State of Florida

Public Service Commission

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-M-E-M-O-R-A-N-D-U-M-

DATE: SEPTEMBER 6, 2001

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK & ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF COMPETITIVE SERVICES (FULWOOD, BARRETT, BLOOM, DOWDS, KING)
DIVISION OF LEGAL SERVICES (BANKS, ELLIOT)

RE: DOCKET NO. 001797-TP - PETITION BY DIECA COMMUNICATIONS, INC. D/B/A COVAD COMMUNICATIONS COMPANY FOR ARBITRATION OF UNRESOLVED ISSUES IN INTERCONNECTION AGREEMENT WITH BELLSOUTH TELECOMMUNICATIONS, INC.

AGENDA: 09/18/2001 - REGULAR AGENDA - POST HEARING DECISION - PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\001797.RCM

CASE BACKGROUND

On December 15, 2000, Covad Communications Company (Covad) filed a Petition for Arbitration pursuant to 47 U.S.C. Section 252(b) of the Telecommunications Act of 1996, seeking arbitration of certain unresolved issues in the interconnection negotiations between Covad and BellSouth Telecommunications Incorporated (BellSouth). The petition enumerated 35 issues. On January 9, 2001, BellSouth timely filed its Response to the petition.

At the issue identification meeting, 28 issues were identified by the parties to be arbitrated. Prior to the administrative hearing, the parties resolved or agreed to stipulate to a number of those issues. The administrative hearing was held on June 27-28, 2001. This is staff's recommendation on the remaining issues to be arbitrated: 1, 5a, 5b, 5c, 6, 7a, 7b, 8, 11a, 11b, 12, 16, 18, 22, 23 24, 25, 29, 30, and 32a. Staff notes that the Commission's jurisdiction is addressed in Issue A.

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List of Acronyms

ADSL	Asymmetric Digital Subscriber Line
ADUF	Average Daily Usage File
AIN	Advanced Intelligent Network
ALEC	Alternative Local Exchange Carrier
ANI	Automatic Number Identification
ANSI	American National Standards Institute
API	Application Programming Interface
ASR	Access Service Request
ATIS	Alliance for Telecommunications Industry Solutions
BCCM	BellSouth Change Control Manager
BFR	Bona Fide Request
BOC	Bell Operating Company
C.F.R.	Code of Federal Regulations
CABS	Carrier Access Billing System
CCA	Collocation Conversion Application
CCCM	CLP's Change Control Manager
CCP	Change Control Process
CDF	Conventional Distribution Frame
CEV	Controlled Environmental Vault
CFA	Connecting Facility Assignment
CLEC	Competitive Local Exchange Carrier
CLP	Competing Local Provider
CO	Central Office
CORBA	Common Object Request Broker Architecture
CSOTS	CLEC Service Order Tracking System
CSA	Carrier Serving Area
CSR	Customer Service Record
DA	Directory Assistance
DLC	Digital Loop Carrier
DLEC	Data Local Exchange Carrier
DOE	Direct Order Entry

DSL	Digital Subscriber Line
DSLAM	Digital Subscriber Line Access Multiplexer
EC-CPM	Exchange Carrier-Common Presentation Manager
ECIC	Electronic Communications Implementation Committee
ECS	Electronic Communications Support Group
ECTA	Electronic Communications Trouble Administration
EDI	Electronic Data Interchange
EICCP	Electronic Interface Change Control Process
EMI	Exchange Message Interface
EODUF	Enhanced Optional Daily Usage File
ERS	Extended Reach Service
FCC	Federal Communications Commission
FGC	Feature Group C
FGD	Feature Group D
FID	Field Identifier
FX	Foreign Exchange
GUI	Graphical User Interface
HVAC	Heating Ventilation and Air Conditioning
ICS	Interconnections Services
IDLC	Integrated Digital Loop Carrier
IDSL	Integrated Digital Subscriber Line
ISDN	Integrated Services Digital Network
ILEC	Incumbent Local Exchange Carrier
ISP	Internet Service Provider
IXC	Interexchange Carrier
LAN	Local Area Network
LCC	Line Class Code
LCCAM	Line Class Code Assignment Module
LCSC	Local Carrier Service Center
LEC	Local Exchange Carrier
LENS	Local Exchange Navigation System
LEO	Local Exchange Ordering System
LERG	Local Exchange Routing Guide
LESOG	Local Exchange Service Order Generator
LNP	Local Number Portability

LPIC	Local Presubscribed Interexchange Carrier
LSOG	Local Service Ordering Guidelines
LSR	Local Service Request
LSVT	Line Sharing Verification Transmitter
MDF	Main Distribution Frame
MOS	Modified Operator Signaling
NEBS	Network Equipment and Building Specifications
NRC	Non-Recurring Charge
NTF	No Trouble Found
NXX	Central Office Code/Prefix
OBF	Ordering and Billing Forum
OCN	Operating Company Name
ODUF	Optional Daily Usage File
OLNS	Originating Line Number Screening
OS/DA	Operator Service/Directory Assistance
OS	Operator Service
OSS	Operational Support Systems
OTS	Operator Transfer Service
PIC	Presubscribed Interexchange Carrier
PIU	Percent Interstate Usage
PLU	Percent Local Usage
POI	Point of Interconnection
POT	Point of Termination
POTS	Plain Old Telephone Service
PUC	Public Utilities Commission
RCF	Remote Call Forwarding
RNS	Regional Negotiation System
ROS	Regional Ordering System
SL	Service Level
SOCS	Service Order Communications Systems
SOER	Service Order Edit Routine
SOLAR	Service Order Language Analysis Routine
TAFI	Trouble Analysis and Facilitation Interface
TAG	Telecommunications Access Gateway
TCIF	Telecommunications Industry Forum

TOPS	Traffic Operator Position Systems
UCL	Unbundled Copper Loop
UCL-ND	Unbundled Copper Loop Non Designed
UNE	Unbundled Network Element
UNE-P	Unbundled Network Element-Platform
USOC	Universal Service Order Code
WFA	Work Force Administration

DISCUSSION OF ISSUES

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

RECOMMENDATION: Staff believes that the Commission has jurisdiction pursuant to Chapter 364, Florida Statutes, and Section 252 of the Federal Telecommunications Act of 1996 (Act) to arbitrate interconnection agreements, and may implement the processes and procedures necessary to do so in accordance with Section 120.80 (13)(d), Florida Statutes. Section 252 states that a State Commission shall resolve each issue set forth in the petition and response, if any, by imposing the appropriate conditions required. This section requires this Commission to conclude the resolution of any unresolved issues not later than nine months after the date on which it received the request under this section. In this case, however, the parties have explicitly waived the nine-month requirement set forth in the Act.

Further, staff believes that while Section 252(e) of the Act reserves the state's authority to impose additional conditions and terms in an arbitration not inconsistent with the Act and its interpretation by the FCC and the courts, the Commission should use discretion in the exercise of such authority. **(BANKS)**

POSITION OF PARTIES

COVAD: The Commission has jurisdiction in this matter pursuant to Section 252 of the Federal Telecommunication Act of 1996 (Act) to arbitrate interconnection agreements. Section 252 states that a state commission shall resolve each issue set forth in the petition and response, if any, by imposing the appropriate conditions as required. Further, Section 252(e) of the Act reserves the state's authority to impose additional conditions and terms in an arbitration not inconsistent with Act and its interpretation by the FCC and the courts.

BELLSOUTH: BellSouth adopted the Commission Staff's position on this issue.

STAFF ANALYSIS

Covad did not address the Commission's jurisdiction in its brief. Therefore, Covad has waived any objection to the

Commission's jurisdiction in this matter. However, in its prehearing statements filed with the Commission, Covad states that the Commission's jurisdiction to arbitrate the issues in this docket is pursuant to Section 252 of the Act. Further, Covad states that Section 252 provides that a state commission shall resolve each issue set forth in the petition and response.

In its brief, BellSouth states that the Commission has jurisdiction in this matter pursuant to Section 252 of the Act, which requires the Commission to resolve each issue set forth in the petition and response, if any, by imposing conditions as required to implement Section 251 of the Act. (BellSouth BR, p.4) Further, BellSouth states that the U.S. District Court for the Northern District of Florida has determined that the Commission is required to arbitrate and resolve all issues brought to the Commission, not just those that are subject to arbitration under the Act. MCI Telecommunications Corp. v. BellSouth Telecommunications, Inc. et al, Case No.4:97cv141-RH (N.D. Fla. June 6, 2000). (BellSouth BR, p.4)

CONCLUSION

Staff believes that the Commission has jurisdiction pursuant to Chapter 364, Florida Statutes, and Section 252 of the Federal Telecommunications Act of 1996 (Act) to arbitrate interconnection agreements, and may implement the processes and procedures necessary to do so in accordance with Section 120.80 (13)(d), Florida Statutes. Section 252 states that a State Commission shall resolve each issue set forth in the petition and response, if any, by imposing the appropriate conditions required. This section requires this Commission to conclude the resolution of any unresolved issues not later than nine months after the date on which it received the request under this section. In this case, however, the parties have explicitly waived the nine-month requirement set forth in the Act.

Further, staff believes that while Section 252(e) of the Act reserves the state's authority to impose additional conditions and terms in an arbitration not inconsistent with the Act and its interpretation by the FCC and the courts, the Commission should use discretion in the exercise of such authority.

ISSUE 1: What limitations of liability, if any, should be included in the Parties' Interconnection Agreement?

RECOMMENDATION: Staff believes the record does not provide sufficient evidence upon which a decision can be made as to whether or not to impose the disputed language addressing limitations on liability. Therefore, staff recommends that the Commission not impose the adoption of any disputed terms contained in the limited liability provision of the parties' interconnection agreement, whereby the parties would be liable in damages, without a liability cap, for a material breach of the interconnection agreement. **(BANKS)**

POSITION OF THE PARTIES:

COVAD: Covad proposes that there be no limited liability for material breaches of the contract. Further, if BellSouth willfully breaches the contract or engages in gross negligence in implementing the contract, no limitation of liability should apply. In order to develop local competition via an interconnection agreement, the agreement must be enforceable.

BELLSOUTH: This issue is beyond the scope of Section 251 of the 1996 Act. Therefore, the Commission should not impose the adoption of disputed language relating to this issue. If, however, the Commission addresses the merits of the disputed language, each party's liability to the other arising out of any negligent act or omission should be limited to a credit for the actual cost of the services or functions not performed or improperly performed. BellSouth is willing to exclude from this limitation losses resulting from gross negligence or intentional misconduct.

STAFF ANALYSIS:

The issue in contention is whether the interconnection agreement should contain language that imposes a limitation on liability in the event of a material breach of the agreement. Covad proposes that the parties retain the existing limitation of liability provision, which in part does not limit liability in the event of a material breach of the contract or in the event of gross negligence or willful misconduct. (Covad BR, p.1) Covad states that the key issue is whether BellSouth should be allowed to limit its liability in the event of a material breach of the contract. (Covad BR, p.1) Covad asserts that the evidence shows that the existing liability cap provision functioned effectively for the parties for the duration of the Covad Interconnection agreement. (Covad BR, p.1) Further, Covad states that BellSouth has not been involved in any disputes with ALECs regarding the limitation of liability provision in the agreement in which the materiality of the breach was raised as an issue. (TR 593)

Covad witness Oxman states that the current liability provision was negotiated between BellSouth and Covad in 1998. Witness Oxman asserts that the agreement specifically provided that BellSouth would not be protected by a limitation of liability if Covad were damaged "from gross negligence or willful misconduct of BellSouth." (TR 33) In addition, the clause also provided that if BellSouth failed to "honor in one or more material respects any one or more of the material provisions" of the contract, no limitation of liability would apply at all. (TR 33) Witness Oxman explains that BellSouth has proposed a liability plan in which BellSouth would only be liable to Covad for the actual costs of the services or functions not performed or improperly performed. (TR 33) Witness Oxman opines that a liability clause that substantially wipes out any responsibility or damages for a breach provides little, if any, incentive for a party to comply with the contract. (TR 34) Witness Oxman contends that BellSouth's proposed liability limitation clause would harm the Commission's pro-competitive initiatives. For example, the witness states that under BellSouth's proposal, if BellSouth failed to provide a loop to Covad, Covad's "damages" would be limited to the "actual cost" of the loop it did not provide. (TR 34) In that instance, witness Oxman states that BellSouth would not bill Covad for the loop that it did not provide, and Covad would be precluded from recovering any other damages for that breach of the contract. (TR 34)

BellSouth asserts that the issue of limitation of liability is beyond the scope of the Telecommunications Act of 1996 (Act). (BellSouth BR, p.5) BellSouth explains that the issue is not an appropriate subject for arbitration because Section 252(c) of the Act only empowers the Commission to resolve "open issues" in a manner that meets the "requirements of Section 251, including the regulations prescribed by the [FCC] pursuant to Section 251." 47 U.S.C. § 251(c)(1). (BellSouth BR, p.5) BellSouth explains that none of the requirements of Section 251 address limitation of liability and there is nothing about a limitation of liability clause that would ensure compliance with the requirements of Section 251 of the Act. (BR at 5) BellSouth states that in Docket

No. 000649-TP, the Commission acknowledged that, although it was obligated to arbitrate "any open issue," it may only impose a condition or term required to ensure that such resolutions and conditions meet the requirements of Section 251. (BellSouth BR, p.6) The Commission went on to find in that docket, that it was not appropriate to "impose adoption of any disputed terms contained in the limited liability provision whereby the parties would 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 Agreement." (BellSouth BR, p.6)

BellSouth contends that pursuant to the Commission's Order No. PSC-01-0824-FOF-TP, issued March 30, 2001, in Docket No. 000649-TP, the Commission should refuse to impose any disputed terms in the limited liability provision because such a provision is not required to implement an enumerated item under Sections 251 and 252 of the Act. (BellSouth BR, p.6) BellSouth witness Cox states that BellSouth's proposal provides that each party's liability to the other arising out of any negligent act or omission should be limited to a credit for the actual cost of the services or functions not performed or improperly performed. (TR 499) Witness Cox asserts that it is common for parties to an interconnection agreement to agree to limited liability. (TR 500) Witness Cox contends that Covad's proposal should be denied because it is inconsistent with standard practices, and it would result in preferential treatment of Covad. (TR 502) Further, BellSouth asserts that Covad's language effectively renders any limitation of liability inapplicable because it could potentially apply to any breach of the agreement. (TR 593)

CONCLUSION

Staff believes that while "any open issue" may be arbitrated, the Commission may only impose a condition or term required to ensure that such resolutions and conditions meet the requirements of Section 251. Although Covad asserts that the evidence shows that the existing liability cap provision functioned effectively for the parties for the duration of the Covad Interconnection agreement, Covad has not demonstrated that this Commission must adopt language for a limitation of liability clause. Staff believes that the Commission should make its determination on whether or not to impose a condition or term based upon whether the term or condition is required to ensure compliance with the requirements of Sections 251 or 252. Staff notes that liquidated damages is not an enumerated item under Sections 251 and 252 of the Act. Staff believes that the record does not support a finding that a liquidated damages provision is required to implement an enumerated item under Sections 251 and 252 of the Act.

Based on the foregoing, staff believes the record does not provide sufficient evidence upon which a decision can be made as to whether or not to impose the disputed language addressing limitations on liability. Therefore, staff recommends that the Commission not impose the adoption of any disputed terms contained in the limited liability provision of the parties' interconnection agreement, whereby the parties would be liable in damages, without a liability cap, for a material breach of the interconnection agreement.

ISSUE 5a: What is the appropriate interval for BellSouth to provision an unbundled voice-grade loop, ADSL, HDSL, or UCL for Covad?

Loop Type	**Provisioning Intervals**
Service Level 1 (SL1)	Three Business Days
Service Level 2 (SL2)	Four Business Days
ADSL, HDSL, or UCL	Four Business Days

Staff notes that these intervals apply to loops that do not require conditioning. Staff recommends that the provisioning interval should begin after Covad submits an error-free electronic order during BellSouth's normal retail business hours. Staff notes that when Covad submits orders outside of BellSouth's normal business hours, BellSouth should deem Covad's order as received at the start of business the following business day. Staff recommends that BellSouth should be allowed an additional day for manually submitted orders.

Staff recommends that these provisioning intervals should be included in the Interconnection Agreement. Further, staff recommends that BellSouth should be required to meet these intervals for at least 90 percent of SL1 and SL2 loop requests within any calendar month, which is derived from Rule 25-4.066(2), FAC. Staff notes that this rule only applies to BellSouth's retail service; however, staff believes that parity extends this benchmark to Covad as well. Staff notes that there is not enough record evidence to support a determination of the percentage of time that BellSouth should be required to meet for the intervals for ADSL, HDSL, or UCL loops. **(FULWOOD)**

POSITION OF THE PARTIES:

COVAD: These loops should be provisioned within 3 business days. This interval should be included in Covad's Interconnection Agreement.

BELLSOUTH: BellSouth will provide these facilities according to its Interval Guide, which is 5-7 working days after an error-free local service request has been received and a Firm Order Confirmation (FOC) has been returned to Covad.

STAFF ANALYSIS:

This issue before the Commission is to determine the appropriate intervals for BellSouth to provision an unbundled voice grade loop, ADSL, HDSL, or UCL loop. Moreover, this issue addresses whether the intervals should be included in the parties' Interconnection Agreement. BellSouth witness Latham testifies that an unbundled voice grade loop is a circuit that supports Plain Old Telephone Service (POTS), and may be provisioned using any technology that supports voice grade service. According to witness Latham, there are two types of voice grade loops, Service Level 1 (SL1) and Service Level 2 (SL2). He explains that SL1 loops are 2-wire loops which do not include a test point, Design Layout Record (DLR), or any coordinating conversion activities; SL2 loops are 2-wire or 4-wire loops which include a test point, DLR, and order coordination. (TR 954)

BellSouth witness Latham asserts that ADSL loops must meet the Revised Resistance Design (RRD) standards which require "a non-loaded copper loop, up to 18,000 feet in length, with up to 6,000 ft of [bridged tap] inclusive of loop length, and 1300 ohms [of] resistance." For clarification, he explains that a loop with 4000 feet of bridged tap must be less than 14,000 feet. (TR 954)

BellSouth witness Latham asserts that HDSL loops must meet the Carrier Serving Area (CSA) transmission standards, which require a non-loaded copper loop, typically less than 12,000 feet in length, with up to 2,500 feet of bridged tap inclusive of loop length, and 850 ohms of resistance., (TR 954-955)

BellSouth witness Latham points out that BellSouth offers three types of Unbundled Copper Loops (UCLs): UCL-Short, UCL Long, and UCL-Non Designed (UCL-ND). He explains that the UCL-Short is a 2-wire or 4-wire copper loop which is up to 18,000 feet in length, with up to 6,000 feet of bridged tap inclusive of loop length, and 1300 ohms of resistance. The UCL-Long is a 2-wire or 4-wire copper loop exceeding 18,000 feet in length, with up to 2800 ohms resistance and load coils. The UCL-ND is a non-loaded copper loop that has no specific length, and up to 1300 ohms resistance. (TR 955)

BellSouth witness Latham proposes a five business day interval for SL1 loops, while proposing a six business day interval for provisioning SL2, ADSL, HDSL, and UCL loops. He points out that BellSouth's proposed intervals include "one business day for the Firm Order Confirmation (FOC), on accurate orders received before 10 a.m." (TR 956) He testifies:

> The FOC does not constitute and should not be considered a guarantee that facilities are available. The committed due date is based on an assumption that facilities are available. If there is a post-FOC facility problem detected, the ALEC will be informed of the estimated service date by a supplemental FOC. If it is determined that facilities are not available at the time service is being installed, the ALEC will receive a telephone call from the BellSouth installation control center. (TR 962)

Covad witness Allen disagrees with BellSouth that the FOC interval should be added to the loop delivery interval, which is compounded for manual orders. He points out that the FOC interval for SBC is six hours, while Qwest's interval is 24 hours. (TR 125) Moreover, witness Allen asserts that SBC's and Verizon's FOC intervals are included in the loop provisioning interval. (TR 126)

Covad witness Allen proposes that the interval for voice grade, ADSL, HDSL, and UCLs should be three business days, including BellSouth's FOC interval. He asserts that BellSouth has only committed to target dates to provision the loops set forth in BellSouth's Interval Guide. (TR 124) Moreover, witness Allen contends that BellSouth desires the exclusive right to modify loop delivery intervals. He adds that if language is not inserted into the agreement, BellSouth would not have an incentive to meet its target date or improve delivery intervals. (TR 125) Covad witness Allen alleges:

> BellSouth's current loop delivery intervals deny Covad a meaningful opportunity to compete in Florida. (TR 125)

Witness Allen believes that a firm loop delivery interval would enhance Covad's ability to be competitive, since Covad would be able to offer its customers a date for service delivery. (TR 125-126)

However, BellSouth witness Latham asserts that BellSouth does not have provisioning intervals on its retail side; retail service depends on central office workloads. (TR 993) He explains that missed dates may occur because of the end user or defective pairs, which are the same problems BellSouth faces on its retail side. (TR 994) Witness Latham describes BellSouth's intervals as "target due dates," which sometimes may not be met due to extenuating circumstances beyond BellSouth's control. (TR 995) He asserts:

> We prefer that we have one interval for all CLECs so that we can provide nondiscriminatory treatment and, you know, parity and those type things so that if we need to make a change that it changes for everybody and we notify those parties at least 45 days in advance of that so that they can adjust their systems accordingly. (TR 996)

BellSouth witness Latham argues that if the loop intervals are in the agreement, BellSouth cannot change the intervals until the agreement expires. As a result, different ALECs may have different intervals in their contracts, which could create discriminatory treatment and confusion for BellSouth installation technicians. (TR 966)

Covad witness Allen counters that excluding the intervals from the contract gives BellSouth the exclusive right to unilaterally modify loop intervals. (TR 125) However, he asserts that where the intervals are included in the agreement, BellSouth could only modify intervals through negotiations, which affords both parties input into the changes. (TR 127) He points out that New York, Pennsylvania, Maryland, and Massachusetts have set firm delivery dates for DSL loops in Verizon's territory, which is six days from the receipt of a correct LSR. The witness maintains that the FOC interval is included in the loop delivery interval, unlike BellSouth's proposed intervals. Further, witness Allen asserts that the intervals are in the Agreement between Verizon and Covad, and thus, Verizon cannot unilaterally alter the intervals. (TR 126)

BellSouth witness Latham claims that BellSouth's proposed intervals are reasonable considering that the monthly volume of loops BellSouth provisions for CLECs has nearly doubled over the past 12 months. (TR 956) He testifies:

> In April of 2000, BellSouth installed 6,272 UNE loops in Florida, and in March of 2001, the monthly figure had more than doubled to 13,009. (TR 963)

However, Covad witness Allen replies that where BellSouth maintains that the volumes of loops ordered by ALECs is increasing significantly, BellSouth should employ staff to meet the needs of its wholesale customers. (TR 155) Witness Latham responds, however, that managing the workforce is not entirely under BellSouth's control, since ALECs may issue a significant number of orders in a day. (TR 974) Under cross examination, Covad witness Allen did concede that there are factors other than the actual task time associated with provisioning intervals; however, he contends that workloads should not be a factor. He asserts that workload imbalances may happen occasionally, but BellSouth should counter any imbalances with proper staffing. (TR 200-201)

Covad witness Allen asserts that provisioning DSL loops is similar to provisioning voice grade copper loops; therefore, he believes the provisioning intervals should reflect that fact. (TR 124) He adds:

> Although some retail loops are already connected to the switch, Mr. Latham tries to make the act of performing simple central office cross-connection seem like rocket science. (TR 155)

Moreover, witness Allen asserts that BellSouth does not offer any support for additional work that may justify an extended interval for DSL. (TR 154)

BellSouth witness Latham contends that while Covad implies that an xDSL loop is nothing more than a plain copper voice loop, he points out that voice grade loops work properly with significant amounts of bridged tap. (TR 961) Further, he argues that provisioning an unbundled loop for Covad usually requires more work than turning up a BellSouth end-user. Comparatively, an unbundled loop requires cross-connects to Covad's collocation space, and likely involves circuit coordination between the parties. He contends that these activities typically involve multiple BellSouth work groups; thus, BellSouth's proposed intervals are necessary. (TR 963) BellSouth witness Latham admits that BellSouth could deliver an ADSL loop in three days; however, he maintains that an appropriate interval considering the volumes of loops ordered by ALECs is six to seven days. (TR 972)

BellSouth witness Latham points out that since last year, BellSouth has reduced the provisioning interval for SL1 and SL2 loops by one day. Further, BellSouth currently has an internal initiative that seeks to reduce the SL1 loop interval by an additional day. (TR 976) Under cross examination witness Latham admits that provisioning for SL1 and UCL loops is very similar. However, he justifies the difference in loop intervals by pointing out that BellSouth's current initiative is to reduce loop intervals primarily for POTS type services. (TR 976) He testifies:

> . . . we're not certain that we can really even do the voice-grade loop and the fact that the unbundled copper loop nondesigned is more of a premium service for advanced data service type use, DSL service type use. We thought it was more important to provide the basic voice communications as quickly and efficiently as possible and then follow-up with the DSL stuff after the FOC. (TR 977)

BellSouth witness Latham asserts that BellSouth recognizes that actual loop provisioning intervals may differ for the same type of loop. He explains that BellSouth derives its provisioning intervals from actual intervals "typically" experienced by its technicians, where "typically" represents approximately 80% of the cases. (TR 1010)

However, Covad contends:

> The evidence shows that when BellSouth is ordered by a Commission to comply with a loop delivery interval -- miraculously, BellSouth is able to adjust its workload and force management issues to accommodate that order. (Covad BR p. 5)

Staff notes that BellSouth witness Latham asserts that when an appointment is missed due to the end user, BellSouth will notify Covad. Subsequently, Covad must submit a supplemental order to the local carrier service center (LCSC) with a proposed due date within five days. (TR 962)

<u>Analysis</u>:

The dispute in this issue is whether BellSouth's intervals for provisioning unbundled voice grade, ADSL, HDSL, and UCL loops are appropriate, and whether these intervals should be included in the parties' interconnection agreement. Covad witness Allen proposes that the interval for voice grade, ADSL, HDSL, and Unbundled Copper Loops (UCLs) should be three business days, including BellSouth's FOC interval. (TR 124) In contrast, BellSouth proposes a five business day interval for SL1 loops, while proposing a six business day interval for provisioning SL2, ADSL, HDSL, and UCL loops, including BellSouth's FOC interval. (TR 956) Staff notes that BellSouth's FOC does not ensure that the requested facilities are available, but only confirms that BellSouth has received an accurate, error-free order from Covad. If it is subsequently determined that facilities are not available, BellSouth would notify Covad of the estimated service date. (TR 962) Staff also notes that BellSouth's FOC interval is one business day for accurate error-free orders received by 10 a.m. (TR 956)

BellSouth bases its intervals on achieving parity with its target loop delivery interval for its retail services, but staff believes that BellSouth's argument raises questions about BellSouth's FOC intervals. Staff notes that BellSouth provides no testimony of a FOC for its retail customers. Staff assumes that BellSouth's customer service representatives enter error-free orders directly into BellSouth's system as received by the end-user. Consequently, staff believes that BellSouth's provisioning interval begins when BellSouth receives an order from its end-user. Staff believes that if Covad submits a local service request (LSR) electronically, the order should enter BellSouth's systems in a similar manner as do BellSouth's retail service orders. Staff notes that BellSouth presented no testimony that Covad's orders for SL1, SL2, ADSL, and HDSL loops do not flow-through its systems. Therefore, staff believes that Covad's provisioning interval should begin when Covad electronically submits an accurate error-free order into BellSouth's system. Staff believes that BellSouth should not be allowed a grace period before the provisioning interval begins for Covad's orders, which enter BellSouth's systems in the same manner as do BellSouth's retail service orders. Staff is persuaded that BellSouth's FOC interval should not be added separately to the loop provisioning interval for Covad.

Staff considered that manual orders are not submitted directly into BellSouth's systems. Consequently, a BellSouth representative would have to manually enter Covad's order into BellSouth's system.

Staff recognizes that other ILEC's provisioning intervals differ. Moreover, staff notes that ILECs have included the FOC in their provisioning interval, while others have not. (TR 125) However, staff clarifies that we are not attempting to micro-manage BellSouth's process for entering a manual order. Therefore, staff believes that BellSouth's proposed additional day for processing a manual order is reasonable.

BellSouth contends that its retail provisioning intervals are not distinct, and depend largely on workloads. (TR 993) BellSouth also points out that ALEC UNE loop orders have nearly doubled between April 2000 and March 2001. (TR 956) However, staff agrees with Covad that progressively increasing workload should not be a major factor in extending loop intervals. (TR 200) Staff believes that workload imbalances may occur, but staff believes that they should only occur occasionally.

<u>SL1 Loops</u>

BellSouth witness Latham asserts that last year BellSouth reduced its interval for SL1 and SL2 loop by one day. He also asserts that BellSouth has an internal initiative to reduce SL1 loop provisioning intervals by an additional day, which would result in an interval of three days plus the FOC. (TR 976)

Staff notes that Rule 25-4.066(2), Florida Administrative Code (FAC), requires:

> Where central office and outside plant facilities are readily available, at least 90 percent of all requests for primary service in any calendar month shall normally be satisfied in each exchange or service center within an interval of three working days after receipt of application when all tariff requirements relating thereto have been complied with, except those instances where a later installation date is requested by the applicant or where special equipment or services are involved.

While this rule is only applicable to retail service, staff believes it provides a starting point for determining reasonable provisioning intervals for UNE loops. Staff agrees with BellSouth that there is more work in provisioning service to a Covad end-user compared to a BellSouth end-user. However, the evidence shows that provisioning an SL1 loop for Covad only requires additional cross-connects to Covad's collocation space. (TR 963) Staff notes that BellSouth assumes 21-36 minutes are required to complete central office cross-connects. (EXH. 32, pp. 1-2) Staff recognizes that Exhibit 32 refers to cross-connects for line sharing. However, staff believes it is reasonable to assume that an SL1 loop likely would require a lesser number of cross-connects, since a splitter would not be involved. Therefore, staff is persuaded that BellSouth should provision SL1 loops for Covad within three business days after Covad submits an accurate error-free LSR. Staff notes that BellSouth does not dispatch a technician to the customer's premises for the majority of its non-designed loops whether for Covad or its retail customers. (TR 689)

<u>SL2</u>:

Staff notes that an SL2 loop is a voice grade loop; however, SL2 loops include test points, a DLR, and order coordination. (TR 954) Although staff believes that BellSouth should provision SL2 loops in the three-day interval staff recommends for SL1 loops, staff believes that an additional day for order coordination is appropriate. In support, BellSouth witness Latham propounds that order coordination would increase a loop delivery interval by an additional day. (TR 979) Therefore, staff believes that BellSouth should provision SL2 loops for Covad within four business days after Covad submits an accurate error-free LSR.

<u>ADSL, HDSL, and UCL Loops</u>:

BellSouth witness Latham contends that xDSL loops require cross-connects, and likely involve circuit coordination between the parties. (TR 963) The BellSouth witness concedes that BellSouth could deliver an ADSL loop in three days, but he believes the appropriate interval is six to seven days. However, staff agrees with Covad that provisioning an xDSL loop is similar to provisioning a voice grade loop. (TR 124) Staff notes that BellSouth provides no evidence that the work activities involved in provisioning an xDSL loop are greater than those involved for SL1 loops, except for order coordination. Further, BellSouth admits that provisioning for SL1 and UCL loops is very similar, but BellSouth justifies the difference in loop intervals by asserting that BellSouth's current initiative is to reduce loop intervals primarily for POTS type services. (TR 976) Staff agrees with BellSouth that provisioning voice grade loops should take precedence over other type services.

As mentioned above, the Florida Public Service Commission (FPSC) Rules provide a provisioning standard that ILECs in Florida must meet for basic local voice grade service. However, staff is not aware of any Commission Rules addressing loop intervals for advanced services. Staff notes that BellSouth's planned interval for its retail ADSL service is four days. Staff also notes that BellSouth proposes a four day interval for line sharing. (TR 812) However, BellSouth seems to have uncertainty about its ability to deliver voice grade loops to Covad within three days, although BellSouth claims to make voice grade loops its priority. (TR 976) It appears to staff that BellSouth may have a workload imbalance due to how it allocates technicians.

At first blush, it appears that an appropriate interval for BellSouth to provision an unbundled ADSL, HDSL, and UCL loop is five days. The record shows that the work performed to provision these types of loops is similar to the work to provision an SL1 loop. Staff believes that two days added to the SL1 loop interval would provide BellSouth maneuverability for order coordination and workload. However, since BellSouth ADSL and proposed line sharing offering is four days, staff is persuaded that the appropriate provisioning interval for unbundled ADSL, HDSL, and UCL loops should be four days. Although BellSouth contends that its proposed ADSL service interval should only be applied to Covad's line sharing interval, staff believes that BellSouth should not gain a competitive advantage due to its market share. (TR 997-998) Staff notes that BellSouth did not limit its ADSL service interval only to BellSouth customers, which add ADSL service to a loop currently providing voice. Again, staff believes that provisioning an xDSL loop for Covad is similar to provisioning a voice grade loop, except when the loop requires conditioning. Staff notes that the interval does not apply for a loop that requires "decondition."

Staff considered Covad's proposal that staff's recommended intervals should be inserted into the interconnection agreement. Staff notes that BellSouth concedes the intervals set forth in its Interval Guide are target intervals. BellSouth maintains that it should have the right to modify dates as circumstances require, since BellSouth notifies Covad 45 days prior to a modification. (TR 995-996) Staff notes that several state commissions set firm delivery dates for DSL loops in Verizon's territory, and those intervals are included in the interconnection agreement between Covad and Verizon. (TR 126) Covad points out that BellSouth would have an incentive to meet its delivery intervals, and those intervals could only be modified through negotiations. (TR 125, 127) Staff believes that Covad should be entitled to firm delivery intervals. Moreover, staff agrees with Covad that firm loop provisioning intervals offer Covad a meaningful opportunity to compete. (TR 125-126) Therefore, staff is persuaded that these provisioning intervals should be inserted into the parties' agreement.

Staff acknowledges BellSouth's testimony that inserting loop provisioning intervals into the parties' interconnection agreement could create discriminatory treatment with respect to other ALECs. However, staff believes that the recommended intervals for Covad considers the orders submitted by other carriers as well. Staff bases its decision on parity with intervals BellSouth provides for itself. Considering BellSouth's argument that ALECs should be afforded nondiscriminatory treatment, staff opines that BellSouth intervals for itself would consider all carriers. Therefore, staff believes that the evidence of record supports that these recommended intervals are reasonable.

Staff also considered establishing a percentage in which BellSouth should be required to meet these intervals. Of course, staff believes that the 90 percent set forth in Rule 25-4.066(2), FAC, is appropriate for voice grade loops, which are SL1 and SL2 loops. However, staff observes that there is minimal record evidence to support a percentage of time that BellSouth should meet for other types of loops. Staff notes that Covad proposes that intervals should be inserted into the contract; however, Covad did not propose how often BellSouth should be required to meet the intervals. (Covad BR p.3) It appears to staff that BellSouth derives its provisioning intervals from actual intervals "typically" experienced by its technicians, where "typically" represents approximately 80 percent of the cases. (TR 1010) However, since staff recommends intervals that are shorter than those proposed by BellSouth, staff opines that the 80 percent would not be applicable. Therefore, staff believes that there is not enough record evidence to support a determination of the percentage of time that BellSouth should be required to meet these intervals for ADSL, HDSL, or UCL loops.

CONCLUSION:

Staff recommends that the appropriate intervals for BellSouth to provision unbundled voice grade, ADSL, HDSL, or UCL loops for Covad should be:

Loop Type	**Provisioning Intervals**
Service Level 1 (SL1)	Three Business Days
Service Level 2 (SL2)	Four Business Days
ADSL, HDSL, or UCL	Four Business Days

Staff notes that these intervals apply to loops that do not require conditioning. Staff recommends that the provisioning interval should begin after Covad submits an error-free electronic order during BellSouth's normal retail business hours. Staff notes that when Covad submits orders outside of BellSouth's normal business hours, BellSouth should deem Covad's order as received at the start of business the following day. Staff recommends that BellSouth should be allowed an additional day for manually submitted orders.

Staff recommends that these provisioning intervals should be included in the Interconnection Agreement. Further, staff recommends that BellSouth should be required to meet these intervals for at least 90 percent of SL1 and SL2 loop requests within any calendar month, which is derived from Rule 25-4.066(2), FAC. Staff notes that this rule only applies to BellSouth's retail service; however, staff believes that parity extends this benchmark to Covad as well. Staff notes that there is not enough record evidence to support a determination of the percentage of time that BellSouth should be required to meet these intervals for ADSL, HDSL, or UCL loops.

ISSUE 5b: What is the appropriate interval for BellSouth to provision an IDSL-compatible loop for Covad?

RECOMMENDATION: Staff recommends that the appropriate provisioning interval for an IDSL-compatible/UDC loop should be five business days. Staff notes that this provisioning interval includes an additional day for end-users served by digital loop carrier (DLC) systems. Staff also notes that when an end-user's copper pair is served by a fiber-fed IDLC system, a "work around" is required. Staff recommends that when a "work around" is required, the appropriate provisioning interval should be ten business days.

Staff recommends that these provisioning intervals should begin after Covad submits an error-free electronic order during BellSouth's normal retail business hours. Staff notes that when Covad submits orders after BellSouth's normal business hours, BellSouth should deem Covad's order as received at the start of business the following day. Staff recommends that BellSouth should be allowed an additional day for manually submitted orders.

Staff recommends that these provisioning intervals should be included in the Interconnection Agreement. Staff notes that there is not enough record evidence to support a determination of the percentage of time that BellSouth should be required to meet this interval for IDSL-compatible/UDC loops. **(FULWOOD)**

POSITION OF THE PARTIES:

COVAD: UDC/IDSL-compatible loops should be provisioned within 5 business days. If provisioning this loop requires a copper work around, the interval should be 10 business days. These intervals should be included in Covad's Interconnection Agreement.

BELLSOUTH: BellSouth's interval for IDSL-Compatible loops should be 10 business days plus the FOC interval, as set forth in BellSouth Service Interval Guide. Covad's proposed interval is unreasonable.

STAFF ANALYSIS:

This issue before the Commission is to determine the appropriate interval for BellSouth to provision an IDSL-compatible loop, and whether the interval should be included in the parties' interconnection agreement. Covad witness Allen asserts that IDSL service is typically available to end-users whose loops exceed the loop length limitations for most other DSL services, or end-users that are served through fiber-fed DLC systems. (TR 129) Covad witness Allen believes that IDSL-compatible loops should be provisioned within five calendar days of the submission of an LSR. He claims that Covad's proposed interval considers the fact that a special line card may be required, if the loop is provisioned through a digital loop carrier (DLC) system. (TR 128) Moreover,

> Covad believes that a firm installation interval for IDSL-Compatible Loops will make Covad's operations more efficient and will advance the public interest (as consumers would receive service more quickly). (TR 129)

On May 31, 2000, BellSouth made available the UDC loop, which is essentially identical to the ISDN loop. BellSouth witness Latham claims that the UDC loop is "provisioned in a manner that supports 'data-only' ISDN, which will better meet the needs of CLECs who want to deploy IDSL." (TR 957) Witness Latham testifies that IDSL-compatible loops, also referred to as Universal Digital Channel (UDC), are more complex to provision than a voice-grade, ADSL, HDSL, or UCL loop. (TR 963) He testifies:

> When these circuits are provided though a Digital Loop Carrier (DLC) system, they require specialized line cards in order to function properly. Additionally, the line cards also must be placed in certain slots within the DLC in order to be compatible with IDSL service. (TR 964)

Thus, BellSouth proposes a provisioning interval of ten days after BellSouth's issuance of the FOC. (TR 964)

Covad witness Allen claims that last year, BellSouth's IDSL loop provisioning interval increased from seven to twelve days without negotiations or consultation with Covad. (TR 129)

BellSouth witness Latham admits that BellSouth increased the interval for ISDN loops from seven to twelve days. He contends, however:

> We saw that in a large majority of the cases that the interval was being missed because of the extra work that is required to provision those when they are provisioned through a digital loop carrier system, and our own ISDN

> service also, the interval for our retail ISDN service increased by the same amount, so we wanted to be at parity and we also wanted to set a realistic expectation for the work that was involved so that when we gave a target interval that both you, as our customer, and your end user customer would have a realistic idea about when to expect it. (TR 980)

BellSouth witness Latham maintains that BellSouth's wholesale provisioning intervals are at parity with BellSouth's retail interval, and he points out that Covad was notified 45 days in advance of the increase in the ISDN intervals. Witness Latham argues that changes in provisioning circumstances should allow BellSouth the flexibility to change intervals, and thus these intervals should not be in the Agreement. (TR 964)

Covad witness Allen contends:

> Our experience reveals that BellSouth's major problem with IDSL loops does not relate to DLC slot placement issues, but rather results from BellSouth's technicians being poorly trained on installing line cards in the DLC units. (TR 156)

He argues that the settings on the line cards are identical for ISDN and IDSL, but BellSouth technicians continue to have problems with IDSL. Witness Allen suggests that better training would solve the problem rather than extended provisioning intervals. (TR 156)

BellSouth witness Latham rebuts:

> Normally, IDSL service needs only an ISDN loop. However, some DLC systems will not support IDSL service on certain time slots even though ISDN service will work fine on those same time slots. Therefore, the UDC is provisioned uniquely to avoid the non-compatible time slots so that Covad can be assured the loop supports IDSL services. (TR 965)

Covad witness Allen disputes BellSouth's assertion, claiming that all ISDN loops in compliance with the standards set by the American National Standards Institute (ANSI) will support IDSL. However, he contends that BellSouth employs certain DLC units that "create ISDN loops that do not comply with the ANSI standards, when placed in certain time slots on the DLC unit." (TR 155-156) Covad witness Seeger contends:

> . . . when Covad experienced problems with BellSouth provisioning loops for Covad's IDSL service, I personally worked extensively with BellSouth to help train their technicians. We've gone to a lot of trouble to help BellSouth develop methods and procedures for provisioning these, just to insure that Covad could get timely loop delivery. (TR 306)

He adds:

> I have personally installed cards in Covad DSLAMs in Florida. This process requires no more than 10 minutes in the central office and one hour maximum in the remote terminal. (TR 314)

BellSouth witness Latham asserts that when loops are provisioned through an integrated digital loop carrier, BellSouth would attempt a "work around" to provide an IDSL loop. A "work around" is where BellSouth moves the existing circuit from the fiber-fed DLC to an alternate copper facility. Witness Latham adds that if no alternate facilities are available, Covad has the ability to request that BellSouth place alternate facilities to that customer's location using the special construction process. (TR 965-966)

Witness Allen acknowledges that an xDSL loop "served by certain IDLC systems often requires a 'work around' to certain components of that DLC system." Therefore, Covad proposes ten business days for an IDSL loop when a "work around" is necessary. (TR 128)

<u>Analysis</u>:

The record indicates that there are three scenarios BellSouth may encounter provisioning ISDL loops. The end-user may be served via a copper pair directly from the central office; by a copper-fed DLC system; or by a fiber-fed IDLC system. (TR 129) When an end-user is served via a copper pair from the central office, staff believes that the work performed to provision the loop are identical to an ADSL loop. Staff believes that an end-user is served via a copper pair from the central office, the appropriate provisioning interval should be four business days. Staff notes that a four day interval would provide Covad parity with BellSouth's ADSL service. (See Issue 5a) However, Covad proposes a five day loop interval, which includes the installation of a line card. (TR 128) Staff observes that when an end-user's copper pair is not served via a DLC system, a line card would not be necessary. Covad does not propose an interval for loops that do not require this line card. Notwithstanding, staff believes that Covad's proposed interval is certainly appropriate when an end-user is served via a copper pair from the central office. Therefore, staff is persuaded that BellSouth should be required to provision IDSL-compatible/UDC loops within five business days.

BellSouth asserts that when an end-user's copper pair is served by a copper-fed DLC system, a line card must be installed in the DLC system. (TR 964) Staff believes that the installation of this line card should not require more than an additional day. Covad testifies that a line card installation in a DSLAM "takes ten minutes in the central office, and one hour maximum in the remote terminal." (TR 314) Staff notes that BellSouth's testimony reflects that the line card installation is the only additional work performed. Therefore, staff believes that when an end-user's copper pair is served by a copper-fed DLC system, the appropriate provisioning interval should be five business days.

BellSouth asserts that when an end-user's copper pair is served by a fiber-fed IDLC system, a "work around" is required. Staff notes that a "work around" typically is where BellSouth moves the existing circuit from the fiber-fed DLC to an alternate copper facility. (TR 965) Covad proposes a work around interval of five days. (Covad BR p. 3) Staff notes that BellSouth did not rebut Covad's provisioning interval for a work around. Therefore, staff believes that when an end-user's copper pair is served by a fiber-fed IDLC system, the appropriate provisioning interval should be ten business days.

Staff recommends that these provisioning intervals should be included in the Interconnection Agreement. (See Issue 5a)

CONCLUSION:

Staff recommends that the appropriate provisioning interval for an IDSL-compatible/UDC loop should be five business days. Staff notes that this provisioning interval includes an additional day for end-users served by digital loop carrier (DLC) systems. Staff also notes that when an end-user's copper pair is served by a fiber-fed IDLC system, a "work around" is required. Staff recommends that when a "work around" is required, the appropriate provisioning interval should be ten business days.

Staff recommends that these provisioning intervals should begin after Covad submits an error-free electronic order during BellSouth's normal retail business hours. Staff notes that when Covad submits orders after BellSouth's normal business hours, BellSouth should deem Covad's order as received at the start of business the following day. Staff recommends that BellSouth should be allowed an additional day for manually submitted orders.

Staff recommends that these provisioning intervals should be included in the Interconnection Agreement. Staff notes that there is not enough record evidence to support a determination of the percentage of time that BellSouth should be required to meet this interval for IDSL-compatible/UDC loops.

ISSUE 5c: What is the appropriate interval for BellSouth to "decondition" (i.e., remove load coils or bridged-tap) loops requested by Covad?

RECOMMENDATION: Staff recommends that the appropriate interval for BellSouth to "decondition" loops should be 14 days. Staff recommends that the provisioning interval should begin after Covad submits an accurate error-free electronic order during BellSouth's normal retail business hours. Staff notes that when Covad submits orders after BellSouth's normal business hours, BellSouth should deem Covad's order as received at the start of business the following day. Staff recommends that BellSouth should be allowed an additional day for manually submitted orders.

Staff also recommends that the 14-day loop deconditioning interval should be included in the Interconnection Agreement. **(FULWOOD)**

POSITION OF THE PARTIES:

COVAD: xDSL loops that require conditioning should be provisioned within 5 business days. This interval should be included in Covad's Interconnection Agreement.

BELLSOUTH: BellSouth has proposed to condition loops within 14 days. BellSouth's position is reasonable and nondiscriminatory.

STAFF ANALYSIS:

This issue before the Commission is to determine the appropriate provisioning intervals for BellSouth to remove load coils or bridged-tap from loops, also referred as "conditioning" or "deconditioning," and whether this interval should be included in the parties' Interconnection Agreement. BellSouth witness Latham testifies that "Loop conditioning is the removal of equipment or devices that diminish a loop's ability to provide advanced data services such as DSL." (TR 958) BellSouth initially proposed the following intervals for the removal of 1-3 intervening devices:

Aerial Plant = 10 days
Buried Plant = 15 days
Underground Plant = 30 days (TR 958)

Witness Latham believes that these intervals incorporate considerations relative to order volumes, and the scheduling and dispatch of technicians. (TR 959)

> Loop facilities placed in aerial sections are most accessible and typically present fewer problems to the technicians. Buried loop plant is more difficult to access due to the fact that equipment may be needed to dig up the facilities prior to conditioning. Underground loop plant is generally most difficult to access and can present many problems to the technicians who are attempting to condition these facilities. These problems may include: gaining municipal authority to close a street; pumping water and or hazardous gas from a manhole; un-racking and re-racking large splice cases; and dealing with older pulp-type cables, to name a few. (TR 959)

Covad witness Seeger counters:

> When I was a repair technician at NYNEX, I removed multiple cross-connections and multiple drop wires (i.e., bridged tap). The process took approximately 2 hours from start to finish. (TR 315)

Moreover, Covad witness Seeger asserts that where a BellSouth technician determines a loop needs conditioning, the technician should attempt to find a clean loop in the closest terminal. Then, the technician should attempt "a line station transfer, thus freeing up a clean pair." (TR 315)

Covad witness Allen contends that BellSouth's intervals are too long, which slow the "growth of competitive DSL to Florida consumers." (TR 157). He believes that BellSouth should be deconditioning loops as part of its everyday maintenance. He points out that BellSouth admitted that it could not distinguish between monies spent on deconditioning and other maintenance activities. (EXH 10, p. 8) Moreover, witness Allen adds that BellSouth announced plans to provide DSL to 600,000 customers by year end 2001, transforming its core network from analog to digital. (EXH 10, p. 1) Therefore, he concludes that BellSouth must be actively upgrading its outside plant, removing load coils and excessive bridge taps. (TR 158)

Under cross examination, BellSouth witness Latham concedes that BellSouth would be willing to accept a 14 day interval for line conditioning. He asserts that this 14 day interval has been filed by BellSouth in the Performance Metrics docket in Florida. (TR 1009)

Covad witness Allen points out that BellSouth proposed the 14 business day interval in the Performance Metrics Docket; however, Covad was not offered this interval in negotiations. (TR 159) Witness Allen asserts that BellSouth agreed to condition loops in 14 days only after the Georgia Commission ordered it to. Hence, one could reasonably infer that "BellSouth will not improve any aspect of its performance" unless required by a Commission order. (TR 159)

Analysis:

Staff agrees with Covad that BellSouth should be deconditioning loops as part of its everyday maintenance. (TR 158) However, this issue is to determine the appropriate provisioning intervals for BellSouth to condition a loop for Covad. Staff notes that the terms "condition" or "decondition" are used interchangeably to describe the process when BellSouth removes load coils or bridged-tap from loops.

Staff agrees with Covad that when a BellSouth receives a loop deconditioning request, BellSouth should attempt to find a clean loop in the closest terminal, and attempt a line station transfer. Staff believes that following these procedures should reduce loop conditioning intervals.

Staff agrees with BellSouth that there may be a number of difficulties encountered when deconditioning lines. (TR 959) Staff notes that although Covad witness Seeger provides testimony on work times based on his experience in deconditioning aerial plant, Covad does not rebut BellSouth's testimony on buried or underground plant. (TR 315) In accord with the record, staff believes it may be appropriate to recommend Covad's proposed interval for aerial plant, while recommending BellSouth's intervals for buried and underground plant. However, staff believes that Covad's proposed interval may be narrow in scope, while BellSouth'proposed intervals appear to be conservative.

BellSouth admits that it has not separated the times spent on deconditioning and other maintenance activities. It appears to staff that there is no BellSouth analog to base a decision upon in the record. However, under cross-examination, BellSouth agrees to accept the fourteen-day interval that BellSouth filed in the Performance Metrics Docket. (TR 1009) Staff believes that this interval is more appropriate than the record evidence on deconditioning. Therefore, staff recommends that the appropriate interval for BellSouth to "decondition" loops for Covad should be 14 days. Staff believes that BellSouth may be able to condition lines in a shorter interval than recommended; however, staff is unsure. Since BellSouth agrees to "decondition" loops within 14 days, staff recommends that this decondition interval should be included in the interconnection agreement. Staff notes that the Performance Measures testing may provide a clearer interval for which loops should be deconditioned.

CONCLUSION:

Staff recommends that the appropriate interval for BellSouth to "decondition" loops should be 14 days. Staff recommends that the provisioning interval should begin after Covad submits an accurate error-free electronic order during BellSouth's normal retail business hours. Staff notes that when Covad submits orders after BellSouth's normal business hours, BellSouth should deem Covad's order as received at the start of business the following day. Staff recommends that BellSouth should be allowed an additional day for manually submitted orders.

Staff also recommends that the 14-day loop deconditioning interval should be included in the Interconnection Agreement.

ISSUE 6: Where a due date for the provisioning of a facility is changed by BellSouth after a Firm Order Confirmation has been returned on an order, should BellSouth reimburse Covad for any costs incurred as a direct result of the rescheduling?

RECOMMENDATION: Yes. Staff recommends that for modifications or cancellations due to personnel-related problems, the Commission should require BellSouth to credit Covad for the ordering and provisioning charges (if billed prior to the actual loop provisioning). Further, staff recommends that for modifications or cancellations due to facilities-related problems, the Commission should require BellSouth to credit Covad for any provisioning charges that have been billed prior to the actual loop provisioning. (**DOWDS**)

POSITION OF THE PARTIES:

COVAD: BellSouth proposes that Covad be charged whenever it changes or modifies an order. BellSouth should compensate Covad in the same amount when BellSouth changes or modifies an order, by, for example, issuing a new delivery date. Covad simply wants nondiscriminatory treatment.

BELLSOUTH: Covad requests that BellSouth financially guarantee that an order will be provisioned on the original due date given. This request results in additional work effort and, therefore, additional costs being incurred in the ordering phase, prior to the FOC being returned to Covad. Covad's proposal is unreasonable.

STAFF ANALYSIS:

At issue is the question of whether Covad incurs costs when BellSouth cancels or changes a firm order commitment (FOC) delivery date, and whether Covad is entitled to recover these costs from BellSouth. Staff notes that BellSouth maintains that the cost causer should always compensate the party that incurs the cost(s). (TR 554) However, staff observes that BellSouth does not believe Covad incurs any cost when BellSouth cancels or modifies a Covad loop order. (TR 600) Further, even if Covad incurs any costs, BellSouth contends that recovery of these costs is covered in the performance metrics and concludes that Covad should not recover these costs directly from BellSouth, but instead using the penalties prescribed in the performance metrics approved in Docket No. 000121-TP. (TR 600)

Covad witness Allen testifies that BellSouth has proposed that Covad compensate BellSouth when Covad cancels or modifies a loop order; in response, he proposes that BellSouth compensate Covad when BellSouth cancels or modifies a Covad loop order, using the same rates that BellSouth would impose on Covad. (TR 131) Witness Allen asserts that BellSouth does not agree that BellSouth should pay Covad the same rates when BellSouth cancels or modifies a Covad loop order. (TR 132) The Covad witness contends that BellSouth has repeatedly canceled Covad unbundled loop orders unilaterally, on the FOC delivery date. (TR 131) Witness Allen states that these last-minute cancellations impose considerable costs on Covad with respect to the ordering and receipt of unbundled loops for DSL service. (TR 131)

Covad witness Allen testifies that in Florida alone, for 36% of Covad's orders, BellSouth issues more than one FOC delivery date. He continues that more that 12% of Covad's orders receive 3 or more delivery dates, and adds that "[C]ovad had at least 10 orders receiving 8 or more delivery dates." (TR 133) Witness Allen testifies that multiple FOCs on a single loop order add significantly to Covad's internal processing time and costs because when Covad receives the FOC, Covad must update its internal systems to reflect the " . . . date BellSouth is scheduled to complete delivery of the loop." (TR 133) Further, witness Allen testifies that using the provided date, Covad's internal systems trigger a series of activities, which include: scheduling testing on the loop, notification to the end user, and the dispatch of a Covad installation technician for the completion of the DSL service. He concludes that Covad relies on the BellSouth delivery date to set up all of the downstream processes necessary to ensure that DSL is provisioned to the end user. (TR 133) Witness Allen asserts that regardless of how Covad receives BellSouth's new FOC, Covad must make changes to its internal systems to reflect the new loop delivery date. He contends that these changes would include the scheduled loop testing, assignment changes for the Covad technician, and contact with the Internet service provider (ISP) to inform the end user of the change in delivery date. (TR 133-134) Witness Allen opines that this change often causes the end user frustration and can result in customer dissatisfaction. (TR 134, 160) Moreover, if the new FOC is not received before the original delivery date, witness Allen testifies that Covad generally learns of the missed delivery date either from the ISP or the end user customer when they call Covad to report the missed appointment.

Witness Allen maintains that in all, "this whole sequence of events, adds to Covad's internal processing time which results in much higher provisioning costs." (TR 134)

Covad witness Allen states that although BellSouth insists that Covad's proposal for "reciprocity" with respect to modified or changed loop orders would increase the cost of issuing a FOC, he asserts that BellSouth is short on the specifics of the increased costs. He maintains that BellSouth has never tendered a list of the specific activities that would be different in issuing a true and accurate FOC. (TR 161) Witness Allen argues that BellSouth's ability to meet FOC delivery dates depends on BellSouth's record-keeping with respect to BellSouth's outside plant. (TR 161) Witness Allen further argues that BellSouth therefore should bear the cost of failing to maintain accurate records. (TR 161) Witness Allen notes that other ILECs also experience facility problems; however, a LEC such as Qwest provides Covad information on potential problems with facilities prior to providing a loop delivery date. He contends that this "heads-up" allows Covad to strategically proceed with the orders, and also better advise its customers with respect to potential provisioning problems.(TR 162)

Witness Allen asserts that BellSouth provides a service guarantee plan in its Florida tariff for both its residential and business customers. Witness Allen testifies that BellSouth uses its service guarantee plan to compensate its retail customers when it misses a service delivery date, and asserts that this guarantee is in the amount of $25.00 and $100.00 for its residential and business customers, respectively. Witness Allen argues that for BellSouth to deny its wholesale customers the same or similar commitment is "blatantly discriminatory." (TR 164)

BellSouth witness Cox testifies that

> Covad is asking that if BellSouth cannot meet the date that Covad requests on its order, that Covad be allowed to impose the same charges on BellSouth that Covad alleges BellSouth imposes on Covad to modify the order in any way. (TR 512)

BellSouth witness Cox argues that while Covad's request may appear to have merit, she concludes that Covad's circumstances for which it is seeking compensation are not analogous to those of BellSouth. (TR 512) Witness Cox testifies that when Covad places an order, Covad presumably either has a customer that wants the service or that " . . . Covad has made a choice to order service accepting the risk that a customer will not be available when BellSouth delivers the service." She therefore asserts that it is appropriate for Covad to compensate BellSouth when Covad makes subsequent changes. (TR 512) Witness Cox further asserts that in order for BellSouth to recover its costs, "BellSouth must charge the cost causer for the work that is done." (TR 554) She explains that Covad has to compensate BellSouth for the costs BellSouth incurs on behalf of Covad when Covad cancels or modifies a loop order. (TR 554)

BellSouth witness Cox states that Covad is asking BellSouth to "financially guarantee" that a Covad order will be provisioned on the due date requested by Covad. She contends that in order for BellSouth to provide such a guarantee, BellSouth would have to perform more work processes in the ordering phase than are currently performed. Witness Cox claims that what Covad is asking for is currently part of the provisioning phase. (TR 513) Witness Cox continues that Covad's proposal will increase costs in the ordering phase, prior to the issuance of the FOC, and contends that such costs are not currently reflected in BellSouth's cost studies and proposed rates. (TR 513)

BellSouth witness Cox explains that a FOC merely serves to notify Covad that the order placed is correct in its form, and she insists that a FOC is not a firm order commitment. She continues that at this point in the process, BellSouth has not "dispatched a technician to ensure that the facilities necessary to complete the order are in place and working." (TR 513-514) She adds that Section 2.8.3 of *The BellSouth Business Rules for Local Ordering - OSS99* provides that

> The FOC does not constitute and should not be considered a guarantee that facilities are available. The committed due date is based on an assumption that facilities are available. If there is a post-FOC facility problem detected, the CLEC will be informed of the estimated service date by a supplemental FOC. (TR 514)

Witness Cox explains that a FOC is returned to Covad when it is determined that the order is correct without errors, and the FOC simply provides a BellSouth order number, the service due date and the telephone numbers, and the FOC may contain "additional service specific data." (TR 514) She reiterates that "the date provided is based on the assumption that facilities are available." (TR 514)

BellSouth insists that at the issuance of a FOC, BellSouth can never know the condition of the requested facilities; thus, implementing Covad's proposal would increase the work processes necessary to ensure that the loop delivery date returned on the FOC will stand. However, BellSouth witness Cox continues to explain that " . . . sometimes we can determine and, for the most part, I think, we determine before the target due date if we have a facilities problem." (TR 606)

BellSouth witness Cox denies that BellSouth unilaterally cancels Covad's orders, but testifies that BellSouth has procedures in its Rules where an order could be canceled. She states that BellSouth can cancel an ALEC's order due to, for example, a Missed Appointment, which is when an appointment is missed for end-user reasons. In this instance, she explains that Covad will have to place a supplemental order within five business days with a new desired due date. (TR 516) She continues that if Covad does not place a supplemental order within the five business days, and the order is canceled, she claims that this does not amount to a unilateral cancellation. (TR 516) Witness Cox further explains that a supplemental order is not considered a cancellation, but a postponement that results from facilities problems. (TR 553) However, witness Cox concedes that BellSouth does not charge its ISP customers when this class of customers cancels an order before it is provisioned, and agreed that BellSouth does charge Covad for the same actions. (TR 608) Witness Cox further concedes that its ISP and Covad both buy line-shared UNE loops which are non-designed loops. (TR 608-609) Witness Cox notes that generally, when a conversion does not occur as scheduled, "it is just as likely that the ALEC or the customer caused the miss as it is that BellSouth caused the miss." (TR 517) She concludes that "these problems are not specific to Covad, but would also affect any BellSouth orders."

BellSouth witness Cox testifies that she does not believe that Covad should be compensated for any costs Covad incurs when BellSouth cancels or modifies a loop order. Instead, she asserts that such costs will be captured in the performance measures and their associated penalties. She argues that if BellSouth's service to Covad is not at parity with the service BellSouth provides to its retail customers, then compensation should come through the penalties associated with the performance metrics. (TR 600)

Analysis

Although this issue may appear to fall within the scope of performance measures, staff believes the real issue is quite different. This issue seeks to recover work function costs from the cost causer, and the record shows that the cost causer could be either Covad or BellSouth depending on who initiates the cancellation or modification of the loop delivery date.

The record supports the following conclusions:

- BellSouth recovers its costs incurred when Covad cancels or changes a loop order. (TR 554)
- BellSouth cancels or changes FOC delivery dates occasionally. (TR 605)
- A FOC delivery date is simply a target delivery date, similar to what a BellSouth retail customer will get from a BellSouth service representative. (TR 603-604)
- BellSouth's ISP is not assessed cancellation charges if the loop order is canceled before it is provisioned. (TR 607)
- BellSouth's ISP generally uses non-designed circuits that are the same as those Covad uses for ADSL service. (TR 609)

It is evident that occasionally either Covad or BellSouth has to cancel or modify a Covad loop order, thereby causing the initially issued FOC delivery date to be missed. Staff notes that both parties agree that for the most part, BellSouth charges Covad when Covad cancels or modifies its loop order, for whatever reason. (TR 608) Also, the record supports that when a loop order is canceled or modified, both BellSouth and Covad have some "work processes" that must be re-set in preparation for the re-scheduled loop delivery date. As noted, if Covad initiates this cancellation or modification, BellSouth generally charges Covad for this cancellation or modification in an effort to recover whatever costs BellSouth incurs in effecting the new loop delivery date. At issue is the fact that upon BellSouth effectuating a cancellation or modification, for whatever reasons, BellSouth does not believe Covad is entitled to recover any costs that Covad incurs to prepare for the new loop delivery date. Staff believes that there is an asymmetric treatment in the current arrangement. Staff agrees with

Covad that there needs to be reciprocity in addressing the effects of order cancellations or modifications regardless who initiates a cancellation or modification.

The record supports the assertion that a FOC delivery date is merely a "target" loop delivery date, not a guaranteed delivery date. (TR 603-604) Staff observes that although the FOC delivery date is only a target date, it appears that the industry at large may treat the FOC delivery date as simply a loop delivery date, whether guaranteed or otherwise. Both ALECs and BellSouth make plans for service cut-over using this so-called "target" date.

Since BellSouth insists that when a FOC is issued, it does not know the condition of the required facilities, BellSouth asserts that implementing Covad's proposal will thus increase the work processes necessary to ensure that the loop delivery date shown on the FOC will be adhered to in most instances. Staff agrees with Covad that BellSouth does not identify the specific additional work processes necessary to issue a "guaranteed" delivery date that would result in increased costs. However, staff notes that during cross-examination, BellSouth conceded that it has an internal database that can allow BellSouth to see whether the facilities exist that are necessary to fill a loop order. BellSouth witness Cox explains that " . . . sometimes we can determine and, for the most part, I think, we determine before the target due date if we have a facilities problem." (TR 606)

Although BellSouth attempts to construe this issue as a performance measures issue, BellSouth itself is not sure which performance metrics would apply. BellSouth witness Cox maintains that canceled or modified FOC delivery dates should be captured by either the "missed installation measure" or the "order completion interval" metrics. (TR 601) Staff is not convinced that this issue is explicitly a performance measures issue; instead, staff believes that this issue focuses on cost recovery, not contract performance and penalties for non-performance as the performance metrics attempt to address.

In its effort to construe this issue as a performance measures issue, BellSouth witness Cox argues that BellSouth is obligated to perform at parity since it also uses the FOC to schedule loop delivery dates for its retail customers. Staff notes that BellSouth has a service guarantee program that it provides its retail customers that is not available to its wholesale customers.

(EXH 19, p. 3) Since BellSouth maintains that it uses the same processes for both retail and wholesale customers, one could argue that "parity" would demand that wholesale customers are provided the same or a similar service guarantee plan. However, the record shows that BellSouth provides the service guarantee program only to its retail customers for missed delivery dates and not to its wholesale customers.

Staff believes that BellSouth's decision to modify or cancel a Covad loop order generally results from either personnel- or facilities-related problems, or "acts-of-God." Other than "acts-of-God," it is unclear from this record whether there are other occurrences that are beyond BellSouth's control and that are legitimate reasons for BellSouth unilaterally to modify or cancel an order. Accordingly, staff presumes that all other problems that would compel BellSouth to modify or cancel a Covad loop order are within BellSouth's control.

The record indicates that there are ordering and provisioning charges that are assessed on loop orders. Presumably, the ordering charges are assessed when the LSR order is placed by the ALEC. However, staff is unclear at what point in the process of loop delivery that provisioning charges are assessed (i.e., whether before or after the actual installation has occurred). Staff reasons that the ordering charge recovers costs associated with the activities that are necessary for BellSouth to accept and process a Covad loop order. Provisioning charges cover the actual activities involved in loop delivery, which includes checking on the availability of facilities.

When BellSouth unilaterally cancels or modifies a Covad loop order, Covad presumably will have to resubmit the order (or at least provide additional information); although the record is ambiguous on this point, it appears Covad may be assessed additional ordering charges when this occurs. Staff believes that it would be inequitable for BellSouth to charge Covad for an unsuccessful order due to circumstances that should have been within BellSouth's control at the time the order was accepted. Similarly, staff believes that it would be improper for BellSouth to have assessed Covad for installation charges for a loop that BellSouth had not installed.

Accordingly, staff believes that Covad should receive a credit for any provisioning charges paid prior to the actual loop provisioning. In addition, staff believes that Covad should also receive a credit for the ordering charge if the BellSouth-initiated modification or cancellation is due to personnel-related problems. Staff reasons that BellSouth should be obligated to ensure adequate staffing to provision an accepted LSR.

Conclusion:

Staff believes that there currently is an asymmetric cost recovery treatment, relative to BellSouth, when Covad initiates a loop delivery date cancellation or modification. Staff agrees with Covad that there needs to be reciprocity in addressing loop order cancellation or modification when either BellSouth or Covad initiates this cancellation or modification. In an attempt to remedy this situation, staff recommends that for BellSouth-initiated loop order modifications or cancellations due to personnel-related problems, BellSouth should be required to credit Covad for the ordering charges assessed, as well as any provisioning charges that may have been billed prior to the actual loop provisioning. Further, staff recommends that for BellSouth-initiated modifications or cancellations due to facilities-related problems, BellSouth should not charge Covad provisioning charges until the installation has occurred; accordingly, BellSouth should be required to credit Covad for any provisioning charges that were billed prior to the actual loop provisioning.

ISSUE 7(A): When BellSouth provisions a non-designed xDSL loop, under what terms, conditions and costs, if any, should BellSouth be obligated to participate in Joint Acceptance Testing to ensure the loop is properly provisioned?

RECOMMENDATION: BellSouth should not be required to participate in Joint Acceptance Testing at no charge when it provisions a non-designed xDSL loop to Covad. If Covad requests Joint Acceptance Testing for a non-designed xDSL loop, the appropriate charges should be BellSouth's time and material rates for the specified loop. (**BARRETT**)

POSITION OF THE PARTIES

COVAD: BellSouth should provide Joint Acceptance Testing on every UCL-ND for $40. If BellSouth delivers UCL-ND loops on time that are functional 90% of the time, Covad will pay for the Joint Acceptance Testing. If BellSouth does not deliver UCL-ND loops that are functional on time 90% of the time, BellSouth pays for the Joint Acceptance Testing.

BELLSOUTH: Joint Acceptance Testing is not appropriate for this type of loop unless Covad is willing to pay for this test at time and material rates.

STAFF ANALYSIS: This issue considers whether BellSouth should be required to participate in Joint Acceptance Testing with Covad for non-designed xDSL loops. In the course of this proceeding, Covad's witness narrowed the scope of this issue to relate to a specific non-designed xDSL loop, the unbundled copper loop non-designed, or UCL-ND. (TR 136)

Arguments

Covad witness Allen believes that a joint-testing mechanism should be required which would assure Covad of a working, functional UCL-ND loop when provisioned by BellSouth. (TR 135-136) He states that Joint Acceptance Testing of all loops is "crucial," but also believes the testing should be unnecessary "because when Covad orders a loop, it should always receive a functional loop from BellSouth." (TR 165) The witness contends, however, that BellSouth is failing to provision a fully connected and functioning loop the vast majority of the time. (TR 136)

Covad believes its Joint Acceptance Testing proposal would provide a safety net in order to "catch non-functional loops during the provisioning process, rather than forcing these problems to be resolved through the repair and maintenance process." (TR 135) According to the witness, this type of testing is "only necessary to insure that BellSouth actually does what it has promised to do -- deliver a functional, fully connected loop," so that Covad gets "what it pays for." (TR 135-136) Covad's position is that this testing should be provided at no charge whatsoever, given that the cost of delivering a functional loop is built into BellSouth's rate structure, according to witness Allen. (TR 136) Nonetheless, Covad's Joint Acceptance Testing proposal offers a compensation arrangement for BellSouth that is tied to a specific performance measure. Witness Allen offers that its proposal in Florida is modeled after a similar one between Covad and Southwestern Bell Telephone Company. (TR 166; EXH 10) Covad's Florida proposal is:

> BellSouth will provide joint acceptance testing on the UCL-ND for $40. If BellSouth delivers UCL-ND loops on time that are functional 90% of the time, Covad will pay for the Joint Acceptance Testing. If BellSouth does not deliver UCL-ND loops that are functional on time 90% of the time, BellSouth pays for the Joint Acceptance Testing. (TR 137)

The witness believes that if BellSouth can deliver functional loops on time at a level that enables Covad to compete successfully, Covad would have no need to require Joint Acceptance Testing. (TR 166)

BellSouth witness Kephart contends that Covad's Joint Acceptance Testing proposal is unacceptable because it "redefines" the product at issue, the UCL-ND. (TR 675-676, 678) "It would no longer be the kind of loop it's designed to be if we did that [Joint Acceptance Testing]," states the witness. (TR 676) He elaborates on the UCL-ND and how it came about:

> This product was developed, basically, at the insistence of the various ALECs for a cheaper loop. How do you make a loop cheaper? You have to cut out some of the work content associated with providing the loop . . . so we came up . . . with this UCL-ND loop. . . . What Covad is suggesting is that we turn that process around and do some of the work, probably the most expensive part of the

> work that we do on design loops, and simply dispatch somebody on every one of them [UCL-ND loops]. (TR 676)

The witness believes that BellSouth is willing to perform Joint Acceptance Testing, but at the appropriate charge; however, he notes that BellSouth currently does not offer a product which matches Covad's description, a non-designed loop which includes the desired testing. (TR 678)

Witness Kephart offers that the Joint Acceptance Testing suggested by Covad is not included in the rate for a non-designed xDSL loop. (TR 659) When a non-designed xDSL loop is provisioned to an ALEC, BellSouth performs testing needed to ensure that the loop meets the specifications as outlined in its Technical Requirement 73600 (TR 73600), and nothing more. (TR 659, 668) He states that cost recovery for testing beyond what is needed to provision the loop is not included in the recurring or non-recurring charges associated with this loop. (TR 665) BellSouth, however, is not opposed to performing Joint Acceptance Testing on the UCL-ND or any non-designed loops, but believes that Covad should be required to pay for this additional testing on a time and materials basis to allow BellSouth the opportunity to recover its costs. (BellSouth BR p.15) The specific rates for such testing are posted on BellSouth's interconnection website, according to witness Kephart. (TR 666) He offers that the time and materials rate structure has a charge for the first half hour set at $78.92 and additional half hours at $23.22, and states that Covad's proposed flat $40.00 fee is inadequate. (TR 666-667)

The Joint Acceptance Testing issue for the UCL-ND has been considered in another jurisdiction, according to witness Kephart. (TR 667) He states that the Georgia Public Service Commission's recent order specified that requesting carriers have the option of purchasing additional testing on a time and materials basis. Additionally, the witness states that Covad participated in that docket. (TR 667) The witness states that the time and materials charges in the Georgia docket are identical to those offered in this jurisdiction. (TR 714)

In summary, the BellSouth witness reiterates that this issue is not about BellSouth's willingness to perform Joint Acceptance Testing; rather, this issue is about the compensation for the testing. (TR 714) He offers that BellSouth "agree[s] to do the testing for the proper fee with any ALEC . . . they can always order that [Joint Acceptance Testing] and we'll do it." (TR 714)

Analysis

Staff believes that the core debate in this issue can be reduced to compensation. Although framed as an issue about whether BellSouth should be required to participate in Joint Acceptance Testing with Covad for non-designed xDSL loops, the actual participation in the testing function is not debated between the parties, only the rates and charges associated with the testing. The testimony in this record does not indicate that BellSouth is unwilling to participate in Joint Acceptance Testing with Covad. (TR 714) To the contrary, BellSouth's witness Kephart offers that his company "agree[s] to do the testing for the proper fee with any ALEC." (TR 714)

Staff agrees with the assertions of Covad witness Allen that Joint Acceptance Testing of all loops would provide the assurance of "always receiv[ing] a functional loop from BellSouth." (TR 165) Staff believes that Covad has two principal claims. First, they assert that BellSouth does not consistently provision a fully functional UCL-ND loop to Covad, which necessitates a repair call and a further delay for the end use customer. Second Covad proposes that if Joint Acceptance Testing occurred during the provisioning process, it would solve the problems described above, and avert a repair visit and the expense associated with it. (Covad BR p.8)

On the other hand, BellSouth contends that the matter of whether or not joint testing is routinely performed depends upon the specific loop type ordered by Covad, and the UCL-ND is not normally offered with Joint Acceptance Testing, according to witness Kephart. (TR 666) The UCL-ND product was developed for the ALEC market to meet a demand for a cheaper loop. (TR 676) Staff notes that the UCL-ND is offered at a significantly lower nonrecurring charge than a designed loop, $44.69 versus $199.01, according to BellSouth's witness Kephart. (TR 666) Witness Kephart states that the substantial difference is a direct result of the work content that was removed to define the UCL-ND. (TR 676) Staff agrees.

Under questioning by a Commissioner, witness Kephart was asked about the possibility of developing a test -- something short of a designed loop, but capable of giving Covad a greater assurance that a loop would actually work with xDSL. The witness responded:

> Well, Commissioner, there's always more tests that you can perform. And whenever you make the decision to do more tests, you create more work content, which has to be built into the price, which raises the price and tends to defeat the purpose of what the ALECs were asking for. (TR 690)

Staff notes that unless or until BellSouth develops a non-designed xDSL loop that includes the work content associated with joint testing, Covad's choices are to order either the Joint Acceptance Testing it seeks from BellSouth and accept the applicable time and materials charges, or to order a loop type that includes Joint Acceptance Testing. Simply stated, staff believes that BellSouth should not be required to participate in Joint Acceptance Testing at no charge when it provisions a UCL-ND loop for Covad.

Conclusion

Staff recommends that BellSouth should not be required to participate in Joint Acceptance Testing at no charge when it provisions a non-designed xDSL loop to Covad. However, if Covad requests Joint Acceptance Testing for a non-designed xDSL loop, the appropriate charges should be BellSouth's time and material rates for the specified loop.

ISSUE 7(B): Should BellSouth be prohibited from unilaterally changing the definition of and specifications for its loops?

RECOMMENDATION: No, BellSouth should not be prohibited from unilaterally changing the definition of and specifications for its loops in its TR 73600. However, to the extent that certain technical specifications are explicitly stated in the parties' interconnection agreement; BellSouth should not be permitted to unilaterally modify these standards. (**BARRETT**)

POSITION OF THE PARTIES

COVAD: Yes. Covad needs certainty and the ability to consistently order loops as defined in its contract with BellSouth. Therefore, BellSouth's definition for DSL loops should remain as defined in the contract and Technical Specifications in place on the date of execution of the Interconnection Agreement.

BELLSOUTH: To insure that BellSouth can adapt its loop offerings to newly developed standards and changes in technology, BellSouth needs to retain the flexibility to alter its loop definitions and specifications.

STAFF ANALYSIS: This issue considers BellSouth's loop definitions and specifications, and whether BellSouth should be prohibited from altering or updating these definitions and specifications throughout the life of its interconnection agreement with Covad.

Arguments

Covad witness Allen states that all his company wants is "a loop that complies with the engineering guidelines that BellSouth's network should already be designed to support." (TR 137) The witness contends that BellSouth's specifications for loops that are in place at the time the interconnection agreement is signed should remain in place throughout the life of the contract. (TR 137, 186) He elaborates:

> BellSouth's technical specifications govern things like how much noise can be on an ADSL loop, or what the acceptable loss levels are. The technical specifications are incorporated by reference into Covad's interconnection agreement. If BellSouth is allowed to unilaterally alter the technical specifications, it can

> unilaterally change Covad's contract in ways that may have a detrimental impact on Covad. (TR 186)

As an example, the witness details the following:

> [A]ssume that Covad's equipment is designed to utilize loops that meet a certain industry standard. At the beginning of the Interconnection Agreement with BellSouth, BellSouth's loop product technical specifications may assure Covad that it will receive a loop that meets the industry standards. Then, halfway through the contract, BellSouth could unilaterally change its loop specification to something else entirely. This could severely disrupt Covad's business, delay necessary customer installations, and otherwise detrimentally effect (sic) Covad's business. (TR 168-169)

Covad believes that the technical specifications for an xDSL loop are material aspects of the contract between the parties, and it is seeking to protect those aspects from any unilateral changes imposed by BellSouth. (Covad BR p. 10) Covad witness Allen, however, acknowledges that loop standards do change, but not "as frequently as BellSouth would like the Commission to believe." (TR 168) Covad witness Allen proposes that " . . . BellSouth not be given the power to unilaterally alter our contract," and purports that BellSouth should be required to file an amendment to their respective interconnection agreement if it needs to make a legitimate change to the technical specifications. (TR 187)

In summary, "Covad is building a business based on the loop products and their specifications as set forth by BellSouth," states witness Allen, and Covad asks that BellSouth's loop definitions for xDSL loops remain as defined on the date of execution of their agreement. (TR 168)

BellSouth witness Kephart states that BellSouth needs to be able to change the specifications of its loops to comply with changing industry standards or where dictated by technical feasibility issues. (TR 659) Witness Kephart offers that all loop types are tested and provisioned in accordance with the specifications in its Technical Reference 73600. (TR 673) The witness asserts that if BellSouth and Covad include particular technical specifications and definitions for loops in their agreement, BellSouth does not seek the ability to change those. (TR

661) However, the witness continues, and states " . . . if BellSouth and Covad have incorporated by reference certain technical standards, such as TR 73600, BellSouth should retain the flexibility to update or otherwise modify such standards." (TR 661)

In its brief of the evidence, BellSouth contends that the standards and specifications for its loops are updated from time to time, and that " . . Covad is attempting to prohibit BellSouth from changing loop definitions and specifications." (BellSouth BR pp.15-16) The BellSouth witness states that any change to the industry standard would be reflected in the TR 73600. (TR 661) Witness Kephart contends that loop specifications are provided for the benefit of all ALECs in ordering unbundled loop products:

> BellSouth and all of Florida's ALECs have an equal opportunity to participate in any industry or regulatory discussion leading up to these standards. Any attempt to keep this document static in nature for the pleasure of any particular firm would be a clear disadvantage to all others that make use of this document [Technical Reference 73600]. (TR 673-674)

The witness states that ALECs are given 60 days' notice when standards are being updated, and that "Covad should not be allowed to impose static network standards that could limit BellSouth's ability to meet the needs of all ALECs that provide service in Florida and who acquire unbundled loops from BellSouth." (TR 661)

<u>Analysis</u>

This issue concerns whether BellSouth should be prohibited from altering or updating its loop definitions and specifications throughout the life of its interconnection agreement with Covad.

Staff agrees with BellSouth's witness Kephart that BellSouth needs to be able to change the specifications of its loops to comply with changing industry standards. (TR 659) The industry standards themselves are collaboratively developed by BellSouth and other exchange carriers, including Covad, according to BellSouth witness Kephart. (TR 661) Staff, therefore, believes that any change or modification that results from this collaborative process is not likely to be a "unilateral change imposed by BellSouth," as is the contention in Covad's brief. (Covad BR p. 10) Staff also notes that ALECs are given 60 days' notice when standards are being updated, according to BellSouth witness Kephart. (TR 661, 674) Staff believes this is reasonable, and agrees with the BellSouth witness that "BellSouth should retain the flexibility to update or otherwise modify such standards." (TR 661) As stated in its brief, BellSouth believes that updates of the standards and specifications of its loop products are needed from time to time. (BellSouth BR pp. 15-16) Again, staff agrees with BellSouth witness Kephart that "[a]ny attempt to keep this document static in nature for the pleasure of any particular firm would be a clear disadvantage to all others that make use of this document [Technical Reference 73600]." (TR 674)

Therefore, staff believes BellSouth's position is both fair and reasonable, and notes that Covad has alternatives to pursue in lieu of requesting that BellSouth refrain from modifying its loop specifications for its exclusive pleasure. First, Covad participates in the forum to develop the industry standards themselves. BellSouth witness Kephart states that Covad already participates in this, and Covad offers no rebuttal of this statement. (TR 661) Second, BellSouth has offered Covad the option of including particular technical specifications and definitions for loops in their respective agreement, and witness Kephart states that BellSouth will not seek the ability to change those. (TR 661) The BellSouth witness offers: "Covad would be free to negotiate and specify items about the loop that they would like not to change . . . [a]nd that gives them what they want . . . but it doesn't limit us to being able to not change a document that is there to serve all ALECs." (TR 721-722) Finally, staff believes that by offering ALECs 60 days' notice when standards are being updated, Covad has ample time to evaluate whether or not the forthcoming change will impact its network, and ultimately its customers.

Conclusion

Staff recommends that BellSouth should not be prohibited from unilaterally changing the definition of and specifications for its loops in its TR 73600. However, to the extent that certain technical specifications are explicitly stated in the parties' interconnection agreement, BellSouth should not be permitted to unilaterally modify these standards.

ISSUE 8: When Covad reports a trouble on a loop where, after BellSouth dispatches a technician to fix the trouble, no trouble is found but later trouble is identified on that loop that should have been addressed during BellSouth's first dispatch, should Covad pay for BellSouth's cost of the dispatch and testing before the trouble is identified?

RECOMMENDATION: No. Covad should not be required to pay BellSouth's cost (i.e., BellSouth's rate) of the dispatch and testing for trouble tickets which meet the strict parameter as framed in the wording of this issue. However, Covad should pay for BellSouth's cost (i.e., BellSouth's rate) of the dispatch and testing in two instances: 1) If BellSouth determines the trouble condition resulted from a problem with a Covad customer's inside wiring that prevented the loop from functioning properly; or 2) if a subsequent trouble ticket for the given loop is not forthcoming within a 30 calendar day period after the original trouble ticket was closed by BellSouth as a "No Trouble Found." **(BARRETT)**

POSITION OF THE PARTIES

COVAD: BellSouth should not be permitted to charge Covad when no trouble is found on the loop. This will provide BellSouth with an incentive to fix the problem the first time, rather than opening and charging for multiple trouble tickets. Covad should not be charged when BellSouth improperly and prematurely closes a trouble ticket.

BELLSOUTH: When Covad causes BellSouth to dispatch a technician to test a loop that Covad has reported as having a problem, and no problem is found on BellSouth's facilities, Covad should pay BellSouth's expenses incurred as a result of the unnecessary dispatch.

STAFF ANALYSIS: This issue concerns a dispute about repair requests from Covad for which BellSouth initially determines that "no trouble was found (NTF)," but later trouble is identified on that loop that should have been addressed during BellSouth's initial repair dispatch. This issue assumes that BellSouth assesses a charge to Covad to recoup BellSouth's cost of the dispatch and testing, and the specific dispute herein considers whether Covad should be charged for the previous trouble tickets that were closed out as NTF before the repair was successfully completed.

Arguments

Covad witness Allen asserts that trouble tickets for which no trouble is found are "a fallacy." (TR 169) He contends that what Covad seeks in this issue is to avoid the numerous and unnecessary trouble tickets it is forced to open in order to resolve a trouble condition. (TR 170) "Repeat trouble tickets cost Covad money and customer satisfaction," claims witness Seeger. (TR 321) Witness Allen contends that Covad's own internal testing capabilities enable it to check the operational status to determine that its systems are working all the way to the demarcation point, which encompasses BellSouth's loop. (TR 169) Witness Allen states, "Thus, the times that BellSouth will dispatch a truck and legitimately conclude that there is no trouble on the line are few, and would involve only situations in which a problem with a customer's inside wiring prevented the loop from functioning." (TR 170)

When BellSouth closes a trouble ticket to NTF, a charge is automatically generated, states witness Allen. (TR 171) The witness believes the charge for the NTF trouble tickets is inappropriate, and advocates that BellSouth should be precluded from charging at all for NTF tickets. (TR 138-139, 260) The inappropriate charges necessitate that Covad review its billing statements to identify and request a credit from BellSouth, and the witness describes this process as "burdensome." (TR 170; Covad BR p. 13) The witness describes the framework for this issue as follows:

> When Covad experiences trouble with a UNE loop, Covad opens a trouble ticket with BellSouth. On numerous occasions, BellSouth has responded to the trouble ticket by saying "no trouble found," presumably meaning that BellSouth had dispatched a truck, tested the loop and found no problems. BellSouth then charges Covad for that dispatch . . . and . . . it is then incumbent upon Covad to challenge all of the incorrect "no trouble found" charges imposed on Covad. (TR 138)

Covad believes that BellSouth is responsible for erroneous NTF trouble tickets, according to witness Allen. (TR 170) He contends that the trouble tickets that are prematurely closed with NTF status force Covad to open multiple trouble tickets before BellSouth is able to successfully identify and repair the trouble condition on the loop. (TR 139) The witness believes that BellSouth should be able to "get it right the first time." (TR 262) Witness Allen offers a solution; he states, "[e]ither BellSouth should develop a mechanism for tracking these and providing a credit, or BellSouth should not charge at all for these trouble tickets." (TR 170) BellSouth does not have an automatic process in place to render credit in these circumstances, states witness Allen. (TR 299) Finally, he offers, "[b]y not allowing BellSouth to charge Covad for trouble tickets when 'no trouble' is found, BellSouth will have an incentive to cure the problems on the first ticket." (TR 139)

Witness Allen states that a joint meeting is often necessary to fully resolve a repair issue. (TR 138) According to witness Seeger, the so-called "vendor meet" sessions are productive, and resolve loop problems. He states that "BellSouth routinely admits that it failed to check the cross box connections on earlier trouble tickets or otherwise failed to attempt to repair the loop." (TR 308). Witness Allen contends that certain NTF tickets are the result of "BellSouth's unwillingness to do what it takes to repair the loop." (TR 170) He shares his thoughts on what it would take to resolve this issue:

> There is no BellSouth process that allows Covad to keep the trouble ticket opened or put it in a "delayed maintenance" status for 24, 48, 72 hours to allow for further testing . . . If BellSouth will allow Covad to keep the trouble ticket opened and will work with Covad on the trouble isolation until the trouble can be isolated, then we would not have to deal with the issue of who pays for a dispatch . . . If trouble tickets are allowed to remain open until Covad accepts the loop as fully functional (and delivers to BellSouth a serial number confirming that acceptance), then this issue could be resolved. (TR 171-172)

BellSouth witness Cox states that "when Covad causes BellSouth to dispatch a technician to test a loop that Covad has reported as having a problem, and no problem is found on BellSouth's facilities, it is appropriate that Covad pay BellSouth's expenses incurred as a result of the unnecessary dispatch." (TR 518) However, the witness offers that under the strict parameters of this issue, "BellSouth will either not bill Covad for the dispatch, or will credit Covad for the dispatch charge." (TR 556, 610) The BellSouth witness contends that the true dispute in this issue is not whether BellSouth is willing to offer credit for a NTF ticket that meets the strict parameter as framed in the wording of this issue; the parties are in agreement on this topic. (TR 572; Allen TR 260) Instead, the witness believes that the language in Covad's proposals would limit whether a charge could be assessed for any trouble ticket that BellSouth clears as a NTF, whether a subsequent ticket is processed or not. (TR 557, 572) "Covad's proposal . . . would not allow BellSouth to charge for a dispatch where no trouble is found, regardless of whether trouble is found later," states witness Cox. (TR 572)

Witness Cox acknowledges Covad's concern about repeated trouble tickets, but offers that BellSouth's Performance Measurement Plan addresses this. (TR 558, 612) The specific measure the witness references is entitled the Percent Repeat Trouble within 30 days, and it is designed to monitor BellSouth's relative performance for accurate provisioning. (TR 558, 612) A given loop that generates a follow-up ticket within a 30 day period would be captured in this measure, according to the witness. (TR 612) Through this mechanism, BellSouth strives to treat Covad in the same manner as it treats its end user customers, claims witness Cox. (TR 612) The witness also offers that BellSouth has a specialized work group to address chronic repeat trouble tickets, the Chronic Trouble Group. (TR 613) The witness states that either party can request intervention to resolve a given loop repair situation. (TR 613-614) BellSouth also states that it keeps individual trouble tickets "open" for a 24 hour period to allow Covad the opportunity to perform further testing. (TR 556) The witness rejects Covad's assertions that BellSouth is cavalierly closing trouble tickets, arguing that its technicians test for adherence to the given specifications, and "if the loop is meeting the specifications that it is intended and described to have, then . . . it should be working." (TR 613-615) If the charges generated by the NTF tickets are challenged and BellSouth determines that a credit is due, the witness offers that BellSouth's dispute resolution process is the only known mechanism to address this. (TR 610-611) There is no automatic process to accommodate credits issued for NTF tickets, but the witness states that BellSouth is looking at developing one. (TR 610, 617)

In summary, BellSouth's witness Cox states that she does not agree that BellSouth should not charge for dispatch and testing on a loop if BellSouth is not able to identify a trouble on that loop:

> If Covad requests BellSouth to dispatch a technician to test a loop, Covad should pay for that dispatch. Obviously, the result of BellSouth's test can either be that a trouble is found on the loop, or that no trouble is found on the loop. In either case, BellSouth has

> incurred a cost on behalf of Covad; Covad has learned whether there is trouble on the loop, and obviously, Covad should pay BellSouth. (TR 555-556)

Analysis

Staff believes that there is only a minor dispute remaining on this issue, particularly in light of witness Cox's statement, "[I]t seems like we're close to an agreement here, but I think we've got a question about how we're going to do this." (TR 609) Staff believes that witness Cox was referencing how the charges for NTF tickets would be presented in their respective contract language. (TR 557) Staff believes that its recommendation offers a compromise, and notes that because this issue is very narrowly framed, our recommendation should be narrowly construed.

Staff acknowledges Covad witness Seeger's assertion that "[r]epeat trouble tickets cost Covad money and customer satisfaction." (TR 321) Staff believes, and the record supports, that tickets cleared as NTF often - but not always - turn into "repeat reports," which can impact the end user's level of satisfaction. (TR 170) Staff notes Covad witness Allen's concession, however, that it is possible for an "actual" NTF to occur. He states: "[T]he times that BellSouth will dispatch a truck and legitimately conclude that there is no trouble on the line are few, and would involve only situations in which a problem with a customer's inside wiring prevented the loop from functioning." (TR 170) Staff agrees, and provides for this specific exception in its recommendation. As the record shows, staff believes that if a BellSouth technician was dispatched on a repair call and encountered a problem with a Covad customer's inside wiring that prevented the loop from functioning properly, the technician would likely clear the ticket as a NTF, and Covad would be billed accordingly. Staff believes that this is appropriate.

Additionally, the second exception that staff notes considers the period of time for which a subsequent NTF trouble ticket or tickets can be evaluated for possible credit. In its primary argument, Covad did not specify a time frame, and thus its argument is construed by BellSouth and by staff to be open-ended (i.e., without a time constraint). Staff believes that an open-ended time frame to evaluate NTF tickets for possible credit is clearly not practical, considering that some framework for evaluation is needed for administrative purposes. BellSouth witness Cox asserts that the

Percent Repeat Trouble within 30 days component of its Performance Measurement Plan should address Covad's concern for repeat dispatches. (TR 558) Staff believes that an evaluation period of 30 days is reasonable for NTF tickets as well, given that the charges Covad is billed for NTF tickets are derived from BellSouth dispatches. Furthermore, staff believes that if a NTF ticket generated a subsequent ticket, a "repeat," the subsequent ticket would probably be reported within 30 calendar days. Staff believes that BellSouth should have the measurement tools in place, given its preparations to implement its Performance Measurement Plan. Staff clarifies this exception however, to reflect that the measurement interval is 30 calendar days. Staff believes, therefore, that a subsequent ticket that occurs within 30 calendar days from the original ticket would be subject to review for a possible credit.

As a result, staff is not persuaded by Covad's assertions that this Commission's decision on this matter should address "all" NTF situations. (TR 138-139, 260) Staff believes Covad's position, in effect, would prevent BellSouth from even rendering a charge for NTF tickets. (Covad BR p. 12) However, if a customer's inside wiring prevented the loop from functioning as described by the Covad witness, and BellSouth performed its battery of tests and concluded that "no trouble was found," staff believes that BellSouth should be permitted to charge Covad for its dispatch. Staff agrees with BellSouth that there should be a reasonable limitation on the period of time to consider possible credits for NTF tickets. (BellSouth BR p. 17) Staff believes that the time frame for evaluation for a possible credit should be limited to 30 calendar days, considering that if a NTF ticket generates a subsequent ticket, it is highly probable that the subsequent ticket would be reported within that time frame. Staff notes that BellSouth's performance measures evaluate loop troubles in a 30 day time frame, according to witness Cox. (TR 612) Thus, staff believes that 30 calendar days would also be a reasonable interval for evaluation for Covad to obtain a possible credit for NTF tickets.

Staff believes that the parties agree on the applicability of rendering charges for a subsequent ticket in the instance where BellSouth had previously cleared an initial ticket as a NTF, and later found that the eventual cause of the trouble should have been corrected on the original ticket. Covad and BellSouth each agree that if a NTF charge was assessed on the original ticket, it should not have been. (Allen TR 260; Cox TR 572) Staff agrees, and notes that BellSouth readily admits that credit will be issued. (TR 610-611) Covad also would like to see an automatic credit process in place, but staff notes witness Cox's assertion that a process is not available at this time. (TR 610) Unfortunately, Covad is therefore relegated to using the dispute resolution process. Admittedly, the Covad witness states that the process it must undertake is "burdensome," but nonetheless, BellSouth states its willingness to issue the appropriate credits. (Allen TR 170; Cox TR 610-611) Staff believes, however, that Covad's argument that the dispute resolution process is "burdensome" does not merit abolishing the NTF charges altogether. Staff believes the dispute resolution process is workable for NTF ticket appeals. As witness Cox testifies, BellSouth is looking at the possibility of developing an automatic process, and staff is encouraged by this. (TR 610, 617) Until such time, however, the dispute resolution process appears to be the method that Covad should follow to seek credits for erroneous NTF charges.

Conclusion

Staff recommends that Covad should not be required to pay BellSouth's cost (i.e., BellSouth's rate) of the dispatch and testing for trouble tickets which meet the strict parameter as framed in the wording of this issue. However, staff recommends two exceptions for which Covad should be responsible to pay for BellSouth's cost (i.e., BellSouth's rate) of the dispatch and testing. The exceptions are as follows:

a) If BellSouth determines the trouble condition resulted from a problem with a Covad customer's inside wiring that prevented the loop from functioning properly; or

b) If a subsequent trouble ticket for a given loop is not forthcoming within a 30 calendar day period of time after the original trouble ticket is closed by BellSouth as a "No Trouble Found."

ISSUE 11: What rate, if any, should Covad pay BellSouth if there is no electronic ordering interface available, when it places a manual LSR for:

(a) an xDSL loop?
(b) line sharing?

RECOMMENDATION: The parties should include language in the interconnection agreement which reflects that when problems with BellSouth's electronic ordering systems prevent Covad from placing electronic orders that BellSouth normally accepts, Covad may order the services manually and pay only the electronic ordering rate. In addition, Covad may be assessed manual ordering charges when it submits an order manually because BellSouth does not have an electronic interface in place for that service. **(KING)**

POSITION OF THE PARTIES:

COVAD: No manual order charge should be permitted, unless and until, BellSouth has in place functional, stable electronic ordering systems for all loop types which Covad orders. If mechanized ordering systems are not functioning for some reason and Covad is forced to submit a manual order, Covad should pay the electronic ordering rate.

BELLSOUTH: Manual ordering charges should apply when Covad places an order manually, for its own business reasons or because BellSouth does not have an electronic interface. The rate for manual service orders, Cost Element Number N.1.2, adopted in Docket No. 990649-TP, is appropriate.

STAFF ANALYSIS:

This issue, as framed, was to address what rate, if any, Covad should pay to BellSouth if there is no electronic ordering interface available when it places a manual local service request (LSR) for an xDSL loop or for line sharing. However, in its post-hearing brief, Covad states that:

> As it has evolved, this issue includes two subparts: (1) What should be the charge when Covad places a manual order because existing BellSouth mechanized ordering systems are not functioning? and (2) What should be the charge when Covad is forced to place manual orders

> because BellSouth has not yet implemented electronic ordering for certain loop types? (Covad BR p. 13)

BellSouth does not specifically state in its post-hearing brief that this issue has evolved into two subparts; however, BellSouth does address both issues in its testimony and post-hearing brief. Therefore, in its analysis staff will address what it believes is an appropriate charge when Covad must submit a manual LSR because BellSouth's existing mechanized ordering systems are not functioning, and what is an appropriate charge when Covad places a manual LSR because BellSouth does not have an electronic interface in place for that service.

Staff will first address the issue regarding the appropriate charge when Covad submits a manual LSR because BellSouth's existing mechanized ordering systems are not functioning. According to BellSouth witness Cox, BellSouth's electronic ordering systems are down from time to time. (TR 559) She explains that when problems with BellSouth's electronic ordering systems prevent Covad from placing electronic orders that BellSouth normally accepts, Covad may order the services manually and pay only the electronic ordering rate. (TR 559)

According to Covad's position statement, the testimony of its witness Allen, and the first sentence of its proposed language to be included in the interconnection agreement for this issue, Covad believes that when mechanized systems are not functioning and Covad must place a manual order as a result, it should only be charged the mechanized ordering fee. (Covad BR p. 13; Allen TR 188; EXH 39, p. 8) It appears that the parties are basically advocating the same position regarding this facet of Issue 11; therefore, staff does not believe further analysis is necessary. Accordingly, staff recommends that the parties should include language in the interconnection agreement which reflects that when problems with BellSouth's electronic ordering systems prevent Covad from placing electronic orders that BellSouth normally accepts, Covad may order the services manually and pay only the electronic ordering rate.

Regarding the issue of what is the appropriate charge when Covad can only place manual orders because BellSouth has not yet implemented electronic ordering for certain loop types, the parties are not in agreement; in fact, they appear to be at opposite ends of the spectrum. According to BellSouth witness Cox, manual ordering charges should apply when Covad places an order manually, either for its own business reasons or because BellSouth does not have an electronic interface that will allow Covad to place orders electronically. (TR 521) On the other hand, Covad witness Allen argues that it makes no sense for BellSouth to be able to charge an ALEC a manual service order charge when it does not offer an electronic order alternative. (TR 172) He believes that until BellSouth establishes a fully functional electronic ordering system for xDSL loops and line sharing and Covad has had time to develop its interface for such ordering, Covad should not have to pay the manual service order charge. (Allen TR 172) The only instance in which witness Allen believes a manual order charge is appropriate is when BellSouth has fully functional ordering interfaces in place and Covad chooses not to use the electronic interfaces. (TR 172-173)

BellSouth argues that it is not required to provide electronic order processing for all UNEs. (Cox TR 521) In support of that position, BellSouth witness Cox refers to paragraph 87 of the FCC's Order on BellSouth's second 271 application for Louisiana. According to witness Cox this order states:

> . . . a BOC must offer access to competing carriers that is analogous to OSS functions that a BOC provides to itself. Access to OSS functions must be offered in 'substantially the same time and manner' as the BOC. For those OSS functions that have no retail analogue . . . a BOC must offer access sufficient to allow an efficient competitor a meaningful opportunity to compete. (TR 521-522)

Witness Cox also notes that " . . . our obligation is to the extent we have electronic ordering capability ourselves, we make it available for ALECs, there are certain services where we also do not have that capability, and would also have a manual option for the ALECs." (TR 620)

As noted above, Covad believes that until BellSouth establishes a fully functional electronic ordering system for xDSL loops and line sharing and Covad has had time to develop its own interface for such ordering, Covad should not have to pay the manual service order charge. (Allen TR 172) Witness Allen notes that "The point is that for us to be as efficient and effective as possible, we need to have electronic interface, and we shouldn't be penalized by having to order those services manually." (TR 274) However, witness Allen provided no direct evidence (such as citing to a FCC Order or prior

FPSC decision) which supports his belief that electronic charges should always be applicable prior to BellSouth having established a fully functional electronic ordering system.

Conclusion:

As noted above, this issue actually has two components. First, staff believes that the testimony, briefs, and position statements of the parties reflect that they are in agreement regarding the appropriate charge for a manually submitted LSR when BellSouth's mechanized ordering systems are not functioning; they agree that in this situation, Covad should be charged the electronic ordering rate. Therefore, staff recommends that language reflecting this agreement be incorporated into the parties' final interconnection agreement.

Second, with regard to the appropriate charge when Covad places a manual order because BellSouth has not yet implemented electronic ordering for certain loop types, BellSouth believes that the manual charge is appropriate. BellSouth argues that it is not required to have electronic ordering interfaces in place for all UNEs, and cites to ¶87 of the FCC's Order on BellSouth's second 271 application for Louisiana in support of this position.

Covad merely argues that it should not pay manual charges when BellSouth has not yet developed electronic interfaces, but does not provide any further support other than general statements made by Covad witness Allen.

In Docket No. 000649-TP, Petition by MCImetro Access Transmission Services LLC and MCI WorldCom Communications, Inc. for arbitration of certain terms and conditions of a proposed agreement with BellSouth Telecommunications, Inc. concerning interconnection and resale under the Telecommunications Act of 1996, the Commission addressed a similar issue. In that docket the Commission determined that manual ordering charges are appropriate for manually submitted orders unless an ALEC can show it cannot submit orders electronically for a wholesale service while BellSouth has the ability to submit orders electronically for the retail analogue. Specifically, the Commission stated:

> . . . we find that where it is determined that BellSouth has an electronic interface in place for its retail

> offerings, but there is no analogous system in place for comparable services obtained by an ALEC, it would be a reasonable presumption that an ALEC is being denied a meaningful opportunity to compete; where such a finding is made, BellSouth should charge an electronic ordering charge. However, such a determination will need to be made on a case-by-case basis. (PSC-01-0824-FOF-TP, pp. 19-20)

While Covad witness Allen made reference to the fact that for Covad to be as efficient and effective as possible, it needs to have electronic interfaces, he did not argue nor, did he present any evidence which addresses Covad's inability to compete in the absence of fully electronic ordering capabilities. Furthermore, staff believes that Covad's claim that manual charges should not be assessed until BellSouth establishes a fully functional electronic ordering system for xDSL loops and line sharing and Covad has had time to develop its own interface for such ordering, appears to exceed the parity standard required by the Telecommunications Act and the FCC's Order on BellSouth's second 271 application for Louisiana. Therefore, regarding this portion of Issue 11, staff recommends that Covad may be assessed manual ordering charges when it submits an order manually because BellSouth does not have an electronic interface in place for that service. However, if Covad believes it is being denied a meaningful opportunity to compete, it may bring the specific issue back to this Commission for further consideration.

ISSUE 12: Should Covad have to pay for a submitted LSR when it cancels an order because BellSouth has not delivered the loop in less than five business days?

RECOMMENDATION: The Commission should require BellSouth to credit to Covad an LSR OSS charge previously paid by Covad when Covad cancels a loop order because Covad's customer has canceled his/her loop order, due to BellSouth's failure to deliver the loop within the applicable loop provisioning interval specified in staff's recommendations in Issues 5a through 5c. (**DOWDS**)

POSITION OF THE PARTIES:

COVAD: No. Because of BellSouth's poor performance in delivering loops, Covad customers often cancel orders while Covad is waiting for BellSouth to deliver the loop. There should be no cancellation charge if a Covad customer cancels an order because it is taking BellSouth too long to provision the loop.

BELLSOUTH: Once Covad submits an LSR, BellSouth begins processing Covad's order. Even if Covad later withdraws its request, Covad is responsible for paying whatever charges are appropriate to reimburse BellSouth for the work done on Covad's behalf.

STAFF ANALYSIS:

Covad witness Allen states that due to BellSouth's poor performance in delivering loops, "Covad's customers often cancel orders while Covad is waiting for BellSouth to deliver a loop." (TR 141) Witness Allen further states that Covad should not pay BellSouth a cancellation charge when BellSouth doesn't deliver the loop in a specified interval, and the customer proceeds to cancel the order with Covad. However, he notes that "if the customer wants the service, we're not going to cancel the order for the sake of canceling the order." (TR 276) Witness Allen concludes that Covad will not cancel a loop order for the mere fact that BellSouth missed a delivery interval, but insists that this issue only seeks to address situations where a Covad customer cancels a loop order because the loop has not been delivered by BellSouth even after the delivery date. (TR 277)

Covad witness Allen contends that BellSouth unjustly states that it should be paid an LSR OSS charge even when it has failed to deliver or delivers the loop late. (TR 141) Witness Allen argues that granting BellSouth's proposal will provide BellSouth an incentive to delay loop provisioning to Covad. (TR 141) Alternatively, witness Allen suggests that BellSouth waive the LSR OSS cancellation charge when Covad cancels a loop order because BellSouth has failed to deliver a loop within the loop delivery interval. (TR 141) He asserts that "this bright-line proposal would better align BellSouth's interest with installing Covad's loops, rather than delaying those installations." (TR 141) Witness Allen argues that delays in loop delivery " . . . stifles Covad's ability to recruit and retain satisfied customers in Florida," and continues that end user customers will not wait " . . . 10, 20, or even 30 days . . ." to have their loops delivered; instead, these customers will ultimately cancel their orders. (TR 141)

BellSouth witness Cox states that with this issue, Covad seeks to have BellSouth waive the appropriate cancellation fees when Covad cancels a loop order because BellSouth has not delivered the loop within the specified delivery interval. (TR 625) Although witness Cox takes issue with Covad's specified five-day interval, she concedes that the five days delivery interval is Covad's proposed interval for conditioned and IDSL loops. (TR 625) Witness Cox further concedes that should the Commission set a different loop provisioning interval in the performance measures docket, then the interval set in this proceeding will be superceded. (TR 625)

BellSouth witness Cox argues that this issue is essentially a performance measures issue as it relates to loop provisioning intervals. She further argues that the moment Covad submits a local service request (LSR), BellSouth starts processing the order; therefore, even if Covad withdraws the request, BellSouth has already undertaken work on behalf of Covad and Covad should compensate BellSouth for the work performed. (TR 524) Witness Cox asserts that even if BellSouth does not provision a loop in the time frame requested, various work functions will have been performed prior to Covad canceling the order, and points to the fact that the LSR OSS fee is how BellSouth recovers its costs for such work. (TR 525) Witness Cox concludes that " . . . Covad must pay appropriate LSR OSS charges, even if Covad cancels an order because BellSouth is unable to provision the order within five days." (TR 561)

Analysis

Staff notes that through this issue Covad seeks to waive the cancellation charges that Covad would incur when Covad cancels an accepted LSR when the customer cancels its loop order with Covad simply because BellSouth has failed to deliver the loop within Covad's proposed five business days interval. Staff notes that the subject of the appropriate loop provisioning intervals are dealt with in Issues 5a, 5b, and 5c of this proceeding.

In the parties' proposed interconnection agreement, BellSouth proposes that Covad " . . . will incur an OSS charge for an accepted LSR that is later canceled." (Attachment 2, p. 25) Staff notes that Covad is not proposing to cancel a loop order for the mere fact that BellSouth has missed a loop provisioning interval; instead, Covad seeks to have the OSS charge waived when Covad's customer cancels, thus compelling Covad to in turn cancel its order with BellSouth. Staff observes that this is a clarification that seemingly narrows this issue. (TR 276) BellSouth does not address the merits of Covad's proposal, but instead argues that this issue will be addressed using the performance metrics approved in Docket No. 000121-TP. (TR 525) Staff observes that the performance metrics do not address charges and credits. Within the narrow scope of this issue, staff believes that it is reasonable for Covad to receive a credit for OSS charges that it has already paid to BellSouth when the customer cancels his/her loop order because BellSouth has not provisioned the loop within the specified provisioning interval.

In BellSouth's proposed agreement language in Attachment 2, Paragraph 2.9.3, BellSouth proposes that an OSS cancellation charge will be incurred when an LSR is accepted and later canceled by an ALEC. BellSouth continues that the OSS charge will be waived when "BellSouth does not deliver the loop in less than ten (20) [*sic*] days." (Attachment 2, p. 25)

Conclusion

Based on the above arguments, staff recommends that the Commission should require BellSouth to credit to Covad an LSR OSS charge previously paid by Covad only when Covad cancels a loop order because Covad's customer has canceled his/her loop order, due to BellSouth's failure to deliver the loop within the specified loop provisioning interval. As noted above, BellSouth proposes to waive this charge when it fails to deliver a loop within 10 days; instead of 10 days, staff recommends that BellSouth should waive the LSR OSS charge when it fails to deliver a loop within the intervals recommended by staff in Issues 5a through 5c.

ISSUE 16: Where should the splitters be located in the central office?

RECOMMENDATION: Staff recommends that BellSouth-owned splitters should be located in the ALEC common area of the central office where the ALECs are collocated. Staff recommends that Covad-owned splitters should be located in Covad's collocation space. **(FULWOOD)**

POSITION OF THE PARTIES:

COVAD: Splitters should be placed either on the MDF or within a minimal distance (e.g., 25 feet) of the distribution frame. This will result in efficient provisioning and mitigate placement costs.

BELLSOUTH: Splitters should be located in the common areas where the ALECs are collocated. Covad is not entitled to dictate where splitters are located in BellSouth's central offices. Locating the splitters on the MDF as proposed by Covad is very inefficient due to the frame space that this approach requires.

STAFF ANALYSIS:

This issue before the Commission is to determine the appropriate location of splitters in the central office that are used for the provision of line sharing. Covad witnesses Kientzle/Riolo testify:

> In the home-run copper scenario, the technically feasible options include the placement of a Covad-owned splitter in Covad's collocation arrangement, the placement of a splitter in a common area of the central office, and the placement of the splitter directly on the MDF. Splitters placed in a common area or on the MDF can be either BellSouth- or Covad-owned. (TR 388)

Covad witnesses Kientzle/Riolo assert that the splitter should be placed on the MDF or within 25 feet of the MDF. (TR 390) The witnesses add that while locating the splitter within 25 feet of the MDF is not the most cost efficient option, costs should increase by a minimal amount. (TR 393)

BellSouth proposes that when BellSouth owns the splitter, the splitter should be located "in a rack either in the common area close to the collocation area or in a rack in the BellSouth lineup."

(TR 808) Witness Williams admits that locating splitters on a central office frame is technically feasible; however, he contends:

> A frame located splitter arrangement requires six frame-mountable splitter blocks, each of which is capable of serving sixteen end user line sharing lines. This is inefficient due to the frame space that approach requires. This architecture requires 6 blocks to serve 96 end user lines. (TR 809)

BellSouth Witness Williams asserts that BellSouth prefers the rack-mounted architecture, which requires four frame-mounted blocks per 96 end-user lines. He points out that the rack-mounted architecture is one-third more efficient than a frame-mounted splitter. Moreover, witness Williams claims that a frame-mounted splitter would cause the frame to prematurely exhaust. (TR 809)

Covad witnesses Kientzle/Riolo argue that BellSouth's concerns of premature frame exhaustion are unwarranted considering that a high percentage of BellSouth's loops in Florida are served over fiber, which does not use MDF space. (TR 457) Moreover, Covad witnesses claim that the most important consideration for this Commission in determining the location of splitters should be cost. Witnesses Kientzle/Riolo believe that placing the splitter on the MDF reduces cable cost, cable placement expenses, loading factors, cross connections, and other related charges. (TR 391)

Covad witnesses Kientzle/Riolo testify to the functions necessary to provision line sharing in the most cost efficient manner.

> BellSouth would need to disconnect the cable pair cross connect that connected the original POTS line from its termination on the vertical side of the MDF ("VMDF") to the HMDF terminal block that corresponds to the voice switch. BellSouth would install a new cross connect from the customer's cable pair on the VMDF to the data/voice terminal on the splitter block. BellSouth would also install a new cross connect between the voice terminal on the splitter block and BellSouth's switching equipment terminal block, which is also located on the HMDF. (TR 392)

BellSouth witness Williams contends that the cost of the cable is small in comparison with the cost of frame space. (TR 839) Moreover, witness Williams asserts that no ALEC proposed a frame-mounted arrangement at any of the line sharing collaborative meetings, in which Covad was a participant. In support, he testifies:

> The line sharing collaborative keeps an issues log to track issues. It probably contains 200 different issues. There are no issues recorded concerning frame-mounted splitters from any ALEC. (TR 830)

Covad witness Riolo suggests that Covad did not propose a frame-mounted splitter, because BellSouth pressured ALECs into accepting the rack-mounted splitter. He asserts that BellSouth denied ALECs access to test its line-shared circuit, where ALECs did not accept the rack-mounted splitter. (TR 477-478)

Further, witnesses Kientzle/Riolo claim that BellSouth "originally planned to place the splitter on the MDF," but BellSouth later changed its plans. (TR 391) However, BellSouth witness Williams argues that the frame-mounted splitter was never considered a desirable architecture by BellSouth. (TR 822) BellSouth witness Williams admits that the frame-mounted splitter was used in the line sharing pilot office. However, he contends that rack-mounted splitters initially were unavailable due to excessive demand. (TR 849)

Witness Williams asserts that "many central offices where ALECs have ordered splitters have COSMOS frame," and it is not technically feasible to mount a splitter on a COSMOS frame. (TR 821) Covad Witness Riolo retorts that it is technically feasible to mount a frame-mounted splitter on a COSMOS frame. However, he concedes that he is unaware of an entity that has actually developed an adapter to do so. (TR 470)

BellSouth witness Williams further asserts that frame-mounted splitters cannot support manual test access jacks, also referred to as bantam jacks. Witness Williams points out that "the bantam jacks provide the ALEC with direct access to the outside plant cable pair for testing." (TR 809) He adds:

> The consensus of ALECs who attended the Collaborative was that frame-mounted splitters and bantam jacks allowed

> more room for testing and eliminated the possibility of accidentally losing other cross-connections on the frame. (TR 809)

Covad witnesses Kientzle/Riolo argue that CLECs did not request the bantam jacks, and no other ILEC employs the bantam jacks. (TR 391-392)

> The bantam test jack is not necessary for line sharing, and Covad should not have to pay for this additional expense. (TR 392)

BellSouth witness Williams claims that the bantam jacks BellSouth provides are pursuant to ¶118 of the FCC's Line Sharing Order, FCC 99-355, issued on December 9, 1999, in CC Docket No. 98-147:

> We require that incumbent LECs must provide requesting carriers with access to the loop facility for testing, maintenance, and repair activities. We require that, at a minimum, incumbents must provide requesting carriers with loop access either through a cross-connection at the competitor's collocation space, <u>or through a standardized interface designed for to provide physical access for testing</u> [purposes]. (Emphasis Added) (TR 822)

Witness Williams believes that the bantam jack is the "standardized interface" which meets the FCC's criteria. (TR 822) However, Covad witness Riolo contends that "there are splitter cards that have test points built into them that are much less costly" than the bantam jack. (TR 475)

Covad witnesses Kientzle/Riolo assert that increasing the splitter distance from the MDF extends the length of the cross-connect, which adds to Covad's cost. Moreover, the length of the cross-connections must be added to the total length of the loop, which in marginal cases could preclude Covad from providing DSL service. (TR 393)

> For example, if BellSouth places the splitter on an entirely different floor from the MDF, it could easily require one thousand feet of tie cable. This means that Covad could only service customers 17,000 feet or less from the central office. (TR 394)

Further, witnesses Kientzle/Riolo add that a long cross-connect between the splitter and MDF may restrict the speed of service that Covad could provide. (TR 394)

BellSouth witness Williams counters that the maximum length added to an ALEC's loop due to the splitter's location is 250 feet. He adds that the central office configuration necessitates that the data signal traverse up and down two floors. (TR 824)

BellSouth Witness Williams believes that Covad should not be allowed to dictate to BellSouth where equipment will be placed in the central office. Moreover, he believes that BellSouth should be allowed to make engineering decisions related to the placement of BellSouth's equipment "on a central office by central office basis." (TR 810)

Analysis:

Both parties agree that Covad should be allowed to place a Covad-owned splitter in its collocation space. (Covad TR 397; BellSouth TR 830) Both parties' arguments center on the most efficient location of the splitter. Covad argues that the splitter location should be determined solely based on the cost splitter configuration, while BellSouth argues that the most efficient frame configuration should determine the location of the splitter. Based on the record evidence, staff examined three configurations for our recommendation. (Covad BR p. 15; BellSouth BR p. 23)

First, staff disagrees with Covad's proposal to place a Covad-owned or BellSouth-owned splitter on the MDF. In support, staff refers to the Generic Collocation Order, Order No. PSC-00-0941-FOF-TP, issued on May 11, 2000, in Docket No. 990321-TP:

> Upon consideration of the arguments and the evidence presented, we are persuaded that an ILEC should not be obligated to offer access to its MDF. The MDF connects directly to the switch and provides an area for technicians to modify switch connection without actually altering the connections at the switch, which the evidence shows is very difficult due to the extremely large number of connections at any point at the switch. We agree with BellSouth and GTEFL that labeling and maintaining terminations is critical and should be performed by one party, the ILEC. Moreover, we are

> concerned that security and network accountability would be jeopardized by requiring ILECs to provide access to the MDF. (p. 49)

Staff maintains that network security and accountability should be considered the primary factors in any configuration proposed by Covad to BellSouth. Covad contends that its technicians share the same interest in maintaining BellSouth's network, considering that Covad's service co-exists with BellSouth's on a shared loop. (TR 317) However, staff is simply not persuaded that any ALEC should have access to BellSouth's MDF. Moreover, staff believes that a Covad-owned splitter should be located in Covad's collocation space, except for a virtually collocated splitter. In support, staff cites the Generic Collocation Order, p. 51:

> . . . if terms cannot be reached between the carriers, the ALEC's collocation site shall be the default demarcation point. (Order No. PSC-00-0941-FOF-TP)

Second, staff disagrees with Covad's proposal to place the splitter within 25 feet of the MDF. In Issue 23, Covad seeks access to all points of interconnection on the line shared loop. Staff believes that placing the splitter within 25 feet of the MDF precludes Covad from accessing a test point on the loop where the voice and data signals are combined. (TR 406) Staff recognizes Covad's need to access the loop on the customer's side of the splitter. However, staff notes that if the splitters are located within 25 feet of the MDF, Covad would typically be restricted from accessing the point of interconnection. Moreover, staff agrees with BellSouth that Covad should not be allowed to dictate where BellSouth's equipment will be placed in the central office. (TR 810) Staff acknowledges that there may be slightly increased costs by denying Covad's proposal; however, staff agrees with BellSouth that cable costs are minimal. (TR 839) Staff notes that Issue 24 covers cost in detail.

Third, staff agrees that BellSouth's proposal to locate the splitter in the common area where the ALECs are collocated is appropriate. (TR 808) However, as discussed in Issue 24, staff believes that Covad's objection to the use of the bantam jack is reasonable. BellSouth asserts that the bantam jacks meet the criteria of a "standardized interface" as set forth in the FCC's Line Sharing Order. Staff refers to ¶118 of the FCC's Line Sharing Order:

> Based on the record before us, we agree with the competitive LECs that a relatively low level of incumbent LEC effort is required to ensure that competitive LECs have access to appropriate loop testing access points.[1] Thus, we require that incumbent LECs must provide requesting carriers with access to the loop facility for testing, maintenance, and repair activities. We require that, at a minimum, incumbents must provide requesting carriers with loop access either through a cross-connection at the competitor's collocation space, or through a standardized interface designed for to provide physical access for testing purposes. Such access must be provided in a reasonable and nondiscriminatory manner. An incumbent seeking to utilize an alternative physical access methodology may request approval to do so from the state commission, but must show that the proposed alternative method is reasonable, nondiscriminatory, and will not disadvantage a requesting carrier's ability to perform loop or service testing, maintenance, or repair. We stress that incumbents may not use their control over loop testing access points and mechanisms for anti-competitive or discriminatory purposes, and that we will remain attentive and ready to respond to any reported anti-competitive incidents relating to competitive LEC access to loop testing mechanisms. (FCC 99-355)

Staff interprets the FCC Order to require BellSouth to provide one of two options for Covad to access the customer's side of the loop. BellSouth may either provide Covad with a cross connection from the customer's side of the splitter to its collocation space, or BellSouth may offer a standardized interface. Staff notes that BellSouth's proposed "standard interface," bantam jacks are discussed further in Issue 24. Staff also notes that Issue 23 discusses testing alternatives to the bantam jack.

Staff considered Covad's testimony regarding the length of the cross-connect from the MDF to the splitter. Covad contends that a long cross-connect would increase cost, and could possibly preclude Covad from serving some end-users. (TR 393) BellSouth asserts that in the worst-case scenario, 250 feet may be added to an ALEC's loop due to cross connects. BellSouth points out that the configuration of a multi-story central office may necessitate the additional

[1] We note that the incumbent LECs do not refute these testing requirements.

length. (TR 824) Staff is persuaded that BellSouth's cable additions are reasonable, and staff believes that cable cost are minimal.

CONCLUSION:

Staff recommends that BellSouth-owned splitters should be located in the ALEC common area of the central office where the ALECs are collocated. Staff recommends that Covad-owned splitters should be located in Covad's collocation space.

ISSUE 18: What should the provisioning interval be for the line sharing unbundled network element?

RECOMMENDATION: Staff recommends that the appropriate interval for BellSouth to provision the line shared loop should be four business days. Staff recommends that the provisioning interval should begin after Covad submits an error-free electronic order during BellSouth's normal business hours. Staff notes that when Covad submits orders after BellSouth's close of business hours, BellSouth should deem Covad's order as received at the start of business the following day. Staff recommends that BellSouth should be allowed an additional day for manually submitted orders.

Staff also recommends that these provisioning intervals should be included in the Interconnection Agreement. Staff notes that there is not enough record evidence to support a determination of the percentage of time that BellSouth should be required to meet this interval for line shared loops. **(FULWOOD)**

POSITION OF THE PARTIES:

COVAD: The Commission should establish a "step-down" process to drive the interval to 24 hours within 2 months of the Order in this docket. BellSouth should provision loops first within 3 days (from Day 1 to Day 30 after the Order is issued), then within 2 days (from Day 31 to Day 60) and, then within 24 hours beginning on Day 61.

BELLSOUTH: BellSouth owes Covad nondiscriminatory access to its unbundled network elements. The current provisioning intervals for Covad and the other ALECs in Florida are comparable to the provisioning for BellSouth's own ADSL service, which is all that can be required of BellSouth.

STAFF ANALYSIS:

This issue before the Commission is to determine the appropriate provisioning interval for line sharing. Covad witnesses Kientzle/Riolo assert that "the only physical work required for the provisioning of a line-shared loop is wiring the splitter configuration into the existing service, which involves removing one cross connect on the MDF and replacing it with two new cross connects." (TR 404) Witnesses Kientzle/Riolo claim that BellSouth should be able to do the work in ten minutes. Therefore, Covad believes the provisioning interval for line-shared loops that do not require conditioning should be 24 hours. (TR 404)

Covad witnesses Kientzle/Riolo recognize that Covad's proposed interval is significantly less than BellSouth's current provisioning interval. Thus, witnesses Kientzle/Riolo propose:

> BellSouth would provision loops first within 3 days (from Day 1 to Day 30 after the Order is issued), then within 2 days (from Day 31 to Day 60) and, finally, within 24 hours, beginning Day 61 after the Order. (TR 405)

Covad witnesses Kientzle/Riolo point out that the Illinois Commerce Commission determined a phased-in approach to line-sharing intervals was appropriate. (TR 405)

BellSouth witness Williams contends that in order to provision a line sharing loop, BellSouth must install cross-connects from: the loop carrying voice and data to the splitter; the splitter voice termination to BellSouth's voice switch; and the splitter data termination to the CLEC collocation space. Also, BellSouth must test to insure continuity in the voice and data circuits. After line verification, BellSouth closes the work order in COSMOS. (TR 811) Witness Williams believes the appropriate interval for provisioning line sharing is three days after the firm order confirmation. He justifies the three day interval by making reference to the interval BellSouth proposed in the Performance Measures Docket, which is four days. Witness Williams explains that BellSouth's three day interval, plus one day for firm order confirmation, is at parity with the four day offering BellSouth provisions to subscribers of its ADSL service. (TR 812) Staff notes that BellSouth proposes an additional day for manually submitted orders. (TR 812)

BellSouth witness Williams testifies that "BellSouth's plan for line sharing is to return to the ALEC a firm order confirmation no later than the next day for an electronic order, and eighteen hours for manual orders." (TR 826) Witness Williams admits that in some cases line sharing loops may be provisioned in less than three days when information flows correctly though all of BellSouth's provisioning systems. However, he testifies that "if orders fall out for manual handling, three days will be required." (TR 812)

Covad witnesses Kientzle/Riolo rebut BellSouth's testimony that order flow-through should extend the line sharing provisioning interval. Witnesses Kientzle/Riolo refer to the testimony of BellSouth witness Pate at the Georgia Public Service Commission on November 13, 2000, in Docket No. 11900-U, which reads:

> ...the Telecordia solution offers electronic processing of Line Sharing service requests allowing flow-through within BellSouth's OSS. This includes the ability to inventory and assign BellSouth facilities and splitters at the pre-specified CLEC meet points. These capabilities provided by the Telecordia solution translate into reliable, fast and accurate processing of CLEC Line Sharing service requests. (EXH 14, p. 15)

BellSouth witness Williams contends that the appropriate benchmark for the line sharing provisioning interval is BellSouth's ADSL service. This is the retail analog established by this Commission as an interim performance measure for third-party testing. BellSouth's planned intervals for ADSL service and line sharing are at parity. (TR 830)

Covad witness Allen argues that BellSouth's provisioning intervals are too long, and only slows the "growth of competitive DSL to Florida consumers." (TR 157) Witness Allen adds that Covad has reached agreement with SBC for a line sharing interval of three business days in all of its regions. (TR 126-127)

Analysis:

Staff notes that BellSouth provides evidence of actual work times to provision line-shared loops in the three basic central office configurations, which range from 21-36 minutes. (EXH. 32, pp. 1-2) Covad claims that BellSouth should be able to provision line-shared loops in ten minutes. (TR 404) Covad concedes that there are factors other than actual task time associated with provisioning intervals. (TR 200) Notwithstanding, Covad proposes a step-down provisioning interval, which after 61 days requires BellSouth to provision a line shared loop within 24 hours.

According to BellSouth, line sharing loops may be provisioned in less than three days. However, BellSouth contends "that if orders fall out for manual handling, three days will be required." Staff notes that BellSouth proposes a three-day loop provisioning interval, plus one day for firm order confirmation, which totals four days. (TR 815)

In Issue 5a, staff recommends that the loop provisioning interval for SL1 loops should be three days, including the FOC. Staff believes that loop intervals for advanced services should not be less than loop provisioning intervals for SL1 loops, unless the intervals are at parity with BellSouth's retail service. Staff agrees with BellSouth that the appropriate analog for line sharing is BellSouth's ADSL service. Staff notes that BellSouth's ADSL service interval is four days. (TR 812) Thus, staff believes that four days is an appropriate interval for a line shared loop, including the FOC.

As a whole, staff agrees with BellSouth's proposed provisioning interval for line sharing UNE loops. Staff recognizes that BellSouth's derivation of its four day interval differs from staff's. Nevertheless, staff believes that BellSouth's proposed interval is generally appropriate. Therefore, staff is persuaded that the provisioning interval for line sharing UNE loops should be four days.

Staff also recommends that these provisioning intervals should be included in the Interconnection Agreement. (see Issue 5a)

CONCLUSION:

Staff recommends that the appropriate interval for BellSouth to provision the line shared loop should be four business days. Staff recommends that the provisioning interval should begin after Covad submits an error-free electronic order during BellSouth's normal business hours. Staff notes that when Covad submits orders after BellSouth's close of business hours, BellSouth should deem Covad's order as received at the start of business the following day. Staff recommends that BellSouth should be allowed an additional day for manually submitted orders.

Staff also recommends that these provisioning intervals should be included in the Interconnection Agreement. Staff notes that there is not enough record evidence to support a determination of the percentage of time that BellSouth should be required to meet this interval for line shared loops.

ISSUE 22: Should BellSouth test for data continuity as well as voice continuity both when provisioning and repairing line shared loops?

RECOMMENDATION: No. Staff recommends that BellSouth should only be required to test the continuity of the data circuit, including the high frequency spectrum. **(FULWOOD)**

POSITION OF THE PARTIES:

COVAD: Yes. BellSouth should use the Sunset ADSL test for line sharing orders, which it uses on its retail orders, and LSVT for provisioning of line shared circuits. This will help determine that BellSouth has properly completed the cross connection on the data line from the splitter to the collocation space.

BELLSOUTH: BellSouth is willing to test continuity of the data circuit wiring. BellSouth also tests the wiring of the high frequency spectrum. BellSouth uses a Line Sharing Verification Transmitter (LSVT) to test the wiring of the loops for line sharing.

STAFF ANALYSIS:

This issue before the Commission is to determine whether BellSouth should be required to employ the Sunset test set for testing data continuity when provisioning and repairing line-shared loops. BellSouth witness Williams testifies:

> As a result of the FCC Line Sharing Summits, Covad and BellSouth determined that BellSouth technicians were testing line-shared loops only for working voice service. BellSouth technicians did not test to insure that BellSouth had properly completed the cross connections on the data line from the splitter to the collocation space. (TR 148)

Thus, BellSouth began deployment of the Line Sharing Verification Transmitter (LSVT) in January 2001 to test the continuity of data circuit wiring, including the high frequency spectrum. (TR 149) BellSouth witness Williams maintains that BellSouth will continue to use the Line Sharing Verification Transmitter (LSVT) when provisioning line-shared loops. (TR 813)

Covad witness Allen agrees that BellSouth should continue to use the LSVT test for provisioning; however, he believes that the Sunset ADSL test should only be used for maintenance and repair. (TR 179) Witness Allen explains that Covad discovered that BellSouth used the Sunset test set when BellSouth technicians successfully tested Covad's line sharing circuits. Because of the success of line-shared loops provisioned with the Sunset test set, Covad requests that BellSouth use the test set for all of Covad's line-shared loops. (TR 179) Witness Allen asserts that the Sunset ADSL test set provides Covad "with visibility into the configuration of its line sharing circuit and improved cooperative testing abilities during the repair and maintenance process." (TR 179)

BellSouth witness Williams admits that a BellSouth technician used the Sunset test set in one instance to resolve a Covad line sharing problem; however, he contends that the BellSouth employee "did something he shouldn't have." (TR 862) Witness Williams points out that ALECs employ different equipment for their networks, which requires the use of different test equipment. He believes that it would be unreasonable to require BellSouth technicians to use various test sets. (TR 820) Further, BellSouth witness Williams argues that BellSouth treats ALECs in a nondiscriminatory manner. It is a coincidence that Covad's equipment is compatible with BellSouth's Sunset test set. However, BellSouth should not be required to test Covad's data signal, because both parties' equipment uses the same protocol. (TR 863)

Covad witness Allen claims that it is imperative that BellSouth test for data continuity during provisioning and maintenance of line sharing. He argues that Covad has experienced many problems with BellSouth completing the work necessary to provision loops. He adds that although the line sharing verification transmitter (LSVT) is a good step in "providing good quality line sharing orders to Covad," Covad's needs are not being met regarding this issue. (TR 178) Currently, Covad is required to open trouble tickets on new orders that have problems, even though the order has not been successfully turned up on the provisioning side. He believes that BellSouth should modify its procedure for Covad's line sharing orders, since BellSouth already uses the Sunset test sets for its retail customers. (TR 180)

BellSouth Witness Williams testifies:

> I believe that testing of the data circuit is beyond what we're expected to do as an ILEC. I think, what we're expected to do is to run the cross-connections and make sure all the wiring is correct, including the wiring for the high-frequency spectrum, which we're certainly willing to do, but I don't think we should be expected to test the signal that comes from Covad's DSLAM. (TR 869)

In support, he refers to ¶123 of the FCC's Line Sharing Order, FCC 99-355, issued on December 9, 1999, in CC Docket No. 98-147:

> Bell Atlantic also states that it will not be able to use its own equipment to test the data portion of the shared line, making Bell Atlantic's ability to maintain those competitors' xDSL services "more difficult."[2] <u>The record does not indicate, nor do we foresee, that incumbent LECs such as Bell Atlantic would have occasion to test a competitive LEC's xDSL equipment or products</u>. (Emphasis added.) (TR 820)

<u>Analysis</u>:

At the crux of this dispute is whether BellSouth is obligated to use the Sunset test set. Covad argues that the Sunset test set improves its repair representative's view of the line sharing configuration, thereby improving Covad's cooperative testing ability during maintenance and repair. (TR 179) Staff notes that currently BellSouth employs the LSVT to test the continuity of data circuit wiring. The continuity test determines if there is continuous flow-through at the high frequency or data band. (TR 813) Further, staff notes that the Sunset test set will test the data signal from Covad's Digital Subscriber Line Access Multiplexer (DSLAM), which is an additional test.

Covad witness Allen refers to the FCC Line Sharing Summits which determined that BellSouth's testing of line-shared loops did not include the cross connects on the data side of the splitter. Subsequently, BellSouth began use of the LSVT in January 2001. (TR 148-149) Staff notes that BellSouth agrees to employ the LSVT test for line sharing orders. (TR 813) However, BellSouth believes that testing the data signal from Covad's DSLAM is beyond what the FCC

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[2]Bell Atlantic Jackson Stmt. at para. 12.

requires BellSouth to do. BellSouth refers to ¶123 of the FCC's Line Sharing Order, which reads:

> Bell Atlantic also states that it will not be able to use its own equipment to test the data portion of the shared line, making Bell Atlantic's ability to maintain those competitors' xDSL services "more difficult."[2] The record does not indicate, nor do we foresee, that incumbent LECs such as Bell Atlantic would have occasion to test a competitive LEC's xDSL equipment or products. The quality of the service that a competitive LEC provides to its customer is not the incumbent's responsibility, so long as the incumbent is providing sufficient quality of service to the requesting carrier. We agree with commenters that if they are provided with access to the high frequency portion of the loop that is of sufficient quality, competitive LECs have ample capability and incentive to ensure the quality of the services they offer to their customers, and the performance of their own equipment.[3] (99-355)

Staff interprets the FCC's Line sharing Order as concluding that ILECs are not obligated to test a competitor's xDSL equipment.

Additionally, Covad argues that under the definition of parity with BellSouth's ADSL service, BellSouth should be obligated to use the Sunset test set for Covad's line sharing orders. (TR 180) However, BellSouth argues that it is a coincidence that Covad's and BellSouth's equipment uses the same "protocol." (TR 863) Staff notes that "protocol" is the format of messages exchanged between systems. BellSouth witness Williams points out that the Sunset test may or may not work with other ALEC's equipment. Thus, BellSouth likely would be required to employ multiple test sets to test its competitors' equipment. (TR 863)

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[3] Furthermore, we understand that incumbent LECs coordinate line testing with alarm companies that procure "alarm loops." *See* Aug. 31 Technical Forum. We are confident that incumbent LECs are capable of coordinating maintenance, testing, and repair activities with competitive LECs as well as they currently do with alarm companies. *See* NorthPoint Comments at 27. *See also* Combined Data CLEC Sept. 30 *Ex Parte* at 26.

Staff does not believe that BellSouth would bear an unreasonable burden testing Covad's data signal. However, staff believes that Covad's parity argument applied in a non-discriminatory manner requires BellSouth to test all ALECs, which would be burdensome for BellSouth. Staff notes that the FCC does not require BellSouth to test a competitive carriers' xDSL equipment, and staff is persuaded that testing the data signal from Covad's DSLAM would constitute a test of Covad's xDSL equipment.

CONCLUSION:

Staff recommends that BellSouth should only be required to test the continuity of the data circuit, including the high frequency spectrum.

ISSUE 23: Should Covad have access to all points on the line shared loop?

RECOMMENDATION: No. Staff recommends that Covad should not be allowed to test all points on a line shared loop. However, staff recommends that BellSouth should be obligated to provide one of the following options:

1) allow Covad to test the loop at the point of interconnection on the customer's side of the splitter; or

2) offer Covad a cross-connect from the loop access point of interconnection on the splitter to Covad's collocation space.

Staff believes that these methods provide BellSouth with network security, while minimizing the costs to Covad. **(FULWOOD)**

POSITION OF THE PARTIES:

COVAD: Yes. Whenever the line in the central office has both data and voice traffic on it, Covad needs access to all points of interconnection. This allows Covad to efficiently troubleshoot problems and replaces the unnecessary and expensive bantam test jack.

BELLSOUTH: BellSouth is responsible for the quality of wiring at its frame. It would not be appropriate to allow individuals not employed by BellSouth to perform work at the frame because of the potential cost and service disruption that errors by ALEC technicians might cause.

STAFF ANALYSIS:

This issue before the Commission is to determine whether Covad should have access to all points of interconnection inside the central office. Covad witnesses Kientzle/Riolo assert that it is critical for the Commission to allow Covad to test the shared physical loop. Where Covad owns the splitter, Covad is entitled to perform necessary testing. (TR 406) They add that Covad must have direct access "at the point where the combined voice and data loop leaves the central office," which is at the MDF. (TR 406) Witnesses Kientzle/Riolo testify:

> Either BellSouth or Covad may receive the trouble report from the customer, so each should have equal access to each appearance of the plant items comprising the circuit for test purposes. (TR 406)

BellSouth witness Williams responds that Covad should report troubles on UNE services to BellSouth, and BellSouth will repair the trouble. (TR 814) BellSouth witness Williams asserts that BellSouth should be responsible for wiring at the frame. Witness Williams points out that BellSouth tracks all wiring modifications on the frame. He explains that the "tracking includes all wiring diagnostic work performed, the date and time of the activity, and the technician performing the work." (TR 814) BellSouth tracks the information to identify wiring problems, technician accountability, and technician training. However, he believes that if CLEC technicians were allowed to perform work at the frame, tracking records would be "incomplete or inaccurate." He testifies:

> There is no question of the party responsible for the wiring of service on the BellSouth frame. BellSouth feels that to allow individuals not employed by BellSouth to perform work at its frame is a potential risk to service and potentially costly for BellSouth to remedy errors caused by CLEC technicians. (TR 814)

Covad witness Riolo retorts that a number of ALEC employees are retired ILEC employees with many years of experience above most ILEC technicians; therefore, BellSouth's insecurities about ALEC technicians are unwarranted. (TR 476-477) Moreover, Covad witness Seeger contends that Covad's technicians share the same interest in maintaining BellSouth's network as BellSouth, considering that Covad's service co-exists with BellSouth's on a line shared loop. (TR 317) Witness Seeger further asserts that Covad does not intend to perform wiring on the frame; however, Covad should be allowed to perform testing at the frame. (TR 317)

BellSouth witness Williams agrees that Covad should be allowed to test the loop it uses for line sharing, but he does not believe that Covad should have access to all points of interconnection within the central office. (TR 815) BellSouth witness Williams asserts that the bantam jack allows Covad to test the loop from the splitter to the Network Interface Device (NID). He testifies:

> For each line sharing end user, BellSouth offers the ALECs a bantam-type test jack located in the same rack as the splitter shelf. This Bantam test jack is made to accept a test cord. When the cord is inserted, the voice and data signals and associated central office wiring are isolated from the outside plant copper loop. (TR 815)

Covad disagrees with BellSouth that the bantam jack offers all the necessary testing Covad requires. Covad asserts in its briefs that:

> . . . the bantam test jack adds seriously and unnecessarily to the cost of the splitter configuration, increasing Covad's cost by as much as 30%-40%.[4] No other ILEC adds this cost to a line sharing configuration and other ILECs allow Covad significantly more test access to facilitate the line sharing process.[5] (Covad BR p. 24)

BellSouth Witness Williams adds that BellSouth provides Covad with access to Data Local Exchange Carrier Trouble Analysis and Facilitation Interface (DLEC TAFI), which allows Covad to perform mechanized loop testing. (TR 815)

Covad witnesses Kientzle/Riolo suggest that where the Commission denies Covad access to the shared physical loop, the Commission should require BellSouth to respond to trouble reports promptly. Specifically, BellSouth should be required to "clear" data trouble reports within four hours. (TR 460-461)

Analysis:

Based on BellSouth's position, it appears to staff that BellSouth's concerns center around Covad's technicians performing work at its frame. (BellSouth BR p. 29) Covad contends that its technicians would only perform tests, not work on BellSouth's frame. (TR 317) However, staff does not agree that Covad should have access to BellSouth's frame. (See discussion in Issue 16)

Staff is persuaded that Covad should have access to the customer's side of the loop. Staff notes that the FCC outlined

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[4] TR. 392, 851.

[5] TR. 851,853.

BellSouth's obligation in this matter. Staff cites ¶118 of the FCC's Line Sharing Order:

> . . . We require that, at a minimum, incumbents must provide requesting carriers with loop access either through a cross-connection at the competitor's collocation space, or through a standardized interface designed to [sic] provide physical access for testing purposes. Such access must be provided in a reasonable and nondiscriminatory manner. . . . (FCC 99-355)

Staff interprets the FCC's Order to require BellSouth to provide Covad with access to the customer's side of the loop. The Order specifically outlines that BellSouth may provide Covad either with a cross-connection from the customer's side of the splitter to Covad's collocation space, or a standardized interface. Covad clearly opposes the "standardized interface." (TR 391-392)

Staff recognizes there are three other methods for Covad to gain access to the customer's side of the loop, which may be less expensive. Staff believes that the following options allow Covad loop access, while offering BellSouth MDF protection:

A. BellSouth could provision a cross-connect from the loop access point of interconnection on the splitter to Covad's collocation space. (FCC 99-355, ¶118)

B. BellSouth could use splitter cards that have built in test points. According to Covad, SBC employs the splitter cards, which are not as expensive as the bantam jacks. (TR 475)

C. BellSouth may allow Covad to test the loop at the loop access point of interconnection on the splitter. Staff notes that this method requires no cross-connects or additional cost. (EXH. 30, p.1)

Staff clarifies that we are not determining which network configuration BellSouth should use. Staff agrees with BellSouth that Covad should not be allowed to make engineering decisions in BellSouth's central offices. (TR 810) However, staff notes that Covad is allowed to test loops via the bantam jacks at the splitter. (TR 815) Thus, staff believes that it would be reasonable for BellSouth to allow Covad to test the loop's point of interconnection on the customer's side of the splitter. Staff notes that this method requires no cross-connects or additional cost to Covad. Staff also believes that it would be reasonable for BellSouth to run a cross-connect from the loop access point of interconnection on the splitter to Covad's collocation space. Staff notes that the FCC identifies this method in ¶118 of the FCC's Line Sharing Order, and the cable costs are reasonable for Covad.

CONCLUSION:

Staff recommends that Covad should not be allowed to test all points on a line shared loop. However, staff recommends that BellSouth should be obligated to provide one of the following options:

1) allow Covad to test the loop at the point of interconnection on the customer's side of the splitter; or

2) offer Covad a cross-connect from the loop access point of interconnection on the splitter to Covad's collocation space.

Staff believes that these methods provide BellSouth with network security, while minimizing the costs to Covad.

ISSUE 24: Are the rates proposed by BellSouth for line sharing compliant with TELRIC pricing?

RECOMMENDATION: Staff recommends that BellSouth should revise its line sharing cost studies to incorporate the adjustments noted in staff's analysis. A revised line sharing cost study that reflects staff's recommended adjustments should be filed with the Commission 30 days after the issuance of the order in this proceeding, and the associated rates should be included in the parties' agreement. Staff also recommends BellSouth incorporate all appropriate adjustments ordered by this Commission in Docket No. 990649-TP. Staff does not recommend rates be interim subject to true-up, but notes that when the Commission sets rates for collocation, Covad will have the ability to adopt those rates at its discretion. (**BLOOM, DOWDS**)

POSITION OF THE PARTIES:

COVAD: No. The Commission should adopt the prices in Covad Exhibit ERYK/JPR-3 for the components of line-sharing over home-run copper, with any necessary adjustments to reflect the Commission's decision in Docket No. 990649-TP. The Commission should establish a process to determine the appropriate pricing, terms and conditions for fiber-fed DSL capable loops.

BELLSOUTH: The Commission should adopt the rates BellSouth proposed in this docket for line sharing with the understanding that any final adjustments ordered in Docket No. 990649-TP, if applicable, can be incorporated at a later date.

STAFF ANALYSIS: The Commission is being asked to choose between the rates for line sharing proposed by Covad and the rates for line sharing proposed by BellSouth. The departure point for the rates proposed by both parties is the line sharing cost study submitted by BellSouth (confidential version is EXH 24; redacted version is EXH 28). BellSouth contends its cost study adheres to TELRIC costing principles, while Covad alleges that there are serious flaws in the BellSouth study that undermine its value as the basis for setting rates. Staff would note the discussion of line sharing rates in this proceeding relates only to loops provisioned with copper and does not address fiber loops.

Technically, line sharing is the practice by which an alternative local exchange company (ALEC) and an incumbent local exchange company (ILEC) share a local loop. In a line sharing arrangement, the ALEC uses the high frequency portion (above 25 Khz) for data transmission, such as Internet access, and the ILEC uses the low frequency portion of the loop (4 Khz and below) for analog voice transmission. Line sharing is a result of the Federal Communications Commission's (FCC) Order No. 99-355 (CC Docket No. 98-147, Deployment of Wireline Services Offering Advanced Telecommunications Capability, December 9, 1999) which ordered ILECs to provide unbundled access to the high frequency spectrum of the local loop pursuant to Section 251(c)(3) of the Act.

Covad witnesses Kientzle and Riolo contend this access is critical to the development of competitive markets because the decision by the FCC means ALECs do not have to purchase separate, stand-alone loops to provide high-speed data services, such as digital subscriber line (DSL), but instead can share the incumbent's loop, thereby lowering market entry costs and creating a level playing field. (Kientzle/Riolo TR 384) In their joint testimony, Covad witnesses Kientzle and Riolo contend the BellSouth cost study used to arrive at rates for line sharing is flawed and is unreliable. The Covad witnesses raise criticisms of specific aspects of the BellSouth study.

RECURRING CHARGES

1. Splitter placement

In a line sharing environment, the splitter is an eponymously named component that separates the voice and data portion of a loop, routing the voice portion to an ILEC's main distribution frame and the high frequency portion to an ALEC's collocated equipment, where it is multiplexed by the digital subscriber line access multiplexer (DSLAM) and connected to a packet-switched network. (Kientzle/Riolo TR 389-390)

Covad witnesses Kientzle and Riolo contend mounting the splitter directly on the main distribution frame (MDF) is the most efficient configuration for line sharing because it avoids the imposition of "unnecessary cross connections, test points or bay/frame terminations" on alternative local exchange companies (ALECs). (Kientzle/Riolo TR 385) The witnesses testify that splitter placements that are farther away from the MDF have two major, detrimental effects:

> First, placing the splitter away from the MDF requires more tie cable, support structure and pathways to be designated, installed and maintained, which adds to the cost of splitter placement. The further away from the MDF, the longer the tie cables are for the competitor. Moreover, with some incumbent-proposed line-sharing configurations, additional cross-connects are frequently added, increasing the likelihood of trouble/failure. Additional, unnecessary cross connections add significantly to the overall cost of line sharing, diminishing the economic benefits of this very low-cost method of providing DSL-based service.
>
> Second, the length of the tie cable must be added on to the total length of the loop to determine whether DSL-based services can be offered at all and, if so, at what speed. Most technology to provide ADSL is limited to loops of no more than about 18,000 feet; thus, in marginal cases, a long tie cable inside the central office could preclude Covad from offering line-shared DSL service to a customer. (Kientzle/Riolo TR 393-394)

BellSouth witness Shell testifies that the issue of what constitutes the "most efficient" configuration is legally complex, involving 47 C.F.R. 51.505, the vacating of portions of that rule by the Eighth Circuit Court of Appeals, and a pending appeal before the U.S. Supreme Court of the appellate court's decision. (Shell TR 738) Essentially, witness Shell states, BellSouth has not attempted to conform its cost methodology to the Eighth Circuit decision because, witness Shell maintains, the cost study filed in this proceeding reflects an efficient configuration even though it is not the configuration sought by Covad. (Shell TR 739)

In opposition to Covad witnesses Riolo and Kientzle, BellSouth witness Williams asserts that the most efficient configuration does not necessarily involve mounting the splitter on the MDF or within 25 feet of the MDF:

> The most efficient architecture to deploy line sharing when BellSouth owns the splitter is to place the splitter in a rack either in the common area close to the collocation area or in a rack in the BellSouth lineup. (Williams TR 821)

Underlying this assertion, witness Williams testifies, are space considerations and the nature of central office main distribution frames (MDFs). Witness Williams contends BellSouth's experience with its line sharing pilot program in Georgia showed that splitters cannot be mounted on MDFs and still accommodate manual test jacks. (Williams TR 821). Also, witness Williams testifies, "Many central offices where ALECs have ordered splitters have COSMOS (computer system for mainframe operations) frames. It is not possible to mount a splitter on a COSMOS frame." (Williams TR 821)

Staff notes that Issue 16 in this arbitration addresses the splitter placement issue exclusively.

2. Bantam test jacks/Splitter bay capacity

BellSouth witness Williams testifies that placing a splitter on or in close proximity to an MDF does not leave sufficient space to provide manual test access jacks, which he refers to as "bantam test jacks," or "bantam jacks"; these test jacks allow an ALEC to have direct access to the outside plant cable pair for testing. (Williams TR 821) Witness Williams explains:

> The bantam jack allows the ALEC to test the loop from the splitter to the NID (network interface device). This bantam jack is made to accept a test cord. When the cord is inserted, the voice and data signals and associated central office wiring are isolated from the outside copper loop. This leaves the loop ready for unobstructed wideband testing by the ALEC technician. . .(Williams TR 823)

BellSouth witness Williams contends the bantam test jack configuration BellSouth proposes, and on which its cost study is based, was reached after conducting a line sharing pilot program in Atlanta and during collaborative meetings with ALECs in the BellSouth region without objection. (Williams TR 821) Witness Williams also maintains that the FCC mandates that ILECs provide a standard interface for loop testing for ALECs; he cites ¶118 of the FCC's Third Report and Order (Order No. 99-355, CC Docket No. 98-147), which reads in part:

> We require that, at a minimum, incumbents must provide requesting carriers with loop access either through a

> cross-connection at the competitor's collocation space, <u>or through a standarized interface designed to provide physical access for testing</u>. (Emphasis by the witness, Williams TR 822)

Covad witnesses Kientzle and Riolo argue the configuration BellSouth proposes, utilizing bantam test jacks, generates additional costs for Covad, which they contend are unnecessary. (Kientzle/Riolo TR 426) Specifically, witnesses Kientzle and Riolo argue that BellSouth's addition of bantam test jacks in a splitter bay reduces the available space to install splitter shelves. They contend that reducing the available space in a splitter bay from the manufacturer's recommendation of 14 96-line splitter shelves to eight splitter shelves where bantam test jacks are used, underutilizes the bay's capacity and results in higher per-line costs. (Kientzle/Riolo TR 429)

BellSouth witness Shell confirms under cross-examination that BellSouth's cost study assumes eight splitter shelves per splitter bay instead of the manufacturer's recommended 14 splitter shelves. (Shell TR 760). Asked if using an assumption of 14 splitter shelves per splitter bay in its cost study instead of eight would reduce the cost to Covad, BellSouth witness Shell answered, "The cost would be lower, but, again, BellSouth chose in working with the collaborative to also use bantam test jacks, and that takes up capacity which led to eight splitters and eight bantam test jack shelves in our bays." (Shell TR 761) Witness Shell alludes to the configuration using 14 splitter shelves per bay not being efficient, "because of cooling requirements associated with having the equipment very close," (Shell TR 761) but provides no further support.

BellSouth witness Shell acknowledged under cross examination that the addition of bantam test jack shelves adds costs equivalent to 50 percent of the cost of a splitter shelf to the cost of line sharing. (Shell TR 757). BellSouth witness Shell also admitted that a splitter with test-point functionality built into the splitter card is commercially available for and would add 2.3 percent to the cost of a splitter shelf. (Shell TR 759)

Under cross examination, BellSouth witness Williams said he does not know of any other ILEC in the country that either requires the use of bantam test jacks or of any ILEC that uses them at all. (Williams TR 851) Regarding the cost of a bantam test jack, witness Williams said under cross examination, "It's a standard type of test equipment that's available on the market, and I can't tell you why it costs so much. I can't even say whether that's a good price or a high price. I just don't know." (Williams TR 851)

3. Cable length

Covad witnesses Kientzle and Riolo assert that a collateral effect of not allowing ALECs to mount splitters on the MDF or within 25 feet of the MDF is the cost of connecting cables, which they allege increase in price as distance from the MDF increases. (Kientzle and Riolo TR 427) The Covad witnesses testify that the BellSouth cost study "appears to reflect the assumption of 'three 100 pair cables for an average distance of 150 feet.'" (Kientzle and Riolo TR 427).

BellSouth witness Shell concurs that the cost study assumes an average length of 150 feet of cable. However, witness Shell testifies, "BellSouth's vendor charges the same rate for cables from 1 to 150 feet, thus, the distance from the splitter to the MDF does not effect [sic] the cost results. Additionally, the ALEC is not charged a 'per foot' rate thus from a cost perspective this concern is moot." (Shell TR 740)

4. Supporting Equipment and Power Loading Factors.

Covad witnesses Kientzle and Riolo contest BellSouth's application of a power loading factor in a line sharing environment, arguing line sharing equipment does not create a demand for additional power. (Kientzle/Riolo TR 435)

The BellSouth cost study employs a power loading factor to calculate the incremental investment for power-related equipment such as rectifiers, power supplies, batteries, some fuse panels and emergency power generators that are required to support each additional dollar of central office investment. The power loadings are developed from investment data obtained from BellSouth's central office monthly allocation process extract of power demand. (EXH 28, p.20)

Covad witnesses Kientzle and Riolo testify, "BellSouth applied a "Supporting Equipment &/or Power" loading to all splitter related investments in its study. Splitters, splitter shelves, etc., are passive devices and require no power whatever." The Covad witnesses continue, "Hence, the application of a power factor to these elements violates cost causation and would saddle competitors with recurring power costs for power they do not consume." (Kientzle/Riolo TR 435) Because the power component of the supporting equipment and power factor is distinctly identifiable, witnesses Kientzle and Riolo recommend it be deleted from this factor.

BellSouth witness Shell does not dispute the assertion that a splitter is an electronically passive device that requires no additional power, or that BellSouth has applied a power factor that is based on the power costs associated with pair gain investments to the investment in a line splitter shelf. (Shell TR 768) Witness Shell appears to acknowledge the possibility of confusion within BellSouth over the applicability of the in-plant factor for digital circuit pair gain equipment in a line sharing arrangement:

> This account classification was chosen by either the science technology or the network groups that studied the equipment for the purchasing and they decided that it fit this category. Pair gain simply allows a cabling pair or a circuit to have more then one transmission path and, essentially, the thought may have been that this is what it was doing by splitting the frequency. (Shell TR 768)

Covad witnesses Keintzle and Riolo propose a downward adjustment of the power factor from BellSouth's recommended 1.1011 to 1.0232. (Kientzle/Riolo TR 435) For splitter bay and other splitter related investments, the Covad witnesses propose a power factor of 1.0162, which removes the power component, compared with BellSouth's proposal that the factor be set at 1.0251.

5. Land and Building Factor

Covad witnesses Kientzle and Riolo contend BellSouth is potentially double-recovering costs through the application of land and building factors to splitter-related investments. (Kientzle/Riolo TR 433) In its cost study, BellSouth proposes a land factor of 0.0078 be applied to splitter investments and a building factor of 0.1267 also be applied.

BellSouth witness Williams acknowledges BellSouth's proposed configuration for line sharing is to place the splitter in the ALEC common area. (Williams TR 808-809) Covad witnesses Kientzle and Riolo contend ALECs are already paying for common area space as part of their collocation charges, and conclude that "BellSouth's addition of land and building investments based on splitter-related investments would double-recover the cost of land and building investment that competitors are already paying for through collocation charges." (Kientzle/Riolo TR 434)

BellSouth witness Shell does not address directly the land and building factors dispute; however, he does address loading factors in a general manner, saying that "The cost study reflects the equipment, which enables ALECs to line share based on BellSouth's provisioning practices. Thus, the costs generated by applying the loading factors to the investment accurately reflect the costs BellSouth incurs in provisioning these UNEs." (Shell TR 740)

6. Connecting blocks

Witnesses Kientzle and Riolo allege BellSouth's calculation of connecting block investments, which assumes a rack-mounted splitter arrangement, overstates the ILEC's costs. The Covad witnesses oppose a rack-mounted configuration in favor of a frame-mounted arrangement. (Kientzle/Riolo TR 429) Nonetheless, the Covad witnesses argue, while a rack-mounted arrangement is the least preferred option, they believe BellSouth overestimates the number of connecting blocks needed to facilitate a 96-line splitter. (Kientzle/Riolo TR 431)

In its cost study, BellSouth assumes four connector blocks are necessary for each 96-line splitter. (EXH 28, p.513,) Witnesses Kientzle and Riolo testify, "Only three blocks are necessary to implement rack-mounted splitter arrangements." (Kientzle/Riolo TR 430-431) BellSouth witness Williams counters that "BellSouth's preferred rack-mounted architecture requires four frame mounted blocks, or 89 type blocks, which can serve 96 end user lines." (Williams TR 809)

7. In-plant factors

Covad witnesses Kientzle and Riolo challenge BellSouth's assertions that the ILEC will incur $279 in costs to place a splitter bay, and $2,734.34 to place the splitter and the splittter shelves. (Kientzle/Riolo TR 432) The Covad witnesses argue that BellSouth's cost study inflates these values because they are estimated using in-plant factors for the ILEC's digital pair gain equipment account. (Kientzle/Riolo TR 432)

> Splitters have no moving parts and are nothing more than a shelf into which splitter line cards are placed and cabling is attached. Thus, splitters bear little in common with sophisticated electronics equipment such as pair gain systems. (Kientzle/Riolo TR 432)

During cross examination, BellSouth witness Shell was asked about the application of historic in-plant factors - such as pair gain equipment accounts - to devices that are essentially passive electronically.

> I guess, what you're asking is BellSouth should look at every piece of equipment that's in every category of every account and determine which one needs to come out and which one doesn't need to come out. (Shell TR 770)

The Covad witnesses argue that information contained in proprietary discovery responses provided by BellSouth (EXH 18, POD 32, p.6) more accurately estimate the engineering and installation costs of a splitter bay and the placement of the shelf. The witnesses state, "We propose using this information from BellSouth's direct estimate as a compromise replacement for BellSouth's use of substantially inaccurate 'in-plant' factors. (Kientzle/Riolo TR 433)

<u>NONRECURRING CHARGES</u>

1. BellSouth-owned splitters

Covad witnesses Kientzle and Riolo assert the BellSouth cost study does not substantiate the work times for 96-line and 24-line splitter installations when BellSouth owns the splitter. (Kientzle/Riolo TR 439) In its study, BellSouth estimates nearly 8.5 hours of engineering and network work at a cost to competitors of $377.72. (EXH 28, p.511) The Covad witnesses contend BellSouth offers no testimony to explain what functions are performed during the hours worked, or any corroborative evidence to confirm task times associated with the rate element. (Kientzle/Riolo TR 442) In the absence of an explanation of what specific functions are being performed, the Covad witnesses advocate rejecting the proposed nonrecurring charge. (Kientzle/Riolo TR 443)

BellSouth witness Shell testifies during cross examination that the circuit capacity management group, which the cost study lists as performing three hours of work to set up a splitter, is a group that, "would typically keep track of circuit equipment in the central office. And their function would be to monitor, look at the field of splitter utilization, verify that the splitter capacity exists, ID it, and run any concerns that may exist. . ." (Shell TR 774) Of the four hours attributed to the COSMOS (computer system for maintenance operations) group, witness Shell testified, "The COSMOS group, they would take that information (from the circuit capacity management group), also verify it to make sure everything is documented in the system so that then it's all electronically and automatically done..." (Shell TR 775)

2. Competitor-owned splitters

The BellSouth cost study lists nonrecurring rate elements associated with activities performed by its complex resale support group, circuit capacity management group and COSMOS group when the splitter is owned by an ALEC. (EXH 28, p.511) Covad witnesses Kientzle and Riolo label these charges "inexplicable" because under this option, Covad would own, install and maintain the splitter in its collocation space. (Kientzle/Riolo TR 445) The Covad witnesses testify, "It is difficult to imagine why BellSouth believes a competitor should pay BellSouth for any such tasks when Covad purchases and installs its own splitter in its own collocation area." (Kientzle/Riolo TR 446)

BellSouth witness Shell does not address these proposed charges in his testimony. The Covad witnesses advocate the elimination of these charges.

3. Per-line activation

The Covad witnesses question the multiple functions BellSouth's cost study lists as necessary to activate a splitter line, which result in charges of $37.02 for a first line and $21.20 for an additional line on the same order. (EXH 28, p.511) In addition to a lack of detail, witnesses Kientzle and Riolo contend the multiple engineering functions are suspect because line sharing requires little or no engineering (Kientzle/Riolo TR 449); BellSouth has allocated too much central office time to provision line sharing; and BellSouth adds a number of tasks prefaced by the initials LST, which are not explained in the cost study. (Kientzle/Riolo TR 450). The Covad witnesses note BellSouth lists 25 minutes as the task time on average to connect and test a line shared line in Florida, but they offer an exhibit from a proceeding before the Georgia Public Service Commission in which BellSouth assumed 15 minutes to perform this function. (EXH 14, p.6)

During cross examination, witness Shell was asked about the 25-minute assumption, to which he responded, "It's based on the amount of time that the group that would do this work said that, on average, this is how much time it would take." (Shell TR 778)

In general, witness Shell testifies, the costs incurred by BellSouth in the nonrecurring calculations reflect activities that are performed once BellSouth receives a firm order from the ALEC for the splitter. (Shell TR 750)

The Covad witnesses recommend a task time of 20 minutes for each per-line activation at an assumed labor rate of $40 per hour, resulting in a charge of $12.

4. Per Subsequent activity per-line rearrangement

BellSouth proposes a charge of $32.78 for per-line rearrangements and an additional charge of $16.38 for each additional line rearrangement on the same order. (EXH 28, p.511) The Covad witness recommend a 50 percent reduction of BellSouth's proposed price, claiming BellSouth cannot support its study inputs and assumptions, and that the task times assumed are inflated. (Kientzle/Riolo TR 455) The Covad witnesses point out that the BellSouth study in this proceeding assumes 37 minutes of central office time are necessary to perform line rearrangements, but BellSouth proposed 22 minutes in its Georgia line sharing study (EXH 14, p.6). In addition, the Covad witnesses allege, BellSouth's assumption of a 35 percent fallout rate for manual work to the assignment facility inventory group reflects "unreasonably inefficient" levels of fallout. (Kientzle/Riolo TR 455)

<u>Conclusions</u>

Recurring Charges

1. Splitter Placement

In accord with staff's recommendation in Issue 16, staff believes that on balance it is most appropriate for splitters to be placed on racks in the ALEC common area. Although it is conceivable that there may be instances where this configuration may not yield the least cost option for a given ALEC, staff is persuaded by the testimony of BellSouth witness Williams that problems can readily arise if splitters are mounted on the MDF; staff thus agrees that the assumption reflected in BellSouth's cost study, where splitters are mounted on a rack in the common area or in a rack in a BellSouth lineup, is appropriate.

2. Bantam Test Jacks/Splitter bay capacity

Staff agrees with BellSouth that the FCC's UNE Remand Order requires them to provide an interface for loop testing; however, this order lacks specifics as to how loop testing should be provided. It appears that Covad and other data ALECs participated in the line sharing collaborative that took place in Georgia where BellSouth proposed using bantam test jacks, and no ALEC objected to this proposed configuration, which BellSouth has since deployed. However, the record indicates that this configuration, which intersperses bantam test jack shelves with splitter shelves in a bay, reduces the useable capacity in a bay and increases significantly the unit cost of a splitter(and thus the price Covad would face). Staff also notes that BellSouth apparently is the sole major LEC that chose this configuration, and that there is an alternative configuration that integrates testing capability into a splitter card at a much lower overall cost.

Staff believes Covad witnesses Kientzle and Riolo argue persuasively that the use of bantam test jacks as proposed by BellSouth imposes unecessary costs on competitive entities by raising the incremental cost of a splitter by 50 percent. The incremental increase of 50 percent using bantam test jacks compares with an incremental cost increase of 2.3 percent using a splitter with built-in test point functionality. Accordingly, staff recommends that BellSouth be required to modify its line sharing cost study to eliminate use of bantam test jack shelves and instead to model the use of splitter cards with testing functionality.

3. Cable Length

The uncontested testimony of BellSouth witness Shell is that the price for connectorized cable paid by BellSouth to its vendor is unchanged whether the distance is one foot or 150 feet. Witness Shell contends BellSouth does not charge competitors for cable on a per-foot basis, which means the distance from a MDF to a splitter does not affect cable cost. Staff recommends, therefore, that the 150-foot assumption in BellSouth's cost study is reasonable.

4. Supporting equipment and power factor

The parties agree a splitter shelf is a passive device that requires no additional power. Consequently, there is no need to add in incremental power costs associated with a splitter. Staff therefore recommends that BellSouth should modify its cost study to reflect the elimination of the power component from the supporting equipment and power factor, as recommended by the Covad witnesses.

5. Land and Building Factor

At issue here is whether or not a pro rata share of land and building costs are being recovered through collocation charges assessed to ALECs; if so, since BellSouth's cost study assumes that a splitter bay will be located in the ALEC common area, it appears that application of the land and building factor to the splitter would result in double recovery. The BellSouth witnesses are silent on this issue. Covad witnesses Kientzle and Riolo assert that land and building costs are recovered via collocation charges, but they do not indicate in which rates this recovery occurs nor do they indicate where in BellSouth's collocation cost study that this recovery can be confirmed. Based on the record, staff can neither confirm nor invalidate the Covad witnesses' assertion; thus staff recommends that no adjustment for land and building costs be made.

6. Connecting Blocks

While the Covad witnesses assert that only three connector blocks are required for a rack-mounted splitter arrangement, BellSouth contends they use four blocks; there is no record support that corroborates either assertion. Staff recommends that no adjustment be made.

7. In-plant factors

BellSouth estimated the costs of engineering and installation associated with splitter shelves and bays by multiplying an averaged in-plant factor derived based on data for the entire pair gain account. However, in this proceeding BellSouth has provided no direct estimates of the engineering and installation costs for these items. Staff agrees with the Covad witnesses that it is preferable to use these direct estimates, and recommends that BellSouth's cost study be modified to incorporate them.

Nonrecurring Charges

1. BellSouth-owned splitters

Covad witnesses Kientzle and Riolo challenge BellSouth's contention that it will take 8.5 hours of engineering and network costs, equating to $377.72, for splitter installation, and assert that no explanation of the functions performed and their associated work times were provided; absent such explanation, they recommend rejecting this charge. BellSouth witness Shell provided during his cross-examination some descriptions of the activities performed by the affected work groups. While staff is dismayed that BellSouth apparently chose to exclude this information from its filings in this proceeding, witness Shell's descriptions were not contested. Staff thus believes the record requires that BellSouth's proposed charge be adopted.

2. Competitor-owned splitters

The Covad witnesses question why BellSouth would perform certain functions when a splitter is owned by and located in an ALEC's collocation area, implying that they instead would be performed by the ALEC. No BellSouth witness addressed this aspect. A review of Exhibit 28, page 511, indicates that for the rate elements in question, some of the same work groups are involved as those associated with engineering and installation of BellSouth-owned splitters, but hours are reduced (2.4 hours v. 8.5 above). Although there is a surprising lack of explanation, it appears these activities may be associated with monitoring equipment in the CO and similar record keeping functions. Staff recommends that the record does not support an adjustment to these elements.

3. Per-line activation

BellSouth assumes that it takes approximately 50 minutes on average for an initial line splitter activation in a CO, of which approximately 25 minutes appears to be related to connect and test the line. (EXH 28, p.511) The Covad witnesses note that in a Georgia proceeding BellSouth asserted that connect and test could be performed in 15 minutes. Staff recommends that the work times for this element should be reduced by 10 minutes, from 50 minutes to 40 minutes, to reflect 15 minutes for connect and test.

4. Per subsequent activity per-line rearrangement

Covad witnesses Kientzle and Riolo contend that the work times associated with BellSouth's initial and additional per-line rearrangement charges of $32.78 and $16.38, respectively, are unsupported; they recommend BellSouth's proposed rates be reduced by 50%. The Covad witnesses also observe that in this proceeding 37 minutes are assumed for CO work to perform line rearrangements, but BellSouth assumed 22 minutes in its Georgia study. No explanation is provided by BellSouth for the 15 minute increase. Staff recommends that the CO connect and test time be reduced to the level in the Georgia study.

Recommendation

Staff recommends that BellSouth should revise its line sharing cost studies to incorporate the adjustments noted in staff's analysis. A revised line sharing cost study that reflects staff's recommended adjustments should be filed with the Commission 30 days after the issuance of the order in this proceeding, and the associated rates should be included in the parties' agreement. Staff also recommends BellSouth incorporate all appropriate adjustments ordered by this Commission in Docket No. 990649-TP. Staff does not recommend rates be interim subject to true-up, but notes that when the Commission sets rates for collocation, Covad will have the ability to adopt those rates at its discretion.

ISSUE 25: In the event Covad desires to terminate its occupation of a collocation space, and if there is a waiting list for space in that central office, should BellSouth notify the next ALEC on the waiting list to give that ALEC the opportunity to take that space as configured by Covad (such as racks, conduits, etc.), thereby relieving Covad of its obligation to completely vacate the space?

RECOMMENDATION: No. In the event Covad desires to terminate its occupation of a collocation space, and if there is a waiting list for space in that central office, BellSouth should not be required to notify the next ALEC on the waiting list to give that ALEC the opportunity to take that space as configured by Covad, and thus relieve Covad of its subsequent obligations. **(BARRETT)**

POSITION OF THE PARTIES:

COVAD: Yes. If Covad leaves collocation space, the next ALEC has an opportunity to take over that space in a short time and at low costs. BellSouth wants Covad to remove all its equipment, which is very wasteful. Covad just wants to retain the right to find another ALEC interested in acquiring the space.

BELLSOUTH: Covad is not entitled to learn which ALECs are on the waiting list for a particular central office. And, BellSouth has no obligation to contact ALECs on a waiting list on Covad's behalf and attempt to broker a transaction to minimize Covad's expenses associated with vacating a central office.

STAFF ANALYSIS: This issue is framed around the assumption that Covad has an existing collocation arrangement in a BellSouth facility, and Covad elects to relinquish its occupation of the space. Under consideration is whether BellSouth should notify the next ALEC, if any, on the waiting list to give that ALEC the opportunity to take that space in its present configuration, thereby relieving Covad of its obligation to completely restore the space.

Arguments

Covad witness Seeger believes that when an ALEC such as Covad makes the decision to exit a collocation space, the space could be taken over very quickly and at a moderate expense by another ALEC, if Covad was excused from removing all of its equipment from the BellSouth central office. (TR 309-310) BellSouth's contract proposal would require Covad to remove all its equipment ". . .

bays, racking -- everything," states the witness. (Seeger TR 310) The witness believes that Covad simply wants to retain the right to find another ALEC interested in acquiring the space from Covad, so it could negotiate privately with the other ALEC to strike a deal to sell its equipment. (TR 310) Witness Seeger offers that "[e]ssentially, Covad has paid for the racking and other space preparation necessary to support ALEC facilities." (TR 310)

Witness Seeger states that being relieved of its obligation to restore the collocation space to its original condition is an added benefit of Covad's proposal. (TR 310) He believes that BellSouth's teardown requirement would be "incredibly wasteful," since in all likelihood, another ALEC may want to use the structures, and would then have to reconstruct them. (TR 310-311, 322) Under cross examination, witness Seeger clarifies Covad's position:

> What we're stating is that if there is a list, a waiting list of another ALEC . . . [whose collocation application was] denied because of space limitations . . ., give us the number one name on the list, and let us have the opportunity to contact them to see if they are willing to take our space as is, and thus, saving us the cost of removing our equipment, racking, and everything else, and it also saves BellSouth the cost of having to rebuild it. (TR 325)

Also under cross examination, the witness discusses the timing aspects, and acknowledges that BellSouth is obligated to adhere to provisioning guidelines for collocation space. (TR 325) The witness concedes that under certain circumstances, the timing aspects of negotiations between Covad and a potential suitor should not be held against BellSouth's provisioning window. (TR 325-326) After discussion, however, he concludes that any time spent negotiating with another ALEC would not impact BellSouth in the least, since the space itself is still under Covad's control, not BellSouth's. (Seeger TR 335)

The witness was asked about BellSouth's involvement as an intermediary, to which he states:

> Despite what BellSouth said in its response to Covad's petition, Covad does not want (and would not ask) BellSouth to broker its equipment. Nonetheless, BellSouth is the only party that has information about

> ALECs seeking entrance to a particular central office. Thus, Covad asks that BellSouth send a simple email to ALECs on the waiting list, asking them to contact Covad about acquiring Covad's space. Then, BellSouth would be out of the transaction altogether. (Seeger TR 310)

Through questioning, witness Seeger outlines a reasonable resolution to this issue:

> Q. If BellSouth were willing to simply send an email to the first ALEC on the waiting list and advise that ALEC that Covad was moving out of space, here's Covad's phone number, call them and see if you-all can work something out, would that be acceptable to Covad to resolve this issue?
>
> A. I think it would be, yes, if Covad was copied on the e-mail.

(TR 326)

BellSouth witness Cox states that BellSouth is only obligated to notify the Commission and the telecommunications carriers on the waiting list within two days of knowing that collocation space is available. (TR 526) She offers that BellSouth objects to Covad's request for a number of reasons. First, BellSouth is hesitant to reveal the identity of the ALEC seeking space in one of its central offices, the so-called "next name" on the waiting list. ". . . [M]any ALECs consider this information to be proprietary business information," she asserts. (Cox TR 526-527) Second, Covad's request affects BellSouth's time frame for provisioning the space for a future occupant, and if BellSouth is required to provide the information that Covad is requesting, the time involved in the ensuing discussion between the negotiating ALECs should not be counted as part of BellSouth's provisioning interval. (TR 528) Last, BellSouth is concerned about brokering or otherwise being involved in a transaction between Covad and another party. (Cox TR 528) "There is nothing in the Act or the FCC Rules to require BellSouth to provide the service Covad is seeking," states the witness. (Cox TR 562)

Covad's proposed language goes beyond the scope of this issue, claims witness Cox, and the witness is especially concerned about the notion in Covad's proposed language that BellSouth be required to look beyond the first name on the waiting list in search of an

ALEC who would be willing to accept the collocation space immediately. (TR 563) The witness believes that if the Commission allowed this, the FCC's "first-come, first-served" requirement would be compromised. (TR 564) Until Covad relinquishes its space in a BellSouth central office, it has the right to find another ALEC interested in acquiring its space, asserts witness Cox. She continues:

> Until Covad sends an application to terminate its collocation arrangement, Covad retains the right to share the collocation space with another ALEC or, alternatively, transfer its space to another ALEC provided the premises is not in a space exhaust situation . . . BellSouth has assigned collocation space from one ALEC to another and would be willing to permit this to be done in conjunction with Covad selling its in-place equipment to the same ALEC. Covad, however, should be responsible for brokering its own space reassignment or sale of equipment . . ." (Cox TR 565)

Witness Cox foresees Covad's proposal for a simple e-mail to ALECs on the waiting list "leading to more problems than it solves," citing the above referenced concerns. (TR 566) Finally, the obligation to draft -- and in all likelihood, follow up on -- the e-mail is an unnecessary administrative step for BellSouth and is not required to meet BellSouth's collocation obligations, states the witness. (Cox TR 566) The witness states, "[w]e have concerns about sending it out to all ALECs, because it's a first come, first serve process, so the ALEC who is first on the list should get the next available space." (Cox TR 628) Without confidentiality protection measures in place, BellSouth is reluctant to be involved in the least. (BellSouth BR p. 33) However, under questioning by a Commissioner to explore BellSouth's position with respect to resolving this issue, the witness states:

> Commissioner: Okay. So, if this Commission required BellSouth to notify Covad of the next ALEC on the list, required Covad to maintain that information as confidential, and required Covad to get back to BellSouth with respect to when their negotiations with the subsequent ALEC ends, BellSouth would be fine with that . . . ?
>
> Witness Cox: Correct. (TR 629)

While still expressing concern with revealing the names of the next ALEC on the waiting list to Covad, witness Cox offers that " . . . to the extent that ALECs could be made aware that this is going to happen . . . that could be something that could be accommodated to meet what Covad is attempting to do." (TR 630)

Analysis

As framed, this issue considers the circumstance when Covad and BellSouth have an existing collocation arrangement, and Covad elects to relinquish its occupation of the space. Staff notes that in a line of questioning, Covad's attorney characterizes this issue as a money-saving proposal. (TR 627) As its witness offers, Covad " . . . has paid for the racking and other space preparation necessary to support ALEC facilities." (Seeger TR 310) Staff believes that in this issue, Covad is simply looking for a mechanism to recoup monies already spent in the event that it chooses to relinquish a BellSouth collocation space. Staff notes, however, that BellSouth's witness Cox offers testimony that addresses the concern of large up-front expenditures for ALECs for space preparation:

> The standardized rates for collocation being implemented in Florida should resolve Covad's concerns with regard to large up-front space preparation charges on a going-forward basis. In response to numerous ALEC requests, BellSouth is implementing standardized collocation rates. BellSouth has provided this Commission a cost study that moves Space Preparation charges from all non-recurring rates to the recurring . . . rate elements. This will allow space preparation charges, rather than being paid as a lump sum up-front, to be paid over the life of the collocation space. (TR 567)

Staff is encouraged by this testimony, and agrees with the witness that on a going-forward basis, Covad's -- or any other ALECs -- concern for recouping large up-front expenditures will be mitigated.

Staff, like BellSouth, believes that BellSouth is not obligated to be involved in brokering a potential sale of equipment between Covad and another competitive entrant. (BellSouth BR p. 34) Staff believes that BellSouth should not be subject to being a "middleman," particularly since it is not prohibiting Covad from finding another ALEC interested in acquiring its space. (Cox TR 565) BellSouth has assigned collocation space from one ALEC to another, states witness Cox, and would be willing to permit Covad to do this as well. (TR 565) Staff would encourage Covad to be more proactive by finding another ALEC interested in acquiring its space, should it choose to exit a BellSouth collocation space.

As previously mentioned, Covad seeks to be relieved of its obligation to restore the collocation space to its original condition. (Seeger TR 310) However, staff believes that Covad would not be subject to this obligation of restoring the space in BellSouth's central office to its original condition if it was successful in locating another ALEC interested in acquiring the space. Staff, therefore, believes that Covad should aggressively pursue locating another ALEC prior to terminating its occupancy of a BellSouth collocation. Staff agrees that it would be "incredibly wasteful" for Covad to embark on a complete teardown if another ALEC wanted to use the existing structures. Nonetheless, staff recommends in the event Covad desires to terminate its occupation of a collocation space, and if there is a waiting list for space in that central office, BellSouth should not be required to notify the next ALEC on the waiting list to give that ALEC the opportunity to take that space as configured by Covad. Staff notes as BellSouth witness Cox does that "[t]here is nothing in the Act or the FCC Rules to require BellSouth to provide the service Covad is seeking." (TR 562) Staff believes that without specific guidance from the Act, the FCC, or prior Commission decision on this matter, BellSouth should not be required to notify the next ALEC on the waiting list to give that ALEC the opportunity to take that space as configured by Covad. However, staff is encouraged from dialogue presented at the hearing that specific aspects of this issue may be near settlement. Staff believes that if a modified proposal that incorporated BellSouth's confidentiality and provisioning concerns -- the same concerns discussed by a Commissioner -- were incorporated into a modified proposal, an agreement could be reached. (TR 629)

<u>Conclusion</u>

Staff recommends that BellSouth should not be required to notify the next ALEC on the waiting list to give that ALEC the opportunity to take that space as configured by Covad, thus relieving Covad of its subsequent obligations. However, staff would encourage the parties to settle this matter if BellSouth's confidentiality and provisioning concerns can be addressed.

ISSUE 29: What rates should Covad pay for collocation?

RECOMMENDATION: Staff recommends that BellSouth should revise its collocation cost studies to incorporate the adjustments noted in staff's analysis. A revised collocation cost study that reflects staff's recommended adjustments should be filed with the Commission 30 days after the issuance of the order in this proceeding, and the associated rates should be included in the parties' agreement. Staff also recommends BellSouth incorporate all appropriate adjustments ordered by this Commission in Docket No. 990649-TP. Staff does not recommend rates be interim subject to true-up, but notes that when the Commission sets rates for collocation, Covad will have the ability to adopt those rates at its discretion. (**BLOOM, DOWDS**)

POSITION OF THE PARTIES:

COVAD: The Commission should reduce specific task and rate elements specifically recommended by Covad and reduce the remaining rates by a reasonable amount on an interim basis, subject to true-up, until the generic collocation cost case is completed.

BELLSOUTH: The Commission should adopt BellSouth's proposed rates for collocation in this docket with the understanding that any final adjustments ordered in Docket No. 990649-TP, if applicable, (and eventually Docket Nos. 981834-TP/990321-TP for collocation) can be incorporated at a later date.

STAFF ANALYSIS: The Commission is being asked to determine which of the parties makes a more persuasive argument regarding the rates that should be charged for collocation. Covad also seeks to have any ordered rates designated as interim subject to true-up at the completion of the Commission's generic collocation docket. BellSouth maintains that any changes in rates that may result from pending dockets be incorporated on a going-forward basis.

Staff observes that the extreme divergence of views presented by the parties, coupled with the lack of substantiation to support their respective positions, leaves staff with a high level of discomfort. For example, BellSouth's cost study shows 51.25 hours are needed to process an original application for collocation at a cost of $3,760. Covad's subject matter expert counters that BellSouth should spend no more than two hours processing a successful original application for collocation, but provides no figure for how much Covad should be charged. BellSouth provides minimal substantiation, such as time and motion studies, for the 51.25 hours it alleges are required to process an application. Likewise, Covad's subject matter expert provides no independently verifiable documentation in support of his estimate that two hours are all that are needed to process a collocation application. A similar strain runs through disputes regarding task times for firm order confirmations, collocation cage construction, and engineering work to provide cable records. While staff accepts that reasonable minds may differ on an identical set of facts, the record on this issue lacks a common fact base from which divergent opinions would stem. Staff also notes that BellSouth chose in many cases to ignore the rebuttal testimony of Covad's subject matter expert on collocation, leaving a record that could give the appearance of bias toward Covad.

While a simple solution would appear to be a recommendation that "splits the difference" between the opposing positions, staff has concerns about such an approach because it disregards the lack of an underlying factual basis in some instances. A second option would be to direct BellSouth to update and refile its cost study to include greater detail on some inputs and additional support, such as time and motion studies, similar to those the record reflects the company was ordered to conduct by the Georgia Public Service Commission (TR 769). However, staff is reluctant to advocate such a recommendation in this case because the effect would be a delay in the ultimate conclusion of this proceeding, which includes a number of issues that can be resolved based on the existing record. Finally, staff is mindful that the Commission has pending a generic collocation docket that arguably provides a more appropriate forum for the detailed level of analysis and discovery that a refiled cost study would precipitate. Given that the alternatives appear limited, staff's intent is to proceed with a recommendation that addresses the issues raised by the parties.

Covad witness Riolo submitted rebuttal testimony in which he critiqued certain key areas of BellSouth's collocation cost studies. (TR 343)

1. Application for Physical Collocation

Covad witness Riolo asserts that BellSouth's proposed rates for an original application for physical collocation ($3,760) and for a subsequent application ($3,134) are "grossly inflated." (Riolo

TR 344). Witness Riolo expresses skepticism that the task times totaling 51.25 hours for an initial application and 39.6 hours for a subsequent application in BellSouth's cost study are necessary to process a single application:

> There is no support or justification for any of these task times. BellSouth has supplied no explanations for the work, no time and motion studies or any other support whatsoever. Moreover, given my experience, it remains unclear to me what all these groups are doing for these enormous amounts of time. (Riolo TR 344)

In contrast, witness Riolo argues that an application review should take no more than two hours of work by BellSouth. (Riolo TR 345)

BellSouth witness Shell acknowledges that the cost study provided in this proceeding does not provide a level of detail that would allow an independent review to determine the specific nature of the activities performed by BellSouth personnel in the processing of a collocation application. (Shell TR 786)

2. Firm Order Processing Charges

BellSouth proposes a charge of $1,202 to recover costs it contends are incurred when it processes a firm order for physical collocation, a process that results in the ALEC having a date that circuits ordered will be installed or made operational. (EXH 28, p.214) This charge is in addition to BellSouth's proposal to assess $3,760 for an initial collocation application. (Riolo TR 346) Covad witness Riolo challenges the assertion that BellSouth's Interexchange Network Access Coordinator (INAC) will spend 20 hours processing a firm order for collocation at a cost of $1,019. (Riolo TR 346) Witness Riolo alleges:

> First, BellSouth tacitly admits that work done to prepare the space for collocation or to augment power systems is not part of the firm order processing charge, since those groups are not involved in the Firm Order process. Thus, BellSouth admits that costs of generating, approving, awarding, implementing and completing space preparation work in the central office is recovered in the recurring charge for space preparation. (Riolo TR 347)

BellSouth witness Shell appears to confirm that space preparation charges are separate from firm order processing charges when he testifies that space preparation includes a per square foot charge comprising costs for augmenting electrical systems, adding power, lighting, ventilation and cable racks. (Shell TR 797-798) In a late filed exhibit (EXH 29, p.2), witness Shell provides some detail regarding the activities of the INAC without specific task times, and none of the tasks appear to involve space preparation.

BellSouth witness Shell does not respond directly to Covad witness Riolo's proposed elimination of the firm order processing charge.

3. Collocation Cage Construction

Covad witness Riolo alleges BellSouth's proposed rates for wire mesh cage construction are predicated on assumptions designed to inflate costs. (Riolo TR 347) As an example, witness Riolo testifies, BellSouth's cost study assumes each wire cage will require three full walls, while, "In my experience, it is much more likely that BellSouth would only be building 2 walls per cage or 2.5 on average at the most. By assuming it will build three full walls, BellSouth raises its cost." (Riolo TR 347)

Based on his experience in constructing caged collocation spaces, witness Riolo argues cage material, grounding work, and project management, in addition to construction, should cost no more than $4,000 per wire cage installed. (Riolo TR 348)

During cross examination, Covad witness Riolo quoted a figure of $928 for a wire cage from a company he testifies advertises over the Internet. (Riolo TR 366) Witness Riolo acknowledges, however, that he could not address whether the technical standards for the wire cages available through the Internet would be sufficient for collocation arrangements, or comment on the reputation of the company selling the cages. (Riolo TR 368) BellSouth witness Shell does not address Covad witness Riolo's concerns.

4. Security Systems Charges

BellSouth proposes security system access charges to recover the cost of installing and maintaining a system for restricting access to collocation areas. These systems apparently involve the use of access cards, in some instances, and lock-and-key arrangements in others. Covad witness Riolo challenges certain cost study assumptions he contends were made by BellSouth to arrive at its costs for security systems. (Riolo TR 348) Specifically, witness Riolo cites BellSouth's nonrecurring charge of $55.59 per card to activate a new security access system card plus a $.0592 monthly recurring charge. He states that BellSouth's cost study assumes that it takes 12 minutes to activate a new access card, and contends this time estimate seems to him excessive. He observes that a hotel desk clerk's activation of a room card key is comparable and implies that it can be done in less than 12 minutes. Witness Riolo also notes that BellSouth proposes to assess a recurring per central office per square foot charge of $0.0113 for each collocation cage location, even when the security system is a lock and key. (Riolo TR 348-349)

Witness Riolo also argues that BellSouth's cost study assumes a 25 percent occurrence of problems affecting its security system, although he does not specify what these problems would be. Witness Riolo concludes:

> It seems unbelievable that a security system would have such a high problem occurrence on new access, lost/stolen cards or the transfer of cards. It appears that when BellSouth's contract labor resolves a problem with the system they developed and/or manage, then they pass the charge onto BellSouth (although we have been provided none of those documents). Then, BellSouth marks up those costs and imposes them on Covad and other ALECs. If a BellSouth system has a 25% problem occurrence, it should be repaired. Costs of perpetuating a nonfunctional system should not be passed on to Covad. (Riolo TR 349)

5. Cross Connection Charges

BellSouth proposes specific task times for the physical attachment of wires within a central office, which is normally accomplished using cross-connect blocks. Covad witness Riolo contends BellSouth has inflated work times for performing 2-wire cross-connections (25 minutes), 4-wire cross connections (25 minutes), and DS1 and DS3 cross-connections (37.5 minutes). "These task times are completely unsupported in the BellSouth study and, frankly, they are unsupportable." (Riolo TR 350) Witness Riolo asserts that cross-connections are among the simplest routine tasks accomplished in a central office and that BellSouth's cost study should be adjusted downward to reflect a task time of three minutes for all types of cross connections. (Riolo TR 351)

BellSouth witness Shell acknowledges the time of 25 minutes to perform a cross connection is an estimated average and is not based on any study of the actual time needed to perform cross-connections on the various types of frame configurations that may exist within BellSouth's network. (Shell TR 778)

6. POT Bays

According to Covad witness Riolo, BellSouth makes various assumptions in its cost study about the fill rates of a point of termination (POT) bay. (TR 351) Witness Riolo explains his concerns about BellSouth's assumptions:

> Typically, there are 14 shelf positions on a 7-foot bay. BellSouth claims that only 12 will be used. Then BellSouth assumes that the collocator will occupy only 33% of the bay, with 3 DS1 panels and 1 DS3 panel. Then, BellSouth assumes that Covad will operate at 80% fill on each DS1 panel, so BellSouth calculates 33% times 80%, to arrive at a circuit utilization of 26.4% for DS1s. For DS3s, BellSouth calculates that 33% of the bay times 18% for a circuit utilization rate of 5.94%. BellSouth's study assumes a variety of utilization rates without any support: the rates vary dramatically from 5.6% to 26% to 40%. There is no support for any of these utilization rates and BellSouth's repeated use of lower utilization rates increases Covad's costs. (TR 351)

The Covad witness asserts that the utilization rates in BellSouth's POT bay cost study need to be adjusted upward, by assuming that all 14 shelves will be used, and a fill rate of 95% will be achieved. (TR 351)

BellSouth does not respond to witness Riolo's assertions regarding task times either in the testimony of its subject matter expert or in its brief.

7. Production of Cable Records

In its cost study, BellSouth describes the collocation cable records element as a nonrecurring cost for establishing records within the BellSouth systems, including information about which ALEC's cables terminate on BellSouth's frame. (EXH 28, p.48) BellSouth contends it will take 28 hours of engineering time by its circuit capacity management group to produce a single collocation cable record at a cost of $1,519. Covad witness Riolo describes the task time for this function as "astounding." (Riolo TR 352) The Covad witness notes that BellSouth's cost study also lists a task time of 14 hours to produce a voice grade cable record for a collocation arrangement.

Witness Riolo compares the times to produce cable records with the six minutes BellSouth's cost study proposes to produce a comparable DS1 record (EXH 28, p.369), 21 minutes to produce a DS3 record (EXH 28, P.372), and four hours to produce a fiber cable record (EXH 28, p.379).

Covad witness Riolo believes, "Any mechanized record system in use throughout the industry today should be able to generate records in minutes. Under forward-looking pricing principles, a fully mechanized system must be assumed." (Riolo TR 352). BellSouth witness Shell provided no reply to witness Riolo's assertions.

8. Space Preparation - CO Modification Per Square Foot

In this proceeding BellSouth proposes to charge a recurring per square foot rate of $2.56 for space preparation, instead of assessing a large nonrecurring charge. Covad witness Riolo has several criticisms of BellSouth's underlying cost study of this rate element. First, he notes that this rate is based on a survey of 123 space preparation jobs conducted between April and November 1999. However, he observes that it appears that these jobs were to add entire rooms or floors to central offices, rather than based on space preparation fees paid by ALECs. Witness Riolo questions why such outdated data were used, and to what extent these projects were done for ALECs. (TR 353) Moreover, he asserts that the study violates the federal pricing rules because it uses embedded data, rather than assuming a forward-looking network built to support ALECs. (TR 352)

Second, witness Riolo states that BellSouth has taken the position that it is not obligated to make central office additions to relieve space exhaust; thus, the witness infers that BellSouth, at least in part, made these CO additions for its own benefit. While an ALEC will pay BellSouth's recurring charge for as long as they retain the collocation space, witness Riolo alleges that ". . . BellSouth will apparently pay nothing for the portion of the space its equipment occupies (and for which the additions were done in the first place)." (TR 353)

Finally, witness Riolo states that the period April-November 1999, the period construction jobs used in BellSouth's were drawn, was a time of high collocation activity. The witness opines that much of this space presumably was paid for by ALECs via nonrecurring charges, but currently there should be excess prepared space available:

> Thus, the space constructed and prepared (and paid for by nonrecurring charges imposed on ALECs at that time) should, at least, somewhat compensate BellSouth for the work. Now, there is much less collocation activity, as some ALECs go out of business while others withdraw from collocation spaces. Thus, there should be a surplus of prepared space in the BellSouth system, consisting of space prepared and paid for in nonrecurring charges by ALECs, huge additions built to central offices, and space released by ALECs no longer operating in certain areas. Since BellSouth's charges do no [sic] appear to take any of this into consideration, they are too high and must be reduced. (TR 354)

In cross examination, BellSouth witness Shell rejected the argument that embedded costs were used to arrive at a square foot charge for space preparation:

> What the floor space preparation charges are would be the cost to make the space usable, which could be augmenting the AC, reworking the ventilation ducts, adding more power, running cable racks or aisle lighting or things of that nature. And what we do is we look at the current cost of several jobs we've done in the past. We back out costs that wouldn't apply going forward and we project what that would be. (Shell TR 797-798)

9. Space Preparation - Common Systems Modification Per Square Foot - Cageless Element

Covad witness Riolo conjectures that this item apparently is a new rate element for space preparation done on commons systems, such as heating, ventilation and air conditioning; however, he is unable to determine how BellSouth developed its proposed rate.

> However, there is no explanation for how BellSouth reaches it [sic] proposed rates for this element. Strangely, the work paper BSCC 2.4, recurring cost summary for H.1.42, Cageless, shows inputs for poles, buildings, lands, conduit systems, and digital circuit (other). It's not clear to me how these inputs are used to create a rate for common systems upgrades chargeable to ALECs. (TR 354)

Absent such an explanation and support for the rate proposal, the witness recommends the Commission reject BellSouth's rate proposal. (TR 354)

Analysis

As is evident for the preceding issues analysis, the arguments over specific aspects of BellSouth's collocation cost study are largely one-sided. Covad witness Riolo makes references to specific pricing inputs he believes are flawed. In its brief, Covad argues that these "egregious examples" are evidence that all of the rates proposed by BellSouth in its cost study should be reduced by a "reasonable percentage." (Covad BR p. 35)

BellSouth, conversely, apparently rests on the assertion it makes in its brief (BellSouth BR p. 36) that its proposed rates are, "cost-based, consistent with BellSouth's actual business practices, and compliant with the requirements of the 1996 Act." During cross examination, counsel for BellSouth questioned Covad witness Riolo only on the issue of standards for wire cages for collocation space. It is unclear to staff whether BellSouth's approach represents agreement with Covad on the disputed issues outlined in this recommendation or benign neglect of this aspect of the arbitration proceeding. Staff would point out that BellSouth's subject matter expert acknowledged during cross-examination by Commission counsel that the cost study submitted by BellSouth is not a stand-alone document in the sense that it does not provide substantiation for task time inputs. The submission of a staff-requested late-filed exhibit (EXH 29) from witness Shell did little to alleviate staff concerns that the task times in BellSouth's cost study lack objective support.

As to the arguments, staff cannot agree with the underlying principle espoused by Covad in its brief, that the existence of examples of inputs that admittedly strain credibility in the cost study should prompt an across-the-board reduction in rates proposed by BellSouth because of the variety of rates and elements. On the other hand, by electing not to challenge Covad's subject matter expert on certain issues, BellSouth creates a record that leaves staff with few options but to agree with Covad's expert on issues where specific alternatives are offered.

1. Application for Physical Collocation.

As noted in the opening of this staff analysis, the extreme divergence of opinion on this issue is impossible to reconcile from the record created by the parties. BellSouth witness Shell claims 51.25 hours are needed to process an initial application for collocation. Covad witness Riolo's assertion that the appropriate time is two hours would appear to contemplate a perfect world scenario in which BellSouth would have no other applications to process other than Covad's. Staff has sincere misgivings about BellSouth's assertions but believes the preponderance of the evidence on this issue favors BellSouth's position.

2. Firm Order Processing Charges

Covad witness Riolo argues for the elimination of a firm order processing charge, pointing out that work done to prepare space for collocation or to augment power systems should not be included in a processing charge because preparation and power augmentation (where and when necessary) are recovered in the recurring charge for space preparation. Specifically, witness Riolo protests BellSouth's use of an INAC for 20 hours to process a firm order confirmation. Staff does not agree with Covad witness Riolo that the costs booked to BellSouth's INAC constitute double recovery for space preparation charges, which are recovered elsewhere. However, having reviewed the admittedly sketchy description of functions performed by the INAC, staff believes a downward adjustment is appropriate. BellSouth's late-filed Exhibit 29 lists 10 tasks performed by the INAC. Two of these functions -- contacting the area provisioning team and initiating and facilitating follow-up planning meetings -- are performed only if required, according to Exhibit 29. BellSouth does not indicate a reduction in the firm order processing charge if these functions are not required. A third function is described as "Interface with Regulatory and Collocation Project Team for policy development and issue resolution." BellSouth witness Shell provides no detail on what policies would need to be developed during the processing of a firm order for collocation or why these functions are not conducted during the initial application phase. A fourth function is described as "Serve as technical consultant to area provisioning team, account team coordinator and customer for identification and resolution of issues." BellSouth witness Shell does not explain why BellSouth needs to provide technical consultants to its own provisioning teams or account team coordinators or why these functions are not completed during the initial application phase.

In summary, staff finds insufficient justification for why the four functions detailed above should be included in the firm order processing charge. Staff would note that in late filed hearing Exhibit 29, BellSouth was asked to provide the collocation work times for the ATCC and INAC. While BellSouth identified 10 activities performed by the INAC that comprise the 20 hour total, the amount of time associated with each discrete activity is not identified. Absent this detail, staff recommends that each of the four functions discussed above be deleted for a reduction of eight hours (two hours per function times four functions) to the INAC line item in BellSouth's cost study. BellSouth's cost study books the INAC's time at $50.98 per hour; therefore, staff recommends BellSouth revise downward the INAC line item (EXH 28, p.216) by $407.84 and make any necessary recalculations.

3. Collocation Cage Construction

This issue alone was among those considered under collocation that elicited substantive testimony during the hearing. Witness Riolo contends BellSouth's construction costs should be limited to $4,000 for construction of a wire collocation cage. Witness Riolo's conclusion appears to rest on two premises: First, he relies on anecdotal evidence of wire cage costs available over the Internet and second, on what he perceives as BellSouth's flawed assumption in the cost study that each cage will require three walls to be constructed. While staff does not dispute the availability of products through electronic media, the record of the proceeding does not reflect whether those products would meet or exceed standards ILECs or ALECs may have in place for collocation.

Staff agrees with witness Riolo that collocation cage requirements may vary depending on need and location. By accepting the assumption that collocation cage needs will vary, it would appear to hold that costs will also vary. Given the number of factors that may vary from one collocation space to another, it would appear inconsistent to set a price cap for construction. Staff recommends BellSouth's position on this issue.

4. Security Systems Charges

Covad witness Riolo questions the recurring and nonrecurring charges BellSouth lists its cost study for security systems and argues that BellSouth's projected 25 percent problem occurrence rate is excessive. Witness Riolo provides no alternatives to BellSouth's proposed rates. While staff agrees that anticipating a problem occurrence rate of 25 percent for any telecommunications system appears high, witness Riolo offers no testimony or evidence to support what an acceptable rate would be. Staff recommends BellSouth's position in this issue.

5. Cross Connection Charges

BellSouth's cost study proposes various times for performing cross-connections, ranging from 25 minutes for a 2-wire or 4-wire cross-connect, to 37.5 minutes for DS1 and DS3 cross-connections. Covad witness Riolo contends cross connects are among the "most simple and routine tasks accomplished in a central office" and should not take more than three minutes. BellSouth witness Shell does not directly address Covad witness Riolo's task times, and witness Shell admits that BellSouth's estimates are unsupported by any studies; staff therefore believes BellSouth's task times for these four functions should be reduced to three minutes.

6. POT bays

Covad witness Riolo argues that in BellSouth's POT bay study various unsubstantiated assumptions about utilization rates are made, and that because these assumed utilization rates are too low, Covad will pay an excessive rate. No BellSouth witness commented on this issue. Staff agrees with the Covad witness that some of BellSouth's proposed utilization rates appear low, and that support for these rates is virtually nonexistent. However, staff believes that witness Riolo's recommended fill rates - in excess of 95% - err to the other extreme and are clearly unachievable, on average. Although we have misgivings about some of BellSouth's utilization rates, staff believes there is no viable alternative in this record. Thus, we recommend no adjustment be made.

7. Production of Cable Records

Staff has serious reservations regarding BellSouth's claim that 28 hours of engineering work are necessary to produce a cable record for a collocation arrangement. Staff has the same reservation about BellSouth's claim that 14 hours are needed to produce a single voice grade cable record. Had BellSouth's cost study provided documentation that would allow objective verification of the discrete activities BellSouth alleges are necessary to provide the records, or had BellSouth witness Shell offered testimony to corroborate these task times, staff's concerns might be mollified.

For example, BellSouth's cost study contends a voice grade DS0 record has two elements: a per-cable-record and a per-100-pairs-requested, in addition to the per-request cost. The BellSouth study contends the voice grade DS0 is defined as a maximum of 3600 records, requiring 15 minutes of installation time. (EXH 28, p.48) Conversely, the cost study defines a fiber cable record as having a maximum of 99 records requiring 4 hours of circuit capacity management - described by witness Shell as essentially inventory tasks (Shell TR 774) - and circuit provisioning. (EXH 28, p.48) The cost study does not make clear, nor does witness Shell explain, how producing a fiber cable record with a maximum of 99 records can take four hours when a DS0 record with a maximum of 3600 records can be accomplished in 15 minutes.

Covad witness Riolo contends under forward-looking pricing principles, a fully mechanized system must be assumed for such record keeping and that such a system should have the capability to produce records in minutes instead of hours.

Staff notes that the criteria established under the Act for setting UNEs and codified into rule at 47 C.F.R. 51.505 states in part that "the total long-run incremental cost of an element should be measured based on the use of the <u>most efficient telecommunications technology currently available and the lowest cost network technology currently available</u>..."(emphasis added) Staff has extreme difficulty accepting that 28 hours of engineering work and a charge of $1,519 to produce a single cable record meets the standard of using the most efficient technology available. Staff agrees with witness Riolo's rationale that the most efficient technology in this case would be a fully mechanized system capable of record retrieval in minutes, not hours.

However, staff would note there are two distinct activities at issue here. First, it appears that the 28 hours that BellSouth assumes is associated with functions that "inform" BellSouth's various operational support systems of the existence, location, etc., of an ALEC's cables in the central office. Second, there are separate activities that pertain to retrieving information on cable records, once entered into BellSouth's systems. Although staff has unresolved questions about BellSouth's assumptions, Covad presented no viable alternatives. Thus, staff is compelled to recommend that BellSouth's proposals be adopted for this proceeding.

8. Space Preparation - CO Modification Per Square Foot

Covad witness Riolo contested BellSouth's analysis, alleging that it was an embedded analysis, in violation of the FCC's pricing rules, and was based on what appear to be large central office additions, rather than ALEC collocation requests. BellSouth witness Shell rebutted the contention about their using an improper embedded analysis, noting that historic activity is merely the starting point from which projections of going forward costs and practices are estimated. With regards to BellSouth's analyzing large construction projects that may have been for an entire floor of a central office, staff believes this approach is reasonable, because the analyst is attempting to estimate the cost, on average, of conditioned space suitable for collocation - not just the average cost of historic collocation arrangements. Staff recommends that no adjustments are warranted here.

9. Space Preparation - Common Systems Modification Per Square Foot

Covad witness Riolo admits that while he presumes this element pertains to costs related to such commons systems as heating, ventilation and air conditioning, he cannot determine how BellSouth actually arrived at its rate; thus, in the absence of such an explanation, he states that the Commission should reject this rate element. Staff notes that the bulk of the cost included in BellSouth's proposed rate element is related to FRC 357C, Digital Circuit Equipment - Other. (EXH 24, p. 205) However, staff too is puzzled how this rate was developed; while the amount shown on page 205 of Exhibit 24 presumably must be on a per square foot basis, there is nothing in BellSouth's filing that explains what is in the numerator (357C investment) and the denominator (square feet). Given the paucity of support for this element, staff recommends it be rejected, at least until some future time when BellSouth can provide some meaningful explanation.

Recommendation

Staff recommends that BellSouth should revise its collocation cost studies to incorporate the adjustments noted in staff's analysis. A revised collocation cost study that reflects staff's recommended adjustments should be filed with the Commission 30 days after the issuance of the order in this proceeding, and the associated rates should be included in the parties' agreement. Staff also recommends BellSouth incorporate all appropriate adjustments ordered by this Commission in Docket No. 990649-TP. Staff does not recommend rates be interim subject to true-up, but notes that when the Commission sets rates for collocation, Covad will have the ability to adopt those rates at its discretion.

ISSUE 30: Should BellSouth resolve all loop "facilities" issues within thirty days of receiving a complete and correct local service request from Covad?

RECOMMENDATION: Yes, BellSouth should resolve all loop "facilities" issues in a nondiscriminatory manner within thirty calendar days of receiving a complete and correct local service request from Covad. However, if BellSouth is unable to resolve all loop "facilities" issues due to a major network outage(s) or congestion condition(s) within thirty calendar days of receiving a complete and correct local service request from Covad, BellSouth should be required to expedite the provisioning of these loop facilities. **(BARRETT)**

POSITION OF THE PARTIES

COVAD: BellSouth should resolve bad pair facilities within 7 business days, new construction facilities issues within 30 days, and other facilities issues in the same amount of time as it resolves facilities issues for BellSouth retail POTS.

BELLSOUTH: It is not reasonable to place an arbitrary, artificial time limit on when facilities issues can be resolved. Availability of facilities is affected by Outside Plant Construction workload and other factors.

STAFF ANALYSIS: This issue considers whether a specific time frame should apply for resolving loop facility issues between Covad and BellSouth. While the issue is framed to capture "all" loop facility issues, Covad's stated position categorizes loop facilities issues into three broad functional divisions, with a specific recommendation for each. (Allen TR 191; Covad BR p. 35) BellSouth, on the other hand, offers no time frames for any loop facility issue. (BellSouth BR p. 36)

Staff notes that the wording of this issue as framed in the Petition for Arbitration is structured to reflect "all" facility issues. Therefore, staff's recommendation captures similar wording to encompass "all" facilities issues, but also offers a provision to accommodate network related contingencies that may exceed 30 calendar days.

Arguments

Covad witness Allen contends that this issue is significant because the loop installation process should be as predictable and uniform as possible. (TR 151) He further states that Covad has lost customers as a result of orders held for facility problems. (Allen TR 191) Covad witness Seeger states that "[n]o one at BellSouth seems to be accountable for attempting to resolve these issues in a timely manner." (TR 311) He sums up his company's position by stating:

> Covad is not requesting an arbitrary time limit to resolve facilities issues. We believe that 30 days is more than reasonable. We need to set a specific interval so BellSouth will resolve the problem. If there is not a fixed date, the problem will drop off into the "black hole known as pending facilities . . ." Because there is no deadline to fill these orders, many linger for days or even months before either Covad or the customer cancels them. All we are trying to do is to get BellSouth to focus on resolving these issues in a timely way. (TR 318)

According to Covad witness Seeger, BellSouth has proposed language that would only obligate it to resolve facilities issues at a "parity level," but contends that BellSouth has not produced any documentation to prove what a "parity level" is. (TR 312) However, witness Allen, a former BellSouth employee, believes that 30 days is a target interval that BellSouth uses internally for clearing facilities; however, he did not offer any material to substantiate this belief. (TR 180) Covad's witness Seeger, in fact, believes that BellSouth's own retail operations should adhere to defined intervals similar to those proposed by Covad, but acknowledges that Covad is not likely to receive better treatment for itself than BellSouth provides for its retail arm. (TR 328)

Covad witness Allen believes the work of clearing facility problems can easily be accomplished within Covad's proposed time frames. (TR 191) He elaborates on the time frames:

> [O]ur discussions with BellSouth have led us to develop the following proposal. BellSouth should categorize facility issues into three types: 1) defective cable pairs; 2) facilities exhaust conditions; and 3) new construction.

> The interval to clear a defective cable pair to make a facility available should be no more than seven (7) calendar days. For a facility exhaust condition, one of which BellSouth should already be aware, the interval should be no more than thirty (30) days. Finally, for new construction, the interval should be the same that BellSouth quotes for its retail POTS service. (Allen TR 181)

The Covad witness concludes his case by asserting that Covad is asking the Commission to decide "what should be the standard interval for clearing facilities, so that Florida consumers are not continually frustrated when they have to wait months to receive service." (Allen TR 182)

BellSouth witness Kephart states that facility issues for Covad and all other ALECs are resolved in a nondiscriminatory manner using the same procedures BellSouth uses to address facility problems for BellSouth retail operations. (TR 662) The witness believes that Covad's request to place a time limit on when "pending facility" issues can be resolved is unreasonable, citing workload concerns. (Kephart TR 661-662, 669) The witness states that work to relieve network congestion or severe facility shortages are examples which can take precedence over new service. (Kephart TR 670) He expands his discussion:

> In order to minimize delay due to facility issues, BellSouth outside plant engineering and construction forces prioritize jobs such that work to resolve facility demand . . . is placed ahead of normal construction and routine activity. However, service-affecting maintenance takes priority over any work to provide new service. BellSouth makes every attempt to relieve facility problems as quickly as possible, but it is not unusual for a relief job to require greater than one month before being completed. It is therefore unreasonable to place an artificial time constraint on the completion of jobs that will relieve facility issues. (TR 663)

The witness also contends that restoration work following a natural disaster or a major outage caused by human error will take priority over work to provision newly demanded service. (Kephart TR 669-670)

On the topic of its provisioning performance, witness Kephart states that "BellSouth tracks the number of orders that require greater than thirty days to complete for BellSouth and for all ALECs. Historically, less than 0.5% of all orders have required greater than thirty days to complete." (TR 671) He continues:

> BellSouth currently adheres to objectives previously set by this Commission . . . that establish a thirty day interval for clearing 95% of all facilities issues and an objective to clear 100% in sixty days. BellSouth believes that the guidelines previously set by this Commission are adequate in light of the unforeseen situations that can impact resolution of facilities issues. (Kephart TR 671)

In summary, the BellSouth witness believes that Covad's proposal of a strict 30-day requirement "would put them at a higher level of service than what we provide to other ALECs . . . and we don't think that's reasonable." (TR 716) What is reasonable, he contends, is to handle all "pending facilities" orders in a consistent manner, whether they are ALEC orders or BellSouth retail orders. (Kephart TR 717)

Analysis

Staff agrees with Covad witness Allen that this issue is significant for ALECs to enable them to operate in a predictable fashion. (TR 151) BellSouth states that it strives to provision "pending facilities" orders in a nondiscriminatory manner, but declined to state a given interval or time frame for provisioning them, instead citing that it adheres to the established Rules set forth by this Commission. (Kephart TR 662, 671) Though not specifically referenced by the witness, staff believes that the Rule the witness references is Rule 25-4.066(3), Florida Administrative Code (F.A.C.), which states:

> Each telecommunications company shall establish as its objective the satisfaction of at least 95 percent of all applications for new service in each exchange within a 30 day maximum interval and, further, shall have as its objective the capability of furnishing service within each of its exchanges to applicants within 60 days after the date of application; except those circumstances where a later installation date is requested by the applicant

> or where special equipment or services are involved. (25-4.066(3), F.A.C.)

Staff notes, however, that Rule 25-4.066(3) F.A.C., pertains to the provisioning of retail telecommunication services, and the provisioning at issue here -- while similar to retail -- is of a wholesale nature. However, based on witness Kephart's statement that "BellSouth tracks the number of orders that require greater than thirty days to complete for BellSouth and for all ALECs," staff believes that BellSouth provisions retail and wholesale orders in a substantially similar manner. BellSouth believes that the guidelines of this Rule are adequate in light of the unforeseen situations that can impact resolution of facilities issues. (Kephart TR 671) Staff agrees with the witness, and although staff is receptive to Covad's proposal that imposes various intervals, staff does not believe that such a model would be compatible with Rule 25-4.066(3), F.A.C. Staff notes, however, that the existing Rule is under review in a currently docketed proceeding, Docket No. 991473-TP, and could be subject to an amendment at a future date. Nevertheless, staff believes that BellSouth's position is compatible with the current status of this Rule, and believes that Covad's proposal may not be.

Staff agrees with BellSouth that service restorals following a natural disaster or a major outage caused by human error should take priority over requests for new service, but believes witness Kephart's argument on this point is largely moot, since the Force Majeure language located in Part A, Section 14 of the contract (agreement) appears to relieve BellSouth of its obligations to perform in the event of a natural disaster. (TR 710-711; EXH 23) Staff, therefore, does not give any appreciable weight to these assertions of witness Kephart.

As BellSouth witness Kephart states, BellSouth resolves facility issues for Covad and all other ALECs in a nondiscriminatory manner using the same procedures it uses for retail operations. (TR 662) However, witness Kephart states that a small percentage of all orders (retail and wholesale) require greater than thirty days to complete, and based on these assertions, staff believes that the overwhelming majority of all loop facility issues can be, and are, resolved within 30 days. Therefore, staff does not agree with witness Kephart that a set limit of 30 days "would put them [Covad] at a higher level of service than what we provide to other ALECs." (TR 716)

Staff recommends that BellSouth should resolve all loop facility issues in a nondiscriminatory manner within 30 calendar days of receiving a complete and correct local service request from Covad, but allows a caveat to account for the small percentage of orders that may take longer than 30 calendar days. Staff believes that if network related circumstances extend the interval beyond thirty days, BellSouth should be required to expedite the provisioning of these loop facilities.

Conclusion

Staff recommends that BellSouth should resolve all loop facility issues in a nondiscriminatory manner within thirty calendar days of receiving a complete and correct local service request from Covad. However, if BellSouth is unable to resolve all loop "facilities" issues due to a major network outage(s) or congestion condition(s) within thirty calendar days of receiving a complete and correct local service request from Covad, BellSouth should be required to expedite the provisioning of these loop facilities.

ISSUE 32a: Should Covad be required to pay amounts in dispute as well as late charges on such amounts?

RECOMMENDATION: No. Staff recommends that Covad should not be required to pay any legitimately disputed portion of a bill during the pendency of the dispute. Where the dispute is resolved in favor of BellSouth, Covad should be required to pay the amount it owes BellSouth plus applicable late payment charges. When a dispute is resolved in favor of Covad and Covad has previously paid the disputed charges, BellSouth should refund to Covad the monies with interest. (**DOWDS**)

POSITION OF THE PARTIES:

COVAD: Covad should not be required to dispute a bill by itemizing each bills amount, if Covad finds systemic or recurring problems. Additionally, BellSouth should pay Covad 1.5% monthly interest on amounts erroneous [sic] charged by BellSouth that Covad paid in error.

BELLSOUTH: Covad should not have to pay portions of bills that it legitimately disputes until the dispute is resolved. Covad should, however, pay any undisputed amounts. Moreover, once the dispute is resolved, Covad should pay late charges on the disputed bill that it is finally determined that Covad owes.

STAFF ANALYSIS:

Covad witness Oxman testifies that through March 2001, Covad has identified overcharges in excess of $1.6 million, and concludes that Covad has experienced several significant billing problems with BellSouth. (TR 48) He further testifies that BellSouth's mistakes include errors for circuit charges, canceled circuits, disconnected circuits, mileage errors, service data errors, improper application of tax exemption, and USOC logic set errors. (TR 48) Witness Oxman opines that " . . . the size, extent and pervasive nature of these billing discrepancies reveal significant problems with BellSouth's billing systems for UNEs and collocation." (TR 48) Witness Oxman argues that when BellSouth overcharges Covad, Covad should not be required to pay the overcharges while the disputed overcharge is being addressed. He further argues that late payment charges should not be assessed on disputed amounts. (TR 48-49) Witness Oxman proposes that Covad should not be subjected to suspension or termination of service for nonpayment during the pendency of a legitimate billing dispute. (TR 49) However, he proposes that when it is determined that Covad incorrectly withheld monies through the dispute process, a late payment fee may be considered. (TR 49)

Covad witness Oxman asserts that Covad depends on BellSouth for its business in Florida. He further asserts that BellSouth should be paid for the actual elements and services provided " . . . at the actual, approved or agreed-to rate for those elements and services." (TR 49) Witness Oxman concludes that BellSouth should not be allowed to threaten to cut off Covad's access to loops and elements because Covad refuses to pay incorrect bills that have been disputed. (TR 49) Witness Oxman opines that asking an ALEC to pay a disputed amount prior to a resolution frees BellSouth of all risks or any burden in the case where BellSouth renders an incorrect bill. (TR 49) He claims that granting BellSouth's proposal will provide BellSouth an incentive to render incorrect bills. (TR 49)

Covad witness Oxman testifies that the current market climate is not conducive for ALECs to raise funds, and argues that the Commission should not create a system " . . . that encourages BellSouth to render incorrect bills and that requires ALECs to pay these inflated amounts to BellSouth while the dispute is [being] resolved . . . ." Witness Oxman argues that such a system will cause the ALECs to run out of money faster and will ultimately harm end user customers in Florida. (TR 50)

BellSouth witness Cox concurs that Covad should not pay portions of a bill that Covad legitimately disputes until the dispute is resolved. She continues that when a dispute is resolved in favor of BellSouth, Covad should pay late charges on the disputed portion that Covad owes. Witness Cox contends that anything short of this will give Covad free use of money that belongs to BellSouth. (TR 532) Witness Cox asserts that Covad needs to pay late charges on the disputed amounts that are actually owed to BellSouth, and argues that anything less will provide Covad an incentive to contest its bill in order to delay payments to BellSouth. (TR 532) Further, witness Cox contends that when a disputed bill is determined to be correct, then Covad should be required to pay the disputed amount plus interest to BellSouth. (TR 568) Witness Cox states that during the pendency of a legitimately disputed bill, Covad will not be subject to suspension or termination of service for non-payment. (TR 567)

Analysis

Both parties agree that no payments should be made on portions of a bill that are legitimately disputed until the dispute is resolved. However, the parties disagree on whether penalties should apply on the disputed amounts if the dispute is ultimately resolved in favor of BellSouth. BellSouth argues that when a dispute is resolved in its favor, Covad should pay the amount owed plus interest and late payment charges. Covad argues that such a policy provides BellSouth no incentive to ensure that the bills it renders are accurate and that it is inappropriate for BellSouth to levy late payment fees on disputed amounts ultimately resolved in BellSouth's favor.

In BellSouth's proposed agreement language in Attachment 7, Paragraph 3.2, BellSouth defines a bona fide dispute to mean

> . . ., a dispute of a specific amount of money actually billed by BellSouth. The dispute must be clearly explained by DIECA and supported by written documentation from DIECA, which clearly shows the basis for DIECA's dispute of the charges. The dispute must be itemized to show the Q account and earning number against which the disputed amount applies. (EXH 20, p. 2)

Staff notes that the language BellSouth proposes for a bona fide dispute prescribes very specific and detailed steps that Covad must follow in disputing a portion of a bill rendered by BellSouth.

On balance, staff concludes that BellSouth's proposal, which allows Covad not to pay disputed portions of a bill during the pendency of the dispute but includes assessment of late payment charges on the disputed amounts if BellSouth prevails, is reasonable. It affords Covad the opportunity to challenge portions of its bills without paying the disputed amounts; if a dispute is resolved in BellSouth's favor, BellSouth is reimbursed for the carrying costs associated with the disputed amount. However, staff also believes that in those circumstances where Covad has paid a bill, later challenges portions of this bill, and the dispute is resolved in Covad's favor, similarly BellSouth should pay Covad interest on the amount to be credited to Covad. Staff believes this outcome is equitable and symmetrical.

Conclusion

Staff recommends that Covad should not be required to pay any legitimately disputed portion of a bill during the pendency of the dispute. Where the dispute is resolved in favor of BellSouth, Covad should be required to pay the amount it owes BellSouth plus applicable late payment charges. When a dispute is resolved in favor of Covad and Covad has previously paid the disputed charges, BellSouth should refund to Covad the monies with interest.

ISSUE 33: Should this docket be closed?

RECOMMENDATION: No, the parties should be required to submit a signed agreement that complies with the Commission's decisions in this docket for approval within 30 days of issuance of the Commission's Order. This docket should remain open pending Commission approval of the final arbitration agreement in accordance with Section 252 of the Telecommunications Act of 1996. **(BANKS)**

STAFF ANALYSIS:

The parties should be required to submit a signed agreement that complies with the Commission's decisions in this docket for approval within 30 days of issuance of the Commission's Order. This docket should remain open pending Commission approval of the final arbitration agreement in accordance with Section 252 of the Telecommunications Act of 1996.