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July 3, 2003

VIA FEDERAL EXPRESS

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

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

Dear Mrs. Bayo:

Please find enclosed for filing in your office the original and fifteen (15) copies of Post-Hearing Statement of Issues and Positions and Post-Hearing Brief on behalf of AT&T Communications of the Southern States, LLC, Teleport Communications Group, Inc., and TCG of South Florida.

Please stamp two (2) copies of AT&T's Post-Hearing Statement and Post-Hearing Brief in the usual manner and return to us via our courier.

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

Sincerely yours,

Loretta A. Cecil/SHR

Loretta A. Cecil

Enclosure(s)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of Post-Hearing Statement of Issues and Positions and Post-Hearing Brief on behalf of AT&T of the Southern States, LLC, Teleport Telecommunications Group, Inc. and TCG South Florida (all collectively "AT&T") was furnished by U. S. Mail this 3rd day of July, 2003 to the following:

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint Of AT&T Communications Of The Southern States, LLC, Teleport Telecommunications Group, Inc., And TCG South Florida For Enforcement of Interconnection Agreements With BellSouth Telecommunications, Inc.	)	Docket No. 020919-TP
	)	Filed: July 3, 2003

POST-HEARING STATEMENT OF ISSUES AND POSITIONS AND POST-HEARING BRIEF OF AT&T COMMUNICATIONS OF THE SOUTHERN STATES, LLC, TELEPORT COMMUNICATIONS GROUP, INC. AND TCG SOUTH FLORIDA

AT&T Communications of the Southern States, LLC, Teleport Telecommunications Group, Inc., and TCG South Florida ("AT&T") submit this post-hearing statement of issues and positions and post-hearing brief to the Florida Public Service Commission ("Commission") in the above captioned proceeding pursuant to Order No. PSC-03-0737-PCO-TP dated June 20, 2003, and Order No. PSC-02-1652-PCO-TP dated November 26, 2002, and Rule 28.106-215, Florida Administrative Code.

STATEMENT OF ISSUES AND POSITIONS

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

AT&T Position: ***The Commission has jurisdiction in this matter pursuant to Section 252 of the Telecommunications Act of 1996[1] and Section 364.01, Florida Statutes. Moreover, Section 16 of the Interconnection Agreement, allows AT&T to petition this Commission to resolve any disputes that arise under the Interconnection Agreement.***

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

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

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

AT&T Position: ***The Parties stipulated that the applicable reciprocal compensation rate and terms of the Second Interconnection Agreement apply from July 1, 2001 forward. [Fl. Tr. 7]***

[1] *Telecommunications Act of 1996*, Pub. L. No. 104-104, 110 Stat. 56.

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

AT&T Position: ***"Local Traffic" as used in Second Interconnection Agreement includes all "LATAwide Traffic." The only exception is "LATAwide Traffic" which the State Commission or FCC determines constitutes interLATA calls.***

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

AT&T Position: ***Under the terms of the Second Interconnection Agreement, reciprocal compensation rates and terms apply to calls originated and terminated through switched access arrangements, except for calls which the State Commission or FCC determines constitute interLATA calls.***

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

AT&T Position: ***BellSouth has breached Second Interconnection Agreement because it has failed to charge AT&T reciprocal compensation for the transport and termination of all ""Local Traffic," including all "LATAwide Traffic," and neither the State Commission nor the FCC has determined that any such calls constitute interLATA calls.***

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

AT&T Position: ***AT&T is entitled from BellSouth to (1) $6,961,545, from July 1, 2001 through December 31, 2002, late payments on such amount of 1 and 1/2 % per month from July 1, 2001 until paid; and (2) an Order that BellSouth is obligated to charge AT&T from January 1, 2003 forward reciprocal compensation for all "Local Traffic," as defined in Issues 2, 3 and 4.[2] ***

POST-HEARING BRIEF

I. INTRODUCTION.

AT&T's complaint alleges a "straightforward" breach of contract claim which can, and should, be resolved based on the literal and unambiguous provisions of the interconnection

[2] BellSouth has not disputed the credit amount of $6,961,545 for the period July 1, 2001 through December 31, 2002, and AT&T's entitlement to interest thereon at the rate of 1 and 1/2 % per month from July 1, 2001 until paid.

agreement executed by AT&T and BellSouth on October 26, 2001 ("Interconnection Agreement").[3] The complaint involves what constitutes "Local Traffic" and "Switched Access Traffic" under the Interconnection Agreement for compensation purposes. As the Commission is aware, reciprocal compensation applies to the transport and termination of "Local Traffic," while switched access applies to the transport and termination of "Switched Access Traffic." [Fl. Tr. 78][4] In Florida, the switched access rate is twenty five (25) percent *higher* than the reciprocal compensation rate. [Id.] Thus, the distinction between "Local Traffic" and "Switched Access Traffic" is critical to AT&T's ability to offer competitive local service in Florida and gave rise to the dispute at hand.

A. BELLSOUTH MISCONTRUES THE "LOCAL TRAFFIC" AND "SWITCHED ACCESS TRAFFIC" PROVISIONS OF THE INTERCONNECTION AGREEMENT, FIRST BY IGNORING THE "INTERRELATEDNESS" OF THESE PROVISIONS, AND SECOND, BY ADVOCATING A FLAWED "FACILITIES" TEST FOR DETERMINING COMPENSATION FOR TRAFFIC.

BellSouth is keenly aware of the competitive phenomena created by the significant difference between rates for reciprocal compensation and switched access in Florida, and misconstrues two key provisions of the Interconnection Agreement in order to maintain its

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[3] There are two interconnection agreements at issue in this proceeding. The first interconnection agreement ("First Interconnection Agreement") was executed by AT&T and BellSouth and approved by the Commission on June 19, 1997 in Docket No. 9600833-TP by Order No. PSC-97-0724-FOF-IP. First Interconnection Agreement was effective June 10, 1997 and was set to expire three years (3) thereafter. However, there was a "retroactivity" provision included in Section 2.3 of First Interconnection Agreement ("Retroactivity Provision") which provided that in the event First Interconnection Agreement expired before AT&T and BellSouth had executed another "follow-on" or "second" interconnection agreement, or before the Commission had issued its arbitration order in a "follow-on" or "second" arbitration, that the terms subsequently agreed to by the Parties or so ordered by the Commission in any "follow-on" or "second" arbitration, would be "retroactive" to the day following expiration of First Interconnection Agreement, or June 11, 2000. In Order No. PSC-99-1877-FOF-TP, the Commission approved TCG South Florida's adoption in its entirety of First Interconnection Agreement. Subsequently, a second interconnection agreement ("Second Interconnection Agreement) was executed by AT&T and BellSouth and approved by the Commission on December 7, 2001 in Docket No. 000731-TP by Order PSC No. PSC-01-2357-FOF-TP. Second Interconnection Agreement also was effective for a three (3) term beginning October 26, 2001 as to both AT&T Communications of the Southern States, LLC and TCG South Florida. Because the disputed language negotiated by the Parties in Second Interconnection Agreement applies to First Interconnection Agreement as of June 11, 2000 (by virtue of the Retroactivity Provision of First Interconnection Agreement), where the context is appropriate AT&T will refer to both First and Second Interconnection Agreements in this post-hearing brief as the "Interconnection Agreement." Otherwise, First and Second Interconnection Agreements will be identified separately.

[4] Because an identical proceeding is underway before the North Carolina Utilities Commission, the Parties stipulated the admission of the transcript of the North Carolina hearing (which was held on January 21, 2003) and depositions taken in North Carolina into this Docket No. 020919-TP. To avoid confusion regarding which transcripts and depositions are being cited in this post-hearing brief, AT&T separately will refer to the North Carolina and Florida hearing transcripts, and separately to the North Carolina and Florida depositions.

monopoly over local service in the state. These provisions are Section 5.3.1.1,[5] which governs "Local Traffic," and Section 5.3.3,[6] which governs "Switched Access Traffic." [Fl. Tr. 38-49] By virtue of express language in Section 5.3.3, the Parties agreed that these provisions were specifically "interrelated." [Id.] However, BellSouth misconstrues these provisions, first, by ignoring their "interrelatedness," [Fl. Tr. 40-41] and second, by advocating that the Commission should determine what constitutes "Local Traffic" based on the type of facility used to transport a call [Fl. Tr. 303-304], and not on the Commission's time honored position that a call's ends points determine compensation.[7]

The type of interconnection facilities which BellSouth alleges must be used to transport "Local Traffic" are local interconnection trunks. [Id.] Not surprising, BellSouth uses *only* local interconnection trunks to transport its customers' local traffic. [N.C. Tr. Vol. 3, 40-43] This is because over the course of decades and as a traditional "local only" carrier, BellSouth has built its network using local interconnection trunks, having had no prior need to establish a traditional long distance network. [Id.] Moreover, today, even after receiving permission to enter the interLATA market in its territory, BellSouth continues to use only local interconnection trunks to

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[5] Section 5.3.1.1 first was agreed to by the Parties in Attachment 3 to the Interconnection Agreement. Thereafter, the Parties agreed to Exhibit 1 to First Amendment to Interconnection Agreement. In both Attachment 1 and Exhibit 1, the language regarding what constitutes "Local Traffic" is the same and found in Section 5.3.1.1.

[6] Section 5.3.3 first was agreed to by the Parties in Attachment 3 to the Interconnection Agreement. Thereafter, the Parties agreed to Exhibit 1 to First Amendment to Interconnection Agreement. In Exhibit 1, the Parties "renumbered" Section 5.3.3 to Section 5.3.10. However, the language in Section 5.3.10 of Exhibit 1 is the same as the language of Section 5.3.3 of Attachment 3. Because the Parties repeatedly have referred to the definition of "Switched Access Traffic" as being found in Section 5.3.3, AT&T will cite only Section 5.3.3 in this post-hearing brief.

[7] See, *In Re: Investigation into Appropriate Methods to Compensate Carriers for the Exchange of Traffic Subject to Section 251 of the Telecommunications Act of 1996,* Florida PSC Docket No. 000075-TP, Fl. PSC Order PSC-02-1248-FOF-TP, September 10, 2002 *("Florida Reciprocal Compensation Docket")*, at Page 30 where the Commission held that compensation for virtual- NXX traffic should be based on the end points of a call. Moreover, contrary to its "facility" test advocated in this proceeding, on prior occasions BellSouth repeatedly has urged this Commission to determine compensation based on the end points of the call. See, for example, Direct Testimony of John A. Ruscilli, dated March 12, 2001 at Pages 27-44; *Florida Reciprocal Compensation Docket* and the Rebuttal Testimony of John A. Ruscilli, dated April 19, 2001 at Pages 16-22; *Florida Reciprocal Compensation Docket.*; See also, BellSouth's Response to AT&T's Arbitration Petition in Docket No. 000731-TP (Exhibit No. 18 in Fl Hearing) at Page 7 where BellSouth stated ". . to the extent, however, that calls provided via IP Telephony are long distance calls, access charges should apply, *irrespective of the technology used to transport them.*" [emphasis added] Additionally, as recently as May 5, 2003, Ms. Shiroishi confirmed in her Florida deposition in this proceeding that "[o]ur position on Voice Over IP has always been that Voice Over IP transmissions are, originate and terminate or *where the end points of the call are traditionally* would be accessed, and those are considered access calls." [Shiroishi Fl. Depo. P. 56] [emphasis added]

transport its customers' traffic, preferring instead to provide long distance services provided by the long distance networks of other carriers. [Id.; Fl. Tr. 345-346]

In stark contrast, AT&T has invested significant sums to modify its traditional long distance network in order to provide both long distance *and* local services to its customers using the same network. [Fl. Tr. 72; 87-92] As a result, AT&T utilizes various facilities to provide services to its customers, including, among others, switched access arrangements ordered from BellSouth which carry both local and long distance calls. In misconstruing the Interconnection Agreement, BellSouth argues that anytime AT&T transports a call over a switched access arrangement such call does not constitute "Local Traffic," but instead constitutes "Switched Access Traffic" subject to a higher switched access rate.[8] [Fl. Tr. 241-242]

BellSouth's attempts to retain its monopoly hold over the local telephone market in Florida by cleverly misconstruing the Interconnection Agreement is blatantly anticompetitive. Thus in determining whether BellSouth's interpretation of the Interconnection Agreement is appropriate, the Commission also must consider its anticompetitive consequences. Sections 364.01(1); 364.04(b); 364.04(f)-(g), Florida Statues. Such consequences simply cannot be ignored under the guise of "contract construction."

B. BELLSOUTH ADVOCATES THAT THE COMMISSION CONSIDER BELLSOUTH'S "EXTRINSIC" OR PAROL EVIDENCE REGARDING WHAT BELLSOUTH "INTENDED" WHEN IT NEGOTIATED THE INTERCONNECTION AGREEMENT, RATHER THAN RELYING ONLY UPON THE LITERAL WORDS OF THE INTERCONNECTION AGREEMENT.

[8] Hopefully, the following hypothetical puts BellSouth's anticompetitive argument in perspective. Assume that an AT&T local customer in Jacksonville calls his neighbor "two streets over" who happens to be a BellSouth local customer. Because the call takes place or stays within the Jacksonville LATA, it fits the definition of "Local Traffic" in the Interconnection Agreement However, further assume that because of various historical facility and network considerations, AT&T uses a switched access arrangement along with other AT&T facilities to transport its local customer's call to BellSouth's customer. Irrespective of the short distance between these two customers, and the fact that the call clearly remains within the LATA, under BellSouth's interpretation of the Interconnection Agreement, the call does not constitute "Local Traffic" because it was transported by AT&T over a switched access arrangement. Rather, BellSouth would charge AT&T a higher switched access rate to transport and terminate the call. On the other hand, if the roles were reversed and it was a BellSouth customer in Jacksonville calling his neighbor "two streets over" who happened to be an AT&T local customer, AT&T would, and always has (since executing the Interconnection Agreement on October 26, 2001), charge BellSouth the applicable lower reciprocal compensation rate. [Fl Tr. 54-55; 345-346] The difference is that AT&T interprets the Interconnection Agreement to mean that all calls that stay within the LATA constitute "Local Traffic," regardless of the interconnection facility utilized. More importantly, if AT&T were to interpret the Interconnection Agreement the same as BellSouth, BellSouth still would pay AT&T the lower reciprocal compensation rate because BellSouth always uses *only* local interconnection trunks to transport its customers' local calls. [Id.]

Unfortunately, the Commission will be required to interpret the disputed language in the Interconnection Agreement by determining which of the Parties is telling the truth regarding what transpired during their interconnection negotiations. This is because BellSouth opened "pandora's box" with the filing of Ms. Shiroishi's testimony, who found it necessary to testify more regarding what BellSouth "intended" the Interconnection Agreement to mean, rather than what the Interconnection Agreement "actually says."[9] [*See*, Shiroishi's Direct Testimony, Fl. Tr. 238; 242-244; Shiroishi's Rebuttal Testimony, Fl. Tr. 252-253] BellSouth was forced to rely upon Ms. Shiroishi's "intent" testimony because BellSouth knows the "literal" words of the Interconnection Agreement "interrelate" Section 5.3.1.1 with Section 5.3.3. When these Sections are interrelated, BellSouth loses because the Interconnection Agreement limits "Switched Access Traffic" to interLATA calls, thus, by definition, making all other calls "Local Traffic" and subject to reciprocal compensation.

In order to close "pandora's box," AT&T's witnesses were compelled to testify at length about what happened during the negotiations in order to rebut Ms. Shiroishi's revisionist history. [*See*, Peacock's Rebuttal Testimony, Fl. Tr. 163-174; and Stevens' Rebuttal Testimony, Fl. Tr. 202-209] This "closing exercise" also required extensive cross examination of Ms. Shiroishi who excelled at making filibuster speeches during both the North Carolina and Florida hearings, in hopes of convincing the Commission that BellSouth's misconstruction of Interconnection Agreement was legitimate. [*See*, Fl. Tr. 286-287; 292-293; 295-307; 314-316; 323-324;328-330; 335-338; 358-359;] Accordingly, AT&T has analyzed the testimony and credibility of Ms. Shiroishi in greater detail below, pointing out the numerous times when Ms. Shiroishi made statements which clearly were inconsistent with the drafts of the Interconnection Agreement exchanged between the Parties, as well as various discussions between the Parties. In comparison, the testimony and credibility of

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[9] AT&T argued in two pre-hearing motions filed on February 12, 2003 and March 21, 2003 respectively, that BellSouth's "extrinsic" or parol evidence should not be considered by the Commission because the Interconnection Agreement is unambiguous and BellSouth offered its "extrinsic" or parol evidence merely to alter the literal words of the unambiguous Interconnection Agreement. Rather than repeating AT&T's arguments in this post-hearing brief, AT&T hereby incorporates them by this reference, and requests that the Commission not consider BellSouth's "extrinsic" or parol evidence for the reasons stated in AT&T's prior motions, but instead construe the Interconnection Agreement based on the literal words contained therein.

AT&T's witnesses shows that the AT&T's interpretation of the Interconnection Agreement is correct, based not only upon the literal words of the Interconnection Agreement, but also the discussions between the Parties during their negotiations.

C. AT&T IS ENTITLED TO A DECLARATION BY THE COMMISSION THAT BELLSOUTH HAS BREACHED THE INTERCONNECTION AGREEMENT AND THUS IS ENTITLED TO A CREDIT FROM BELLSOUTH, PLUS INTEREST, AS WELL AS A DECLARATION THAT ON A GOING FORWARD BASIS BELLSOUTH SHOULD CHARGE AT&T RECIPROCAL COMPENSATION FOR TRANSPORTING AND TERMINATING ALL "LOCAL TRAFFIC," INCLUDING ALL "LATAWIDE TRAFFIC."[10]

Because BellSouth has breached the Interconnection Agreement by failing to charge AT&T the applicable reciprocal compensation rate for transporting and terminating all "Local Traffic" from July 1, 2001 to December 31, 2002 [Fl. Tr. 81-82; Exhibit 12], the Commission should order that (1) AT&T is entitled to a credit from BellSouth in the amount of $6,961,545, as well as late payments on such amount from BellSouth at the rate of one and one half percent (1 and 1/2 %) per month times beginning from July 1, 2001 until such credit is paid; [Id.] and (2) BellSouth is obligated to charge AT&T from January 1, 2003 forward reciprocal compensation rates for the termination of all "Local Traffic," including all "LATAwide Traffic." [11] [Id.]

II. ARGUMENT.

A. THE DEFINITIONS OF "LOCAL TRAFFIC" AND "SWITCHED ACCESS TRAFFIC" ARE SPECIFICALLY "INTERRELATED IN THE INTERCONNECTION AGREEMENT AND THUS CLEARLY INCLUDE "TRADITIONAL" INTRALATA TRAFFIC AS "LOCAL TRAFFIC."

With respect to BellSouth's obligation to charge AT&T reciprocal compensation for the transport and termination of "Local Traffic," Section 5.3.1.1 provides:

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

The language "except those calls that are originated or terminated through switched

[10] Pursuant to Section 5.3.1.1 of the Interconnection Agreement, the only exception would be calls which the State Commission or FCC determines are *interLATA* calls

access arrangements as established by the State Commission or FCC," is qualified by the definition of "Switched Access Traffic" found in Section 5.3.3. This is because the Parties specifically agreed that Section 5.3.3 is "interrelated" to Section 5.3.1.1. Section 5.3.3 defines "Switched Access Traffic" as:

> . . . telephone calls requiring local transmission or switching services for the purpose of the origination or termination of Intrastate InterLATA and Interstate InterLATA traffic . . . This Section 5.3.3 is interrelated to Section 5.3.1.1.

As this definition reflects, the Parties expressly limited "Switched Access Traffic" under the Interconnection Agreement to *interLATA traffic* and excluded all *traditional intraLATA traffic.* Accordingly, by virtue of the "interrelatedness" of Section 5.3.1.1 and 5.3.3, the definition of "Switched Access Traffic" clearly qualifies the language "calls that are originated or terminated through switched access arrangements as established by the State Commission or FCC" to mean interLATA traffic originating or terminating through such switched access arrangements. [Fl. Tr. 38-44]

1. GEORGIA LAW REQUIRES THE COMMISSION TO GIVE MEANING TO THE "INTERRELATEDNESS" OF SECTIONS 5.3.1.1 AND 5.3.3 AND NOT JUST "ISOLATED" SECTIONS IN CONSTRUING INTERCONNECTION AGREEMENT.

Georgia law governs the Interconnection Agreement.[12] As a result, the Commission is required to look at the "four corners" of the contract, *Stephens v. Parrino and Ware,* 138 GA App 634, 226 S.E.2d 809 (1976); and to construe the contract ". . . by examining the agreement in its entirety and not merely by examining isolated clauses and provisions thereof and give regard to the clear intent of the entities rather than particular words. . ." *First Capital Life Insurance Company v. AAA Communications, Inc.* 906 F. Supp. 1546 (1995); See also, *Richard Haney Ford, Inc. v. Ford Dealer Computer Services,* 218 GA App. at 316, 461 S.E.2d 282 (1995). Additionally, as the Eleventh Circuit has held, the Commission is required to interpret the contract so that the *entirety* of the contract is upheld. *Maiz v. Virani,* 253 F.3d 641 (11th Cir. (GA) 2001) at 659.

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[11] Again, pursuant to Section 5.3.1.1 of the Interconnection Agreement, the only exception would be calls which the State Commission or FCC determines are *interLATA* calls.

[12] In Section 24.6.1 of the General Terms and Conditions of Interconnection Agreement, the Parties agreed that, "the validity of this Agreement, the construction and enforcement of its terms, and the interpretation of

In direct conflict with Georgia law, BellSouth asks the Commission to ignore the definition of "Switched Access Traffic" found in Section 5.3.3. More specifically, BellSouth argues that the language regarding "switched access arrangements" as set forth in Section 5.3.1.1 should *stand alone,* to use Ms. Shiroishi's words, regarding what the Parties intended regarding what constituted "Local Traffic." [Shiroishi Fl. Depo. 105-106] This is improper, based not only on Georgia law as found in *Stephens, First Capital, Richard Haney Ford,* and *Maiz,* but also as a result of the literal words of the contract. This is because the Parties specifically agreed that the definition of "Switched Access Traffic" found in Section 5.3.3 was "interrelated" to Section 5.3.1.1 (which governs what constitutes "Local Traffic").

BellSouth is forced to argue that Section 5.3.1.1 *stands alone* because when Sections 5.3.1.1 and 5.3.3 are "read together," the only logical construction of the Interconnection Agreement "as a whole" is that the Parties agreed that all LATAwide calls which traditionally had been treated as intraLATA toll traffic would be compensated as "Local Traffic," except for such LATAwide calls which the State Commission or FCC determined were interLATA calls. In other words, the language "switched access arrangements" in Section 5.3.1.1 is limited by the definition of "Switched Access Traffic" in Section 5.3.3, and thus can mean only interLATA calls.

Moreover, the "switched access arrangements" language set forth in Section 5.3.1.1 cannot be interpreted as BellSouth advocates to mean intraLATA calls, for to do so expressly contradicts the definition of "Switched Access Traffic" in Section 5.3.3 which is limited to interLATA calls. As a result, the only contract interpretation which allows both Sections 5.3.1.1 and 5.3.3 to survive contemporaneously as required by Georgia law is AT&T's interpretation that "switched access arrangements" as set forth in Section 5.3.1.1 is limited to interLATA calls found in the definition of "Switched Access Traffic" in Section 5.3.3.

2. <u>BELLSOUTH'S ARGUMENT THAT THE "INTERRELATEDNESS" OF SECTION 5.3.3 to SECTION 5.3.1.1 ONLY DEALS WITH VOICE OVER INTERNET PROTOCOL ("VOIP") CALLS VIOLATES RULES OF CONTRACT CONSTRUCTION AND CONTRADICTS OTHER BELLSOUTH TESTIMONY</u>.

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the rights and duties of the Parties shall be governed by the laws of the State of Georgia . . . except insofar as federal law may control any aspect of this Agreement, in which case federal law shall govern such aspect."

As the Commission will recall, Ms. Shiroishi argued that the "interrelated" language of Section 5.3.3 "interrelated" Section 5.3.3 to Section 5.3.1.1 *only as to VOIP calls*, and thus, did not "interrelate" the definition of "Switched Access Traffic" found in Section 5.3.3 to the "entirety" of Section 5.3.1.1 regarding what constitutes "Local Traffic." [Fl. Tr. 246; 252-254; 260; Shiroishi Fl. Depo. 107-108] This makes no sense.

a. Section 5.3.3 is "interrelated" to Section 5.3.1.1. with "Section" being capitalized with a capital "S," thus "interrelating" the "entirety" of Section 5.3.3 to Section 5.3.1.1.

First, even Ms. Shiroishi admitted that the "interrelated" language of Section 5.3.3 unequivocally states "[t]his Section is interrelated to Section 5.3.1.1." with "Section" being capitalized with a capital "S." [Shiroishi Fl. Depo. 109; Fl. Tr. 333-334.] Under the rules of contract construction, this means that all of Section 5.3.3, and not just the sentence which deal with VOIP calls, is "interrelated" to what constitutes "Local Traffic" as set forth in Section 5.3.1.1. Ms. Shiroishi admitted the same during the Florida hearing. [Fl. Tr. 334]

b. Ms. Shiroishi argues that VOIP calls do not originate or terminate over switched access arrangements.

Second, Ms. Shiroishi stated that VOIP calls do not originate or terminate over "switched access arrangements." [Shiroishi Fl. Depo. 119-120; Fl. Tr. 335; N.C. Tr. Vol. 2, 45-47; Vol. 3, 24] Thus, using Ms. Shiroishi's own understanding of VOIP technology,[13] the language in Section 5.3.3 regarding compensation for VOIP calls provides no basis for "interrelating" the two Sections.

c. The Parties already had agreed in Section 5.3.3. that VOIP calls did not constitute "Switched Access Traffic."

Third, the Parties already had agreed in Section 5.3.3 that VOIP calls do not constituted "Switched Access Traffic" as defined in the same Section 5.3.3. Thus, not having VOIP calls defined as "Switched Access Traffic" also provides no basis for interrelating the two Sections because Section 5.3.3 stands by itself for the proposition that VOIP calls are not "Switched Access Traffic." When confronted with the fact, all Ms. Shiroishi could say was " . . . *I don't know that*

[13] AT&T takes no position whether Ms. Shiroishi is correct in her representation of how VOIP technology works Instead, AT&T refers to Ms. Shiroishi's position in order to expose her faulty logic that the language "switched access arrangements as established by the State Commission or the FCC" found in Section 5.3.1.1 relates only to VOIP calls.

BellSouth would have been comfortable without referencing the switched access issue [referring to "not interrelating" Section 5.3.3 to Section 5.3.1.1]." [Shiroishi Fl. Depo. 112]

d. The Parties already had agreed that VOIP calls which originated in one LATA and terminated in another LATA would not be compensated as "Local Traffic."

Fourth, the Parties already had agreed in Section 5.3.3 that VOIP calls which originated in one LATA and terminated in another LATA would not be compensated as "Local Traffic." Thus, not having VOIP calls defined as "Local Traffic" provides no basis for interrelating the two Sections because Section 5.3.3 by itself stands for the proposition that VOIP calls which are originated in one LATA and terminated in another LATA would not be compensated as "Local Traffic."

e. Ms. Shiroishi's Section 252(i) "opt-in" argument is counter-intuitive.

Regarding this last point, Ms. Shiroishi attempted to draw a nexus between the need to interrelate the language of Section 5.3.3 to Section 5.3.1.1 in an "opt-in" situation where another alternative local exchange carrier ("ALEC") adopts the VOIP language of Section 5.3.3 under the "pick and choose" rule of Section 252(i) of the Act. Her theory was that in addition to "picking" the VOIP language from Section 5.3.3, the ALEC also would be required to adopt the language of Section 5.3.1.1 regarding what constituted "Local Traffic." [Fl. Tr. 261]

To establish this nexus, Ms. Shiroishi testified in her Florida deposition that whenever BellSouth included a definition of "Switched Access Traffic" in an interconnection agreement which tied compensation for VOIP calls to the "LATA," BellSouth necessarily would be required to "interrelate" that definition of "Switched Access Traffic" to what also constitutes "Local Traffic" under that same interconnection agreement. (Shiroishi Fl. Depo. 122-123] However, on cross examination by AT&T's counsel (and subsequently by Commissioner Davidson) when confronted with an interconnection agreement which BellSouth recently had executed with Auglink Communications, Inc. ("Auglink") in Florida [Fl. Tr. Exhibit 26] which had (1) a definition of "Switched Access Traffic;" (2) a definition of "Local Traffic" similar to Section 5.3.1.1; (3) language tying compensation for VOIP calls to the "LATA;" but finally, (4) no language "interrelating" the definition of "Switched Access Traffic" to the definition of "Local Traffic;" Ms. Shiroishi "backtracked" from her deposition testimony indicating that it was not really necessary for

BellSouth to "interrelate" the definition of "Switched Access Traffic" to "Local Traffic" under the conditions outlined above. Instead, she testified that such "interrelatedness" is required *only* when the ALEC does not take BellSouth's "standard" language regarding compensation for VOIP calls. [Fl. Tr. 343; 367-370]

f. BellSouth's interconnection agreements with other ALECs contain their own definitions of "Local Traffic.

Irrespective of Ms. Shiroishi's attempts "to explain away" this obvious inconsistency between her testimony and BellSouth's actual interconnection "interrelating" practices, the fact remains that Ms. Shiroishi's argument simply makes no sense given the odds that BellSouth's interconnection agreement with another ALEC already would include its own definition of "Local Traffic." Moreover, even if the ALEC only adopted the VOIP language of 5.3.3 without also adopting Section 5.3.1.1, BellSouth still would be fully protected. *This is because Section 5.3.3 itself, without any reference whatsoever to Section 5.3.1.1, provides: (1) a definition of "Switched Access Traffic;" (2) that VOIP calls are not "Switched Access Traffic," and (3) VOIP calls which originate in one LATA and terminate in another LATA shall not be compensated as "Local Traffic."* Moreover, because as a matter of policy, BellSouth has not agreed to a definition of "Local Traffic" which is greater than the LATA, there would be no logical reason to have any ALEC adopt the LATAwide "maximum" definition of "Local Traffic" in Section 5.3.1.1 when odds are that the ALEC's existing definition of "Local Traffic" is "smaller" than LATAwide. Thus, the ALEC's existing definition of "Local Traffic" would provide an even better definition for BellSouth relative to reciprocal compensation purposes than the definition of "Local Traffic" in the Interconnection Agreement. As a result, Ms. Shiroishi's "opt-in" argument is both illogical and irrelevant because Section 5.3.3 itself provides that VOIP calls from one LATA to another LATA never would be treated as "Local Traffic."

g. Ms. Shiroish's "opt-in" argument ignores that the Section 5.3.3 is "interrelated in its "entirety" to Section 5.3.1.1.

During the North Carolina hearing Commissioner Ervin appeared to be as perplexed as AT&T regarding the logic of Ms. Shiroishi's "opt-in" argument. His questions to Ms. Shiroishi were as follows:

Q. Let's go back to 5.3.1 which is the definition of switched access traffic. I think you agreed, under cross examination from Ms. Cecil, that the interrelationship language that's the last sentence in that provision applies to the entire definition. I think you ultimately agreed to that.

What is your --. It was not clear to me, however, what you understand that interrelationship sentence to mean. When that sentence says that this definition is interrelated to 5.3.1.1, how is it interrelated?

A. That definition, it will –

Q. In other words, how do you contend that it's interrelated. I understand there's a dispute.

A. The interrelationship, again would come into play if a carrier, for instance, would ask to adopt the VOIP provisions of AT&T's agreement, but maybe not like their local traffic definition. They wanted a traditional local calling area or BellSouth's local calling area as defined in our tariffs. Then you would have a problem in reconciling what the parties had agreed to on VOIP, which was within the LATA, how we were going to handle it, versus the smaller local calling area.

So that sentence was actually proposed by BellSouth to help us in the case that a carrier said, I want to adopt the VOIP provisions of AT&T's agreement, we would then have a provision that says this is interrelated back to the local traffic definition. So they would also have to adopt that.

Q. There's language in 5.3.3 that deals with subjects other than Voice over Internet Protocol, isn't there?

A. There are. But, again, the language was put in – not until the parties negotiated VOIP.

Q. And I understand that that may be the fact. I'm just trying to understand how we can have language that says that the entire section is interrelated to 5.3.1.1, but only one sentence in a broader paragraph can somehow have any interrelated effect.

You understand my problem?

A. Yes, sir . . .

[N.C. Tr. Vol. 3, 64-69]

As Commissioner Ervin's exchange with Ms. Shiroishi establishes, BellSouth cannot have "its cake and eat it too." Either Sections 5.3.1.1 and 5.3.3 are fully "interrelated" or they are not. BellSouth cannot argue that only one sentence in Section 5.3.3 is "interrelated" to Section 5.3.1.1, and at the same time, argue that none of the provisions of Section 5.3.1.1 are "interrelated" to Section 5.3.3.

B. BELLSOUTH'S ARGUMENT THAT INTRALATA TRAFFIC, BY DEFINITION, CAN NEVER BE CONSIDERED INTERLATA TRAFFIC FOR COMPENSATION PURPOSES IS INCONSISTENT WITH PRIOR BELLSOUTH ADVOCACY.

In yet another rejoinder hoping to convince the Commission that Section 5.3.3 is not "interrelated" in its "entirety" to Section 5.3.1.1, BellSouth argues that "LATAwide" as set forth in Section 5.3.1.1 parenthetically modifies "switched access arrangements" in this same Section, meaning that the Parties agreed that "switched access arrangements" refers only to traditional "LATAwide" calls transported over "switched access arrangements." [Fl. Tr. 250; N.C. Tr. Vol. 2, 39] In other words, BellSouth argues that, by definition, "switched access arrangements" as set forth in Section 5.3.1.1 can never be used to transport interLATA traffic.

a. BellSouth's argument relies on "by-gone" telecommunications regulation.

This might have been a reasonable argument in the "by-gone" days of telecommunications regulation, but it has no place in the modern regulatory environment. Rather, BellSouth itself has argued that certain calls, even if they "look, smell, and act like intraLATA calls, are in fact interLATA calls. Consider Ms. Shiroishi's testimony where she stated that "[t]he point of using voice over IP is that *you might even dial it locally, it might look locally, but the end points might be in different LATAs or different states.*" [Fl. Tr. 335-336].

Additionally, during the arbitration between AT&T and BellSouth which resulted in the Parties executing the Interconnection Agreement, BellSouth argued that calls to ISP's—even if such calls were originated and terminated in the same LATA—constituted interstate traffic, obviously one type of interLATA calls. [Fl. Tr. Composite Exhibit 20; B. C. Peacock Rebuttal Exhibit 1, Issue Matrix, Issue 1] Accordingly, it is disingenuous at best for BellSouth now to assert antiquated regulatory concepts regarding what constitutes a "LATAwide" call in order to have the language "switched access arrangements" set forth in Section 5.3.1.1 misconstrued to suit its needs in this proceeding.

b. AT&T's interpretation of "switched access arrangements" is based on BellSouth's own advocacy.

AT&T's interpretation that "switched access arrangements" as set forth in Section 5.3.1.1 is qualified by the definition of "Switched Access Traffic" in Section 5.3.3, is based on BellSouth's own

advocacy and concerns (as Ms. Shiroishi discussed with AT&T's Mr. Peacock) that certain intraLATA traffic (ISP calls and VOIP calls) indeed can be interLATA calls for compensation purposes.[14] Additionally, during Ms. Shiroishi's Florida deposition, she admitted that it is possible that a State Commission or the FCC could determine that certain interLATA traffic is "Local Traffic." (Shiroishi Fl. Depo. 132-133]

Moreover, as discussed in greater detail below, the types of calls for which Ms. Shiroishi advised AT&T's Mr. Peacock that BellSouth needed "protection" in order to prevent AT&T and other ALECs from asserting that such calls constituted "Local Traffic" (ISP calls and VOIP calls, among others) are *exactly* the same types of calls that BellSouth repeatedly has argued to this Commission are not intraLATA calls even if they "look, smell or act like" intraLATA calls. In this respect, Georgia law requires the Commission to consider the "surrounding circumstances" which existed at the time the contract was executed. *Maiz at* 659, 253 F.3d. 641, *St. Charles Foods, Inc. v. America's Favorite Chicken Co.*, 198 F.3d 815 at 820 (11th Cir. (GA) 1999). Clearly, BellSouth's advocacy before this Commission that certain "LATAwide" calls are more truly interLATA calls for compensation purposes should, and must, be considered by the Commission in interpreting the Interconnection Agreement. Moreover, BellSouth's interpretation of the contract collides with Georgia's well settled law that ". . . doubts in a contract are construely strongly against the drafting party." O.C.G.A. § 13-2-2(5); *Empire Distrib., Inc., v. Georgia L. Smith, II, Georgia World Cong. Ctr. Auth.* 225 GA App. 742, 509 S.E.2d 650, 653 (1998); *Howkins v. Atlanta Baggage Co.*, 107 GA App. 38, 129 S.E.2d 158 (1962).[15] Again, the only exception would be calls which the State Commission or FCC determines are interLATA calls.

Thus, applying all of the various rules of contract construction under Georgia law, the literal and unambiguous provisions of Sections 5.3.1.1 and 5.3.3 of the Interconnection Agreement

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[14] AT&T does not cite this BellSouth advocacy for its accuracy; rather AT&T cites this BellSouth argument because it refutes BellSouth's argument that only traditional intraLATA calls can be transported over "switched access arrangements "

[15] There is no dispute in this proceeding that BellSouth both proposed and drafted (1) the "switched access arrangements" language set forth in Section 5.3.1.1; (2) the definition of "Switched Access Traffic" set forth in Section 5.3.3; and (3) the language set forth in Section 5.3.3 which "interrelates" Section 5.3.3 with Section 5.3.1.1. [N.C. Tr. Vol. 1, 178-181; Vol. 2, 36]

clearly establish BellSouth's obligation to charge AT&T at the local compensation rate for all "traditional" LATAwide traffic which is the subject of the dispute at hand.

C. IF THE COMMISSION CONSIDERS BELLSOUTH'S "EXTRINSIC" OR PAROL EVIDENCE, SUCH EVIDENCE MAY NOT "ADD TO," "TAKE FROM" OR "VARY" THE PROVISIONS OF THE INTERCONNECTION AGREEMENT.

Under Georgia law "parol evidence is inadmissible to add to, take from, or vary a written contract." O.C.G.A. § 13-2-2(1). Additionally, "the construction which will uphold a contract in whole and in every part is to be preferred, and the whole contract should be looked to in arriving at the construction of any part." O.C.G.A. § 13-2-2(4). Furthermore, in ascertaining the intent of the parties as required by O.C.G.A. § 13-2-3, the intent must be given effect whenever possible, even if a document or instrument is poorly or unskillfully prepared. *Skinner v. Bearden,* 77 GA App. 325, 326, 48 S.E.2d. 574 (1948); *Nelson v. Nelson,* 176 GA App. 187, 335 S.E.2d. 411, 412 (1985).

In accordance with O.C.G.A. § 13-2-2, in considering BellSouth's "extrinsic" or parol evidence, the Commission must ignore all such evidence to the extent it is offered to vary the terms of the Interconnection Agreement, specifically what constitutes "Local Traffic" as set forth in Section 5.3.1.1 and the definition of "Switched Access Traffic" set forth in Section 5.3.3. Instead, the Commission must give meaning to *all* of the provisions in the Interconnection Agreement (including the "entire agreement" or merger clause contained therein). Even if the Interconnection Agreement is subject to an exception to the general rule prohibiting the consideration of "extrinsic" or parol evidence, allowing BellSouth to rely upon "extrinsic" or parol evidence to minimize or eliminate consideration of the definition of "Switched Access Traffic" in Section 5.3.3 violates the rule of contract construction that prefers the construction of a contract which will "uphold the contract in whole." *Ochs v. Hoerner,* 235 Ga. App. 735, 510 S.E.2d 107 (1998); (holding that parol evidence is inadmissible to alter terms of the unambiguous sales contract in view of the merger clause, even if otherwise subject to some exception to the general rule). Accordingly, even though Ms. Shiroishi stated time and again that Section 5.3.3 was interrelated to Section 5.3.1.1 only to deal with VOIP calls, that this not what the Interconnection Agreement says. If the Commission were to adopt Ms. Shiroishi's argument, the Commission would be ignoring the fact that the definition of "Switched Access Traffic" applies to all of Section 5.3.1.1, meaning that switched

access only can apply to interLATA calls. Such construction of the Interconnection Agreement clearly would violate Georgia law.

D. THE "EXTRINSIC" OR PAROL EVIDENCE PROVIDED BY AT&T ESTABLISHES THAT THE PARTIES INTENDED THAT "LOCAL TRAFFIC" WOULD INCLUDE TRADITIONAL INTRALATA TRAFFIC FOR PURPOSES OF RECIPROCAL COMPENSATION; BELLSOUTH'S TESTIMONY REGARDING THE SAME IS NOT CREDIBLE.

AT&T's "extrinsic" or parol testimony establishes that the language in Section 5.3.1.1 "except those calls that are originated or terminated through switched access arrangements as established by the State Commission or FCC" was agreed to by the Parties in order to "protect" BellSouth in the event a State Commission or the FCC subsequently determined that certain traffic which stayed *"within a LATA"* nevertheless constituted *interLATA traffic.*

This rationale tracks perfectly the definition of "Switched Access Traffic" as found in Section 5.3.3 which is limited to interLATA traffic. The specific examples of such traffic for which BellSouth sought "protection" were calls to ISP's and VOIP calls. [Fl. Tr. 65-68; 163-165] Thus the "switched access arrangements" language in Section 5.3.1.1 was not agreed to by the Parties to govern traditional intraLATA toll calls originated or terminated over "switched access arrangements." Rather, Section 5.3.1.1 specifically states that for such traditional intraLATA toll traffic, the Parties agreed "to apply a LATAwide local concept" meaning that such LATAwide calls would be subject to reciprocal compensation.

In comparison, BellSouth's Testimony does not provide a logical interpretation or analysis of the various contract provisions in dispute. Rather, as discussed above, BellSouth takes out of context the "switched access arrangements" language in Section 5.3.1.1, and ignores the definition of "Switched Access Traffic" in Section 5.3.3. by virtue of its strained interpretation of the "interrelated" language in Section 5.3.3. Hoping to confuse the dispute even more, BellSouth also offers Ms. Shiroishi's Testimony regarding various "discussions" which Ms. Shiroishi had with AT&T's negotiations during the interconnection negotiations.

1. BellSouth's Testimony.

As the Commission will recall, there is a significant difference between the Parties regarding what was said by Ms. Shiroishi when the Parties were negotiating Sections 5.3.1.1 and 5.3.3.

Despite the fact that BellSouth had several representatives attend these negotiating sessions, BellSouth only offered the testimony of Ms. Shiroishi. Furthermore, although AT&T asked BellSouth to produce "any and all notes" which confirmed what was said during these discussions, Ms. Shiroishi produced no notes of her own.[16] [Fl. Tr. 321; N.C. Tr. Vol. 2, 11]

a. <u>The Shiroishi Testimony</u>.

Regarding the critical Section 5.3.1.1, Ms. Shiroishi summarized her discussions with AT&T regarding "switched access arrangements" as follows:

> The exclusion was specifically written in order to exclude from the definition of local traffic calls that are considered switched access under tariff. As stated above, we had *extensive discussion* about the exclusion of traffic that was originated or terminated through switched access arrangements. In the course of those discussions, we drew diagrams on the whiteboard and discussed the role of switched access arrangements as outside the definition of local traffic.

[Fl. Tr. 2544] [emphasis added]

However, directly contradicting Ms. Shiroishi's alleged "extensive" discussion with AT&T, Ms. Shiroishi admitted that her discussion with AT&T when negotiating the disputed language

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[16] Moreover, the only notes produced by BellSouth was a one page document created by another BellSouth employee which contains no information regarding the dispute in this proceeding. <u>See</u>, AT&T Shiroishi Cross Examination Exhibit 1 from the North Carolina proceeding. [N.C. Tr. Vol 2, 70-72] When asked in North Carolina why more notes were not available, Ms. Shiroishi indicated that BellSouth's "Document Retention Guidelines" provided that once an interconnection agreement was executed, BellSouth's practice is to destroy all notes, emails and "red-lined" versions of the contract, except where there is litigation pending. She also stated that BellSouth "probably" would keep all documents if it became aware of a dispute. Unless there is litigation or a dispute pending, Ms. Shiroishi stated that the only document which is saved is the executed contract. [N C. Tr. Vol. 2, 67-72] However, in North Carolina these Guidelines either were not followed or they were followed inconsistently given that Ms. Shiroishi was able to produce "red-lined" versions of the contract, but not any of her notes. This is particularly surprising given that Ms Shiroishi also supervises all other BellSouth interconnection negotiators. In Florida, Ms. Shiroishi's explanation as to why she had no notes became even more suspect because, unlike the North Carolina Interconnection Agreement which was executed on July 17, 2001, in Florida the Parties did not execute the Interconnection Agreement until October 16, 2001. Moreover, although the Parties reached an "eight state" agreement on Sections 5.3.1.1 and 5.3.3 on July 17, 2001, Ms Shiroishi admitted in her Florida deposition that BellSouth knew it had a dispute with AT&T regarding Sections 5.3.1.1 and 5.3.3 before BellSouth signed the Florida Interconnection Agreement on October 26, 2001. [Shiroishi Fl. Depo. 95-97] If that were the case, according to Ms. Shiroishi's statements in North Carolina, she should have retained her notes. However, once confronted with this glaring inconsistency, Ms Shiroishi attempted to explain it away by testifying in Florida that it was her "personal process" to destroy all notes each time she completed "red-lining" the interconnection agreement which she was negotiating. [Shiroishi Fl. Depo. 143-144; Fl. Tr. 320] Moreover, with respect to BellSouth's dispute with AT&T, Ms. Shiroishi did not follow the advice which she testified that she gives to the contract negotiators who work for her regarding retention of notes. As she stated in her Florida deposition: ". . . I would not give anybody specific guidance to destroy or not destroy. . .typically. . .[what] I advise people is to *keep what you need to document the issues and make sure that you have that until the issues are resolved. And then at the time that an agreement is signed and the issue is resolved and there's no need to keep all the documentation unless we're under a lawsuit to retain those types of documents . . .* " [Shiroishi Fl. Depo. 144-145] [emphasis added]

totaled less than the forty-five (45) minutes in which she was cross examined regarding Section 5.3.1.1. at the hearing. [Fl. Tr. 311] Moreover, in North Carolina, Ms. Shiroishi confirmed in both her deposition and at the hearing, that she never discussed with AT&T what constituted "switched access arrangements" under Section 5.3.1.1. [N.C. Tr., Vol. 3, 9], and that her testimony ". . . calls originated or terminated over 'switched access arrangements' would be governed by BellSouth's switched access tariffs. . . " was nothing more than her own personal conclusion. [N.C. Tr., Vol. 3, 13; *See also*, Shiroishi Fl. Depo. 74-75] In other words, regarding this very critical provision, Ms. Shiroishi admitted that there was no provision in the Interconnection Agreement which provides that calls originated or terminated through "switched access arrangements" would be subject to BellSouth's switched access rate rather than reciprocal compensation.[17] [Id.]

Consider also the following additional gaps in Ms. Shiroishi's testimony:

i. Ms. Shiroishi never asked for a briefing on the AT&T interconnection negotiations.

Ms. Shiroishi admitted that although she entered the Florida negotiations "late in the process" as a subject matter expert on interconnection issues, she never had a briefing from her BellSouth colleagues regarding the outstanding issues. [N.C. Depo. 121-122] This obviously begs the question of how much Ms. Shiroishi really knew about the status of BellSouth's interconnection negotiations with AT&T when she began her alleged "extensive discussion" with AT&T during the last few weeks of the negotiations.

ii. Ms. Shiroishi failed to adequately explain why she offered AT&T a "new" definition of "Local Traffic."

Although Ms. Shrioishi was the BellSouth negotiator who offered AT&T a "new" definition of "Local Traffic," she could not explain why she offered this new definition to AT&T other than the fact that BellSouth had offered the same definition to other ALEC's. This clearly indicates that this new definition was not tailored to AT&T's negotiations, which is consistent with Ms. Shiroishi admission that previously she had received no briefing on the outstanding issues between BellSouth and AT&T, including the fact that BellSouth previously had agreed to an undisputed

[17] See also, Shiroishi Fl. Depo. 74-75 regarding what she discussed with AT&T regarding "switched access arrangements where she stated: "I don't recall specifically other than what I testified to in North Carolina."

"LATAwide" definition of "Local Traffic" in Mississippi. The Mississippi Interconnection Agreement was important because it formed the basis for AT&T's negotiations with BellSouth in Florida and the other eight states. [Fl. Tr. 286-287]

iii. Ms. Shiroishi does not know why BellSouth agreed to a "LATAwide" definition of "Local Traffic" in Mississippi.

Although currently the supervisor of all eleven (11) BellSouth interconnection negotiators, [Shiroishi Fl. Depo. 14-16] to date Ms. Shiroishi still does not know why BellSouth agreed to a "LATAwide" definition for "Local Traffic" with AT&T in Mississippi.[18] This is a critical "knowledge gap" given that the Parties executed the Mississippi Interconnection Agreement *before* they agreed to interconnection agreements in Florida and the other states.[19] [Fl. Tr. 280] Additionally, although Ms. Shiroishi's organization also has responsibility for resolving disputes [Fl. Depo. 16], she was caught by surprise at the Florida hearing to learn that although BellSouth unequivocally had agreed to a "LATAwide" definition for "Local Traffic" in Mississippi, BellSouth continues to charge AT&T switched access for transporting and terminating any traffic in Mississippi which is transported over a "switched access arrangement," yet also stays "within the LATA."[20] [Fl. Tr. 280-282] This Mississippi billing dispute clearly establishes BellSouth's penchant for not abiding the literal words of an interconnection agreement, even when its lead interconnection negotiator is testifying regarding the same.

iv. Despite a "clear memory" regarding "extensive discussions" with AT&T regarding "switched access arrangements," Ms. Shiroishi had "no memory" of other important discussions with AT&T.

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[18] Moreover, Ms. Shiroishi apparently has made no effort to determine the answer to this question despite the fact that she by the time she testified in Florida, she had been asked this question three times before—in both of her North Carolina and Florida depositions and at the North Carolina hearing. [N.C. Depo. 51-52; Shiroishi Fl. Depo. 282-283] The only plausible explanation for her lack of diligence (given Ms. Shiroishi's record of receiving five (5) promotions in just four years at BellSouth [Fl. Depo. 14]) is that BellSouth strategically decided that it did not want to provide a witness who could answer this question. BellSouth also refused to answer the question in discovery. [*See*, BellSouth's Objections to AT&T's First Set of Interrogatories dated March 21, 2003] The reason for this strategic decision is simple—the answer would support AT&T's belief that after obtaining a "LATAwide" definition for "Local Traffic" in Mississippi, AT&T thought BellSouth had agreed to a similar "LATAwide" definition for "Local Traffic" in the other eight states—thus explaining AT&T's decision not to arbitrate the definition of "Local Traffic" in Florida and the other eight states which followed the Mississippi negotiations.

[19] As AT&T's witnesses testified, AT&T was not about to "give up" in other states the "LATAwide" definition of "Local Traffic" which BellSouth already had agreed to in Mississippi. [N.C. Vol. 2, Tr. 87]

[20] *See*, Fl. Tr. 137-138 for AT&T's Mr. King's discussion of BellSouth's improper billing of AT&T under the Mississippi Interconnection Agreement.

Ms. Shiroishi also had "no memory" regarding her discussions with AT&T's Mr. Peacock regarding changing "ruling regulatory body" in Section 5.3.1.1 to "State Commission or the FCC." [Shiroishi Fl. Depo. 73] This is another critical gap in that these discussions directly involved what constituted "switched access arrangements" and AT&T's understanding of why BellSouth asked to include this language in Section. 5.3.1.1. Ms. Shiroishi also did not recall her discussions with AT&T's Mr. Peacock regarding why Mr. Peacock requested that she change BellSouth's proposed definition of "Switched Access Traffic" in Section 5.3.3 to remove *intralATA traffic* from the definition. [Shiroishi Fl. Depo. 116-117] This is not only a significant gap, but a *fundamental* significant gap, because these discussions expressly related to what AT&T thought BellSouth had agreed to when BellSouth deleted *intraLATA traffic* from the definition of "Switched Access Traffic," and replaced it with only *interLATA traffic.*

2. AT&T's Testimony.

In stark contrast to BellSouth, AT&T filed the testimony of three (3) witnesses in this proceeding, Messrs. King and Peacock, and Ms. Stevens. As Mr. King testified, he has responsibility for interpreting and implementing the provisions of the Interconnection Agreement. [Fl. Tr. 61] Although Mr. King was not involved in the "face-to-face" negotiations with BellSouth, he was kept informed regarding the negotiations on a daily basis and his approval was required regarding all compensation provisions. [Id.] Mr. Peacock was AT&T's lead negotiator with BellSouth for all nine (9) BellSouth states and he attended every negotiating session. [Fl. Tr. 151-153] Mr. Peacock also was the AT&T manager who routinely informed Mr. King (and other AT&T managers) regarding the status of the negotiations. [Id.] Beginning in February 2001, Mr. Peacock was assisted by Ms. Stevens who handled administrative details, including attending negotiating sessions, making and keeping notes of negotiating sessions, and keeping track of "red-lined" versions of the contract exchanged between the Parties. [Fl. Tr. 202-204]

a. The Peacock Testimony.

First, as Mr Peacock testified, the discussions between BellSouth and AT&T relative to Section 5.3.1.1 are far off the mark of what Ms. Shiroishi represented:

> The discussions regarding BellSouth's proposed language were framed by the arbitration issues that remained unresolved. These discussions did not include any modification to include intraLATA traffic as "Local Traffic." AT&T's understanding of BellSouth's proposed language was that it was needed to prevent either AT&T (or any [ALEC] which "opted-into" or adopted this language under Section 252(i) of the Act) from representing that ISP traffic and VOIP calls constituted "Local Traffic" for purposes of applying local reciprocal compensation rates. My discussions with Ms. Shiroishi and subsequent "red-lined contract language changes" were focused on drafting language that met BellSouth's concerns and obligated AT&T to abide by any state commission or FCC Order regarding ISP traffic or VOIP calls.

[Fl. Tr. 163-164]

Additionally, Mr. Peacock further testified regarding why AT&T agreed to the "switched access arrangements" language set forth in Section 5.3.1.1:

> I discussed Ms. Shiroishi's explanation with Mr. King and others at AT&T and we agreed to accept the language, except that we asked to change "ruling regulatory body" to "State Commission or FCC." Importantly, at this time the Parties also had agreed to a clear and unambiguous definition of "Switched Access Traffic" (proposed by BellSouth) which did not include any intraLATA or "LATAwide Traffic." Moreover, the justification for including language regarding "switched access arrangements" (in order to protect BellSouth from AT&T or other ALEC's from representing that ISP traffic or VOIP calls were "Local Traffic"), tracked perfectly the definition of "Switched Access Traffic" in Section 5.3.3. Furthermore, BellSouth offered, and AT&T agreed, to include language in Section 5.3.3 (which includes the definition of "Switched Access Traffic") that this Section 5.3.3 was "interrelated" to Section 5.3.1.1. As discussed above, Section 5.3.1.1 is that Section of the Interconnection Agreement where the parties agreed "...to apply a LATAwide local concept to this Attachment 3. . . " Thus, when these two Sections are "read together" by virtue of the "interrelated" language of Section 5.3.3, it is clear that the definition of "Switched Access Traffic" (which is limited to intrastate interLATA and interstate interLATA traffic) in Section 5.3.3 applies to the "exclusion" language regarding "switched access arrangements" found in Section 5.3.1.1.

[Fl. Tr. 164-165]

In addition to Mr. Peacock's explanation regarding AT&T's acceptance of the exclusion language, he also testified about other draft contract language which BellSouth changed which confirmed his belief that BellSouth did not intend to exclude traditional intraLATA traffic from what constituted "Local Traffic." As he stated:

> The original "Switched Access Traffic" proposed by BellSouth to AT&T read as follows: "Switched Access Traffic is defined as telephone calls requiring local transmission or switching services for the purpose of the origination or termination of ***Telephone Toll Service***..." 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."
>
> In an e-mail from Ms. Shiroishi to AT&T on July 18, 2001, Ms. Shiroishi states, "Attached is the redline as a result of last night's call. I realized we don't need the intraLATA stuff, so I've redlined. Everything else that you accepted last night is shown as accepted." In the redline version of the contract, [this language] in fact is shown as struck.

[Fl. Tr. 165-167]

Thus, as Mr. Peacock testified, BellSouth's willingness to strike the very language that supports its position in this proceeding (that traditional intraLATA traffic was subject to switched access rates) supports AT&T's position that the Parties had agreed to compensate such intraLATA traffic as "Local Traffic." [Id.]

Faced with Mr. Peacock's testimony, during deposition and hearing in North Carolina, BellSouth's counsel attempted to get Mr. Peacock to state that the "switched access arrangement" language addressed "switched access services" *in general,* and not ISP calls and VOIP calls, thus hoping to establish that Mr. Peacock was unsure regarding what Ms. Shiroishi had discussed with him regarding Section 5.3.1.1. However, despite BellSouth's repeated attempts to confuse the issue, Mr. Peacock remained firm in his conviction that ISP calls and VOIP calls were discussed with Ms. Shrioishi, *along with other interLATA access services,* regarding BellSouth's need to add language regarding "switched access arrangements" in Section 5.3.1.1. [N.C. Tr., Vol. 2, 3-5; 22] Mr. Peacock also testified that the "diagrams drawn on a whiteboard" related to "point of interconnection," an issue which the Parties continued to negotiate, and not which calls were transported over "switched access arrangements." [Fl. Tr. 170]

b. <u>The Stevens Testimony</u>.

Ms. Stevens provides the Commission with important corroborating testimony that Mr. Peacock's recollections of the negotiations between the Parties are factual and that Ms. Shiroishi's are not. In response to a BellSouth discovery request, AT&T produced Ms. Stevens' notes from the

period of February 21, 2001 until December 31, 2001.[21] Thus, her notes cover the important time period when Ms. Shiroishi first became involved in the negotiations until well after November 16, 2001, when Ms. Shiroishi first explained that BellSouth that had a different interpretation of the "switched access arrangements" language in Section 5.3.1.1.[22]

Moreover, with respect to Ms. Shiroishi's statements that she advised AT&T that "switched access arrangements" referred to BellSouth's switched access tariffs, Ms. Stevens testified:

> Q. Do you ever remember being in a meeting, or on a conference call, when Ms. Shiroishi, or anyone else from BellSouth, made such statements?
>
> A. No. Not during the timeframe in question. I do remember her making such a statement, but it was only ***after*** the parties had signed Section Interconnection Agreement on October 26, 2001, and it was only when BellSouth began providing its "interpretation" of what constituted "Local Traffic" under Second Interconnection Agreement. My notes reflect that she made such statements at a meeting between the parties on November 16, 2001.
>
> Q. Rather than relying solely on your memory, did you check your meeting or conference call notes to determine whether you ever recorded that Ms. Shiroishi, or anyone else from BellSouth, made such statements?
>
> A. Yes I did. But again, I found no entries in my notes where I had recorded that such statements were made by Ms. Shiroishi or anyone else from BellSouth before the parties signed Second Interconnection Agreement on July 19, 2001.

[Fl. Tr. 206-207.]

Furthermore, regarding the Parties "drawing diagrams on the whiteboard" regarding "switched access arrangements," Ms. Stevens corroborated Mr. Peacock's testimony that such drawings related to the negotiations the Parties were having regarding "point of interconnection" and not which types of calls were transported over "switched access arrangements."[23] [Fl. Tr. 207-208]

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[21] See, AT&T's Response to BellSouth's 1st Set of Production of Documents No. 1, dated April 23, 2003.

[22] The Commission will recall that AT&T and BellSouth executed the Interconnection Agreement on October 26, 2001. Thus, Ms Stevens' notes cover the important time period both before and after the Interconnection Agreement was executed by the Parties. So that there is no confusion, Ms. Shiroishi did not advise AT&T of BellSouth's differing interpretation of Section 5.3.1.1 until November 16, 2001. However, earlier on October 24, 2001, BellSouth's counsel advised AT&T's counsel of this BellSouth differing interpretation. See, BellSouth' Response to AT&T First Request For Production of Documents, POD 28, dated March 21, 2003. Because this correspondence came to AT&T through BellSouth's counsel and outside of the Parties' "routine" negotiations, this correspondence (and BellSouth's interpretation of Section 5.3.1.1) would not be included in Ms. Stevens' notes.

[23] Ms. Shiroishi also admitted in her Florida deposition that the Parties drew "lots" of diagrams regarding "point of interconnection " [Shiroishi Fl Depo. 79]

Regarding such diagrams, a review of Ms. Stevens' notes confirms that the diagrams drawn did not relate to "switched access arrangements." Moreover, perhaps most telling is that Ms. Stevens' notes of November 16, 2001—the same day Ms. Shiroishi advised AT&T that BellSouth had a different interpretation regarding "switched access arrangements"—do contain diagrams which relate to "switched access arrangements."[24]

Given this corroborating evidence, in order for the Commission to believe Ms. Shiroishi and not Ms. Stevens regarding these diagrams, the Commission must conclude that Ms. Stevens was "prescient" and thus anticipated that a dispute between the Parties would develop in the future such that, on a calculated basis, she intentionally omitted copying any diagrams regarding "switched access arrangements" in her notes before July 19, 2001 (when the Parties reached agreement on Sections 5.3.1.1 and 5.3.3), but then included them after the Interconnection Agreement was executed on October 26, 2001. This also would require the Commission to conclude that Ms. Stevens knew at the time of her note-taking that Ms. Shiroishi subsequently would allege that diagrams were drawn before July 19, 2001. None of these conclusions are reasonable.

Moreover, as the Commission will recall, BellSouth's attempts to discredit Ms. Stevens' testimony were limited. This is because Ms. Stevens' notes are extensive. In fact, BellSouth's main criticism of Ms. Stevens' note-taking was that she did not include more "verbatim" quotes regarding statements made by the Parties during their negotiations. In particular, BellSouth's counsel attempted to chide Ms. Stevens because her notes did not contain the words "protection" regarding both ISP calls and VOIP calls relative the "switched access arrangements" language found in Section 5.3.1.1. However, as Ms. Stevens testified on re-direct examination, she did not make "verbatim" notes. [Fl. Tr. 229] Furthermore, the Commission is encouraged to review Ms. Stevens' notes for itself—it if does, it will find numerous references to the Parties' negotiations regarding compensation for ISP calls and VOIP calls, among other issues.

Finally, regarding the statements made by Ms. Shiroishi at the November 16, 2001 meeting regarding BellSouth's interpretation of the "switched access arrangements" language found in

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[24] Ms. Stevens' notes of November 16, 2001 are attached to this post-hearing brief as Appendix 1.

Section 5.3.1.1 (and the detailed notes which Ms. Stevens made of this meeting), *Ms. Stevens testified that had Ms. Shiroishi in fact made these same statements during a negotiations meeting before the Parties had executed the Interconnection Agreement on October 16, 2001, she would have include those statements in her notes.* [Fl. Tr. 233].

c. The King Testimony.

Mr. King confirmed Mr. Peacock's Testimony that BellSouth had requested the "switched access arrangements" language set forth in Section 5.3.1.1 in the context of resolving two (2) issues which the Parties were continuing to negotiate. [Fl. Tr. 65-66]. These were calls to ISPs and VOIP calls [Id.] As Mr. King stated:

> Mr. Peacock explained that BellSouth wanted to include the language to protect BellSouth in the event a state commission or the FCC determined that ISP traffic was deemed jurisdictionally to be interLATA traffic even though the traffic technically stayed within a LATA. Mr. Peacock further explained that BellSouth would not allow such traffic to be compensated as "Local Traffic" when AT&T's long distance network transported this traffic. He said Ms. Shiroishi also was concerned about a state commission or the FCC determining VOIP calls to be interLATA traffic. Further, we discussed the words "regulatory ruling body" and requested that the words be changed to "State Commission or the FCC" given BellSouth's statements that "regulatory ruling body" meant "state commission or the FCC."

[Fl. Tr. 65-66]

Mr. King also testified regarding what Mr. Peacock advised him regarding other provisions that were being proposed by BellSouth:

> As discussions between Mr. Peacock and BellSouth continued, BellSouth also proposed a definition of "Switched Access Traffic" in Section 5.3.3 (which included only intrastate interLATA and interstate interLATA traffic as "Switched Access Traffic"). BellSouth also proposed language to make it clear that Section 5.3.3 with its definition of "Switched Access Traffic" was "interrelated" to Section 5.3.1.1. (which included the "LATAwide" local concept language regarding "Local Traffic" as well as the "switched access arrangements" language regarding not misrepresenting interLATA traffic as being subject to local compensation rates).

[Fl. Tr. 66]

Finally, Mr. King testified about why he gave Mr. Peacock approval to execute the Interconnection Agreement with the "switched access arrangements" language set forth in Section 5.3.1.1:

> I gave Mr. Peacock my approval after he advised me of BellSouth's rationale for the language as had been explained to him and others at AT&T. That rationale was that BellSouth wanted to include language regarding "switched access arrangements" in

> order to protect BellSouth in the event a State Commission or the FCC determined that ISP bound traffic was interLATA traffic even though the traffic technically stayed within a LATA; and in the event that the FCC determined that VOIP calls constituted interLATA traffic. Mr. Peacock also indicated that AT&T and BellSouth had reached agreement on a clear and unambiguous definition of "Switched Access Traffic" in Section 5.3.3 that was limited to intrastate interLATA and interstate interLATA traffic and did not include any intraLATA or "LATAwide Traffic." Finally, we discussed that BellSouth also had proposed language that Section 5.3.3 (which defined "Switched Access Traffic") was "interrelated" to Section 5.3.1.1 (which set forth the "LATAwide" local concept for "Local Traffic"). Based on these provisions and Mr. Peacock's discussions with Ms. Shiroishi, I believed that the language which BellSouth had asked be included in Second Interconnection Agreement provided that intraLATA traffic would be compensated at local reciprocal compensation rates and not at switched access rates. It clearly was AT&T's intent for that to be the case, and we never would have agreed to any language that would have required us to pay switched access rates for local intraLATA traffic.

[Fl. Tr. 67-68]

BellSouth's cross-examination of Mr. King primarily involved whether Mr. King understood that the term "switched access arrangements" was included in BellSouth's Florida Access Tariff. Mr. King agreed that it did. [Fl. Tr. 111-113] However, this is not compelling because BellSouth's Florida Access Tariff also includes BellSouth's switched access rate *for both intrastate intraLATA traffic and intrastate interLATA traffic.*[25]

In this respect, as Mr. King testified, Mr. Peacock had advised him that BellSouth had wanted the "switched access arrangements" language set forth in Section 5.3.1.1 in order to "protect" BellSouth if a State Commission or FCC subsequently determined that calls to ISPs and VOIP calls (even if they stayed within a LATA) were determined to be interLATA calls. [N.C. Vol. 1, Tr. 55] Thus, the fact that BellSouth's Florida Access Tariff also contains references to "switched access arrangements" for intrastate interLATA calls tracks perfectly with Mr. King's understanding that BellSouth was looking for interLATA "protection" relative to the "switched access arrangements" language set forth in Section 5.3.1.1.

BellSouth also asked Mr. King why BellSouth needed to be "protected" relative to calls to ISPs when the FCC already had issued an order which was consistent with BellSouth's position regarding the treatment of this traffic. [Fl. Tr. 127-130] There are several flaws with this BellSouth argument. First, as BellSouth's counsel specifically stated at the North Carolina hearing "...

BellSouth's position is and always has been that such calls are interLATA in nature." [N.C. Tr., Vol. 1, 87] Additionally, the "FCC decision" to which BellSouth's counsel referred was the FCC's ISP Order. Contrary to BellSouth's counsel's representations, in this Order the FCC did not determine that calls to ISPs constituted interLATA traffic. Rather the FCC held that such traffic was "predominately interstate in nature."[26] This distinction is significant in that interstate traffic obviously does not include intrastate *interLATA* traffic. Thus, indeed BellSouth needed further "protection" in the event the FCC subsequently determined that calls to ISPs constituted interLATA traffic. Moreover, as Mr. King also testified, the rates which AT&T and BellSouth agreed to in the Interconnection Agreement relative to compensation for calls to ISPs were not interstate rates, [N.C. Tr., Vol. 1, 105] and generally interstate rates are much lower than intrastate interLATA rates. Finally, relative to VOIP calls, BellSouth certainly needed "protection" in the event a State Commission or FCC determined such traffic to be interLATA calls. Specifically, this Commission already had declined to rule that VOIP calls constituted compensable traffic,[27] and the FCC currently is considering whether VOIP is switched access traffic.[28]

3. THE "RED-LINED" VERSIONS OF THE INTERCONNECTION AGREEMENT PRODUCED BY BELLSOUTH IN DISCOVERY SUPPORTS THE PEACOCK, STEVENS AND KING TESTIMONY AND NOT THE SHIROISHI TESTIMONY.

In evaluating the credibility of Messrs. Peacock and King, and Ms. Stevens as opposed to that of Ms. Shiroishi, the Commission can determine for itself whether the proposed drafts of contract language exchanged between the Parties during July, 2001 supports the same. To aid in this effort, AT&T prepared three (3) matrices[29] which discuss the three (3) most relevant contract

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[25] In this respect, BellSouth's interstate switched access tariff also uses the term "SWA," alleged by BellSouth to mean "switched access arrangement." The website to access BellSouth's interstate switched access tariff is http.//cpr.bellsouth.com, See, Section 6, Application of Switched Access Service.

[26] Order on Remand and Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic, CC Docket No. 96-98, 99-68, ¶1, April 27, 2001.

[27] *Florida Reciprocal Comp Docket*, Order at p.37.

[28] On October 18, 2002, AT&T filed with the FCC its "Petition For Declaratory Ruling That AT&T's Phone-To-Phone IP Telephony Services Are Exempt From Access Charges", FCC Docket No 02-361. The Petition is pending.

[29] The provisions contained in these matrices are taken from e-mails and "red-lined" versions of Interconnection Agreement produced by BellSouth in response to AT&T's 1st Request for Production of Documents in this proceeding. These matrixes were identified and admitted into the record in this proceeding as Exhibit 27.

provisions to this dispute: (1) "Local Traffic," (2) "Switched Access Traffic," and (3) "IntraLATA Toll Traffic." [30]

a. The "Local Traffic" Matrix. Contrary to BellSouth's allegations, this Matrix clearly reflects that in July 2001, the Parties in fact were negotiating compensation for ISP traffic while also negotiating the "switched access arrangements" language set forth in Section 5.3.1.1. Specifically, on July 17, 2001, Ms. Shiroishi sent AT&T BellSouth's proposed language regarding implementation of the FCC's ISP Order. Note also that on July 17, 2001, the language "ruling regulatory body" still is included in the "switched access arrangement" exclusion language. It is changed to "State Commission or FCC" only after Ms. Shiroishi sent BellSouth's next draft to AT&T on July 18, 2001. Furthermore, the fact that the Parties continued to negotiate relative to compensation for calls to ISP's is reflected in the two (2) sentences regarding ISP traffic proposed by Mr. Peacock on July 19, 2001. Moreover, compensation for ISP traffic was not resolved until later in the day on July 19, 2001 when the Parties agreed to delete the two (2) sentences added by Mr. Peacock earlier on July 19, 2001. On July 19, 2001, the Parties completed their negotiations of the Interconnection Agreement..

Accordingly, all of Ms. Shiroishi's testimony and BellSouth's cross-examination questions which were offered to convince the Commission that the "switched access arrangements" language set forth in Section 5.3.1.1 was negotiated separately and had nothing to do with compensation for calls to ISP's and VOIP calls (discussed further below relative to "Switched Access Traffic") are for naught. Rather, these "Local Traffic" red-lined contract provisions fully corroborate Messrs. Peacock's and King's, and Ms. Stevens' testimony and contradict Ms. Shiroishi's testimony.

b. The "Switched Access Traffic" Matrix. This Matrix confirms that BellSouth first proposed a definition of "Switched Access Traffic" as set forth in Section 5.3.3 to AT&T on July 1, 2001. Contrary to Ms. Shiroishi's testimony, it also confirms that the definition of "Switched Access Traffic" was not being negotiated by the Parties solely to confirm their agreement that VOIP calls would not be compensated at a switched access rate until the FCC subsequently determined the classification of this traffic. In this respect, the Commission should note that on July 19, 2001

[30] These Matrixes are attached to this post-hearing brief as Appendix 2

at 2:21 a.m., Mr. Peacock sent Ms. Shiroishi a proposed revised Section 5.3.3 in which he added the following language:

> If BellSouth or AT&T is the other Party's end user's presubscribed interexchange carrier or if an end-user uses BellSouth or AT&T as an interexchange carrier or on an 101XXXX basis, BellSouth or AT&T will charge the other Party the appropriate tariff charges for originating switched access services.

As is abundantly clear, this language has nothing to do with VOIP calls, but rather was added by Mr. Peacock to cover the situation where one of the Parties is a customer's local service provider, yet the customer "PICs" the other Party to be their intraLATA toll carrier. This language was accepted by BellSouth and is contained in the final version of the Interconnection Agreement.

Moreover, the Commission also should review the various language changes which the Parties made in defining "Switched Access Traffic" from July 11, 2001 through July 19, 2001. First, when Ms. Shiroishi initially proposed the definition of "Switched Access Traffic" on July 11, 2001, she defined it as "Telephone Toll Traffic" (meaning all toll traffic—both intraLATA and interLATA). Then between July 11, 2001 and July 16, 2001, Ms. Shiroishi added "IntraLATA Intrastate" along with "Intrastate InterLATA" and "Interstate InterLATA" traffic to the definition of "Switched Access Traffic."[31] *Importantly, Ms. Shiroishi's attempts to include both "Telephone Toll Traffic" and "IntraLATA Intrastate Traffic" in the definition of "Switched Access Traffic" flatly contradicted the "LATAwide" concept for "Local Traffic" that the Parties had agreed to in Section 5.3.1.1 (except for calls transported over 'switched access arrangements"), thus clearly calling into question her explanations regarding the limited "interrelatedness" of Section 5.3.3 to Section 5.3.1.1.* When questioned about this contradiction at her Florida deposition, Ms. Shiroishi denied that there was any contradiction because Sections 5.3.1.1 and 5.3.3 were not "linked" together. [Shiroishi Fl. Depo. 105] However, this explanation proved to be "short lived" for Ms. Shiroishi failed to remember that on July 18, 2001 at 7:27 p.m., she forwarded Ms. Peacock a red-line version which included both (1) "IntraLATA Intrastate Traffic" within the definition of "Switched Access Traffic" *and* (2) language "interrelating" Section 5.3.1.1 to Section 5.3.3. Importantly,

because these Sections *were "linked"* as of July 18, 2001 in accordance with Ms. Shiroishi's own explanation, they clearly contradicted one another, thus once again calling into question the credibility of Ms. Shiroishi's testimony in this proceeding.

Mr. Peacock objected to this language, first "marking through" the language "Telephone Toll Service" on July 16, 2001 at 4:20 p.m. and then "highlighting" "IntraLATA Intrastate" on July 19, 2001 at 2:21 a.m. Mr. Peacock highlighted this language so that the Parties could discuss the same during their next negotiating session which occurred later that same day. This was consistent with the prior practice of the Parties relative to highlighting language and exchanging "red-lined" versions of the contract. After the next negotiating session, on July 19, 2001 at 9:59 a.m., Ms. Shiroishi sent Mr. Peacock the final language for Section 5.3.3. Importantly, in this last red-lined version of the Interconnection Agreement, Ms. Shiroishi deleted the words "IntraLATA Intrastate" from the definition of "Switched Access Traffic." This clearly confirms Mr. Peacock's Testimony that the Parties had negotiated a definition of "Switched Access Traffic" which did not include traditional intraLATA traffic.

In this respect, if as Ms. Shiroishi alleges (1) there was no connection between the Parties' agreement regarding what constituted "Local Traffic" in Section 5.3.1.1 and the definition of "Switched Access Traffic" in Section 5.3.3 (other than protecting BellSouth relative to VOIP calls if another ALEC adopted Section 5.3.3); and (2) the definition of "Switched Access Traffic" in Section 5.3.3 was negotiated by the Parties solely to govern VOIP calls, it is difficult to understand why Ms. Shiroishi ever would have attempted to include traditional intraLATA traffic in the definition of "Switched Access Traffic.[32] However, from reviewing the "red-lined" versions of the contract, there is no doubt she did. Accordingly, Ms. Shiroishi's argument that the definition of "Switched Access Traffic" only was agreed to by the Parties regarding VOIP calls is inconsistent with the actual "give

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[31] From carefully reviewing the "red-lined" versions of the contract, AT&T believes there was an intervening "red-lined" version of the contract proposed by BellSouth between July 11, 2001 and July 16, 2001. However, it appears not to have been produced by BellSouth.

[32] This is particularly the case relative to VOIP calls which BellSouth alleged was interLATA traffic. *See*, specifically BellSouth's counsel's cross examination of Mr. King in North Carolina: Q. Now, let's first talk about VOIP calls. You know that BellSouth's position, in its arbitration with AT&T and generally, was that voice over internet calls should be treated as interLATA, correct? A. That has been BellSouth's position. Q. To your knowledge, BellSouth has never changed that position, correct? A. Correct. [N.C. Tr. Vol. 1, 86]

and take" negotiations between the Parties. Rather, these negotiations support Mr. Peacock's Testimony that he advised Mr. King that the Parties had reached agreement on a definition of "Switched Access Traffic" which clearly did not include traditional intraLATA traffic—in fact, Mr. Peacock specifically negotiated it out of the Interconnection Agreement. As the Commission will recall, Mr. King testified that this assurance confirmed his understanding that BellSouth was not attempting to exclude traditional intraLATA traffic from what constituted "Local Traffic." [Fl. Tr. 67]

There are two (2) other issues the Commission should consider in evaluating the credibility of Ms. Shiroishi's Testimony regarding why the Parties agreed to include the definition of "Switched Access Traffic" in Section 5.3.3 of the Interconnection Agreement.

First, if the "interrelated" language of Section 5.3.3 was included only to protect BellSouth against another ALEC' adopting the VOIP language included in Section 5.3.3, but not also adopting Section 5.3.1.1 relative to what constitutes "Local Traffic," why did Ms. Shiroishi not include the "interrelated" language on July 11, 2001 when she first proposed the definition of "Switched Access Traffic" to AT&T? *As it turns out, the "interrelated" language was not added by BellSouth until July 17, 2001—at the very same time that Ms. Shiroishi also was attempting to get "IntraLATA Intrastate" traffic included in the definition of "Switched Access Traffic."* If Ms. Shiroishi been able to convince AT&T to include intraLATA Intrastate calls in the definition of "Switched Access Traffic" set forth in Section 5.3.3, then it would have been a significant advantage for BellSouth to have had Section 5.3.3 "interrelated" to Section 5.3.1.1. This is because such "interrelatedness" would have confirmed the Parties' agreement that "Local Traffic" did not include intraLATA traffic. It well may be that this was why the "interrelated" language of Section 5.3.3 first was proposed by BellSouth, and thereafter, BellSouth found it difficult to remove the language once "Intrastate IntraLATA" traffic was removed from the definition of "Switched Access Traffic."

Second, if not all traditional "LATAwide" traffic was to be included in "Local Traffic," why does the VOIP language in Section 5.3.3 specifically state VOIP calls "which originates in one LATA" and "terminates in another LATA" shall not be compensated as "Local Traffic"? Obviously, with this language, the Parties distinguished "Local Traffic" from "non-Local Traffic" based simply on whether the call remains "within the LATA" and nothing else.

c. The "IntraLATA Toll Traffic" Matrix. Finally, this Matrix also supports Mr. Peacock's position that BellSouth agreed that traditional intraLATA toll traffic was included in what constituted "Local Traffic" in Section 5.3.1.1. In this respect, the foregoing language shows that on July 11, 2001, Ms. Shiroishi still was attempting to convince AT&T to agree that "IntraLATA Toll Traffic" was subject to the Party's switched access tariff rates. However, she deleted the foregoing language on July 18, 2001 as the Parties were continuing to negotiate Sections 5.3.1.1 and 5.3.3. Irrespective of Ms. Shiroishi's Testimony that this "IntraLATA Toll Traffic" language was no longer needed after the Parties completed their negotiations of Sections 5.3.1.1 and 5.3.3, the deletion of the very language which would have allowed BellSouth to charge AT&T switched access rates for calls originated or terminated over "switched access arrangements" (as BellSouth has defined "switched access arrangements" in this proceeding) certainly begs the question of what Ms. Shiroishi was discussing with AT&T during this time frame regarding BellSouth's interpretation of the "switched access arrangements" language set forth in Section 5.3.1.1. In this respect, Ms. Shiroishi's e-mail to Mr. Peacock of July 18, 2001 at 7:27 a.m. simply states "I realized that we don't need the intraLATA stuff, so I've red-lined it." [Fl. Tr. 167] Interestingly, she provided no further explanation regarding this very significant change in the contract. This is highly suspect given that BellSouth just had anointed Ms. Shiroishi as an interconnection negotiations expert who also supervised all of the other BellSouth interconnection negotiators. Moreover, Ms. Shiroishi also served as BellSouth's subject matter expert for interconnection. [N.C. Tr. Vol. 2, 64-64; 76-77]

Furthermore as the drafter (or in this case the "deleter") of such contract language, under Georgia law, Ms. Shiroishi's lack of clarity and explanation regarding the same must be construed against BellSouth. *See*, *Empire Distrib.* And *Howkins v. Atlanta Baggage Co.* Accordingly, Mr. Peacock certainly was entitled to put Ms. Shiroishi's deletion of this language "into the equation" as he explained to Mr. King the various provisions of the Interconnection Agreement which led both Messrs. King and Peacock to conclude that BellSouth had agreed to treat traditional intraLATA traffic as "Local Traffic" for reciprocal compensation purposes.

D. BELLSOUTH'S "EXTRINSIC" OR PAROL EVIDENCE FAILS THE LOGIC TEST.

1. BellSouth Already Had Agreed To A LATAwide Definition Of "Local Traffic" In Its Mississippi Interconnection Agreement With AT&T.

As Mr. Peacock testified, BellSouth and AT&T did not go into the Florida negotiations "cold." Rather, on March 23, 2001, the Parties executed an Interconnection Agreement for Mississippi which included a LATAwide definition of "Local Traffic." [Fl. Tr. 171-172; 177] The definition of "Local Traffic" in this contract provides "Local Traffic means any telephone call that originates and terminates in the same LATA." [B. C. Peacock, Rebuttal Exhibit 5 at Page 20; Peacock Composite Fl. Hearing Exhibit 20.]

Notwithstanding the fact that the Parties already had agreed to a LATAwide definition of "Local Traffic" for Mississippi, BellSouth would like the Commission to conclude that AT&T was perfectly willing to accept a less favorable definition for North Carolina. This defies all common sense and logic. Moreover, as discussed above, throughout this proceeding AT&T repeatedly has attempted to determine from BellSouth why BellSouth agreed to a LATAwide definition of Local Traffic in Mississippi, but not in Florida. BellSouth would never answer the question. [*See*, BellSouth's Objections to AT&T's First Set of Interrogatories; Interrogatory No. 7]

However, Ms. Shiroishi admitted in both North Carolina and Florida that while for compensation for ISP calls was a dead issue in Mississippi, it remained very much alive in the other eight (8) BellSouth states. [N.C. Tr., Vol. 2, 82-83; Fl. Tr. 326-328] More specifically, in Mississippi the Parties signed the interconnection agreement on March 23, 2001, before the FCC's ISP Order was issued on April 27, 2001. As such, in Mississippi BellSouth agreed to compensate ISP calls at the same rate as for "Local Traffic" during the term of the interconnection agreement. *Importantly, BellSouth also waived its right to change the ISP compensation terms in the event the FCC subsequently determined that calls to ISP's were subject to "non-local" compensation rates.*[33] [B.C. Peacock Rebuttal Exhibit No. 5 at P. 21, Section 6.1.3.1; Peacock Composite Fl. Hearing

[33] Section 6.1.3.1 of Attachment 3 to the Mississippi Interconnection Agreement provides: "The Parties recognize and agree that the FCC, courts of competent jurisdiction, or state commissions with jurisdiction over the Parties will issue subsequent decisions on ISP-bound traffic ("Subsequent Decisions"). Notwithstanding any provision in this Agreement to the contrary, the inter-carrier compensation mechanism established in Section 6.1.3 shall continue at the rates set forth in section 6 1.2 for the full term of this Agreement without regard to such Subsequent Decisions, except as provided for in Section 6.1.3.2."

Exhibit 20.]

However, in Florida the Parties continued to negotiate compensation ISP calls. [Shiroishi Fl. Depo. 47] Thus, Mr. Peacock's testimony that BellSouth made statements that it needed the "switched access arrangements" language of Section 5.3.1.1 in order to "protect" against subsequent regulatory action made sense, and thus justified the Parties agreeing to a different definition of "Local Traffic" in Florida than in Mississippi. Accordingly, Mr. Peacock's testimony regarding how "regulatory" circumstances in each state impacted interconnection negotiations passes the logic test. Ms. Shiroishi's testimony does not.

2. BellSouth's Logic Also Assumes AT&T Would Have Agreed To An Exclusion For "Local Traffic" Which "Swallows the Whole."

Questions posed by Commissioner Kerr in North Carolina to Ms. Shiroishi cannot be improved upon regarding the obvious illogical proposition that AT&T—on the one hand would have achieved its objective of obtaining a LATAwide definition of "Local Traffic," but then on the other hand—would have agreed to an exclusion which would have "swallowed" such definition in its entirety. Consider the following exchange:

> Q. . . . And if you had most – if you had predominately switched access traffic, if I had predominately switched access traffic and you were representing BellSouth and we negotiated this, the exception would really swallow the rule. In other words, we were making a transition, we had been paying access charges for most of our traffic. The first sentence seems to say, well, we're adopting a LATAwide concept, meaning we are going to transition traffic from having paid access to treating it as local. Except all of it or most of it, actually, we're not making any change. I mean, isn't that how your interpretation would work out as a practical matter?
>
> In other words, if the majority of your traffic were switched access?
>
> A. Right.
>
> Q. You, basically, in the first half of that sentence would be saying we're going to make this transition and how we're going to treat most of your traffic. Except we're really not, because the exception's going to reach back and swallow this transition we've made. Do you disagree with that as kind of the practical result of your interpretation?
>
> A. Not if that were the case. Unless, like I talked about earlier, the networks, they were looking into, again, separating, you know, TCG would be quite the local type arm with all their LTLT, and ATX would be – I'm sorry, those are ACNAs that I'm talking about – the access arm.

[N.C. Tr., Vol. 3, 53-58]

As this exchange demonstrates, it is not logical that AT&T would have obtained a LATAwide definition of "Local Traffic" and then voluntarily would have relinquished such definition.

E. BELLSOUTH'S ARGUMENT THAT OTHER ALEC'S HAVE THE SAME DEFINITION OF "LOCAL TRAFFIC," BUT YET HAVE NOT CLAIMED "LOCAL TRAFFIC" INCLUDES ALL "LATAWIDE TAFFIC" ALSO IS BASED ON FAULTY LOGIC.

Obviously, it is not relevant whether other ALEC's have the same definition of "Local Traffic" in their interconnection agreements, unless these interconnection agreements also contain the same definition of "Switched Access Traffic." However, Ms. Shiroishi advised the North Carolina Utilities Commission that it need not be concerned regarding such determination. [N.C. Tr., Vol. 3 , 20-21] Moreover, as BellSouth never proved that any of the interconnection agreements which it has with other ALEC's have the identical provisions as to both Sections 5.3.1.1 and 5.3.3 of the Interconnection Agreement, BellSouth's argument fails.

F. BELLSOUTH'S LOGIC THAT AT&T AGREED TO "CONVERT" OR "MIGRATE" ITS EXISTING NETWORK TO "LOCAL INTERCONNECTION TRUNKS" IN ORDER TO HAVE ITS TRAFFIC TRANSPORTED AND TERMINATED AS "LOCAL TRAFFIC" ALSO IS FAULTY.

Because the literal and unambiguous provisions of Section 5.3.1.1 and 5.3.3 do not support BellSouth's arguments regarding what constitutes "Local Traffic," BellSouth misconstrues other Interconnection Agreement provisions to support its case. As Ms. Shiroishi testified:

> Further, the definition [of "Local Traffic"] in the [Interconnection] Agreement related to the type of arrangement, or trunk group, that the traffic originated over or terminated through. As such, the parties included a provision in the Interconnection Trunking and Routing section (Section 3) of Attachment 3 that addressed this conversion.

[Fl. Tr. 246] Ms. Shiroishi argued that the Interconnection Agreement requires AT&T to use only "local interconnection trunks" to transport "Local Traffic." [Fl. Tr. 303-305]

As both Messrs. Peacock and King testified, there is absolutely no language in the Interconnection Agreement which support Ms. Shiroishi's conclusions – absolutely none. Moreover, Mr. King specifically testified:

> In fact, Mr. Peacock and I never discussed any "migration" or "conversion" requirements in Attachment 3 that would affect AT&T. I feel confident he would have done so had Ms. Shiroishi explained her "interpretation" of these provisions to him as she has testified in this proceeding. Ms. Shiroishi is suggesting that

AT&T replace many of its existing facilities, which AT&T implemented over many years to operate a combined local and long distance network, to local facilities. This would be an inefficient and expensive endeavor and Ms. Shiroishi knows that. In this respect, her interpretation of AT&T's trunking "requirements" under the Interconnection Agreement (in order to have AT&T's "local traffic" considered "Local Traffic") are akin to the proverbial "poison pill." It certainly was never AT&T's understanding or intent that it would need to engage in a wholesale rebuilding of its combined local and long distance network in order to have its "local traffic" to be considered "Local Traffic" under Interconnection Agreement for local reciprocal compensation purposes. Moreover, BellSouth also would experience increase costs to implement such a "migrated" or "converted" network. Those sections from the Interconnection Agreement referred by Ms. Shiroishi in her Direct Testimony allow BellSouth to request AT&T to implement any such "migration" or "conversion." To date, BellSouth has never made any such request of AT&T.

[Fl. Tr. 74-75]

The faulty logic in BellSouth's arguments can be seen from the following cross examination of Ms. Shiroishi at the North Carolina hearing:

Q. I want to talk to you about your testimony where you talked about other language in the agreement which supports your understanding as to what switched access arrangements would be. And you referred the Commission to various provisions from Attachment 3 that talk about interconnection trunking, correct?

A. Yes.

Q. And I think as we discussed in your deposition, as you interpret that language, AT&T would have to take all of its local traffic and route it only over local trunks, is that correct?

A. Again, "have to," that's a hard phrase for me to answer to. What the definition says is that how – how AT&T and BellSouth route that traffic is going to be determinant of the compensation that's paid for it.

Q. Well, and I don't want to be argumentative, but in order for AT&T to have its local traffic compensated at local compensation rates, it would have to, according to you, route, that traffic over a local-only trunk, is that correct?

A. Yeah. And, actually, the trunks in an industry are called local toll trunks. There are local only, but there're are local toll trunks that are referred to as LTLT trunk groups. And so that, as well as a trunk type that would be utilized, and would, under this definition, qualify for reciprocal compensation rates.

Q. But you could not run it over whatever a switched access arrangement is, it would have to be this local trunk, correct?

A. Correct.

Q. And are you aware that AT&T currently, and has in the past, sent traffic

to BellSouth, which would be intraLATA, interLATA and local, over the same trunk group?

A. I'm aware of that because in the deposition we talked about that, yes.

Q. Now, you agreed with me in your deposition that it is technically feasible for AT&T to send all of its kinds of traffic over one trunk group?

A. For termination, yes.

Q. Termination, right.

Q. And did you read Mr. King's testimony where he said to take advantage or to put everything over a local trunk group would be a massive undertaking or a significant undertaking for AT&T?

A. I saw that part of his testimony, yes.

Q. And did that surprise you that he took that position?

A. Not since the parties have had discussions. Obviously, prior to this coming to a complaint proceeding, the parties have discussed the issue after we realized the disagreement. So I had heard Mr. King say that before.

Q. And that's consistent because at the time you were negotiating this language, including these provisions about interconnection, you admitted that you didn't know much about AT&T's network, did you?

A. Right. When I negotiate, again, the parties who come to the table are there to represent and bring to the table their network architecture, their issues, and I'm there to represent BellSouth.

Q And those positions in that Attachment 3 that you refer to, they refer to a conversion taking place, that the parties are to convert existing facilities to facilities that are described in this Attachment 3. Remember that?

A. Yeah. I believe it says upon either party's request.

Q. Right. Now, has BellSouth asked AT&T to do any conversion of any trunks since second interconnection agreement was signed?

A. No. Again, a conversion wouldn't be necessary. The language sets out how compensation is going to work. To the extent AT&T wanted some type of conversion to effectuate how compensation works or change that, then they could request that as well.

[N.C. Tr., Vol. 3, 36-39]

BellSouth's position particularly is illogical given that Mr. King testified that previously AT&T has sent "Local Traffic" to BellSouth over "switched access arrangements" which BellSouth transported and terminated at reciprocal compensation rates:

> Several years ago, in an effort to offer local services to various business customers, AT&T began offering local service using 4ESS (TM) switched and related facilities which traditionally had been used to provide long distance services. BellSouth has in the past, and it continues today under the Interconnection Agreement, to charge AT&T local reciprocal compensation rates for calls which are transported over these facilities. For compensation billing purposes, AT&T provides BellSouth a Percent Local Usage ("PLU") factor in order to determine what portion of AT&T's traffic is "Local Traffic" versus "Switched Access Traffic." This factor changes from time to time as traffic levels and types vary.

[Fl. Tr. 72-73]

Moreover, as Mr. King testified, the Interconnection Agreement contains no "facility" test for determining compensation for traffic. [Fl. Tr. 86-87] Rather, all types of traffic can be transported and "mixed" over both "local interconnection trunks" and "switched access arrangements." [Id.] BellSouth and AT&T then determine how much of the traffic transported over each of these facilities constitutes "Local Traffic" and how much of it constitutes "Switched Access Traffic" using "Percent Local Usage" and "Percentage Interstate Usage" factors. [Fl. Tr. 72-74] Provisions establishing these factors are forth in Sections 5.37 and 5.39 of Exhibit 1 to First Amendment to the Interconnection Agreement. [King Rebuttal Exhibit 1 at Page 27; King Composite Fl. Hearing Exhibit 13]

Thus, BellSouth's "facility" test argument makes no sense when considering the circumstances under which the Parties executed the Interconnection Agreement as required under Georgia law, *(See, Maiz and St. Charles Food)*, as well as the literal language of the Interconnection Agreement. In this respect, the Commission logically cannot conclude that AT&T agreed to a complete reconfiguration of its network in order to have its traffic transported and terminated by BellSouth as "Local Traffic."

CONCLUSION

Resolving interconnection disputes can be a difficult task, particularly where the Commission is asked to consider "extrinsic" or parol evidence; multiple contract provisions are involved; and the testimony of the witnesses is widely divergent. Given these challenges, under Georgia law the Commission first should attempt to resolve this dispute using the literal words of the contract "as a whole." If the Commission does this, for all the reasons set forth above, AT&T's

complaint should be upheld. However, if the Commission finds it necessary to resolve this dispute by considering "extrinsic" or parol evidence, the Commission is required to test the credibility of the witnesses by looking for confirming statements and events contained in the record. Additionally, the Commission is required to apply common sense and logic in determining whether statements were made or events occurred as represented. If the Commission does this, for all the reasons set forth above, AT&T's complaint also will be upheld.

Respectfully submitted, this 3rd day of July, 2003.

By: Loretta A. Cecil /SHK

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11/9/01 Meeting on switch Transition

AT&T - Roberta, Jan Smith, Michael K., Bill
BST - Jon Flint, Michael W., Rhma Reynolds, Billing group, Michael Moore

Bill ⇒ BST aware of our desire to transfer ownership of AOCN code (604O) changed to 7125 (T66) Assoc. OCN & ACNA's will now be assoc w/ 7125.

LATA Wide Local

11/16/01 BST: Ed H., Beth S., Rhma R., Shelly Deck
AT&T: Jeff K., Kay S., Bill, Sam, Michael

Beth - BST understanding that AT&T is Facil Based ⇒ Both Kr own network & interconnect AT&T - UNEP.
Bill, Kay, Jeff - agree. This is OK.
FBand defined by Beth as Not using BST facilities (switching). For us, that means UNS + ALD are FB.

- Beth + Ed. agreed we had Uniform FCC Cap + 50% long by adding net to mid yr settlement. BST will put long-int resend to us.

FB only

- Beth made clr BST not offering right now UNE for Fac Based.

BST interprets that long self "anything" over switched access stays. Beth brought up

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point that AT&T orders all as switched access line [redacted] and they can hold us to that via contract language.

BST agrd: Fac Based

- AT&T local EU → LDTU to BST mkts (+ call → term to BST EU
AT&T bills both orig

Fac Based lt IntraLATA

1. AT&T FB — LDTL AT&T — Recip Comp — BST
2. AT&T FB — ORIG ALL — LDTL BST — BST
3. BST — ORIG Access — LDTL AT&T — TER Access — AT&T BST
3B. BST — ORIG Access — LDTL BST — BST
4. BST — LDTL BST — ALL — AT&T

4 is recip of 1

LOCAL TRAFFIC MATRIX

Shiroishi to Peacock July 11, 2001 6:12 p.m.	**5.3** 5.3.1 **5.3.1.1**	**Interconnection Compensation** Compensation for Local Traffic For reciprocal compensation between the Parties pursuant to this Attachment, Local Traffic is defined as any telephone call that originates and terminates in the same LATA except for those calls that are originated or terminated through switched access arrangements as established by the ruling regulatory body when the original Party has its own switch. **[OPEN-AT&T]** Therefore when an AT&T end user originates traffic and AT&T sends it to BellSouth for termination, AT&T will determine whether the traffic is local or intraLATA toll. When a BellSouth end user originates traffic and BellSouth send it to AT&T for termination, BellSouth will determine whether the traffic is local or intraLATA toll. Each Party will provide the other with information that will allow it to distinguish local from intraLATA toll traffic. At a minimum, each Party shall utilize NXX's in such a way that the other Party shall be able to distinguish local from intraLATA toll traffic. **DISAGREE** **AT&T PROPOSAL: As clarification of this definition and for reciprocal compensation, Local Traffic does include traffic that originates and terminates to or through enhanced service provider or information service provider.** **BST PROPOSAL: As clarification of this definition and for reciprocal compensation, Local Traffic does not include traffic that originates from or is directed to or through an enhanced service provider or information service provider.**
Shiroishi to Peacock July 17, 2001 12:54 p.m.	5.3.1. 5.3.1.1	Compensation for Local Traffic ***** Shiroishi adds language that Parties have agreed to compensation for calls to ISPs by agreeing to implement FCC's ISP Order ***** For the treatment of local and ISP-bound traffic in this Agreement, the Parties agree to implement the FCC's Order on Remand and Report and Order in CC Docket 96-98 and 99-68 released April 27, 2001 ("ISP Order on Remand"). The Parties further agree to amend this agreement, within sixty (60) days of execution, to incorporate language reflecting the FCC ISP Order on Remand. At such time as that amendment is finalized, the Parties agree to work cooperatively to "true-up" compensation amounts consistent

		with the terms of the amended language from the effective date of the FCC ISP Order on Remand to the date the amendment is finalized. Additionally, the Parties agree to apply a "LATAwide" local concept to this Attachment 3, meaning that traffic that has traditionally been treated as intraLATA toll traffic will now be treated as local for intercarrier compensation purposes, except for those calls that are originated or terminated through switched access arrangements as established by the ruling regulatory body. ~~For reciprocal compensation between the Parties pursuant to this Attachment, Local Traffic is defined as any telephone call that originates and terminates in the same LATA except for those calls that are originated or terminated through switched access arrangements as established by the ruling regulatory body when the original Party has its own switch.~~ **[OPEN-AT&T]** ~~Therefore when an AT&T end user originates traffic and AT&T sends it to BellSouth for termination, AT&T will determine whether the traffic is local or intraLATA toll. When a BellSouth end user originates traffic and BellSouth send it to AT&T for termination, BellSouth will determine whether the traffic is local or intraLATA toll. Each Party will provide the other with information that will allow it to distinguish local from intraLATA toll traffic. At a minimum, each Party shall utilize NXX's in such a way that the other Party shall be able to distinguish local from intraLATA toll traffic.~~ ***** Shiroishi strikes through above language. *****
Shiroishi to Peacock July 18, 2001 7:27 a.m.	5.3.1 5.3.1.1	<u>Compensation for Local Traffic</u> For the treatment of local and ISP-bound traffic in this Agreement, the Parties agree to implement the FCC's Order on Remand and Report and Order in CC Docket 96-98 and 99-68 released April 27, 2001 ("ISP Order on Remand"). The Parties further agree to amend this agreement, within sixty (60) days of execution, to incorporate language reflecting the FCC ISP Order on Remand. At such time as that amendment is finalized, the Parties agree to work cooperatively to "true-up" compensation amounts consistent with the terms of the amended language from the effective date of the FCC ISP Order on Remand to the date the amendment is finalized. Additionally, the Parties agree to apply a "LATAwide" local concept to this Attachment 3, meaning that traffic that has traditionally been treated as intraLATA toll traffic will now be treated as local for intercarrier compensation purposes, except for those calls that are originated or terminated through switched access arrangements as established by the ***** Shiroishi changes "ruling regulatory body" to "State Commission or FCC" ***** State Commission or FCC.
Peacock to Shiroishi July 19, 2001	**5.3** 5.3.1	**Interconnection Compensation** <u>Compensation for Local Traffic</u>

2:21 a.m.	5.3.1.1	For the treatment of local and ISP-bound traffic in this Agreement, the Parties agree to implement the FCC's Order on Remand and Report and Order in CC Docket No. 96-98 and 99-68 released April 27, 2001 ("ISP Order on Remand"). The Parties further agree to amend this agreement, within sixty (60) days of execution, to incorporate language reflecting the FCC ISP Order on Remand. At such time as that amendment finalized, the Parties agree to work cooperatively to "true-up" compensation amounts consistent with the terms of the amended language from the effective date of the FCC ISP Order on Remand to the date the amendment is finalized. *** **Following Underlined Sentences added by Peacock** *** In no event shall this Agreement have any effect on the rates applicable to interconnection traffic and ISP traffic prior to the effective date of the FCC ISP Order or any claims by AT&T against BellSouth for non-payment of such charges. The rates applicable to ISP traffic under this Agreement pursuant to the FCC ISP Order shall in no event be deemed to apply retroactively prior to the effective date of the FCC ISP Order. Additionally, the Parties agree to apply a "LATAwide" local concept to this Attachment 3, meaning that traffic that has traditionally been treated as intraLATA toll traffic will now be treated as local for intercarrier compensation purposes, except for those calls that are originated or terminated through switched access arrangements as established by the State Commission or FCC.
Shiroishi to Peacock July 19, 2001 9:59 a.m.	**5.3** 5.3.1 5.3.1.1	**Interconnection Compensation** Compensation for Local Traffic For the treatment of local and ISP-bound traffic in this Agreement, the Parties agree to implement the FCC's Order on Remand and Report and Order in CC Docket No. 96-98 and 99-68 released April 27, 2001 ("ISP Order on Remand"). The Parties further agree to amend this agreement, within sixty (60) days of execution, to incorporate language reflecting the FCC ISP Order on Remand. At such time as that amendment finalized, the Parties agree to work cooperatively to "true-up" compensation amounts consistent with the terms of the amended language from the effective date of the FCC ISP Order on Remand to the date the amendment is finalized. *** **Shiroishi Deletes two Sentences Added by Peacock on July 19, 2001, 2:21 a.m.** *** Additionally, the Parties agree to apply a "LATAwide" local concept to this Attachment 3, meaning that traffic that has traditionally been treated as intraLATA toll traffic will now be treated as local for intercarrier compensation purposes, except for those calls that are originated or terminated through switched access arrangements as established by the State Commission or FCC.

SWITCHED ACCESS TRAFFIC MATRIX

Shiroishi to Peacock July 11, 2001 6:21 p.m.	**5.3.3**	**Switched Access Traffic**. Switched Access Traffic is defined as telephone calls requiring local transmission or switching services for the purpose of the origination or termination of Telephone Toll Service. Switched Access Traffic includes, but is not limited to, the following types of traffic: Feature Group A, Feature Group B, Feature Group C, Feature Group D, toll free access (e.g., 800/877/888), 900 access, and their successors. The Parties have been unable to agree as to whether Voice over Internet Protocol (VOIP) transmissions which cross local calling area boundaries constitute Switched Access Traffic. Notwithstanding the foregoing, and without waiving any rights with respect to either Party's position as to the jurisdictional nature of VOIP, the Parties agree to abide by any effective and applicable FCC rules and orders regarding the nature of such traffic and the compensation payable by the Parties for such traffic, if any; provided however, that any VOIP transmission which originates in one local calling area and terminates in another local calling area (i.e., the end-to-end points of the call), shall not be compensated as Local Traffic.
Peacock to Shiroishi July 16, 2001 4:20 p.m.	**5.3.3**	**Switched Access Traffic**. Switched Access Traffic is defined as telephone calls requiring local transmission or switching services for the purpose of the origination or termination of *** **Peacock "Strike-Out" of Telephone Toll Service** *** ~~Telephone Toll Service~~. Switched Access Traffic includes, but is not limited to, the following types of traffic: Feature Group A, Feature Group B, Feature Group C, Feature Group D, toll free access (e.g., 800/877/888), 900 access, and their successors. The Parties have been unable to agree as to whether Voice over Internet Protocol (VOIP) transmissions which cross local calling area boundaries constitute Switched Access Traffic. Notwithstanding the foregoing, and without waiving any rights with respect to either Party's position as to the jurisdictional nature of VOIP, the Parties agree to abide by any effective and applicable FCC rules and orders regarding the nature of such traffic and the compensation payable by the Parties for such traffic, if any; ~~provided however, that any VOIP transmission which originates in one local calling area and terminates in another local calling area (i.e., the end-to-end points of the call), shall not be compensated as Local Traffic.~~
Shiroishi to Peacock July 17, 2001 12:54 p.m.	**5.3.3**	**Switched Access Traffic**. Switched Access Traffic is defined as telephone calls requiring local transmission or switching services for the purpose of the origination or termination of ~~Telephone Toll Service~~. Switched Access Traffic includes, but is not limited to, the following types of traffic: Feature Group A, Feature Group B, Feature Group C, Feature Group D, toll free access (e.g., 800/877/888), 900 access, and their successors. The Parties have been unable to agree as to whether Voice over Internet Protocol (VOIP) transmissions which cross local calling area boundaries constitute Switched Access Traffic. Notwithstanding the foregoing, and without waiving any rights with respect to either Party's position as to the jurisdictional nature of VOIP, the Parties agree to abide by any effective and applicable FCC rules and orders regarding the nature of such traffic and the compensation payable by the Parties for such traffic, if any; provided however, that any VOIP transmission which originates in one LATA and terminates in

		another LATA (i.e., the end-to-end points of the call), shall not be compensated as Local Traffic.*** **Shiroishi Adds Last Sentence** This Section 5.3.2 is interrelated to Section 5.3.1.2.***
Shiroishi to Peacock July 18, 2001 7:27 p.m.	**5.3.3**	**Switched Access Traffic**. Switched Access Traffic is defined as telephone calls requiring local transmission or switching services for the purpose of the origination or termination of *** **Shiroishi adds "IntraLATA Intrastate, Intrastate InterLATA and Interstate InterLATA"** *** IntraLATA Intrastate, Intrastate InterLATA and Interstate InterLATA traffic. *** **Note: Telephone Toll Service deleted from July 16, 2001, 4:20 p.m. "red-line."** *** Switched Access Traffic includes, but is not limited to, the following types of traffic: Feature Group A, Feature Group B, Feature Group D, toll free access (e.g., 800/877/888), 900 access, and their successors. The Parties have been unable to agree as to whether Voice over Internet Protocol (VOIP) transmissions which cross local calling area boundaries constitute Switched Access Traffic. Notwithstanding the foregoing, and without waiving any rights with respect to either Party's position as to the jurisdictional nature of VOIP, the Parties agree to abide by any effective and applicable FCC rules and orders regarding the nature of such traffic and the compensation payable by the Parties for such traffic, if any; provided however, that any VOIP transmission which originates in one LATA and terminates in another LATA (i.e., the end-to-end points of the call), shall not be compensated as Local Traffic. This Section is interrelated to Section 5.3.1.1.
Peacock to Shiroishi July 19, 2001 2:21 a.m.	**5.3.3**	**Switched Access Traffic**. Switched Access Traffic is defined as telephone calls requiring local transmission or switching services for the purpose of the origination or termination of *** **Peacock Highlights IntraLATA Intrastate For Discussion** *** IntraLATA Intrastate, *** **Peacock moves following language up in the Section.** *** (If BellSouth or AT&T is the other Party's end user's presubscribed interexchange carrier or if an end user uses BellSouth or AT&T as an interexchange carrier on a 101XXX basis, BellSouth or AT&T will charge the other Party the appropriate tariff charges for originating swiched access services.) ~~calls that are routed over switched access trunk groups,~~ Intrastate InterLATA and Interstate InterLATA traffic. Switched Access Traffic includes, but is not limited to, the following types of traffic: Feature Group A, Feature Group B, Feature Group D, toll free access (e.g., 800/877/888), 900 access, and their successors. ~~(If BellSouth or AT&T is the other Party's end user's presubscribed interexchange carrier or if an end user uses BellSouth or AT&T as an interexchange carrier on a 101XXX basis, BellSouth or AT&T will charge the other Party the appropriate tariff charges for originating switched access services.)~~ However, ~~T~~the Parties have been unable to agree as to whether Voice over Internet Protocol (VOIP) transmissions which cross local calling area boundaries constitute Switched Access Traffic. Notwithstanding the foregoing, and without waiving any rights with respect to either Party's position as to the jurisdictional nature of VOIP, the Parties agree to abide by any effective and applicable FCC rules and orders regarding the nature of such traffic and the compensation payable by the Parties for such traffic, if any; provided however, that any VOIP transmission which originates in one LATA and terminates in another LATA (i.e., the end-to-end points of the call), shall not be compensated as Local Traffic. This Section 5.3.2 is

		interrelated to Section 5.3.1.1.
Shiroishi to Peacock July 19, 2001 9:59 a.m.	**5.3.3**	**Switched Access Traffic**. Switched Access Traffic is defined as telephone calls requiring local transmission or switching services for the purpose of the origination or termination of ***** Shiroishi "Strikes Out" IntraLATA Intrastate ***** ~~IntraLATA Intrastate~~, Intrastate InterLATA and Interstate InterLATA traffic. Switched Access Traffic includes, but is not limited to, the following types of traffic: Feature Group A, Feature Group B, Feature Group D, toll free access (e.g., 800/877/888), 900 access, and their successors. Additionally, if BellSouth or AT&T is the other Party's end user's presubscribed interexchange carrier or if an end user uses BellSouth or AT&T as an interexchange carrier on a 101XXX basis, BellSouth or AT&T will charge the other Party the appropriate tariff charges for originating switched access services. The Parties have been unable to agree as to whether Voice over Internet Protocol (VOIP) transmissions which cross local calling area boundaries constitute Switched Access Traffic. Notwithstanding the foregoing, and without waiving any rights with respect to either Party's position as to the jurisdictional nature of VOIP, the Parties agree to abide by any effective and applicable FCC rules and orders regarding the nature of such traffic and the compensation payable by the Parties for such traffic, if ~~any;~~any; provided however, that any VOIP transmission which originates in one LATA and terminates in another LATA (i.e., the end-to-end points of the call), shall not be compensated as Local Traffic. This Section is interrelated to Section 5.3.1.1.

INTRALATA TOLL TRAFFIC MATRIX

Shiroishi to Peacock July 11, 2001 6:21 a.m.	5.4 5.4.1 5.4.2	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. Compensation for IntraLATA Toll Traffic. For terminating its IntraLATA Toll Traffic on the other Party's network, the originating Party will pay the terminating Party's intrastate or interstate terminating switched access tariff rates as set forth in the effective intrastate or interstate access services tariff, whichever is appropriate. The appropriate charges will be determined by the routing of the call. If BellSouth or AT&T is the other Party's end user's presubscribed interexchange carrier or if an end user uses BellSouth or AT&T as an interexchange carrier on a 101XXXX basis, BellSouth or AT&T will charge the other Party the appropriate tariff charges for originating switched access services.
Shiroishi to Peacock July 18, 2001 7:27 a.m.	~~5.4~~ ~~5.4.1~~ ~~5.4.2~~ 5.3.9	*** **Shiroishi "Strikes-Out" Following Language** *** ~~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.~~ ~~Compensation for IntraLATA Toll Traffic.~~ *** **Shiroishi "Strikes-Out" Following Language** *** ~~For terminating its IntraLATA Toll Traffic on the other Party's network, the originating Party will pay the terminating Party's intrastate or interstate terminating switched access tariff rates as set forth in the effective intrastate or interstate access services tariff, whichever is appropriate. The appropriate charges will be determined by the routing of the call.~~ If BellSouth or AT&T is the other Party's end user's presubscribed interexchange carrier or if an end user uses BellSouth or AT&T as an interexchange carrier on a 101XXXX basis, BellSouth or AT&T will charge the other Party the appropriate tariff charges for originating switched access services.
Peacock to Shiroishi July 19, 2001 2:21 a.m.	~~5.4~~ ~~5.4.1~~ ~~5.4.2~~ 5.3.9	~~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.~~ ~~Compensation for IntraLATA Toll Traffic. For terminating its IntraLATA Toll Traffic on the other Party's network, the originating Party will pay the terminating Party's intrastate or interstate terminating switched access tariff rates as set forth in the effective intrastate or interstate access services tariff, whichever is appropriate. The appropriate charges will be~~

		~~determined by the routing of the call.~~*** **Peacock "Strike-Out" Remaining Language** ***~~ If BellSouth or AT&T is the other Party's end user's presubscribed interexchange carrier or if an end user uses BellSouth or AT&T as an interexchange carrier on a 101XXXX basis, BellSouth or AT&T will charge the other Party the appropriate tariff charges for originating switched access services.~~
Shiroishi to Peacock July 19, 2001 9:59 a.m.	~~5.4~~ ~~5.4.1~~ ~~5.4.2~~	~~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.~~ ~~Compensation for IntraLATA Toll Traffic. For terminating its IntraLATA Toll Traffic on the other Party's network, the originating Party will pay the terminating Party's intrastate or interstate terminating switched access tariff rates as set forth in the effective intrastate or interstate access services tariff, whichever is appropriate. The appropriate charges will be determined by the routing of the call. If BellSouth or AT&T is the other Party's end user's presubscribed interexchange carrier or if an end user uses BellSouth or AT&T as an interexchange carrier on a 101XXXX basis, BellSouth or AT&T will charge the other Party the appropriate tariff charges for originating switched access services.~~