

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for arbitration  
concerning 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  
ORDER NO. PSC-03-0570-PHO-TP  
ISSUED: May 5, 2003

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on Monday, April 21, 2003, in Tallahassee, Florida, before Commissioner J. Terry Deason, as Prehearing Officer.

APPEARANCES:

Tracy Hatch, Esquire, AT&T of the Southern States, LLC, 101 N. Monroe, Suite 700, Tallahassee, Florida, 32301  
On behalf of AT&T Communications of the Southern States, Teleport Communications Group, Inc. and TCG South Florida ("AT&T").

Jim Meza, III, Esquire, 150 South Monroe Street, Suite 400, Tallahassee, Florida 32301; and Andrew D. Shore, Esquire, Suite 4300, BellSouth Center, 675 West Peachtree Street, N.E., Atlanta, Georgia 30375  
On behalf of BellSouth Telecommunications, Inc. ("BST").

Patricia A. Christensen, Esquire, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850  
On behalf of the Commission.

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FPSC-COMMISSION CLERK

PREHEARING ORDER

I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

II. CASE BACKGROUND

On August 26, 2002, AT&T of the Southern States, LLC, Teleport Communications Group, Inc. and TCG of the Carolinas, Inc. (collectively "AT&T") filed its Complaint for enforcement of its Interconnection Agreement against BellSouth Telecommunications, Inc. (BellSouth). AT&T in its Complaint alleges that BellSouth breached, and continues to breach, its obligation to charge AT&T local reciprocal compensation rates for transport and termination of all "Local Traffic," including all "LATAwide traffic," in accordance with the terms of the parties' two interconnection agreements.<sup>1</sup> On September 20, 2002, BellSouth filed its response to AT&T's Complaint. BellSouth denied that it has breached the parties' interconnection agreements. BellSouth alleged that it is not required to charge AT&T reciprocal compensation for all LATAwide traffic because all LATAwide traffic is not "Local Traffic." BellSouth stated that switched access rates apply to intraLATA traffic that is originated or terminated over switched access arrangements.

On November 14, 2002, an issue identification meeting was held. By Order No. PSC-02-1652-PCO-TP, issued November 26, 2002 (Order Establishing Procedure), the Prehearing Conference has been scheduled for April 21, 2002, and the Hearing has been scheduled for May 7, 2003.

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<sup>1</sup>First Interconnection Agreement approved by the Commission on June 19, 1997 by Order No. PSC-97-0724-FOF-TP. Second Interconnection Agreement approved by the Commission on December 7, 2001, by Order No. PSC-01-2357-FOF-TP, effective as of October 1, 2001.

On January 27, 2003, BellSouth filed its Motion for Partial Summary Final Order on Issue 1(a).<sup>2</sup> On February 19, 2003, AT&T filed its Response to BellSouth's Motion for Partial Summary Final Order on Issue 1(a) and its Cross Motion for Partial Summary Final Order on Issue 1(a).

AT&T also filed a Motion to Strike BellSouth's "Extrinsic" Testimony and AT&T Brief Supporting AT&T's Motion to Strike BellSouth's "Extrinsic" Evidence on February 12, 2003. BellSouth filed its Response to AT&T's Motion to Strike on February 24, 2003. At the April 1, 2003, Agenda Conference, the Commission granted the Motions for Partial Summary Final Order on Issue 1(a), and denied AT&T's Motion to Strike.

On March 21, 2003, AT&T filed its Response to BellSouth's Opposition to its First Motion to Strike BellSouth's Extrinsic Testimony and its Second Motion to Strike Additional BellSouth Testimony. On March 28, 2003, BellSouth filed its Response to AT&T's Unauthorized Reply Brief and to AT&T's Second Motion to Strike.

### III. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record

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<sup>2</sup>ISSUE 1: (a) Do the terms of the Second Interconnection Agreement as defined in AT&T's complaint apply retroactively from the expiration date of the First Interconnection Agreement as defined in AT&T's complaint, June 11, 2000, forward? (b) If the answer to Issue 1(a) is "yes," is AT&T entitled to apply the reciprocal compensation rates and terms of the Second Interconnection Agreement only from July 1, 2001, forward?

of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 364.183, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

1. Any party intending to utilize confidential documents at hearing for which no ruling has been made, must be prepared to present their justifications at hearing, so that a ruling can be made at hearing.

2. In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- a) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- b) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- c) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided

to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.

- d) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- e) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of the Commission Clerk and Administrative Services's confidential files.

#### IV. POST-HEARING PROCEDURES

Each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages, and shall be filed at the same time.

#### V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony

and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VI. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
Jeffrey A. King	AT&T	A, 1(a), 1(b), 2, 3, 4, 5
Beth Shiroishi	BST	All
<u>Rebuttal</u>		
Jeffrey A. King	AT&T	2, 3
Billy C. Peacock	AT&T	2, 3
Roberta Stevens	AT&T	2, 3
Beth Shiroishi	BST	All

VII. BASIC POSITIONS

**AT&T:** BellSouth has breached its obligation to charge AT&T at the applicable reciprocal compensation rate for the transport and termination of "Local Traffic" as required

by the unambiguous provisions of two interconnection agreements entered into by the Parties pursuant to Section 251 of the Telecommunications Act of 1996 ("Act")<sup>3</sup> and approved by the Commission under Section 252 of the Act ("First Interconnection Agreement"; "Second Interconnection Agreement"; collectively the "Interconnection Agreements").

**1. Description of the Interconnection Agreements.**

First Interconnection Agreement was executed by AT&T Communications of the Southern States, Inc. (the predecessor to AT&T Communications of the Southern States, LLC) and BellSouth following negotiations and an arbitration decided by this Commission in Docket No. 960833-TP. It was approved by this Commission by Order PSC-97-0724-FOF-TP on June 19, 1997, was effective beginning June 10, 1997 and by its own terms continued until Second Interconnection Agreement became effective. Subsequently, on September 21, 1999, in Order No. PSC-99-1877-FOF-TP, the Commission approved TCG South Florida's adoption in its entirety of First Interconnection Agreement. Although First Interconnection Agreement was to expire three years from its effective date of June 10, 1997, the Retroactivity Provision included in Section 2.3 thereof continued the effectiveness of First Interconnection Agreement for some time thereafter. Specifically, Section 2.3 provided that in the event First Interconnection Agreement expired before BellSouth and AT&T had executed another "follow-on" or "second" interconnection agreement, or before this Commission had issued its arbitration order in any "follow-on" or "second" arbitration, that the terms subsequently agreed to by the Parties or so ordered by this Commission in any "follow-on" or "second" arbitration would be retroactive to the day following expiration of First Interconnection Agreement, or June 11, 2000, and that the First Interconnection Agreement would remain in effect until the "follow-on" or "second" interconnection agreement

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<sup>3</sup>Pub. L. No. 104-104, 110 Stat. 56, amending 47 U.S.C. Section 201, Communications Act of 1934.

became effective. Thereafter, the Second Interconnection Agreement was executed by AT&T and BellSouth following another period of negotiations and a subsequent arbitration decided by this Commission in Docket No. 000731-TP. Second Interconnection Agreement was approved by this Commission on December 7, 2001, in Order No. PSC-01-2357-FOF-TP and again was effective for another three-year term, beginning October 26, 2001, as to both AT&T Communications of the Southern States, Inc. (predecessor to AT&T Communications of the Southern States, LLC) and TCG South Florida.

2. The Definitions of "Local Traffic" and "Switched Access Traffic" Are Specifically "Interrelated" In Second Interconnection Agreement And Thus Make Clear That The Parties Intended To Include "Traditional" IntraLATA Toll Traffic as "Local Traffic" For Reciprocal Compensation Purposes.

With Respect to BellSouth's obligation to charge AT&T reciprocal compensation rates for the transport and termination of "Local Traffic," Section 5.3.1 of Attachment 3 of Second Interconnection Agreement provides that:

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

With respect to the language "except those calls that are originated or terminated through switched access arrangements as established by the State Commission or FCC," the Parties qualified the same by agreeing to a definition of "Switched Access Traffic" in Section 5.3.3 of Attachment 3 that specifically "interrelated" the definition of "Switched Access Traffic" with what constituted "Local Traffic" as used in Section 5.3.1 of



the same Attachment 3. In particular, Section 5.3.3 provides that "Switched Access Traffic" is defined as:

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

Thus, the Parties expressly limited "Switched Access Traffic" under Second Interconnection Agreement to interLATA traffic and excluded all intraLATA traffic. Accordingly, the Parties specifically agreed that the definition of "Switched Access Traffic" clearly qualifies the language "calls that are originated or terminated through switched access arrangements as established by the State Commission or FCC" by virtue of the language found in Section 5.3.3 which states "This Section 5.3.3 [which contains the definition of "Switched Access Traffic"] is interrelated to Section 5.3.1.1 [which describes "Local Traffic"]."

As a result, when the "four corners of the contract" are "read together" as is required under applicable Georgia law,<sup>4</sup> the Parties agreed that all "LATAwide Traffic" which traditionally had been treated as intraLATA toll traffic would be compensated as "Local Traffic" at reciprocal compensation rates, except for

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<sup>4</sup>In Section 24.6.1 of the General Terms and Conditions of Second Interconnection Agreement, the Parties agreed that, "the validity of this Agreement, the construction and enforcement of its terms, and the interpretation of the rights and duties of the Parties shall be governed by the laws of the State of Georgia . . . except insofar as federal law may control any aspect of this Agreement, in which case federal law shall govern such aspect." With respect to the Commission's obligation to consider the "four corners of the contract," See Stephens v. Parrino and Ware, 138 Ga. App. 634, 226 S.E. 2d 808 (1976); First Capital Life Insurance Co. v. AAA Communications, Inc., 906 F.Supp. 1546 (1995).

such "LATAwide" traffic which a State Commission or FCC determined to be interLATA traffic.<sup>5</sup>

3. Should the Commission Find It Necessary To Consider "Extrinsic" Or Parol Testimony, AT&T's "Extrinsic" Or Parol Testimony Overwhelmingly Establishes That The Parties Intended That "Local Traffic" Would Include "Traditional" IntraLATA Toll Traffic For Purposes of Reciprocal Compensation.

The provisions of Second Interconnection Agreement regarding what constitutes "Local Traffic" and "Switched Access Traffic" are unambiguous. However, in the event the Commission considers "extrinsic" or parol evidence in order to determine the intent of the Parties upon a finding of ambiguity regarding these provisions, AT&T's "extrinsic" or parol testimony provides overwhelming evidence that the language "except those calls that are originated or terminated through switched access arrangements as established by the State Commission or FCC," was agreed to by the Parties to "protect" BellSouth in the event a State Commission or the FCC subsequently determined that certain traffic which stayed within a LATA nevertheless constituted interLATA traffic. This rationale tracks perfectly the definition of "Switched Access Traffic" as found in Section 5.3.3 which is limited to interLATA traffic. The specific examples of such traffic discussed by the Parties prior to executing Second Interconnection Agreement (for which BellSouth sought "protection") were calls to internet service providers and voice over internet protocol. Thus the "except for" exclusion language in Section 5.3.1 discussed above was not agreed to by the Parties to

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<sup>5</sup>As but one example of how any "LATAwide" traffic ever could be considered interLATA traffic, as this Commission is well aware BellSouth historically has taken the position that calls to internet service providers - even if such calls are originated and terminated within a LATA - is interstate traffic. See, 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; Florida Public Service Commission.

govern "traditional" intraLATA toll traffic originated or terminated over "switched access arrangements." Rather, Section 5.3.1 specifically states that for such "traditional" intraLATA toll traffic, the Parties agreed to ". . . apply a LATAwide local concept . . ." meaning that all traditional inraLATA traffic would be compensated as reciprocal compensation.

4. The Trunking Provisions of Second Interconnection Agreement Do Not Govern What Constitutes "Local Traffic."

With respect to whether the trunking provisions of Second Interconnection Agreement govern what constitutes "Local Traffic," there is no language in the contract which in any way states or implies that trunking arrangements govern what constitutes "Local Traffic." Again, to the extent the Commission deems it necessary to consider "extrinsic" or parol evidence to resolve any ambiguity regarding the same, AT&T's "extrinsic" or parol provides overwhelming evidence that trunking arrangements have no bearing on what constitutes "Local Traffic" under Second Interconnection Agreement.

5. BellSouth Owes AT&T Refunds For Overcharging For The Transport and Termination of "Local Traffic" As Well As Late Payment Charges.

Because BellSouth has breached the Interconnection Agreements by failing to charge AT&T reciprocal compensation rates for transporting and terminating "Local Traffic" (including all "LATAwide Traffic") from July 1, 2001 to date, AT&T is entitled to a refund from BellSouth in the amount of such overcharges, as well as late payments from BellSouth at the rate of one and one half percent (1 and 1/2 %) per month times such overcharged amounts beginning July 1, 2001 in accordance with Section 1.16.1 of Attachment 6 to Second Interconnection Agreement.

**BST:** The Parties' Interconnection Agreement expressly and unambiguously excludes intraLATA calls carried over switched access arrangements from the definition of

"local traffic." Accordingly, switched access rates, not reciprocal compensation rates, apply for the transport and termination of such calls. AT&T's claim that the agreement clearly includes such calls within the definition of local traffic is wrong. If the Commission determines that the agreement is ambiguous on this critical point and, accordingly, considers evidence other than the contract itself, that extrinsic evidence proves that the parties intended at the time of contracting to exclude intraLATA calls carried over switched access arrangements from the definition of local traffic.

**STAFF:** Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

VIII. ISSUES AND POSITIONS

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

**POSITIONS:**

**AT&T:** The Commission has jurisdiction to enforce the terms of the Interconnection Agreements pursuant to Section 252 of the Act and Section 364.01, Florida Statutes. Moreover, Section 16 of Second Interconnection Agreement, which applies to First Interconnection Agreement by virtue of the Retroactivity Provision, allows AT&T to petition this Commission for a resolution of any disputes that arise as to interpretation of the Interconnection Agreements.

**BST:** No position.

**STAFF:** Part II of the Federal Telecommunications Act of 1996 (Act) sets forth provisions regarding the development of competitive markets in the telecommunications industry. Section 251 of the Act regards interconnection with the incumbent local exchange carrier and Section 252 sets forth the procedures for negotiation, arbitration, and approval of agreements.

State Commissions retain primary authority to enforce the substantive terms of agreements they have approved pursuant to Sections 251 and 252 of the Act. Iowa Utilities Board v. Federal Communications Commission, 120 F. 3d 753, 804 (8<sup>th</sup> Cir. 1997). A petition has been filed requesting the Commission's review of an agreement the Commission previously approved to determine if the parties are in compliance with that agreement. Based on Iowa Utilities Board and Section 252 (c)(1), the Commission have the authority to review the complaint.

**ISSUE 1A:** Do the terms of the Second Interconnection Agreement as defined in AT&T's complaint apply retroactively from the expiration date of the First Interconnection Agreement as defined in AT&T's complaint, June 11, 2000, forward?

**POSITION:** The Commission found by Order No. PSC-03-0528-FOF-TP, issued April 21, 2003, that the terms, conditions, and prices of the Second Interconnection Agreement apply between BellSouth and AT&T from June 11, 2000, forward, except for the reciprocal compensation rates.

**ISSUE 1B:** If the answer to Issue 1(a) is "yes," is AT&T entitled to apply the reciprocal compensation rates and terms of the Second Interconnection Agreement only from July 1, 2001, forward?

**POSITION:** The Parties stipulate that the reciprocal compensation rates and terms of the Second Interconnection Agreement apply from July 1, 2001, forward.

**ISSUE 2:** Does the term "Local Traffic" as used in the Second Interconnection Agreement identified in AT&T's complaint include all "LATAwide" calls, including all calls originated or terminated through switched access arrangements as established by the state commission or FCC?

**POSITIONS:**

**AT&T:** Section 5.3.1 of Attachment 3 to Second Interconnection Agreement provides that with respect to intercarrier

compensation relative to transporting and terminating "Local Traffic," the Parties agreed:

" . . . 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."

With respect to "switched access arrangements" referred to in Section 5.3.1, Section 5.3.3 of Attachment 3 to Second Interconnection Agreement provides the only definition of "Switched Access Traffic" found anywhere in Second Interconnection Agreement to which, by definition, switched access charges may apply. As provided in this Section, "Switched Access Traffic" is defined as:

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

Consistent with the "LATAwide" concept for "Local Traffic" as set forth in Section 5.3.1, the definition of "Switched Access Traffic" set forth in Section 5.3.3 does not include any traditional "LATAwide Traffic." Moreover, with respect to the definition of "Switched Access Traffic" as set forth in Section 5.3.3, interLATA traffic this is the only type of traffic for which switched access charges apply under Second Interconnection Agreement. All other traffic is to be treated as "Local Traffic" and compensated at local reciprocal compensation rates. The Parties also agreed in Section 5.3.3 that "[t]his Section [5.3.3] is interrelated to Section 5.3.1." As discussed above, Section 5.3.1 provided that

" . . . the Parties agree to apply a 'LATAwide' local concept to this Attachment 3,

meaning that traffic that has traditionally been treated as intraLATA toll traffic will now be treated as local for intercarrier compensation purposes, except for those calls that are originated or terminated through switched access arrangements as established by the State Commission or FCC."

Thus, when Section 5.3.1. is read together with its "interrelated" Section 5.3.3, the language ". . . except those calls that are originated or terminated through switched access arrangements as established by the State Commission or FCC," clearly means Intrastate InterLATA calls (because these calls are subject to jurisdiction of the "State Commission") and Interstate InterLATA calls (because these calls are subject to the jurisdiction of the "FCC"). This interpretation is correct and appropriate because Section 5.3.3 contains the only definition of "Switched Access Traffic" found in Second Interconnection Agreement to which, by definition, switched access charges may apply.

**BST:** No. The Second Interconnection Agreement expressly and specifically excludes from the definition of "local traffic" intraLATA calls originated or terminated through switched access arrangements. Even if the Commission determines that the contract is ambiguous, the answer is the same, because the evidence proves that the parties intended to exclude such calls.

**STAFF:** Staff has no position at this time.

**ISSUE 3:** Under the terms of the Second Interconnection Agreement, do reciprocal compensation rates and terms apply to calls originated or terminated through switched access arrangements as established by the state commission or FCC?

**POSITIONS:**

**AT&T:** Yes, for traditional "LATAwide" calls. As explained in Issue 2 above, with respect to intercarrier compensation relative to transporting and terminating "Local Traffic,"

in Section 5.3.1 the Parties agreed ". . . 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." When Section 5.3.1 is read together with its "interrelated" Section 5.3.3, the language ". . . except those calls that are originated or terminated through switched access arrangements as established by the State Commission or FCC," clearly means Intrastate InterLATA calls (because these calls are subject to jurisdiction of the "State Commission") and Interstate InterLATA calls (because these calls are subject to the jurisdiction of the "FCC"). This interpretation is correct and appropriate because Section 5.3.3 contains the only definition of "Switched Access Traffic" found in Second Interconnection Agreement to which, by definition, switched access charges may apply. As provided in this Section, "Switched Access Traffic" is defined as ". . . telephone calls requiring local transmission or switching services for the purpose of the origination or termination of Intrastate InterLATA and Interstate InterLATA traffic." Thus, by virtue of the "interrelatedness" of the definition of "Switched Access Traffic" as found in this Section 5.3.3 to the "LATAwide" local concept language found in Section 5.3.1, the language in Section 5.3.1 ". . . except those calls that are originated or terminated through switched access arrangements as established by the State Commission or FCC," clearly means Intrastate InterLATA calls (because these calls are subject to jurisdiction of the "State Commission") and Interstate InterLATA calls (because these calls are subject to the jurisdiction of the "FCC"). BellSouth completely ignores Section 5.33 and its limiting definition of "Switched Access Traffic" in construing Section 5.3.1 regarding what constitutes "Local Traffic."

**BST:** No. Switched access rates apply to non-local calls, and the Second Interconnection Agreement expressly excludes from the definition of local traffic calls carried over switched access arrangements. BellSouth's Florida



Switched Access Tariff sets forth the rates and terms pursuant to which AT&T purchases switched access arrangements from BellSouth to carry the traffic at issue.

**STAFF:** Staff has no position at this time.

**ISSUE 4:** If the answer to Issue 3 is "yes," has BellSouth breached the Second Interconnection Agreement?

**POSITIONS:**

**AT&T:** Yes. Second Interconnection Agreement (the terms of which apply to First Interconnection Agreement as of June 11, 2000 by virtue of the Retroactivity Provision of First Interconnection Agreement) clearly provides that BellSouth and AT&T are to transport and terminate "Local Traffic" at the local reciprocal compensation rates set forth in Second Interconnection Agreement. With respect to what constituted "Local Traffic," Second Interconnection Agreement clearly provides that the parties agreed to apply a "LATAwide" concept thereto, meaning that all calls which "traditionally" had been transported and terminated within a "LATA" ("LATAwide Traffic"), would be subject to the local reciprocal compensation rates set forth in Second Interconnection Agreement. The only exception were "non-traditional" calls "within a LATA" that were originated or terminated over switched access arrangements as established by the State Commission or the FCC. In breach of this obligation, BellSouth has refused to apply the applicable reciprocal compensation rate to all "Local Traffic," including all traditional "LATAwide Traffic," and instead has applied BellSouth's switched access rate to certain of this traffic.

**BST:** N/A

**STAFF:** Staff has no position at this time.

**ISSUE 5:** If the answer to Issue 4 is "yes," what remedies are appropriate?

**POSITIONS:**

**AT&T:** AT&T is entitled to receive, and BellSouth is obligated to provide, a credit (including late payments thereon) for amounts which BellSouth has overcharged AT&T for failing to transport and terminate all "Local Traffic," including all "traditional" calls made within a LATA at the applicable reciprocal compensation rate. Credits and late payments for improper billings clearly are allowed under Second Interconnection Agreement. Through October 2002, BellSouth has overcharged AT&T \$6,310,425 for transporting and terminating certain "Local Traffic" in Florida, including certain "LATAwide Traffic" at a switched access rate, and not at the applicable reciprocal compensation rate as required in Second Interconnection Agreement. Because BellSouth has continued to overcharge AT&T for transporting and terminating all "Local Traffic" since October 2002, AT&T also is entitled to a credit for any such overcharges and BellSouth owes AT&T interest on all overcharged amounts at the rate of one and one half percent (1 and ½%) per month from July 1, 2001 until the date such overcharges are paid by BellSouth to AT&T. Finally, AT&T is entitled to a declaratory ruling from the Commission that BellSouth is obligated to charge AT&T at the applicable reciprocal compensation rate for the transport and termination of all "Local Traffic" on a going forward basis.

**BST:** N/A

**STAFF:** Staff has no position at this time.



<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
B. Peacock	AT&T	<hr/> (BCP - 2)	Rebuttal Testimony Exhibit No. 2 - Attachment 3 (including its Exhibit A) to AT&T's Arbitration Petition.
B. Peacock	AT&T	<hr/> (BCP - 3)	Rebuttal Testimony Exhibit No. 3 - Attachment B, Page 1, Issue 1 to AT&T's Arbitration Petition.
B. Peacock	AT&T	<hr/> (BCP - 4)	Rebuttal Testimony Exhibit No. 4 - Attachment B, Page 8, Issue 16, to AT&T's Arbitration Petition.
B. Peacock	AT&T	<hr/> (BCP - 5)	Rebuttal Testimony Exhibit No. 5 - Various Provisions From The Interconnection Agreement Currently in Effect From the Interconnection Agreement Currently in Effect Between AT&T and BellSouth For the State of Mississippi.

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
B. Peacock	AT&T	<hr/> (BCP - 6)	Rebuttal Testimony Exhibit No. 6 - Exhibit Including Various Provisions From Interconnection Agreements Currently in Effect Between AT&T and BellSouth For the States of Florida and Mississippi and Related Information.
R. Stevens	AT&T	<hr/> (RS - 1)	Rebuttal Testimony Exhibit No. 1 - Meeting Notes of Roberta Stevens Summarizing Interconnection Negotiations Between AT&T and BellSouth for the Period February 21, 2001 through December 13, 2001.

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PROPOSED STIPULATIONS

1. Relative to Issue (1)(b), AT&T and BellSouth have stipulated that AT&T is entitled to apply the reciprocal compensation rates and terms of the Second Interconnection Agreement from July 1, 2001, forward.

2. The parties have agreed that the depositions of AT&T witnesses King, Peacock, and Stevens, and the deposition of BellSouth witness Shiroishi taken in North Carolina Utilities Commission Docket No. P-55, Sub 1376 should be admitted as evidence into the record in this proceeding, as should the

transcript from the hearing in the above-referenced proceeding.

XI. PENDING MOTIONS

None pending.

XII. PENDING CONFIDENTIALITY MATTERS

None pending.

XIII. DECISIONS THAT MAY IMPACT COMMISSION'S RESOLUTION OF ISSUES

Parties have stated in their prehearing statements that the following decisions have a potential impact on our decision in this proceeding:

None stated.


XIV. RULINGS

Opening statements, if any, shall not exceed ten minutes per party.

It is therefore,

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner J. Terry Deason as Prehearing Officer, this 5th Day of May, 2003.

  
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J. TERRY DEASON  
Commissioner and Prehearing Officer

( S E A L )

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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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, 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 or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.