

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 020919-TP

In the Matter of

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.



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VOLUME 1

PAGES 1 THROUGH 195

PROCEEDINGS: HEARING

BEFORE: COMMISSIONER J. TERRY DEASON  
COMMISSIONER BRAULIO L. BAEZ  
COMMISSIONER RUDOLPH BRADLEY

DATE: Wednesday, May 7, 2003

TIME: Commenced at 9:35 a.m.  
Concluded at 5:13 p.m.

PLACE: Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida

REPORTED BY: TRICIA DeMARTE, RPR  
Official FPSC Reporter  
(850) 413-6736

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FLORIDA PUBLIC SERVICE COMMISSION

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FPSC-COMMISSION CLERK

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16 Staff.

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COMMISSIONER DEASON: Call the hearing to order.  
Could I have the notice read, please.

MS. CHRISTENSEN: By notice issued April 9th, 2003, this time and place having been set for a hearing in Docket 020919, request for arbitration concerning complaint of AT&T Communications of the Southern States, LLC, Teleport Communications Group, Inc., and TCG South Florida for the enforcement of interconnection agreements with BellSouth Telecommunications, Inc. The purpose of the hearing is as set forth in the notice.

COMMISSIONER DEASON: Thank you. Take appearances.

MR. MEZA: Jim Meza and Andrew Shore on behalf of BellSouth.

MS. CECIL: Loretta Cecil on behalf of AT&T Corp and the TCG Companies.

MR. HATCH: Tracy Hatch on behalf of AT&T Communications of the Southern States, LLC.

MS. CHRISTENSEN: Patricia Christensen on behalf of the Commission.

COMMISSIONER DEASON: Okay. Thank you.  
Ms. Christensen, do we have any preliminary matters we need to address?

MS. CHRISTENSEN: Yes, Commissioner. Staff notes that the parties have agreed to stipulate Issue 1B and, as

1 noted in the prehearing order, the stipulation wording is that  
2 relative to Issue 1B, AT&T and BellSouth have stipulated that  
3 AT&T is entitled to apply the reciprocal compensation rates in  
4 terms of the second interconnection agreement from July 1st,  
5 2001 forward.

6 COMMISSIONER DEASON: Very well. So that issue is  
7 resolved by agreement of the parties.

8 MS. CHRISTENSEN: Correct. There also are several  
9 stipulated exhibits which staff and the parties have agreed to  
10 have moved into the record. At the Commissioner's pleasure, we  
11 can address those now.

12 COMMISSIONER DEASON: I think now would be an  
13 appropriate time to do that.

14 MS. CHRISTENSEN: There are several stipulated  
15 exhibits that would be introduced by staff. Those are  
16 Stipulation 1, which is BellSouth's responses to staff's  
17 first set of interrogatories. Stipulation 2 -- and that's a  
18 composite exhibit composed of two parts. The first part,  
19 AT&T's responses to staff's first set of interrogatories, and  
20 the second part is AT&T's responses to staff's first set of  
21 production of documents. Stipulation 3, AT&T's responses to  
22 BellSouth's first set of interrogatories Numbers 3 -- or 2 and  
23 3. And Stipulation 4, BellSouth's responses to AT&T's  
24 first set of interrogatories.

25 COMMISSIONER DEASON: And this entire package of

1 exhibits you have provided?

2 MS. CHRISTENSEN: Correct. They have been provided  
3 to the parties as well as to each Commissioner and the court  
4 reporter.

5 COMMISSIONER DEASON: Very well. And I'll ask the  
6 parties, if staff's representation is correct, these entire  
7 exhibits, Stip 1 through 4, can be entered into the record  
8 without objection; is that correct?

9 MR. MEZA: That's correct.

10 MS. CECIL: That's correct.

11 COMMISSIONER DEASON: Okay. We will identify the  
12 exhibits Stip 1 through 4 as Exhibits Number 1, 2, 3, 4,  
13 respectively. And without objection, show that Exhibits  
14 1 through 4 are admitted in the record.

15 (Exhibits 1, 2, 3, and 4 marked for identification  
16 and admitted into the record.)

17 MS. CHRISTENSEN: Commissioner, there are also  
18 several exhibits that the parties have agreed, along with  
19 staff, that can be admitted that will be introduced by the  
20 parties. And those are as follows: The depositions of AT&T's  
21 witnesses King, Peacock, and Stevens from the North Carolina  
22 Utility Commission, Docket Number P-55, Sub 1376; the  
23 deposition of BellSouth witness Shiroishi from the North  
24 Carolina Case, Docket Number P-55, Sub 1376; the transcript  
25 from the hearing in the North Carolina proceeding, Docket

1 Number P-55, Sub 1376; and as well as the telephonic deposition  
2 that was taken of Ms. Shiroishi, BellSouth's witness, in the  
3 Florida proceeding.

4 Staff would recommend that each of the depositions  
5 and the hearing transcript be identified separately as hearing  
6 exhibits.

7 COMMISSIONER DEASON: Okay. Let's do that. Let's go  
8 through that exercise at this point. Let's just take them one  
9 by one beginning with the depositions. I believe the first one  
10 was -- I'll let you identify each one, and then we'll identify  
11 it for the record.

12 MS. CHRISTENSEN: The first deposition would be AT&T  
13 witness King from the North Carolina proceeding.

14 COMMISSIONER DEASON: Okay. That will be identified  
15 as Exhibit Number 5. And without objection, show that  
16 deposition is admitted into the record.

17 (Exhibit 5 marked for identification and admitted  
18 into the record.)

19 MS. CHRISTENSEN: The next deposition would be AT&T  
20 witness Peacock from the North Carolina proceeding.

21 COMMISSIONER DEASON: That will be identified as  
22 Exhibit Number 6. Without objection, show that Exhibit Number  
23 6 is admitted.

24 (Exhibit 6 marked for identification and admitted  
25 into the record.)

1 MS. CHRISTENSEN: The next deposition would be  
2 deposition of AT&T witness Stevens from the North Carolina  
3 proceeding.

4 COMMISSIONER DEASON: Show that identified as  
5 Exhibit Number 7. Without objection, show that Exhibit Number  
6 7 is admitted.

7 (Exhibit 7 marked for identification and admitted  
8 into the record.)

9 MS. CHRISTENSEN: The next deposition would be  
10 BellSouth witness Shiroishi from the North Carolina proceeding.

11 COMMISSIONER DEASON: That will be identified as  
12 Exhibit Number 8. And without objection, show that Exhibit  
13 Number 8 is admitted into the record.

14 (Exhibit 8 marked for identification and admitted  
15 into the record.)

16 MS. CHRISTENSEN: The next item would be the  
17 transcript from the hearing in the North Carolina proceeding.

18 COMMISSIONER DEASON: That will be identified as  
19 Exhibit Number 9. And without objection, show that Exhibit  
20 Number 9 is admitted.

21 (Exhibit 9 marked for identification and admitted  
22 into the record.)

23 MS. CHRISTENSEN: And the final deposition is  
24 BellSouth witness Shiroishi from the Florida proceeding.

25 COMMISSIONER DEASON: Which Florida proceeding was

1 this?

2 MS. CHRISTENSEN: This Florida proceeding, this  
3 docket.

4 COMMISSIONER DEASON: Okay. So it was a deposition  
5 taken in this docket --

6 MS. CHRISTENSEN: Correct.

7 COMMISSIONER DEASON: -- and it has been filed.

8 MS. CHRISTENSEN: Uh-huh.

9 COMMISSIONER DEASON: Okay. That will be identified  
10 as Exhibit Number 10. And without objection, show that Exhibit  
11 Number 10 is admitted.

12 (Exhibit 10 marked for identification and admitted  
13 into the record.)

14 COMMISSIONER DEASON: Is that all the exhibits you're  
15 aware of at this time?

16 MS. CHRISTENSEN: That concludes all of the exhibits  
17 that staff is aware of at this time, and I believe copies have  
18 been provided to the Commissioners as well as the court  
19 reporter of all of those exhibits.

20 There are several pending motions regarding request  
21 for confidential classification. There are two that were filed  
22 by BellSouth, one on May 1st and one on May 5th, and a notice  
23 of intent that was filed on April 23rd by AT&T. And staff  
24 would recommend that those be addressed by separate order at  
25 the conclusion of the hearing.

1 COMMISSIONER DEASON: Very well. Any objection to  
2 that?

3 MS. CECIL: No, Commissioner.

4 MR. MEZA: No objection.

5 MS. CHRISTENSEN: And the only other preliminary  
6 matters that I know were brought to my attention is AT&T had  
7 brought to my attention that they wished to use a PowerPoint  
8 presentation during cross-examination of BellSouth's witness,  
9 and staff has no objection to that. I know we brought it to  
10 the Presiding Officer's attention and made BellSouth aware, but  
11 I'm not exactly sure what their final position was on that.

12 COMMISSIONER DEASON: Mr. Meza.

13 MR. MEZA: BellSouth has no objection.

14 COMMISSIONER DEASON: Very well.

15 MS. CHRISTENSEN: And also, we did not take this up  
16 during the prehearing, but we would like to address it now.  
17 Staff recommends that we take direct and rebuttal testimonies  
18 together.

19 COMMISSIONER DEASON: Okay. It's been suggested that  
20 we take direct and rebuttal testimony together. Is there an  
21 objection to that procedure?

22 MR. SHORE: No objection.

23 MS. CECIL: No objection.

24 COMMISSIONER DEASON: Very well. Commissioners, any  
25 objection to that?



1 Okay. We will take the direct and rebuttal together.

2 MS. CHRISTENSEN: Staff is not aware of any other  
3 preliminary matters at this time.

4 COMMISSIONER DEASON: Okay. BellSouth, do you have  
5 any preliminary matters?

6 MR. MEZA: No, sir.

7 COMMISSIONER DEASON: AT&T?

8 MS. CECIL: Commissioner, there is one exhibit that I  
9 will be using during my opening statement which might be  
10 appropriate to identify and admit at this point in time, if I  
11 could.

12 COMMISSIONER DEASON: Why don't we distribute that.

13 MS. CECIL: It is before you. It's entitled, "Local  
14 Traffic." It's two pages. The second page is switched access  
15 traffic. This is an excerpt from prefiled testimony which I  
16 think all the parties are very familiar with.

17 COMMISSIONER DEASON: We will identify this as  
18 Exhibit Number 11. And we will -- this is just sections of the  
19 agreement; is this correct?

20 MS. CECIL: That's correct.

21 COMMISSIONER DEASON: Is the agreement in the record,  
22 or will be entered into the record?

23 MS. CECIL: The agreement will be admitted into the  
24 record by virtue of moving in exhibits of prefiled testimony at  
25 the appropriate time.

1           COMMISSIONER DEASON: Okay. Well, we'll identify  
2 this as Exhibit Number 11 (sic). I'll allow you to use it for  
3 purposes of your opening statement. And at the end of that, if  
4 you wish to move it into the record, we'll take it up at that  
5 time.

6           MS. CECIL: Thank you.

7           (REPORTER'S NOTE: Due to the duplication of exhibit  
8 numbers, the above-referenced exhibit has been renamed Exhibit  
9 11A.)

10           (Exhibit 11A marked for identification.)

11           MR. SHORE: Commissioner Deason, there is a couple of  
12 demonstrative exhibits that I intend to use during my opening  
13 as well. They're already going to be part of the record. I  
14 didn't plan to ask that those be separately identified. I  
15 don't believe that it's necessary. But if you feel differently  
16 based on your ruling about AT&T's demonstrative exhibits, I  
17 just wanted to make you aware of that.

18           COMMISSIONER DEASON: No, please -- I'll allow you to  
19 use those exhibits, and I don't think it's necessary to  
20 identify them. But for clarity of the record, if AT&T believes  
21 they should be identified, we'll cross that bridge when we come  
22 to it.

23           MR. SHORE: Fair enough.

24           COMMISSIONER DEASON: Okay. I believe the prehearing  
25 order indicates that opening statements will be allowed and

1 that they are limited to ten minutes per side. Are both  
2 parties prepared to proceed with opening statements?

3 MS. CECIL: Yes, Commissioner.

4 MR. SHORE: We are.

5 COMMISSIONER DEASON: AT&T, I'll allow you to proceed  
6 with your opening statement.

7 MS. CECIL: Thank you. Good morning, Commissioners.  
8 Unlike many of the disputes which you have been asked to  
9 resolve in the past, this proceeding does not involve a  
10 difficult policy issue. Instead, this is a clear-cut breach of  
11 contract case. The contracted issue is the interconnection  
12 agreement currently in effect between AT&T and BellSouth which  
13 was signed on October the 26th, 2001. It has a three-year  
14 term.

15 This interconnection agreement was the result of an  
16 arbitration which this Commission held earlier in 2001. There  
17 are only two contract provisions which are in dispute. The  
18 first one is Section 5.3.1.1, and it is listed on what's now  
19 been identified as Exhibit 11. It involves the rates the  
20 parties are to charge each other for the transporting and  
21 termination of each other's local calls. Again, that is  
22 Section 5.3.1.1.

23 Not all of this section is in dispute, just the last  
24 sentence, which you will note indicates, "Additionally, the  
25 parties agree to apply a LATAwide local concept to this

1 Attachment 3, meaning that traffic that has traditionally been  
2 treated as intraLATA toll traffic will now be treated as local  
3 for intercarrier compensation purposes, except for those calls  
4 that are originated or terminated through switched access  
5 arrangements as established by the state commission or the  
6 FCC."

7 In particular, after hearing all the evidence of the  
8 parties, you must decide what the parties intended when they  
9 agreed to this switched access arrangement's language which I  
10 have highlighted in red on Exhibit 11.

11 Throughout the day the parties will repeatedly  
12 discuss this language in great detail, but suffice it to say,  
13 AT&T agreed to this language as an accommodation to BellSouth  
14 in the event that this Commission or the FCC subsequently  
15 decided that two very particular types of intraLATA traffic,  
16 namely, calls to Internet service providers or calls using  
17 voice over Internet protocol, were determined to be interLATA  
18 calls.

19 On the other hand, BellSouth takes the position that  
20 this language, switched access arrangements, means any type of  
21 traffic that is transported over a BellSouth switched access  
22 trunk group governed by BellSouth's switched access tariffs,  
23 and that the only way any AT&T traffic ever could be considered  
24 local traffic is if AT&T totally reconfigured its local and  
25 long distance network at a significant expense and used only

1 local interconnection facilities to transport its traffic. In  
2 other words, AT&T would never be allowed to use switched access  
3 trunk groups and have that traffic qualify as local traffic.

4 As the Commission will hear from the AT&T witnesses,  
5 AT&T would have never agreed to such an arrangement.

6 Furthermore, such analysis turns on its ear the long-held  
7 notion that where a call begins and where a call ends governs  
8 whether the call is a local call or a switched access call, and  
9 that it is not the facilities over which the call is  
10 transported which governs whether the call is local or switched  
11 access. And as even BellSouth agrees, trunks are trunks, and  
12 all kinds of traffic can be carried over the same type of trunk  
13 groups. Again, I will leave it to the witnesses to provide  
14 further information regarding Section 5.3.1.1.

15 And then if you would turn the page, you will see  
16 that the next contract provision that's in dispute is  
17 Section 5.3.3, which defines switched access traffic. Notice  
18 in the first sentence of this section that the parties  
19 expressly agree that switched access traffic would be limited  
20 to interLATA calls and that intraLATA calls were specifically  
21 excluded.

22 Notice also the last sentence of this section which I  
23 also have highlighted in red. It makes clear that the  
24 definition of switched access traffic in this Section 5.3 was  
25 specifically linked to what was considered local traffic in the

1 prior section 5.3.1.1 which I just discussed. In other words,  
2 as you can see, the parties agree that these two sections were  
3 clearly interrelated.

4 AT&T believes that when these two sections of the  
5 contract are read together, as is required by the language of  
6 the contract, the fact that switched access traffic is limited  
7 to interLATA traffic supports AT&T's position that all  
8 traffic -- all other traffic, including all traditional  
9 interLATA traffic, is local traffic.

10 As this Commission is aware, in Florida, switched  
11 access rates are significantly higher than local compensation  
12 rates. And based on its improper interpretation of the  
13 contract, BellSouth has charged AT&T switched access rates for  
14 a significant amount of AT&T's traffic since this contract has  
15 been executed and became effective. Thus, AT&T seeks  
16 reimbursement for the current overcharged amounts of almost  
17 \$7 million, we seek interest on that amount, and we ask that on  
18 a going-forward basis that you direct BellSouth to charge AT&T  
19 local reciprocal comp rates for its local traffic.

20 Again, I want to emphasize to you today that this is  
21 not your typical policy proceeding; rather, because BellSouth  
22 has opted to try this case based on what the parties say the  
23 contract means rather than what the contract actually says, you  
24 are going to have to decide who is telling the truth regarding  
25 what happened during the negotiations that led to the signing

1 of this agreement. To do that, you will need to evaluate all  
2 of the evidence presented, not just the statements of the  
3 witnesses. And in making such evaluations, you will need to  
4 consider the credibility of the witnesses, including whether  
5 there are documents which exist which support their statements.  
6 You will also need to ask yourself, do their statements make  
7 sense in light of the negotiations that were underway at the  
8 time? Does it make sense?

9 We believe that once you have considered all of the  
10 evidence that you will agree that AT&T's interpretation of the  
11 contract is correct and that BellSouth's is not. On behalf of  
12 AT&T and the TCG Companies, we appreciate your time and efforts  
13 in this proceeding. Thank you, Commissioners.

14 COMMISSIONER DEASON: Thank you. Mr. Shore.

15 MR. SHORE: Thank you. I'm just going to ask  
16 Mr. Meza to help me out and put up those demonstrative  
17 exhibits.

18 COMMISSIONER DEASON: You're going to need to bring  
19 the microphone closer to you.

20 MR. SHORE: That's two strikes. Good morning,  
21 Commissioners and staff. I agree with Ms. Cecil that this  
22 isn't the typical case where these parties are before you  
23 arguing about technical issues that relies on a bevy of expert  
24 testimony. I agree that this case is a common sense case.

25 We're asking you as well to apply your common sense

1 to determine what one sentence in the parties' interconnection  
2 agreement means. That's the sentence up there underneath the  
3 caption "Florida Agreement" that sets forth the parties'  
4 definition of local traffic. And as you can see, it reads,  
5 "The parties agree to apply a LATAwide local concept, meaning  
6 the traffic that has traditionally been treated as intraLATA  
7 toll traffic will now be treated as local, except for calls  
8 that are originated or terminated through switched access  
9 arrangements as established by this Commission or the FCC."

10 We're asking that you find that this sentence means  
11 exactly what it says: That all calls within the LATA are  
12 local, except calls that are originated or terminated over  
13 switched access arrangements. And AT&T, on the other hand, and  
14 I'll tell you why in a moment, and Ms. Cecil alluded to it,  
15 claims that this sentence doesn't mean what it says.

16 AT&T claims that this sentence means that all calls  
17 within the LATA are local, including those calls that are  
18 transmitted over switched access arrangements. AT&T filed one  
19 witness in support of its direct case, Mr. King. And  
20 Mr. King's testimony is that the except clause following the  
21 LATAwide first part of this definition is -- excepts only  
22 interLATA calls from the LATAwide definition of local traffic.  
23 In other words, according to AT&T, what that definition says is  
24 that all calls within the LATA are local except interLATA  
25 calls. Not only is that not what the contract says, but it



1 makes absolutely no sense.

2           Now, the parties do have a LATAwide definition of  
3 local traffic without exception in their contract in  
4 Mississippi, and that's up there before you and that will be in  
5 evidence in this case. And that doesn't exempt any category of  
6 intraLATA traffic from it.

7           AT&T's story in this case that it's asking you to buy  
8 into is that the definition in Mississippi means exactly the  
9 same thing as the Florida definition with its exception for  
10 switched access arrangement calls.

11           Now, I said I minute ago I'd tell you why AT&T wants  
12 you to interpret the contract in a way that we believe defies  
13 common sense. Actually, AT&T has several million reasons. As  
14 Ms. Cecil said, traffic that is not terminated at reciprocal  
15 compensation rates is terminated and transported at higher  
16 switched access rates. Here the difference has been about  
17 \$7 million during the first 18 months of this contract, and  
18 it's a three-year contract.

19           Now, AT&T has paid, and it continues to pay,  
20 BellSouth switched access rates for calls intraLATA that are  
21 terminated over switched access arrangements just as the  
22 contract requires. In this case they're asking you to rule  
23 that it doesn't have to do that on a prospective basis and also  
24 that BellSouth should have to give it back its \$7-plus million.

25           Now, as was obvious by the stipulated agreements, we

1 tried this identical case earlier this year before the North  
2 Carolina Utilities Commission, same complaint, same witnesses,  
3 same contract language, same testimony, and we agreed to put  
4 all the depositions and the hearing transcript from that case  
5 into the record here. So while there needs to be some overlap  
6 in some of the questions that we're going to need to ask the  
7 witnesses, I don't intend to ask all the same questions that we  
8 did in North Carolina.

9 I do just want to briefly, though, summarize what the  
10 evidence in this case will show and what it won't show.  
11 BellSouth's witness is Beth Shiroishi. That's Ms. Shiroishi  
12 back there in the black suit. She's been before this  
13 Commission before. She testified in your generic reciprocal  
14 compensation docket where you rejected AT&T's request that you  
15 define local traffic the default local traffic definition as  
16 LATAwide, and you adopted the proposal set forth by  
17 Ms. Shiroishi in that case.

18 Now, AT&T likes to make a very big deal about the  
19 fact that Ms. Shiroishi is young and that she's risen to her  
20 position at BellSouth rather quickly. I'm really not sure what  
21 their point is. The relevant point, however, is that  
22 Ms. Shiroishi -- and it will be obvious to you when she's on  
23 the stand -- understands local interconnection issues as well  
24 as anyone, and she deserves the position she has.

25 If AT&T takes the same approach here today as it did

1 in trying this case in North Carolina, after we sit through  
2 question after question after question after question about  
3 Ms. Shiroishi's background, her employment history, her  
4 educational background, which, by the way, are not in  
5 dispute -- we're not going to apologize to you for the fact  
6 that AT&T thinks Ms. Shiroishi is too young to be in her job.

7           What's relevant in this case is the fact that  
8 Ms. Shiroishi was the person that proposed the contract  
9 language that contains the local traffic definition and the  
10 except clause to AT&T and she negotiated it with AT&T. And  
11 what Ms. Shiroishi tells you in her testimony is that this  
12 definition and exception was nothing new. BellSouth's got this  
13 very similar definition and contracts with other ALECs here in  
14 Florida. And notably, not a single one of those ALECs has  
15 claimed that the exception was for a purpose that doesn't make  
16 sense, which is what AT&T's claim here is, or that the contract  
17 means what -- something other than what it clearly says, also  
18 which is what AT&T is trying to do here.

19           Ms. Shiroishi tells you to the extent that you don't  
20 think the contract is clear, and we certainly believe that it  
21 is, and you need to look outside based on the law outside the  
22 contract to determine its meaning, that she explained to AT&T's  
23 negotiators exactly what that exception meant before the  
24 parties executed this agreement and AT&T didn't object.

25           You recall that AT&T filed two motions to strike

1 Ms. Shiroishi's testimony, and you denied those motions. Now,  
2 AT&T is left with claiming that Ms. Shiroishi is not telling  
3 the truth. We're eager for you to pay attention as Ms. Cecil  
4 cross-examines Ms. Shiroishi because we're confident you'll  
5 find that Ms. Shiroishi is credible and that she is the one  
6 telling the truth.

7           Since AT&T has the burden in this case to convince  
8 you that that except clause means something other than what it  
9 says, I want to just use my last couple of minutes talking  
10 about AT&T's arguments.

11           AT&T's first argument is that the contract doesn't  
12 mean what it says and that the calls over switched access  
13 arrangements are not exempted from the definition of local  
14 traffic. In fact, AT&T claims that the agreement is  
15 unambiguous on this point.

16           AT&T's claim is predicated on the following: That  
17 calls over switched access arrangements means the same thing as  
18 a specifically defined term in a separate paragraph of the  
19 contract, the paragraph addressing voice over Internet protocol  
20 transmissions.

21           An important point that AT&T ignores, however, is the  
22 contract says right on its first page that specially defined  
23 terms only have their special meaning when they're capitalized,  
24 and there's no doubt that not only is switched access  
25 arrangement a different term, it's not capitalized. The fact

1 is AT&T's witnesses admit they knew what a switched access  
2 arrangement was before they ever saw this language, and there's  
3 no dispute that switched access arrangements are the facilities  
4 that AT&T or other parties purchase out of switched access  
5 tariffs here in Florida and elsewhere.

6           You may recall that the FCC has ruled that under  
7 Section 252(i), that's the opt-in part of the statute, that when  
8 an ALEC opts in to a provision from another interconnection  
9 agreement, the ILEC can require that it also opt in to other  
10 related terms. Now, BellSouth put a sentence in this agreement  
11 that tracks that rule and says that the two sections are  
12 interrelated, so that if another ALEC adopted the voice over  
13 Internet protocol transmission, it would also have to adopt the  
14 definition of local traffic. And Ms. Shiroishi explains why  
15 that's the case, and I don't have time to go into that now.  
16 The fact that they're related for opt-in purposes does not make  
17 a defined term in one section of the agreement the same thing  
18 as a different term in another section of the agreement. And  
19 that's AT&T's case.

20           AT&T's second argument is that if the agreement does  
21 not clearly mean what it says -- or what AT&T wants it to mean,  
22 excuse me, and it doesn't, let's not make any mistake about it,  
23 then the extrinsic evidence proves AT&T's case.

24           Well, that's not so either. We will show you that  
25 AT&T's testimony is not credible. We'll show you that its

1 testimony is self-contradictory, that it's inconsistent with  
2 portions of the agreement over which there's no dispute, that  
3 it contains misrepresentations, and that it doesn't make sense.  
4 Why would BellSouth agree to a definition of local traffic with  
5 an explicit exception that according to AT&T is meaningless?

6           And finally, one of AT&T's themes in this case seems  
7 to be that the Commission should decide the case in favor of  
8 AT&T because AT&T has submitted more evidence, more witnesses,  
9 lengthier testimony, and more paper. Well, you don't need me  
10 to remind you that it's the quality of the evidence and its  
11 ability to withstand scrutiny that matters, not the quantity of  
12 paper that's put into the record.

13           After AT&T gets done chasing its rabbits, the  
14 question remains the same. What does this one sentence up here  
15 mean? We say it means what it says, and we'd ask you to affirm  
16 that in your order in this case. Thank you in advance for your  
17 attention.

18           COMMISSIONER DEASON: Thank you. Does staff have any  
19 opening statement at this time?

20           MS. CHRISTENSEN: No, Commissioner.

21           COMMISSIONER DEASON: Very well. I believe we're  
22 prepared to swear in witnesses. I'd ask all witnesses that are  
23 present and that will be testifying today to please stand and  
24 raise your right hand.

25           (Witnesses collectively sworn.)

1 COMMISSIONER DEASON: Thank you. Please be seated.  
2 I believe that Witness King is the first scheduled witness.

3 MS. CECIL: That's correct, Commissioner. Mr. King.

4 JEFFREY A. KING

5 was called as a witness on behalf of AT&T Communications of the  
6 Southern States, LLC, Teleport Communications Group, Inc., and  
7 TCG South Florida, Inc., and, having been duly sworn, testified  
8 as follows:

9 DIRECT EXAMINATION

10 BY MS. CECIL:

11 Q Mr. King, would you state your name and business  
12 address for the record, please.

13 A My name is Jeffrey A. King. I'm a district manager  
14 for AT&T, and my business address is 1200 Peachtree Street,  
15 Atlanta, Georgia 30309.

16 Q And do you affirm that you've just been asked to  
17 swear the truth in this proceeding?

18 A Yes.

19 Q Are you the same Jeffrey A. King who caused to be  
20 filed 30 pages of direct testimony with three exhibits on  
21 January the 15th, 2003, and 20 (sic) pages of rebuttal  
22 testimony and two exhibits on March the 14th, 2003?

23 A Yes.

24 Q Okay. Do you have any changes to your testimony  
25 today?

1           A     The only change is an updated Exhibit 3 from my  
2 direct testimony that provides data through December of '02.  
3 At the time of my original filing, the data was compiled  
4 through October of 2002. So that updated matrix is being  
5 handed out.

6           Q     And that's an update to Exhibit 3 to your direct  
7 testimony; is that correct?

8           A     Yes.

9           Q     Mr. King, if I ask you today the same questions that  
10 are included in both your direct and rebuttal testimony, would  
11 your answers be the same?

12          A     Yes, they would.

13                MS. CECIL: Commissioner, I would move the admission  
14 of Mr. King's prefiled direct and rebuttal testimony.

15                COMMISSIONER DEASON: Without objection, show that  
16 testimony inserted into the record.

17

18

19

20

21

22

23

24

25



1 PLEASE STATE YOUR NAME, TITLE, AND BUSINESS ADDRESS.

2

3 A. My name is Jeffrey A. King. I am a District Manager in the Local  
4 Services & Access Management organization of AT&T Corp. ("AT&T").  
5 My business address is 1200 Peachtree Street, N.E., Atlanta, Georgia  
6 30309.

7

8 Q. FOR WHOM ARE YOU FILING TESTIMONY IN THIS PROCEEDING?

9

10 A. I am testifying on behalf of AT&T Communications of the Southern  
11 States, LLC, Teleport Communications Group, Inc., and TCG South  
12 Florida, Inc. (collectively referred to as "AT&T").

13

14 Q. HAVE YOU PREVIOUSLY TESTIFIED IN OTHER REGULATORY  
15 PROCEEDINGS?

16

17 A. Yes. I previously filed testimony on behalf of AT&T regarding various  
18 cost and pricing issues with public service or utility commissions in  
19 Georgia, Florida, Tennessee, North Carolina, Louisiana, Alabama,  
20 Puerto Rico and before the Federal Communications Commission  
21 ("FCC").

22

23 Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR EDUCATION  
24 AND EXPERIENCE.

25

1 A. I received a Bachelor of Arts degree in Business Administration with  
2 a concentration in Industrial Administration from the University of  
3 Kentucky in 1983. I joined AT&T's Access Information Management  
4 organization in April 1986 and worked developing and testing the  
5 ordering and inventory Access Capacity Management System for  
6 electronically interfacing "High Capacity" access orders with  
7 incumbent local exchange carriers ("ILECs"). In December 1992, I  
8 joined the Access Management organization and managed  
9 customer/supplier relations on interstate access price issues,  
10 including access charge impacts and tariff terms and conditions  
11 analysis, with BellSouth Telecommunications, Inc. ("BellSouth") and  
12 Sprint LTD. In addition, my responsibilities included ILEC cost  
13 study analysis. I began supporting AT&T's efforts to enter the local  
14 services market with the implementation of the Telecommunications  
15 Act of 1996. Since July 1998, my responsibilities have included  
16 analyzing ILEC costs and recommending all cost-based prices  
17 charged by ILECs. My responsibilities also include managing the  
18 rates, terms and conditions of local interconnection and switched  
19 access tariff charges that AT&T pays to ILECs in the nine-state  
20 BellSouth region.

21

22 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

23

24 A. My testimony addresses the five (5) issues identified in the issue  
25 identification meeting held by the Florida Public Service

1 (“Commission”) on November 14, 2002 regarding AT&T’s Complaint  
2 filed in this proceeding.

3  
4 Q. BRIEFLY DESCRIBE AT&T’S COMPLAINT IN THIS PROCEEDING.

5  
6 A. AT&T’s Complaint alleges that BellSouth has breached, and  
7 continues to breach, its obligation to charge AT&T local reciprocal  
8 compensation rates for the transport and termination of all “Local  
9 Traffic,” including all “LATAwide Traffic,” under two interconnection  
10 agreements entered into between AT&T and BellSouth pursuant to  
11 Section 251 of the Telecommunications Act of 1996, Pub. L. No. 104-  
12 104, 110 Stat. 56 (“Act”) and approved by the Commission under  
13 Section 252 of the Act. Instead of charging AT&T local reciprocal  
14 compensation rates for such traffic, BellSouth has charged AT&T  
15 intrastate switched access rates for the transport and termination of  
16 certain “Local Traffic,” including certain “LATAwide Traffic.” By  
17 failing to charge AT&T local reciprocal compensation rates for all  
18 such traffic, AT&T alleges that BellSouth has overcharged, and  
19 continues to overcharge, AT&T for transporting and terminating all  
20 “Local Traffic,” including all “LATAwide Traffic.” Thus, AT&T seeks  
21 an order from the Commission directing BellSouth: (1) to issue a  
22 credit (including interest) to AT&T for all outstanding “overcharged”  
23 amounts; and (2) on a “going forward” basis, to charge AT&T local  
24 reciprocal compensation rates for BellSouth’s transport and  
25 termination of such traffic.

26

1 Q. IN BELLSOUTH'S SEPTEMBER 20, 2002 ANSWER, OTHER THAN  
2 DENYING LIABILITY GENERALLY, DID BELLSOUTH DISPUTE THE  
3 AMOUNT WHICH AT&T ALLEGED IT HAD BEEN OVERCHARGED  
4 BY BELLSOUTH FROM JULY 1, 2001 THROUGH MAY 31, 2002  
5 FOR TRANSPORTING AND TERMINATING CERTAIN "LOCAL  
6 TRAFFIC," INCLUDING "LATAWIDE TRAFFIC?"

7  
8 A. No.

9  
10 Q. PLEASE DISCUSS THE TWO INTERCONNECTION AGREEMENTS AT  
11 ISSUE IN THIS PROCEEDING.

12  
13 A. The first interconnection agreement was executed by AT&T and  
14 BellSouth and approved by the Commission on June 19, 1997 in  
15 Docket No. 960833-TP ("First Interconnection Agreement"). First  
16 Interconnection Agreement was effective June 10, 1997, and was set  
17 to expire three years from its effective date of June 10, 1997, or June  
18 10, 2000. However, there was a "retroactivity" provision included in  
19 Section 2.3 of First Interconnection Agreement ("Retroactivity  
20 Provision") which provided that in the event First Interconnection  
21 Agreement expired before AT&T and BellSouth had executed another  
22 "follow-on" or "second" interconnection agreement ("Second  
23 Interconnection Agreement"), or before the Commission had issued  
24 its arbitration order in a "follow-on" or "second" arbitration, that the

1 terms subsequently agreed to by the Parties in Second  
2 Interconnection Agreement or so ordered by the Commission in any  
3 “follow-on” or “second” arbitration, would apply “retroactively” to the  
4 day following expiration of First Interconnection Agreement. First  
5 Interconnection Agreement also provided that the terms, conditions,  
6 and prices of First Interconnection Agreement would remain in effect  
7 until Second Interconnection Agreement became effective.

8  
9 On September 21, 1999, the Commission approved TCG South  
10 Florida’s adoption in its entirety of First Interconnection Agreement.

11  
12 Second Interconnection Agreement was executed by AT&T and  
13 BellSouth and approved by the Commission on December 7, 2001 in  
14 Docket No. 000731-TP Second Interconnection Agreement applied  
15 to both AT&T of the Southern States, Inc. (predecessor to AT&T of  
16 the Southern States, LLC) and TCG South Florida, Inc. By virtue of  
17 the Retroactivity Provision of First Interconnection Agreement  
18 discussed above, the terms of Second Interconnection Agreement  
19 also applied to First Interconnection Agreement as of June 11, 2000.  
20 Provisions (underlined) from both First and Second Interconnection  
21 Agreements which are relevant to this proceeding are attached  
22 hereto and incorporated herein by this reference as J. A. King  
23 Exhibit No. 1. AT&T requests that the Commission take judicial

1 notice of both First and Second Interconnection Agreements in their  
2 entirety, including those provisions found in J. A. King Exhibit No. 1.

3  
4 **ISSUE A: WHAT IS THE COMMISSION'S JURISDICTION IN THIS**  
5 **MATTER?**

6  
7 Q. DOES THE COMMISSION HAVE JURISDICTION TO GRANT THE  
8 RELIEF REQUESTED BY AT&T IN THIS PROCEEDING?

9  
10 A. Yes. The Commission has jurisdiction to enforce the terms of the  
11 Interconnection Agreements pursuant to Section 252 of the Act and  
12 Sections 364.01 and 364.162(1), Florida Statutes. Moreover, Section  
13 16 of Second Interconnection Agreement, which applied to First  
14 Interconnection Agreement as of June 11, 2000 by virtue of the  
15 Retroactivity Provision discussed above, allows AT&T to petition this  
16 Commission for a resolution of any disputes that arise as to  
17 interpretation of Second Interconnection Agreement.  
18

19 **ISSUE 1: (a) DO THE TERMS OF THE SECOND**  
20 **INTERCONNECTION AGREEMENT AS DEFINED IN AT&T'S**  
21 **COMPLAINT APPLY RETROACTIVELY FROM THE EXPIRATION**  
22 **DATE OF THE FIRST INTERCONNECTION AGREEMENT AS**  
23 **DEFINED IN AT&T'S COMPLAINT, JUNE 11, 2000, FORWARD?**

24  
25 Q. PLEASE DISCUSS WHETHER THE TERMS OF THE SECOND

1 INTERCONNECTION AGREEMENT APPLY RETROACTIVELY TO  
2 FIRST INTERCONNECTION AGREEMENT FROM JUNE 11, 2000  
3 FORWARD.

4  
5 A. As discussed above, the Retroactivity Provision found in Section 2.3  
6 of First Interconnection Agreement clearly provides that in the event  
7 First Interconnection Agreement expired before AT&T and BellSouth  
8 had executed another “follow-on” or “second” interconnection  
9 agreement, or before the Commission had issued its arbitration  
10 order in a “follow-on” or “second” arbitration, then the terms  
11 subsequently agreed to by the Parties in Second Interconnection  
12 Agreement or so ordered by the Commission in any “follow-on” or  
13 “second” arbitration, would apply “retroactively” to First  
14 Interconnection Agreement as of the day following expiration of First  
15 Interconnection Agreement. Thus, because First Interconnection  
16 Agreement expired as of June 10, 2000, the terms of Second  
17 Interconnection Agreement applied “retroactively” to First  
18 Interconnection Agreement from June 11, 2000 forward.

19  
20 Q. IN BELLSOUTH’S SEPTEMBER 20, 2002 ANSWER FILED IN THIS  
21 PROCEEDING, DID BELLSOUTH DISPUTE THE EXISTENCE OF  
22 FIRST AND SECOND INTERCONNECTION AGREEMENTS,  
23 INCLUDING ANY OF THE PROVISIONS FROM FIRST OR SECOND

1 INTERCONNECTION AGREEMENTS, OR THE APPLICATION OF THE  
2 RETROACTIVITY PROVISION OF FIRST INTERCONNECTION  
3 AGREEMENT?  
4

5 A. No.  
6

7 **ISSUE 1: (b) IF THE ANSWER TO ISSUE 1(a) IS "YES," IS AT&T**  
8 **ENTITLED TO APPLY THE RECIPROCAL COMPENSATION RATES**  
9 **AND TERMS OF THE SECOND INTERCONNECTION AGREEMENT**  
10 **ONLY FROM JULY 1, 2001, FORWARD?**  
11

12 Q. PLEASE DISCUSS WHETHER AT&T IS ENTITLED TO APPLY THE  
13 RECIPROCAL COMPENSATION RATES AND TERMS OF THE  
14 SECOND INTERCONNECTION AGREEMENT ONLY FROM JULY 1,  
15 2001, FORWARD.  
16

17 A. Although the terms of Second Interconnection Agreement apply  
18 "retroactively" to First Interconnection Agreement as of June 11,  
19 2000, AT&T and BellSouth agreed in Second Interconnection  
20 Agreement that the local reciprocal compensation rates set forth in  
21 Second Interconnection Agreement would apply to all "Local Traffic,"  
22 including all "LATAwide Traffic," beginning only July 1, 2001  
23 forward. Thus, notwithstanding that the terms of Second



1 Interconnection Agreement apply to First Interconnection Agreement  
2 as of June 11, 2000, BellSouth was not obligated to charge AT&T for  
3 the transport and termination of all "Local Traffic," including all  
4 "LATAwide Traffic" at the local reciprocal compensation rates set  
5 forth in Second Interconnection Agreement until July 1, 2001. The  
6 specific provisions from Second Interconnection Agreement which  
7 establish BellSouth's obligation as of July 1, 2001 to charge AT&T  
8 local reciprocal compensation rates for the transport and  
9 termination of all "Local Traffic," including all "LATAwide Traffic,"  
10 are discussed below in my testimony.

11  
12 **ISSUE 2: DOES THE TERM "LOCAL TRAFFIC" AS USED IN THE**  
13 **SECOND INTERCONNECTION AGREEMENT IDENTIFIED IN**  
14 **AT&T'S COMPLAINT INCLUDE ALL "LATAWIDE" CALLS,**  
15 **INCLUDING ALL CALLS ORIGINATED OR TERMINATED**  
16 **THROUGH SWITCHED ACCESS ARRANGEMENTS AS**  
17 **ESTABLISHED BY THE STATE COMMISSION OR FCC?**

18  
19 Q. PLEASE DISCUSS THOSE PROVISIONS OF SECOND  
20 INTERCONNECTION AGREEMENT WHICH PROVIDE THAT "LOCAL  
21 TRAFFIC" INCLUDES ALL "LATAWIDE" CALLS, EXCEPT ALL CALLS  
22 ORIGINATED OR TERMINATED THROUGH SWITCHED ACCESS  
23 ARRANGEMENTS AS ESTABLISHED BY THE STATE COMMISSION

1 OR FCC.

2

3 A. Section 5.3.1.1 of Attachment 3 to Second Interconnection  
4 Agreement provides that with respect to intercarrier compensation  
5 relative to transporting and terminating “Local Traffic,” the Parties  
6 agreed “ **...to a apply a “LATAwide” local concept, meaning that**  
7 **traffic that has traditionally been treated as intraLATA toll**  
8 **would now be treated as local for intercarrier compensation,**  
9 **except for those calls that are originated or terminated**  
10 **through switched access arrangements as established by the**  
11 **State Commission or FCC.”**

12

13 “Switched access arrangements” are not defined in Second  
14 Interconnection Agreement. Rather, Section 5.3.3 of Attachment 3  
15 to Second Interconnection Agreement contains a definition for  
16 **“Switched Access Traffic” to which, by definition, switched**  
17 **access charges may apply.** In this Section, “Switched Access  
18 Traffic” is defined as “ ... telephone calls requiring local transmission  
19 or switching services for the purpose of the origination or  
20 termination of Intrastate InterLATA and Interstate InterLATA traffic.”  
21 Thus, consistent with the “LATAwide” concept for “Local Traffic” as  
22 set forth in Section 5.3.1.1, the definition of “Switched Access  
23 Traffic” also set forth in Section 5.3.3 does not include any

1 "LATAwide Traffic."

2  
3 Moreover, with respect to the definition of "Switched Access Traffic"  
4 as set forth in Section 5.3.3, this is the only type of traffic for which  
5 switched access charges apply under Second Interconnection  
6 Agreement. All other traffic is to be treated as "Local Traffic" and  
7 compensated at local reciprocal compensation rates. Moreover, to  
8 reiterate that "switched access arrangements as established by the  
9 State Commission or FCC" as used in Section 5.3.1.1 track the  
10 definition of "Switched Access Traffic" in Section 5.3.3, the Parties  
11 also agreed in Section 5.3.3 (again the Section which defines  
12 "Switched Access Traffic") that ***[t]his Section is interrelated to***  
13 ***Section 5.3.1.1.*** As discussed above, Section 5.3.1.1 provided that  
14 "...the Parties agree to apply a 'Latawide' local concept to this  
15 Attachment 3, meaning that traffic that has traditionally been  
16 treated as intraLATA toll traffic will now be treated as local for  
17 intercarrier compensation purposes, except for those calls that are  
18 originated or terminated through switched access arrangements as  
19 established by the State Commission or FCC."

20

21 Q. HAS BELLSOUTH FILED TESTIMONY IN ANY OTHER STATE  
22 REGARDING THE "INTERRELATED" LANGUAGE OF SECTION 5.3.3  
23 DISCUSSED ABOVE (REGARDING THE DEFINITION OF SWITCHED

1 ACCESS TRAFFIC) IN WHICH IT DISPUTES THAT THE DEFINITION  
2 OF SWITCHED ACCESS TRAFFIC APPLIED TO THE PARTIES'  
3 AGREEMENT TO ADOPT A "LATAWIDE CONCEPT" WITH RESPECT  
4 TO THE TRANSPORT AND TERMINATION OF "LOCAL TRAFFIC?"

5  
6 A. Yes. In a similar proceeding in North Carolina, on  
7 December 18, 2002, BellSouth filed the Direct Testimony of  
8 Elizabeth R.A. Shiroishi. In that testimony, Ms. Shiroishi stated that  
9 the "interrelated" language of Section 5.3.3 (which includes the only  
10 definition of "Switched Access Traffic" found anywhere in Second  
11 Interconnection Agreement) was included in Second Interconnection  
12 Agreement "... as the Parties were negotiating mutually agreeable  
13 language to deal with Voice Over Internet Protocol" traffic, thus  
14 implying that there was no "interrelationship" between the definition  
15 of "Switched Access Traffic" in Section 5.3.3 and the use of the term  
16 "Local Traffic" or "LATAwide concept" as used in Section 5.3.1.1.<sup>1</sup>

17  
18 Q. IS MS. SHIROISHI'S "INTERPRETATION" OF THE "INTERRELATED"  
19 LANGUAGE OF SECTION 5.3.3 CREDIBLE?  
20  
21

---

<sup>1</sup> North Carolina Utilities Commission, Docket No. P-55; Sub 1376; Direct Testimony of Elizabeth R. A. Shiroishi filed December 18, 2002, at Pages 8-9.

1 A. Absolutely not. A review of the entirety of Section 5.3.3 shows that  
2 Ms. Shiroishi's "implication" that the "interrelated language" of  
3 Section 5.3.3 applied only to Voice Over Internet Protocol traffic  
4 violates all proper rules of contract construction and interpretation.  
5 Importantly, the "interrelated" language of Section 5.3.3 uses the  
6 term "Section" with a capitol "S," meaning that **all of the language**  
7 **included in Section 5.3.3 is interrelated to Section 5.3.1.1**, and  
8 not just the last two sentences of the Section as implied by Ms.  
9 Shiroishi. Specifically, Section 5.3.3 states in its entirety:

10 **"Switched Access Traffic is defined as telephone**  
11 **calls requiring local transmission or switching**  
12 **service for the purpose of the origination or**  
13 **termination of Intrastate InterLATA traffic.**

14 Switched Access Traffic includes, but it not limited to,  
15 the following types of traffic: Feature Group A, Feature  
16 Group B, Feature Group D, toll free access (e.g.  
17 800/877/888), 900 access, and their successors.  
18 Additionally, if BellSouth or AT&T is the other party's  
19 end user's presubscribed interexchange carrier or if an  
20 end user uses BellSouth or AT&T as an interexchange  
21 carrier on a 101XXXX basis, BellSouth or AT&T will  
22 charge the other party the appropriate tariff charges  
23 for originating switched access services. The Parties

1           have been unable to agree as to whether Voice over  
2           Internet Protocol (“VOIP”) transmissions which cross  
3           local calling area boundaries constitute Switched  
4           Access Traffic. Notwithstanding the foregoing, and  
5           without waiving any rights with respect to either  
6           Party’s position as to the jurisdictional nature of VOIP,  
7           the Parties agree to abide by the any effective and  
8           applicable FCC rules and orders regarding the nature  
9           of such traffic and the compensation payable by the  
10          Parties for such traffic, if any; provided, however, that  
11          any VOIP transmission which originates in one LATA  
12          and terminates in another LATA (i.e., the end-to-end  
13          points of the call), shall not be compensated as Local  
14          Traffic. ***This Section is interrelated to Section***  
15          ***5.3.1.1.”***

16  
17    Q.    WHEN PROPER RULES OF CONTRACT CONSTRUCTION AND  
18           INTERPRETATION ARE APPLIED, WHAT DOES THE LANGUAGE OF  
19           SECTION 5.3.3 THAT “THIS SECTION IS INTERRELATED TO  
20           SECTION 5.3.1.1” MEAN RELATIVE TO DETERMINING WHICH  
21           TRAFFIC WOULD BE SUBJECT TO LOCAL RECIPROCAL  
22           COMPENSATION RATES AND WHICH TRAFFIC WOULD BE  
23           SUBJECT TO SWITCHED ACCESS RATES?“

1 A. Clearly, as Section 5.3.1.1 specifically provides, with respect to  
2 intercarrier compensation relative to transporting and terminating  
3 “Local Traffic,” the Parties agreed “ ...to a apply a ‘LATAwide’ local  
4 concept, meaning that traffic that has traditionally been treated as  
5 intraLATA toll would now be treated as local for intercarrier  
6 compensation, except for those calls that are originated or  
7 terminated through switched access arrangements as established by  
8 the State Commission or FCC.” Thus, when Section 5.3.1.1 is read  
9 together with its “interrelated” Section 5.3.3, the language “ ... except  
10 those calls that are originated or terminated through switched  
11 access arrangements as established by the State Commission or  
12 FCC,” clearly means Intrastate InterLATA calls (because these calls  
13 are subject to jurisdiction of the “State Commission”) and Interstate  
14 InterLATA calls (because these calls are subject to the jurisdiction of  
15 the “FCC”). This interpretation is correct and appropriate because  
16 Section 5.3.3 contains the only definition of “Switched Access Traffic”  
17 found in Second Interconnection Agreement to which, by definition,  
18 switched access charges may apply. As provided in this Section,  
19 “Switched Access Traffic” is defined as “ ... telephone calls requiring  
20 local transmission or switching services for the purpose of the  
21 origination or termination of Intrastate InterLATA and Interstate  
22 InterLATA traffic.” Thus, by virtue of the “interrelatedness” of the  
23 definition of “Switched Access Traffic” as found in this Section 5.3.3

1 to the "LATAwide" local concept language found in Section 5.3.1.1,  
2 the language in Section 5.3.1.1 " ... except those calls that are  
3 originated or terminated through switched access arrangements as  
4 established by the State Commission or FCC," clearly means  
5 Intrastate InterLATA calls (because these calls are subject to  
6 jurisdiction of the "State Commission") and Interstate InterLATA  
7 calls (because these calls are subject to the jurisdiction of the  
8 "FCC").

9  
10 Q. HOW CAN ANY "LATAWIDE" TRAFFIC EVER BE CONSIDERED  
11 INTRASTATE INTERLATA OR INTERSTATE INTERLATA TRAFFIC,  
12 THUS SUPPORTING YOUR POSITION THAT THE LANGUAGE "...  
13 EXCEPT THOSE CALLS THAT ARE ORIGINATED OR TERMINATED  
14 THROUGH SWITCHED ACCESS ARRANGEMENTS AS  
15 ESTABLISHED BY THE STATE COMMISSION OR FCC..." AS FOUND  
16 IN SECTION 5.3.1.1 TRACKS EXACTLY THE DEFINITION OF  
17 SWITCHED ACCESS TRAFFIC (WHICH IS LIMITED TO INTRASTATE  
18 INTERLATA AND INTERSTATE INTRALATA CALLS) IN SECTION  
19 5.3.3?

20  
21 A. BellSouth repeatedly has taken the position in prior regulatory  
22 proceedings that certain calls, even those within a LATA, are not  
23 local calls or even intraLATA calls. One example is BellSouth's



1 position that “dial up” calls to ISP providers that are dialed by using  
 2 a local dialing pattern (7 or 10 digits) by a calling party in one LATA  
 3 to an ISP in the same LATA are predominately interstate calls and  
 4 thus not subject to local reciprocal compensation rates.<sup>2</sup> Another  
 5 example is BellSouth’s position regarding Voice Over Internet  
 6 Protocol where BellSouth has argued that, to the extent “ ... calls  
 7 provided via Internet Protocol Telephony are long distance calls,  
 8 access charges should apply.”<sup>3</sup>

9  
 10 Q. WHAT DOES SECTION 5.3.3 OF EXHIBIT 1 TO SECOND  
 11 AMENDMENT TO SECOND INTERCONNECTION AGREEMENT  
 12 PROVIDE?

13  
 14 A. This Section provides the local reciprocal compensation rates which  
 15 apply to all “Local and ISP Traffic.” These rates are as follows:

16 5.3.3.1 Commencing on July 1, 2001, and continuing  
 17 until December 31, 2001, \$.0015 per minute of  
 18 use;

19 5.3.3.2 Commencing on January 1, 2002, and  
 20 continuing until June 30, 2003, \$.0010 per

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<sup>2</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>3</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.

1 minute of use;

2 5.3.3.3 Commencing on July 1, 2003, and continuing  
3 until June 30, 2004, or until further FCC action  
4 (whichever is later), \$.0007 per minute of use.

5  
6 Q. BASED ON THE FOREGOING, DOES THE TERM "LOCAL TRAFFIC"  
7 AS USED IN THE SECOND INTERCONNECTION AGREEMENT  
8 INCLUDE ALL "LATAWIDE TRAFFIC," INCLUDE ALL CALLS  
9 ORIGINATED OR TERMINATED THROUGH SWITCHED ACCESS  
10 ARRANGEMENTS AS ESTABLISHED BY THE STATE COMMISSION  
11 OR FCC?

12  
13 A. Yes, except for "LATAwide Traffic" that meet the definition of  
14 Switched Access Traffic (Intrastate InterLATA and Interstate  
15 InterLATA traffic) as set forth in Section 5.3.3 and as discussed  
16 above.

17  
18 **ISSUE 3: UNDER THE TERMS OF THE SECOND**  
19 **INTERCONNECTION AGREEMENT, DO RECIPROCAL**  
20 **COMPENSATION RATES AND TERMS APPLY TO CALLS**  
21 **ORIGINATED OR TERMINATED THROUGH SWITCHED ACCESS**  
22 **ARRANGEMENTS AS ESTABLISHED BY THE STATE**  
23 **COMMISSION OR FCC?**

1 Q. BASED ON YOUR DISCUSSION OF ISSUE 2, DO LOCAL  
2 RECIPROCAL COMPENSATION RATES APPLY TO CALLS  
3 ORIGINATED OR TERMINATED THROUGH SWITCHED ACCESS  
4 ARRANGEMENTS AS ESTABLISHED BY THE STATE COMMISSION  
5 OR FCC?

6  
7 A. Yes, except for "LATAwide Traffic" that meets the definition of  
8 Switched Access Traffic (Intrastate InterLATA or Interstate InterLATA  
9 traffic) as set forth in Section 5.3.3 and as discussed above. With  
10 respect to intercarrier compensation relative to transporting and  
11 terminating "Local Traffic," in Section 5.3.1.1 the Parties agreed "  
12 ...to a apply a "LATAwide" local concept, meaning that traffic that  
13 has traditionally been treated as intraLATA toll would now be treated  
14 as local for intercarrier compensation, except for those calls that are  
15 originated or terminated through switched access arrangements as  
16 established by the State Commission or FCC." When Section  
17 5.3.1.1 is read together with its "interrelated" Section 5.3.3, the  
18 language " ... except those calls that are originated or terminated  
19 through switched access arrangements as established by the State  
20 Commission or FCC," clearly means Intrastate InterLATA calls  
21 (because these calls are subject to jurisdiction of the "State  
22 Commission") and Interstate InterLATA calls (because these calls are  
23 subject to the jurisdiction of the "FCC"). This interpretation is

1 correct and appropriate because Section 5.3.3 contains the only  
2 definition of “Switched Access Traffic” found in Second  
3 Interconnection Agreement to which, by definition, switched access  
4 charges may apply. As provided in this Section, “Switched Access  
5 Traffic” is defined as “ ... telephone calls requiring local transmission  
6 or switching services for the purpose of the origination or  
7 termination of Intrastate InterLATA and Interstate InterLATA traffic.”  
8 Thus, by virtue of the “interrelatedness” of the definition of “Switched  
9 Access Traffic” as found in this Section 5.3.3 to the “LATAwide” local  
10 concept language found in Section 5.3.1.1, the language in Section  
11 5.3.1.1 “ ... except those calls that are originated or terminated  
12 through switched access arrangements as established by the State  
13 Commission or FCC,” clearly means Intrastate InterLATA calls  
14 (because these calls are subject to jurisdiction of the “State  
15 Commission”) and Interstate InterLATA calls (because these calls are  
16 subject to the jurisdiction of the “FCC”).

17

18 Q. IN ITS ANSWER FILED IN THIS PROCEEDING, DID BELLSOUTH  
19 RELY UPON THE LANGUAGE IN SECTION 5.3.1.1 REGARDING  
20 “CALLS ORIGINATED OR TERMINATED THROUGH SWITCHED  
21 ACCESS ARRANGEMENTS AS ESTABLISHED BY THE STATE  
22 COMMISSION OR FCC” TO ASSERT THAT IT HAD NO OBLIGATION  
23 TO CHARGE AT&T LOCAL COMPENSATION RATES FOR

1 TRANSPORTING AND TERMINATING ALL "LOCAL TRAFFIC,"  
2 INCLUDING ALL "LATAWIDE TRAFFIC" ?

3  
4 A. Yes, but only by taking language in Sections 5.3.1.1 and 5.3.3 out of  
5 context and using improper rules of contract construction and  
6 interpretation.

7  
8 Q. WHAT SUPPORTS YOUR POSITION THAT BELLSOUTH HAS TAKEN  
9 LANGUAGE IN SECTIONS 5.3.1.1 AND 5.3.3 OUT OF CONTEXT?

10  
11 A. As discussed above, Section 5.3.3 (which follows Section 5.3.1.1)  
12 clearly defines "Switched Access Traffic" as being limited to  
13 "Intrastate InterLATA" and "Interstate InterLATA" calls and does not  
14 include other types of calls, including any "IntraLATA" or "LATAwide  
15 Traffic." Moreover, also as discussed above, at the end of Section  
16 5.3.3, there is clear language that Section 5.3.3 is "interrelated" to  
17 Section 5.3.1.1 which establishes a "LATAwide" local concept for  
18 purposes of intercarrier compensation. Thus the language found in  
19 Section 5.3.1.1 " ... except those calls that are originated or  
20 terminated through switched access arrangements as established by  
21 the State Commission or FCC," tracks precisely the definition of  
22 "Switched Access Traffic" as found in Section 5.3.3. Obviously, the "  
23 ... except those calls that are originated or terminated through

1 switched access arrangements as established by the State  
2 Commission ... ” means “Intrastate InterLATA” calls (over which the  
3 State Commission has jurisdiction) and the language “ ... except  
4 those calls that are originated or terminated through switched  
5 access arrangements as established by the ... FCC” means  
6 “Interstate InterLATA” calls (over which the FCC has jurisdiction).

7

8 Q. IS THERE OTHER SUPPORT FOR AT&T’S POSITION THAT  
9 BELLSOUTH HAS TAKEN THIS LANGUAGE IN SECTION 5.3.1.1  
10 OUT OF CONTEXT?

11

12 A. Yes. By definition, switched access charges only can be charged for  
13 transporting and terminating “Switched Access Traffic.” Again, as  
14 discussed above, Section 5.3.3 contains a very clear and  
15 unambiguous definition of “Switched Access Traffic.” However,  
16 BellSouth completely ignores this explicit definition as well as  
17 misconstrues the other language in Section 5.3.3 which specifically  
18 states that “[t]his Section [5.3.3] [definition of “Switched Access  
19 Traffic”] is interrelated to Section 5.3.1.1 [“LATAwide” local concept].  
20 It could not be clearer that these two Sections are to be “read  
21 together.” Yet despite this clear language, BellSouth totally ignores  
22 Section 5.3.3 and its definition of “Switched Access Traffic.”  
23 Accordingly, BellSouth also clearly ignores that Section 5.3.3’s

1 definition of "Switched Access Traffic" means that BellSouth's  
2 switched access rates only would apply to InterLATA calls—  
3 Intrastate and/or Interstate—but not calls that are "IntraLATA,"  
4 "within the LATA, or "LATAwide Traffic."

5  
6 Q. IS SECTION 5.3.3 THE ONLY PLACE IN SECOND  
7 INTERCONNECTION AGREEMENT WHERE "SWITCHED ACCESS  
8 TRAFFIC" IS DEFINED?

9  
10 A. Yes.

11  
12 Q. DOES THE DEFINITION OF "SWITCHED ACCESS TRAFFIC" IN  
13 SECTION 5.3.3 INCLUDE ANY INTRALATA OR "LATAWIDE  
14 TRAFFIC?"

15  
16 A. Absolutely not. Rather, to the contrary the definition of "Switched  
17 Access Traffic" as set forth in Section 5.3.3 includes only "InterLATA"  
18 traffic and does not include any "IntraLATA" or "LATAwide Traffic."

19  
20 Q. IS THERE LANGUAGE IN SECOND INTERCONNECTION  
21 AGREEMENT WHICH PROVIDES THAT BELLSOUTH IS ENTITLED  
22 TO CHARGE AT&T SWITCHED ACCESS RATES, RATHER THAN  
23 LOCAL RECIPROCAL COMPENSATION RATES, FOR "LATAWIDE

1 TRAFFIC” TRANSPORTED AND TERMINATED THROUGH  
2 “SWITCHED ACCESS ARRANGEMENTS AS ESTABLISHED BY THE  
3 STATE COMMISSION OR FCC?”

4  
5 A. No.

6  
7 Q. HAS BELLSOUTH FILED TESTIMONY IN ANY OTHER STATE  
8 ASSERTING THAT LANGUAGE OTHER THAN IS FOUND IN  
9 SECTIONS 5.3.1.1 AND 5.3.3 GOVERNS ITS OBLIGATION TO  
10 CHARGE AT&T LOCAL RECIPROCAL COMPENSATION RATES FOR  
11 THE TRANSPORT AND TERMINATION OF “LOCAL TRAFFIC,”  
12 INCLUDING ALL “LATAWIDE TRAFFIC?”

13  
14 A. Yes. In Ms. Shiroishi’s Direct Testimony filed December 18, 2002 in  
15 the North Carolina proceeding discussed above, Ms. Shiroishi states  
16 that the “...definition of [Local Traffic] in Second Interconnection  
17 Agreement related to the type of arrangement, or trunk group, that  
18 the traffic originated over or terminated through.”

19  
20 Q. IS THERE ANY SUCH LANGUAGE IN SECOND INTERCONNECTION  
21 AGREEMENT, AS MS. SHIROISHI’S STATED IN NORTH CAROLINA,  
22 WHICH PROVIDES THAT “LOCAL TRAFFIC” IS DEPENDENT UPON,  
23 RELATED TO, OR CONDITIONED UPON, THE TYPE OF TRUNK



1 ARRANGEMENT OR TRUNK GROUP THAT THE TRAFFIC  
2 ORIGINATED OVER OR TERMINATED THROUGH?

3  
4 A. Absolutely not. This is yet another BellSouth attempt to avoid the  
5 express provisions of Sections 5.3.1.1 and 5.3.3 of Second  
6 Interconnection Agreement which require BellSouth to charge AT&T  
7 local reciprocal compensation rates for the transport and  
8 termination of "Local Traffic," including all "LATAwide Traffic."

9  
10 **ISSUE 4: IF THE ANSWER TO ISSUE 3 IS "YES," HAS**  
11 **BELLSOUTH BREACHED THE SECOND INTERCONNECTION**  
12 **AGREEMENT?**

13  
14 Q. HAS BELLSOUTH BREACHED SECOND INTERCONNECTION  
15 AGREEMENT? IF SO, IN WHAT MANNER?

16  
17 A. Yes. Second Interconnection Agreement (the terms of which apply to  
18 First Interconnection Agreement as of June 11, 2000 by virtue of the  
19 Retroactivity Provision of First Interconnection Agreement) clearly  
20 provides that BellSouth and AT&T are to transport and terminate  
21 each other's "Local Traffic" at the local reciprocal compensation rates  
22 set forth in the Second Interconnection Agreement. With respect to  
23 defining "Local Traffic," Second Interconnection Agreement clearly

1 provides that the parties agreed to apply a "LATAwide" concept  
2 thereto, meaning that **all** calls transported and terminated within a  
3 "LATA" ("LATAwide Traffic"), would be subject to the local reciprocal  
4 compensation rates set forth in Second Interconnection Agreement.  
5 However, BellSouth has refused to apply local reciprocal  
6 compensation rates to **all** "Local Traffic," including all "LATAwide  
7 Traffic," and instead has applied BellSouth's switched access rates to  
8 certain "Local Traffic."

9  
10 Q. NOTWITHSTANDING BELLSOUTH'S BREACH OF SECOND  
11 INTERCONNECTION AGREEMENT, HAS AT&T CHARGED  
12 BELLSOUTH FOR TRANSPORTING AND TERMINATING  
13 BELLSOUTH'S "LOCAL TRAFFIC," INCLUDING ALL "LATAWIDE"  
14 TRAFFIC" AT LOCAL RECIPROCAL COMPENSATION RATES UNDER  
15 SECOND INTERCONNECTION AGREEMENT?

16  
17 A. Yes. AT&T charges BellSouth the local reciprocal compensation  
18 rates agreed to by the Parties and set forth in Section 5.3.3 of  
19 Exhibit 1 to Second Interconnection Agreement, and not switched  
20 access rates, for all "Local Traffic," including all "LATAwide Traffic,"  
21 which AT&T transports and terminates for BellSouth. Specifically,  
22 having implemented the "LATAwide" concept for "Local Traffic" as  
23 required by Second Interconnection Agreement, AT&T charges

1 BellSouth local reciprocal compensation rates for all "Local Traffic,"  
2 including all "LATAwide Traffic."

3

4 Q. IS BELLSOUTH AWARE THAT AT&T CHARGES BELLSOUTH LOCAL  
5 RECIPROCAL COMPENSATION RATES, RATHER THAN SWITCHED  
6 ACCESS RATES, FOR ALL "LOCAL TRAFFIC," INCLUDING ALL  
7 BELLSOUTH "LATAWIDE TRAFFIC," WHILE BELLSOUTH REFUSES  
8 TO DO THE SAME FOR AT&T ON A RECIPROCAL BASIS?

9

10 A. Yes.

11

12 Q. HAS BELLSOUTH EVER OFFERED TO PAY AT&T SWITCHED  
13 ACCESS RATES, RATHER THAN LOCAL RECIPROCAL  
14 COMPENSATION RATES, FOR AT&T'S TRANSPORT AND  
15 TERMINATION OF BELLSOUTH'S "LOCAL TRAFFIC," INCLUDING  
16 ALL BELLSOUTH "LATAWIDE TRAFFIC?"

17

18 A. No. Once Second Interconnection Agreement was executed by AT&T  
19 and BellSouth, AT&T began updating its billing systems to charge  
20 BellSouth the local reciprocal compensation rates set forth in Second  
21 Interconnection Agreement for transporting and terminating all  
22 "Local Traffic," including all "LATAwide Traffic." AT&T's compliance  
23 specifically included providing a credit to BellSouth in order to fully

1       comply with the obligations of the Parties under Second  
2       Interconnection Agreement to reciprocally charge each other the  
3       local compensation rates set for in Second Interconnection  
4       Agreement for the transport and termination of all "Local Traffic,"  
5       including all "LATAwide Traffic."

6  
7       **ISSUE 5: IF THE ANSWER TO ISSUE 4 IS "YES," WHAT**  
8       **REMEDIES ARE APPROPRIATE?**

9  
10    Q.    IS AT&T ENTITLED TO RECEIVE, AND IS BELLSOUTH OBLIGATED  
11       TO PROVIDE, A CREDIT (INCLUDING INTEREST) FOR AMOUNTS  
12       WHICH BELLSOUTH HAS OVERCHARGED AT&T FOR FAILURE TO  
13       TRANSPORT AND TERMINATE ALL "LOCAL TRAFFIC," INCLUDING  
14       ALL "LATAWIDE TRAFFIC" AT LOCAL RECIPROCAL  
15       COMPENSATION RATES?

16  
17    A.    Yes. Credits and late payments for improper billings clearly are  
18       allowed under Sections 1.14, 1.15, and 1.16 of Attachment 6 of  
19       Second Interconnection Agreement. Sections 1.14, 1.15, and 1.16 of  
20       Attachment 6 of Second Interconnection Agreement are attached  
21       hereto as J. A. King Exhibit No. 2. Through October 2002, BellSouth  
22       has overcharged AT&T \$6,310,425 for transporting and terminating  
23       certain "Local Traffic," including certain "LATAwide Traffic" at

1 switched access rates, and not at local compensation rates as  
2 required in Second Interconnection Agreement. Regarding the  
3 specifics of this increased overcharged amount, attached hereto and  
4 incorporated by this reference is J. A. King Exhibit No. 3 which  
5 updates Exhibit 4 to AT&T's Complaint. To the extent BellSouth  
6 continues to overcharge AT&T for transporting and terminating all  
7 "Local Traffic," including certain "LATAwide Traffic," J. A. King  
8 Exhibit No. 3 will need to be updated at the time of the hearing in  
9 this proceeding. BellSouth also owes AT&T interest on all  
10 overcharged amounts at the rate of one and one half percent (1 and  
11 ½%) per month from July 1, 2001 until the date such overcharges  
12 are paid by BellSouth to AT&T. Such interest is not included in J. A.  
13 King Exhibit No. 3.

14  
15 Q. IN ADDITION TO CREDITS (AND INTEREST), WHAT OTHER  
16 REMEDIES ARE APPROPRIATE FOR AT&T IN THIS PROCEEDING?

17  
18 A. AT&T entitled to a declaratory ruling from the Commission that  
19 BellSouth is obligated to charge AT&T for the transport and  
20 termination of all "Local Traffic," including all "LATAwide Traffic," at  
21 local reciprocal compensation rates, on a forward going basis. AT&T  
22 should not be forced to bring complaints against BellSouth regarding  
23 this issue in order to have BellSouth transport and terminate such

1 traffic at the appropriate rates, nor should the Commission's  
2 resources be wasted on such efforts.

3 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

4

5 A. Yes.

1 Q. PLEASE STATE YOUR NAME, TITLE, AND BUSINESS ADDRESS.

2

3 A. My name is Jeffrey A. King. I am a District Manager in the Local  
4 Services & Access Management organization of AT&T Corp.  
5 ("AT&T"). My business address is 1200 Peachtree Street, N.E.,  
6 Atlanta, Georgia 30309.

7

8 Q. FOR WHOM ARE YOU FILING TESTIMONY IN THIS  
9 PROCEEDING?

10

11 A. I am testifying on behalf of AT&T Communications of the Southern  
12 States, LLC, Teleport Communications Group, Inc., and TCG of the  
13 Carolinas, Inc. (collectively referred to as "AT&T").

14

15 Q. ARE YOU THE SAME JEFFREY A. KING WHO PREVIOUSLY FILED  
16 DIRECT TESTIMONY ON BEHALF OF AT&T IN THIS PROCEEDING  
17 ON JANUARY 15, 2003?

18 A. Yes.

19 **ISSUE 2: DOES THE TERM "LOCAL TRAFFIC" AS USED IN**  
20 **THE SECOND INTERCONNECTION AGREEMENT IDENTIFIED**  
21 **IN AT&T'S COMPLAINT INCLUDE ALL "LATAWIDE" CALLS,**  
22 **INCLUDING ALL CALLS ORIGINATED OR TERMINATED**  
23 **THROUGH SWITCHED ACCESS ARRANGEMENTS AS**  
24 **ESTABLISHED BY THE STATE COMMISSION OR FCC?**

1        **ISSUE 3: UNDER THE TERMS OF THE SECOND**  
2        **INTERCONNECTION AGREEMENT, DO RECIPROCAL**  
3        **COMPENSATION RATES AND TERMS APPLY TO CALLS**  
4        **ORIGINATED OR TERMINATED THROUGH SWITCHED ACCESS**  
5        **ARRANGEMENTS AS ESTABLISHED BY THE STATE**  
6        **COMMISSION OR FCC?**

7  
8        Q.    WHAT IS THE PURPOSE OF YOUR TESTIMONY?

9  
10      A.    My testimony responds to the Direct Testimony filed by  
11      Elizabeth R. A. Shiroishi on January 15, 2003, particularly  
12      regarding discussions I had with Billy C. Peacock, AT&T's lead  
13      contract negotiator, regarding BellSouth's intent in proposing  
14      certain language regarding what constituted "Local Traffic" in  
15      Second Interconnection Agreement. I also respond to  
16      Ms. Shiroishi's testimony where she implies that AT&T is required  
17      to transport all "Local Traffic" over "local interconnection trunks  
18      under Second Interconnection Agreement."

19  
20      Q.    WERE YOU A MEMBER OF AT&T'S INTERCONNECTION  
21      NEGOTIATIONS TEAM WHICH WAS NEGOTIATING WITH  
22      BELLSOUTH REGARDING SECOND INTERCONNECTION  
23      AGREEMENT?

24



1 A. Not exactly. Although I was not a member of the AT&T team which  
2 met regularly with BellSouth, I was involved in the negotiations in  
3 that I provided guidance and assistance to Mr. Peacock on various  
4 compensation and network issues. Mr. Peacock frequently  
5 discussed with me the status of the negotiations and sought my  
6 comments and approval regarding proposed language dealing with  
7 compensation issues and network facilities. As a manager in  
8 AT&T's Local Services and Access Management organization, I had  
9 responsibility for implementing various compensation and network  
10 provisions agreed to by AT&T and BellSouth. Thus I had a  
11 significant interest and provided assistance in the negotiations.

12

13 Q. HOW OFTEN DID MR. PEACOCK DISCUSS WITH YOU THE  
14 STATUS OF INTERCONNECTION NEGOTIATIONS WITH  
15 BELLSOUTH AND SEEK YOUR COMMENTS AND APPROVAL OF  
16 LANGUAGE.?

17

18 A. Very frequently, sometimes daily, particularly when issues were  
19 being discussed that specifically affected the compensation rates  
20 which AT&T would pay BellSouth for the transport and  
21 termination of traffic.

22

23 Q. WERE THERE CERTAIN COMPENSATION ISSUES WHICH WERE

1 PARTICULARLY IMPORTANT TO AT&T WHICH YOU DISCUSSED  
2 WITH MR. PEACOCK?

3  
4 A. Yes. One of the most significant issues was what constituted  
5 "Local Traffic" for purposes of applying local reciprocal  
6 compensation rates. If traffic is not considered "Local Traffic" it is  
7 generally transported and terminated at switched access rates  
8 (which are higher) than local reciprocal compensation rates.

9  
10 Q WHAT WAS AT&T'S POSITION REGARDING WHAT CONSTITUTED  
11 "LOCAL TRAFFIC?"

12  
13 A. AT&T considered all intraLATA traffic to be "Local Traffic" subject  
14 to local reciprocal compensation rates.

15  
16 Q. TO THE BEST OF YOUR KNOWLEDGE, WAS BELLSOUTH AWARE  
17 OF AT&T'S POSITION THAT ALL INTRALATA TRAFFIC WAS TO BE  
18 CONSIDERED "LOCAL TRAFFIC" TO BE TRANSPORTED AND  
19 TERMINATED AT LOCAL RECIPROCAL COMPENSATION RATES?

20  
21 A. Yes. In addition to the discussions which Mr. Peacock had with  
22 various members of BellSouth's negotiations team while  
23 negotiating Second Interconnection Agreement, during the last

1 several years I also have met with Jerry Hendrix of BellSouth to  
2 resolve various pricing and related compensation issues for AT&T.  
3 Mr. Hendrix is Ms. Shiroishi's supervisor and these discussions  
4 took place separate and apart from the interconnection agreement  
5 negotiations between AT&T and BellSouth. During these meetings,  
6 I have advised Mr. Hendrix on numerous occasions that AT&T  
7 desired to negotiate an interconnection agreement with BellSouth  
8 which defines "Local Traffic" to include intraLATA traffic.

9  
10 Q IF SUCH A DEFINITION COULD NOT BE AGREED TO WITH  
11 BELLSOUTH ON A VOLUNTARY BASIS, WOULD AT&T HAVE  
12 ARBITRATED THE ISSUE OF WHAT CONSTITUTES "LOCAL  
13 TRAFFIC" BEFORE THE COMMISSION IN ITS MOST RECENT  
14 ROUND OF INTERCONNECTION AGREEMENT NEGOTIATIONS?

15  
16 A. Most definitely.

17  
18 Q. DID AT&T ARBITRATE THIS ISSUE WITH BELLSOUTH IN  
19 FLORIDA OR ANY OTHER STATE IN THE MOST RECENT ROUND  
20 OF INTERCONNECTION NEGOTIATIONS?

21  
22 A. No we did not. This is because before AT&T's arbitration petition  
23 was filed in Florida and in other states, I was advised by Mr.

1 Peacock that BellSouth had agreed that local reciprocal  
2 compensation rates would apply to all intraLATA traffic and that  
3 we would not have to arbitrate this issue.

4

5 Q. AFTER AT&T FILED ITS ARBITRATION PETITION IN FLORIDA,  
6 DID MR. PEACOCK EVER ADVISE YOU THAT BELLSOUTH WAS  
7 PROPOSING NEW LANGUAGE REGARDING WHAT CONSTITUTED  
8 "LOCAL TRAFFIC?"

9

10 A. Yes. In the context of continuing to negotiate two unresolved  
11 issues while the arbitration proceeding was pending, Mr. Peacock  
12 advised me that BellSouth had proposed new "LATAwide" local  
13 concept language regarding what constituted "Local Traffic."

14

15 Q. WHAT WERE THE TWO ISSUES WHICH AT&T AND BELLSOUTH  
16 WERE CONTINUING TO NEGOTIATE AFTER AT&T HAD FILED ITS  
17 ARBITRATION PETITION IN FLORIDA?

18

19 A. Compensation for transporting and terminating Internet Service  
20 Provider ("ISP's") bound traffic and Voice Over Internet Protocol  
21 ("VOIP") calls.

22

23 Q. WHAT WAS THE NEW LANGUAGE PROPOSED BY BELLSOUTH?

1

2 A. BellSouth proposed what was referred to as a "LATAwide" local  
3 concept for defining "Local Traffic." Specifically, the language  
4 proposed by BellSouth in a new Section 5.3.1.1 stated:

5 "The Parties agree to apply a "LATAwide" local concept  
6 to this Attachment 3, meaning that traffic that has  
7 traditionally been treated as intraLATA toll will now be  
8 treated as local for intercarrier compensation  
9 purposes, except for those calls that are originated or  
10 terminated through switched access arrangements as  
11 established by the ruling regulatory body."  
12

13 Q. DID YOU DISCUSS WITH MR. PEACOCK BELLSOUTH'S INTENT  
14 REGARDING THE LANGUAGE "EXCEPT FOR THOSE CALLS THAT  
15 ARE ORIGINATED OR TERMINATED THROUGH SWITCHED  
16 ACCESS ARRANGEMENTS AS ESTABLISHED BY RULING  
17 REGULATORY BODY" IN THIS NEW SECTION 5.3.1.1?  
18

19 A. Yes. Mr. Peacock explained that BellSouth wanted to include the  
20 language to protect BellSouth in the event a state commission or  
21 the FCC determined that ISP traffic was deemed jurisdictionally to  
22 be interLATA traffic even though the traffic technically stayed  
23 within a LATA. Mr. Peacock further explained that BellSouth  
24 would not allow such traffic to be compensated as "Local Traffic"  
25 when AT&T's long distance network transported this traffic. He  
26 said Ms. Shiroishi also was concerned about a state commission or  
27 the FCC determining VOIP calls to be interLATA traffic. Further,

1 we discussed the words “regulatory ruling body” and requested  
2 that the words be changed to “State Commission or the FCC” given  
3 BellSouth’s statements that “regulatory ruling body” meant “state  
4 commission or the FCC.”

5  
6 Q. DID YOU HAVE FURTHER DISCUSSIONS WITH MR. PEACOCK  
7 REGARDING ANY OTHER LANGUAGE IN SECOND  
8 INTERCONNECTION AGREEMENT REGARDING WHAT  
9 BELL SOUTH INTENDED RELATIVE TO THE “SWITCHED ACCESS  
10 ARRANGEMENTS” LANGUAGE DISCUSSED ABOVE?

11  
12 A. Yes. As discussions between Mr. Peacock and BellSouth  
13 continued, BellSouth also proposed a definition of “Switched  
14 Access Traffic” in Section 5.3.3 (which included only intrastate  
15 interLATA and interstate interLATA traffic as “Switched Access  
16 Traffic”). BellSouth also proposed language to make it clear that  
17 Section 5.3.3 with its definition of “Switched Access Traffic” was  
18 “interrelated” to Section 5.3.1.1. (which included the “LATAwide”  
19 local concept language regarding “Local Traffic” as well as the  
20 “switched access arrangements” language regarding not  
21 misrepresenting interLATA traffic as being subject to local  
22 compensation rates).

23

1 Q. GIVEN THAT BELL SOUTH'S PROPOSED LANGUAGE DISCUSSED  
2 ABOVE INVOLVED WHAT CONSTITUTED "LOCAL TRAFFIC,"  
3 WOULD MR. PEACOCK HAVE NEEDED YOUR APPROVAL  
4 BEFORE AGREEING TO ANY SUCH LANGUAGE?

5

6 A. Yes.

7

8 Q. DID YOU PROVIDE YOUR APPROVAL?

9

10 A. Yes. I gave Mr. Peacock my approval after he advised me of  
11 BellSouth's rationale for the language as had been explained to  
12 him and others at AT&T. That rationale was that BellSouth  
13 wanted to include language regarding "switched access  
14 arrangements" in order to protect BellSouth in the event a state  
15 commission or the FCC determined that ISP bound traffic was  
16 interLATA traffic even though the traffic technically stayed within a  
17 LATA; and in the event that the FCC determined that VOIP calls  
18 constituted interLATA traffic. Mr. Peacock also indicated that  
19 AT&T and BellSouth had reached agreement on a clear and  
20 unambiguous definition of "Switched Access Traffic" in Section  
21 5.3.3 that was limited to intrastate interLATA and interstate  
22 interLATA traffic and did not include any intraLATA or "LATAwide  
23 Traffic." Finally, we discussed that BellSouth also had proposed

1 language that Section 5.3.3 (which defined "Switched Access  
2 Traffic") was "interrelated" to Section 5.3.1.1 (which set forth the  
3 "LATAwide" local concept for "Local Traffic"). Based on these  
4 provisions and Mr. Peacock's discussions with Ms. Shiroishi, I  
5 believed that the language which BellSouth had asked be included  
6 in Second Interconnection Agreement provided that intraLATA  
7 traffic would be compensated at local reciprocal compensation  
8 rates and not at switched access rates. It clearly was AT&T's  
9 intent for that to be the case, and we never would have agreed to  
10 any language that would have required us to pay switched access  
11 rates for intraLATA traffic.

12  
13 Q. SPECIFICALLY, AT PAGE 6, LINES 1-4 OF MS. SHIROISHI'S  
14 TESTIMONY SHE STATES THAT IF AN INTRALATA CALL  
15 ORIGINATES OR TERMINATES THROUGH SWITCHED ACCESS  
16 ARRANGEMENTS, THEN THAT CALL WOULD BE EXCLUDED  
17 FROM THE DEFINITION OF "LOCAL TRAFFIC." SHE THEN GOES  
18 ON TO STATE "SUCH A CALL WOULD BE GOVERNED BY  
19 BELLSOUTH'S SWITCHED ACCESS TARIFFS AND WOULD BE  
20 SUBJECT TO THE APPROPRIATE SWITCHED ACCESS RATES."  
21 DID MR. PEACOCK EVER STATE TO YOU THAT MS. SHIROISHI  
22 OR ANYONE ELSE FROM BELLSOUTH HAD MADE ANY SUCH  
23 STATEMENTS TO AT&T IN NEGOTIATIONS MEETINGS BETWEEN



1 THE PARTIES OF IN ANY OTHER DISCUSSIONS WITH  
2 MR. PEACOCK?

3

4 A. Absolutely not.

5

6 Q. DOES SECOND INTERCONNECTION AGREEMENT CONTAIN ANY  
7 PROVISIONS WHICH CONTAIN ANY OF MS. SHIROISHI'S  
8 CONCLUSIONS DISCUSSED?

9

10 A. No it does not.

11

12 Q. WITH RESPECT TO MS. SHIROISHI'S TESTIMONY AT PAGE 10,  
13 BEGINNING AT LINE 18 REGARDING VARIOUS TRUNKING  
14 "REQUIREMENTS," IS THE INTRALATA TRAFFIC, WHICH IS IN  
15 DISPUTE IN THIS PROCEEDING, TRAFFIC IN WHICH AT&T  
16 PROVIDES ITS ORIGINATING CUSTOMER BOTH THE FACILITIES-  
17 BASED DEDICATED LOOP TO THE CUSTOMER'S PREMISE AS  
18 WELL AS LOCAL SWITCHING (I.E., DIAL TONE), INCLUDING THE  
19 UNBUNDLED NETWORK ELEMENT PLATFORM OR LOOP/PORT  
20 COMBINATION ("UNE-P")?

21

22 A. Yes.

23

1 Q. WITH RESPECT TO UNE-P, DOES BELLSOUTH ALSO REFUSE TO  
2 TREAT THESE INTRALATA CALLS AS "LOCAL TRAFFIC"?

3

4 A. Yes. UNE-P is a new local service option available to AT&T. Due to  
5 billing and network capabilities that currently exist within AT&T's  
6 traditional long distance business, AT&T routes certain of its  
7 customers' intraLATA traffic (e.g., intraLATA 1+ dialed calls) over  
8 the AT&T long distance network and then terminates that traffic  
9 back to BellSouth over in-place switched access provisioned  
10 facilities. Even though AT&T is the originating carrier for these  
11 types of calls, because the call "leaves" the AT&T network and  
12 transverses switched access facilities within the LATA, BellSouth  
13 requires AT&T to pay switched access rates for such calls based on  
14 its interpretation of Second Interconnection Agreement. To put  
15 BellSouth's position in perspective, if an AT&T UNE-P customer  
16 was calling a BellSouth customer (i.e., a customer which is "PIC'D"  
17 or uses BellSouth for intraLATA service) and the BellSouth  
18 customer returns that call to the AT&T UNE-P customer, AT&T  
19 would receive no compensation from BellSouth.<sup>1</sup> This is because  
20 BellSouth alleges that it "owns" all of the UNE-P network and thus  
21 the call never leaves its network even though AT&T is providing

---

<sup>1</sup> Under UNE-P, the Parties have agreed that the originating party is responsible for both originating and terminating costs related to "Local Traffic."

1 local service (through UNE-P) to the customer being called by  
2 BellSouth's customer. Further, if that same BellSouth customer  
3 were to call an AT&T facilities based local customer (not UNE-P),  
4 and the BellSouth's customer's call does leave BellSouth's network,  
5 AT&T charges BellSouth local reciprocal compensation rates to  
6 terminate that call in accordance with the provisions of Second  
7 Interconnection Agreement "Local Traffic" and not switched access  
8 rates.

9  
10 Q. DOES AT&T PURCHASE ORIGINATING SWITCHED ACCESS  
11 FROM BELLSOUTH FOR ITS LATAWIDE LOCAL TRAFFIC?

12  
13 A. No it does not.

14  
15 Q. WITH RESPECT TO MS. SHIROISHI'S TESTIMONY AT PAGES 10,  
16 LINES 18-22 AND PAGE 11, LINES 1-15, MS. SHIROISHI  
17 FURTHER STATES "...THE DEFINITION [OF LOCAL TRAFFIC] IN  
18 SECOND INTERCONNECTION AGREEMENT RELATED TO THE  
19 TYPE OF ARRANGEMENT, OR TRUNK GROUP, THAT THE  
20 TRAFFIC ORIGINATED OVER OR TERMINATED THROUGH." SHE  
21 THEN GOES ON TO STATE "THE DESCRIPTIONS OF THE  
22 TRUNKING ARRANGEMENTS MAKE CLEAR THAT THEY ARE FOR  
23 LOCAL AND INTRALATA TOLL TRAFFIC AND THE TRUNKING

1 ARRANGEMENTS ARE NOT THE SAME AS THE SWITCHED  
2 ACCESS TRUNKING ARRANGEMENTS SET FORTH IN  
3 BELLSOUTH'S TARIFFS." ARE ANY OF THESE STATEMENTS BY  
4 MS. SHIROISHI FOUND IN ATTACHMENT 3 TO SECOND  
5 INTERCONNECTION AGREEMENT?  
6

7 A. Absolutely not.  
8

9 Q. WITH RESPECT TO EXISTING TRUNKING ARRANGEMENTS  
10 UTILIZED BY AT&T, HAS BELLSOUTH IN THE PAST, AND DOES  
11 BELLSOUTH CURRENTLY CHARGE AT&T LOCAL RECIPROCAL  
12 COMPENSATION RATES FOR "LOCAL TRAFFIC" WHICH IS NOT  
13 TRANSPORTED OVER "LOCAL INTERCONNECTION TRUNKS" AS  
14 DEFINED BY BELLSOUTH?  
15

16 A. Yes. Several years ago, in an effort to offer local services to various  
17 business customers, AT&T began offering local service using  
18 4ESS™ switched and related facilities which traditionally had been  
19 used to provide long distance services. BellSouth has in the past,  
20 and it continues today under Second Interconnection Agreement,  
21 to charge AT&T local reciprocal compensation rates for calls which  
22 are transported over these facilities. For compensation billing  
23 purposes, AT&T provides BellSouth a Percent Local Usage ("PLU")

1 factor in order to determine what portion of AT&T's traffic is "Local  
2 Traffic" versus "Switched Access Traffic." This factor changes from  
3 time to time as traffic levels and types vary.  
4

5 Q. HAS BELLSOUTH AGREED TO THIS PLU FACTOR BILLING  
6 PROCESS?  
7

8 A. Yes. BellSouth has agreed to this process in Second  
9 Interconnection Agreement.  
10

11 Q. TO YOUR KNOWLEDGE HAS BELLSOUTH CONTACTED AT&T'S  
12 ACCESS BILLING MANAGEMENT ORGANIZATION TO INFORM  
13 AT&T THAT IT WILL NO LONGER ACCEPT A PLU FACTOR FROM  
14 AT&T?  
15

16 A. No. However, BellSouth has "frozen" AT&T's PLU factor at the  
17 September 2001 PLU factor level while this dispute is pending.  
18

19 Q. WITH RESPECT TO MS. SHIROISHI'S TESTIMONY AT PAGES 10-  
20 11 REGARDING VARIOUS TRUNKING "REQUIREMENTS," IS IT  
21 CLEAR TO YOU WHAT MS. SHIROISHI IS ALLEGING?  
22

23 A. No it is not. However, she seems to be implying that AT&T must

1 "migrate" or "convert" its existing trunks to "local only" trunks in  
2 order for AT&T's "Local Traffic" to be compensated at local  
3 reciprocal compensation rates.

4

5 Q. DID MR. PEACOCK EVER ADVISE YOU THAT MS. SHIROISHI  
6 HAD INTERPRETED THE INTERCONNECTION PROVISIONS OF  
7 ATTACHMENT 3 TO REQUIRE ANY SUCH "MIGRATIONS" OR  
8 "CONVERSIONS"?

9

10 A. Absolutely not. In fact, Mr. Peacock and I never discussed any  
11 "migration" or "conversion" requirements in Attachment 3 that  
12 would affect AT&T. I feel confident he would have done so had Ms.  
13 Shiroishi explained her "interpretation" of these provisions to him  
14 as she has testified in this proceeding.

15

16 Q. WOULD IT BE A SIGNIFICANT AND EXPENSIVE UNDERTAKING  
17 FOR AT&T TO IMPLEMENT THE "MIGRATIONS" AND  
18 "CONVERSIONS" SHE REFERENCES?

19

20 A. Yes. Ms. Shiroishi is suggesting that AT&T replace many of its  
21 existing facilities, which AT&T implemented over many years to  
22 operate a combined local and long distance network, to local  
23 facilities. This would be an inefficient and expensive endeavor and

1 Ms. Shiroishi knows that. In this respect, her interpretation of  
2 AT&T's trunking "requirements" under Second Interconnection  
3 Agreement (in order to have AT&T's "local traffic" considered "Local  
4 Traffic") are akin to the proverbial "poison pill." It certainly was  
5 never AT&T's understanding or intent that it would need to engage  
6 in a wholesale rebuilding of its combined local and long distance  
7 network in order to have its "local traffic" to be considered "Local  
8 Traffic" under Second Interconnection Agreement for local  
9 reciprocal compensation purposes. Moreover, BellSouth also  
10 would experience increase costs to implement such a "migrated" or  
11 "converted" network. Those sections from Second Interconnection  
12 Agreement referred by Ms. Shiroishi in her Direct Testimony allow  
13 BellSouth to request AT&T to implement any such "migration" or  
14 "conversion." To date, BellSouth has never made any such request  
15 of AT&T.

16  
17 Q. IN TRYING TO MAKE SENSE OF MS. SHIROISHI'S TESTIMONY,  
18 FROM A TECHNICAL PERSPECTIVE, ARE THERE ANY  
19 DIFFERENCES BETWEEN TRUNKS USED TO TRANSPORT  
20 "LOCAL TRAFFIC" AND TRUNKS WHICH ARE USED TO  
21 TRANSPORT SWITCHED ACCESS TRAFFIC?

22  
23 A. No, as the saying goes in the industry, "a trunk is a trunk is a

1 trunk." Trunks which are used to transport "Local Traffic" and  
2 "Switched Access Traffic" are functionally equivalent. Billing is  
3 therefore determined by the jurisdiction of traffic, using billing  
4 factors known as PIU ("Percent Interstate Usage"), PLU ("Percent  
5 Local Usage"), and PLF ("Percent Local Facility").

6  
7 Q. FINALLY, ARE THERE PROVISIONS IN ATTACHMENT 3 TO  
8 SECOND INTERCONNECTION AGREEMENT WHICH WOULD  
9 LEAD YOU TO CONCLUDE THAT "LOCAL TRAFFIC" AND  
10 "SWITCHED ACCESS TRAFFIC" CAN BE TRANSPORTED OVER  
11 THE SAME TRUNKS?

12  
13 A. Yes. Sections 5.3.7 and 5.3.9 allow the parties to determine the  
14 amount of local and switched access traffic to be billed based on  
15 the parties' projections of how much of their traffic is "Local  
16 Traffic" and how much of their traffic is "Switched Access Traffic."  
17 If AT&T was required under Second Interconnection Agreement to  
18 transport all of its "Local Traffic" only over "local trunks" and all of  
19 its "Switched Access Traffic" over only "Switched Access Trunks,"  
20 the type of traffic could be determined from the trunk group  
21 carrying the traffic. As a result, there would be no need for the  
22 parties to project with "factors" how much of their traffic is "Local  
23 Traffic" and how much of their traffic is "Switched Access Traffic".



1 For the Commission's convenience, I have attached a copy of  
2 Sections 5.3.7 and 5.3.9 of Attachment 3 as JAK Rebuttal Exhibit  
3 1.

4

5 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

6 A. Yes.

1 BY MS. CECIL:

2 Q Mr. King, have you prepared a summary of your  
3 testimony?

4 A Yes, I have.

5 Q Would you please give that.

6 A Thank you. Good morning, Commissioners. My name is  
7 Jeffrey A. King, and I am employed by AT&T Corp. as a district  
8 manager in the Local Services and Access Management  
9 organization. I've been employed by AT&T for 17 years in  
10 various pricing and access management positions. I am  
11 responsible for AT&T's compensation issues with BellSouth.  
12 Thus my testimony describes AT&T's complaint that BellSouth has  
13 breached, and continues to breach, the parties' October 26,  
14 2001 interconnection agreement regarding compensation for the  
15 exchange of local traffic.

16 As the Commission is aware, when an AT&T customer  
17 calls a BellSouth customer, BellSouth is entitled to receive  
18 compensation from AT&T because the call is completed, or  
19 terminated, using BellSouth's network. There generally are two  
20 compensation rates that apply to the termination of such calls.  
21 The first rate is known as local reciprocal compensation which  
22 applies to the termination of all local traffic; the second  
23 rate is referred to as switched access, which applies to all  
24 switched access traffic.

25 In Florida, switched access rates are roughly 25

1 times higher than local reciprocal compensation rates. As a  
2 result, it is extremely important to know what jurisdiction  
3 traffic will be billed. Moreover, the jurisdiction of the  
4 traffic determines the compensation for the facilities; in  
5 that, what part of facility expense is a switched access  
6 arrangement and what part is a local interconnection  
7 arrangement.

8 In the interconnection agreement, the parties agreed  
9 to adopt a LATAwide local concept for local traffic, meaning  
10 that all calls within a local access transport area, or LATA,  
11 would be compensated at lower reciprocal compensation rates.  
12 The only exception was for certain calls that are originated or  
13 terminated through switched access arrangements.

14 BellSouth's breach is based on an improper  
15 interpretation of the contract. First, BellSouth takes out of  
16 context language regarding switched access arrangements.  
17 Second, BellSouth ignores all of the language that applies to,  
18 and thus governs, what constitutes a switched access  
19 arrangement. For the Commission's convenience, the language,  
20 which BellSouth takes out of context, is found in Section  
21 5.3.1.1. This section addresses local traffic. Similarly, the  
22 language, which BellSouth ignores, is found in Section 5.3.3.  
23 This section addresses switched access traffic. These are the  
24 same sections that were handed out by Ms. Cecil earlier in her  
25 introduction.

1           When these two interrelated sections are read  
2 together, the language which states "except for those calls  
3 originated or terminated through switched access arrangements  
4 as established by the state commission or FCC" tracks perfectly  
5 with the definition of switched access traffic. This is  
6 because a state commission has jurisdiction over intrastate  
7 interLATA calls and the FCC has jurisdiction over interstate  
8 interLATA calls.

9           In Ms. Shiroishi's direct testimony she does not rely  
10 upon any language in the contract regarding switched access  
11 arrangements. Instead, she claims that the parties discussed  
12 the fact that such arrangements are offered through each  
13 party's switched access tariffs. Mr. Peacock, AT&T's lead  
14 negotiator with BellSouth, advised me that Ms. Shiroishi stated  
15 that BellSouth had requested this language in order to protect  
16 BellSouth in the event a state commission or the FCC determined  
17 that calls to Internet service providers was deemed  
18 jurisdictionally to be interLATA even though the call  
19 originated or terminated within the LATA.

20           Additionally, Mr. Peacock also stated that  
21 Ms. Shiroishi wanted to make sure that voice over Internet  
22 protocol, or VOIP, calls were not included in the definition of  
23 LATAwide local traffic in the event that the FCC determined  
24 that VOIP calls constituted interLATA traffic. Therefore, an  
25 exclusion clause was agreed to by the parties, such that AT&T

1 would not represent VOIP and ISP traffic as local traffic if  
2 that traffic was originated or terminated over a switched  
3 access arrangement. AT&T's complaint only addresses those  
4 intraLATA calls that meet the definition of local traffic. ISP  
5 and VOIP traffic is not local traffic, nor switched access  
6 traffic. Therefore, agreeing to the switched access  
7 arrangement language mitigated any misrepresentation of this  
8 traffic on facilities provisioned to support AT&T switched  
9 access services.

10 Ms. Shiroishi also implied in her direct testimony  
11 that AT&T must migrate or convert its existing network to local  
12 only trunks in order for AT&T to have its local traffic billed  
13 at local reciprocal compensation rates. There is no such  
14 requirement. Had AT&T been required to do so, it would have  
15 meant a major network reconfiguration, something AT&T would not  
16 have accepted.

17 AT&T's complaint asked the Commission to declare  
18 BellSouth in breach of the interconnection agreement and to  
19 order BellSouth to do three things: One, issue a credit to  
20 AT&T in the amount of \$6,961,545 for the period of July 1, 2001  
21 through December 31, 2002; two, issue a credit to AT&T  
22 representing interest at the rate of one and a half percent per  
23 month on this amount of \$6,961,545 from July 1, 2001 until such  
24 credit is paid; and three, charge AT&T from January 1, 2003  
25 going forward local reciprocal compensation rates for the

1 termination of all LATAwide local calls. This concludes my  
2 summary. Thank you.

3 MS. CECIL: Commissioner, I'd also like to identify  
4 the exhibits to Mr. King's testimony both direct and rebuttal.  
5 He has J. A. King Direct Exhibit Number 1.

6 COMMISSIONER DEASON: And he has three direct  
7 exhibits; is that correct?

8 MS. CECIL: That's correct, sir.

9 COMMISSIONER DEASON: We'll identify that as a  
10 composite exhibit, Number 11.

11 (Exhibit 11 marked for identification.)

12 COMMISSIONER DEASON: And there has been an update  
13 filed for Direct Exhibit Number --

14 MS. CECIL: Three.

15 COMMISSIONER DEASON: -- 3. We'll identify the  
16 update as Exhibit 12.

17 (Exhibit 12 marked for identification.)

18 COMMISSIONER DEASON: And then there is -- is there  
19 one prefiled rebuttal exhibit?

20 MS. CECIL: Yes, sir.

21 COMMISSIONER DEASON: Okay. That will be identified  
22 as Exhibit 13.

23 (Exhibit 13 marked for identification.)

24 MS. CECIL: Thank you. The witness is available for  
25 cross.

1 COMMISSIONER DEASON: BellSouth.

2 MR. SHORE: Thank you, Commissioner.

3 CROSS EXAMINATION

4 BY MR. SHORE:

5 Q Mr. King, I'm Andrew Shore. I've got some questions  
6 about your sworn testimony in this case. Before I get to that,  
7 just a few preliminary questions. You're the only witness that  
8 filed direct testimony on behalf of AT&T in this case; correct?

9 A Correct.

10 Q You testified in a similar proceeding in North  
11 Carolina earlier this year regarding the same contract language  
12 that's the subject of your testimony here; right?

13 A Correct.

14 Q That definition of local traffic that's up on the  
15 board before you that's attached as part of your Exhibit 1 to  
16 your testimony, that was negotiated by AT&T and BellSouth on a  
17 region-wide basis, and it's contained in contracts in all  
18 BellSouth states except for the state of Mississippi; correct?

19 A Correct.

20 Q The primary purpose of your direct testimony is for  
21 you to tell the Commission what you say the local traffic  
22 definition and exception for calls carried over switched access  
23 arrangements means; true?

24 A Correct.

25 Q Okay. Let's talk about that testimony now. The

1 definition -- we've produced it up there -- that's set forth in  
2 Section 5.3.1.1 of Attachment 3 to the parties' agreement?

3 A Yes.

4 Q Okay. And you attached that as part of your  
5 Exhibit 1 to your direct testimony. I think it's on Page 18;  
6 correct?

7 A Yes.

8 Q And in a definition reads -- well, it's sitting up  
9 there. I don't need to read it again. We've read it a couple  
10 of times already. You state in your testimony that this  
11 definition that's in Paragraph 5.3.1.1 is clear that all calls  
12 transported and terminated within a LATA are to be treated as  
13 local traffic and subject to reciprocal compensation rates;  
14 correct?

15 A All AT&T local traffic, yes.

16 Q Well, I just want to be clear. It's your  
17 testimony -- it's on Pages 25 and 26. You say the contract is  
18 clear that all calls transported and terminated within the LATA  
19 are to be treated as local traffic; correct?

20 A On Page 25 of my testimony?

21 Q Yeah, I think it's 25 and spills over to 26 of your  
22 direct. Do you see that with respect to defining local  
23 traffic?

24 A Right, that meets the definition of local traffic.  
25 Correct.



1 Q And your interpretation is that all calls within the  
2 LATA meet the definition of local traffic; correct?

3 A No. If I am the AT&T PIC to a BellSouth long -- or I  
4 am the long distance carrier to a BellSouth local customer and  
5 it's an intraLATA call, that is still access. So it is only  
6 local traffic that AT&T originates from its local customer and  
7 we terminate to BellSouth.

8 Q And your testimony is that those intraLATA calls that  
9 are originated or terminated through switched access  
10 arrangements meet the definition of local traffic in  
11 Section 5.3.1.1; correct?

12 A The calls in question in this proceeding are --  
13 indeed meet the definition of local traffic intraLATA calls;  
14 correct.

15 Q And those calls that are at issue in this proceeding,  
16 those are calls that are carried over switched access  
17 arrangements; correct?

18 A Yes -- well, let me qualify that response, please.  
19 The telecommunications environment provides for the ordering of  
20 facilities to support your traffic, and often that facility may  
21 be provisioned initially to support switched access traffic  
22 predominantly, or you may provide that you order something that  
23 is specific that you know you're going to use for local  
24 interconnection. And so generally there are different forms of  
25 facilities that are ordered, i.e., a lot of this use of the

1 term "switched access arrangements."

2 I want to make very clear that I do not have a  
3 dispute as to what a switched access arrangement is. It is  
4 indeed a facility that supports the delivery of switched access  
5 traffic. The reason I want to clarify that response is that  
6 there are factors that are applied to the billing of these  
7 facilities that would determine what part of that facility  
8 supports switched access traffic and what part of that facility  
9 supports usage.

10 And when I say "facility," I'm not talking about this  
11 exact facility because our reporting factors for billing are  
12 done at a state level. And so what occurs is that you  
13 assign -- you have PIU, percent interstate usage, which defines  
14 your interstate and intrastate traffic jurisdictions. Within  
15 the intrastate jurisdiction, you then define what part of that  
16 traffic is local, and what remains would be your intrastate  
17 access services. And so what occurs is that while you may have  
18 ordered a switched access arrangement, while you may have  
19 ordered a local interconnection arrangement, however you want  
20 to use those terms as provisioned, in the end the billing sorts  
21 by jurisdiction.

22 For instance, I may order a local interconnection  
23 trunk, but if I put 1 percent of traffic over that trunk that  
24 is interLATA in nature, then my PLU is 99 percent, leaving  
25 1 percent as being switched access. So while we may call that

1 a local interconnection trunk, 1 percent of that -- those  
2 trunks are billed switched access and do not qualify as a local  
3 interconnection trunk. So I want to be -- and there's a lot of  
4 semantics with the use of these terms arrangements.

5 I do not deny that I agree that facilities are  
6 defined under -- is the traffic, in other words, that will  
7 determine in the end how those arrangements are billed. And it  
8 is switched access traffic, as I've relayed in my testimony,  
9 that will determine what part of your facilities are considered  
10 switched access arrangements and what is considered a local  
11 interconnection arrangement.

12 COMMISSIONER DEASON: That was a long answer. Let me  
13 ask a question. So, in your opinion, is the critical factor  
14 the nature of the call or the facilities it travels over or  
15 through?

16 THE WITNESS: It's the nature of the call. If it is  
17 originated as a -- and I've defined it as a local, it's my  
18 local customer call, okay, then I've -- I then go to my  
19 interconnection agreement and determine, you know, how the  
20 compensation is. If it is indeed originated as a toll service,  
21 I'm using originating -- and let me also clarify, none of this  
22 traffic originated as switched access, okay, so these are all  
23 facilities-based local arrangements for AT&T. So, yes, the --  
24 and when we terminate this traffic, indeed, I'm terminating it  
25 over switched access type arrangements because I'm using my

1 traditional LD network. I'm commingling my traffic over my  
2 traditional LD network.

3           You know, we've been around a long time. It's very  
4 difficult for us to have separate trunks for every type of  
5 traffic, and that's a burden or a cost that I believe BellSouth  
6 is trying to push onto AT&T with their interpretation of this  
7 contract. In other words, they're trying to increase my cost  
8 that they don't have to incur.

9           COMMISSIONER DEASON: Give me an example of a call --  
10 the nature of a call that you believe fits the definition of  
11 reciprocal compensation and BellSouth believes should be viewed  
12 as a switched access arrangement call.

13           THE WITNESS: Well, Bell's position is that any  
14 traffic over switched access arrangements, which means if I  
15 ordered it under my traditional LD network, originally  
16 provisioned it that way, then it's switched access irrespective  
17 of the originating and terminating points of a call. And  
18 that's what defines the jurisdiction of the call, the  
19 originating and terminating points. That will determine  
20 whether it's intraLATA in nature or interLATA in nature.

21           Obviously what brought a lot of this language into  
22 play was that at the time of our discussions voice over  
23 Internet protocol was a very hot topic and still is today.  
24 Theoretically, it can be within a LATA, just like the Internet  
25 service provider language. A call itself originates and

1 terminates within the LATA. But, as the FCC determined, you  
2 know, once it gets out into the big World Wide Web, a lot of  
3 people believe it's interstate or interLATA in jurisdiction.

4 COMMISSIONER DEASON: Well, give me an example.

5 THE WITNESS: AT&T's digital link --

6 COMMISSIONER DEASON: Give me an example of a call  
7 when the end points that you believe that when that traffic,  
8 that call is terminated that reciprocal compensation is the  
9 mechanism for compensating BellSouth.

10 THE WITNESS: Any call that originates within the  
11 Jacksonville LATA and terminates within the Jacksonville LATA  
12 is an intraLATA call. Now, what determines whether that  
13 intraLATA call is access or local, you know, and falls under my  
14 interconnection agreement depends on whether it originated from  
15 an AT&T local customer or originated as an access service,  
16 so -- and I've explained before --

17 COMMISSIONER DEASON: And what determines that,  
18 whether you treat that as a local call or whether you treat  
19 that as a long distance call for your own billing purposes?

20 THE WITNESS: No, no. If I have a local  
21 relationship -- if the relationship is a local relationship  
22 with the end user, then that's what would qualify it to meet  
23 the definition of local traffic or a local customer. Once I've  
24 defined it as a local customer traffic, then I go to my  
25 interconnection agreement for the proper compensation of the

1 traffic.

2 COMMISSIONER DEASON: You have a local customer in  
3 Jacksonville. They subscribe to you for their local telephone  
4 service. Any call that that customer makes, if it terminates  
5 within the Jacksonville LATA, you believe that only reciprocal  
6 compensation is due.

7 THE WITNESS: Correct. Which is the same way I treat  
8 BellSouth's traffic when they terminate it to an AT&T customer.  
9 BellSouth's position here is that they're trying to say, AT&T,  
10 it's great that you've got this great, wonderful long distance  
11 network, but if you decide to send any of your local traffic  
12 over that so-called long distance network, you're out of luck.  
13 I'm not going to let you have reciprocal compensation.

14 And so, you know, as Mr. Shore presented in his  
15 introduction, if you want to read just this one section on its  
16 face, you know, you could say that anything over switched  
17 access type arrangements for our traditional long distance  
18 network is toll or access services regardless of whether it  
19 was, you know, a true access service or whether it was really  
20 from an AT&T local customer, they're basically saying I'm going  
21 to increase your cost to serve your local customers in the  
22 Jacksonville area or any area.

23 COMMISSIONER DEASON: So you all do not dispute the  
24 dollar amount in question; is that correct?

25 THE WITNESS: Right. It is really whether you all

1 view this to stand on its face, which also means that AT&T is  
2 going to have an increase in costs. Because up until AT&T  
3 tried to implement this new agreement, BellSouth indeed was  
4 allowing AT&T to send local traffic over its switched access  
5 arrangement, so to speak.

6 COMMISSIONER DEASON: So you know the number of  
7 minutes of originating with local customers that terminate  
8 within a LATA, you know those number of minutes, and you expect  
9 that that should be at a reciprocal compensation rate.  
10 BellSouth knows the number of those minutes which originate and  
11 travel through some type of a switched access arrangement, and  
12 they believe there should be a higher compensation level.

13 THE WITNESS: Yes. The Exhibit 3 that I updated  
14 provides for the minutes. And, you know, the amount of traffic  
15 that I'm qualifying as so-called what I'm sending over my  
16 traditional long distance network trunks that were established,  
17 there's no dispute on that aspect.

18 They're basically just saying it's of no value  
19 because the clause says that those minutes can't be local  
20 because they are traveling over your traditional long distance  
21 network. As, you know, this Commission is aware, you know,  
22 that's a large investment that's already been out there, and so  
23 to just throw it away and not utilize that capacity the best we  
24 can in the most efficient manner that we can is  
25 counterproductive to trying to survive in this very tough

1 telecommunications business right now. And, you know,  
2 BellSouth would essentially have AT&T create, you know, a lot  
3 more so-called local interconnection trunks, trunks that are  
4 coming off of our new local business that we've established.

5 For instance, when we bought the Teleport or TCG  
6 properties, we assigned a lot of that to be associated with our  
7 local business, and so they believe that that is our only  
8 network to support our local customers. And what I'm here to  
9 say is that is not the case. I use the entire network, both my  
10 traditional toll switches as well as the new so-called local  
11 switches, and I would have never agreed to language that  
12 said AT&T --

13 COMMISSIONER DEASON: Okay. You've answered my  
14 question. Thank you.

15 MR. SHORE: Thank you. Commissioner.

16 BY MR. SHORE:

17 Q Mr. King, you testified in North Carolina that the  
18 except clause in this contract provision we're talking about  
19 excludes only interLATA calls from the definition of local  
20 traffic; correct?

21 A That is defined -- that would be defined as switched  
22 access, yes.

23 Q So under your interpretation this definition would  
24 read, "The parties agree to apply a LATAwide local concept to  
25 this Attachment 3, meaning the traffic that has traditionally



1 been treated as intraLATA toll traffic will now be treated as  
2 local for intercarrier compensation purposes, except interLATA  
3 traffic." That's your interpretation; correct?

4 A Technically, that is somewhat -- I mean, that's true.  
5 But let me explain that the -- as established by the state  
6 commission or FCC, you know, the voice over Internet protocol  
7 is an example if it is determined even though the originating  
8 and terminating points of that call are within the LATA and a  
9 Commission decides that that is interLATA or we're going to  
10 call that an interLATA type call regardless of its originating  
11 and terminating points, then essentially they are saying that  
12 it is not an intraLATA local or LATAwide local call.

13 So this exclusion language was allowed so that if a  
14 Commission deemed that an intraLATA call was indeed access and  
15 wanted to call it interLATA in nature, then it would fit the  
16 definition of interLATA or switched access and be excluded from  
17 us calling it local.

18 COMMISSIONER DAVIDSON: Chairman, I have a question  
19 on this point. Thank you.

20 COMMISSIONER DEASON: Sure.

21 COMMISSIONER DAVIDSON: And I appreciate the Chairman  
22 sort of boiling this down to its essence. That was very  
23 helpful.

24 If you could, assume that there is an AT&T local  
25 customer in Jacksonville who calls a BellSouth local customer

1 in Jacksonville and the call originates over AT&T's long  
2 distance network. What language in 5.3.1 or 5.3.3 would you  
3 rely on to say we must be billed at the local reciprocal  
4 compensation rate as opposed to the switched access? I mean,  
5 point to the specific language that says -- that supports your  
6 position.

7 THE WITNESS: The 5.3.3, okay, would define what  
8 qualifies as switched access. And since your call originated  
9 from a local customer and stayed within the LATA, it does not  
10 meet the definition of switched access. It's an intraLATA call  
11 from -- a local intraLATA call and so, therefore, it meets the  
12 definition of local traffic which is supported in the 5.3.1.1.

13 Okay. Now, the interrelatedness and where this  
14 exclusion clause came in again was the VOIP, for instance. If  
15 a state commission or FCC says, I don't care that that call  
16 originated and terminated within the LATA, it is by nature an  
17 inter -- we're going to call it interstate jurisdiction or  
18 interLATA jurisdiction, then a state commission or FCC has now  
19 ruled that that call has to be excluded from your local traffic  
20 definition.

21 COMMISSIONER DAVIDSON: Thank you. I understand the  
22 parties' sort of arguments over their provisions, but, if you  
23 could, point to or read the specific language in the contract.  
24 And I'll probably ask BellSouth's witnesses the same question,  
25 but what specific language? We are entitled to reciprocal

1 compensation -- to be billed at reciprocal compensation rates  
2 as opposed to switched access rates because the contract says  
3 in Paragraph Blank, X.

4 THE WITNESS: In 5.3.1.1 you identify this LATAwide  
5 local concept, and we identify that -- think, you know, calls  
6 that were traditionally treated as access will now be defined  
7 as local. Okay. So now your intraLATA calls are local  
8 traffic.

9 COMMISSIONER DAVIDSON: Well, again, I understand the  
10 interpretation, but both parties are saying that the contract  
11 is clear. Both parties are saying it's clear in different  
12 ways, but it's clear, and I'm trying to sort of get each party  
13 to point to the exact language that supports them.

14 So is it the last sentence of 5.3.1.1? And would you  
15 just drop the except clause? Are you basically saying that our  
16 position is supported because it's the intent of the paragraph,  
17 or is there specific language that you rely on that says the  
18 contract specifically defines this scenario?

19 THE WITNESS: The paragraph would not stand on its  
20 own. As we've discussed, the 5.3.3 is interrelated, so you do  
21 have to read the two of them together. And what 5.3.1.1 is  
22 determined -- does define now that your local traffic is  
23 intraLATA calls. Okay. Then if you go to 5.3.3, it explains  
24 switched access traffic, and that, you know, essentially if a  
25 Commission decides that if you're going to call -- how best to

1 put this? This is where you've identified that there are calls  
2 that may not fit the true meaning of LATAwide local as the  
3 parties, you know, had intended, and so all intraLATA calls may  
4 not be local traffic. So which calls now are not going to be  
5 intraLATA local traffic?

6 We specifically identified what issues we were  
7 discussing and why we needed to relate these two paragraphs  
8 because VOIP type calls or calls to Internet service providers  
9 is another example are calls that technically can stay within  
10 the LATA. So you create the -- I guess it gets back, if it's  
11 local traffic, then local reciprocal compensation rates apply.  
12 If it's switched access traffic, then switched access rates  
13 apply.

14 And what we have determined is that there is a subset  
15 of intraLATA calls, i.e., local traffic, that we can't agree  
16 really is local traffic. And so there was an exclusion  
17 created, an interrelatedness between these two paragraphs to  
18 ensure that AT&T did not misrepresent those calls which an FCC  
19 or a state commission would say, I'm dismissing the originating  
20 and terminating points which is how you define local traffic or  
21 switched access traffic, and I now am saying these types of  
22 calls are, you know, interLATA or whatever. And it's going to  
23 have their own bucket or own compensation mechanism. So now  
24 you have created a subset of traffic that I can no longer call  
25 local traffic. And it's nondisputable that local traffic will

1 be billed at reciprocal compensation rates. So it really boils  
2 down to how this exclusion clause -- you know, how are we  
3 defining calls that would not fit the bill of local traffic?

4 BellSouth's argument is, I used an arrangement  
5 through my traditional toll network which says, sorry, you've  
6 chosen to use the wrong network to send that call, therefore,  
7 you can't be -- I'm not going to bill you reciprocal  
8 compensation. And that's contrary -- my contract says local  
9 traffic gets billed reciprocal compensation. So to have an  
10 exclusion, it was only to define those calls that a ruling  
11 regulatory body or a FCC or a state commission would deem to be  
12 an exclusion from local traffic.

13 COMMISSIONER DAVIDSON: Thank you.

14 MR. SHORE: Thank you.

15 BY MR. SHORE:

16 Q Mr. King, let me just follow up on a couple of the  
17 questions that Commissioner Deason and Commissioner Davidson  
18 asked you.

19 First of all, BellSouth doesn't specify what network  
20 or what facilities you can use to terminate your traffic to  
21 BellSouth. The difference is if you use a certain type of  
22 facility, one set of rates apply, and if you use a different  
23 type, different rates apply; correct?

24 A That's Bell's position, yes.

25 Q And just so we're clear in follow up to Commissioner

1 Deason's question earlier. If AT&T has a customer for its  
2 local service in the Jacksonville LATA and that customer calls  
3 a BellSouth customer also located in the Jacksonville LATA and  
4 AT&T terminates that call over a switched access arrangement  
5 established by this Commission, it's your interpretation that  
6 that is local traffic, it's not exempted; correct?

7 A Not correct. Getting back to my earlier statement,  
8 that's switched access arrangement. The portion that is  
9 utilized to support my local traffic becomes a local  
10 arrangement, not a switched access arrangement for purposes of  
11 billing.

12 Q Let's just talk about that minute of use that goes  
13 over it. Okay? That exact call. It's your position that --  
14 and that's a switched access -- that's an arrangement you buy  
15 out of BellSouth's switched access tariff here in Florida;  
16 correct?

17 A It was provisioned that way, but the billing will not  
18 necessarily be that way. As I mentioned earlier, the billing  
19 factors will allocate a portion of that to the local arena and  
20 a portion to the access arena. What is left, you know, after  
21 you have applied those billing factors is indeed a switched  
22 access arrangement. So that facility, you know, that exact  
23 facility carrying that call has commingled traffic on it.

24 Q The way this dispute arose is because BellSouth  
25 projected the factors that you were sending it; correct?

1           A     Yes, but it was again based on the interpretation  
2 here. You refused to allow -- essentially, you would have --  
3 the outcome that you would seek here would be that any traffic  
4 sent over a facility originally provisioned to support its toll  
5 network cannot be called local even if it meets the definition  
6 of local traffic in our interconnection agreement, i.e.,  
7 originates and terminates within the LATA.

8           Q     Another name for a facility originally provisioned to  
9 support its toll network is a switched access arrangement;  
10 correct?

11          A     Yes, but I would qualify again that that -- that part  
12 that supports the local traffic is a local arrangement, not a  
13 switched access arrangement.

14          Q     Let's try an easy one. I think we can agree that if  
15 traffic is not defined by the parties in their agreement as  
16 local traffic, that it's generally transported and terminated  
17 at switched access rates; correct?

18          A     Yes.

19          Q     And local reciprocal compensation rates are set forth  
20 in parties' interconnection agreements; right?

21          A     Correct.

22          Q     And, for example, the reciprocal compensation rates  
23 that AT&T and BellSouth agreed to for local traffic and the way  
24 that they defined it are set forth in your interconnection  
25 agreement with BellSouth; right?

1 A Yes.

2 Q And switched access rates that apply to nonlocal  
3 traffic, those are set forth in switched access tariffs;  
4 correct?

5 A Yes.

6 Q Now, I want to talk for a moment about the  
7 1997 interconnection agreement between BellSouth and AT&T.  
8 Now, that agreement provided that whether traffic was deemed  
9 local traffic was determined by how the originating carrier  
10 billed its end user; correct?

11 A Yes.

12 Q AT&T didn't arbitrate that issue with BellSouth back  
13 in 1997. It agreed to that definition; right?

14 A I do not believe it was a subject of arbitration, but  
15 it's subject to check.

16 Q Okay. Fair enough. Under the 1997 agreement, if the  
17 originating carrier billed its end user for a toll intraLATA  
18 call, then it had to pay the terminating carrier switched  
19 access charges rather than reciprocal compensation rates;  
20 correct?

21 A Yes.

22 Q So just carrying that and putting names on who those  
23 folks are, if an AT&T local customer made an intraLATA toll  
24 call to a BellSouth customer and AT&T billed its customer toll  
25 rates, then AT&T would pay BellSouth switched access rates, not



1 recip comp rates; right?

2 A That's how that provision would work, yes.

3 Q You're familiar with the definition of local traffic  
4 that's in the parties' current interconnection agreement in  
5 Mississippi, aren't you?

6 A Yes, sir.

7 Q And that, I reproduced it up there on the easel,  
8 that's set forth, I believe, in one of the -- Exhibit 5 to  
9 Mr. Peacock's testimony. And that states that local traffic  
10 means any telephone call that originates and terminates in the  
11 same LATA. Do you see that?

12 A Yes.

13 Q We can agree, I think, that that's a LATAwide  
14 definition of local traffic, can't we?

15 A That's a beautiful thing.

16 Q And we can also agree, it doesn't have any  
17 exceptions, does it?

18 A No exceptions.

19 Q Okay. Now, we'll get to your reasons in a minute,  
20 and you've talked about them some already this morning. But  
21 your testimony in this case is that the parties' definition of  
22 local traffic in Florida agreement with this expressed  
23 exclusion there that we've talked about means the exact same  
24 thing as the Mississippi definition; correct?

25 A Not exactly because of the VOIP type calls and the

1 ISP type calls that we've mentioned before. Those are calls  
2 now and technology now, you know, that is being addressed by  
3 different FCC and state commissions, and so we had to address  
4 those types of calls.

5 Q The interconnection agreement addresses ISP traffic  
6 specifically in a different part of the agreement; correct?

7 A That is true.

8 Q And it addresses VOIP calls in a separate section;  
9 correct?

10 A I believe the VOIP is within the sections we've  
11 referenced here that interrelates back to the local traffic.

12 Q In a separate section --

13 A Yes.

14 Q -- from the definition of local traffic; correct?

15 A Yes.

16 Q And so your position though is that under the Florida  
17 agreement that all calls that originate -- and let's take -- so  
18 we don't have to quibble about this now, we can get back to it  
19 later, let's take ISP traffic and VOIP transmissions out of the  
20 equation for a second. Excluding those, your testimony is that  
21 under the Florida definition all calls that originate and  
22 terminate in the same LATA are local; correct?

23 A Yeah, with the Florida agreement, the way it's  
24 structured today, I would say that it's the same as Mississippi  
25 except for the calls that a FCC or state commission would deem

1 as access and not fit my local traffic definition. So there  
2 would be the two types of traffic or two types of calling  
3 protocols, however you want to look at it, that would have to  
4 be excluded from this Mississippi definition. And so that's  
5 why you see the change in the language and why we agreed to the  
6 change was to account for those excluded calls.

7 Q Now, the reason that you say that calls -- in the  
8 Florida agreement, that calls originated or terminated through  
9 switched access arrangements means switched access traffic is  
10 because that term "switched access traffic" is specifically  
11 defined in Section 5.3.3; correct?

12 A Yes.

13 Q Can you look at Exhibit 1 to your direct testimony,  
14 Page 7 of that exhibit?

15 A Okay.

16 Q That's a portion of the interconnection agreement  
17 between BellSouth and AT&T; correct?

18 A Yes.

19 Q And if you go down to the part about two-thirds of  
20 the way down titled, "Definitions and Acronyms," do you see  
21 that?

22 A Yes, I do.

23 Q Okay. Can you read that first sentence that begins,  
24 "For purposes"?

25 A "For purposes of this agreement, certain terms have

1 been defined in the body of the agreement to encompass meanings  
2 that may differ from, or be in addition to, the normal  
3 connotation of the defined word."

4 Q Can you also read into the record -- I think it's the  
5 second to last sentence that starts, "A defined word"?

6 A "A defined word intended to convey its special  
7 meaning is capitalized when used."

8 Q Now, the term "switched access traffic," that's  
9 defined right at the beginning of Section 5.3.3; correct?

10 A Yes.

11 Q And every time it's used, that term, it's capitalized  
12 in that section; correct?

13 A It appears to be, yes.

14 Q And I think we can agree that the term "switched  
15 access traffic" does not appear in Section 5.3.1.1; correct?

16 A The term, no.

17 Q And can we also agree that the term "switched access  
18 arrangement" that appears in 5.3.1.1 is not capitalized?

19 A It is not capitalized.

20 Q And we can also agree, can we not, that the term  
21 "switched access arrangement" is not defined anywhere in the  
22 interconnection agreement?

23 A It is not.

24 Q And doesn't appear, in fact, anywhere else in the  
25 interconnection agreement, does it?

1 A Correct.

2 Q Now, you testified in North Carolina -- I think you  
3 alluded in a response to a different question I asked you  
4 earlier this morning that you were familiar with the term  
5 "switched access arrangements" before you saw this contract  
6 language; right?

7 A Yes.

8 Q And your testimony in North Carolina was that you  
9 understood that a switched access arrangement was a facility;  
10 correct?

11 A Yes.

12 Q And you testified that you knew that switched access  
13 arrangements were offered by tariffs; right?

14 A Yes.

15 Q And you're aware, aren't you, that there's different  
16 types of switched access arrangements: Feature Group A,  
17 Feature Group B, et cetera?

18 A Yes.

19 Q Can we agree that the difference between the types of  
20 switched access arrangements are the technical characteristics,  
21 for example, where it's connected to BellSouth's switch and  
22 also how the end user would access them in originating calls?

23 A Generally, you know, there are many services that can  
24 be, you know, defined, you know, Feature Group A, B, C, D, you  
25 know, and it does help determine how the connections were set

1 up. But again, how you ultimately bill gets back to the  
2 traffic that rides over those facilities. So whether you  
3 ordered it as switched access or ordered it as local  
4 interconnection, in the end it is the billing -- the traffic  
5 that will determine the billing. Even on my local  
6 interconnection trunks that I order today, if I provide 1  
7 percent as access, then 1 percent of those facilities get  
8 billed per the switched access tariff.

9           COMMISSIONER DEASON: Let me ask a question at this  
10 point. When you order an access arrangement, do you designate  
11 if it's the traffic that flows through that arrangement is to  
12 be primarily local or is to be primarily access? Or how do you  
13 do that?

14           THE WITNESS: The facilities themselves, you know,  
15 are ordered -- there is a presumption that the traffic will be  
16 predominantly interstate, for instance, or intrastate, and so  
17 you would provide a PIU. The PLU, the percent local usage, is  
18 not part of the provisioning of the facility itself because  
19 that is determined by the traffic. Traffic changes every month  
20 and so you have a process in place that looks at the traffic  
21 that indeed you are sending to the carrier and develops a mix  
22 and that mix drives the actual billing.

23           So, in other words, whether I had said it's an  
24 interstate facility, in the end, we look at the traffic. And  
25 if the traffic said, well, you know, you had intrastate on it,

1 then the billing will adjust. So regardless of how I ordered  
2 the arrangement or the trunk or whatever, it's the traffic that  
3 will drive the ultimate billing of that arrangement.

4 COMMISSIONER DEASON: So what is the significance of  
5 the term "switched access arrangement" in the contract if it  
6 all depends upon how that arrangement -- the traffic that flows  
7 through that Internet arrangement -- why don't you just use the  
8 term "interconnection arrangement" as opposed to "switched  
9 access arrangement"? I'm trying to understand if there's  
10 significance to the term "switched access arrangement."

11 THE WITNESS: Again, I'm going from Mississippi now  
12 into eight other states to negotiate language that, you know --  
13 and I want LATAwide local, okay. And so when provisions are  
14 being put on the table to say, well, we need to address VOIP,  
15 you know, we need to be able to account for these exclusions,  
16 how do we do that? That was the language that was proposed,  
17 that was the language I spoke with Mr. Peacock about the  
18 BellSouth intent, that I was instructed that the intent was to  
19 only identify the exclusion calls because then that changes  
20 your mix of traffic. That is going to affect the billing.  
21 Okay.

22 On these facilities that were ordered off of my toll  
23 network, these so-called switched access arrangements, the  
24 traffic is going to ultimately determine the jurisdiction of  
25 the billing. Okay.

1           COMMISSIONER DEASON: In general, simple terms can I  
2 boil this down to, is your position that it is the nature of  
3 the traffic, the origination and termination of a call, that  
4 traffic which determines what compensation rate should apply,  
5 and it's BellSouth's position that it is through what type of  
6 an access arrangement that that traffic flow determines the  
7 compensation rate? Or is that too --

8           THE WITNESS: Well, no. You're actually pretty close  
9 there. From an AT&T perspective, you're absolutely right. It  
10 is the jurisdiction of the traffic that will drive the  
11 compensation about the traffic and the arrangements, the  
12 facility arrangements.

13           BellSouth agrees with that except if it's a -- if it  
14 was coming off your traditional toll network, their position  
15 now is that's the one exception and you can't call that local  
16 traffic at all, anytime, no way, ever, see you later.

17           COMMISSIONER DEASON: Okay. I'll ask the same  
18 question to a BellSouth witness at the appropriate time.

19           COMMISSIONER DAVIDSON: I have a related follow-up.  
20 Your chart which sets forth amounts allegedly overbilled and  
21 credit amounts has a -- the most current total through  
22 December 2. It claims a credit amount of \$6,961,545 that AT&T  
23 alleges it was overbilled by BellSouth. These are basically an  
24 overbilling of switched access rates.

25           Is that amount something that AT&T then overbilled to



1 its customers and would be refunding to its customers if the  
2 credit was issued?

3 THE WITNESS: Not necessarily. First of all, right  
4 now this is just cutting into margins. That's not going to  
5 affect the pricing plans, et cetera. Obviously if my expense  
6 is high, that's going to limit the pricing plans, but this is  
7 not necessarily subject to some kind of flow-through. I mean,  
8 I don't have a mechanism to really flow this through. The  
9 presumption here is that my business units develop their  
10 pricing plans assuming they had this capability. And so I'm  
11 fighting to keep that. I mean, that's what they've assumed  
12 already in their pricing.

13 COMMISSIONER DAVIDSON: Thanks. And one follow-up on  
14 that. Do you recall, or if you can address this, when did AT&T  
15 receive the first bill under the October 26, 2001  
16 interconnection agreement which would have had an amount  
17 relating to 5.3.1? Did you get a bill in September -- I'm  
18 sorry, November, December?

19 THE WITNESS: Well, while this agreement was signed  
20 in October of 2001, you know, at that point we were kind of at  
21 that, you know, understanding of LATAwide local. We knew where  
22 we were headed. So, I mean, the effect of Florida billing, you  
23 know, would have been in, like, an October time frame. What  
24 happened is AT&T and BellSouth did have an agreement per se  
25 that limited, and it's already on the record here, that limited

1 reciprocal compensation back to July of 2001 because we had the  
2 retroactive clauses.

3 COMMISSIONER DAVIDSON: Well, let me get just right  
4 to the question. My question is, did AT&T make any payments  
5 under this October 2001 interconnection agreement specifically  
6 relating to Paragraph 5.3.1 that were consistent with  
7 BellSouth's understanding of the agreement, or with the very  
8 first bill did AT&T protest and say, you all have got it wrong,  
9 you're overbilling us?

10 THE WITNESS: Once we agreed to the language and  
11 filed is when I instructed our factor people to increase the --  
12 to develop the PLU to encompass all of this traffic. At the  
13 time we proposed that change to BellSouth, it went into  
14 dispute. So there was never any -- the billing continued to be  
15 the way it had always been, and AT&T has a policy of always  
16 paying our bills. So what we do is do a pay and dispute, so --

17 COMMISSIONER DAVIDSON: When was the first dispute?

18 THE WITNESS: Well, the dispute was in September of  
19 '01 is when the actual dispute was filed.

20 COMMISSIONER DAVIDSON: Thanks.

21 COMMISSIONER DEASON: Let me ask a follow-up question  
22 on that. I know it's your position also that since you have  
23 paid those amounts in dispute and that if you prevail in your  
24 position that you're seeking recovery of interest carrying  
25 costs on that at the rate of one and a half percent per month,

1 which equals 18 percent per year. Is that an amount which is  
2 contemplated within the contract?

3 THE WITNESS: Yes, it is.

4 COMMISSIONER DEASON: That's a pretty good return on  
5 your investment in this day. I understand why you want to go  
6 ahead and pay.

7 BY MR. SHORE:

8 Q Mr. King, how do you determine the percent local  
9 factor you talked about? That's based on how local is defined  
10 in the agreement; correct?

11 A Yes.

12 Q And you define it in this agreement as anything that  
13 originates and terminates in the same LATA; right?

14 A That is, originate by my facilities -- as a  
15 facilities-based local customer, yes.

16 Q And BellSouth disagrees with that, or I guess we  
17 would be back in Atlanta today, at least the folks on this side  
18 of the --

19 A What? You disagree only to the extent if I decide to  
20 send that call over a switched access arrangement per se, and  
21 I --

22 MR. SHORE: Let me ask to pass out and identify as  
23 the next exhibit a portion of BellSouth's switched access  
24 tariff here in Florida.

25 COMMISSIONER DEASON: Mr. Shore, do you wish to have

1 this identified?

2 MR. SHORE: I would, yes, please. It would be  
3 identified as the next numbered exhibit in sequence.

4 COMMISSIONER DEASON: Exhibit 14.

5 MR. SHORE: Thank you.

6 (Exhibit 14 marked for identification.)

7 BY MR. SHORE:

8 Q Mr. King, I've given you a portion of BellSouth's  
9 switched access tariff that's in effect here in Florida today.  
10 Do you have that before you?

11 A Yes, I do.

12 Q And I think maybe we've covered this already, but  
13 I'll be honest with you, I'm getting a little bit confused with  
14 some of the testimony. But can we agree that AT&T purchases  
15 switched access arrangements out of this tariff in Florida  
16 today?

17 A Yes. The part of our network that supports switched  
18 access traffic would be paid for using the rates, terms, and  
19 conditions of this tariff.

20 Q And the calls that are in dispute, the minutes of use  
21 that are in dispute in this case, they're going over the same  
22 facilities that you purchase out of this tariff; correct?

23 A Yes.

24 Q Now, let me direct your attention to Section E6.1.1.  
25 That's on Page 1, and it's titled, "BellSouth Switched Access

1 Service Arrangements and Manner of Provision." Do you see  
2 that?

3 A Yes.

4 Q And that section describes the different types of  
5 switched access service arrangements offered in the tariff;  
6 correct?

7 A Yes, it is.

8 Q And the switched access service arrangements  
9 described here in the tariff, those are what you testified a  
10 little bit earlier that you understood switched access  
11 arrangements were; correct?

12 A Yes.

13 Q And I'm done with that exhibit, Mr. King. You're  
14 familiar, aren't you, with Section 252(i) of the 1996 Act that  
15 allows an ALEC to opt in to terms of another ALEC's agreement?

16 A Generally, yes.

17 Q Are you aware that in interpreting Section 252(i)  
18 that the FCC has said that when an ALEC seeks to adopt a term  
19 from another agreement, the ILEC can require that it take all  
20 terms that are legitimately related to that term?

21 A Yes.

22 MR. SHORE: Mr. Chairman, I just want the witness to  
23 read something into the record, and I've got one copy. I don't  
24 intend to mark it as an exhibit. Can I approach the witness  
25 and have him read this? I'll show it to counsel first.

1 COMMISSIONER DEASON: Sure.

2 BY MR. SHORE:

3 Q Mr. King, I'm going to show you the United States  
4 Supreme Court decision in the Iowa Utility Board case dated  
5 January 25, 1999. And I want to refer to a section where the  
6 Court's discussing Section 252(i) of the Act, and just ask you  
7 to read into the record that sentence that I've highlighted.

8 A "The Commission has said that an incumbent LEC can  
9 require a requesting carrier to accept all terms that it can  
10 prove [\*\*\*47] are legitimately related to the desired term.  
11 First Report and Order (P 1315)."

12 Q Thank you.

13 A So that means Section 5.3.3 of our agreement that  
14 interrelates to 5.3.1.1 would also be subject to being combined  
15 or interrelated.

16 MR. SHORE: We're going to talk about that. Thanks.  
17 I'd like to distribute now and ask to be identified as  
18 Exhibit 15 a portion of the interconnection agreement between  
19 BellSouth and ICG Telecom Group here in Florida.

20 (Exhibit 15 marked for identification.)

21 BY MR. SHORE:

22 Q Mr. King, can you turn to Section 13 under the  
23 general terms and condition? It's on Page 13 of the general  
24 terms if you look at the top right-hand corner. And I'd ask  
25 that you look at the Section 13 titled, "Adoption of

1 Agreements." Do you see that?

2 A Yes.

3 Q Can you read the first two sentences of that  
4 Section 13 into the record, please.

5 A "BellSouth shall make available, pursuant to 47 USC  
6 252 and the FCC rules and regulations regarding such  
7 availability, to ICG any interconnection, service, or network  
8 element provided under any other agreement filed and approved  
9 pursuant to 47 USC 252, provided a minimum of six months  
10 remains on the term of such agreement." You wanted this  
11 other -- next sentence as well?

12 Q The next sentence as well, please.

13 A "The parties shall adopt all rates, terms and  
14 conditions concerning such other interconnection, service or  
15 network element and any other rates, terms and conditions that  
16 are legitimately related to or were negotiated in exchange for  
17 or in conjunction with the interconnection, service or network  
18 element being adopted."

19 Q Now, that second sentence, I guess there's a couple  
20 of things, but one thing that it says is that if ICG were to  
21 adopt a term from another ALEC's agreement with BellSouth, then  
22 it would also have to take all terms legitimately related to  
23 the terms it wants; correct?

24 A Yes.

25 Q And that's consistent with the FCC rule that we just

1 looked at where the Supreme Court was citing the rule; right?

2 A Subject to lawyers saying so, yes.

3 MR. SHORE: Let me hand you another exhibit that I'd  
4 ask to be identified as Exhibit 16?

5 COMMISSIONER DEASON: Sixteen.

6 MR. SHORE: Exhibit 16 for purposes of the record is  
7 excerpts from the current interconnection agreement in Florida  
8 between BellSouth and Sprint.

9 (Exhibit 16 marked for identification.)

10 BY MR. SHORE:

11 Q Mr. King, if you'd look at the last page, the last  
12 page of my exhibit, it's the signature page from the  
13 Sprint/BellSouth interconnection agreement. Do you see that?

14 A The last page?

15 Q Yes, sir.

16 A Yes.

17 Q Okay. And that's -- can you see there that this  
18 agreement was executed on November 5th and 6th, 2001?

19 A Yes.

20 Q Okay. And that was about ten days or so, two weeks  
21 after the BellSouth/AT&T interconnection agreement that's the  
22 subject of this dispute; correct?

23 A Correct.

24 Q Now, I'll ask you to turn to Section 17 of the  
25 general terms and conditions of the Sprint agreement which, I



1 think, is the fifth page of my exhibit.

2 A The fifth page of the exhibit --

3 Q Yeah, I think so.

4 A -- or does it say "Page 5" on the bottom?

5 Q No. Up at the top it says, "General Terms and  
6 Conditions, Page 18."

7 A Okay.

8 Q And if you look down to Section 17.1, it's labeled  
9 "Most Favored Nations" clause. Do you see that?

10 A Yes.

11 Q Can we agree that the first two sentences there are  
12 identical to the section from the ICG agreement we just read  
13 except for the fact in the second sentence the Sprint agreement  
14 uses the word "interrelated" in lieu of "legitimately related"?

15 A That is a change between the two, yes.

16 Q And can we agree that if Sprint, that has this  
17 agreement with BellSouth, was looking at another carrier's  
18 agreement to determine whether it wanted to adopt any of the  
19 provisions from that agreement, one way it would know whether  
20 BellSouth was going to take the position that it would have to  
21 take other terms would be if the term it was looking at  
22 expressly said that it was interrelated to another term? Can  
23 we agree on that?

24 A It's not a capital "I," so I can't say that I can  
25 agree or not agree. Again, I'm not a lawyer, so you're asking

1 for an opinion here.

2 Q I'm just asking for your opinion, not a legal  
3 opinion. And the Sprint agreement here says that if Sprint  
4 wants a term from another agreement, it agrees to take all  
5 terms that are interrelated. Do you see that?

6 A Yes.

7 Q Okay. Now, if Sprint's looking at another agreement  
8 and sees a term, one way it would know if BellSouth is going to  
9 take the position that you have to take another agreement is if  
10 that other agreement expressly says this term is interrelated  
11 to Term B; true?

12 A I don't construct the interconnection agreements.  
13 I'm probably not the right person to ask some of these  
14 questions to. You know, obviously we've already identified a  
15 section that does say you're interrelated. I guess I would  
16 kind of flip the question. Because one section doesn't say  
17 "interrelated," can a carrier adopt just that section, or  
18 because another section says I'm interrelated to this section  
19 that doesn't have that term "interrelated" in it, can they  
20 ignore this other interrelated section?

21 I think what you had in the original ICG one, you  
22 know, was this legitimate -- you know, if it's legitimate, then  
23 it belongs together. I think obviously the way the language in  
24 our agreement that does discuss in 5.3.3 that it is  
25 interrelated would suggest that BellSouth, if a carrier wanted

1 to come along, you have to take those two sections of the  
2 tariff together.

3 Q Okay.

4 A Yes.

5 Q I think right at the end there you did answer my  
6 question. Thank you.

7 A Okay.

8 Q Now, you're aware that it was BellSouth -- in your  
9 contract, Section 5.3.3 that we talked about, you're aware that  
10 it was BellSouth that proposed the language at the end of that  
11 section that says it's interrelated to 5.3.1.1, aren't you?

12 A Yes, I believe it was BellSouth that put that  
13 language on the table.

14 Q I want to ask you some questions about your rebuttal  
15 testimony where you talk about BellSouth's alleged intent in  
16 proposing this definition and exception. First off, you didn't  
17 participate in any of the negotiations or conference calls with  
18 BellSouth before the parties reached an agreement on the terms  
19 at issue here, did you?

20 A I was not in direct communication with BellSouth on  
21 it, no.

22 Q Before the parties reached agreement on the  
23 definition of local traffic, you never had any discussions with  
24 anybody at BellSouth regarding the meaning of that definition  
25 and its exception; correct?

1 A Not directly with BellSouth on that meaning, no.

2 Q Now, your understanding of BellSouth's supposed  
3 purpose in proposing the local traffic definition at issue here  
4 was based upon what Mr. Peacock told you; right?

5 A Correct.

6 Q And you know that Mr. Peacock, he was AT&T's lead  
7 negotiator -- I think that's what his title is -- is that  
8 right?

9 A Yes.

10 Q You're aware that he would bring in to the  
11 negotiations with BellSouth other -- or strike the word  
12 "other." He would bring in experts within AT&T to deal with  
13 certain issues as those issues were being negotiated with  
14 BellSouth; right? You were -- that was what transpired?

15 A That can happen, yes.

16 Q Okay. You were not brought in to those negotiations  
17 with BellSouth at any time; correct?

18 A Well, not prior to executing. Subsequently, yes,  
19 obviously when we saw that we had a difference of opinion.

20 Q Up until the spring of 2001 Greg Follensbee was  
21 AT&T's local interconnection expert and the one who negotiated  
22 local interconnection issues with BellSouth; right?

23 A Yes.

24 Q And you're aware -- he left AT&T in the spring of  
25 2001; correct?

1 A Yes.

2 Q Are you aware that BellSouth and AT&T arbitrated some  
3 issues over the terms of their 2001 interconnection agreement  
4 here in Florida, aren't you? I think you referred to it  
5 earlier.

6 A Yes.

7 Q And AT&T filed its petition for arbitration, would  
8 you agree, subject to check, in June of 2000?

9 A Subject to check, yes.

10 Q You state in your rebuttal testimony on Pages 6 and  
11 7 that before AT&T filed its arbitration petition, Mr. Peacock  
12 told you that BellSouth had agreed to apply local reciprocal  
13 compensation rates to all interLATA traffic so AT&T wouldn't  
14 have to arbitrate to try to get that; right?

15 A Yes.

16 MR. SHORE: Let me hand you what I'd ask to be  
17 identified as the next exhibit, and that is AT&T's arbitration  
18 petition filed with this Florida Commission on June 16, 2000,  
19 along with Attachment 3 to the proposed interconnection  
20 agreement that AT&T attached to its arbitration petition.

21 COMMISSIONER DEASON: Exhibit 17.

22 (Exhibit 17 marked for identification.)

23 BY MR. SHORE:

24 Q Mr. King, let me ask you to turn to Section 6.1.1 of  
25 Attachment 3 to the language that AT&T filed with its petition,

1 and it's on Attachment 3, Page 30.

2 A I'm with you.

3 Q Are you there?

4 And that language says that the parties would pay  
5 each other recip comp for all intraLATA traffic, just what  
6 Mr. Peacock told you the parties had agreed to; right?

7 A Which section again are you --

8 Q I'm in Attachment 3, Section 6.1.1. The language --

9 A Yes.

10 Q -- that AT&T filed along with its arbitration  
11 petition.

12 A Yes.

13 Q Okay. And that's consistent with what Mr. Peacock  
14 told you the parties agreed to; correct?

15 A Yes.

16 MR. SHORE: Okay. Now, I'd like to hand out  
17 BellSouth's response to your arbitration petition, along with  
18 the parallel portions of BellSouth's contract language that it  
19 filed with that response, and ask that that be identified as  
20 the next exhibit.

21 COMMISSIONER DEASON: 18.

22 (Exhibit 18 marked for identification.)

23 BY MR. SHORE:

24 Q Mr. King, can you turn to Page 3 of BellSouth's  
25 response? You see there that paragraph numbered 1?

1 A Yes.

2 Q Okay. And then the second sentence there says,  
3 "Attached to its response, and incorporated herein by reference  
4 as fully as if set out in its entirety, BellSouth has included  
5 the following." And you go down to letter B, it says, "A copy  
6 of the true and correct proposed interconnection agreement that  
7 indicates the areas of dispute and the areas of agreement.  
8 While AT&T filed what it styled as the proposed interconnection  
9 agreement, the parties agreed at the outset of the negotiations  
10 that BellSouth would maintain the official version of the  
11 interconnection agreement throughout negotiations. The version  
12 filed by AT&T with its petition contains misstatements of the  
13 parties' agreement." Do you see that?

14 A Yes, I see that.

15 Q Okay. Now, can you turn to the Attachment 3 that was  
16 filed along with BellSouth's response to your arbitration  
17 petition? And it's about -- I don't know. It begins about a  
18 third of the way or so through the exhibit. And if you just  
19 look at the cover page of Attachment 3 first.

20 A Okay.

21 Q Okay. You see where it says "DISAGREE" all in caps  
22 there on that cover page of Attachment 3?

23 A I guess I'm not on the same --

24 Q It's Page 1 of Attachment 3. It's numbered 1, I'm  
25 sorry.

1 A I don't see the "DISAGREE." I see -- oh, yes. I'm  
2 sorry. Yes. 5.3.1.1 and 5.3.1.7.

3 Q Right. Okay. Now, can you turn to Page 20 of this  
4 Attachment 3? Do you see Section 5.3.1.1?

5 A Yes.

6 Q And that section defines local traffic as a call that  
7 originates and terminates in the same LATA and is billed by the  
8 originating party as a local call. Do you see that?

9 A Yes.

10 Q Okay. That was the same definition the parties had  
11 back in their 1997 agreement that we talked about earlier;  
12 correct?

13 A Yes, roughly. Yes.

14 Q Now, did Mr. Peacock ever tell you that in  
15 BellSouth's response to AT&T's petition and the interconnection  
16 agreement attached to its response that BellSouth made clear  
17 that it disagreed with the LATAwide local traffic definition  
18 set forth in the contract language that AT&T filed along with  
19 its petition?

20 A You'd have to ask Mr. Peacock that question. You  
21 asked me if he had told me?

22 Q Yes, sir.

23 A I was unaware at the time that we, you know, had the  
24 dispute. I'm sorry. Rephrase your question again.

25 Q Well, let me just ask it again. Did Mr. Peacock ever



1 tell you that in BellSouth's response to AT&T's arbitration  
2 petition and the interconnection agreement Attachment 3 that  
3 we're looking at here that BellSouth made it clear that it  
4 disagreed with the LATAwide local traffic definition set forth  
5 in the agreement AT&T attached to its petition? Did he ever  
6 tell you that?

7 A At the time of this filing, I'm unaware that we had  
8 the disagreement. I'd have to get all my -- you know, the  
9 timing straight because obviously we felt we had an agreement.  
10 And it was not until we started, I think, a couple of days  
11 before filing some of these that it was determined that, you  
12 know, we saw that there was a, you know, potential conflict. I  
13 believe we thought you were going to file one thing and you  
14 ended up filing something different that we weren't expecting  
15 to see. So that would be a question for Mr. Peacock, but  
16 I -- prior to -- let me clarify here if I can.

17 Whether an issue would be arbitrated or not in the  
18 form of we do disagree and it should become part of an  
19 arbitration, you know, issue, no, we had not made it an  
20 arbitration issue.

21 MR. SHORE: Mr. Chairman, if I can maybe ask for your  
22 assistance in getting the witness to answer my question.  
23 Certainly if he feels some explanation is necessary, I'd  
24 understand that, but I still don't believe he's answered my  
25 question.

1 COMMISSIONER DEASON: I think he has. He says he  
2 wasn't aware. That's the way I interpret it.

3 MR. SHORE: Okay. Fair enough.

4 COMMISSIONER DEASON: The witness can be rather  
5 lengthy in his answers.

6 BY MR. SHORE:

7 Q AT&T never amended its arbitration petition to make  
8 the definition of local traffic an issue for this Commission to  
9 decide, did it?

10 A Specific to Florida, I'm unaware that we did. I'm  
11 also -- I believe we had the LATAwide case going on as well,  
12 which, I believe, may have been part of that reason. I'm not  
13 sure.

14 Q When you say "LATAwide case," you're referring to  
15 this Commission's generic reciprocal compensation docket?

16 A Right.

17 Q So you're aware then in that case that this  
18 Commission rejected AT&T's proposal to use a LATAwide  
19 definition of local traffic as a default; correct? You're  
20 aware of that?

21 A I'm aware of that.

22 Q Now, you state in your testimony on Page 7, it's your  
23 rebuttal testimony, that Mr. Peacock told you that following  
24 the arbitration filings that BellSouth had proposed a new  
25 definition of local traffic, and that it did so in the context

1 of negotiating the unresolved issues of compensation for ISP  
2 traffic and compensation for VOIP calls; right?

3 A Yes.

4 Q BellSouth first proposed the LATAwide definition of  
5 local traffic and its exclusion for calls carried over switched  
6 access arrangements in May of 2001; correct?

7 A Subject to check.

8 Q In your rebuttal testimony you say that Mr. Peacock  
9 told you that BellSouth wanted the exclusion for calls carried  
10 over switched access arrangements, and you've said it today, in  
11 order to protect BellSouth in the event that a state commission  
12 or the FCC determined that ISP traffic that might stay within a  
13 LATA was interLATA traffic and also from a possible state  
14 commission or FCC decision that voice over Internet protocol  
15 calls were interLATA; correct?

16 A Would be subject, yes, to the jurisdiction of -- that  
17 interLATA calls fall under, which is switched access traffic.

18 Q You knew, didn't you, sir, that BellSouth's position  
19 in its arbitration with AT&T was -- in fact, BellSouth's  
20 position always had been that VOIP calls should be treated as  
21 interLATA; you're aware of that?

22 A Yes. I'm aware that that was your position and that  
23 that didn't change, that the originating and terminating points  
24 may have indeed been within a LATA.

25 Q You were aware of BellSouth's position back in May of

1 2001 as well; correct?

2 A Yes.

3 Q And you also know that BellSouth's position regarding  
4 ISP traffic always has been that such traffic was not subject  
5 to reciprocal compensation payments; correct?

6 A Yes.

7 Q And you're also familiar, weren't you, in May of 2001  
8 with the FCC's April 2001 ISP order on remand?

9 A Yes.

10 Q And you knew, didn't you, that the order, the FCC  
11 order affirmed the FCC's conclusion that all ISP traffic is not  
12 subject to recip comp requirements of Section 251(b)(5) of the  
13 Act?

14 A You may have to, you know, give me the specific  
15 language as to how you've paraphrased it, but generally it  
16 defined its own class of service and compensation mechanism for  
17 that traffic.

18 Q My question was, you're aware, were you not, in May  
19 of 2001 that in April the FCC in its ISP order on remand  
20 concluded that ISP traffic -- all ISP traffic was not subject  
21 to the reciprocal compensation requirements of Section 251 of  
22 the Telecom Act?

23 A Right.

24 Q Now, if traffic is deemed interstate, you told us  
25 earlier --

1 COMMISSIONER DEASON: Mr. Shore, let me -- how much  
2 more do you have for this witness?

3 MR. SHORE: Ten or 15 minutes.

4 COMMISSIONER DEASON: We're going to go ahead and  
5 take a 10-minute recess at this time. We'll take a ten-minute  
6 recess.

7 (Brief recess.)

8 COMMISSIONER DEASON: Call the hearing back to order.

9 BY MR. SHORE:

10 Q Just a few perhaps, Mr. King. The interconnection  
11 agreement between BellSouth and AT&T, the current  
12 interconnection agreement, that has a provision that  
13 specifically addresses the treatment of ISP traffic; correct?

14 A Yes.

15 Q Okay. And it also has a provision that specifically  
16 addresses the treatment of VOIP transmissions; correct?

17 A Yes.

18 Q And that section is Section 5.3.3 of Attachment 3;  
19 right?

20 A Yes.

21 Q And what the parties did with respect to VOIP calls  
22 in Section 5.3.3 is that they agreed to disagree, but that they  
23 would also agree to abide by any FCC orders or rules regarding  
24 the jurisdictional nature of VOIP transmissions; correct?

25 A Yes.

1 Q You said in your summary, Mr. King, that you're the  
2 person at AT&T responsible for all compensation issues with  
3 BellSouth?

4 A Yes.

5 Q I take it then one of the things you're evaluated on  
6 is how well you do minimizing the compensation that AT&T has to  
7 pay to BellSouth?

8 A Yes. The industry is a cost reduction industry, so,  
9 yes, we're trying to reduce cost.

10 MR. SHORE: That's all I have. Thank you, Mr. King.

11 COMMISSIONER DEASON: Staff.

12 CROSS EXAMINATION

13 BY MS. CHRISTENSEN:

14 Q Mr. King, I want to clarify just a few things in my  
15 mind. You agreed early on that switched access arrangements  
16 equals switched access facilities; is that correct?

17 A They are the facilities that support switched access  
18 traffic.

19 Q Okay. So you could basically read the Florida  
20 agreement language to say, except for those calls that  
21 originated or terminated through switched access facilities as  
22 established by the state commission and FCC; that would be a  
23 fair reading?

24 A Yes. You could -- I mean, the arrangements are the  
25 facilities, yes.

1 Q Okay. In those switched access  
2 arrangements/facilities, those are the types of facilities that  
3 are bought out of the BellSouth switched access service tariff;  
4 correct?

5 A It's kind of semantic obviously because how you  
6 provision, you know, the original order because you intend for  
7 predominantly to be switched access services or traffic on  
8 those facilities, so that's how it's provisioned because you're  
9 expecting all of it to come off of your tolled network. So  
10 technically, yes. But as I explained or tried to clarify  
11 earlier, to the extent that those facilities are commingled  
12 with local traffic, then the portion of billing is allocated to  
13 the local jurisdiction for your local traffic and the portion  
14 of the arrangement that is still access gets billed access. So  
15 I may have ordered it as switched access, but it's the traffic  
16 mix that will ultimately determine the billing of the facility.

17 Q However, the Florida agreement language doesn't have  
18 that clarifying meaning in it. It doesn't contain any  
19 clarifying language that says, except for those calls that  
20 originated or terminated through switched access arrangements,  
21 except for those that are billed as local traffic. I mean,  
22 there's no clarifying language in that contract, is there?

23 A It's only an arrangement that's switched access for  
24 that part of your -- that is supporting switched access traffic  
25 I guess is what I'm -- the way I'm trying to put, you know, my

1 own little spin, if you want to call it that. But if -- let's  
2 say that, you know, in this state they say that, you know, VOIP  
3 is indeed interLATA or interstate -- well, interLATA,  
4 intrastate interLATA, for instance, then I can -- what this  
5 says to me is that those calls, I cannot put them over a  
6 switched access arrangement and expect to allocate those calls  
7 to the local jurisdiction.

8 Q But you would agree looking at that language, that's  
9 not limited to just VOIP or ISP because it would have said  
10 that; correct?

11 A On its face, that stand-alone I would agree. But  
12 again, it is interrelated to another section.

13 Q But you're relying on the intent, what AT&T meant  
14 when they adopted that language; correct? That you're relying  
15 on what you intended that language to be?

16 A That in and of itself -- and I would not have agreed  
17 to that language in and of itself because, indeed, and you can  
18 even tell from the matrix that we have put together, BellSouth  
19 was allowing me to use switched access arrangements prior to  
20 this dispute to provide my local traffic. We were providing a  
21 percent local usage factor on these switched access  
22 arrangements well before this dispute ever arose.

23 Q Okay. So to read -- the language, to read it the way  
24 that you mean it, we would have to interpret the switched  
25 access arrangements to be caveated by how you bill the traffic?



1 A Correct.

2 Q And that's not a term or that caveat is not  
3 specifically stated in that contract language, is it?

4 A Well, the contract language is very clear as to what  
5 traffic jurisdiction gets billed to.

6 Q Right. But in this particular section, excluding the  
7 interrelated section, this particular section does not have a  
8 caveat that switched access arrangements is to be limited by  
9 how you bill that traffic; is that correct?

10 A Not by how you bill the traffic; right.

11 Q Okay. But to use AT&T's interpretation, you would  
12 have to have that interpretation in the meaning of switched  
13 access arrangements; correct?

14 A Yes, if I follow you correctly. I mean, I'm not  
15 sure. I mean, obviously, you can even look for those calls in  
16 that statement. Well, what are those calls? And what I'm  
17 trying to say is, is those calls are VOIP calls. Okay.  
18 BellSouth is saying -- and why doesn't it say "any calls"? It  
19 says "those calls." Well, which calls? It is those calls  
20 which we are saying are not local traffic.

21 MS. CHRISTENSEN: I have nothing further.

22 COMMISSIONER DEASON: Commissioners, any questions?

23 Redirect.

24 REDIRECT EXAMINATION

25 BY MS. CECIL:

1 Q Mr. King, I want to ask you some questions about an  
2 exhibit which we're going to have marked.

3 MS. CECIL: And, Commissioner Deason, I guess this  
4 will be Exhibit Number 19?

5 COMMISSIONER DEASON: That's correct.

6 MS. CECIL: Thank you.

7 (Exhibit 19 marked for identification.)

8 BY MS. CECIL:

9 Q Mr. King, if you would, turn to Page 22 of this  
10 exhibit. And I'll represent to you that this is Exhibit Number  
11 1 to your prefiled direct testimony, but please turn to --

12 MR. SHORE: Commissioner Deason?

13 COMMISSIONER DEASON: Yes.

14 MR. SHORE: If I can interrupt for a moment. I'm  
15 assuming that since this is redirect that this is somehow tied  
16 to a cross-examination question, and if I could just ask you to  
17 ask counsel for AT&T. If that's the case, I may have an  
18 objection. Certainly if it's not --

19 COMMISSIONER DEASON: Let's wait for the question.

20 And then once we hear the question, we'll know whether it was  
21 related to your cross.

22 BY MS. CECIL:

23 Q All right. Mr. King, Ms. Christensen asked you  
24 questions about caveating as to how billing would take place  
25 relative to the language in 5.3.1.1, and I believe Commissioner

1 Davidson also asked you some questions about how billing was  
2 accomplished. I'd like to direct your attention to  
3 Section 5.3.14, which is on Page 22 of the exhibit. Do you see  
4 that?

5 A Yes, I do.

6 Q Can you explain if this provision in the contract has  
7 anything to do with the billing of traffic that goes over  
8 switched access arrangements?

9 A 5.3.14, the percent local use factor, is indeed what  
10 determines the jurisdiction of the traffic for billing  
11 purposes, for compensation purposes.

12 Q Could you explain how the billing works?

13 A We basically measure our traffic that's on the  
14 network, develop the factor and provide that to BellSouth,  
15 which they in turn apply to their internal billing records when  
16 they submit their bill to AT&T. That would allow for,  
17 regardless of the so-called arrangement that was ordered, that  
18 your facilities get properly billed to the jurisdiction  
19 supporting the traffic.

20 Q If you look at the second sentence in 5.3.14, it  
21 states, "The application of the PLU will determine the amount  
22 of local minutes to be billed to the other party." And then  
23 the next sentence says, "For purposes of developing the PLU,  
24 each party shall consider every local call and every long  
25 distance call, excluding intermediary traffic." How have the

1 parties today interpreted this provision of the contract?

2 A Well, we've been utilizing it. We utilize it  
3 historically. Even today while we're under dispute it's still  
4 being used, it's just at a frozen level. So whether -- and  
5 it's being used against trunks that were ordered to primarily  
6 support switched access, and it's used on trunks to primarily  
7 support local interconnection.

8 Q Okay. If BellSouth's position is correct that  
9 anything that goes over switched access arrangement will be  
10 billed as switched access, would there be any need for  
11 Paragraph 5.3.14 to be in the agreement?

12 A Wouldn't be any need for it applicable to the  
13 so-called switched access arrangements.

14 Q Okay. Let's talk about Section 5.3.15, percent local  
15 facility.

16 A Okay.

17 Q Does that provision of the agreement have anything to  
18 do with how billing takes place between the parties in response  
19 to Ms. Christensen's caveat question?

20 A Yes. The two factors, both the PLU and this percent  
21 local facility, are essentially the same. The percent -- this  
22 gets back to my discussion that the percent of your traffic is  
23 what drives the weighting of the facility billing, and so  
24 essentially those factors will equal one another.

25 Q Okay. Then let's turn over to Page 23 of this same

1 exhibit, Section 5.3.16, percentage interstate usage. Does  
2 this provision have any impact on the billing between the  
3 parties?

4 A Well, yes. As I mentioned earlier, the process  
5 starts with -- when you identify all of our toll traffic, you  
6 have to sort it between intrastate and interstate. Obviously,  
7 local traffic is not interstate traffic, so you identify  
8 first the PIU. Once you have your intrastate bucket of  
9 minutes, you determine of that bucket of minutes what are your  
10 local minutes. So your PLU is actually applied against your  
11 intrastate PIU'd minutes.

12 Q Now, Mr. Shore asked you several questions about the  
13 Mississippi interconnection agreement and the definition of  
14 local traffic in that agreement. Do you remember those  
15 questions?

16 A Yes.

17 Q And the Mississippi agreement is there before you.  
18 How does BellSouth -- how has BellSouth been billing AT&T for  
19 traffic in Mississippi under that definition of local traffic?

20 A Well, when we increased our PLU factors, including in  
21 Mississippi, they also put those under dispute. So I'm  
22 technically in a dispute in Mississippi even though I have very  
23 clear language. So we're currently in a dispute resolution  
24 process there.

25 Q So are you saying that they're charging you switched

1 access rates for some traffic which is within the LATA in  
2 Mississippi also?

3 A Yes.

4 Q Now, Mr. Shore also asked you several questions about  
5 the FCC's determination in the April 27, 2001 order on remand  
6 for ISP traffic. Do you know whether the FCC in that decision  
7 determined that ISP traffic should be compensated at interstate  
8 levels -- rates?

9 A They did not order interstate rates, no.

10 Q And that was the position that BellSouth was  
11 advocating relative to ISP traffic, was it not?

12 A Yes.

13 Q Okay. Mr. Shore asked you several questions about  
14 what Mr. Peacock told you after BellSouth had filed their  
15 response to AT&T's arbitration petition. Do you remember those  
16 questions?

17 A Yes.

18 Q Did AT&T and BellSouth continue to negotiate the  
19 definition of local traffic after BellSouth filed its  
20 arbitration petition -- or its response to AT&T's arbitration  
21 petition?

22 A I believe we did, yes.

23 Q So the fact that there was not an amended arbitration  
24 petition filed by AT&T, that didn't mean the parties didn't  
25 continue to negotiate; is that correct?

1 MR. SHORE: I'm going to object to the leading nature  
2 of the redirect examination. That last question was --

3 COMMISSIONER DEASON: Could you rephrase that  
4 question, please?

5 MS. CECIL: Yes.

6 BY MS. CECIL:

7 Q AT&T and BellSouth continue to negotiate the  
8 definition of local traffic even though AT&T had not amended  
9 the petition; is that correct?

10 A Yes.

11 Q Okay. Mr. Shore asked you about a gentleman by the  
12 name of Mr. Follensbee. Do you remember that?

13 A Yes, I do.

14 Q And he said that he was involved in, I guess, the  
15 early interconnection negotiations between BellSouth and AT&T;  
16 is that correct?

17 A Yes.

18 Q And he said that Mr. Follensbee left AT&T. Do you  
19 remember that?

20 A Yes.

21 Q Where does Mr. Follensbee now work?

22 A BellSouth.

23 Q And in which organization?

24 A The interconnection, I believe.

25 MR. SHORE: That's not true, and I'm going to object

1 to that. That's not true.

2 COMMISSIONER DEASON: The witness is under oath.  
3 He's expressing his opinion and his belief, and you're not here  
4 to testify. If one of your witnesses has knowledge of that, I  
5 will allow you the ability to ask that question to your  
6 witness.

7 MR. SHORE: Fair enough. And I'll just object that  
8 there was no foundation and that she didn't ask him if he was  
9 aware, but I understand your ruling.

10 BY MS. CECIL:

11 Q Mr. King, did you work with Mr. Follensbee when he  
12 was at AT&T?

13 A Yes, I did.

14 Q Was Mr. Follensbee responsible for negotiating for  
15 AT&T the Mississippi interconnection agreement?

16 A Yes.

17 Q Commissioner Davidson also asked you some questions  
18 about when AT&T first received a bill from BellSouth under the  
19 interconnection agreement that we're talking about today.  
20 Could you explain in further detail how the billing works  
21 between AT&T and BellSouth for exchanging traffic?

22 A It gets back to some of my earlier discussion as  
23 well. But, you know, the factors that apply to the billing  
24 have to first be known and so those factors are provided.  
25 Today, it's done on a monthly basis so that the jurisdiction of



1 the calls can be known such that when BellSouth bills, you  
2 know, we know that the billing is proper.

3 Obviously, those factors became in dispute and so the  
4 billing subsequently became in dispute. But, I mean, it's that  
5 simple. You know, the factors are known. It's applied against  
6 the billing for that following month, which is done on arrears  
7 for switched access -- or the -- I'm sorry, for these  
8 components.

9 Q After the agreement was signed by the parties, what  
10 did you do relative to AT&T's PLU factor that it was sending to  
11 BellSouth?

12 A Prior to the -- I'm sorry.

13 Q After the agreement was signed, what did you do  
14 relative to communicating with BellSouth about the PLU factor?

15 A Well, we immediately requested an update in those  
16 factors and that was denied by BellSouth; hence, we went into  
17 dispute.

18 Q When you use the term "update the factors," what do  
19 you mean?

20 A Well, we had previously, prior to this language, even  
21 under the old interconnection agreement been utilizing switched  
22 access arrangements, as BellSouth uses this term, to support  
23 the delivery of local traffic. And as an example, our digital  
24 link product, we actually had many, many meetings with  
25 BellSouth probably in the '96, '97 time frame, and they agreed

1 to allow us to use and commingle over our long distance  
2 network, which is again why it's somewhat illogical for this  
3 new change in philosophy. You know, why would I give up  
4 something I had worked so hard to accomplish to be able to  
5 efficiently use our network to provide for both local and long  
6 distance services that we would just all of a sudden take  
7 products that we had placed over these, like, digital link and  
8 utilizing our so-called long distance network that I would all  
9 of a sudden just give that away?

10           It's a very big product for AT&T, a very, large local  
11 product for AT&T to serve some of our business customers. So  
12 obviously they're not looking -- as Mr. Shore mentioned, it's  
13 my job not to increase expense.

14           Q     Now, when you use the terminology that you updated  
15 the factor, did that mean that you increased the amount of  
16 local traffic that AT&T thought should have been billed at  
17 reciprocal comp rates?

18           A     Exactly.

19           Q     After the agreement was signed?

20           A     Yes. We at that point included the full intraLATA  
21 calls, not just the traditional seven- and ten-digit, you know,  
22 traditional BellSouth local calling area.

23           Q     Thank you. Commissioner Deason also asked you some  
24 questions about ordering switched access arrangements, and I  
25 believe there was also some discussion about, you know,

1 ordering facilities in general versus switched access  
2 arrangements. What type of facilities do you order from  
3 BellSouth? Is it only switched access arrangements?

4 A Well, no. We will order facilities, you know, to  
5 support local interconnection, to support, you know, switched  
6 access services. But, you know, as we mentioned, we commingle  
7 a lot of the traffic that goes over those facilities. The  
8 access tariffs that were provided to me by Mr. Shore are  
9 intrastate access tariffs. So they do govern interLATA traffic  
10 as well as intraLATA traffic that is indeed switched access  
11 traffic. And I think as we've made clear in this case, our  
12 interconnection agreement excludes intraLATA traffic from -- or  
13 local intraLATA traffic from falling under the auspices of the  
14 switched access tariff that was presented to me.

15 Q So is it your testimony then that you can order local  
16 interconnection, local arrangements as opposed to switched  
17 access arrangements?

18 A From a provisioning standpoint --

19 Q Uh-huh.

20 A -- when you're ordering it? Yes.

21 Q If you order local interconnection or local access  
22 arrangements -- or local arrangements, I'm sorry, does  
23 BellSouth always bill all of the traffic that is placed over  
24 that local interconnection as local traffic?

25 A No. It will be dependent upon the percent local

1 usage and percent local facility factors that are supplied to  
2 them as to how the local interconnection arrangement will be  
3 billed.

4 Q Are those the same factors that we just discussed  
5 earlier?

6 A Yes.

7 Q I also want to ask you some questions about this  
8 definition of local traffic which is up on the board there.  
9 Commissioner Davidson asked you some questions about where is  
10 it in this provision that you're relying on specific language  
11 for your interpretation of the contract. And the  
12 first beginning of that section where it says, "The parties  
13 agree to apply a LATAwide local concept to this Attachment 3,"  
14 was that in the old interconnection agreement?

15 A No, it was not.

16 Q Was the language, "meaning that traffic that has  
17 traditionally been treated as intraLATA toll traffic will now  
18 be treated as local for intercarrier compensation," was that in  
19 the old interconnection agreement?

20 A No, it was not.

21 Q Did you have discussions with Mr. Peacock as to what  
22 that language meant?

23 A Yes, I did, because that was essentially getting to  
24 the same things I had already had in Mississippi. I did not  
25 want to lose that capability, and so this language obviously

1 supports the fact that we were looking to have all of our  
2 intraLATA calls deemed local traffic.

3 MS. CECIL: No further questions.

4 COMMISSIONER DEASON: Exhibits.

5 MR. SHORE: BellSouth would like to move its  
6 cross-examination exhibits into evidence.

7 COMMISSIONER DEASON: Okay. I believe your  
8 cross-examination exhibits consist of Exhibits 14 through 18, I  
9 believe.

10 MR. SHORE: That's correct.

11 COMMISSIONER DEASON: Okay. Without objection?

12 MS. CECIL: No objection.

13 COMMISSIONER DEASON: Hearing no objection, show then  
14 that Exhibits 14 through 18 are admitted.

15 (Exhibits 14, 15, 16, 17, and 18 admitted into the  
16 record.)

17 MS. CECIL: Commissioner, we'd also like to move  
18 Exhibits 11, 12, and 13, which were the exhibits to Mr. King's  
19 prefiled testimony.

20 COMMISSIONER DEASON: Without objection, show that  
21 Exhibits 11, 12, and 13 are admitted.

22 (Exhibits 11, 12, 13 admitted into the record.)

23 MS. CECIL: And also Exhibit 19.

24 COMMISSIONER DEASON: I have a question about Exhibit  
25 19. Isn't this information already incorporated somewhere else

1 in the record?

2 MS. CECIL: Yes, it is, sir.

3 COMMISSIONER DEASON: We will -- I will allow you  
4 to -- if for some reason other aspects are not admitted and you  
5 believe you need 19 to make the record complete, I'll allow you  
6 to renew your motion. Right now, we'll just temporarily pass  
7 it.

8 MS. CECIL: Thank you.

9 COMMISSIONER DEASON: Okay. Thank you, sir.

10 THE WITNESS: Thank you.

11 (Witness excused.)

12 COMMISSIONER DEASON: We're going to go ahead and  
13 proceed to the next witness, which I believe is BellSouth's  
14 witness; is that correct?

15 MR. SHORE: I was under the impression that we were  
16 going to handle all of AT&T's witnesses, they were the  
17 complainant, and do direct and rebuttal at the same time. We  
18 can proceed with --

19 COMMISSIONER DEASON: Well, I'm just going down the  
20 list as it is shown on Page 6 of the prehearing order. But if  
21 the parties have a different agreement, that's fine with me  
22 also.

23 MR. SHORE: We never -- the parties never discussed  
24 it. That was my understanding based on Ms. Christensen, what  
25 she said this morning. But if I'm wrong, we're ready to call

1 Ms. Shiroishi.

2 MS. CHRISTENSEN: I believe at the beginning of the  
3 hearing we had taken up the question of whether or not to take  
4 direct and rebuttal together, and the parties agreed that they  
5 would do direct and rebuttal together. So I think the  
6 assumption of the parties was AT&T would put on all of their  
7 witnesses and then BellSouth would put on all their witnesses.

8 COMMISSIONER DEASON: That's fine. AT&T, you may  
9 call your next witness.

10 MS. CECIL: We would call Bill Peacock. Mr. Peacock,  
11 if you'd come forward.

12 BILLY C. PEACOCK  
13 was called as a witness on behalf of AT&T Communications of the  
14 Southern States, LLC, Teleport Communications Group, Inc., and  
15 TCG South Florida, Inc., and, having been duly sworn, testified  
16 as follows:

17 DIRECT EXAMINATION

18 BY MS. CECIL:

19 Q Mr. Peacock, would you state your name and business  
20 address for the record?

21 A My name is Billy C. Peacock. My business address is  
22 P. O. Box 6994, Douglasville, Georgia 30154.

23 Q And have you previously affirmed in this proceeding  
24 that you would tell the truth?

25 A Yes, ma'am, I have.

1 Q Are you the same Billy C. Peacock who caused to be  
2 filed 27 (sic) pages of rebuttal testimony and six exhibits on  
3 March the 14th, 2003?

4 A Yes, I am.

5 Q Do you have any changes to your testimony?

6 A I do not.

7 Q If I ask you today the same questions that are  
8 included in your rebuttal testimony, would your answers be the  
9 same?

10 A Yes, they would.

11 MS. CECIL: Commissioner, we would now move for the  
12 admission of Mr. Peacock's rebuttal testimony. We will  
13 identify his exhibits at the end of his summary.

14 COMMISSIONER DEASON: The prefilled rebuttal  
15 testimony, without objection, shall be inserted into the  
16 record.

17

18

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25



1 Q. PLEASE STATE YOUR NAME, TITLE, AND BUSINESS ADDRESS.

2

3 A. My name is Billy C. Peacock. I am a District Manager in the Local  
4 Services & Access Management organization of AT&T Corp.  
5 ("AT&T"). My business address is P. O. Box 6994, Douglasville,  
6 Georgia 30135.

7

8 Q. FOR WHOM ARE YOU FILING TESTIMONY IN THIS  
9 PROCEEDING?

10

11 A. I am testifying on behalf of AT&T Communications of the Southern  
12 States, LLC, Teleport Communications Group, Inc., and TCG of the  
13 Carolinas, Inc. (collectively referred to as "AT&T").

14

15 Q. HAVE YOU PREVIOUSLY TESTIFIED IN OTHER REGULATORY  
16 PROCEEDINGS?

17

18 A. Yes. I have testified in North Carolina regarding the same issues  
19 that are pending in this proceeding.

20

21 Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR EDUCATION  
22 AND EXPERIENCE.

23

24 A. I received a Bachelor of Business Administration degree from  
25 Georgia State University in 1987 and a Masters of Business

1 Administration from Georgia State University in 1989. My twenty-  
2 nine (29) year career in telecommunications began in October Of  
3 1973 with South Central Bell in Jackson, Mississippi, where I held  
4 positions in Operator Services, Industry Affairs and Public Affairs. I  
5 joined AT&T in 1983 and have held positions in External Affairs,  
6 State Government Affairs, Law & Government Affairs and Local  
7 Services and Access Management. In March of 1999, I joined  
8 AT&T's Local Services and Access Management organization to  
9 lead AT&T's negotiation of new Interconnection Agreements  
10 between AT&T and BellSouth Telecommunications Inc.  
11 ("BellSouth") for AT&T's nine Southern Region states. I led a cross-  
12 functional team whose objective was to negotiate contract terms  
13 and conditions that allowed AT&T to obtain all the services,  
14 features and functionalities guaranteed under the  
15 Telecommunications Act of 1996 ("Act") and subsequent orders,  
16 rules and implementing regulations of the Federal  
17 Communications Commission ("FCC").

18  
19 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?  
20

21 A. My testimony responds to the Direct Testimony filed by Elizabeth  
22 R. A. Shiroishi on December 18, 2002, particularly regarding Ms.  
23 Shiroishi's recollection of the "intent" of AT&T and BellSouth in  
24 negotiating what constituted "Local Traffic" for purposes of

1 applying local reciprocal compensation rates to the transport and  
2 termination of such "Local Traffic."

3  
4 **ISSUE 2: DOES THE TERM "LOCAL TRAFFIC: AS USED IN**  
5 **THE SECOND INTERCONNECTION AGREEMENT IDENTIFIED**  
6 **IN AT&T'S COMPLAINT INCLUDE ALL "LATAWIDE" CALLS,**  
7 **INCLUDING ALL CALLS ORIGINATED OR TERMINATED**  
8 **THROUGH SWITCHED ACCESS ARRANGEMENTS AS**  
9 **ESTABLISHED BY THE STATE COMMISSION OR FCC?**

10  
11 **ISSUE 3: UNDER THE TERMS OF THE SECOND**  
12 **INTERCONNECTION AGREEMENT, DO RECIPROCAL**  
13 **COMPENSATION RATES AND TERMS APPLY TO CALLS**  
14 **ORIGINATED OR TERMINATED THROUGH SWITCHED ACCESS**  
15 **ARRANGEMENTS AS ESTABLISHED BY THE STATE**  
16 **COMMISSION OR FCC?**

17  
18 Q. WHAT QUALIFIES YOU TO TESTIFY REGARDING THE "INTENT"  
19 OF AT&T AND BELL SOUTH IN THEIR NEGOTIATIONS AS TO  
20 WHAT CONSTITUTED "LOCAL TRAFFIC"?

21  
22 A. I led the AT&T negotiations team from start to finish regarding its  
23 attempts to enter into Second Interconnection Agreement with  
24 BellSouth in Florida and all other BellSouth states. As such, I was  
25 present and participated in all negotiating sessions with BellSouth.

1 I also was responsible for informing other AT&T employees who  
2 were not involved in negotiation meetings with BellSouth as to the  
3 progress being made in the negotiations, including reviewing  
4 language proposed by BellSouth and obtaining proposed changes  
5 or approval of such language.

6  
7 Q. WHO WERE THE OTHER MEMBERS OF THE AT&T NEGOTIATING  
8 TEAM?

9  
10 A. Ms. Roberta Stevens, Mr. Sam Benenati, Mr. Michael Karno, Esq.  
11 and Ms. Roxanne Douglas, Esq.

12  
13 Q. WAS MR. KING, WHO FILED DIRECT TESTIMONY ON BEHALF OF  
14 AT&T IN THIS PROCEEDING ON JANUARY 15, 2003, ALSO A  
15 MEMBER OF THE AT&T NEGOTIATIONS TEAM?

16  
17 A. Not exactly. Although Mr. King was not a member of the AT&T  
18 negotiations team which regularly met with BellSouth, he was one  
19 of the AT&T managers charged with implementing various  
20 provisions of Second Interconnection Agreement once it was  
21 finalized with BellSouth. Thus, during negotiations I routinely  
22 briefed Mr. King on the status of the negotiations and reviewed  
23 BellSouth's proposed language with him. Again, I did this not only  
24 to obtain Mr. King's comments, but also to receive his approval  
25 regarding interconnection provisions for which he was responsible

1 from an implementation perspective. In other words, Mr. King was  
2 one of several internal AT&T "clients" for whom I was negotiating  
3 Second Interconnection Agreement with BellSouth.  
4

5 Q. WITH RESPECT TO MR. KING'S SUBSEQUENT IMPLEMENTATION  
6 RESPONSIBILITIES, WAS WHAT CONSTITUTED "LOCAL TRAFFIC"  
7 AN IMPORTANT ISSUE TO AT&T IN ITS NEGOTIATIONS WITH  
8 BELLSOUTH?  
9

10 A. Definitely. The definition of "Local Traffic" established the traffic to  
11 which the parties would apply local reciprocal compensation rates.  
12 If traffic did not meet the definition of "Local Traffic," it would be  
13 transported and terminated at higher switched access rates.  
14

15 Q. WHAT IMPACT DID THE IMPORTANCE OF WHAT CONSTITUTED  
16 "LOCAL TRAFFIC" HAVE ON YOUR NEGOTIATIONS WITH  
17 BELLSOUTH?  
18

19 A. Had AT&T not been able to successfully resolve the issue to  
20 Mr. King's and AT&T's satisfaction, we would have been required to  
21 arbitrate the issue with BellSouth in Florida and all other  
22 Southern Region states.  
23

1 Q. WAS BELLSOUTH AWARE OF THE IMPORTANCE TO AT&T OF  
2 WHAT CONSTITUTED "LOCAL TRAFFIC" IN YOUR  
3 NEGOTIATIONS?  
4

5 A. Absolutely.  
6

7 Q. WHAT WAS AT&T'S POSITION AND INTENT REGARDING WHAT  
8 CONSTITUTED "LOCAL TRAFFIC?"  
9

10 A. Ever since the passage of the Act, AT&T has been attempting to  
11 obtain a definition of "Local Traffic" in its interconnection  
12 negotiations with BellSouth and other incumbent local exchange  
13 carriers ("ILEC's) which included all traffic within a "local transport  
14 and access area" or "LATA" as defined in the Act. This was a well  
15 known company-wide objective. Thus, in our interconnection  
16 negotiations with BellSouth, we advised BellSouth that AT&T  
17 wanted to define all intraLATA traffic as constituting "Local Traffic"  
18 and accordingly, such "Local Traffic" would be transported and  
19 terminated at local reciprocal compensation rates. Put another  
20 way, we advised BellSouth that AT&T wanted to pay local  
21 reciprocal compensation rates for the transport and termination of  
22 what historically had been known as intraLATA traffic.  
23

1 Q. RELATIVE TO YOUR NEGOTIATIONS WITH BELLSOUTH IN  
2 FLORIDA, DID AT&T ARBITRATE IN FLORIDA OR ANY OTHER  
3 STATE WHAT CONSTITUTES "LOCAL TRAFFIC"?

4  
5 A. No. BellSouth agreed that intraLATA traffic would be compensated  
6 at local reciprocal rates so we did not have to arbitrate the issue.  
7 In this respect, AT&T did not ask this Commission to arbitrate  
8 what constituted "Local Traffic" in its arbitration petition for  
9 Second Interconnection Agreement filed on . For the Commission's  
10 convenience, I have attached a copy of list of arbitration issues  
11 with BellSouth as BCP Rebuttal Exhibit 1.

12  
13 Q. WHAT WAS THE EXACT LANGAUAGE REGARDING  
14 COMPENSATION FOR INTRALATA TRAFFIC TO WHICH  
15 BELLSOUTH AGREED BEFORE AT&T FILED ITS ARBITRATION  
16 PETITION?

17  
18 A. In Attachment 3, Section 6, Interconnection Compensation, at  
19 Section 6.1.1, Compensation for Local and IntraLATA toll,  
20 BellSouth agreed to the following language:

21  
22 "Except as provided in this Attachment [3], the Parties  
23 shall bill each other reciprocal compensation in  
24 accordance with the standards set forth in this  
25 Agreement for all local and intraLATA toll traffic

1           originated by one Party and terminated to the other  
2           Party. Such traffic shall be recorded and transmitted  
3           to AT&T in accordance with Attachment 6 of this  
4           Agreement. Reciprocal compensation for the transport  
5           and termination of local and intraLATA toll traffic shall  
6           be charged at rates specified in Exhibit A of this  
7           Attachment.”

8  
9    Q.    WHAT TYPE OF RATES WERE INCLUDED ON EXHIBIT A TO  
10   ATTACHMENT 3?

11  
12   A.    Exhibit A contains only “Local Interconnection” or local reciprocal  
13   compensation rates; it does not contain any switched access rates.  
14   For the Commission’s convenience, I have attached a copy of  
15   Attachment 3 (including its Exhibit A) which was filed by AT&T in  
16   its arbitration petition as BCP Rebuttal Exhibit 2.

17  
18   Q.    DID THE LANGUAGE SET FORTH ABOVE IN SECTION 6.1.1 OF  
19   ATTACHMENT 3 REMAIN IN SECOND INTERCONNECTION  
20   AGREEMENT THAT WAS EVENTUALLY EXECUTED BY AND  
21   BELLSOUTH?

22  
23   A.    No.

24  
25   Q.    WHY NOT?



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A. After AT&T filed its arbitration petition, and even while the arbitration proceedings were taking place, AT&T continued to negotiate with BellSouth regarding those issues which were still unresolved and were in the process of being arbitrated. The goal was to resolve as many issues as possible, and when issues were resolved after AT&T's petition had been filed, AT&T and BellSouth would advise the Commission of such resolution and thus remove the issues from the arbitration proceeding. Two local compensation pricing issues which were included in AT&T's arbitration petition, but which the parties continued to negotiate after AT&T filed its arbitration petition, were "Issue 1: Should BellSouth be permitted to treat calls to internet service providers ("ISP's") as non-local traffic for purposes of reciprocal compensation? (Local Interconnection, Attachment 3, Section 6.1.3);" and "Issue 16: What is the treatment of outbound traffic voice calls over internet protocol ("VOIP") telephony, as it pertains to reciprocal compensation? (Local Interconnection, Attachment 3, Section 6.1.9)." With respect to Issue 1, AT&T and BellSouth agreed upon "placeholder" language to be included in Second Interconnection Agreement for Issue 1 relative to ISP traffic and removed it from the arbitration proceeding once the FCC issued its April 27, 2001 ISP Order on Remand regarding ISP traffic (discussed further below). (This "placeholder" language was needed because AT&T and BellSouth had yet to agree to exact

1 language regarding the FCC's April 27, 2001 Order on Remand).  
2 With respect to Issue 16, AT&T and BellSouth agreed upon  
3 language that states that the parties would abide by any future  
4 FCC order or rule regarding IP telephony after the Commission  
5 issued its arbitration order which adopted AT&T's position relative  
6 to VOIP calls. Thus the language in Section 6.1.1 of Attachment 3  
7 was changed to reflect the parties' agreement regarding these two  
8 issues.

9  
10 Q. WHAT WAS THE DISPUTE REGARDING ISP TRAFFIC AS  
11 DESCRIBED IN AT&T'S ARBITRATION PETITION?

12  
13 A. AT&T argued that calls to ISP's should be treated as "Local Traffic"  
14 and transported and terminated at local reciprocal compensation  
15 rates. BellSouth argued that the FCC had determined that calls to  
16 ISP's to be "interstate in nature" and, therefore should not be  
17 treated as "Local Traffic" for purposes of applying local reciprocal  
18 compensation rates.<sup>1</sup>

19  
20 Q. HOW DID THE PARTIES EVENTUALLY RESOLVE THIS DISPUTE?

21  
22 A. On April 27, 2001, while the parties were still negotiating, the FCC  
23 released its Order on Remand and Report and Order in CC Docket  
24 No. 96-98 and 99-68 ("ISP Order on Remand"). The parties

---

<sup>1</sup> See Attachment B, Issues for Arbitration Between AT&T and BellSouth, at Page 1, Issue 1, BellSouth Position, filed with AT&T's arbitration petition and attached hereto as BCP Rebuttal Exhibit 3.

1 eventually agreed to implement the FCC's ISP Order on Remand  
2 regarding the treatment of ISP traffic in Second Interconnection  
3 Agreement. The language reflecting such agreement was reflected  
4 in Section 5.3.1.1 of Attachment 3 of Second Interconnection  
5 Agreement. It provides:

6 "For the treatment of local and ISP bound traffic in  
7 this Agreement, the Parties agree to implement the  
8 FCC's Order on Remand and Report and Order in CC  
9 Docket No. 96-98 and 99-68 released April 27, 2001  
10 ("ISP Order on Remand"). The Parties further agree to  
11 amend this agreement, within sixty (60) days of  
12 execution, to incorporate language reflecting the FCC  
13 ISP Order on Remand. At such time as that  
14 amendment is finalized, the Parties agree to work  
15 cooperatively to "true-up" compensation amounts  
16 consistent with the terms of the amended language  
17 from the effective date of the FCC ISP Order on  
18 Remand to the date the amendment is finalized. The  
19 Parties do not agree on the rates to apply to ISP bound  
20 traffic between the end of the term of the preceding  
21 agreement and June 14, 2001, the effective date of the  
22 FCC's ISP Order on Remand. In this Section, the  
23 Parties express their intent to file negotiated language  
24 to incorporate the FCC's ISP Order on Remand. If the  
25 Parties are unable to agree on this language

1           addressing this issue by the time the language is due  
2           to be filed, the Parties will file their respective proposed  
3           language with the appropriate Commission for  
4           resolution. Until final contract language is agreed  
5           upon or ordered, the Parties agree not to re-rate or bill  
6           each other for ISP bound calls between the end of the  
7           of the term of the preceding interconnection agreement  
8           and June 14, 2001. Additionally, the Parties agree to  
9           apply a "LATAwide" local concept to this Attachment 3,  
10          meaning that traffic that has been traditionally been  
11          treated as intraLATA toll traffic will now be treated as  
12          local for intercarrier compensation purposes, except  
13          for those calls that are originated or terminated  
14          through switched access arrangements as established  
15          by the State Commission or FCC."

16  
17    Q.    WHAT WAS THE DISPUTE REGARDING VOIP CALLS AS  
18    DESCRIBED IN AT&T'S ARBITRATION PETITION?

19  
20    A    AT&T argued that VOIP calls should not be subject to any  
21    compensation until the FCC issued rules regarding these calls.  
22    BellSouth argued that these calls were consistent with traditional  
23    long distance calling and thus were to be transported and

1 terminated at switched access rates and not at local reciprocal  
2 compensation rates as “Local Traffic.”<sup>2</sup>

3  
4 Q. HOW DID THE PARTIES RESOLVE THIS DISPUTE?

5  
6 A. The parties eventually “agreed to disagree” whether VOIP calls  
7 constituted switched access traffic and agreed to abide by any  
8 applicable subsequent FCC order(s) regarding such calls. The  
9 language reflecting such agreement was reflected in Section 5.3.3  
10 of Attachment 3 of Second Interconnection Agreement. It provides,  
11 among other things:

12  
13 “The Parties have been unable to agree as to whether  
14 Voice Over Internet Protocol (“VOIP”) transmissions  
15 which cross local calling area boundaries constitute  
16 Switched Access Traffic. Notwithstanding the  
17 foregoing, and without waiving any rights with respect  
18 to either Party’s position as to the jurisdictional nature  
19 of VOIP, the Parties agree to abide by an effective and  
20 applicable FCC rules and orders regarding the nature  
21 of such traffic and the compensation payable by the  
22 Parties for such traffic, if any; provided however, that  
23 any VOIP transmission which originates in one LATA  
24 and terminates in another LATA (i.e., the end to end

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<sup>2</sup> See Attachment B, Issues for Arbitration Between AT&T and BellSouth, at Page 8, Issue 16, BellSouth Position, filed with AT&T’s arbitration petition and attached hereto as BCP Rebuttal Exhibit 4.

1 points of the call), shall not be compensated as Local  
2 Traffic. This Section is interrelated to Section 5.3.1.1.”

3  
4 Q. AGAIN, HOW DID THE PARTIES RESOLVING THESE TWO ISSUES  
5 IMPACT WHAT CONSTITUTED “LOCAL TRAFFIC” UNDER  
6 SECOND INTERCONNECTION AGREEMENT?

7  
8 A. As is apparent from the foregoing discussion, both issues involved  
9 “jurisdictional” questions, meaning whether such traffic or calls  
10 constituted “Local Traffic” or switched access traffic. Thus when it  
11 came time to draft language relative to these issues, in addition to  
12 the specific language for each issue, BellSouth eventually also  
13 proposed the following language in Section 5.3.1.1 of Attachment 3  
14 that “[a]dditionally, the Parties agree to apply a “LATAwide” local  
15 concept to this Attachment 3, meaning that traffic that has been  
16 traditionally treated as intraLATA toll traffic will now be treated as  
17 local for intercarrier compensation purposes, except for those calls  
18 that are originated or terminated through switched access  
19 arrangements as established by the ruling regulatory body.”

20  
21 Q. AT THIS TIME, WAS MS. SHIROISHI INVOLVED IN THE  
22 NEGOTIATIONS?

23  
24 A. Yes. After we already had significant negotiations with BellSouth,  
25 Ms. Shiroishi subsequently joined the BellSouth negotiations team

1 as BellSouth's local interconnection subject matter expert.  
2 Thereafter, she also led BellSouth's intercarrier compensation  
3 negotiations with AT&T.  
4

5 Q. IN MS. SHIROISHI'S DIRECT TESTIMONY, AT PAGE 7, LINES 24-  
6 25, SHE REFERS TO THE ABOVE LANGUAGE "EXCEPT FOR  
7 THOSE CALLS THAT ARE ORIGINATED OR TERMINATED  
8 THROUGH SWITCHED ACCESS ARRANGEMENTS AS  
9 ESTABLISHED BY THE STATE COMMISSION OR FCC" AS AN  
10 "EXCLUSION" THAT WAS "SPECIFICALLY WRITTEN IN ORDER TO  
11 EXCLUDE FROM THE DEFINITION OF LOCAL CALLS THAT ARE  
12 CONSIDERED SWITCHED ACCESS UNDER THE TARIFF." IS  
13 THIS TESTIMONY CONSISTENT WITH WHAT MS. SHIROISHI OR  
14 ANYONE ELSE FROM BELL SOUTH SAID ABOUT THIS LANGUAGE  
15 DURING YOUR NEGOTIATIONS?  
16

17 A. Absolutely not. Actually, the first time Ms. Shiroishi presented this  
18 language it was slightly different from the language that was  
19 eventually agreed to by the parties. She originated proposed "as  
20 established by the ruling regulatory body." The language that was  
21 eventually included in Second Interconnection Agreement states  
22 "as established by the State Commission or FCC." The discussions  
23 regarding BellSouth's proposed language were framed by the  
24 arbitration issues that remained unresolved. These discussions  
25 did not include any modification to include intraLATA traffic as

1 "Local Traffic." AT&T's understanding of BellSouth's proposed  
2 language was that it was needed to prevent either AT&T (or any  
3 Competing Local Provider ("CLP") which "opted-into" or adopted  
4 this language under Section 252(i) of the Act) from representing  
5 that ISP traffic and VOIP calls constituted "Local Traffic" for  
6 purposes of applying local reciprocal compensation rates. My  
7 discussions with Ms. Shiroishi and subsequent "red-lined contract  
8 language changes" were focused on drafting language that met  
9 BellSouth's concerns and obligated AT&T to abide by any state  
10 commission or FCC Order regarding ISP traffic or VOIP calls.

11  
12 Q. DID YOU DISCUSS MS. SHIROISHI'S EXPLANATION WITH  
13 MR. KING?

14  
15 A. Yes. I discussed Ms. Shiroishi's explanation with Mr. King and  
16 others at AT&T and we agreed to accept the language, except that  
17 we asked to change "ruling regulatory body" to "State Commission  
18 or FCC." Importantly, at this time the Parties also had agreed to a  
19 clear and unambiguous definition of "Switched Access Traffic"  
20 (proposed by BellSouth) which did not include any intraLATA or  
21 "LATAwide Traffic." Moreover, the justification for including  
22 language regarding "switched access arrangements" (in order to  
23 protect BellSouth from AT&T or other CLPs from representing that  
24 ISP traffic or VOIP calls were "Local Traffic"), tracked perfectly the  
25 definition of "Switched Access Traffic" in Section 5.3.3.



1 Furthermore, BellSouth offered, and AT&T agreed, to include  
2 language in Section 5.3.3 (which includes the definition of  
3 “Switched Access Traffic”) that this Section 5.3.3 was “interrelated”  
4 to Section 5.3.1.1. As discussed above, Section 5.3.1.1 is that  
5 Section of Second Interconnection Agreement where the parties  
6 agreed “...to apply a LATAwide local concept to this Attachment  
7 3...” Thus, when these two Sections are “read together” by virtue  
8 of the “interrelated” language of Section 5.3.3, it is clear that the  
9 definition of “Switched Access Traffic” (which is limited to  
10 intrastate interLATA and interstate interLATA traffic) in Section  
11 5.3.3 applies to the “exclusion” language regarding “switched  
12 access arrangements” found in Section 5.3.1.1.

13  
14 Q. WERE THERE OTHER CHANGES TO THE CONTRACT LANGUAGE  
15 THAT SUPPORT THE PARTIES’ INTENT TO COMPENSATE  
16 INTRALATA TOLL AS LOCAL TRAFFIC? IF SO, WHAT WERE  
17 THOSE CHANGES?

18  
19 A. Yes. The original “Switched Access Traffic” proposed by BellSouth  
20 to AT&T read as follows:

21  
22 “Switched Access Traffic is defined as telephone calls  
23 requiring local transmission or switching services for  
24 the purpose of the origination or termination of  
25 **Telephone Toll Service...**”

1  
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24

During the negotiations, and prior to reaching agreement on all Attachment 3 language, the Parties agreed to modify this sentence so that it read:

“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...***”

BellSouth’s acceptance of this modification is yet further support for AT&T’s belief that intraLATA traffic was considered “Local Traffic” subject to local reciprocal compensation rates and was not subject to switched access rates.

Additionally, BellSouth had proposed to include the following language in Section 5.4 of Attachment 3 regarding compensation for IntraLATA Toll Traffic:

“IntraLATA Toll Traffic. IntraLATA Toll Traffic is defined as any telephone call that originates and terminates in the same LATA and is billed by the originating Party as a toll call.

1 Compensation for IntraLATA Toll Traffic. For  
2 terminating its IntraLATA Toll Traffic on the other  
3 Party's network, the originating Party will pay the  
4 terminating Party's intrastate or interstate terminating  
5 switched access tariff rates as set forth in the effective  
6 intrastate or interstate access services tariff, whichever  
7 is appropriate. The appropriate charges will be  
8 determined by the routing of the call. If BellSouth or  
9 AT&T is the other Party's end user's presubscribed  
10 interexchange carrier or if an end user uses BellSouth  
11 or AT&T as an interexchange carrier on a 101XXXX  
12 basis, BellSouth or AT&T will charge the other Party  
13 the appropriate tariff charges for originating switched  
14 access services."

15  
16 In an e-mail from Ms. Shiroishi to AT&T on July 18, 2001,  
17 Ms. Shiroishi states, "Attached is the redline as a result of last  
18 night's call. I realized we don't need the intraLATA stuff, so I've  
19 redlined. Everything else that you accepted last night is shown as  
20 accepted." In the redline version of the contract, the language  
21 found on **Page 18, lines 10-25, and Page 19, lines 1-3 [check**  
22 **page when final]**, of my testimony in fact is shown as struck.

23  
24 BellSouth's willingness to strike the very language that supports  
25 its position in this proceeding (that intraLATA was subject to

1 switched access rates) supports AT&T's position that the parties  
2 were in agreement to compensate such intraLATA traffic as "Local  
3 Traffic."

4  
5 Q. DID AT&T ACCEPT MS. SHIROISHI'S EXPLANATION IN GOOD  
6 FAITH AND THUS AGREE TO HER "EXCLUSION" LANGUAGE?

7  
8 A. Yes we did, after I explained Ms. Shiroishi's explanation to  
9 Mr. King and others at AT&T.

10  
11 Q. WHAT WOULD HAVE HAPPENED HAD MS. SHIROISHI  
12 EXPLAINED, AS SHE TESTIFIES SHE DID, ON PAGE 7, LINES  
13 24-25, THAT THE "EXCLUSION" LANGUAGE WAS "SPECIFICALLY  
14 WRITTEN TO EXCLUDE FROM THE DEFINITION OF LOCAL  
15 TRAFFIC CALLS THAT ARE CONSIDERED SWITCHED ACCESS  
16 UNDER TARIFF," MEANING THAT AT&T WOULD HAVE BEEN  
17 REQUIRED TO PAY SWITCHED ACCESS RATES FOR ALL  
18 INTRALATA OR "LATAWIDE TRAFFIC"?

19  
20 A. Obviously, given AT&T's corporate objective to have all intraLATA  
21 traffic compensated at local reciprocal compensation rates, we  
22 would never have agreed with such language. Instead, we would  
23 have reverted back to the language agreed to by the parties before  
24 AT&T filed its arbitration petition found in Section 6.1.1 of  
25 Attachment 3 which stated that "[r]eciprocal compensation for the

1 transport and termination of local and intraLATA toll traffic shall  
2 be charged at the rates specified in Exhibit A.” In other words, we  
3 would have never agreed to pay switched access rates for  
4 intraLATA traffic unless ordered to do by a state commission in an  
5 arbitration—and we would have arbitrated the definition of “Local  
6 Traffic” in every state in BellSouth’s territory.

7  
8 Q. BEFORE FILING YOUR TESTIMONY IN THIS PROCEEDING, DID  
9 YOU REVIEW ANY MEETING NOTES OR MINUTES OF  
10 NEGOTIATIONS WITH BELLSOUTH?

11  
12 A. Yes, although my recollection of what Ms. Shiroishi said about the  
13 “exclusion” language is very clear, I did review AT&T’s meeting  
14 notes from the June/July 2001 timeframe when we were  
15 negotiating the ISP and VOIP issues. I found nothing in these  
16 meeting notes that contradicted my recollection of Ms. Shiroishi’s  
17 explanation regarding the “exclusion” language as I have testified  
18 herein.

19  
20 Q. IN THAT CASE, HOW DO YOU EXPLAIN MS. SHIROISHI’S  
21 TESTIMONY AT PAGE 8, LINES 3-6, THAT THE PARTIES “...DREW  
22 DIAGRAMS ON THE WHITEBOARD AND DISCUSSED THE ROLE  
23 OF SWITCHED ACCESS ARRANGEMENTS AS OUTSIDE THE  
24 DEFINITION OF LOCAL TRAFFIC?”

25

1 A. Ms. Shiroishi is correct that the parties drew diagrams on a  
2 whiteboard, but those diagrams involved our negotiations  
3 regarding network architecture or "Point of Interconnection." As  
4 this Commission will remember, this was a complex network  
5 facilities issue that was a significant issue in the arbitration. It  
6 was complex not only from the standpoint of understanding prior  
7 orders from the FCC and other state commissions, but also from a  
8 network architecture perspective, thus making it almost impossible  
9 to discuss the issue without resorting to drawing diagrams.  
10 Furthermore, the meeting notes which I reviewed confirmed that  
11 such "whiteboard diagrams" were used by the parties in discussing  
12 the network architecture or "Point of Interconnection" issue and  
13 not to diagram what constituted "switched access arrangements."  
14 Again, had Ms. Shiroishi diagramed that "switched access  
15 arrangements" would have meant that AT&T would be paying  
16 switched access rates for intraLATA traffic, we would have never  
17 accepted her "exclusion" language.

18  
19 Q. AT PAGE 8, LINES 11-13, WHAT IS THE RELEVANCE OF  
20 MS. SHIROISHI'S TESTIMONY THAT "BELLSOUTH HAS MULTIPLE  
21 INTERCONNECTION AGREEMENTS WITH ALECS CONTAINING  
22 THE SAME DEFINITION OF LOCAL TRAFFIC AS IN THE AT&T  
23 AGREEMENT, WHICH CONTAINS THE EXCLUSION FOR SWITCH  
24 ACCESS ARRANGEMENTS," AND THAT NO OTHER ALEC

1 INTERPRETED THIS LANGUAGE IN THE MANNER AT&T IS  
2 ATTEMPTING?

3  
4 A. None, whatsoever, because Ms. Shiroishi failed to testify as to  
5 whether any of these interconnection agreements with other CLP's  
6 also contain the same definition of "Switched Access Traffic," the  
7 same provisions regarding ISP traffic and VOIP calls, and the same  
8 "interrelated" language found in Section 5.3.3, all as found in  
9 Section Interconnection Agreement. She also provided no  
10 testimony regarding the intent of BellSouth and the other CLP's  
11 regarding any related interconnection negotiations (if such  
12 negotiations even occurred).

13  
14 Q. WHAT IS THE SIGNIFICANCE OF MS. SHIROISHI'S TESTIMONY  
15 AT PAGE 9, LINES 1-4, THAT THE PARTIES' INTERCONNECTION  
16 AGREEMENT FOR MISSISSIPPI HAS A DEFINITION OF "LOCAL  
17 TRAFFIC" WHICH READS "LOCAL TRAFFIC MEANS ANY  
18 TELEPHONE CALL THAT ORIGINATES AND TERMINATES IN THE  
19 SAME LATA."

20  
21 A. Rather than cast doubt on what the parties intended regarding  
22 what constitutes "Local Traffic" under the Florida Second  
23 Interconnection Agreement, the fact that the parties agreed to a  
24 "LATAwide" definition in the Mississippi Second Interconnection  
25 Agreement supports my contention that AT&T wanted a

1 "LATAwide" definition of "Local Traffic" from BellSouth as a matter  
2 of corporate policy and that BellSouth was aware of AT&T's  
3 corporate policy. Moreover, Ms. Shiroishi fails to tell the  
4 Commission the whole story of the Mississippi Second  
5 Interconnection Agreement. Most importantly, at the time that  
6 interconnection agreement was negotiated and executed, the FCC  
7 had not yet released its April 27, 2001, ISP Order on Remand. As  
8 such, rather than arbitrate in Mississippi, BellSouth agreed to  
9 have all ISP traffic compensated at negotiated compensation rates.  
10 Having made that decision regarding ISP traffic, there was no need  
11 to have the "exclusion" regarding what would happen if the FCC  
12 subsequently decided that ISP traffic was interLATA traffic such to  
13 access charges. For the Commission's convenience, I have  
14 attached those relevant portions of the Mississippi agreement as  
15 BCP Rebuttal Exhibit 5.

16  
17 Q. ON PAGE 10, LINES 10-11, MS. SHIROISHI DISCUSSES THE  
18 "INTERRELATED" LANGUAGE OF SECTION 5.3.3 (DEFINITION OF  
19 SWITCHED ACCESS TRAFFIC) TO SECTION 5.3.1.1 (LATAWIDE  
20 CONCEPT FOR "LOCAL TRAFFIC"), IMPLYING THAT THE  
21 LANGUAGE "THIS SECTION IS INTERRELATED TO SECTION  
22 5.3.1" DOES NOT APPLY TO "LOCAL TRAFFIC," BUT INSTEAD  
23 ONLY APPLIES TO THE VOIP PROVISIONS IN SECTION 5.3.1. IS  
24 THIS A CREDIBLE ARGUMENT?

25



1 A. No. A review of the entirety of Section 5.3.3 shows that  
2 Ms. Shiroishi's "implication" that the "interrelated language" of  
3 Section 5.3.3 applied only to VOIP calls violates all proper rules of  
4 contract construction and interpretation. Importantly, the  
5 "interrelated" language of Section 5.3.3 uses the term "Section"  
6 with a capital "S," meaning that **all of the language included in**  
7 **Section 5.3.3 is interrelated to Section 5.3.1.1**, and not just  
8 the last two sentences of the Section as implied by Ms. Shiroishi.

9  
10 Q. AT PAGE 10, LINES 13-20, MS. SHIROISHI ALSO STATES THAT  
11 THERE IS OTHER LANGUAGE IN ATTACHMENT 3 WHICH  
12 "ADDRESS THE MIGRATION TO THIS NEW DEFINITION OF  
13 LOCAL TRAFFIC," ASSERTING SOMEHOW THAT THE TYPES OF  
14 TRUNKS USED BY AT&T GOVERNED WHETHER CERTAIN  
15 TRAFFIC WOULD BE CONSIDERED "LOCAL TRAFFIC." ARE  
16 THERE ANY PROVISIONS IN SECOND INTERCONNECTION  
17 AGREEMENT WHICH STATE THAT WHETHER TRAFFIC IS  
18 CONSIDERED "LOCAL TRAFFIC" IS DEPENDANT ON THE TYPES  
19 OF TRUNKS USED TO TRANSPORT SUCH TRAFFIC?

20  
21 A. Absolutely not. There is no language whatsoever in Second  
22 Interconnection Agreement that makes what constitutes "Local  
23 Traffic" dependent in any way on the use of any particular trunks.  
24 Had BellSouth suggested such a provision, AT&T would have never  
25 agreed to "convert" or "reconfigure" its network. Since 1996, AT&T

1 has designed its network to transport both local and long distance  
2 calls over the same or related network facilities. What Ms.  
3 Shiroishi is suggesting is that AT&T is required to transport all of  
4 its "local calls" only over "local trunks" and all of its "long distance  
5 calls" only over "long distance" trunks. This is inefficient and not  
6 consistent with the intent of the Act to develop competition in an  
7 efficient manner. Perhaps more importantly, the use of "local only"  
8 and "long distance only" trunks is not required by Second  
9 Interconnection Agreement despite any "implication" Ms. Shiroishi  
10 might assert to the contrary.

11  
12 Q. IN YOUR TESTIMONY, YOU HAVE REFERRED TO DIFFERENT  
13 SECTIONS IN VARIOUS INTERCONNECTION AGREEMENTS  
14 (BOTH FLORIDA AND MISSISSIPPI). HAVE YOU PREPARED A  
15 DOCUMENT WHICH INCLUDES SUCH SECTIONS PLUS OTHER  
16 RELATED INFORMATION?

17  
18 A. Yes. For the Commission's convenience, I have attached this  
19 document as BCP Rebuttal Exhibit 6.

20  
21 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

22  
23 A. Yes.

1 BY MS. CECIL:

2 Q Mr. Peacock, have you prepared a summary of your  
3 testimony?

4 A Yes, I have.

5 Q Would you please give it, sir.

6 A Yes. Thank you. Good afternoon, Commissioners. My  
7 name is Billy C. Peacock and I am employed by AT&T Corporation.  
8 I joined AT&T in 1984 holding various positions in external  
9 affairs, state government affairs, consumer marketing, and  
10 Local Services and Access Management. Before joining AT&T,  
11 from 1973 to 1984, I worked for South Central Bell in various  
12 operator services, human resources, and industry affairs  
13 positions. In March of 1999, I joined AT&T's Local Services  
14 and Access Management organization to lead AT&T's negotiation  
15 of new interconnection agreements between AT&T and BellSouth.  
16 All totaled, I have over 29 years experience in the Bell system  
17 and in the telecommunications industry.

18 My testimony responds to the direct testimony filed  
19 by BellSouth's Beth Shiroishi on January the 15th,  
20 2003 regarding various discussions that she states took place  
21 between AT&T and BellSouth regarding the Florida  
22 interconnection agreement signed by AT&T and BellSouth on  
23 October the 26th, 2001.

24 I've led AT&T's negotiations team from start to  
25 finish regarding its attempts to negotiate a new agreement with

1 BellSouth in Florida and the other eight states in BellSouth's  
2 territory. It was and is my job to inform other AT&T managers  
3 as to the progress being made in the negotiations, including  
4 reviewing language proposed by BellSouth and obtaining proposed  
5 changes or approval of such language.

6           Today, BellSouth refuses to implement the provisions  
7 of the executed contract that apply to LATAwide local traffic.  
8 The language in the agreement clearly states that the parties  
9 agree to apply a LATAwide local concept, meaning that traffic  
10 that had been traditionally treated as intraLATA toll traffic  
11 would be treated as local for intercarrier compensation  
12 purposes, except for those calls that are originated or  
13 terminated through switched access arrangements as established  
14 by the state commission or FCC.

15           Initially, as filed in AT&T's arbitration petition,  
16 the agreement simply stated that each party would bill the  
17 other reciprocal compensation for all local and intraLATA toll  
18 traffic originated by one party and terminated by the other  
19 party.

20           The language changed somewhat after AT&T's  
21 arbitration filing on June the 16th of 2000. AT&T and  
22 BellSouth continued to negotiate unresolved issues that  
23 included two local compensation pricing issues. These issues  
24 were Arbitration Issue 1, that questioned how calls to Internet  
25 service providers, or ISPs, would be compensated, as local or

1 as interstate switched access, and Arbitration Issue 16, that  
2 questioned the representation of other access services traffic  
3 as local traffic for the purposes of payment of reciprocal  
4 compensation.

5 Numerous face-to-face and teleconference meetings  
6 were held between AT&T and BellSouth. AT&T and BellSouth  
7 focused on resolving disagree provisions as filed in AT&T's  
8 arbitration filing. Changes made to the language in the  
9 agreement were made to reflect our settlement of these issues.

10 Ms. Shiroishi's attempts to assert that these  
11 changes -- that through these changes AT&T negotiated away one  
12 of AT&T's most desired provisions in our agreement with  
13 BellSouth, i.e., LATAwide local. Ms. Shiroishi is wrong.  
14 BellSouth never stated its desire to change the LATAwide local  
15 language such that it would exclude intraLATA toll as local.  
16 If BellSouth had said such as this, AT&T never would have  
17 agreed, and AT&T would have included this disagreement in our  
18 arbitration filing with this Commission.

19 The facts are: Fact one, to put this in perspective,  
20 in Mississippi, BellSouth had already previously agreed to  
21 AT&T's proposed LATAwide local language. Fact two, the  
22 language in our executed agreement was changed to reflect that  
23 additional types of traffic, specifically Internet provider  
24 traffic and voice over Internet protocol, VOIP, traffic, that  
25 originated or terminated through switched access arrangements

1 would be excluded from LATAwide local. Fact three, through  
2 negotiations the language in 5.3.3 was changed to intrastate  
3 interLATA and interstate interLATA specifically excluding  
4 intraLATA traffic. BellSouth's acceptance of this change  
5 supports AT&T's position that intraLATA traffic was considered  
6 local traffic subject to local compensation rates and not  
7 subject to switched access. And fact four, BellSouth offered  
8 and AT&T agreed to delete the very language in the agreement  
9 that supported BellSouth's position that intraLATA toll was  
10 subject to switched access charges. The deleted language  
11 defined intraLATA toll traffic as being compensated through  
12 switched access rates.

13 In closing, in this arbitrated agreement AT&T would  
14 never have agreed to pay switched access rates for intraLATA  
15 traffic unless ordered to do so by the Commission in an  
16 arbitration, and AT&T would have arbitrated intraLATA toll  
17 traffic as local in every state in the BellSouth territory had  
18 BellSouth not agreed to the LATAwide local concept. That  
19 concludes my summary. Thank you.

20 MS. CECIL: Commissioner, if we could identify  
21 Mr. Peacock's rebuttal exhibits. He had six exhibits attached.

22 COMMISSIONER DEASON: They will be identified as a  
23 composite exhibit and given Exhibit Number 20.

24 MS. CECIL: Thank you.

25 (Exhibit 20 marked for identification.)

1 MS. CECIL: The witness is available for cross.

2 COMMISSIONER DEASON: BellSouth.

3 MR. SHORE: Thank you, Commissioner Deason.

4 CROSS EXAMINATION

5 BY MR. SHORE:

6 Q Mr. Peacock, I'm Andrew Shore. I want to ask you a  
7 few questions about some of the things you've said under oath  
8 here. Before I do that, you said in your summary that you  
9 became AT&T's lead negotiator with BellSouth in March of 1999;  
10 is that right?

11 A That's correct.

12 Q And that was when you first joined the Local Services  
13 and Access Management group at AT&T that handles the  
14 interconnection agreement negotiations; correct?

15 A That's correct.

16 Q Prior to that, your job was as a regulatory manager  
17 in the law and government affairs department; correct?

18 A That's correct.

19 Q And what you told me at your deposition was that a  
20 regulatory manager, your responsibilities were similar to those  
21 of a docket manager; correct?

22 A Similar but expanded, yes.

23 Q Now, you're not an expert in all of the substantive  
24 areas that are addressed in the BellSouth/AT&T interconnection  
25 agreement, are you?

1 A I am not.

2 Q You didn't take any notes during your many meetings  
3 negotiating the interconnection agreement with BellSouth, did  
4 you?

5 A I did not. It was not necessary. I had an official  
6 note taker in the meeting with me.

7 Q And Ms. Stevens was your official note taker?

8 A She was.

9 Q Okay. We'll talk to her about her notes, I guess, as  
10 soon as you get off the stand.

11 A Okay.

12 Q I think I asked Mr. King this and he said "subject to  
13 check." I want to ask you if you recall from memory that  
14 BellSouth first proposed the contract language that had a  
15 LATAwide definition of local with an exception for switched  
16 access arrangements in the May 2001 time frame. Do you recall  
17 that?

18 A I do. May 22nd is the date that I remember.

19 MR. SHORE: Great. Let me ask that it be identified.  
20 I believe it's Exhibit 20, and hand you --

21 COMMISSIONER DEASON: What are you handing out?

22 MR. SHORE: I'm going to hand him a document. It's  
23 an e-mail that he produced, along with an attachment to the  
24 e-mail.

25 COMMISSIONER DEASON: Okay. And you wish to have



1 this identified?

2 MR. SHORE: Yes, sir.

3 COMMISSIONER DEASON: Okay. It's Exhibit 21.

4 MR. SHORE: Thank you.

5 (Exhibit 21 marked for identification.)

6 BY MR. SHORE:

7 Q Mr. Peacock, Exhibit 21 is an e-mail from  
8 Michael Willis at BellSouth to you dated May 22nd, 2001  
9 transmitting a redline version of Attachment 3 to the  
10 interconnection agreement and asking for AT&T's feedback;  
11 correct?

12 A That's correct.

13 Q Now, the parties, they were negotiating this  
14 interconnection agreement, they exchanged redline versions back  
15 and forth; correct?

16 A Yes. The practice was that if one of the parties  
17 wanted to propose new language for the other party to consider,  
18 then we would include that in the redline in a form such that  
19 it drew attention to itself, meaning that it was bolded or  
20 underlined. And also, if through a negotiation session or  
21 meeting face-to-face or teleconference that language had  
22 changed, then we would also put that language into the  
23 redline document, so, yes.

24 Q The e-mail that you produced to us, Exhibit 21, that  
25 only has a portion of Attachment 3 attached to it; correct?

1           A     The second page of what you handed me is an internal  
2 AT&T -- I'm sorry, internal BellSouth e-mail from  
3 Beth Shiroishi to other members of BellSouth. And in that she  
4 only has a portion of the interconnection agreement. That's  
5 correct.

6           Q     And the date typed down at the bottom of that  
7 Attachment 3 of this exhibit is 4/18/00. Do you see that?

8           A     You've gone to the third page?

9           Q     On the actual Attachment 3.

10          A     Yes.

11               MR. SHORE: Let me hand you what I'd ask to be  
12 identified as Exhibit 22. Once again, I'd call upon Mr. Meza  
13 to help me.

14               (Exhibit 22 marked for identification.)

15 BY MR. SHORE:

16          Q     Exhibit 22 is a full version of Attachment 3, and you  
17 see down at the bottom it had the date 4/18/00 crossed out and  
18 5/22/01 written in handwriting next to it?

19          A     Yes, I do.

20          Q     And you recall Ms. Stevens testifying in North  
21 Carolina that she wrote 5/22/01 there because that was the date  
22 that AT&T actually received this version of the agreement from  
23 BellSouth?

24          A     That's correct. And the reason for that was that on  
25 certain occasions the documentation that we receive back from

1 BellSouth, the dates would not have been corrected, and in this  
2 case, the date that was on the bottom of the attachment was  
3 incorrect.

4 Q If you look at Exhibit 2 -- excuse me, Exhibit 22,  
5 Attachment 3 there, if you turn to Page 20, please. And in  
6 particular, if you'd look at Section 5.3.1.1. Do you see that?

7 A I do.

8 Q And that's the first proposed language that BellSouth  
9 sent to AT&T that states that local traffic will be defined as  
10 all calls that originate and terminate in the same LATA, except  
11 calls originated or terminated over switched access  
12 arrangements as established by the ruling regulatory body;  
13 correct?

14 A Yes. This is the first time AT&T saw this proposed  
15 language from BellSouth that BellSouth wished to negotiate with  
16 AT&T.

17 Q There in the margin next to that proposed Section  
18 5.3.1.1 it says, "Issue for Bill and Dave" in handwriting. Do  
19 you see that?

20 A I do.

21 Q Do you recognize that handwriting?

22 A Roberta Stevens.

23 Q And Ms. Stevens, that's the woman that works for you?

24 A Yes, she does.

25 Q And Dave, who's Dave refer to? Is that an internal

1 subject matter expert at AT&T?

2 A Mr. Dave Talbott, AT&T's local network  
3 interconnection architecture subject matter expert.

4 Q Now, in your rebuttal testimony on Page 15, you state  
5 that when it came time to draft contract language relative to  
6 the issues of compensation for ISP traffic and VOIP calls, that  
7 BellSouth also eventually proposed a language with the LATAwide  
8 definition of local traffic and its exception for calls carried  
9 over switched access arrangements. That's your testimony;  
10 correct?

11 A I'm sorry. Please direct me to the page in my  
12 rebuttal that you're speaking of and reask your question.

13 Q On Page 15.

14 A Fifteen. I'm sorry.

15 Q Beginning on Line -- end of Line 10 going on to 11,  
16 your testimony is that when it came time to draft language  
17 relative to these issues, and the issues you're referring to  
18 there are the issues of compensation for ISP traffic and voice  
19 over Internet protocol traffic, that BellSouth also eventually  
20 proposed the LATAwide definition of local traffic with its  
21 exception for switched access arrangements; correct?

22 A That's correct.

23 Q Now, regarding ISP traffic, the parties eventually  
24 agreed to implement the FCC's April 2001 ISP order on remand;  
25 correct?

1           A     Yes, we did. And the parties negotiated to develop  
2 placeholder language and then later negotiated the actual  
3 language based on the final effective FCC ISP order that, I  
4 think, was a June or July date.

5           MR. SHORE: Let me ask Mr. Meza to help me pass out  
6 what I'd ask to be identified as Exhibit 23.

7           (Exhibit 23 marked for identification.)

8 BY MR. SHORE:

9           Q     Exhibit 23 are matrices that Ms. Cecil used as an  
10 exhibit to Ms. Shiroishi's deposition a week or so ago. If you  
11 look at the first matrix, the one entitled "Local Traffic  
12 Matrix," it starts on Page 1. Do you see that, Mr. Peacock?

13          A     I do.

14          Q     Okay. Now, according to Ms. Cecil's matrix, if you  
15 look down where she types in bold there, according to this  
16 matrix it was on July 17th that the language was added stating  
17 that the parties have agreed to implement -- or excuse me,  
18 agreed to compensation for calls to ISPs by agreeing to  
19 implement the FCC's ISP order; correct?

20          A     That's correct.

21          Q     Now, regarding VOIP calls the parties eventually  
22 agreed to disagree regarding the proper compensation for such  
23 calls, but they said they would abide by any FCC orders or  
24 rules regarding VOIP transmissions; correct?

25          A     That's correct. The issues in this matrix that are

1 reflected in this matrix were issues that were being negotiated  
2 on a region-wide basis.

3 Q If you'd turn to the second matrix --

4 A And I'm sorry, I wasn't finished. I was still  
5 speaking. May I continue?

6 COMMISSIONER DEASON: You may.

7 THE WITNESS: Thank you. The issues in this matrix  
8 were not specific to Florida but were being negotiated on a  
9 region-wide basis. So the language that you see before you  
10 would have been language that would have been reflected in all  
11 of the ICAs after we had reached agreement on our regional  
12 settlement in July.

13 BY MR. SHORE:

14 Q When the parties exchanged redline agreements,  
15 typically -- or I don't know about typically, all the time,  
16 they were supposed to underline new language; correct?

17 A The general rule was that if you add new language,  
18 you would underline or somehow highlight it so that the other  
19 party would realize that it was new language.

20 Q Okay. And if you turn to the switched access traffic  
21 matrix, the first entry on that matrix is July 11, 2001;  
22 correct?

23 A That's correct.

24 Q And that language there is underlined that's adjacent  
25 to that date; correct?

1 A That's correct.

2 Q And that's the first draft of the agreement or  
3 language stating that the parties would -- you know, don't  
4 agree on VOIP transmissions but would agree to disagree and  
5 abide by any FCC rules. That's the first time that appeared in  
6 the draft of the agreement; correct?

7 A You're correct that that's the first time the  
8 language appeared in the draft of the agreement. But as early  
9 as May the 16th the parties were discussing the need for access  
10 services traffic as local, and we were waiting for BellSouth to  
11 provide that language. It was an issue again in a June 6th  
12 meeting that we had with BellSouth recognizing that they needed  
13 to provide the language.

14 On June the 26th, as part of the notations that were  
15 taken by AT&T, we actually show or state that this language is  
16 linked to ISP. And then finally on 7/11 the language was added  
17 by BellSouth.

18 Q Now, in your testimony you state that in discussing  
19 the language in Attachment 3 with Ms. Shiroishi from BellSouth,  
20 that Ms. Shiroishi expressed some concern about other ALECs  
21 being able to opt in to AT&T's language with BellSouth and then  
22 misrepresenting certain terms of the agreement. That's on  
23 Page 17 of your testimony; correct?

24 A Direct me to the part of the page that you're reading  
25 from, please.

1 Q Right there on the top of Page 17. You note that  
2 Ms. Shiroishi expressed to you some concern about other ALECs  
3 opting in to certain provisions of the AT&T agreement; correct?

4 A That's correct.

5 Q And what you say is your understanding was that  
6 BellSouth was concerned about an ALEC claiming that ISP traffic  
7 and VOIP calls constituted local traffic for purposes of  
8 reciprocal compensation; correct?

9 A That's correct.

10 Q Now, we've already discussed the fact that the  
11 parties agreed in their interconnection agreement to implement  
12 the FCC's ISP order on remand; right?

13 A At what point are you speaking of?

14 Q Well, the parties did agree to that, did they not?

15 A The parties negotiated from May through July  
16 regarding ISP traffic and what language would be added to the  
17 interconnection agreements. So do you have a particular point  
18 in time that you're asking me to answer for?

19 Q Did the parties agree, when they reached the final  
20 agreement on contract language, to implement the FCC's ISP  
21 order on remand?

22 A Yes. BellSouth notified us that they chose to opt in  
23 to the FCC's order, and then the parties agreed that we would  
24 implement the order.

25 Q And the FCC said in that order that ISP traffic was



1 not subject to reciprocal compensation obligations; correct?

2 A You're correct. They said that information -- I'm  
3 sorry, that ISP traffic was, in fact, information access,  
4 another type of access traffic that was compensable at rates  
5 established by the FCC.

6 Q But in addition to that, they said that it was not  
7 subject to reciprocal compensation; true?

8 A They said it was not local and thereby would not be  
9 compensable via reciprocal compensation, but that it, in fact,  
10 was information access traffic and would be compensated at  
11 rates established by the FCC.

12 MR. SHORE: Commissioner Deason, if I could have  
13 permission to approach the witness and show him the ISP's order  
14 on remand.

15 COMMISSIONER DEASON: Yes.

16 BY MR. SHORE:

17 Q Mr. Peacock, I'm going to show you the FCC's ISP  
18 order on remand that we've been talking about, and I'm going to  
19 ask you to read -- actually, I told your lawyer that I was  
20 going to ask you to read a certain section, and I'm going to  
21 ask you to read a different section, so let me show that to  
22 her.

23 Mr. Peacock, I'd like you to read the sentence that  
24 I've highlighted in Paragraph 23 of that FCC order. Just read  
25 that for the record.

1           A     This is under the heading of Statutory Analysis, B,  
2 Paragraph -- or Subsection 23. "In this section, we examine  
3 our findings in the declaratory ruling and conclude that  
4 ISP-bound traffic is not subject to the reciprocal compensation  
5 requirement in Section 251(b) because of the carve-out  
6 provision in Section 251(g) which excludes several enumerated  
7 categories of traffic from the universe of telecommunications  
8 referred to in Section 251(b)(5)."

9           Q     It was BellSouth that proposed the interrelated  
10 language, the sentence at the end of the 5.3.3, that says that  
11 that section is interrelated to 5.3.1.1; correct?

12          A     That is correct.

13          Q     And according to Page 2 of Ms. Cecil's switched  
14 access traffic, that was proposed on July 17, 2001. Do you see  
15 where Ms. Cecil wrote in there, "Shiroishi adds last sentence,  
16 this Section is interrelated to Section"?

17          A     Yes.

18               MR. SHORE: That's all I have. Thank you very much.

19               THE WITNESS: Thank you.

20               COMMISSIONER DEASON: Staff.

21                               CROSS EXAMINATION

22 BY MS. CHRISTENSEN:

23          Q     Good morning --

24          A     Good morning.

25          Q     -- or afternoon, actually.

1 A You're right.

2 Q I just have a few questions regarding the language  
3 that was adopted in the Florida agreement, specifically  
4 regarding the switched access arrangement exception.

5 A Yes, ma'am.

6 Q Mr. King testified that he wouldn't -- well, one,  
7 that he agreed that the switched access arrangements equals  
8 facilities. I mean, they're synonymous. You could read  
9 switched access arrangements the same as switched access  
10 facilities. Would you also agree with that?

11 A I am not an expert in switched access, but my belief  
12 is that when you reference a switched access arrangement, you  
13 are talking about the facilities that are used to transport or  
14 carry switched access traffic. But I can't say that the word  
15 "arrangement" and the word "facility" are synonymous.

16 Q Now, you were the -- is it chief negotiator on that  
17 particular section?

18 A Yes. I'm -- yes.

19 Q Did you -- when BellSouth proposed the exception  
20 language, did you check with anyone else at AT&T as to what  
21 they thought the exception language meant?

22 A Numerous attorneys and subject matter experts.

23 Q Okay. And did they also agree that switched access  
24 arrangements were synonymous with switched access facilities?

25 A Our discussions dealt more with the traffic and not

1 what a switched access arrangement might be. So my answer is  
2 that we really dealt more with the traffic that would be  
3 carried over that arrangement versus the arrangement itself.

4 Q And did you discuss putting in language in that  
5 exception that would have clarified that you were talking about  
6 the traffic type rather than limiting it to the arrangement  
7 type?

8 A Actually, BellSouth did that for us when they went  
9 ahead and offered an offer to us, the switched access traffic.  
10 When that was first -- and we were able to use that vehicle  
11 then to improve upon the intent between the parties in 5.3.1.1.  
12 BellSouth provided us the switched access traffic definition in  
13 5.3.3. And originally they had intended that -- or offered  
14 that that language would apply to all telephone toll service  
15 whether it were interLATA, intraLATA, it didn't matter. And  
16 through negotiations we changed that definition of switched  
17 access traffic such that it only defined switched access  
18 traffic as interLATA.

19 So again, when BellSouth offered to interrelate the  
20 languages, we were certainly happy to do that, even though I  
21 don't think it was necessary because I think that the two  
22 sections would have been interrelated even without that last  
23 clause being added by BellSouth.

24 Q All right. So let me understand. Is it AT&T's  
25 position that embedded in the term "switched access

1 arrangement" is an understanding or the intent of the parties  
2 that the switched access arrangements be limited or defined by  
3 the type of traffic that goes over the facilities?

4 A Absolutely. AT&T questioned BellSouth regarding the  
5 type traffic -- the definition of the traffic that would be  
6 carried over those arrangements. And we were given the  
7 definition as you find it in this contract today.

8 Q And specifically which part of the contract are you  
9 referring to?

10 A 5.3.3, the switched access traffic definition that's  
11 at question.

12 MS. CHRISTENSEN: Okay. I have no further questions.

13 COMMISSIONER DEASON: Commissioners, questions?

14 Redirect.

15 MS. CECIL: No redirect, Commissioner. I would like  
16 to move for the admission of Mr. Peacock's Exhibit Number 20.  
17 And also, in light of the fact that Mr. Shore asked Mr. Peacock  
18 questions about the FCC's April 27, 2001 ISP order on remand,  
19 if the Commission would take judicial notice of that order,  
20 that would be --

21 COMMISSIONER DEASON: Okay. I don't believe there's  
22 any problem with us taking judicial notice of the FCC order.  
23 In regards to Exhibit 20, without objection, show that exhibit  
24 is admitted.

25 (Exhibit 20 admitted into the record.)

1 MR. SHORE: We would move for the admission of  
2 Exhibits 21, 22, and 23.

3 COMMISSIONER DEASON: Without objection, show  
4 Exhibits 21, 22, and 23 are admitted.

5 (Exhibits 21, 22, and 23 admitted into the record.)

6 COMMISSIONER DEASON: Thank you, sir.

7 (Witness excused.)

8 COMMISSIONER DEASON: We're going to recess for  
9 lunch. We will reconvene at 1:30.

10 (Lunch recess.)

11 (Transcript continues in sequence with Volume 2.)

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1 STATE OF FLORIDA )

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON )

4  
5 I, TRICIA DeMARTE, RPR, Official Commission Reporter, do  
6 hereby certify that the foregoing proceeding was heard at the  
7 time and place herein stated.

8 IT IS FURTHER CERTIFIED that I stenographically  
9 reported the said proceedings; that the same has been  
10 transcribed under my direct supervision; and that this  
11 transcript constitutes a true transcription of my notes of said  
12 proceedings.

13 I FURTHER CERTIFY that I am not a relative, employee,  
14 attorney or counsel of any of the parties, nor am I a relative  
15 or employee of any of the parties' attorneys or counsel  
16 connected with the action, nor am I financially interested in  
17 the action.

18 DATED THIS 20th DAY OF MAY, 2003.

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