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March 21, 2003

VIA FEDERAL EXPRESS

Mrs. Blanca S. Bayo  
Director, Division of the Commission Clerk  
and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399

Re: Complaint of AT&T Communications of the Southern  
States, LLC, Teleport Communications Group, Inc., and  
TCG South Florida For Enforcement of Interconnection  
Agreements with BellSouth Telecommunications, Inc.  
Docket No. 020919-TP

Dear Mrs. Bayo:

Enclosed is an original and fifteen (15) copies of AT&T's Response to BellSouth's Opposition To AT&T's First Motion to Strike BellSouth's Extrinsic Testimony and AT&T's Second Motion To Strike Additional BellSouth Extrinsic Testimony on behalf of AT&T Communications of the Southern States, LLC, Teleport Communications Group, Inc., and TCG South Florida.

Please stamp two (2) copies of the Response and Second Motion in the usual manner and return to us via our envelope.

If you have any questions, please do not hesitate to contact me at 404-888-7437.

Best regards,

**WOMBLE CARLYLE SANDRIDGE & RICE**  
**A Professional Limited Liability Company**

*Loretta A. Cecil / LAR*

Loretta A. Cecil

Enc.

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: )  
AT&T Communications of the )  
Southern States, LLC, Teleport ) **Docket No. 020919-TP**  
Communications Group, Inc. and )  
TCG South Florida For Enforcement ) **Filed: March 21, 2003**  
of Interconnection Agreements with )  
BellSouth Telecommunications, Inc. )  
)

**AT&T'S RESPONSE TO BELLSOUTH'S OPPOSITION TO AT&T'S FIRST  
MOTION TO STRIKE BELLSOUTH'S EXTRINSIC TESTIMONY**

**AT&T'S SECOND MOTION TO STRIKE ADDITIONAL BELLSOUTH  
EXTRINSIC TESTIMONY**

**COMES NOW** AT&T of the Southern States, LLC, Teleport Communications Group, Inc., and TCG South Florida (collectively "AT&T") and hereby file this Response to BellSouth Telecommunications, Inc.'s ("BellSouth") Opposition to AT&T's First Motion to Strike BellSouth's Extrinsic Testimony as set forth in the January 15, 2003 Direct Testimony of Elizabeth R. A. Shiroishi ("Shiroishi"). Additionally, pursuant to Rule 28-106.204, Florida Administrative Code, AT&T also files this Second Motion to Strike BellSouth's Additional Extrinsic Testimony set forth in the March 14, 2003 Rebuttal Testimony of Shiroishi.<sup>1</sup>

**INTRODUCTION**

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<sup>1</sup> As required by Rule 28-106.204(3), Florida Administrative Code, BellSouth was advised in advance of AT&T's filing of this Second Motion to Strike Additional BellSouth Extrinsic Testimony.

In BellSouth's Opposition to AT&T's First Motion to Strike, BellSouth's seeks to justify Shiroishi's extrinsic testimony on the basis that such testimony is (1) not "inconsistent" with BellSouth's Answer" and (2) not offered to vary the terms of Second Interconnection Agreement.<sup>2</sup>

In its September 20, 2002, Answer, BellSouth unequivocally asserted the proverbial "the agreement speaks for itself" defense.<sup>3</sup> Yet in Shiroishi's January 15, 2003 Direct Testimony, BellSouth departed from this defense and instead filed testimony replete with extrinsic or parol evidence regarding what the Parties "intended and discussed" when they negotiated Second Interconnection Agreement. Clearly, if "the agreement speaks for itself," filing testimony that primarily addresses what was "intended and discussed" by the Parties during their contract negotiations is fundamentally inconsistent with this defense. Moreover, there would be no logical reason to file such extrinsic testimony *except* to vary the express terms of the contract, which is exactly what Shiroishi does in her Direct Testimony.

Not satisfied with filing Shiroishi's Direct Testimony with such extrinsic testimony, on March 14, 2003, BellSouth's filed Shiroishi's Rebuttal Testimony which also includes improper extrinsic testimony. With this most recent testimony, BellSouth again is seeking to vary the express terms of the contract. Accordingly, AT&T now files this Second Motion to

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<sup>2</sup> BellSouth Opposition at Pages 4 and 7.

<sup>3</sup> BellSouth Answer at Pages 1-2.

Strike BellSouth's Additional Extrinsic Testimony from Shiroishi's Rebuttal Testimony.

### **ARGUMENT**

#### **I. AT&T's First Motion To Strike Is Not Based On A "Straw Man" Argument.**

In its Opposition, BellSouth alleges that AT&T's First Motion to Strike is based on a "straw man" argument that BellSouth is attempting to use extrinsic evidence to vary the terms of an unambiguous contract.<sup>4</sup>

Specifically, BellSouth states:

The Commission should deny AT&T's motion for one simple and straightforward reason—it is predicated upon a "straw man" argument that BellSouth is attempting through the use of extrinsic evidence to vary the terms of an unambiguous contract. That is not true. The parties agree that the interconnection agreement is clear on its face with respect to the treatment for inter-carrier compensation purposes of intraLATA calls that traverse switched access arrangements. The rub is that although the agreement expressly and unambiguously excludes from the definition of "local traffic" intraLATA calls that traverse switched access arrangements, AT&T stridently maintains, nevertheless, that such traffic is "clearly and unambiguously" included within the contract's definition of "local traffic."<sup>5</sup>

Contrary to BellSouth's rhetoric, AT&T has not proposed a straw man argument. This is readily apparent from reviewing the express terms of the contract. Specifically, Section 5.3.1.1 of Attachment 3 of Second Interconnection Agreement provides that the Parties agreed:

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<sup>4</sup> BellSouth Response at Page 1.

<sup>5</sup> Id. at Pages 1-2.

. . . to apply a “LATAwide” local concept, meaning that traffic that has traditionally been treated as intraLATA toll would now be treated as local for intercarrier compensation, except for those calls that are originated or terminated through switched access arrangements as established by the State Commission or FCC.

Obviously, the language “. . . apply a “LATAwide” local concept, meaning that traffic that *traditionally* has been treated as intraLATA toll would now be treated as local for intercarrier compensation . . .”<sup>6</sup> was a significant change from the way the Parties previously had compensated one another for the transport and termination of intraLATA traffic. The only caveat to what constituted “Local Traffic” was the language “. . . except for those calls that are originated or terminated through switched access arrangements as established by the State Commission or FCC.” If traffic is not exchanged as “Local Traffic” at local reciprocal compensation rates, it is exchanged at switched access rates. Consistent with this logic, Section 5.3.3 of Attachment 3 to Second Interconnection Agreement contains the following definition for “Switched Access Traffic” to which switched access rates would apply:

. . . telephone calls requiring local transmission or switching services for the purpose of the origination or termination of Intrastate InterLATA and Interstate InterLATA traffic. . .

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<sup>6</sup> Emphasis Added.

As Section 5.3.3 clearly provides, intrastate intraLATA traffic is not included in the definition of "Switched Access Traffic" found in the contract. Moreover, Section 5.3.3 of Attachment 3 to Second Interconnection Agreement specifically states that Sections 5.3.1.1 and 5.3.3 are "interrelated." Thus, when read together, the contract does speak for itself, and the language in Section 5.3.1.1 ". . . except for calls that are originated or terminated through switched access arrangements as established by the state commissions or the FCC. . ." tracks perfectly with the definition of "Switched Access Traffic" in Section 5.3.3. In this respect, state commissions establish rates for intrastate interLATA traffic and the FCC establishes rates for interstate interLATA traffic.

BellSouth's rejoinder to this logical interpretation of the "four corners of the contract" is that traffic which is exchanged "within a LATA" inherently can never be considered "Switched Access Traffic." This is because "Switched Access Traffic," as defined in Section 5.3.3, applies only to interLATA traffic and thus by definition can never apply to traffic which is exchanged "within a LATA." Thus, BellSouth attempts to have the Commission believe that just because traffic is exchanged "within a LATA," it can never be interLATA traffic. This is a disingenuous argument at best. Specifically, as Mr. King testified in his Direct Testimony filed on January 15, 2003, prior to execution of Second Interconnection Agreement BellSouth repeatedly had argued in various regulatory proceedings that

certain calls, even those “within a LATA,” are not local calls or even intraLATA calls. One such example is BellSouth’s position that “dial up” calls to internet service providers (“ISP’s) that are dialed by using a local dialing pattern (7 or 10 digits) by a calling party in one LATA to an ISP’s in the same LATA are predominately interstate calls and thus not subject to local reciprocal compensation rates.<sup>7</sup> Not only did BellSouth take this position in various policy proceedings, but it also forced many ALEC’s to file complaints in Florida and other states to recover local reciprocal compensation for such intraLATA traffic—again arguing that such calls—even if they were exchanged “within a LATA”—were interstate calls. Another example is BellSouth’s position regarding voice over internet protocol (“VOIP”) calls where BellSouth has made similar jurisdictional arguments.”<sup>8</sup> Thus, notwithstanding BellSouth’s rhetoric to the contrary, BellSouth’s own words confirm BellSouth’s position that certain calls can be transported and terminated “within a LATA” and still be considered interLATA traffic.

Irrespective of BellSouth’s various attempts to counter the express terms of the contract (and in the process contradicting its own prior advocacy), the only logical interpretation of Second Interconnection Agreement makes clear that all traffic “within a LATA” would be transported

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<sup>7</sup> Direct Testimony of Elizabeth R. A. Shiroishi on behalf of BellSouth Telecommunications, Inc. at Page 2, filed on December 1, 2000, in Docket No. 000075-TP, before the Florida Public Service Commission.

<sup>8</sup> Direct Testimony of John A. Ruscilli on behalf of BellSouth Telecommunications, Inc. at Page 47, filed on March 12, 2001, in Docket No. 000075-TP (Phase II), before the Florida Public Service Commission.

and terminated as “Local Traffic,” except for those calls originated or terminated through switched access arrangements as established by the state commission or FCC. Regarding such “switched access arrangements,” because Section 5.3.1.1 (where the language regarding “switched access arrangements” is found) specifically states that it is interrelated to Section 5.3.3 (where the definition of “Switched Access Traffic” is found), the Parties clearly agreed that the language “switched access arrangements as established by the state commission or FCC” is limited to “Switched Access Traffic” which includes only intrastate interLATA and interstate interLATA traffic as set forth in Section 5.3.3.

Importantly, in its Opposition to AT&T’s First Motion to Strike, BellSouth totally ignores the definition of “Switched Access Traffic” set forth in Section 5.3.3. Thus, the “rub” (to use BellSouth’s “straw man” terminology) between the Parties regarding the definition of “Local Traffic,” lies not with AT&T, but with BellSouth in its attempts to argue that “Switched Access Traffic” includes traditional intraLATA traffic despite the clear words in Sections 5.3.1.1 and 5.3.3 to the contrary. There is absolutely no way BellSouth can sustain its argument that “switched access arrangements” means traditional intraLATA traffic without its reliance on improper extrinsic evidence and ignoring other “interrelated” express terms of the contract. Thus, AT&T’s First Motion to Strike is not based any “straw man” argument, but rather the only correct interpretation of the contract



taken “as a whole” when appropriately limited to the four corners of the contract.

**II. Shiroishi’s Extrinsic Testimony Clearly Attempts To Alter, Vary, Or Change The Unambiguous Terms of Second Interconnection Agreement.**

By virtue of the express “interrelateness” of Sections 5.3.1.1 and 5.3.3., BellSouth faces a huge problem in this proceeding. This is because these Sections clearly tie together what constitutes “Local Traffic” with what constitutes “Switched Access Traffic.” Moreover, BellSouth can point to no provisions in Second Interconnection Agreement where “switch access arrangements” are defined to mean traffic which is subject to BellSouth’s intrastate intraLATA tariff rates. Rather, the express language of Section 5.3.3 limits “Switched Access Traffic” to only interLATA traffic. Understanding that BellSouth was in a serious “hole” regarding the express terms of the contract, on January 15, 2003, Shiroishi filed the following Direct Testimony:

BellSouth originally proposed that the exclusion language read ‘except for those calls that are originated and terminated through switched access arrangements as established by the ruling regulatory body.’ After discussion around what was meant by the ‘the ruling regulatory body,’ the Parties modified the words to read ‘except for those calls that are originated or terminated through switched access arrangements as established by the State Commission or FCC.’ ***In the course of these discussions, the Parties discussed the fact that this reference was to be the switched access arrangements that are offered to purchase through each Party’s switched access tariffs, which are approved by the State***

***Commission (for intrastate switched access) or the  
FCC (for interstate switched access.)”<sup>9</sup>***

Regardless of what Shiroishi now alleges the Parties discussed regarding Section 5.3.1.1, the fact remains that there no provisions in Second Interconnection Agreement which provide that “switched access arrangements” referred to BellSouth’s “intrastate switched access tariffs” for traditional intraLATA traffic.

Thus, in Shiroishi’s Direct Testimony, BellSouth clearly is attempting to vary the definition of “Switched Access Traffic” in Section 5.3.3 by arguing that it also includes intrastate intraLATA traffic. Her argument could not be clearer and its “hole filling” purpose is obvious. In this respect, the sole purpose of her extrinsic testimony is to “alter, vary or change” the express provisions of Second Interconnection Agreement relative to the definition of “Switched Access Traffic” as defined in Section 5.3.3.

**III. The North Carolina Utilities Commission Agreed With AT&T That A Finding Of Ambiguity Was Required Before It Could Consider BellSouth’s Extrinsic Testimony.**

BellSouth also would lead the Commission to believe that a Motion to Strike which AT&T filed in a similar proceeding pending in North Carolina was denied in its entirety by the North Carolina Utilities Commission (“North

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<sup>9</sup> Shiroishi Direct Testimony at Page 7; lines 9-18.

Carolina Commission”).<sup>10</sup> This is not a fair representation of the North Carolina Commission’s ruling. Instead, after granting AT&T additional time to conduct discovery regarding BellSouth’s extrinsic evidence,<sup>11</sup> and hearing further oral argument from AT&T before witnesses were allowed to testify regarding the same, the North Carolina Commission specifically determined (for “evidential purposes” only) that various provisions of the contract were ambiguous before it would admit Shiroishi’s extrinsic testimony into the record. Specifically, Presiding Commissioner Sam J. Ervin, IV concluded:

. . . I don’t in any way. . . dispute your [AT&T’s counsel] general statement of what the law provides. And I am not going to repeat the general statement of law that you’ve made because I think I broadly agree with it. Without going into great detail, it is my understanding that extrinsic evidence is admissible even in cases involving contracts with merger or integration clauses such as the present ones in the event the language of the contract in question, examined solely on the basis of the relevant contractual language and without reference to any extrinsic evidence, is ambiguous. After reviewing the pleadings, the response filed by BellSouth, the renewed motion to strike and after listening to the arguments of the parties presented this morning, I conclude, for the sole purpose of ruling on the present renewed motion to strike, that the relevant contract language is sufficiently ambiguous to permit the introduction of extrinsic evidence . . . <sup>12</sup>

Additionally, Presiding Commissioner Ervin further stated:

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<sup>10</sup> AT&T Motion to Strike filed with the North Carolina Utilities Commission on December 30, 2002; AT&T Renewed Motion to Strike filed with the North Carolina Utilities Commission on January 21, 2003, Docket No. P-55, Sub 1376.

<sup>11</sup> North Carolina Utilities Commission Order dated January 7, 2003; Denying Motion to Strike, But Allowing Brief Discovery; Docket P-55, Sub 1376.

<sup>12</sup> North Carolina Proceeding; Hearing Transcript; Vol. 1, Pages 14-15.

. . . the ruling that I make is a ruling that the [P]residing Commissioner makes with respect to evidence and is not a final determination by the Commission with respect to the question on the merits.<sup>13</sup> . . . I conclude at least for purposes of determining the admissibility of evidence and for no other purposes, that there's sufficient ambiguity arising solely from an examination of the language of the contract . . . <sup>14</sup>

As AT&T discussed in its First Motion to Strike, Georgia law is clear that where a "contract [is] plain clear, certain in its terms, and not ambiguous, there [is] nothing for either the trial court or jury to construe." Estate of Sam Farkas, Inc. v. Clark, 238 Ga.App. 115, 517 S.E.2d. 826 (1999). Thus, in accordance with Georgia law, a trial court must first decide whether the contract language is ambiguous. Municipal Elec. Authority of Georgia v. City of Calhoun, 227 Ga. App. 571, 489 S.E.2d. 599 (1997).

The North Carolina Commission acknowledged this requirement of Georgia law and made its prior finding of ambiguity accordingly. Although AT&T disagrees that the contract is ambiguous, an affirmative finding of ambiguity is required before the Commission can consider such extrinsic evidence from BellSouth. BellSouth agrees with this procedural requirement. Specifically, in its Opposition to AT&T's First Motion to Strike BellSouth clearly stated:

If, however, the Commission determines, based on AT&T's inventive arguments, that the agreement is ambiguous on this point, then the parol evidence rule

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<sup>13</sup> Id. at Page 12.

<sup>14</sup> Id. at Page 16.

does not apply, because “parol evidence is admissible to explain ambiguity in a written contract.” Andrews v. Skinner, 279 S.E.2d. 523, 525 (Ga. App. 1981). . . . BellSouth offers the testimony because it is appropriate for the Commission to consider extrinsic evidence in the event the Commission finds that the contract is ambiguous. The parol evidence rule, as even AT&T acknowledges, does not bar the testimony in that situation.<sup>15</sup>

Thus, there seems to be no dispute between the Parties that a prior finding of ambiguity is required before the Commission can consider BellSouth’s extrinsic evidence. Notwithstanding the foregoing, the contract at issue is not ambiguous, and the Commission should grant AT&T’s First Motion to Strike.

**IV. AT&T’s Second Motion To Strike Additional BellSouth Extrinsic Evidence.**

In Shiroishi’s March 14, 2003 Rebuttal Testimony, once again BellSouth seeks to use extrinsic evidence to vary the express terms of the contract where no ambiguity exists. Still very much concerned about BellSouth’s gapping evidential “hole” regarding the fact that Section 5.3.1.1 (which deals with what constitutes “Local Traffic”) is specifically “interrelated” to Section 5.3.3 (which defines “Switched Access Traffic”), Shiroishi attempted to argue that the “interrelated” language of Section 5.3.3” deals only with VOIP traffic. Specifically she states:

. . . the reference to the interrelationship was added as the Parties were negotiating mutually agreeable language to deal with Voice over Internet Protocol

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<sup>15</sup> BellSouth Opposition at Pages 6-7.

("VOIP"). The correspondence between the Parties at the time of negotiation regarding Attachment 3 of Second Interconnection Agreement establishes that the Parties actually inserted the agreement's definition of local traffic, WITH the exclusion for traffic that originates or terminates through switched access arrangements, BEFORE Section 5.3.3 was inserted. In fact, the negotiation correspondence makes clear that Section 5.5.5 was inserted solely to deal with the issue of VOIP traffic.<sup>16</sup>

This is another clear example of BellSouth attempting to use extrinsic evidence to vary the express terms of the contract. As BellSouth well knows, the "interrelated" language in Section 5.3.3. states "[t]his Section is interrelated to Section 5.3.1[1]." It does not state that the "*VOIP provisions of this Section 5.3.3 are interrelated to Section 5.3.1.1.*" In particular, Section 5.3.3 covers many types of traffic in addition to VOIP traffic, most importantly, the definition of "Switched Access Traffic."

In addition to the foregoing, Shiroishi's Rebuttal Testimony contains other improper extrinsic testimony. Attached hereto as Exhibit 1, and incorporated herein by this reference, is a copy of Shiroishi's Rebuttal Testimony. For the Commission's convenience, AT&T has underlined on Exhibit 1 those portions of Shiroishi's Rebuttal Testimony which contain in improper extrinsic testimony which should be struck.

Regarding the legal support for the striking of such extrinsic testimony in this Second Motion to Strike, AT&T hereby incorporates by this

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<sup>16</sup> Shiroishi Rebuttal Testimony, March 14, 2003, at Page 4.

reference AT&T's Brief Supporting AT&T's First Motion To Strike BellSouth Extrinsic Testimony filed with the Commission on February 12, 2003.

**WHEREFORE**, AT&T requests the Commission to:

- (a) strike those portions of Shiroishi's Direct Testimony found on Exhibit 1 to AT&T's First Motion to Strike filed with the Commission on February 12, 2003;
- (b) strike those portions of Shiroishi's Rebuttal Testimony found on Exhibit 1 to AT&T's Second Motion to Strike Additional BellSouth Extrinsic Testimony filed with the Commission on March 21, 2003;
- (c) grant AT&T such further relief as it deems just and proper.

Respectfully submitted this the 21st day of March, 2003.

By: Loretta A. Cecil / SAR  
Loretta A. Cecil, Esq.  
FL Bar No. 358983  
Attorney for AT&T of the Southern States, LLC, Teleport Communications Group, Inc. and TCG of the Carolinas, Inc.  
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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have served a copy of the AT&T's Response to BellSouth's Opposition to AT&T's First Motion to Strike BellSouth's Extrinsic Testimony and AT&T's Second Motion to Strike Additional BellSouth Extrinsic testimony on behalf of AT&T Communications of the Southern States, LLC, Teleport Communications Group, Inc., and TCG South Florida (collectively "AT&T") on all parties in the U.S. Mail, postage prepaid.

This the 21st day of March, 2003.

BellSouth Telecommunications, Inc.  
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Loretta A. Cecil, Esq.



1                   BELLSOUTH TELECOMMUNICATIONS, INC.  
2                   REBUTTAL TESTIMONY OF BETH SHIROISHI  
3                   BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION  
4                   DOCKET NO. 020919-TP  
5                   March 14, 2003

6  
7    Q.    PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH  
8           TELECOMMUNICATIONS, INC. ("BELLSOUTH") AND YOUR BUSINESS  
9           ADDRESS.

10  
11   A.    My name is Elizabeth R. A. Shiroishi. I am employed by BellSouth as Director,  
12           Interconnection Services Marketing. My business address is 675 West Peachtree  
13           Street, Atlanta, Georgia 30375.

14  
15   Q.    ARE YOU THE SAME ELIZABETH R.A. SHIROISHI WHO FILED DIRECT  
16           TESTIMONY IN THIS CASE?

17  
18   A.    Yes.

19  
20   Q.    DOES THE EXPRESS EXCLUSION FROM THE DEFINITION OF LOCAL  
21           TRAFFIC SET FORTH IN SECTION 5.3.1 OF ATTACHMENT 3 TO THE  
22           INTERCONNECTON AGREEMENT REFERENCE "SWITCHED ACCESS  
23           TRAFFIC" AS DEFINED IN SECTION 5.3.3, AS MR. KING CLAIMS ON  
24           PAGES 10 AND 21-22?

25

1 A. No. Mr. King incorrectly claims that the exclusion of “switched access  
2 arrangements” from the local traffic definition in section 5.3.1 is synonymous  
3 with “Switched Access Traffic” as defined in Section 5.3.3. If that were true, the  
4 exclusion would state “Switched Access Traffic as defined in Section 5.3.3.”  
5 Instead, the agreement specifically provides that the exclusion is for calls that are  
6 “originated or terminated through switched access arrangements.” The term  
7 switched access arrangements is not the same as the specifically defined term  
8 “Switched Access Traffic.”

9  
10 Further, Mr. King’s theory is not logical. The exclusion from the LATAwide  
11 definition of local traffic is specifically for a certain class of intraLATA traffic.  
12 AT&T’s position, however, is that all calls in the LATA are local. If that were  
13 correct, there would be no need for the exclusion. The language would simply  
14 state that all calls in the LATA are local.

15  
16 Q. DOES BELLSOUTH HAVE AN INTERCONNECTION AGREEMENT WITH  
17 AT&T IN ANOTHER STATE THAT HAS A DEFINITION OF LOCAL  
18 TRAFFIC WHICH INCLUDES ALL TRAFFIC THAT ORIGINATES AND  
19 TERMINATES IN THE LATA?

20  
21 A. Yes. As stated in my direct testimony, in the agreement that governs the parties’  
22 relationship in Mississippi, the Parties agreed that all calls in the LATA would be  
23 considered local. Thus, the definition simply reads, “Local Traffic means any  
24 telephone call that originates and terminates in the same LATA.” Mr. King’s  
25 testimony is that the language at issue in the Florida agreement, which

1 specifically excludes traffic that originates or terminates over switched access  
2 arrangements, means the same thing as the broader Mississippi definition. If that  
3 were true, there would have been no reason to add the express exclusion. And  
4 that is not what the contract here says, in any event.

5  
6 Q. ON PAGE 11 OF HIS DIRECT TESTIMONY, MR. KING STATES "WITH  
7 RESPECT TO THE DEFINITION OF 'SWITCHED ACCESS TRAFFIC' AS  
8 SET FORTH IN SECTION 5.3.3, THIS IS THE ONLY TYPE OF TRAFFIC  
9 FOR WHICH SWITCHED ACCESS CHARGES APPLY UNDER THE  
10 SECOND INTERCONNECTION AGREEMENT." PLEASE COMMENT.

11  
12 A. First and foremost, switched access charges are governed and apply in accordance  
13 with the terms of tariffs, in this case either BellSouth's or AT&T's. An  
14 interconnection agreement may reference such tariffs, but those tariffs are stand-  
15 alone documents that are filed and approved by the State Commission (for  
16 intrastate services) or the FCC (for interstate services) and that apply pursuant to  
17 their own terms. Second, consistent with BellSouth's tariffs, the interconnection  
18 agreement between BellSouth and AT&T clearly excludes from the definition of  
19 "local" any call that originates or terminates through switched access  
20 arrangements.

21  
22 Q. PLEASE ADDRESS THE "INTERRELATED" LANGUAGE IN SECTION  
23 5.3.3 AND MR. KING'S ASSERTIONS ON PAGES 11 THROUGH 16  
24 REGARDING THE ALLEGED MEANING OF THAT LANGUAGE.  
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1 A. Section 5.3.3 states:

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Switched Access Traffic is defined as telephone calls requiring local transmission or switching service for the purpose of the origination or termination of Intrastate InterLATA and Interstate InterLATA traffic. Switched Access Traffic includes, but is not limited to, the following types of traffic: Feature group A, Feature Group B, Feature Group D, toll free access (e.g. 800/877/888), 900 access, and their successors. Additionally, if BellSouth or AT&T is the other party's end user's presubscribed interexchange carrier or if an end user uses BellSouth or AT&T as an interexchange carrier on a 101XXXX basis, BellSouth or AT&T will charge the other party the appropriate tariff charges for originating switched access services. The Parties have been unable to agree as to whether Voice over Internet Protocol ("VOIP") transmissions which cross local calling area boundaries constitute Switched Access Traffic. Notwithstanding the foregoing, and without waiving any rights with respect to either Party's position as to the jurisdictional nature of VOIP, the Parties agree to abide by any effective and applicable FCC rules and orders regarding the nature of such traffic and the compensation payable by the Parties for such traffic, if any; provided however, that any VOIP transmission which originates in one LATA and terminates in another LATA (i.e, the end-to-end points of the call), shall not be compensated as Local Traffic. This Section is interrelated to Section 5.3.1.

As stated in my direct testimony, the reference to the interrelationship was added as the Parties were negotiating mutually agreeable language to deal with Voice over Internet Protocol ("VOIP"). The correspondence between the Parties at the time of negotiation regarding attachment 3 of Second Interconnection Agreement establishes that the Parties actually inserted the agreement's definition of local traffic, **WITH** the exclusion for traffic that originates or terminates through switched access arrangements, **BEFORE** Section 5.3.3 was inserted. In fact, the negotiation correspondence makes clear that Section 5.3.3 was inserted solely to deal with the issue of VOIP traffic. The issue of VOIP was raised through the context of Switched Access Traffic because that's where the disagreement centered: were VOIP transmissions switched access or not? As you can see from

1 the language, the Parties agreed to disagree on this issue. However, they agreed  
2 that VOIP transmissions would not be compensated as local. Because VOIP  
3 transmissions are not routed over switched access arrangements, the language  
4 simply makes clear that VOIP transmissions that originate and terminate in  
5 different LATAs shall not be compensated as local. This language was then  
6 interrelated back to Section 5.3.1.1 because in that Section, the Parties agreed  
7 that, subject to the exception of calls that originated or terminated over switched  
8 access arrangements, all other calls within the LATA would be treated as local.

9  
10 If the Parties had agreed for compensation purposes that local calls would be  
11 anything that originated and terminated in the traditional local calling area as  
12 specified in the tariff, then the VOIP language would have needed to state that  
13 VOIP transmissions that originate and terminate in different local calling areas  
14 would not be treated as local. The interrelationship language ensures that, if a  
15 Party requested to adopt the VOIP provisions of the BellSouth AT&T agreement,  
16 it would also need to adopt the definition of local traffic. If not, there could be an  
17 inconsistency between the adopting carrier's definition of local traffic and its  
18 application in the VOIP transmission provisions. It is very important to note that  
19 the interrelationship language appears in 5.3.3, but not in 5.3.1.1. If Mr. King's  
20 theory was true, the Parties would have inserted language in the local traffic  
21 definition relating it to Section 5.3.3. This is not the case. Instead, the Parties  
22 inserted the interrelationship language in Section 5.3.3 because of the potential  
23 discrepancy described above if a carrier adopted Section 5.3.3 without 5.3.1.1.  
24 However, there is no issue if a carrier wants to adopt Section 5.3.1.1 without  
25 Section 5.3.3.

1 Q. PLEASE ADDRESS MR. KING'S ASSERTIONS ON PAGE 16 AND 17 THAT  
2 THE EXCLUSION IN THE LOCAL TRAFFIC DEFINITION WAS AIMED AT  
3 ISP-BOUND TRAFFIC AND VOIP TRAFFIC.

4  
5 A. It is not true. If the Parties had intended to exclude from the definition of "local"  
6 VOIP or Switched Access Traffic, then that's what the Agreement would state.  
7 Instead, the provision for local traffic first states that the call must be intraLATA,  
8 and then applies an exclusion for anything that originates and terminates over  
9 switched access arrangements as established by the State Commission or FCC.  
10 Importantly, the FCC made a determination regarding the jurisdictional nature of  
11 ISP-bound traffic before the Parties entered into this agreement. And since  
12 BellSouth's position regarding VOIP transmissions is and always has been that  
13 access charges should apply to those transmissions where the end points of the  
14 call are not in the same local calling area, there was absolutely no need to add the  
15 exclusion to address VOIP or ISP-bound traffic.

16  
17 Q. ON PAGE 24, MR. KING STATES THAT THERE IS NOT ANY LANGUAGE  
18 IN THE INTERCONNECTION AGREEMENT PROVIDING FOR THE  
19 ENTITLEMENT TO CHARGE SWITCHED ACCESS RATES. PLEASE  
20 COMMENT.

21  
22 A. There is no reason that the interconnection agreement would address switched  
23 access rates. BellSouth's tariffs, which are approved by this Commission for  
24 intrastate access and by the FCC for interstate access, are the controlling  
25 documents for switched access arrangements purchased from them and the traffic

1 flowing over such arrangements. As such, tariffs, and not the interconnection  
2 agreement, provide for the entitlement of switched access rates.

3  
4 Q. PLEASE ADDRESS MR. KING'S QUESTIONS ON PAGES 26 THROUGH 28  
5 ADDRESSING THE RECIPROCITY OF THE TERMS AND CONDITIONS  
6 FOR COMPENSATION OWED FOR LOCAL TRAFFIC.

7  
8 A. Section 5.3.1 of Attachment 3 to the Interconnection Agreement states:

9  
10 The Parties agree to apply a "LATAwide" local concept to this  
11 Attachment 3, meaning that traffic that has traditionally been treated as  
12 intraLATA toll traffic will now be treated as local for intercarrier  
13 compensation purposes, except for those calls that are originated or  
14 terminated through switched access arrangements as established by the  
15 State Commission or FCC.

16  
17 As stated in my direct testimony, this language is written reciprocally, and thus  
18 applies to each Party equitably. To the extent that BellSouth originated or  
19 terminated calls through switched access arrangements as defined in the tariff,  
20 such calls would be subject to switched access and not reciprocal compensation  
21 rates.

22  
23 Q. ON A GOING FORWARD BASIS, CAN AT&T ELECT ANOTHER  
24 DEFINITION OF LOCAL TRAFFIC IN ITS INTERCONNECTION  
25 AGREEMENT WITH BELLSOUTH?

26  
27 A. Yes. Section 252(i) of the Telecommunications Act of 1996 allows a carrier to  
28 adopt any interconnection, service, or network element from any other effective,

1 filed and approved agreement for the remaining term of the agreement as long as  
2 AT&T takes with it all interrelated rates, terms, and conditions. Thus, AT&T  
3 could choose to adopt from any other filed and approved interconnection  
4 agreement with BellSouth the definition of local traffic found in that agreement,  
5 along with the interrelated rates, terms, and conditions.

6

7 Q. DOES THAT CONCLUDE YOUR TESTIMONY?

8

9 A. Yes.