where a telephone call originates and the switch that terminates the call. Cox, Tr. Vol. 5, at 849. An end office switch, on the other hand, connects trunks to customer lines, and allows a call to be originated or terminated. If a local call is not handled by a switch on a tandem basis, it is not appropriate to pay reciprocal compensation for the tandem switching function. WorldCom is seeking to be compensated for functionality it does not provide.

Under Section 251(b)(5) of the 1996 Act, all local exchange carriers are required to establish reciprocal compensation arrangements for the transport and termination of telecommunications. 47 U.S.C. § 251(b)(5). The terms and conditions for reciprocal compensation must be "just and reasonable," which requires the recovery of a reasonable approximation of the "additional cost" of terminating local calls that originate on the network of another carrier. 47 U.S.C. § 252(d)(2)(A). According to the FCC, the "additional cost" of transporting terminating traffic varies depending on whether or not a tandem switch is involved. *See First Report and Order*, ¶ 1090. As a result, the FCC determined that state commissions can

establish transport and termination rates that vary depending on whether the traffic is routed through a tandem switch or directly to a carrier's end-office switch.

The FCC directed state commissions to consider two factors in determining whether an ALEC should receive the same reciprocal compensation rate as would be the case if traffic were transported and terminated via the incumbent's tandem switch. First, the FCC directed state commissions to “consider whether new technologies (*e.g.*, fiber ring or wireless network) performed functions similar to those performed by an incumbent LEC's tandem switch and thus whether some or all calls terminating on the new entrant's network should be priced the same as the sum of transport and termination via the incumbent LEC's tandem switch.” *First Report and Order*, ¶ 1090 (emphasis added). Second, the FCC found that “[w]here the interconnecting carrier’s switch serves a geographic area comparable to that served by the incumbent LEC’s tandem switch, the appropriate proxy for the interconnecting carrier’s additional costs is the LEC tandem interconnection rate.” *Id.*

Further, the FCC stated that “symmetrical rates are rates that a carrier other than an incumbent LEC assesses upon an incumbent LEC for transport and termination of local telecommunications traffic equal to those that the incumbent LEC assesses upon the other carrier for the same services.” 47 C.F.R. § 51.711(a)(1). Also, the FCC stated that “[w]here the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC’s tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC’s tandem interconnection rate.” 47 C.F.R. § 51.711(a)(3). Therefore, in order to evaluate whether an ALEC should receive the same reciprocal compensation rate as would be the case if traffic were transported and terminated via the incumbent's tandem switch, “it is appropriate to look at both the function and geographic scope

of the switch at issue.” See *U.S. West Communications, Inc. v. Minnesota Public Utilities Commission*, 55 F. Supp. 2d 968, 977 (D. Minn. 1999).

Turning first to the issue of geographic comparability, WorldCom has submitted maps purportedly indicating the geographic area that its switches in Florida “serve.” Hearing Exh. 18. However, WorldCom submitted no evidence that its switches serve actual customers in the geographic areas denoted on the maps. When pressed to state whether WorldCom actually serves customers in the areas shown on the maps, Mr. Price merely stated that the maps showed areas “in which [WorldCom’s] business markets folks can go out and sell service.” Price, Tr. Vol. 4, at 628. Mr. Price also admitted that WorldCom did not know the locations of its local customers in Florida. Price, Tr. Vol. 4 at 631-32. In response to a series of questions about the maps he had submitted, Mr. Price admitted that WorldCom did not serve local customers in numerous areas served by BellSouth’s tandems. Price, Tr. Vol. 4 at 635-37. In fact, while WorldCom testifies that it serves customers throughout BellSouth’s serving area, Mr. Olson admitted that WorldCom has less than one thousand customers in the entire State of Florida. Olson, Tr. Vol. 2 at 281. The record is clear that WorldCom does not serve a geographic area comparable to BellSouth’s tandem.

That WorldCom may one day provide local service in all the wire centers served by BellSouth’s tandems is irrelevant. This is clear from the decision of the federal district court in *MCI Telecommunications Corp. v. Illinois Bell Telephone Company d/b/a Ameritech Illinois, Inc.*, 1999 U.S. Dist. LEXIS 11418, *19 (N.D. Ill, June 22, 1999). In that case, MCI argued that it should be compensated at the tandem rate for its switch in Bensonville, Illinois. The Illinois Commerce Commission (“ICC”) rejected MCI’s argument, finding that MCI had failed to

provide sufficient evidence to support a conclusion that it was entitled to the tandem interconnection rate.

In affirming the ICC on the tandem switching issue, the federal district court found that MCI's "intentions for its switch" were "irrelevant." According to the court, MCI was required to identify the location of its customers and the geographical area "actually serviced by MCI's switch," which MCI had utterly failed to do. *Id.* at *22-23 n.10. The district court reasoned that:

The "Chicago area" is large, yet MCI offered no evidence as to the location of its customers within the Chicago area. Indeed, an MCI witness said that he "doubted" whether MCI had customers in every "wire center territory" within the Chicago service area. MCI's customers might have been concentrated in an area smaller than that served by an Ameritech tandem switch or MCI's customers might have been widely scattered over a large area, which raises the question whether provision of service to two different customers constitutes service to the entire geographical area between the customers. These are questions that MCI could have addressed, but did not. . . . In short, MCI offered nothing but bare, unsupported conclusions that its switch currently served an area comparable to Ameritech tandem switch or was capable of serving such an area in the future. The ICC's determination that "MCI has not provided sufficient evidence to support a conclusion that it is entitled to the tandem interconnection rate" was not arbitrary and capricious.

Id. at *22-23 (emphasis added). The district court's reasoning applies equally here and is fatal to WorldCom's claim that its switch serves a comparable geographic area.

Turning to the issue of functionality, Mr. Price contends that WorldCom's switch is not required to perform tandem switching functionality, such as connecting one trunk to another for local tandem interconnection purposes, if it meets the test of geographic comparability. Price, *Tr. Vol. 4*, at 626. However, several federal court decisions and orders of this Commission have held that the functions performed by another carrier's switch should be considered in determining whether that carrier is entitled to receive compensation for end-office, tandem, and transport elements in transporting terminating traffic. *See, e.g., U.S. West Communications, Inc. v. Minnesota Public Utilities Commission*, 55 F. Supp. 2d at 977; *U.S. West Communications, Inc.*

v. Public Service Commission of Utah, 75 F. Supp. 2d 1284, 1289 (D. Utah 1999) (affirming commission requirement that U.S. West compensate Western Wireless at the tandem switching rate after concluding that Western Wireless's "switches perform comparable functions and serve a larger geographic area"); *MCI Telecommunications Corp. v. Illinois Bell Telephone Company d/b/a Ameritech Illinois, Inc.*, *supra*. (in deciding whether MCI was entitled to the tandem interconnection rate, the commission correctly applied the FCC's test to determine whether MCI's switch "performed functions similar to, and served a geographical area comparable with, an Ameritech tandem switch"). Indeed, the Ninth Circuit Court of Appeals viewed the FCC's rule in the same way, finding that "the Commission properly considered whether MFS's switch performs similar functions and serves a geographic area comparable to US West's tandem switch." *U.S. West Communications v. MFS Intelenet, Inc.*, 193 F.3d 1112, 1124 (9th Cir. 1999).

This Commission addressed this precise issue recently in an arbitration between BellSouth and Intermedia, Docket No. 991854-TP. In its order, the Commission specifically found that Intermedia failed to meet the geographic comparability and functionality tests. Order (Aug. 22, 2000), at p. 14. This Commission's Order in the MCI/Sprint arbitration case in Docket No. 961230-TP also supports BellSouth's position on this issue. (Order No. PSC-97-0294-FOF-TP, issued March 14, 1997.) The Commission determined that "MCI is not entitled to compensation for transport and tandem switching unless it actually performs each function." Earlier, in its Order in the Metropolitan Fiber Systems of Florida, Inc. ("MFS") and Sprint arbitration case in Docket No. 960838-TP, the Commission determined that "MFS should not charge Sprint for transport because MFS does not actually perform this function." FPSC Order No. PSC-96-1532-FOF-TP, issued December 16, 1996. The circumstances in these arbitration cases can be logically extended to the issue raised by WorldCom's in this arbitration proceeding.

The evidence in this record does not support WorldCom's position that its switch actually provides the tandem switching function for local traffic, and the 1996 Act does not contemplate that compensation for transporting and terminating local traffic should be paid when one party does not actually provide the network functionality for which it seeks compensation.

The California Public Utilities Commission ("CPUC") also reached a conclusion similar to the Florida Commission on this issue. In an arbitration proceeding between MFS/WorldCom and Pacific Bell, the CPUC held that "a party is entitled to tandem and common transport compensation only when the party actually provides a tandem or common transport function." *See Decision 99-09-069, In re: Petition of Pacific Bell for Arbitration of an Interconnection Agreement with MFS/WorldCom, Application 99-03-047, 9/16/99, at 16.* The CPUC further found unpersuasive MFS/WorldCom's argument that its network served a geographic area comparable in size to that served by Pacific Bell's tandem switch.

For the foregoing reasons, this Commission should deny WorldCom's request for tandem switching compensation when WorldCom proved neither that its switch is actually performing local tandem switching nor that its switch serves a geographic area comparable to BellSouth's switch.

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

SUMMARY OF BELLSOUTH'S POSITION

*** When making an adjacent collocation arrangement available, BellSouth will provide power to WorldCom in the same manner that BellSouth provides power to itself in a remote terminal site (AC power which BellSouth "converts" to DC power inside the remote terminal location). The FCC rules do not require BellSouth to provide DC power in an adjacent collocation arrangement. ***

DISCUSSION

At issue in this item is WorldCom's demand that BellSouth provide DC power (rather than AC power) to an adjacent collocation arrangement.¹⁴ The FCC rules do not require BellSouth to provide DC power to an adjacent collocation arrangement. 47 C.F.R. 51.323 (k)(3) only requires that BellSouth provide a power source to an adjacent arrangement, it does not specify the type of power. In making adjacent collocation available, BellSouth will do so in a nondiscriminatory manner (that is, all ALECs obtaining adjacent collocation will be treated in the same manner) and at parity with itself. Milner, Tr. Vol. 8 at 1208. At all of BellSouth's remote site locations, AC power runs to the site and BellSouth then "converts" the AC power to DC power inside the remote site location. *Id.* Mr. Messina admitted that BellSouth has offered to provide WorldCom with power to its adjacent collocation arrangements in the same manner that BellSouth provides power to its own remote terminals. Messina, Tr. Vol. 2 at 194-95. WorldCom has offered no legitimate basis for this Commission to order BellSouth to treat WorldCom differently than BellSouth treats itself and other ALECs.

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

SUMMARY OF BELLSOUTH'S POSITION

*** Collocation space can be completed prior to providing CFAs. If the space is not considered complete (and, hence, billing does not start) until after the CFAs are provided, WorldCom would be able to occupy the space indefinitely without paying floor space charges until it actually gets around to installing its equipment, which is unreasonable. ***

DISCUSSION

¹⁴ An adjacent collocation arrangement would only be used where collocation space within BellSouth's central office had been exhausted. Messina, Tr. Vol. 2 at 194.

This issue concerns the point at which collocation space should be considered complete. After acceptance of the collocation space from BellSouth, WorldCom proceeds with the installation of its equipment, a matter under WorldCom's control rather than under BellSouth's control. Milner, Tr. Vol. 8 at 1210. Part of WorldCom's responsibilities is the installation of its cables terminating on BellSouth frames. WorldCom contends that BellSouth should provide the cable facility assignments (CFAs) before the space is completed. BellSouth cannot provide CFAs until after WorldCom informs BellSouth of the frame locations and designations of WorldCom's cables. *Id.* While Mr. Messina argued that BellSouth could provide CFAs early in the collocation process (Tr. Vol. 2 at 197), Mr. Milner testified that BellSouth's practical experience with ALECs has demonstrated that CFAs must be verified after the installation of the cabling, not before as Mr. Messina suggests. Milner Dep. pp. 68-69.

Ultimately, WorldCom's proposal confuses any measure of BellSouth's performance in provisioning collocation arrangements and delays BellSouth's ability to bill WorldCom, because BellSouth would be unable to designate a collocation arrangement as complete until WorldCom had finished its own work, completion of which is not under BellSouth's control. Collocation space should be considered complete once all work done by BellSouth or BellSouth's certified vendors is complete, at which point BellSouth will render a final bill to the ALEC. At the hearing, Mr. Messina admitted that, in WorldCom's view, even after BellSouth had completed all space preparation work and made the finished space available, WorldCom's obligation to pay BellSouth would not begin. Messina, Tr. Vol. 2 at 196-97. Yet, WorldCom seeks language in the agreement which, if adopted, would permit WorldCom to order collocation space and not pay for it months after BellSouth has made the space available to WorldCom. Such a result would be neither fair nor equitable.

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

*** BellSouth has committed to provide WorldCom, to the extent it is available, information that WorldCom reasonably requires to begin its design plans for collocation space. If the information is not available at the joint planning meeting, BellSouth will provide such information within thirty (30) calendar days thereafter. ***

DISCUSSION

To the extent the information is available, BellSouth is willing to provide WorldCom with the exact cable location termination requirements (i.e., relay rack, bay/panel, jack location), which is the “key information” WorldCom reasonably requires to begin its design plans for collocation space. Milner, Tr. Vol. 8 at 1211-12. If this information is not available at the joint planning meeting, BellSouth will provide such information within thirty (30) days thereafter. *Id.* However, much of the information WorldCom seeks is either not readily available or is not required for WorldCom to begin its work. Furthermore, the language that WorldCom has proposed goes well beyond requiring BellSouth to provide “certain collocation information.” For example, Section 7.17.10 of Attachment 5 purports to give WorldCom the right to establish the demarcation point at any technically feasible point within the central office, which has nothing to do with BellSouth providing WorldCom “certain collocation information at the joint planning meeting.” Moreover, the manner in which the demaracation points are determined for interconnection at a central office and for collocation are governed by FCC rules and Commission orders. Milner, Tr. Vol. 8, at 1212-13.

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?

SUMMARY OF BELLSOUTH'S POSITION

*** The rate for DC power should be calculated based upon fused capacity which BellSouth is required to provide WorldCom. Rather than measuring power consumption, BellSouth applies a factor to the rated power consumption provided by the manufacturer of the equipment in WorldCom's collocation space in order to determine power costs. Central office equipment is normally turned on all the time, and BellSouth must build its power plant to assure that its needs and all collocators' needs are met as well. ***

DISCUSSION

The issue in dispute here is manner in which the rate for DC power should be calculated. The parties appear to agree that the rates for DC power should be those established by the Commission in Docket No. 990649-TP. But, WorldCom and BellSouth disagree on whether that per amp charge should be applied to the fused capacity BellSouth is required to provide to WorldCom or if it should be applied only to the capacity used by WorldCom. BellSouth believes that the per amp charge should apply to the fused capacity (rated power consumption) for the equipment it installs in its collocated spaces, as is the case with every other ALEC collocated with BellSouth.

BellSouth's Collocation Handbook (Issue 8) states "Charges for -48V DC power are assessed per ampere per month based upon the certified vendor engineered and installed power feed fused ampere capacity." BellSouth sizes the power plant capacity that serves collocated equipment based on the power requirement of the equipment specified in WorldCom's collocation application. Equipment manufacturers state the rated power consumption for its equipment and the power plant is built accordingly. Rather than measuring power consumption,

BellSouth simply applies a factor to the rated power consumption provided by the equipment manufacturer in order to determine power costs.

WorldCom's proposal, if adopted, would require BellSouth to install meters to track the actual electrical usage of each of the ALECs collocating in each of the central offices in Georgia. The Commission should reject WorldCom's proposal on this issue. BellSouth should not be put in the position of installing, maintaining, and monitoring electric meters in its central offices.

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?

SUMMARY OF BELLSOUTH'S POSITIONS

*** The rules regarding BellSouth's collocation obligations clearly state that an incumbent has no obligation to accommodate non-fiber optic entrance facilities (i.e., copper) unless and until such interconnection is ordered by the state commission. Neither WorldCom nor any other ALEC should be permitted to place copper entrance facilities (except in conjunction with adjacent collocation) because this would accelerate the exhaust of entrance facilities at BellSouth's central offices at an unacceptable rate. ***

DISCUSSION

This issue concerns WorldCom's demand that it be permitted to use copper entrance cable. Copper cable currently enters BellSouth central offices, which is associated with BellSouth loop distribution facilities. However, entrance facilities are considered to be interconnection trunks, and all of BellSouth's interconnection trunks entering BellSouth central offices are optical fiber facilities. The FCC rules regarding an ILEC's collocation obligation under the Act state that the ILEC should only accommodate copper entrance facilities if such interconnection is first ordered by the state commission. 47 C.F.R. 51.323 (d)(3). Undoubtedly,

the FCC was concerned that permitting ALECs to place copper interconnection facilities would exhaust the space available for interconnection trunks entering ILEC central offices. Neither WorldCom nor any other ALEC should be permitted to place copper entrance facilities since this would accelerate the exhaust of entrance facilities at BellSouth's central offices at an unacceptable rate. The only exception is with adjacent space collocation arrangements as defined by the FCC in 47 CFR § 51.323(k)(3). WorldCom admitted at the hearing that BellSouth's proposal is consistent with prior Commission orders. Messina, Tr. Vol. 2 at 199-200. Thus, there should be no dispute on this point.

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

SUMMARY OF BELLSOUTH'S POSITION

*** Yes. BellSouth has no objection to WorldCom visually verifying that another entrance point does not exist. However, BellSouth is not required to provide a "formal tour" of the central office. ***

DISCUSSION

Under the FCC rules BellSouth is required to provide at least two interconnection points at a premises "at which there are at least two entry points for the incumbent LEC's cable facilities, and at which space is available for new facilities in at least two of those entry points." 47 C.F.R. § 51.323(d)(2). BellSouth has agreed to provide information as to whether there is more than one entrance point for BellSouth's cable facilities. Milner, Tr. Vol. 8 at 1217. WorldCom admits that it is not entitled to a "formal tour." Messina, Tr. Vol. 2 at 202. There appears to be no real dispute on this issue.

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

SUMMARY OF BELLSOUTH'S POSITION

*** BellSouth is not required to incur the time and expense of maintaining a waiting list simply because dual entrance facilities may not be available. ***

DISCUSSION

In the event that dual entrance points exist but space is not available, BellSouth will provide documentation, upon request, and at MCI's expense, so that MCI can verify that no space is available for new facilities. 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. However, BellSouth should not be required to incur the time and expense of maintaining a waiting list simply because dual entrance facilities may not be available.

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

SUMMARY OF BELLSOUTH'S POSITION

*** BellSouth has provided and will provide WorldCom with precisely the same information that BellSouth provides its vendors concerning the vendor certification process. If WorldCom has any questions regarding this process, WorldCom may contact the BellSouth vendor certification group for further information. ***

DISCUSSION

Under 47 C.F.R. § 51.323(j), BellSouth is permitted to approve vendors hired by MCI to construct its collocation space, provided that such approval is based on the same criteria that BellSouth uses in approving vendors for its own purposes. At the hearing, Mr. Messina did not dispute that BellSouth has provided MCI with precisely the same information that BellSouth provides its vendors concerning the vendor certification process. Messina, Tr. Vol. 2 at 203.

BellSouth has provided WorldCom with all of the information it reasonably requires to determine whether a proposed vendor would meet BellSouth's certification standards. MCI's position on this issue should be rejected.

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

SUMMARY OF BELLSOUTH'S POSITION

*** BellSouth is willing to comply with generally accepted industry practices in the provision of physical collocation to the extent it has control over the subject matter thereof. While BellSouth strives to comply with all applicable standards, BellSouth does not have control over all the acts of ALECs collocated within its central offices and should not be expected to meet any standards to the extent BellSouth does not have such control. ***

DISCUSSION

BellSouth is willing to comply with generally accepted industry practices in the provision of physical collocation to the extent it has control over the subject matter thereof. But, MCI wants BellSouth to comply with standards that BellSouth could not even verify exist, others that are inapplicable to the relationship BellSouth has with MCI in providing collocation (vendor relations), and still others that have been deemed inapplicable pursuant to the *Advanced Services Order* (NEBS performance standards).

Furthermore, while BellSouth strives to comply with all applicable standards, BellSouth does not have control over the acts of ALECs collocated within its central offices and should not be expected to meet any standards to the extent BellSouth does not have such control. For example, BellSouth relies on the ALEC to identify accurately in its collocation application the equipment it plans to install and specifications related thereto. If the ALEC does not install equipment in accordance with the information provided in its application, then BellSouth cannot

be required to comply with any standards that may be violated as a result thereof. Milner, Tr. Vol.. 8 at 1218-19.

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?

SUMMARY OF BELLSOUTH'S POSITION

*** BellSouth should be able to sell or otherwise convey its property without restriction so long as BellSouth gives WorldCom reasonable notice of such sale or conveyance. ***

DISCUSSION

WorldCom has proposed language that would purport to control the disposition of BellSouth's property. Specifically, WorldCom's proposed language would purport to prohibit BellSouth from conveying property unless it does so subject to any licenses granted to WorldCom such as for use of BellSouth's poles, ducts or conduit. Price, Tr. Vol. 4, at 667.

WorldCom's proposal would work as follows. Assume that Time Warner approaches BellSouth about purchasing a line of telephone poles owned by BellSouth that contains both BellSouth's and WorldCom's facilities. BellSouth decides to sell the pole line, but Time Warner wants both BellSouth's and WorldCom's facilities removed. If WorldCom decides that it does not want to remove its facilities, BellSouth would be precluded from selling its property. Price Dep. (Vol. 2), at 44-46. Even if Time Warner were willing to permit WorldCom's facilities to remain in place but only at a higher rental fee for use of the poles, WorldCom's proposed language would allow WorldCom to veto BellSouth's sale of its property to Time Warner. *Id.* at 46.

The fact that BellSouth has granted WorldCom a license to make use of BellSouth's facilities does not authorize WorldCom to restrict BellSouth's sale or conveyance of BellSouth's property. WorldCom's proposed language should be rejected.

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?

SUMMARY OF BELLSOUTH'S POSITION

*** WorldCom should be required to pay in advance for any work WorldCom requests BellSouth to perform as do other ALECs that have signed BellSouth's standard license agreement. BellSouth should not be required to finance WorldCom's business plans. ***

DISCUSSION

BellSouth has proposed language that would obligate WorldCom to pay for make ready work in advance. Moreover, BellSouth has proposed to schedule make-ready work for completion in a nondiscriminatory manner on a first come, first served basis at parity with BellSouth. BellSouth also has proposed to begin the process of scheduling make-ready work within twenty days of receipt of payment from WorldCom, unless the period is extended for good cause. BellSouth's proposals are commercially reasonable and will ensure that all ALECs are treated in a nondiscriminatory manner with respect to such work. Milner, Tr. Vol. 8, at 1221. Accordingly, this language should be included in the parties' interconnection agreement.

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?

SUMMARY OF BELLSOUTH'S POSITION

*** The local carrier (such as WorldCom) serving the end user via Interim Number Portability facilities is responsible for paying for collect calls, third number calls or other operator handled calls incurred by the end user. WorldCom is BellSouth's customer of record when Interim Number Portability ("INP") is used, has all of the information necessary to bill the end user and can put a block on such calls thereby avoiding the issue entirely. ***

DISCUSSION

BellSouth has proposed language requiring the local carrier (such as WorldCom) serving the end user via INP to assume responsibility for collect calls, third party calls or other operator assisted calls incurred by the end user. BellSouth's proposal is reasonable because WorldCom is BellSouth's customer of record when INP is used, has all of the information necessary to bill the end user, and can put a block on such calls thereby avoiding the issue entirely. Moreover, any issue WorldCom has with billing its end users for collect and third party calls should be short lived since the INP process has effectively been replaced by the Local Number Portability (LNP) service. Scollard, Tr. Vol. 6 at 1006.

There is nothing novel about BellSouth's proposal, notwithstanding any suggestion by WorldCom to the contrary. BellSouth uses the industry billing mechanisms every day to provide ALECs with records to bill for collect and third number billed calls placed by the ALECs' end users that are carried by BellSouth so that the ALEC can bill the end user on the bills provided to that end user. These mechanisms hold the ALEC liable for the non-payment of these calls. The language proposed by BellSouth for end users served by INP is consistent with the same usage exchange functions and responsibilities as in the process used to bill process WorldCom's other end users. Scollard, Tr. Vol. 6 at 1007-08. BellSouth's proposed language is contained in

BellSouth's standard interconnection agreement and should be included in the interconnection agreement with WorldCom as well.

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?

SUMMARY OF BELL SOUTH'S POSITION

*** BellSouth has provided the Exchange Access Control and Tracking ("EXACT") electronic ordering system for the processing of Access Service Requests ("ASRs") submitted by Interexchange Carriers ("IXCs") for access services. Although local interconnection trunks also are ordered via an ASR, WorldComm can order all UNEs via a Local Service Request ("LSR") through one of BellSouth's UNE ordering interfaces and thereby obtaining the pre-ordering information it desires. ***

DISCUSSION

WorldCom's attempt to require that BellSouth maintain an interexchange ("IXC") process to handle local service requests should be rejected by this Commission. As WorldCom testified, the access service request ("ASR") process is a method used by IXC carriers to order facilities. Lichtenberg, Tr. Vol. 1, at 59-60. Ms. Lichtenberg also admitted that the national industry-approved format for ordering local service from an ILEC is through the submission of an LSR (local service request), not an ASR, however. Lichtenberg, Tr. Vol. 1, at 64. She also admitted that the services she seeks to order with an ASR (DS1 loop transport combinations) can be ordered through the use of an LSR. Lichtenberg, Tr. Vol. 1, at 65. The issue, as stated by Ms. Lichtenberg, concerns WorldCom's inability to submit electronic orders for the DS1 loop transport combinations. Lichtenberg, Tr. Vol. 1, at 65.

WorldCom completely disregards that BellSouth has in place a number of interfaces that allow electronic preordering functionality for UNEs. Instead, WorldCom's proposed language would not only require BellSouth to continue to accept ASRs, it would also require BellSouth to create additional functionality for WorldCom. Lichtenberg, Tr. Vol. 1, at 69. Rather than build a new interface for WorldCom, the more appropriate resolution of this issue would be for WorldCom to use the existing LSR process.

Despite WorldCom's recognition that BellSouth seeks to treat orders for local service in a uniform manner, in essence WorldCom desires to pass on to BellSouth the responsibility of reformatting its access orders. Yet, WorldCom ignores that the pre-ordering functionality for LSRs is available through an application-to-application interface, the Telecommunications Access Gateway, or "TAG." Pate Tr. Vol. 7, at 1109. Moreover, the EEL combination, which is the UNE combination that WorldCom is using the ASR for today, may be ordered through an LSR. *Id.* at 1123. This Commission should not permit WorldCom to circumvent the uniform LSR system to gain a competitive advantage.

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?

SUMMARY OF BELLSOUTH'S POSITION

*** BellSouth currently provides a service inquiry process for ALECs for local services when appropriate. The service inquiry process provided to WorldCom is accomplished in substantially the same time and manner as BellSouth provides for itself. ***

DISCUSSION

WorldCom's position on Issue 81 reflects, once again, its desire for a superior functionality than that provided by BellSouth to its own retail units. BellSouth's current practice

is to use the service inquiry process – a process that determines whether facilities exist for a requested service – as part of the ordering process. Thus, a service inquiry is submitted along with an order, and if the facilities exist the order is completed. WorldCom desires that BellSouth perform a service inquiry as a function of preordering, or separate and apart from the ordering process. WorldCom has also proposed such broad, expansive contractual language that it could request a service inquiry on any facility at the sole request of WorldCom.

Mr. Pate explained that BellSouth provides WorldCom with both a pre-ordering Loop Make-up service inquiry process and a firm order process. Pate, Tr. Vol. 7 at 1066-70. And BellSouth has begun beta testing an electronic loop make-up data query to allow the ALECs to obtain loop make-up information electronically. Pate, Tr. Vol. 7 at 1069. Moreover, BellSouth provides ALECs with the ability to order services in substantially the same time and manner as BellSouth provides its retail units. Pate, Tr. Vol. 7 at 1072. With this issue, WorldCom is simply trying to obtain access to information it wants for use in developing sales proposals. Pate, Tr. Vol. 7 at 1097. BellSouth is under no obligation to fulfill this request. Nevertheless, to the extent that WorldCom has raised an issue that may be of interest to many ALECs, BellSouth has indicated its willingness to address the matter via its Change Control Process, and the Commission should allow the processes in place to address this matter. Pate, Tr., Vol. 7 at 1097.

WorldCom argues that simply because electronic information exists within BellSouth's systems, that a special process should be created to access it. Any such argument is without basis. First, at some point during provisioning, virtually all orders must pass through or reference various BellSouth legacy systems. Nevertheless, the fact that one group within BellSouth has access to a system does not lead to the conclusion that the information in that system is used during ordering or preordering by service representatives. The appropriate legal

standard is whether BellSouth provides WorldCom with access in substantially the same time and manner as that provided to BellSouth – it does not require that WorldCom obtain access beyond parity. The Commission should reject WorldCom’s language.

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

SUMMARY OF BELL SOUTH’S POSITION

*** BellSouth should be permitted to disconnect service to any ALEC that fails to pay billed charges that are not disputed within the applicable time period. If BellSouth cannot disconnect service for nonpayment, WorldCom has little incentive to pay its bills. Also, WorldCom should not be, and by terms of the 1996 Act, cannot be treated differently from any other ALEC with respect to bill payment. ***

DISCUSSION

BellSouth should be permitted to disconnect service to any customer, including WorldCom, that fails to pay billed charges that are not disputed and has proposed language to that effect. No business, including BellSouth, could remain financially viable if it were obligated to continue providing service to customers who refuse to pay lawful charges. BellSouth must be able to deny service in order to obtain payment for services rendered and to prevent additional past due charges from accruing. Cox, Tr. Vol. 5, at 790-91.

However, WorldCom refuses to agree to language that permits BellSouth to disconnect WorldCom for failing to pay an undisputed amount. WorldCom’s position is unreasonable because WorldCom insists that BellSouth must pursue dispute resolution even when the money owed is not disputed. For example, according to Mr. Price, if BellSouth sent WorldCom a bill for \$1 million, not one penny of which was disputed by WorldCom but which WorldCom refuses

to pay, BellSouth could not disconnect service to WorldCom without resorting to “a dispute resolution process that could be pursued for collection.” Price Depo. (Vol. 2) at 64-65.

WorldCom’s position also is inconsistent because WorldCom retains the right to disconnect service to its customers while at the same time seeking to deny BellSouth a similar right. For example, WorldCom’s tariff in Florida permits WorldCom upon notice to discontinue service without any liability upon the nonpayment of any sum owed to the company. Hearing Exhibits 21, 22. In fact, WorldCom’s tariff is significantly broader than the language proposed by BellSouth in that WorldCom is permitted to discontinue service under its tariffs when a customer fails to pay sums that are in dispute. *Id.*; Price, Tr. Vol. 4, at 645.

Finally, the Commission must consider this issue beyond the context of WorldCom. If BellSouth were to exempt WorldCom from BellSouth’s right to discontinue service for the nonpayment of undisputed sums, BellSouth could hardly disconnect service for nonpayment by any ALEC in Florida. Cox, Tr. Vol. 5 at 791. Indeed, if the language proposed by WorldCom is included in the interconnection agreement, any ALEC, including those not as financially viable as WorldCom, could adopt the same agreement and thereby avoid the possibility of having its service disconnected for nonpayment. See 47 C.F.R. § 51.809,

WorldCom can avoid this issue entirely by simply paying undisputed amounts owed to BellSouth within the applicable timeframes. However, if WorldCom fails to do so, BellSouth should be entitled to disconnect service to WorldCom, and, thus, the Commission should adopt the language proposed by BellSouth.

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

SUMMARY OF BELLSOUTH’S POSITION

*** BellSouth provides and is willing to continue to provide WorldCom with billing records consistent with EMI guidelines. However, the agreement should make clear how these records will be provided, which WorldCom's proposal does not do. ***

DISCUSSION

BellSouth provides billing records with Electronic Message Interexchange (EMI) fields in accordance with industry standards. BellSouth provides ALECs with usage records created using the EMI guidelines. BellSouth has a number of interfaces that allow MCI to receive these usage records. Each interface has been created using the guidelines contained in the EMI documents. BellSouth's proposed language dealing with usage recordings is to clarify the exact nature of how these records will be provided. The EMI guidelines call for differing types of records, record fields and data formats depending on the type of usage being recorded. For example, the EMI standards for usage record associated with meet point billing are far different than usage records exchanged between companies to be used to bill for a toll call reverse billed to the terminating number. Scollard, Tr. Vol. 6 at 1012. The language proposed by BellSouth clearly defines which types of records will be included on the different interfaces and the processes used to create each. While not every field contained in an EMI record may be provided, BellSouth provides every field that is required in order for WorldCom to bill its customers. Scollard, Tr. Vol. 6, at 1012.

BellSouth's proposed language is intended to clarify the language contained in the expired interconnection agreement with WorldCom. As Mr. Scollard explained, "the goal of BellSouth is to clarify the confusing language that currently exists in the agreement between the parties so that no misunderstanding is left between BellSouth and [WorldCom] as to what

records will be provided and how these records will be sent.” Scollard, Tr. Vol. 6 at 1032. The Commission should adopt BellSouth’s proposed language on this issue.

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.?

*** BellSouth agrees to provide notification to ALECs concerning central office conversions via web postings. This method of carrier notification is used for all ALECs and ensures that BellSouth treats all ALECs in a nondiscriminatory manner. ***

DISCUSSION

BellSouth makes every effort to schedule central office conversions between midnight and 4 o’clock a.m. in order to minimize the possibility that any customer (BellSouth’s or an ALEC’s) will experience a service disruption. In some cases, the conversion must take place outside of that window. This issue concerns the notification that BellSouth should provide WorldCom when that occurs. BellSouth has agreed to provide such notification to ALECs concerning central office conversions via web postings, which is reasonable and ensures that all ALECs are treated in a nondiscriminatory manner. Milner, Tr. Vol. 8, at 1223. Such web postings are done well in advance of any central office conversion so that WorldCom and every ALEC can make its plans accordingly.

WorldCom’s proposal of a separate e-mail notification to each ALEC would create an administrative nightmare for BellSouth. WorldCom has offered no legitimate reason why it cannot access BellSouth’s web site to obtain this and other information.

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?

*** BellSouth's operators may respond to customer inquiries concerning rates and time charges for BellSouth's retail services. However, BellSouth is not obligated to inquire about a customer's carrier of choice, as requested by WorldCom, or to transfer such call to the customer's carrier of choice. ***

DISCUSSION

WorldCom has proposed language that would require BellSouth's operators to inquire as to the customer's carrier of choice of long distance carrier and forward the call to that carrier every time a customer requests a rate quote or time and charges, regardless of whether the long distance carrier subscribes to BellSouth's Operator Transfer Service. Milner, Tr. Vol. 8 at 1227. Nothing in the 1996 Act requires BellSouth to inquire about a subscriber's preferred long distance carrier or to connect a subscriber to that carrier. WorldCom does not contend otherwise.

BellSouth should not be required to inquire about a customer's preferred long distance carrier. Although BellSouth's operators respond to customer inquiries concerning rates and time charges, BellSouth's practice is to quote only BellSouth's rates. Customers who inquire about long distance rates are advised they should seek that information from their long distance carrier. If that carrier is an Operator Transfer Service (OTS) customer, BellSouth will offer to transfer the caller to their carrier so that the rate can be quoted immediately. Milner, Tr. Vol. 8 at 1272.

Second, it would be contrary to public policy, as part of an interconnection agreement with WorldCom, to require BellSouth to perform an inquiry and transfer function for customers served by every ALEC in Florida. For example, under WorldCom's proposal, if a "subscriber" who receives local exchange service from AT&T were to call BellSouth asking about long distance rates, BellSouth would be required to "inquire of the subscriber from which carrier the rate or time and charges is requested" and then to "connect the call to that carrier." WorldCom's

language in now way is limited to WorldCom's subscribers, and WorldCom is unclear as to whether BellSouth's operators even have the ability to distinguish WorldCom's customers from customers of other ALECs. Price Dep. (Vol. 2) at 87-90.

Finally, it is hardly in the public interest to require BellSouth to perform an inquiry and transfer function for free, as WorldCom proposes. Although Mr. Price testified at his deposition that WorldCom would compensate BellSouth for its operator time, he acknowledged that there is no approved rate for the particular function WorldCom was seeking to require BellSouth's operators to perform. Price Dep. (Vol. 2) at 97-105. As far as the cost of transferring the call itself, Mr. Price opined that this cost should be recovered from those long distance carriers to whom calls were transferred as part of BellSouth's OTS service. Although Mr. Price testified that BellSouth should only transfer a call to a carrier subscribing to OTS, this limitation appears nowhere in WorldCom's proposed language. *Id.* at 94-96. Not surprisingly, WorldCom's proposed language makes no mention of how BellSouth is to recover the costs associated with its operators inquiring about the subscriber's preferred long distance carrier and then transferring the call to that carrier.

WorldCom's proposed language is overbroad, is inconsistent with the testimony of WorldCom's own witness, and would serve no useful purpose in facilitating WorldCom's entry into the residential market in Florida. Accordingly, WorldCom's proposed language should be rejected.

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?

*** Whether shared transport is available between an end office from which BellSouth provides unbundled local switching to WorldComm depends upon the type of customized

routing functionality requested by WorldCom. With the Line Class Code method, dedicated trunk groups are required between BellSouth's end office switch and WorldCom's choice of operator services or directory services platform. With the AIN method of customized routing, shared trunk groups may be used between the BellSouth end office switch and the AIN hub location. ***

DISCUSSION

This issue is related to Issues 5, 15, and 19. "Custom branding" involves BellSouth branding calls to its operator services and directory assistance platform in the name of the ALEC whose customer is calling. Whether shared transport is available between a BellSouth end office from which BellSouth provides unbundled local switching to WorldCom in connection with custom branding depends upon the type of customized routing functionality requested by WorldCom. With the Line Class Code method of customized routing, dedicated trunk groups are required between BellSouth's end office switch and WorldCom's choice of operator services or directory services platform. With the AIN method of customized routing, shared trunk groups may be used between the BellSouth end office switch and the AIN hub location. Milner, Tr. Vol. 8, at 1228. As Mr. Milner explained, BellSouth provides shared transport in connection with the provision of custom branding to the extent technically feasible. *Id.* at 1274. In fact, Mr. Price agreed that BellSouth's AIN method of customized routing "will really give WorldCom what it's looking for." Price Dep. (Vol. 2) at 107-110. Under the circumstances, it is not clear what more WorldCom wants.

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?

*** The language proposed by WorldCom regarding a liability cap for damages is not subject to the Section 251 requirements of the Act. WorldCom's proposed language is not appropriate for inclusion in the Interconnection Agreement, therefore, BellSouth proposes that the Commission reject WorldCom's language and approve only the language already agreed to by both parties. ***

DISCUSSION

The parties agree that a liability cap is appropriate. The dispute here concerns WorldCom's desire to exempt from the liability cap actions that constitute a "material breach of the Agreement." WorldCom's proposed language is not appropriate for inclusion in the interconnection agreement. Limitation of liability language is not subject to Section 251 of the 1996 Act and thus is not properly the subject of arbitration under Section 252. BellSouth proposes that Part A, Sections 11.1.1 and 11.1.2 be approved based upon the language that both parties have agreed upon during the negotiations. BellSouth is willing to forego any language with which WorldCom disagrees if WorldCom will forego any language with which BellSouth disagrees. BellSouth has sufficient incentive to fulfill its obligations without the language proposed by WorldCom.

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?

*** Specific performance is a remedy, not a requirement of Section 251 of the Act. To the extent WorldCom can show that it is entitled to obtain specific performance under Florida law, WorldCom can make this showing without agreement from BellSouth. ***

DISCUSSION

Specific performance is a remedy to which WorldCom may or may not be entitled under Florida law. It is certainly not a requirement of Section 251 of the 1996 Act nor is it an appropriate subject for arbitration under Section 252. While certain services provided under the agreement may be unique, that is certainly not the case universally. For example, the parties are obligated to pay each other reciprocal compensation for the transport and termination of local traffic; there is nothing “unique” about such payments. To the extent WorldCom can show that it is entitled to obtain specific performance under Florida law in particular circumstances, WorldCom can make this showing without agreement from BellSouth.

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 should be permitted to substitute more favorable terms and conditions consistent with the 1996 and applicable FCC rules. ***

DISCUSSION

Consistent with basic principles of contract law, the rights and obligations of BellSouth and WorldCom are those set forth in their interconnection agreement. WorldCom’s adoption or substitution of a specific provision contained in a different approved agreement should be effective on the date the amendment is signed by BellSouth and WorldCom, not the date WorldCom’s requests an amendment. For example, assume WorldCom were to ask BellSouth on November 1, 2000 to amend its interconnection agreement to substitute a particular provision from another interconnection agreement, but WorldCom does not bother executing the actual amendment to its existing agreement until May 1, 2001. Until that amendment actually takes effect so as to modify the terms of the original agreement, the parties must adhere to the terms of

the original agreement. BellSouth is under no obligation to give WorldCom the benefit of terms and conditions prior to the date the parties' agreement is actually amended.

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?

*** Because approved interconnection agreements are available from the Commission, BellSouth should not be required to post them on a website, as WorldCom has requested, particularly agreements that have not even been approved. ***

DISCUSSION

WorldCom seeks to require that BellSouth take the time and expense of posting on a website every one of the hundreds of interconnection agreements filed with the Commission. Section 252(h) of the Act obligates state commissions to make a copy of each approved agreement available for public inspection and copying within 10 days after approval. Thus, every agreement WorldCom ostensibly seeks is available from the Commission, without requiring BellSouth to incur the administrative and economic burden of posting and maintaining these agreements on a website. Furthermore, WorldCom's rights under Section 252(i) to adopt another interconnection agreement or to substitute a provision from another interconnection agreement only extend to agreements that have been "approved" by a state commission. Yet, under WorldCom's proposal, BellSouth would be required to post on its website interconnection agreements that have been filed with the Commission, whether or not such agreements have been approved. This is just another example of WorldCom attempting to impose unnecessary burdens upon BellSouth, which the Commission should summarily reject.

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?

*** BellSouth is willing to take all reasonable actions necessary to ensure that WorldCom's confidential information does not fall into the hands of BellSouth's retail operations. The burden of proving that BellSouth has failed to do so should rest with WorldCom. However, BellSouth should not be strictly liable for taking all actions, as WorldCom proposes. ***

DISCUSSION

The issue in dispute concerns the extent to which BellSouth must protect WorldCom's confidential information. BellSouth is willing to take all *reasonable* actions necessary to ensure that WorldCom's confidential information "does not fall into the hands of BellSouth's retail operations." However, WorldCom's proposed language would ostensibly require that BellSouth "take all actions" to protect such information without any limitation and without specifying what actions WorldCom has in mind. WorldCom's proposal is fraught with difficulties and is an invitation to ongoing disputes. For example, one "action" that BellSouth could take in order to protect WorldCom's confidential information would be to administer daily polygraph tests to every BellSouth employee who had access to WorldCom's confidential information. When asked at his deposition whether WorldCom wanted BellSouth to take such actions, Mr. Price responded "no." Price Dep. (Vol. 2) at 133-34. Yet, there is nothing in WorldCom's proposed language that would impose such a limitation. Furthermore, Mr. Price was not even aware of what specific actions WorldCom wanted BellSouth to take to protect WorldCom's confidential information. *Id.* at 136-137. The only actions that BellSouth should be required to take are those that are "reasonable," which is the language BellSouth has proposed and which is the language this Commission should adopt.

The Commission also should reject WorldCom's proposed "rebuttable presumption" that BellSouth has done something wrong simply by virtue of the fact that WorldCom's confidential information may be disclosed. BellSouth is responsible under the law and will abide by the law in taking all reasonable measures to protect confidential information. However, WorldCom's demand that BellSouth prove that it was not the source of a release of confidential information is patently unreasonable because WorldCom's confidential information could be disclosed by any number of sources, including WorldCom itself as well as WorldCom's vendors and contractors.

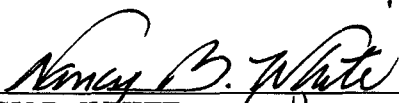
It is improper and absurd to assume that the disclosure of such information, by default, must have come from BellSouth.

CONCLUSION

For the reasons set forth above, BellSouth requests that the Commission adopt BellSouth's position on each issue enumerated above.


Respectfully submitted this 9th day of November, 2000.

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