BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by DIECA Communications, Inc. d/b/a Covad Communications Company for arbitration of unresolved issues in interconnection agreement with BellSouth Telecommunications, Inc.	DOCKET NO. 001797-TP ORDER NO. PSC-01-2017-FOF-TP ISSUED: October 9, 2001

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR., Chairman
J. TERRY DEASON
LILA A. JABER
BRAULIO L. BAEZ
MICHAEL A. PALECKI

APPEARANCES:

NANCY WHITE, ESQUIRE, 150 West Flagler Street, Suite 1910, Museum Tower, Miami, Florida 33130
On behalf of BellSouth Telecommunications, Inc.

FELICIA R. BANKS, ESQUIRE, AND JESSICA ELLIOTT, ESQUIRE, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850.
On behalf of the Commission Staff

FINAL ORDER ON ARBITRATION

BY THE COMMISSION:

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I. 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

II. 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, Inc. (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 Order addresses 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.

III. JURISDICTION

A. Analysis

The issue before us is what is our jurisdiction in this matter. 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 us, Covad states that we have 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 we have 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. Further, BellSouth states that the U.S. District Court for the Northern District of Florida has determined that we are required to arbitrate and resolve all issues brought to us, 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).

B. Decision

We believe that we have 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 us 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, we believe 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, discretion in the exercise of such authority is appropriate.

IV. LIMITATION OF LIABILITY

Arguments

A. 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 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 asserts that the evidence shows that the existing liability cap provision functioned effectively for the parties for the duration of the Covad Interconnection agreement. 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.

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." 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. 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. 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. Witness Oxman contends that BellSouth's proposed liability limitation clause would harm our 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. 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.

BellSouth asserts that the issue of limitation of liability is beyond the scope of the Telecommunications Act of 1996 (Act). 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 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. BellSouth states that in Docket No. 000649-TP, we 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. We 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 contends that pursuant to Order No. PSC-01-0824-FOF-TP, issued March 30, 2001, in Docket No. 000649-TP, we 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 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. Witness Cox asserts that it is common for parties to an interconnection agreement to agree to limited liability. 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. 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.

B. Decision

We believe that while "any open issue" may be arbitrated, we believe that we 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 we must adopt language for a limitation of liability clause. Further, we believe that we should make our 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. We note that liquidated damages is not an enumerated item under Sections 251 and 252 of the Act. We believe 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, we find that 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, we shall 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.

V. PROVISIONING INTERVAL FOR AN UNBUNDLED VOICE GRADE, ADSL, HDSL OR UCL LOOP

Arguments

This issue before us 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.

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.

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.

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.

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." 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.

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. Moreover, witness Allen asserts that SBC's and Verizon's FOC intervals are included in the loop provisioning interval.

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. 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. Covad witness Allen alleges:

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

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.

However, BellSouth witness Latham asserts that BellSouth does not have provisioning intervals on its retail side; retail service depends on central office workloads. 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. Witness Latham describes BellSouth's intervals as "target due dates," which sometimes may not be met due to extenuating circumstances beyond BellSouth's control. 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.

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.

Covad witness Allen counters that excluding the intervals from the contract gives BellSouth the exclusive right to unilaterally modify loop intervals. 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. 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.

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. 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.

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. 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. 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.

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. 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.

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

In response, 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. 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. 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.

BellSouth witness Latham also 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. 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. 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.

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.

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.

We note 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.

A. Analysis

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. 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. We note 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. We also note that BellSouth's FOC interval is one business day for accurate error-free orders received by 10 a.m.

BellSouth bases its intervals on achieving parity with its target loop delivery interval for its retail services, but we believe that BellSouth's argument raises questions about BellSouth's FOC intervals. We note that BellSouth provides no testimony of a FOC for its retail customers. We assume that BellSouth's customer service representatives enter error-free orders directly into BellSouth's system as received by the end-user. Consequently, we believe that BellSouth's provisioning interval begins when BellSouth receives an order from its end-user. We believe 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, we find that Covad's provisioning interval should begin when Covad electronically submits an accurate error-free order into BellSouth's system. 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. We are persuaded that BellSouth's FOC interval should not be added separately to the loop provisioning interval for Covad.

We 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. We recognize that other ILEC's provisioning intervals differ. Moreover, we note that ILECs have included the FOC in their provisioning interval, while others have not. However, we clarify that we are not attempting to micro-manage BellSouth's process for entering a manual order. Therefore, we believe 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. BellSouth also points out that ALEC UNE loop orders have nearly doubled between

April 2000 and March 2001. However, we agree with Covad that progressively increasing workload should not be a major factor in extending loop intervals. We believe that workload imbalances may occur, but they should only occur occasionally.

2. SL1 Loops

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.

We note 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, we find it provides a starting point for determining reasonable provisioning intervals for UNE loops. We agree 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. We note that BellSouth assumes 21-36 minutes are required to complete central office cross-connects. We recognize that Exhibit 32 refers to cross-connects for line sharing. However, we find 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, we are persuaded that BellSouth should provision SL1 loops for Covad within three business days after Covad submits an accurate error-free LSR. We note 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.

3. SL2 Loops

We note that an SL2 loop is a voice grade loop; however, SL2 loops include test points, a DLR, and order coordination. Although we believe that BellSouth should provision SL2 loops in a three-day interval for SL1 loops, we believe 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. Therefore, we find that BellSouth should provision SL2 loops for Covad within four business days after Covad submits an accurate error-free LSR.

4. ADSL, HDSL, and UCL Loops

BellSouth witness Latham contends that xDSL loops require cross-connects, and likely involve circuit coordination between the parties. 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, we agree with Covad that provisioning an xDSL loop is similar to provisioning a voice grade loop. We note 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. We agree with BellSouth that provisioning voice grade loops should take precedence over other type services.

As mentioned above, our rules provide a provisioning standard that ILECs in Florida must meet for basic local voice grade service. However, we are not aware of any rules addressing loop intervals for advanced services. We note that BellSouth's planned interval for its retail ADSL service is four days. We also note that BellSouth proposes a four day interval for line sharing. 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. It

appears to us 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. We believe that two days added to the SL1 loop interval would provide BellSouth maneuverability for order coordination and workload. However, since the interval for BellSouth's ADSL and proposed line sharing offering is four days, we are 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, we find that BellSouth should not be allowed to gain a competitive advantage due to its market share. We note that BellSouth did not limit its ADSL service interval only to BellSouth customers, which add ADSL service to a loop currently providing voice. Again, we find that provisioning an xDSL loop for Covad is similar to provisioning a voice grade loop, except when the loop requires conditioning. We note that the interval does not apply for a loop that requires "decondition."

We considered Covad's proposal that our staff's recommended intervals should be inserted into the interconnection agreement. We note 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. We note 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. Covad points out that BellSouth would have an incentive to meet its delivery intervals, and those intervals could only be modified through negotiations. We find that Covad is entitled to firm delivery intervals. Moreover, we agree with Covad that firm loop provisioning intervals offer Covad a meaningful opportunity to compete. Therefore, we are persuaded that these provisioning intervals should be inserted into the parties' agreement.

We acknowledge BellSouth's testimony that inserting loop provisioning intervals into the parties' interconnection agreement

could create discriminatory treatment with respect to other ALECs. However, we find that the recommended intervals for Covad considers the orders submitted by other carriers as well. We base our decision on parity with intervals BellSouth provides for itself. Therefore, we believe that the evidence of record supports that these recommended intervals are reasonable.

We also considered establishing a percentage in which BellSouth should be required to meet these intervals. We find that the 90 percent requirement set forth in Rule 25-4.066(2), Florida Administrative Code, is appropriate for voice grade loops, which are SL1 and SL2 loops. However, we observe that there is minimal record evidence to support a percentage of time that BellSouth should meet for other types of loops. We note 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. It appears to us that BellSouth derives its provisioning intervals from actual intervals "typically" experienced by its technicians, where "typically" represents approximately 80 percent of the cases. However, since our staff recommended intervals that are shorter than those proposed by BellSouth, it appears that the 80 percent would not be applicable. Therefore, we believe 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.

B. Decision

We find that the appropriate intervals for BellSouth to provision unbundled voice grade, ADSL, HDSL, or UCL loops for Covad shall 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

We note that these intervals apply to loops that do not require conditioning. We find that the provisioning interval shall begin

after Covad submits an error-free electronic order during BellSouth's normal retail business hours. We note that when Covad submits orders outside of BellSouth's normal business hours, BellSouth shall deem Covad's order as received at the start of business the following day. We find that BellSouth shall be allowed an additional day for manually submitted orders.

These provisioning intervals shall be included in the Interconnection Agreement. Further, we find that BellSouth shall 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), Florida Administrative Code. We note that this rule only applies to BellSouth's retail service; however, we believe that parity extends this benchmark to Covad as well. We note 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.

VI. PROVISIONING OF AN IDSL-COMPATIBLE LOOP

Arguments

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. 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. Moreover, he asserts that

> 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).

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." 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. 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.

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

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.

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.

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.

In response, 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.

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.

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.

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." 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.

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.

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 install alternate facilities at that customer's location using the special construction process.

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.

A. Analysis

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. When an end-user is served via a copper pair from the central office, we believe that the work performed to provision the loop are identical to an ADSL loop. We find that an end-user is served via a copper pair from the central office, the appropriate provisioning interval is four business days. We note that a four day interval would provide Covad parity with BellSouth's ADSL service. However, Covad proposes a five day loop interval, which includes the installation of a line card. We observe 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, we believe that Covad's proposed interval is certainly appropriate when an end-user is served via a copper pair from the central office. Therefore, we are 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. We find 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." We note that BellSouth's testimony reflects that the line card installation is the only additional work performed. Therefore, we find that when an end-user's copper pair is served by a copper-fed DLC system, the appropriate provisioning interval shall 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. We note that a "work around" typically is where BellSouth moves the existing circuit from the fiber-fed DLC to an alternate copper facility. Covad proposes a work around interval of five days. We also note that BellSouth did not rebut Covad's provisioning interval for a work around. Therefore, we find that when an end-user's copper pair is served by a fiber-fed IDLC system, the appropriate provisioning interval shall be ten business days.

These provisioning intervals shall be included in the Interconnection Agreement.

B. Decision

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

We find that these provisioning intervals shall begin after Covad submits an error-free electronic order during BellSouth's normal retail business hours. We note that when Covad submits orders after BellSouth's normal business hours, BellSouth shall deem Covad's order as received at the start of business the

following day. We find that BellSouth shall be allowed an additional day for manually submitted orders.

These provisioning intervals shall be included in the Interconnection Agreement. We note that there is not enough record evidence to support a determination of the percentage of time that BellSouth shall be required to meet this interval for IDSL-compatible/UDC loops.

VII. PROVISIONING INTERVAL TO "DECONDITION"

Arguments

We have also been asked 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. We note that the terms "condition" or "decondition" are used interchangeably to describe the process when BellSouth removes load coils or bridged-tap from loops. 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." 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

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

> 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.
>
> 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.

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."

Covad witness Allen contends that BellSouth's intervals are too long, which slow the "growth of competitive DSL to Florida consumers." 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. 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. Therefore, he concludes that BellSouth must be actively upgrading its outside plant, removing load coils and excessive bridge taps.

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.

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. 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.

A. Analysis

We agree with Covad that BellSouth should be deconditioning loops as part of its everyday maintenance. However, this issue is to determine the appropriate provisioning intervals for BellSouth to condition a loop for Covad.

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

We agree with BellSouth that there may be a number of difficulties encountered when deconditioning lines. We note 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.

BellSouth admits that it has not separated the times spent on deconditioning and other maintenance activities. It appears to us 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. We believe that this interval is more appropriate than the record evidence on deconditioning. Therefore, we find that the appropriate interval for BellSouth to "decondition" loops for Covad is 14 days. BellSouth may be able to condition lines in a shorter interval; however, we are unsure. Since BellSouth agrees to "decondition" loops within 14 days, we find that this decondition interval shall be included in the interconnection agreement. We note that the Performance Measures testing may provide a clearer interval for which loops should be deconditioned.

B. Decision

We find that the appropriate interval for BellSouth to "decondition" loops is 14 days. The provisioning interval shall begin after Covad submits an accurate error-free electronic order during BellSouth's normal retail business hours. We note that when Covad submits orders after BellSouth's normal business hours,

BellSouth shall deem Covad's order as received at the start of business the following day. We find that BellSouth shall be allowed an additional day for manually submitted orders.

The 14-day loop deconditioning interval shall be included in the Interconnection Agreement.

VIII. REIMBURSEMENT FOR CHANGE IN DUE DATE

Arguments

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. We note that BellSouth maintains that the cost causer should always compensate the party that incurs the cost(s). However, we observe that BellSouth does not believe Covad incurs any cost when BellSouth cancels or modifies a Covad loop order. 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.

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. 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. The Covad witness contends that BellSouth has repeatedly canceled Covad unbundled loop orders unilaterally, on the FOC delivery date. 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.

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 than 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." 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." 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. 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. Witness Allen opines that this change often causes the end user frustration and can result in customer dissatisfaction. 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."

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. 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. Witness Allen further argues that BellSouth therefore should bear the cost of failing to maintain accurate records. 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.

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."

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.

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. 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. 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." 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.

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. 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.

BellSouth witness Cox further 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." 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.

Witness Cox states 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." She reiterates that "the date provided is based on the assumption that facilities are available."

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."

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. 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. Witness Cox further explains that a supplemental order is not considered a cancellation, but a postponement that results from facilities problems. 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. Witness Cox further concedes that its ISP and Covad both buy line-shared UNE loops which are non-designed loops. 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." 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.

A. Analysis

Although this issue may appear to fall within the scope of performance measures, we believe 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.

- BellSouth cancels or changes FOC delivery dates occasionally.

- A FOC delivery date is simply a target delivery date, similar to what a BellSouth retail customer will get from a BellSouth service representative.

- BellSouth's ISP is not assessed cancellation charges if the loop order is canceled before it is provisioned.

- BellSouth's ISP generally uses non-designed circuits that are the same as those Covad uses for ADSL service.

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. We note that both parties agree that for the most part, BellSouth charges Covad when Covad cancels or modifies its loop order, for whatever reason. 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. We believe that there is an asymmetric treatment in the current arrangement. We agree 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. We observe 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. We agree 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, we note 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."

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. We are not convinced that this issue is explicitly a performance measures issue; instead, we believe that this issue focuses on cost recovery, not contract performance and penalties for non-performance as the performance metrics are designed 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. We note that BellSouth has a service guarantee program that it provides its retail customers that is not available to its wholesale customers. 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.

We believe 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, we find 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, we are 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). We reason 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. We believe 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, we believe that it would be improper for BellSouth to have assessed Covad for installation charges for a loop that BellSouth had not installed.

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

B. Decision

We believe that there currently is an asymmetric cost recovery treatment, relative to BellSouth, when Covad initiates a loop delivery date cancellation or modification. We agree 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, we find that for BellSouth-initiated loop order modifications or cancellations due to personnel-related problems, BellSouth shall 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, we find that for BellSouth-initiated modifications or cancellations due to facilities-related problems, BellSouth shall not charge Covad provisioning charges until the installation has occurred; accordingly, BellSouth shall be required to credit Covad for any provisioning charges that were billed prior to the actual loop provisioning.

IX. JOINT ACCEPTANCE TESTING

Here, we consider 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.

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. 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." The witness contends, however, that BellSouth is failing to provision a fully connected and functioning loop the vast majority of the time.

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." 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." 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. 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. 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.

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.

BellSouth witness Kephart contends that Covad's Joint Acceptance Testing proposal is unacceptable because it "redefines" the product at issue, the UCL-ND. "It would no longer be the kind of loop it's designed to be if we did that [Joint Acceptance Testing]," states the witness. 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].

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.

Witness Kephart offers that the Joint Acceptance Testing suggested by Covad is not included in the rate for a non-designed xDSL loop. 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, and nothing more. 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. 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. The specific rates for such testing are posted on BellSouth's interconnection website, according to witness Kephart. 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.

The Joint Acceptance Testing issue for the UCL-ND has been considered in another jurisdiction, according to witness Kephart. 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. The witness states that the time and materials charges in the Georgia docket are identical to those offered in this jurisdiction.

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. 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."

A. Analysis

We believe 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. To the contrary, BellSouth's witness Kephart offers that his company "agree[s] to do the testing for the proper fee with any ALEC."

We agree 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." We believe 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.

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. The UCL-ND product was developed for the ALEC market to meet a demand for a cheaper loop. We note 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. Witness Kephart states that the substantial difference is a direct result of the work content that was removed to define the UCL-ND. We agree.

Under questioning from the bench, 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.

We note 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, we find that BellSouth should not be required to participate in Joint Acceptance Testing at no charge when it provisions a UCL-ND loop for Covad.

B. Decision

We find that BellSouth shall 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 shall be BellSouth's time and material rates for the specified loop.

X. CHANGES TO LOOP SPECIFICATIONS

We have also considered 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." 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. 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.

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.

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 witness Allen, however, acknowledges that loop standards do change, but not "as frequently as BellSouth would like the Commission to believe." 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.

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.

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. Witness Kephart offers that all loop types are tested and provisioned in accordance with the specifications in its Technical Reference (TR) 73600. 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. 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."

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." The BellSouth witness states that any change to the industry standard would be reflected in the TR 73600. 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].

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."

A. Analysis

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.

We agree with BellSouth's witness Kephart that BellSouth needs to be able to change the specifications of its loops to comply with changing industry standards. The industry standards themselves are collaboratively developed by BellSouth and other exchange carriers, including Covad, according to BellSouth witness Kephart. We, therefore, believe 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. We also note that ALECs are given 60 days' notice when standards are being updated, according to BellSouth witness Kephart. This appears reasonable, and we agree with the BellSouth witness that "BellSouth should retain the flexibility to update or otherwise modify such standards." As stated in its brief, BellSouth believes that updates of the standards and specifications of its loop products are needed from time to time. Again, we agree 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]."

Therefore, we find that BellSouth's position is both fair and reasonable, and note 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. 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. 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." Finally, we believe 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.

B. Decision

We find that BellSouth shall 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 shall not be permitted to unilaterally modify these standards.

XI. CHARGES FOR NO TROUBLE FOUND REPAIR TICKETS

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." 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. "Repeat trouble tickets cost Covad money and customer satisfaction," claims witness Seeger. 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. 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."

When BellSouth closes a trouble ticket as NTF, a charge is automatically generated, states witness Allen. The witness believes the charge for the NTF trouble tickets is not appropriate, and advocates that BellSouth should be precluded from charging at

all for NTF tickets. 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." 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.

Covad believes that BellSouth is responsible for erroneous NTF trouble tickets, according to witness Allen. 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. The witness believes that BellSouth should be able to "get it right the first time." 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." BellSouth does not have an automatic process in place to render credit in these circumstances, states witness Allen. 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."

Witness Allen states that a joint meeting is often necessary to fully resolve a repair issue. 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." Witness Allen contends that certain NTF tickets are the result of "BellSouth's unwillingness to do what it takes to repair the loop." 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.

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." 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." 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. 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. "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.

Witness Cox acknowledges Covad's concern about repeated trouble tickets, but offers that BellSouth's Performance Measurement Plan addresses this. 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. A given loop that generates a follow-up ticket within a 30 day period would be captured in this measure, according to the witness. Through this mechanism, BellSouth strives to treat Covad in the same manner as it treats its end user customers, claims witness Cox. The witness also offers that

BellSouth has a specialized work group to address chronic repeat trouble tickets, the Chronic Trouble Group. The witness states that either party can request intervention to resolve a given loop repair situation. BellSouth also states that it keeps individual trouble tickets "open" for a 24 hour period to allow Covad the opportunity to perform further testing. 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." 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. There is no automatic process to accommodate credits issued for NTF tickets, but the witness states that BellSouth is looking at developing one.

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.

A. Analysis

We believe 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." We believe that witness Cox was referencing how the charges for NTF tickets would be presented in their respective contract language. We believe that our decision offers a compromise, and note that because this issue is very narrowly framed, our decision should be narrowly construed.

We acknowledge Covad witness Seeger's assertion that "[r]epeat trouble tickets cost Covad money and customer satisfaction." We believe, 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. We note 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." We agree, and provide for this specific exception in this Order. As the record shows, we believe 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. We believe that this is appropriate.

Additionally, the second exception that we note 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 us to be open-ended (i.e., without a time constraint). We believe 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. We believe 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, we believe that if a NTF ticket generated a subsequent ticket, a "repeat," the subsequent ticket would probably be reported within 30 calendar days. We believe that BellSouth should have the measurement tools in place, given its preparations to implement its Performance Measurement Plan. We clarify this exception however, to reflect that the measurement interval is 30 calendar days. We believe, 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, we are not persuaded by Covad's assertions that our decision on this matter should address "all" NTF situations. We believe Covad's position, in effect, would prevent BellSouth from even rendering a charge for NTF tickets. 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," we find that BellSouth should be permitted to charge Covad for its dispatch. We agree with BellSouth that there should be a reasonable limitation on the period of time to consider possible credits for NTF tickets. We find 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. We note that BellSouth's performance measures evaluate loop troubles in a 30 day time frame, according to witness Cox. Thus, we believe that 30 calendar days would also be a reasonable interval for evaluation for Covad to obtain a possible credit for NTF tickets.

It appears 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. We agree, and note that BellSouth readily admits that credit will be issued. Covad also would like to see an automatic credit process in place, but we note witness Cox's assertion that a process is not available at this time. Unfortunately, Covad is therefore relegated to using the dispute resolution process. To pursue credits, we note that Covad's witness believes the process it must undertake is "burdensome," but nonetheless, BellSouth states its willingness to issue the appropriate credits. Thus, we believe, that Covad's argument that the dispute resolution process is "burdensome" does not merit abolishing the NTF charges altogether. We believe 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 we are encouraged by this. Until such time, however, the dispute resolution process appears to be the method that Covad should follow to seek credits for erroneous NTF charges.

B. Decision

We find that Covad shall 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, we find that there are two exceptions for which Covad shall be responsible to pay for BellSouth's cost (i.e., BellSouth's rate) of the dispatch and testing. The exceptions are as follows:

I. 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

II. 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."

XII. RATE FOR MANUALLY SUBMITTED LSR FOR XDSL LOOP OF LINE SHARING

Arguments

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?

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, we address what we believe 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.

We 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. 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.

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. It appears that the parties are basically advocating the same position regarding this facet of this issue; therefore, we do not believe further analysis is necessary. Accordingly, we believe 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. 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. 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. 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.

BellSouth argues that it is not required to provide electronic order processing for all UNEs. 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.

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."

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. 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." However, witness Allen provided no direct evidence which supports his belief that electronic charges should always be applicable prior to BellSouth having established a fully functional electronic ordering system.

B. Decision

As noted above, this issue actually has two components. First, we find 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 shall be charged the electronic ordering rate. Therefore, we find 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 paragraph 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, we addressed a similar issue. In that docket we 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, we 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, we find that Covad's claim that manual charges shall 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, we find 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 us for further consideration.

XIII. CREDITS FOR ORDER CANCELLATIONS

Arguments

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." 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." 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.

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. Witness Allen argues that granting BellSouth's proposal will provide BellSouth an incentive to delay loop provisioning to Covad. 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. He asserts that "this bright-line proposal would better align BellSouth's interest with installing Covad's loops, rather than delaying those installations." 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.

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. 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. 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.

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. 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. 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."

A. Analysis

We note 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. We note that the subject of the appropriate loop provisioning intervals have addressed previously in this Order.

In the parties' proposed interconnection agreement, BellSouth proposes that Covad " . . . will incur an OSS charge for an accepted LSR that is later canceled." We note 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. We observe that this is a clarification that seemingly narrows this issue. 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. We observe that the performance metrics do not address charges and credits. Within the narrow scope of this issue, we believe 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."

B. Decision

Based on the above arguments, we find BellSouth shall be required 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, we find that BellSouth shall waive the LSR OSS charge when it fails to deliver a loop within the intervals as mentioned above.

XIV. LOCATION OF SPLITTERS

Arguments

Here we consider 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.

Covad witnesses Kientzle/Riolo assert that the splitter should be placed on the MDF or within 25 feet of the MDF. 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.

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." 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.

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.

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. 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.

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.

BellSouth witness Williams contends that the cost of the cable is small in comparison with the cost of frame space. 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.

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.

Further, witnesses Kientzle/Riolo claim that BellSouth "originally planned to place the splitter on the MDF," but BellSouth later changed its plans. However, BellSouth witness Williams argues that the frame-mounted splitter was never considered a desirable architecture by BellSouth. 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.

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. 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.

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." 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.

Covad witnesses Kientzle/Riolo argue that CLECs did not request the bantam jacks, and no other ILEC employs the bantam jacks.

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

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, or through a standardized interface designed for to provide physical access for testing [purposes]. (Emphasis Added)

Witness Williams believes that the bantam jack is the "standardized interface" which meets the FCC's criteria. 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.

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.

> 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.

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.

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.

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."

A. Analysis

Both parties agree that Covad should be allowed to place a Covad-owned splitter in its collocation space. 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 least cost splitter configuration, while BellSouth argues that the most efficient frame configuration should determine the location of the splitter. Based on the record evidence, there are three configurations for our consideration.

First, we disagree with Covad's proposal to place a Covad-owned or BellSouth-owned splitter on the MDF. In support, we refer 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)

We maintain 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. However, we are not persuaded that any ALEC should have access to

BellSouth's MDF. Moreover, we believe that a Covad-owned splitter should be located in Covad's collocation space, except for a virtually collocated splitter. In support, we cite 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, we disagree with Covad's proposal to place the splitter within 25 feet of the MDF. In the access point issue, Covad seeks access to all points of interconnection on the line shared loop. We believe 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. We recognize Covad's need to access the loop on the customer's side of the splitter. However, we note that if the splitters are located within 25 feet of the MDF, Covad would typically be restricted from accessing the point of interconnection. Moreover, we agree with BellSouth that Covad should not be allowed to dictate where BellSouth's equipment will be placed in the central office. We acknowledge that there may be slightly increased costs by denying Covad's proposal; however, we agree with BellSouth that cable costs are minimal. We note that rates for line sharing issue covers costs in detail.

Third, we agree that BellSouth's proposal to locate the splitter in the common area where the ALECs are collocated is appropriate. However, with respect to line sharing rates, we believe that Covad's objection to the use of the bantam jack is reasonable. BellSouth asserts that the bantam jacks meet the criterion of a "standardized interface" as set forth in the FCC's Line Sharing Order. We refer 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

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

> 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)

We interpret 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. We note that BellSouth's proposed "standard interface," bantam jacks, are discussed further in regards to line sharing rates. We also note that the access test points on a line-shared loops' issue discusses testing alternatives to the bantam jack.

We 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. 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 length. We are persuaded that BellSouth's cable additions are reasonable, and we believe that cable cost are minimal.

B. Decision

We find that BellSouth-owned splitters shall be located in the ALEC common area of the central office where the ALECs are collocated. Further, we find that Covad-owned splitters shall be located in Covad's collocation space.

XV. PROVISIONING INTERVAL FOR LINE SHARING UNBUNDLED NETWORK ELEMENT

The issue before us 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." 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.

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.

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

BellSouth witness Williams contends that in order to provision a line-shared 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. 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. We note that BellSouth proposes an additional day for manually submitted orders.

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." 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."

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.

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.

Covad witness Allen argues that BellSouth's provisioning intervals are too long, and only slows the "growth of competitive

DSL to Florida consumers." Witness Allen adds that Covad has reached agreement with SBC for a line sharing interval of three business days in all of its regions.

A. Analysis

We note 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. Covad claims that BellSouth should be able to provision line-shared loops in ten minutes. Covad concedes that there are factors other than actual task time associated with provisioning intervals. 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-shared 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." We note that BellSouth proposes a three-day loop provisioning interval, plus one day for firm order confirmation, which totals four days.

In the issue addressing the appropriate interval to provision an unbundled voice-grade, ADSL, HDSL, r UCL loop, we find that the loop provisioning interval for SL1 loops shall be three days, including the FOC. We believe 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. We agree with BellSouth that the appropriate analog for line sharing is BellSouth's ADSL service. We note that BellSouth's ADSL service interval is four days. Thus, we believe that four days is an appropriate interval for a line shared loop, including the FOC.

As a whole, we agree with BellSouth's proposed provisioning interval for line sharing UNE loops. We recognize that BellSouth's derivation of its four day interval differs from our determination. Nevertheless, we believe that BellSouth's proposed interval is generally appropriate. Therefore, we are persuaded that the provisioning interval for line sharing UNE loops should be four

days. We also believe that these provisioning intervals should be included in the Interconnection Agreement.

B. Decision

We find that the appropriate interval for BellSouth to provision the line shared loop shall be four business days. The provisioning interval shall begin after Covad submits an error-free electronic order during BellSouth's normal business hours. We note 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. We find that BellSouth shall be allowed an additional day for manually submitted orders.

These provisioning intervals shall be included in the Interconnection Agreement. We note 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.

XVI. TESTING REQUIREMENTS FOR LINE-SHARED LOOPS

Arguments

This issue, as framed, seeks our determination of 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.

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. BellSouth witness Williams maintains that BellSouth will continue to use the Line Sharing Verification Transmitter (LSVT) when provisioning line-shared loops.

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. 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. 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."

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." 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. 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.

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. 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.

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.

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] 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. (Emphasis added.)

A. Analysis

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. We note 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. Further, we note 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. We

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

note that BellSouth agrees to employ the LSVT test for line sharing orders. However, BellSouth believes that testing the data signal from Covad's DSLAM is beyond what the FCC 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]

We interpret 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. However, BellSouth argues that it is a coincidence that Covad's and BellSouth's equipment uses the same "protocol." We note that "protocol" is the format of messages exchanged between systems.

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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.

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.

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

B. Decision

We find that BellSouth shall only be required to test the continuity of the data circuit, including the high frequency spectrum. However, although not required, we encourage BellSouth to make the Sunset test set available to Covad market rates.

XVII. TEST ACCESS POINTS ON A LINE-SHARED LOOP

Arguments

This issue, as framed, seeks 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. 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. 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.

BellSouth witness Williams responds that Covad should report troubles on UNE services to BellSouth, and BellSouth will repair the trouble. 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." 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.

Covad witness Riolo responds 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. 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. 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.

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. 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.

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

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.

Covad witnesses Kientzle/Riolo suggest that where we deny Covad access to the shared physical loop, we should require BellSouth to
respond to trouble reports promptly. Specifically, BellSouth should be required to "clear" data trouble reports within four hours.

A. Analysis

Based on BellSouth's position, it appears to us that BellSouth's concerns center around Covad's technicians performing work at its frame. Covad contends that its technicians would only perform tests, not work on BellSouth's frame. However, we do not agree that Covad should have access to BellSouth's frame.

We are persuaded that Covad should have access to the customer's side of the loop. We note that the FCC outlined BellSouth's obligation in this matter. We cite ¶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. We interpret 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."

We recognize that there are three other methods for Covad to gain access to the customer's side of the loop, which may be less expensive. We believe 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. See 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.
>
> C. BellSouth may allow Covad to test the loop at the loop access point of interconnection on the splitter. We note that this method requires no cross-connects or additional cost.

We clarify that we are not determining which network configuration BellSouth should use. We agree with BellSouth that Covad should not be allowed to make engineering decisions in BellSouth's central offices. However, we note that Covad is allowed to test loops via the bantam jacks at the splitter. Thus, we believe 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. We note that this method requires no cross-connects or additional cost to Covad. We also believe 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. We note that the FCC identifies this method in

¶118 of the FCC's Line Sharing Order, and the cable costs are reasonable for Covad.

B. Decision

We find that Covad shall not be allowed to test all points on a line shared loop. However, we find that BellSouth shall be obligated to provide one of the following options:

I. allow Covad to test the loop at the point of interconnection on the customer's side of the splitter;

or

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

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

XVIII. RATES FOR LINE SHARING

Arguments

This issue, as framed, seeks to determine which rates for line sharing should be implemented. The departure point for the rates proposed by both parties is the line sharing cost study submitted by BellSouth. 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. We note that our discussion of line sharing rates 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. 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.

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). 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.

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. 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.

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.

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. 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."

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. 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. . .

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. 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, 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, or through a standardized interface designed to provide physical access for testing.

Order No. 99-355, CC Docket No. 98-147.

Covad witnesses Kientzle and Riolo argue the configuration BellSouth proposes, utilizing bantam test jacks, generates

additional costs for Covad, which they contend are unnecessary. 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.

BellSouth witness Shell confirmed under cross-examination that BellSouth's cost study assumes eight splitter shelves per splitter bay instead of the manufacturer's recommended 14 splitter shelves. 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." 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," 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. 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.

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. 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."

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. 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.'"

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."

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.

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.

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." 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. 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.

Covad witnesses Keintzle and Riolo propose a downward adjustment of the power factor from BellSouth's recommended 1.1011 to 1.0232. 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. 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. 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."

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."

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. 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.

In its cost study, BellSouth assumes four connector blocks are necessary for each 96-line splitter. Witnesses Kientzle and Riolo testify, "Only three blocks are necessary to implement rack-mounted splitter arrangements." 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."

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 splitter shelves. 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.

> 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.

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 [if] 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.

The Covad witnesses argue that information contained in proprietary discovery responses provided by BellSouth 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.

NONRECURRING CHARGES

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. In its study, BellSouth estimates nearly 8.5 hours of engineering and network work at a cost to competitors of $377.72. 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. In the absence of an explanation of what specific functions are being performed, the Covad witnesses advocate rejecting the proposed nonrecurring charge.

BellSouth witness Shell testifies 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. . ." 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..."

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. 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. 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."

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. 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; 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. 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.

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." 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.

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. 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. 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. 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.

B. Decision

Recurring Charges

1. Splitter Placement

We find that 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, we are persuaded by the testimony of BellSouth witness Williams that problems can readily arise if splitters are mounted on the MDF; we agree that the assumption reflected in BellSouth's cost study, in which 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

We agree 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). We also note 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.

We find Covad witnesses Kientzle and Riolo argue persuasively that the use of bantam test jacks as proposed by BellSouth imposes unnecessary 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, we find that BellSouth shall 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. We find, 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. We find, therefore, that BellSouth shall 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, we can neither confirm nor invalidate the Covad witnesses' assertion; thus, no determination can be made concerning the need for an adjustment for land and building costs.

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. We find that no adjustment shall 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 direct estimates of the engineering and installation costs for these items. We agree with the Covad witnesses that it is

preferable to use these direct estimates, and find that BellSouth's cost study shall 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 we are dismayed that BellSouth apparently chose to exclude this information from its filings in this proceeding, witness Shell's descriptions were not contested. We believe the record supports 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. We find 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. The Covad witnesses note that in a Georgia proceeding BellSouth asserted that connect and test could be performed in 15

minutes. We find that the work times for this element shall 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. We find that the CO connect and test time shall be reduced to the level in the Georgia study.

We find that BellSouth shall revise its line sharing cost studies to incorporate the adjustments noted in this Order. A revised line sharing cost study that reflects our determinations regarding the preceding adjustments shall be filed with the Commission 30 days after the issuance of this Order, and the associated rates shall be included in the parties' agreement. BellSouth shall also incorporate all appropriate adjustments ordered by us in Docket No. 990649-TP. Interim rates shall not be subject to true-up, however, we note that when we set rates for line sharing; Covad will have the ability to adopt those rates at its discretion.

XIX. TERMINATION OF COLLOCATION SPACE

This issue, as framed, is based on 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. BellSouth's contract proposal would require Covad to remove all its equipment ". . . bays, racking -- everything," states the witness. 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. Witness Seeger offers that "[e]ssentially, Covad has paid for the racking and other space preparation necessary to support ALEC facilities."

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. 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. 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.

The witness also discusses the timing aspects, and acknowledges that BellSouth is obligated to adhere to provisioning guidelines for collocation space. 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. 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.

Regarding BellSouth's involvement as an intermediary, 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.

At the hearing, witness Seeger outlined 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.

BellSouth witness Cox states that BellSouth is only obligated to notify us and the telecommunications carriers on the waiting list within two days of knowing that collocation space is available. 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. 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. Last, BellSouth is concerned about brokering or otherwise being involved in a transaction between

Covad and another party. "There is nothing in the Act or the FCC Rules to require BellSouth to provide the service Covad is seeking," states the witness.

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. The witness believes that if we allowed this, the FCC's "first-come, first-served" requirement would be compromised. 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 . . .".

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. 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. 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." Without confidentiality protection measures in place, BellSouth is reluctant to be involved in the least. However, under questioning from the bench, the witness indicated:

> 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.

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."

A. Analysis

This issue considers the circumstance when Covad and BellSouth have an existing collocation arrangement, and Covad elects to relinquish its occupation of the space. We note that in a line of questioning, Covad's attorney characterizes this issue as a money-saving proposal. As its witness offers, Covad " . . . has paid for the racking and other space preparation necessary to support ALEC facilities." We believe 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. We note, 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.

We are encouraged by this testimony, and agree 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.

We agree that BellSouth is not obligated to be involved in brokering a potential sale of equipment between Covad and another competitive entrant. We believe 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. BellSouth has allowed collocation space to be assigned from one ALEC to another, states witness Cox, and would be willing to permit Covad to do this as well. We 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. However, we believe 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. We, therefore, believe that Covad should aggressively pursue locating another ALEC prior to terminating its occupancy of a BellSouth collocation. We agree that it would be "incredibly wasteful" for Covad to embark on a complete teardown if another ALEC wanted to use the existing structures. Nonetheless, we believe that 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. We note 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." We believe 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, we are encouraged from dialogue presented at the hearing that specific aspects of this issue may be near settlement. We believe that if BellSouth's confidentiality and provisioning concerns -- the same concerns

discussed at hearing -- were addressed in a modified proposal, an agreement could be reached.

B. Decision

We find that BellSouth shall be required to notify Covad of the next ALEC on the waiting list to give that ALEC the opportunity to take the space as configured by Covad, thus relieving Covad of its subsequent obligations. Covad shall be required to identify keep the identity of this ALEC in a confidential manner. Further, Covad shall notify BellSouth once the negotiations have concluded between Covad and the ALEC that is seeking collocation space.

XX. RATES FOR COLLOCATION

This issue seeks 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.

We observe that the extreme divergence of views presented by the parties, coupled with the lack of substantiation to support their respective positions, leaves us 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 we accept 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. We also note 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 an approach that "splits the difference" between the opposing positions, we have 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. However, we are reluctant to advocate that position 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, we are mindful that we have 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, our intent is to consider 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.

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." 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.

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

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.

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. This charge is in addition to BellSouth's proposal to assess $3,760 for an initial collocation application. 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. 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.

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. In a late filed exhibit, 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. 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."

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.

During cross examination, Covad witness Riolo quoted a figure of $928 for a wire cage from a company he testifies advertises over the Internet. 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. 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. 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.

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.

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." 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.

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.

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. 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.

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.

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. 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." 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, 21 minutes to produce a DS3 record, and four hours to produce a fiber cable record.

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." 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. 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.

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)."

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.

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.

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.

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

A. Analysis

As is evidenced by the preceding section, the testimony regarding specific aspects of BellSouth's collocation cost study is 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."

BellSouth, conversely, apparently rests on the assertion it makes in its brief that its proposed rates are, "cost-based, consistent with BellSouth's actual business practices, and compliant with the requirements of the 1996 Act." It is unclear to us 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. We point out that BellSouth's subject matter expert acknowledged at hearing 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 late-filed exhibit, requested by our staff, from witness Shell did little to alleviate our concerns that the task times in BellSouth's cost study lack objective support.

As to the arguments, we 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 us with few options but to agree with Covad's expert on issues where specific alternatives are offered.

1. Application for Physical Collocation.

As noted earlier, 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. We have sincere misgivings about BellSouth's assertions but believe 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 the INAC for 20 hours to process a firm order confirmation. We do not agree with Covad witness Riolo that the costs attributed 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, we believe 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, there is insufficient justification for including the four functions detailed above in the firm order processing charge. We 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, we believe 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, we find that BellSouth shall be required to revise downward the INAC line item 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 we do 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.

We agree 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. We agree with 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 we agree 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. We agree with BellSouth's position on 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; we find therefore that 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. BellSouth did not provide a witness that commented on this issue. We agree with the Covad witness that some of BellSouth's proposed utilization rates appear low, and that support for these rates is virtually nonexistent. However, we believe 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, we believe there is no viable

alternative in this record. Thus, we believe that no adjustment should be made.

7. Production of Cable Records

We have serious reservations regarding BellSouth's claim that 28 hours of engineering work are necessary to produce a cable record for a collocation arrangement. We have 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, our 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. 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- and circuit provisioning. 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 that 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.

We note 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 most efficient telecommunications technology currently available and the lowest cost network technology currently available..." (emphasis added) We have 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. We

agree 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, we 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 we have unresolved questions about BellSouth's assumptions, Covad presented no viable alternatives. Thus, we believe that BellSouth's proposals should 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, we believe 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. We find 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. We note that the bulk of the cost included in BellSouth's proposed rate element is related to FRC 357C, Digital Circuit Equipment - Other. However, we are 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, we reject it, at least until some future time when BellSouth can provide some meaningful explanation.

B. Decision

We find that BellSouth shall revise its collocation cost studies to incorporate the adjustments noted. A revised collocation cost study that reflects our adjustments shall 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. We find also that BellSouth shall incorporate all appropriate adjustments ordered by this Commission in Docket No. 990649-TP. Interim rates shall not be subject to true-up, but we note that when we set rates for collocation, Covad will have the ability to adopt those rates at its discretion.

XXI. RESOLUTION OF LOOP FACILITY ISSUES

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. BellSouth, on the other hand, offers no time frames for any loop facility issue.

We note that the wording of this issue as framed in the Petition for Arbitration is structured to reflect "all" facility issues. Therefore, this Order 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. He further states that Covad has lost

customers as a result of orders held for facility problems. Covad witness Seeger states that "[n]o one at BellSouth seems to be accountable for attempting to resolve these issues in a timely manner." 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.

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. 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. 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.

Covad witness Allen believes the work of clearing facility problems can easily be accomplished within Covad's proposed time frames. 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.

The Covad witness concludes his case by asserting that Covad is asking us 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."

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. 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. The witness states that work to relieve network congestion or severe facility shortages are examples which can take precedence over new service. 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.

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.

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." 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.

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." 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.

A. Analysis

We agree with Covad witness Allen that this issue is significant for ALECs to enable them to operate in a predictable fashion. 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. Though not specifically referenced by the witness, we believe that the Rule the witness references is Rule 25-4.066(3), Florida Administrative Code, 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.

We note, however, that Rule 25-4.066(3) Florida Administrative Code, 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," we believe 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. We agree with the witness, and although we are receptive to Covad's proposal that imposes various intervals, we do not believe that such a model would be compatible with Rule 25-4.066(3), Florida Administrative Code. We note, 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, we believe that BellSouth's position is compatible with the current status of this Rule, and believes that Covad's proposal may not be.

We agree with BellSouth that restoration of service 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. We, therefore, do 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. 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, we believe that the overwhelming majority of all loop facility issues can be, and are, resolved within 30 days. Therefore, we do 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."

We believe 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. We believe that if

network related circumstances extend the interval beyond thirty days, BellSouth should be required to expedite the provisioning of these loop facilities.

B. Decision

We find that BellSouth shall 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 shall be required to expedite the provisioning of these loop facilities.

XXII. AMOUNTS IN DISPUTE AND LATE CHARGES

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. 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. 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." 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. 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. However, he proposes that when it is determined that Covad incorrectly withheld monies through the dispute process, a late payment fee may be considered.

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." 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. 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. He claims that granting BellSouth's proposal will provide BellSouth an incentive to render incorrect bills.

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.

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. 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. 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. 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.

A. 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.

We note 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, we conclude 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, we also believe 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. We believe this outcome is equitable and symmetrical.

B. Decision

We find that Covad shall 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 shall 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 shall refund to Covad the monies with interest.

XXIII. CONCLUSION

We have conducted these proceedings pursuant to the directives and criteria of Sections 251 and 252 of the Act. We believe that our decisions are consistent with the terms of Section 251, the provisions of FCC rules, applicable court orders and provision of Chapter 364, Florida Statutes.

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

Based on the foregoing, it is

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

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

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

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

By ORDER of the Florida Public Service Commission this 9th day of October, 2001.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

(S E A L)

FRB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

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

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by

the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.