

State of Florida



Public Service Commission  
CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

RECEIVED - FPSC  
03 SEP - 4 AM 10:51  
COMMISSION CLERK

DATE: SEPTEMBER 4, 2003

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK  
ADMINISTRATIVE SERVICES (BAYO)

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (MARSH)  
OFFICE OF THE GENERAL COUNSEL (CHRISTENSEN) *PRC* *PRC* *RLT*

RE: DOCKET NO. 020919-TP - 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.

AGENDA: 09/16/03 - REGULAR AGENDA - POST-HEARING DECISION -  
PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\020919.RCM

CASE BACKGROUND

On August 26, 2002, AT&T of the Southern States, LLC, Teleport Communications Group, Inc. and TCG South Florida (collectively "AT&T") filed its Complaint for enforcement of its Interconnection Agreement against BellSouth Telecommunications, Inc. (BellSouth). AT&T in its Complaint alleges that BellSouth breached, and continues to breach, its obligation to charge AT&T local reciprocal compensation rates for transport and termination of all "Local Traffic," including all "LATAwide traffic," in accordance with the terms of the parties' two interconnection agreements. On September 20, 2002, BellSouth filed its response to AT&T's Complaint.

DOCUMENT NUMBER-DATE

08248 SEP-4 8

FPSC-COMMISSION CLERK

DOCKET NO. 020919-TP  
DATE: SEPTEMBER 4, 2003

On January 27, 2003, BellSouth filed a Motion for Partial Summary Final Order on Issue 1(a)<sup>1</sup>. On February 19, 2003, AT&T filed its Response to BellSouth's Motion for Partial Summary Final Order on Issue 1(a) and its Cross Motion for Partial Summary Final Order on Issue 1(a). AT&T also filed a Motion to Strike BellSouth's "Extrinsic" Testimony and AT&T Brief Supporting AT&T's Motion to Strike BellSouth's "Extrinsic" Evidence on February 12, 2003. BellSouth filed its Response to AT&T's Motion to Strike on February 24, 2003. On March 21, 2003, AT&T filed its Response to BellSouth's Opposition to its First Motion to Strike BellSouth's Extrinsic Testimony and its Second Motion to Strike Additional BellSouth Testimony. On March 28, 2003, BellSouth filed its Response to AT&T's Unauthorized Reply Brief and to AT&T's Second Motion to Strike.

At the April 1, 2003 Agenda Conference, the Commission granted the Motions for Partial Summary Final Order on Issue 1(a), and denied AT&T's Motion to Strike. The Commission found by Order No. PSC-03-0528-FOF-TP, issued April 21, 2003, that the terms, conditions, and prices of the Second Interconnection Agreement apply between BellSouth and AT&T from June 11, 2000, forward, except for the reciprocal compensation rates. Thus, Issue 1(a) is resolved.

At the April 15, 2003, Agenda Conference, the Commission denied AT&T's Second Motion to Strike Additional BellSouth Testimony. That decision was memorialized in Order No. PSC-03-0525-FOF-TP, issued April 21, 2003.

---

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

DOCKET NO. 020919-TP  
DATE: SEPTEMBER 4, 2003

At the prehearing conference, BellSouth and AT&T agreed on language to resolve Issue 1(b)<sup>2</sup>, as reflected in Order No. PSC-03-0570-PHO-TP (Prehearing Order), issued May 5, 2003. Thus, Issue 1(b) is resolved.

A hearing was held on May 7, 2003. This recommendation addresses the issues identified in Order No. PSC-02-1652-PCO-TP, issued November 26, 2002 (Order Establishing Procedure), with the exception of Issues 1(a) and 1(b), as discussed above.

---

<sup>2</sup>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?

DOCKET NO. 020919-TP  
DATE: SEPTEMBER 4, 2003

### DISCUSSION OF ISSUES

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

**RECOMMENDATION:** Based on BellSouth Telecommunications, Inc., et al. v. MCIMetro Access Transmission Services, Inc., et al., 317 F.3d 1270 (11<sup>th</sup> Cir. January 2003) and Section 252(c)(1), the Commission has the authority to review a complaint based on an interconnection agreement approved by the Commission. Further, pursuant to Sections 364.01 and 364.162, Florida Statutes, the Commission has state authority to review a complaint regarding an interconnection agreement approved by the Commission. (CHRISTENSEN)

### POSITION OF THE PARTIES

**AT&T:** The Commission has jurisdiction in this matter pursuant to Section 252 of the Telecommunications Act of 1996<sup>3</sup> 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.

**BELLSOUTH:** Pursuant to 47 U.S.C. § 252(c)(1), the Commission has jurisdiction to interpret and enforce the terms of an interconnection agreement filed with and approved by the Commission. The claims set forth in AT&T's complaint arise under such an agreement.

**STAFF ANALYSIS:** AT&T states that the Commission has jurisdiction pursuant to Section 252 of the Telecommunications Act and Section 364.01, Florida Statutes. AT&T also states that Section 16 of the Interconnection Agreement permits AT&T to petition this Commission to resolve any disputes that arise under the Interconnection Agreement. (AT&T Brief at 1)

In its brief, BellSouth also states that pursuant to Section 252 of the Act, the Commission has jurisdiction to interpret and enforce the terms of an interconnection agreement filed with and

---

<sup>3</sup>Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56.

DOCKET NO. 020919-TP  
DATE: SEPTEMBER 4, 2003

approved by the Commission. BellSouth asserts that the claims set forth in AT&T's complaint arise under such an agreement. (BellSouth Brief at 7)

### Analysis

There is no dispute between the parties that the Commission has jurisdiction under Section 252 of the Act to resolve disputes involving interconnection agreements approved by the Commission. Part II of the federal Telecommunications Act of 1996 (Act) sets forth provisions regarding the development of competitive markets in the telecommunications industry. Section 251 of the Act regards interconnection with the incumbent local exchange carriers, and Section 252 sets forth the procedures for negotiation, arbitration, and approval of agreements.

State Commissions retain primary authority to enforce the substantive terms of agreements they have approved pursuant to Sections 251 and 252 of the Act. Iowa Utilities Board v. Federal Communications Commission, 120 F. 3d 753, 804 (8<sup>th</sup> Cir. 1997). A petition has been filed requesting the Commission's review of an agreement the Commission previously approved to determine if the parties are in compliance with that agreement. As set forth in BellSouth Telecommunications, Inc., et al. v. MCIMetro Access Transmission Services, Inc., et al., 317 F.3d 1270 (11<sup>th</sup> Cir. January 2003), ". . . the language of §252 persuades us that in granting to the public service commissions the power to approve or reject interconnection agreements, Congress intended to include the power to interpret and enforce in the first instance and to subject their determination to challenges in the federal courts."

Moreover, the Commission has authority under state law to review complaints regarding interconnection agreements approved by the Commission. Section 364.01, Florida Statutes, provides that the Commission has authority over telecommunications companies. Section 364.162, Florida Statutes, states, in pertinent part, that:

The Commission shall have the authority to arbitrate any dispute regarding interpretation of interconnection or resale prices and terms and conditions.

DOCKET NO. 020919-TP

DATE: SEPTEMBER 4, 2003

This statutory language plainly authorizes the Commission to resolve complaints regarding the interpretation of interconnection agreements, which is the case herein.

Thus, based on BellSouth v. MCIMetro and Section 252 (c)(1), the Commission has the authority to review a complaint based on an interconnection agreement approved by the Commission. Further, pursuant to Sections 364.01 and 364.162, Florida Statutes, the Commission has state authority to review a complaint regarding an interconnection agreement approved by the Commission.

DOCKET NO. 020919-TP  
DATE: SEPTEMBER 4, 2003

**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?

**RECOMMENDATION:** Yes, in part. For purposes of this contract, all calls that have been traditionally treated as intraLATA toll traffic, that are originated or terminated over switched access facilities, should be excluded from the definition of LATAwide local traffic. All calls that have been traditionally treated as intraLATA toll traffic, that are originated or terminated over local interconnection facilities, should be compensated as local calls. Further, all calls that have been traditionally treated as local should be so treated under this contract, regardless of the facilities used. (MARSH)

**POSITION OF THE PARTIES**

**AT&T:** "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.

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

**STAFF ANALYSIS:** At issue is the meaning of the following language that describes Local Traffic in the Second Interconnection Agreement:

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

DOCKET NO. 020919-TP  
DATE: SEPTEMBER 4, 2003

established by the State Commission or FCC. (Section 5.3.1.1 of Attachment 3 to Second Interconnection Agreement) (Shiroishi TR 241)

AT&T argues that all traffic that originates and terminates in a LATA is local under the terms of the agreement, except for ISP and Voice Over Internet Protocol (VOIP) traffic. (King TR 102) Predictably, BellSouth disagrees, arguing that the traffic must not only originate and terminate within the LATA, but it must also be carried over local interconnection trunks to be treated as local traffic for compensation purposes. (Shiroishi TR 303-304) Both traffic that has been treated traditionally as intraLATA toll traffic and traditionally local traffic are at issue.

#### AT&T

##### Switched Access Not Defined

AT&T witness King points out that although the definition of local traffic contains a reference to traffic originated or terminated over switched access arrangements, the term "Switched Access Arrangements" is not defined in the Second Interconnection Agreement. (TR 38) He notes that the term "Switched Access Traffic" is defined in Section 5.3.3 of Attachment 3 to the Second Interconnection Agreement as ". . . telephone calls requiring local transmission or switching services for the purpose of the origination or termination of Intrastate InterLATA and Interstate InterLATA traffic." (TR 38) He argues that switched access traffic is the only type of traffic for which switched access charges apply under the Second Interconnection Agreement, requiring that all other traffic be treated as "Local Traffic" and therefore compensated at local reciprocal compensation rates. (TR 39) He concludes that switched access traffic does not include any "LATAwide Traffic" under this definition. (TR 38-39) He agrees that if traffic is not defined by the parties in their agreement as local traffic, it is transported and terminated at switched access rates. (TR 99)

Witness King does not dispute that a switched access arrangement is a ". . . facility that supports the delivery of



DOCKET NO. 020919-TP  
DATE: SEPTEMBER 4, 2003

switched access traffic." (TR 86) However, he argues that a Percent Local Usage (PLU) factor is used to determine what portion of that traffic is local and what portion is switched access. (TR 86) He contends that the critical factor in determining what is local traffic is the nature of a call, not the facilities it travels over. (TR 87) He avers that the originating and terminating points of a call define the jurisdiction of a call. (TR 88)

Witness King explains that

[a]ny call that originates within the Jacksonville LATA and terminates within the Jacksonville LATA is an intraLATA call. Now, what determines whether that intraLATA call is access or local . . . and falls under [AT&T's] interconnection agreement depends on whether it originated from an AT&T local customer or originated as an access service. . . . If [AT&T has] a local relationship . . . with the end user, then that's what would qualify it to meet the definition of local traffic or a local customer. (TR 89)

#### Interrelated Language

Witness King states that the parties agreed in Section 5.3.3, containing the definition of switched access traffic, that Section 5.3.3 is interrelated to Section 5.3.1.1. (TR 39) He testifies that Section 5.3.3 states in its entirety:

**Switched Access Traffic is defined as telephone calls requiring local transmission or switching service for the purpose of the origination or termination of Intrastate InterLATA traffic.** Switched Access Traffic includes, but is not limited to, the following types of traffic: Feature Group A, Feature Group B, Feature Group D, toll free access (e.g. 800/877/888), 900 access, and their successors. Additionally, if BellSouth or AT&T is the other party's end user's presubscribed interexchange carrier or if an end user uses BellSouth or AT&T as an interexchange carrier on a 101XXXX basis, BellSouth or

DOCKET NO. 020919-TP  
DATE: SEPTEMBER 4, 2003

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 the any [sic] 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.*** (TR 41-42) [emphasis added by witness]

Witness King notes that in a similar proceeding in North Carolina, BellSouth witness Elizabeth Shiroishi stated in direct testimony that the "interrelated" language of Section 5.3.3 was included in the Second Interconnection Agreement because

. . . as the Parties were negotiating mutually agreeable language to deal with Voice Over Internet Protocol traffic, thus implying that there was no "interrelationship" between the definition of "Switched Access Traffic" in Section 5.3.3 and the use of the term "Local Traffic" or "LATAwide concept" as used in Section 5.3.1.1.<sup>4</sup> (King TR 40)

Witness King argues that witness Shiroishi's interpretation of the interrelated language of section 5.3.3 is not credible. (TR 40-41) He contends that such an interpretation ". . . violates all proper rules of contract construction and interpretation." (TR 41) He points to the capitalized "S" of the word "Section" to mean that ***. . . all of the language included in Section 5.3.3 is***

---

<sup>4</sup>North Carolina Utilities Commission, Docket No. P-55; Sub 1376; Direct Testimony of Elizabeth R. A. Shiroishi filed December 18, 2002, at Pages 8-9.

DOCKET NO. 020919-TP  
DATE: SEPTEMBER 4, 2003

*interrelated to Section 5.3.1.1*, and not just the last two sentences of the Section as implied by Ms. Shiroishi." [emphasis added by witness] (TR 41)

Witness King opines that when Section 5.3.1.1 is read together with its "interrelated" Section 5.3.3, the language ". . . except those calls that are originated or terminated through switched access arrangements as established by the State Commission or FCC," clearly means Intrastate InterLATA calls (because these calls are subject to jurisdiction of the "State Commission") and Interstate InterLATA calls (because these calls are subject to the jurisdiction of the FCC). (TR 43)

#### Prior Treatment of Local Traffic

Witness King argues that, prior to the execution of the agreement, BellSouth permitted the use of switched access arrangements to provision local traffic, in conjunction with a PLU factor. (TR 132) He states that Section 5.3.14 of p. 22 of Exhibit 19 provides for a percent local use factor which could be used to separate traffic for billing purposes. (TR 135) He elaborates that AT&T would measure its traffic, develop the factor, and provide it to BellSouth. (TR 135) He explains that BellSouth would then apply the factor to its bill to separate out the local traffic. (TR 135)

Witness King states that AT&T can order local interconnection arrangements, but that BellSouth does not bill all of the traffic placed over such facilities as local traffic. (TR 143) Witness King adds that BellSouth does not treat certain intraLATA calls made through UNE-P arrangements as local. (TR 70) He explains that AT&T routes calls, such as intraLATA 1+ dialed calls, ". . . over the AT&T long distance network and then terminates that traffic back to BellSouth over in-place switched access provisioned facilities." (TR 70)

Witness King argues that it would be an expensive undertaking to meet the "local only" trunking requirements that witness Shiroishi implies are necessary. (TR 74-75) He notes that BellSouth has never asked AT&T to convert its trunks. (TR 75)

DOCKET NO. 020919-TP  
DATE: SEPTEMBER 4, 2003

The Issue Was Not Arbitrated

AT&T witness Peacock argues that if AT&T had not been able to successfully resolve the issue of what constituted "local traffic" with BellSouth, it would have arbitrated the issue. (TR 153) He contends that BellSouth agreed that intraLATA traffic would be compensated at local reciprocal compensation rates, thus eliminating the need to arbitrate the issue. (TR 155) He states that the release of the FCC's Order on Remand and Report and Order in CC Docket No. 96-98 and 99-68 during negotiations resolved the dispute between the companies regarding AT&T's position that ISP traffic should be treated as local traffic. (TR 158-159) He also notes that the parties "agreed to disagree" on the handling of VOIP traffic, as reflected in Section 5.3.3 of Attachment 3 of the Second Interconnection Agreement. (TR 160-161)

Witness King notes that while he was not a member of the AT&T team that negotiated the agreement with BellSouth, he frequently met with Mr. Peacock regarding proposed contract language for compensation issues and network facilities. (TR 61) He states that Mr. Peacock explained to him that the language "except for those calls that are originated or terminated through switched access arrangements as established by the ruling regulatory body" as originally proposed by BellSouth, was designed 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." (TR 65) Additionally, he states that such language was also intended to exclude VOIP traffic from compensation, in the event it was determined to be interLATA traffic. (TR 65) He states that AT&T would never have agreed to pay switched access rates for intraLATA traffic. (TR 68)

Witness King contends that BellSouth was aware of AT&T's position that all intraLATA traffic should be considered local traffic, subject to reciprocal compensation rates. (TR 62-63) He argues that AT&T would have arbitrated the issue if a definition could not have been agreed upon. (TR 63)

DOCKET NO. 020919-TP  
DATE: SEPTEMBER 4, 2003

Witness Stevens' Notes

AT&T witness Stevens testifies that she attended negotiations between AT&T and BellSouth to take notes. (TR 203-204) Based on her notes, she disputes witness Shiroishi's contention that the parties discussed BellSouth's position that the term "except for those calls that" are originated or terminated through switched access arrangements as established by the State Commission or FCC" referred to the switched access arrangements that were offered in each party's switched access tariffs. (TR 206) She argues that witness Shiroishi's testimony regarding diagrams that were made during negotiations to represent switched access arrangements actually refers to network architecture and point of interconnection drawings. (TR 211-212)

During cross-examination, witness Stevens agrees that nothing in her notes reflects specific statements made by witness Shiroishi during negotiations regarding the specific handling of ISP and VOIP traffic. (TR 220-221) She also agrees that nothing in her notes reflects a conversation with BellSouth regarding the substitution of the term "established by the state commission or the FCC" for "ruling regulatory body" as discussed in witness Peacock's testimony. (TR 221) Witness Stevens explains that her notes are not verbatim, but rely on use of keywords and abbreviations. (TR 229)

BellSouth

Local vs. Switched Access Traffic

BellSouth witness Shiroishi states that negotiations with AT&T began with a definition of local traffic similar to that used in the First Interconnection Agreement. (TR 242) She explains that during the course of negotiations, BellSouth proposed a new definition that expanded what was considered local traffic, but ". . . still excluded minutes that traversed switched access arrangements that the carrier had purchased from BellSouth." (TR 242) She testifies that the language sets out a decision tree in which the first decision point is whether the traffic originates and terminates within the LATA. (TR 292) She continues that if the answer to that is yes, then the second decision point is, does it

DOCKET NO. 020919-TP  
DATE: SEPTEMBER 4, 2003

traverse or is it originated or terminated through switched access arrangements. She explains that if that answer to the second decision point is no, the traffic is local; if yes, the traffic is not local. (TR 292)

She clarifies with an example. (TR 296)

If you had a call within the LATA, within let's just pick the Jacksonville LATA, that originated and terminated in that Jacksonville LATA and would traditionally be treated as intraLATA toll, . . . if that call that was traditionally intraLATA toll was routed over that local toll trunk group, then under this definition it would be local. (TR 296)

Witness Shiroishi clarifies that for purposes of BellSouth and AT&T, anything that originates and terminates in the LATA and originates and terminates over a "local toll trunk group" would be considered local. (TR 303-304) She addresses witness King's discussion of billing factors by stating that the interconnection agreement determines what is local and what is not. (TR 304) She reiterates that if AT&T orders local interconnection trunks under Attachment 3 of the agreement, for traffic that originates and terminates in the LATA, there would be no switched access charges applied. (TR 305-306)

Witness Shiroishi contends that witness King is incorrect in his statement that the phrase "switched access arrangements" is synonymous with "switched access traffic." (TR 250) She argues that his statement is not logical because if all calls in a LATA were local, as AT&T contends, there would be no need for an exclusion. (TR 250) She draws the same conclusion regarding the language contained in the parties' Mississippi contract, that is, ". . . Local Traffic means any telephone call that originates and terminates in the same LATA." (TR 250-251) She explains that if the Florida language meant the same thing, there would be no need for an exclusion. (TR 251) Witness Shiroishi states that ". . . switched access charges are governed and apply in accordance with the terms of tariffs, in this case either BellSouth's or AT&T's." (TR 251) She concludes that while such tariffs may be referenced

DOCKET NO. 020919-TP  
DATE: SEPTEMBER 4, 2003

in the interconnection agreement they are stand-alone documents.  
(TR 251)

#### Interrelated Language

Witness Shiroishi argues that the interrelationship language contained in Section 5.3.3 of the Second Interconnection Agreement refers to Voice Over Internet Protocol (VOIP). (TR 252) She contends that the definition of local traffic with the exclusion as it currently stands was inserted in the contract before section 5.3.3 was added. (TR 252) She claims that the sole reason section 5.3.3 was inserted was to deal with the issue of VOIP traffic. (TR 252) She avers that the reason for the interrelated language is to ensure that parties adopting the VOIP language from AT&T's agreement would also have to adopt the local definition. (TR 253) She opines that otherwise a carrier could adopt the local definition without the VOIP exclusion. (TR 253)

#### End User Concept vs. Delivery of Traffic

Witness Shiroishi contends that there was specific discussion between the parties about the exclusion of traffic that originated or terminated through switched access arrangements. (TR 243) She avers that the specific purpose of the exclusion was to exclude traffic that is considered switched access under BellSouth's tariff. (TR 243) She notes that there was considerable discussion during negotiations, which included the drawing of diagrams on a whiteboard. (TR 244) She rationalizes that this concept eases the determination of what is local versus what is toll. (TR 297) She states that the definition simplifies the situation where the ALEC does not mirror BellSouth's local calling area. (TR 297-298) She continues that the definition moves away from the end user concept as to what is local, and moves toward a definition based on the way traffic is delivered. (TR 298) She explains that local toll trunk groups are similar to switched access arrangements such as Feature Group A, B, C, D, 800, and 900, except that they transport local and intraLATA toll type traffic. (TR 299) She asserts that the traffic carried on a local toll trunk may be subject to reciprocal

DOCKET NO. 020919-TP  
DATE: SEPTEMBER 4, 2003

compensation or switched access depending on how the interconnection agreement sets out the compensation. (TR 300)

Witness Shiroishi explains that local toll trunks, which are local interconnection facilities, use slightly different signaling than switched access arrangements. (TR 363) She continues that the dialing and technical capabilities and the manner in which local toll trunks are accessed are slightly different. (TR 363) She states that "[i]n the switched access tariff, it actually lays out those for switched access arrangements, and then the interconnection agreement lays out for the local toll, or LTLT, arrangements or trunk groups." (TR 363) She clarifies that local toll trunks are purchased under the interconnection agreements. (TR 364)

Witness Shiroishi points out that the contract provides for migration to the new definition of local traffic as contained in the Second Interconnection Agreement. (TR 246) She states that Section 3.1 of Attachment 3, the Interconnection Trunking and Routing section, addresses the conversion. (TR 246) She quotes "[t]he Parties will convert all existing interconnection arrangements and trunks to the interconnection arrangements described in this Attachment. . . ." (TR 246-247) She adds that the remainder of the Section provides technical specifications for the conversion. (TR 247)

### Analysis

The parties agree that switched access arrangements are synonymous with switched access facilities. There is also no dispute as to whether all intraLATA traffic carried over local interconnection trunks is considered to be local; it is. The disagreement arises over whether any traffic, when originated or terminated over switched access facilities as purchased from BellSouth's switched access tariff, is local, whether traditionally local or traditionally intraLATA toll. Staff believes the contract language is clear on its face.

Section 5.3.3 of the Second Interconnection states:



DOCKET NO. 020919-TP  
DATE: SEPTEMBER 4, 2003

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. [Emphasis omitted] (EXH 11, Tab 1, p. 18 of 24, Section 5.3.1.1 of Attachment 3 to the Second Interconnection Agreement)

AT&T's position is that "Local Traffic" includes all "LATAwide Traffic," except for "LATAwide Traffic" which the state commission or the FCC determines constitutes interLATA calls. AT&T witness King agreed with BellSouth on cross-examination that AT&T's interpretation of the contract provision was that ". . . [t]he parties agree to apply a LATAwide local concept to this Attachment 3, meaning the traffic that has traditionally been treated as intraLATA toll traffic will now be treated as local for intercarrier compensation purposes, *except interLATA traffic.*" (TR 92-93) [emphasis added] From a plain language standpoint, AT&T's position makes no sense. InterLATA traffic is not intraLATA toll traffic, so it does not need to be excluded.

The parties agreed on the record that the term "switched access arrangements" means *facilities*. If the word *facilities* is substituted into the contract language, the definition of local traffic becomes, "traffic that has traditionally been treated as intraLATA toll will now be treated as local for intercarrier compensation purposes, except for those calls that are originated or terminated through switched access *facilities* as established by the State Commission or FCC."

While this substitution begins to clear up the dispute, BellSouth witness Shiroishi's interpretation is also at odds with the plain language of the contract. Witness King testified that BellSouth is now treating traffic as switched access that was formerly treated as local. Witness Shiroishi's testimony supports AT&T's allegation. Staff sees nothing in the contract that states traffic that has traditionally been treated as local will be treated as switched access if originated or terminated over

DOCKET NO. 020919-TP  
DATE: SEPTEMBER 4, 2003

switched access facilities. Local traffic is not the same as "traffic that has traditionally been treated as intraLATA toll."

AT&T brings up several other points in support of its case. Although AT&T witnesses King and Peacock argue that the fact the issue was not arbitrated indicates that there was no disagreement, evidence was produced that contradicts this position. The record shows that when the Second Interconnection Agreement was arbitrated, the parties were not in agreement on the local traffic definition. (TR 125) However, neither party pursued the issue.

The testimony of AT&T witness Stevens is also not convincing. While her notes highlight some of the discussion that took place during negotiations, it is clear from the record that her notes are not complete and do not capture everything that was discussed throughout the negotiations. Absent a full transcript of the conversations that took place, the mere fact that an item was not contained in witness Stevens' notes is not sufficient proof that it was not discussed. Further, the contract is clear on its face. The Commission has found in previous decisions that where the language is clear and unambiguous, the Commission need not look beyond the agreement to determine the parties' intent.<sup>5</sup> Accordingly, there is no need to look to the discussions during negotiations.

### Conclusion

To the extent that an intraLATA call is dialed as a local call, regardless of the facilities it is carried over, BellSouth

---

<sup>5</sup>Order No. PSC-0802-FOF-TP, issued April 24, 2000, in Docket No. 991267-TP, In re: Complaint and/or Petition for Arbitration by Global NAPS, Inc. for Enforcement of Section VI(B) of its Interconnection Agreement with BellSouth Telecommunications, Inc. and Request for Relief, (Global NAPS), at 7-8; Order No. PSC-00-1540-FOF-TP, issued August 24, 2000, in Docket No. 991946-TP, In re: Request for Arbitration Concerning Complaint of ITC DeltaCom Communications, Inc. against BellSouth Telecommunication, Inc. for Breach of Interconnection Terms, and Request for Immediate Relief, (ITC DeltaCom), ITC DeltaCom at 13-14.

DOCKET NO. 020919-TP  
DATE: SEPTEMBER 4, 2003

should bill it as a local call. However, the LATAwide concept as espoused in this agreement does not convert otherwise intraLATA toll traffic into local traffic, if such traffic is carried over switched access facilities. To avail itself of the LATAwide local concept, AT&T must provision calls that have traditionally been intraLATA toll (such as 1+ calls) over local interconnection trunks. Any intraLATA 1+ traffic carried over switched access facilities should be treated as switched access traffic. Calls that have not been traditionally treated as toll, such as calls whose origination and termination points make such calls local in nature, should be treated as local. The contract clearly provides for the use of a PLU factor to separate the traffic between local and switched access.

Staff recommends that, for purposes of this contract, all calls that have been traditionally treated as intraLATA toll traffic, that are originated or terminated over switched access facilities, should be excluded from the definition of LATAwide local traffic. All calls that have been traditionally treated as intraLATA toll traffic, that are originated or terminated over local interconnection facilities, should be compensated as local calls. Further, all calls that have been traditionally treated as local should be so treated under this contract, regardless of the facilities used.

DOCKET NO. 020919-TP  
DATE: SEPTEMBER 4, 2003

**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?

**RECOMMENDATION:** Yes, in part. Calls that have been traditionally treated as intraLATA toll traffic that are originated or terminated through switched access arrangements should be excluded from reciprocal compensation. All calls that have been traditionally treated as local should continue to be treated as local, regardless of the facilities used; therefore, reciprocal compensation should apply. Additionally, all calls that have been traditionally treated as intraLATA toll traffic that are originated or terminated through local interconnection facilities should be subject to reciprocal compensation. (MARSH)

**POSITION OF THE PARTIES**

**AT&T:** 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.

**BELLSOUTH:** No. Switched access rates apply to non-local calls, and the Second Interconnection Agreement expressly excludes from the definition of local traffic calls carried over switched access arrangements. BellSouth's Florida Switched Access Tariff sets forth the rates and terms pursuant to which AT&T purchases switched access arrangements from BellSouth to carry the traffic at issue.

**STAFF ANALYSIS:** The parties' arguments for this issue are the same as for Issue 2. Reciprocal compensation applies to local traffic as defined in Section 5.3.1.1 of the Second Interconnection Agreement. Reciprocal compensation rates are set forth in Section 5.3.3 of Exhibit 1 to the Second Interconnection Agreement. (King TR 54)

DOCKET NO. 020919-TP  
DATE: SEPTEMBER 4, 2003

Conclusion

In keeping with Issue 2, staff recommends that calls that have been traditionally treated as intraLATA toll traffic that are originated or terminated through switched access arrangements should be excluded from reciprocal compensation. All calls that have been traditionally treated as local should continue to be treated as local, regardless of the facilities used; therefore, reciprocal compensation should apply. Additionally, all calls that have been traditionally treated as intraLATA toll traffic that are originated or terminated through local interconnection facilities should be subject to reciprocal compensation.

DOCKET NO. 020919-TP  
DATE: SEPTEMBER 4, 2003

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

**RECOMMENDATION:** Yes. To the extent that BellSouth has treated local traffic that is originated or terminated over switched access facilities as switched access traffic, BellSouth has breached the Second Interconnection Agreement. AT&T should continue to provide BellSouth with PLU factors for separation of local traffic from switched access traffic. (MARSH)

**POSITION OF THE PARTIES**

**AT&T:** BellSouth has breached Second Interconnection Agreement [sic] 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.

**BELLSOUTH:** BellSouth did not take a position on this issue.

**STAFF ANALYSIS:** At issue is whether BellSouth's treatment of intraLATA traffic delivered by AT&T constitutes a breach of contract under the Second Interconnection Agreement.

**AT&T**

AT&T witness King argues that the Second Interconnection Agreement, with respect to defining "Local Traffic," provides that all calls transported and terminated within a "LATA" ("LATAwide Traffic"), are subject to the local reciprocal compensation rates set forth in that agreement. (TR 53-54) He notes that BellSouth has refused to apply the local reciprocal compensation rates set forth in Section 5.3.3 of Exhibit 1 to the Second Interconnection Agreement to certain "LATAwide Traffic" that AT&T believes is local, applying BellSouth's switched access rates instead. (TR 54)

Witness King notes that AT&T updated its billing systems to charge BellSouth the local reciprocal compensation rates set forth in the Second Interconnection Agreement for transporting and terminating "Local Traffic," including all LATAwide Traffic. (TR

DOCKET NO. 020919-TP  
DATE: SEPTEMBER 4, 2003

55) He points out that BellSouth has never offered to pay AT&T switched access rates, rather than local reciprocal compensation rates, for AT&T's transport and termination of any of BellSouth's LATAwide traffic. (TR 55)

### BellSouth

BellSouth did not provide testimony on or brief this issue.

### Analysis

As discussed in Issue 2, AT&T witness King testifies that BellSouth is now treating traffic as switched access that was formerly treated as local. Witness Shiroishi's testimony supports AT&T's allegation. Staff sees nothing in the contract that states traffic that has traditionally been treated as local will be treated as switched access if originated or terminated over switched access facilities. Local traffic is not the same as "traffic that has traditionally been treated as intraLATA toll."

Staff recommended in Issue 3 that all calls that have been traditionally treated as local should continue to be treated as local, regardless of the facilities used; therefore, reciprocal compensation will apply. Based on the evidence it appears that BellSouth has breached the interconnection agreement to the extent that it has treated local traffic as switched access traffic.

BellSouth did not provide testimony on or brief this issue, which is in keeping with its position that BellSouth has not breached the Second Interconnection Agreement.

### Conclusion

Staff recommends that, to the extent that BellSouth has treated local traffic that is originated or terminated over switched access facilities as switched access traffic, BellSouth has breached the Second Interconnection Agreement. AT&T should continue to provide BellSouth with PLU factors for separation of local traffic from switched access traffic.

DOCKET NO. 020919-TP  
DATE: SEPTEMBER 4, 2003

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

**RECOMMENDATION:** The remedies outlined in the Second Interconnection Agreement are appropriate to the extent that BellSouth has treated traffic that has traditionally been treated as local as switched access traffic and failed to make appropriate payments for reciprocal compensation to AT&T. AT&T should develop a PLU factor to separate out local traffic from intraLATA and other traffic that does not qualify for local treatment and submit it to BellSouth. If the parties are unable to agree on the revised traffic figures, they should file with this Commission the figures in dispute and the methodology used to calculate them, along with any supporting documentation, within 30 days of the issuance of the Order.  
(MARSH)

**POSITION OF THE PARTIES**

**AT&T:** 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.<sup>6</sup>

**BELLSOUTH:** BellSouth did not take a position on this issue.

**STAFF ANALYSIS:** In keeping with staff's recommendation in Issue 4, to the extent that BellSouth has treated local traffic that is originated or terminated over switched access facilities as switched access traffic, remedies are appropriate.

---

<sup>6</sup>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.



DOCKET NO. 020919-TP  
DATE: SEPTEMBER 4, 2003

**AT&T**

AT&T witness King argues that Sections 1.14, 1.15, and 1.16 of Attachment 6 of the Second Interconnection Agreement, which are included in J. A. King Exhibit No. 2, provide for credits and late payments for improper billings. (TR 56) He contends that through October 2002, the total overcharges by BellSouth due to the alleged breach of contract were \$6,310,425. (TR 56) At hearing, witness King provided an updated J.A. King Exhibit 3, which shows a figure of \$6,961,545 as of December 2002. (EXH 12) He asserts that BellSouth also owes interest of one and one half percent (1 and 1/2%) per month from July 1, 2001 until the date BellSouth's overcharges are repaid to AT&T. (TR 57) He notes that interest is not included in J. A. King Exhibit No. 3. (TR 57)

Witness King opines that AT&T is ". . . entitled to a declaratory ruling from the Commission that BellSouth is obligated to charge AT&T for the transport and termination of all Local Traffic, including all LATAwide Traffic, at local reciprocal compensation rates, on a forward going basis." (TR 57)

**BellSouth**

BellSouth did not file testimony on or brief this issue.

**Analysis**

Exhibit 3 to witness King's direct testimony, Hearing Exhibit 12, contains a figure which staff believes is for all intraLATA traffic for which BellSouth has charged switched access instead of reciprocal compensation. The exhibit does not differentiate what portion is due to traffic that has traditionally been treated as intraLATA toll, and what portion is due to traffic that has traditionally been treated as local. As discussed in Issue 2, BellSouth has been charging for traffic that has traditionally been treated as local as switched access traffic when it is carried over switched access facilities, rather than over local interconnection facilities. When the traffic contained in witness King's exhibit 3 (Hearing Exhibit 12) is separated into traffic that has

DOCKET NO. 020919-TP  
DATE: SEPTEMBER 4, 2003

traditionally been treated as intraLATA toll, and traffic that has traditionally been treated as local, staff believes the amount that is local will be less than that contained in the exhibit. Because AT&T believes all intraLATA traffic flowing over switched access facilities should be treated as local, the PLU factor AT&T submitted to BellSouth would not differentiate between intraLATA toll traffic carried over switched access facilities and local traffic carried over those same facilities. It appears that it will be necessary for AT&T to develop a PLU factor for such facilities that separates out traditionally local traffic from other traffic. That local portion of the traffic should be subject to interest and late payment penalties, as provided for in the Second Interconnection Agreement.

BellSouth did not provide testimony on or brief this issue, which is in keeping with its position that BellSouth has not breached the Second Interconnection Agreement.

### Conclusion

Staff recommends that the remedies outlined in the Second Interconnection Agreement are appropriate to the extent that BellSouth has treated traffic that has traditionally been treated as local as switched access traffic and failed to make appropriate payments for reciprocal compensation to AT&T. AT&T should develop a PLU factor to separate out local traffic from intraLATA and other traffic that does not qualify for local treatment and submit it to BellSouth. If the parties are unable to agree on the revised traffic figures, they should file with this Commission the figures in dispute and the methodology used to calculate them, along with any supporting documentation, within 30 days of the issuance of the Order.

DOCKET NO. 020919-TP  
DATE: SEPTEMBER 4, 2003

ISSUE 6: Should this docket be closed?

RECOMMENDATION: Yes. Upon the expiration of the appellate period, and if no filings are received from the parties within 30 days of the issuance of the order, this docket should be closed.  
(CHRISTENSEN)

STAFF ANALYSIS: Upon the expiration of the appellate period, and if no filings are received from the parties within 30 days of the issuance of the order, this docket should be closed.