BEFORE THE PUBLIC SERVICE COMMISSION

In re: Joint petition by TDS Telecom d/b/a TDS Telecom/Quincy Telephone; ALLTEL Florida, Inc.; Northeast Florida Telephone Company d/b/a NEFCOM; GTC, Inc. d/b/a GT Com; Smart City Telecommunications, LLC d/b/a Smart City Telecom; ITS Telecommunications Systems, Inc.; and Frontier Communications of the South, LLC ["Joint Petitioners"] objecting to and requesting suspension and cancellation of proposed transit traffic service tariff filed by BellSouth Telecommunications, Inc.	DOCKET NO. 050119-TP
In re: Petition and complaint for suspension and cancellation of Transit Traffic Service Tariff No. FL2004-284 filed by BellSouth Telecommunications, Inc., by AT&T Communications of the Southern States, LLC.	DOCKET NO. 050125-TP ORDER NO. PSC-06-0776-FOF-TP ISSUED: September 18, 2006

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman
J. TERRY DEASON
ISILIO ARRIAGA
MATTHEW M. CARTER II
KATRINA J. TEW

APPEARANCES:

VICKI GORDON KAUFMAN, ESQUIRE, Moyle, Flanigan, Katz, Raymond, White & Krasker, PA, 118 North Gadsden Street, Tallahassee, Florida 32301; SUSAN J. BERLIN, Two North Main Street, Greenville, South Carolina 29601
On behalf of The Competitive Carriers of the South, Inc. and NuVox Communications, Inc.

SUSAN J. BERLIN, ESQUIRE, Two North Main Street, Greenville, South Carolina 29601
On behalf of NuVox Communications, Inc.

DOCUMENT NUMBER-DATE
08563 SEP 18 g
FPSC-COMMISSION CLERK

FLOYD R. SELF, ESQUIRE, Messer, Caparello & Self, P.A., 215 South Monroe Street, Suite 701, Tallahassee, Florida 32302; MICHELE K. THOMAS, Sr. Corporate Counsel, 60 Wells Avenue, Newton, Massachusetts 02459
On behalf of T-Mobile USA, Inc.

LEIGH HYER, ESQUIRE, P.O. Box 110, FLTCO717, Tampa, Florida 33601-0110
On behalf of Verizon Access Transmission Services.

WILLIAM R. ATKINSON, ESQUIRE, Mail Stop GAATLD0602, 3065 Cumberland Circle, SE, Atlanta, Georgia 30339; VICKI GORDON KAUFMAN, ESQUIRE, Moyle, Flanigan, Katz, Raymond, White & Krasker, PA, 118 North Gadsden Street, Tallahassee, Florida 32301
On behalf of Sprint Spectrum Limited Partnership, Nextel South Corporation, Sprint Communications Company Limited Partnership (Sprint Nextel).

KENNETH A. HOFFMAN, ESQUIRE, AND MARTIN P. MCDONNELL, ESQUIRE, Rutledge, Ecenia, Purnell & Hoffman, P.A., Post Office Box 551, Tallahassee, Florida 32302.
On behalf of TDS Telecom, d/b/a TDS Telecom/Quincy Telephone, Northeast Florida Telephone Company, d/b/a Nefcom, GTC, Inc. d/b/a GT Com, Smart City Telecommunications, LLC d/b/a Smart City Telecom and Frontier Communications of the South, LLC.

J. JEFFRY WAHLEN, ESQUIRE, Ausley & McMullen, Post Office Box 391, Tallahassee, Florida 32302
On behalf of AllTel Florida, Inc.

TRACY W. HATCH, ESQUIRE, 101, North Monroe Street, Suite 700, Tallahassee, Florida 32301
On behalf of AT&T Communications of the Southern States, LLC.

MICHAEL A. GROSS, ESQUIRE, Vice President, Regulatory Affairs and Regulatory Counsel, 246 East 6th Avenue, Tallahassee, Florida 32303
On behalf of Florida Cable Telecommunications Association.

CHARLES V. GERKIN, JR., ESQUIRE, Friend, Hudak & Harris, LLP, Three Ravinia Drive, Suite 1450, Atlanta, Georgia 30346; VICKI GORDON KAUFMAN, ESQUIRE, Moyle, Flanigan, Katz, Raymond, White & Krasker, PA, 118 North Gadsden Street, Tallahassee, Florida 32301
On behalf of MetroPCS Florida, LLC.

CHARLES F. PALMER, ESQUIRE, Troutman Sanders LLP, 600 Peachtree Street, 5200 Bank of America Plaza, Atlanta, Georgia, 30308-2216
On behalf of Verizon Wireless.

NANCY B. WHITE, ESQUIRE AND MANUEL A. GURDIAN, ESQUIRE, c/o Nancy H. Sims. 150 South Monroe Street, Suite 400, Tallahassee, Florida 32301; ROBERT CULPEPPER, ESQUIRE AND JOHN TYLER, ESQUIRE, 675 West Peachtree Street NW, Suite 4300, Atlanta, Georgia 30375
On behalf of BellSouth Telecommunications, Inc.

FELICIA R. WEST, ESQUIRE AND KIRA SCOTT, ESQUIRE, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Commission.

Table of Contents

Section	Description	Page
	Acronyms and Abbreviations	6
	Legal Citations	8
I.	Case Background	11
II.	Is BellSouth's Transit Service Tariff an appropriate mechanism to address transit service provided by BellSouth?	12
III.	If an originating carrier utilizes the services of BellSouth as a tandem provider to switch and transport traffic to a third party not affiliated with BellSouth, what are the responsibilities of the originating carrier?	19
	Which carrier should be responsible for providing compensation to BellSouth for the provision of the transit transport and switching services?	19
IV.	What is BellSouth's network arrangement for transit traffic and how is it typically routed from an originating party to a terminating third party?	24
V.	Should the FPSC establish the terms and conditions that govern the relationship between an originating carrier and the terminating carrier, where BellSouth is providing transit service and the originating carrier is not interconnected with, and has no interconnection agreement with, the terminating carrier? If so, what are the appropriate terms and conditions that should be established?	25
	Should the FPSC establish the terms and conditions that govern the relationship between BellSouth and a terminating carrier, where BellSouth is providing transit service and the originating carrier is not interconnected with, and has no interconnection agreement with, the terminating carrier? If so, what are the appropriate terms and conditions that should be established?	25
	Should the FPSC establish the terms and conditions of transit traffic between the transit service provider and the Small LECs that originate and terminate transit traffic? If so, what are the terms and conditions?	25
VI.	Should the FPSC determine whether and at what traffic threshold level an originating carrier should be required to forego use of BellSouth's transit service and obtain direct interconnection with a terminating carrier? If so, at what traffic level should an originating carrier be required to obtain direct interconnection with a terminating carrier?	28
VII.	How should transit traffic be delivered to the Small LEC's networks?	32
VIII.	What effect does transit service have on ISP bound traffic?	34

IX. How should charges for BellSouth's transit service be determined? 37

(A)What is the appropriate rate for transit service? 37

(B)What type of traffic do the rates identified in (A) apply? 37

X. Consistent with Order Nos. PSC-05-0517-PAA-TP and PSC-05-0623-CO-TP, have the parties to this docket ("parties") paid BellSouth for transit service provided on or after February 11, 2005? If not, what amounts if any are owed to BellSouth for transit service provided since February 11, 2005? 44

XI. Have parties paid BellSouth for transit service provided before February 11, 2005? If not, should the parties pay BellSouth for transit service provided before February 11, 2005, and if so, what amounts, if any, are owed to BellSouth for transit service provided before February 11, 2005? 46

XII. What action, if any, should the FPSC undertake at this time to allow the Small LECs to recover the costs incurred or associated with BellSouth's provision of transit service? 47

XIII. Should BellSouth issue an invoice for transit services and if so, in what detail and to whom? 49

XIV. Should BellSouth provide to the terminating carrier sufficiently detailed call records to accurately bill the originating carrier for call termination? If so, what information should be provided by BellSouth? 51

XV. How should billing disputes concerning transit service be addressed? 55

XVI. Implementation Matters 57

Ordering Paragraphs 59

Acronyms and Abbreviations

Act	Telecommunications Act of 1996
AT&T	AT&T Communications of the Southern States, LLC
BellSouth	BellSouth Telecommunications, Inc.
BOC	Bell Operating Company
BTN	Billing Telephone Number
BR	Brief
CFR	Code of Federal Regulations
CLEC	Competitive Local Exchange Carrier
CLLI	Common Language Location Identifier
CMRS	Commercial Mobile Radio Service
CO	Central Office
CompSouth	The Competitive Carriers of the South, Inc.
d/b/a	Doing Business As
DEOTs	Direct End Office Trunks
DN	Docket Number
EAS	Extended Area Service
EMI	Exchange Message Interface
EXH	Exhibit
FCC	Federal Communications Commission
FCTA	Florida Cable Telecommunications Association
f/k/a	Formerly Known As
FPSC	Florida Public Service Commission
IA or ICA	Interconnection Agreement
ICO	Independent Telephone Company
ILEC	Incumbent Local Exchange Company
IP	Interconnection Point
ISP	Internet Service Provider
Joint CLECs	CompSouth & NuVox
Joint CMRS	Sprint Nextel, T-Mobile, and MetroPCS
Joint Petitioners	See "Small LECs"
LATA	Local Access and Transport Area
LEC	Local Exchange Carrier
MetroPCS	MetroPCS Florida, LLC
MOU	Minutes Of Use

MPB	Meet-Point Billed
MTA	Major Trading Area
NDA	Nondisclosure Agreement
NuVox	NuVox Communications, Inc.
OC	Originating Carrier
OCN	Operating Company Number
PLU	Percent Local Usage
POI	Point of Interconnection
SGAT	Statement of Generally Available Terms
Small LECs	TDS Telecom d/b/a TDS Telecom/Quincy Telephone; ALLTEL Florida, Inc.;[1] Northeast Florida Telephone Company d/b/a NEFCOM; GTC, Inc. d/b/a GT Com; Smart City Telecommunications, LLC d/b/a Smart City Telecom; ITS Telecommunications Systems, Inc.; and Frontier Communications of the South, LLC.
SPOI	Single Point of Interconnection
Sprint Nextel and T-Mobile[2]	Sprint Spectrum Limited Partnership, Nextel South Corporation, Sprint Communications Company Limited Partnership and T-Mobile USA, Inc.
Tariff	BellSouth's General Subscriber Services Tariff, Transit Traffic Service Tariff (FPSC Tariff Number T-050059)
TC	Terminating Carrier
TIC	Tandem Intermediary Charge
TELRIC	Total Element Long-Run Incremental Cost
TR	Transcript
Transit Tariff	See "Tariff"
TSP	Telecommunications Service Provider
Verizon Access	Verizon Access Transmission Services f/k/a MCIMetro Access Transmission Service, LLC
Verizon	Verizon Wireless
WCB	Wireline Competition Bureau

[1] ALLTEL Florida Inc. withdrew as a party on April 21, 2006.
[2] Filings of record up to the briefs were on behalf of Sprint Nextel and T-Mobile. For purposes of the brief, MetroPCS joined these companies to file a single brief, identifying it as on behalf of Joint CMRS Carriers.

Legal Citations

Reference Used in Order	Full Citation
Court Decisions	
8th Circuit 2000	Iowa Utilities Board v. FCC, decided July 18, 2000, 219 F.3d 744.
Mountain	D.C. Circuit Court of Appeals, Mountain Communications v. FCC, 355 F.3d 644 (D.C. Cir. 2004).
Atlas	Tenth Circuit Court of Appeals, Atlas Telephone Co. v. Oklahoma Corporation Commission, 400 F.3d 1256 (10th Cir. 2005).
Core Decision	D.C. Circuit Court of Appeals, Core Communications, Inc. v. Level 3 Communications, LLC, et al., No. 04-1368, decided June 30, 2006.
FCC Orders	
Local Competition Order	Order No. FCC 96-325, released August 8, 1996, CC Docket Nos. 96-98 and 95-185, In Re: Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, and Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, First Report and Order.
TSR Order	Order No. FCC 00-194, released June 21, 2000, File Nos. E-98-13, E-98-15, E-98-16, E-98-17, E-98-18, In Re: TSR Wireless, LLC, et al., Complainants, v. US West Communications, Inc. et al., Defendants, Memorandum Opinion and Order.
ISP Remand Order	Order No. FCC 01-131, released April 27, 2001, CC Docket Nos. 96-98 and 99-68, In Re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Inter-carrier Compensation for ISP-Bound Traffic, Order on Remand and Report and Order.
Texcom Order	Order No. FCC 01-347, Texcom, Inc. v. Bell Atlantic Corp., d/b/a Verizon Communications, File No. EB-00-MD-14, released November 28, 2001, Memorandum Opinion and Order.
Texcom Recon Order	Order No. FCC 02-96, Texcom, Inc. v. Bell Atlantic Corp., d/b/a Verizon Communications, File No. EB-00-MD-14, released March 27, 2002, Order on Reconsideration.

Reference Used in Order	Full Citation
Virginia Arbitration Order	Order No. DA 02-1731, In Re: Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration, CC Docket No. 00-218, In Re: Petition of Cox Virginia Telecom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Arbitration, CC Docket No. 00-249, and In Re: Petition of AT&T Communications of Virginia Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., CC Docket No. 00-251, Memorandum Opinion and Order, released July 17, 2002.
Qwest Declaratory Ruling	Order No. FCC 02-276, released October 4, 2002, In Re: Qwest Communications International Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Agreements under Section 252(a)(1), Memorandum and Opinion.
TRO	Order No. FCC 03-36, released August 21, 2003, CC Docket Nos. 01-338, 96-98, and 98-147, In Re: Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, and Deployment of Wireline Services Offering Advanced Telecommunications Capability, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking.
Qwest NAL	Order No. FCC 04-57, Notice of Apparent Liability for Forfeiture, File No. EB-03-1H-0263, released March 12, 2004, In Re: Qwest Corporation Apparent Liability for Forfeiture.
TRRO	Order No. FCC 04-290, released February 4, 2005, WC Docket No. 04-313 and CC Docket No. 01-338, In Re: Unbundled Access to Network Elements and Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Order on Remand.
ICF FNPRM	Order No. FCC 05-33, released March 3, 2005, CC Docket No. 01-92, In Re: Developing a Unified Intercarrier Compensation Regime, Further Notice of Proposed Rulemaking.
T-Mobile Order	Order No. FCC 05-42, released February 24, 2005, CC Docket No. 01-92, In Re: Developing a Unified Intercarrier Compensation Regime and T-Mobile *et al.* Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs, Declaratory Ruling and Report and Order.

Reference Used in Order	Full Citation
FPSC Orders	
BellSouth UNE Order	Order No. PSC-01-1181-FOF-TP, issued May 25, 2001, Docket No. 990649A-TP, In Re: Investigation into Pricing of Unbundled Network Elements.
Level 3 Arbitration Order	Order No. PSC-01-1332-FOF-TP, issued June 18, 2001, in Docket No. 000907-TP, In Re: Petition by Level 3 Communications, LLC for Arbitration of Certain Terms and Conditions of a Proposed Agreement with BellSouth Telecommunications, Inc.
BellSouth UNE Recon Order	Order No. PSC-01-2051-FOF-TP, issued October 18, 2001, Docket No. 990649A-TP, In Re: Investigation into Pricing of Unbundled Network Elements, Order on Motions for Reconsideration and Motion to Conform Analysis.
Phase 1 Compensation Order	Order No. PSC-02-0634-AS-TP, issued May 7, 2002, Docket No. 000075-TP, In Re: Investigation into Appropriate Methods to Compensate Carriers for Exchange of Traffic Subject to Section 251 of the Telecommunications Act of 1996.
Joint Petitioners' Order	Order No. PSC-05-0975-FOF-TP, issued October 11, 2005, Docket No. 040130-TP, In Re: Joint petition by NewSouth Communications Corp., NuVox Communications, Inc., and Xspedius Communications, LLC, on behalf of its operating subsidiaries Xspedius Management Co. Switched Services, LLC and Xspedius Management Co. of Jacksonville, LLC, for arbitration of certain issues arising in negotiation of interconnection agreement with BellSouth Telecommunications. Inc.
Other State Commission Orders	
Georgia Transit Order	Order on Transit Traffic Involving Competitive Local Exchange Carriers and Independent Telephone Companies, Docket No. 16772-U, In Re: BellSouth's Petition for a declaratory Ruling Regarding Transit Traffic, issued March 23, 2005.
Georgia Transit Recon Order	Order on Clarification and Reconsideration, Docket No. 16772-U, In Re: BellSouth's Petition for a Declaratory Ruling Regarding Transit Traffic, issued May 2, 2005.
Tennessee CELLCO Arbitration Order	Order of Arbitration Award, issued January 12, 2006, Docket No. 03-00585, In Re: Petition for Arbitration of CELLCO Partnership D/B/A Verizon Wireless, Petition for Arbitration of BellSouth Mobility LLC; BellSouth Personal Communications, LLC; Chattanooga SA Limited Partnership; Collectively D/B/A Cingular Wireless, Petition for Arbitration of AT&T Wireless PCS, LLC D/B/A AT&T Wireless, Petition for Arbitration of T-Mobile USA, Inc., Petition for Arbitration of Sprint Spectrum L.P. D/B/A Sprint PCS.

ORDER ON BELLSOUTH TELECOMMUNICATIONS, INC.'S TRANSIT TRAFFIC SERVICE TARIFF

I. Case Background

On February 11, 2005, TDS Telecom d/b/a TDS Telecom/Quincy Telephone; ALLTEL Florida Inc.; Northeast Florida Telephone Company d/b/a NEFCOM; GTC, Inc., d/b/a GT Com; Smart City Telecom; ITS Telecommunications Systems Inc.; and Frontier Communications of the South, LLC ("Joint Petitioners" a/k/a "Small LECs") filed a joint petition objecting to and requesting suspension and cancellation of BellSouth Telecommunications, Inc.'s (BellSouth) General Subscriber Services Transit Traffic Tariff.[3] This tariff sets forth certain rates, terms and conditions that apply when carriers receive transit service from BellSouth but have not entered into an agreement with BellSouth setting forth rates, terms and conditions for the provision of transit service. BellSouth's transit tariff does not apply to a party with whom BellSouth has an existing contractual relationship because the tariff, by its terms, applies as a default only in the absence of an existing contractual agreement. Transit traffic is traffic that originates on the network of one carrier, transits over BellSouth's network, and then terminates on the network of a third carrier.

Docket No. 050119-TP was established in response to the petition filed by the Joint Petitioners. On February 17, 2005, AT&T Communications of the Southern States, LLC, (AT&T) also filed a petition and complaint for suspension and cancellation of the same BellSouth Tariff. Docket No. 050125-TP was subsequently established in response to AT&T's petition.

On March 3, 2005, BellSouth filed an answer to the Joint Petitioners in Docket No. 050119-TP, and on March 4, 2005, filed an answer and motion in Docket No. 050125-TP to consolidate the dockets. By Order No. PSC-05-0623-CO-TP, issued on June 6, 2005, this Commission consolidated the two dockets but denied the requests for suspension of BellSouth's tariff. The Order Establishing Procedure, Order No. PSC-05-1206-PCO-TP, issued December 6, 2005, set forth controlling dates for this matter.

An administrative hearing was held on March 29-30, 2006. At the conclusion of the hearing, we encouraged the parties to engage in settlement discussions. On May 1, 2006, BellSouth and the Small LECs jointly filed a status report indicating that settlement discussions were not successful.

On June 9, 2006, post-hearing briefs were filed. For the purpose of briefs and pursuant to Rule 28-106.307, Florida Administrative Code, T-Mobile USA, Inc. ("T-Mobile"), Sprint Spectrum Limited Partnership, Nextel South Corporation, Sprint Communications Company Limited Partnership (collectively, "Sprint Nextel"), and MetroPCS Florida, LLC ("MetroPCS") filed a joint post-hearing brief, identifying themselves as the "Joint CMRS Carriers." In

[3] Transit Traffic Tariff No. FL 2004-284 is also known as BellSouth's GSST Tariff A16.1, or simply as the "Transit Traffic Tariff."

addition, the brief from Verizon Access Transmission Services LLC ("Verizon Access") only addresses Issue 5.

This Order addresses the 18 outstanding issues in this consolidated proceeding. Issues 2 and 3 are discussed under Section III, and Issues 5, 8, 9 are discussed under Section V. Issue 18 which asks whether the consolidated dockets should be closed is discussed under Section XVI. We have jurisdiction over this matter under Chapter 364, Florida Statutes.

II. Is BellSouth's Transit Service Tariff an appropriate mechanism to address transit service provided by BellSouth?

This issue addresses whether BellSouth's Tariff is an appropriate mechanism to set default rates, terms, and conditions for transit traffic in the absence of a negotiated agreement. BellSouth argues that its Tariff is an appropriate mechanism to ensure compensation for its provision of a "value-added" service. Generally, the parties agree that BellSouth should be compensated for provisioning transit service; however, the main dispute in this issue is whether the Tariff is an appropriate means to procure that compensation.

A. Parties' Arguments

With the exception of BellSouth, AT&T, and Verizon Access[4], the parties agree that BellSouth's Tariff is not an appropriate mechanism to address transit service.

The Joint CLECs argue that transit service is critical to a competitive environment because if it were not available, all carriers would have to establish direct interconnections with all other carriers. According to the Joint CLECs, the provision of transit traffic service is a Section 251 obligation under the Act, and BellSouth's Tariff attempts to circumvent the established procedures in Sections 251 and 252 of the Act. Notwithstanding this Commission's authority under the Act, the Joint CLECs contend that this Commission has independent authority under state law to require parties to interconnect. Specifically, they argue that Section 364.16(1), Florida Statutes, authorizes this Commission to require local connections between local exchange companies if such connections "can reasonably be made and efficient service obtained ...."

The Joint CLECs further argue that a transit tariff will harm competition. Although the Joint CLECs receive transit service under their respective interconnection agreements, using a tariff, at the rate BellSouth has filed, "will make the tariffed rate a floor in all future negotiations." BellSouth will have little incentive to negotiate a rate lower than the tariffed rate, which the Joint CLECs assert is over 300% higher than the TELRIC rate. The Joint CLECs aver that if the Tariff is sanctioned there will be no controls in place to evaluate or determine what an appropriate transit rate should be. Carriers needing this service to complete end users' calls will be forced to pay the exorbitant rate that BellSouth charges or leave the market. Because there is essentially no competition for the transit traffic service, the Joint CLECs conclude that this Commission should cancel BellSouth's Tariff. The Joint CLECs argue that a tariff is

[4] Verizon Access only addressed Issue 5 in this proceeding.

unnecessary since BellSouth has provided a transit function for many years through interconnection agreements and has been compensated for this service via Commission-approved, TELRIC-compliant rates. The Joint CLECs endorse FCTA's witness Woods' recommendation that the proceeding arose as a result of the dispute between the Small LECs and BellSouth and should not disrupt existing arrangements.

The Joint CLECs contend that the "presumptively valid" standard is related to whether this Commission should suspend a tariff. Nonbasic tariffs are presumptively valid and will only be suspended if the "tariff will cause significant harm that cannot be adequately addressed if the tariff is ultimately determined to be invalid."[5] The Joint CLECs request that in the event this Commission does not reject BellSouth's Tariff, it should make absolutely clear that the tariff provisions are specifically limited to instances in which the originating carrier does not seek an ICA with BellSouth.

The Joint CMRS Carriers cite to the FCC's T-Mobile Order for the proposition that a unilateral tariff, such as BellSouth's Tariff, is not an appropriate mechanism to impose compensation obligations upon CMRS providers. The Joint CMRS Carriers state that by filing the Tariff, BellSouth has ignored 47 C.F.R. 20.11(d), which provides that local exchange carriers may not impose compensation obligations for traffic not subject to access charges upon commercial mobile radio service providers pursuant to tariffs.

The Joint CMRS Carriers also assert that an important aspect of the Act is the negotiation and arbitration process established under Sections 251 and 252. In conjunction with the Act, the T-Mobile Order makes it clear that an appropriate mechanism for establishing compensation arrangements for interconnection services under the Act is through the negotiation and arbitration process, not by tariff. The Joint CMRS Carriers cite to a federal court decision holding that state tariffs are incompatible with the Act. Specifically, the Seventh Circuit found that the tariff procedure "short-circuits negotiations, making hash of the statutory requirement that forbids requests for arbitration until 135 days after the local phone company is asked to negotiate an interconnection agreement."[6]

The Joint CMRS Carriers explain that a state transit tariff, prepared unilaterally by only one party, cannot be justified where BellSouth's "problem is limited to a handful of carriers and where the 'problem' exists only because BellSouth has declined to invoke the statutory remedy-arbitration that Congress has provided for such circumstances." As discussed by MetroPCS witness Bishop, the overwhelming majority of CLECs and some of the CMRS carriers, who are parties to these agreements, have little or no incentive to arbitrate transit rates, or even to negotiate them aggressively, because they originate little or no transit traffic. This does not alter the fact, the Joint CMRS Carriers assert, that BellSouth has been able to reach agreement on transit rates with most carriers without the need for a tariff.

---

[5] Commission Order No. PSC-05-0517-PAA-TP at 3.
[6] Wisconsin Bell v. Bie, 340 F.3d 441, 445 (7th Cir. 2003).

The Joint CMRS Carriers purport that a tariff is presumed to be legal until such time as it is found to be illegal.[7] According to the Joint CMRS Carriers, the T-Mobile Order, FCC rules, and court decisions, as well as the testimony of numerous expert witnesses supports their contention that BellSouth's Tariff is impermissible. The Joint CMRS Carriers conclude that any presumption originally attached to the tariff has ended, and BellSouth must demonstrate that the tariff complies with all applicable law.[8] Alternatively, the Joint CMRS Carriers request that this Commission find the tariff invalid under Sections 364.16, 364.161, and 364.162, Florida Statutes.

In their brief, the Small LECs argue that BellSouth cannot establish rates, terms and conditions for the exchange of non-access traffic, including transit service, pursuant to a tariff. The Small LECs state that the FCC's ruling in its T-Mobile Order confirms that BellSouth cannot establish rates, terms and conditions for the exchange of local traffic pursuant to a tariff.

The Small LECs argue that the rationale of the T-Mobile decision applies equally as well to wireline carriers such as the Small LECs and the CLECs. As emphasized by witness Watkins, the FCC held in its T-Mobile Order that tariffs are generally not an appropriate on-going mechanism for the establishment of terms and conditions for the exchange of non-access traffic. Furthermore, witness Watkins emphasizes that the FCC intended for compensation arrangements to be negotiated, and that negotiated agreements between carriers are more consistent with the pro-competitive process and policies reflected in the Act.[9] Consistent with that rationale, the Small LECs maintain that unilateral tariffs are also not appropriate in this proceeding.

The Small LECs also contend that BellSouth's Tariff has a number of deficiencies. First, it is deficient because it applies to local calls that terminate to ISPs. The Small LECs assert that the FCC held in the ISP Remand Order that ISP-bound traffic is interstate in nature and that the switching, transport and termination services that carriers provide to connect end-users to ISPs are also interstate services. Second, there is no assurance or guarantee that any of the three affected parties—the originating carrier, BellSouth, or the terminating carrier—will be able to identify or measure completely and accurately all traffic that BellSouth intends to define as transit traffic. Third, BellSouth attempts to coerce, through its Tariff, a commitment on the part of the originating carrier to enter into a traffic exchange agreement or other appropriate agreement.

AT&T's position is that BellSouth's Tariff is an appropriate alternative mechanism to address transit service, but only in instances where an agreement to provide such a service is not in place. Also, AT&T asserts that the rates, terms, and conditions of transit service are "most appropriately addressed and established in [a] carrier's individually negotiated ICA with BellSouth." AT&T also makes the point that since the Tariff rate applies as a default in the absence of an agreement for transit service, the Tariff does not apply to AT&T.

---

[7] Ehrhardt, Florida Evidence Section 301.1, Presumptions-Generally.
[8] Straughn v. K & K Land Management, Inc. 326 So. 2d 421, 424-25 (Fla. 1976).
[9] T-Mobile Order at ¶14.

According to FCTA, BellSouth should pursue compensation for transit service through negotiation of an interconnection agreement rather than a tariff. FCTA explains that the rates for transit traffic, like other intercarrier compensation, should be established in a negotiated or arbitrated interconnection agreement.

Verizon Wireless cites to the T-Mobile Order, as well as various state commissions' decisions, in support of its position that BellSouth's Tariff should not affect current ICAs and compensation arrangements between originating and terminating carriers. Verizon Wireless maintains that there is an expansive body of law supporting the "originating carrier pay" concept. Verizon Wireless recommends that this Commission refrain from making broad policy in this docket, and instead order the parties to voluntary negotiate the issues in this proceeding. Finally, Verizon Wireless asserts that the FCC's rules set a clear preference for negotiation and provide an arbitration remedy, administered by state commissions, where a LEC and CMRS provider could not arrive at a negotiated agreement.

BellSouth asserts that in the absence of a contractual agreement that includes rates, terms and conditions for transit service, its tariff is an appropriate mechanism that allows BellSouth to be compensated for providing a valuable service. BellSouth argues its Tariff is presumptively valid as a matter of law and that it does not have an obligation pursuant to Sections 251 and 252 of the Act to provide transit traffic service. In support of its position, BellSouth cites to this Commission's decision in the Joint Petitioners Arbitration Order for the proposition that transit service is not a Section 251 obligation and should not be priced at TELRIC. BellSouth emphasizes that the tariff is only applicable to service providers, like the Small LECs, who have not contractually agreed to pay BellSouth for the use of the transit traffic service. Without the Tariff, BellSouth argues it will not be able to receive compensation from parties who use the service but do not have interconnection agreements.

B. Analysis

1. Jurisdiction

On January 27, 2005, BellSouth filed its Tariff with this Commission; the Tariff went into effect on February 11, 2005. We have authority over tariffs pursuant to Section 364.051(5)(a), Florida Statutes, and Rule 25-4.034, Florida Administrative Code. No party challenges this Commission's authority and oversight over the Tariff in question with the exception of the Small LECs. The Small LECs argue that this Commission lacks authority to approve the Tariff on the basis that the transit service in question includes ISP-bound traffic, which is interstate in nature. The Small LECs further argue that this Commission did not have the authority over the substantive part of the Tariff upon filing, and therefore the Tariff did not become valid. The issue at hand is the service itself, and whether a Tariff is an appropriate mechanism for providing that service. Moreover, this Commission's jurisdiction was invoked by the filing of the Tariff, and the subsequent protests. There is no question that we have jurisdiction in the instant proceeding.

2. *Is the Tariff a Proper Mechanism to Address Transit Service?*

In determining whether the Tariff is an appropriate mechanism for transit service, we have considered both Florida and federal law, as well as recent FCC decisions and rule changes. We find the Tariff is inappropriate and invalid for two main reasons:

- Florida law provides that a tariff filing is an inappropriate mechanism for interconnection arrangements such as transit traffic; and

- Federal policy and law seem to indicate that the negotiation process is preferred to a unilateral tariff for transit service arrangements.

3. *State Jurisdiction over Interconnection*

At hearing the parties were asked by Commission staff to address in their briefs this Commission's authority under Section 364.16, Florida Statutes. The Joint CLECs and the Joint CMRS Carriers appear to be the only parties that addressed the implications of that statutory provision. The Joint CLECs state that "the Commission has independent authority under state law to require parties to interconnect." The Joint CLECs further state that

> Section 364.16(1), Florida Statutes, authorizes the Commission to require connections between local exchange companies if such connections 'can reasonably be made and efficient service obtained....' Transit service (in the context of the issues in this docket) requires the Small LEC to connect with BellSouth for efficient service. Section 364.16 authorizes the Commission to mandate such interconnection.

The Joint CMRS Carriers request that in the event we find that the Tariff does not violate federal law, that we prohibit the Tariff under Sections 364.16, 364.161, and 364.162, Florida Statutes. The Joint CMRS Carriers also emphasize that

> Congress has specified that a state commission may enforce state law so long as the law does "not substantially prevent implementation of the requirements of this section and the purposes of this part." Requiring a carrier to utilize the negotiation/arbitration process specifically provided in the Act can hardly be considered inconsistent with the Act and its purposes.

We agree in part with these assertions and use our authority under state law in conjunction with limited federal guidance to require the parties to establish rates, terms, and conditions for transit service and find the Tariff invalid as a matter of Florida law.

Specifically, Section 364.16(1), Florida Statutes, provides that

> Whenever the commission finds that *connections between any two or more local exchange telecommunications companies*, whose lines form a continuous line of communication or could be made to do so by the construction and maintenance of

> suitable connections at common points, can reasonably be made and efficient service obtained, and that such connections are necessary, *the commission may require such connections to be made, may require that telecommunications services be transferred, and may prescribe through lines and joint rates and charges to be made, used, observed, and in force in the future and fix the rates and charges by order to be served upon the company or companies affected.* (emphasis added)

This statutory provision encompasses the type of local interconnection arrangements, *i.e.* transit service, at issue in this proceeding. The phrase "connections between any two or more local exchange telecommunications companies" certainly describes the types of arrangements involved in transiting. BellSouth witness McCallen describes transit traffic as

> Traffic that neither originates nor terminates on BellSouth's network, but that is delivered to BellSouth by the Telecommunications Service Provider ("TSP) that originated the traffic so that BellSouth can deliver the traffic to the TSP that will terminate the traffic.

Based on this description, we find that BellSouth's transit service is more characteristic of a local interconnection arrangement within the purview of Section 364.16(1), not a nonbasic service as BellSouth asserts. Section 364.02(10) defines a nonbasic service as "any telecommunications service provided by a local exchange telecommunications company other than a basic local telecommunications service, a local interconnection arrangement described in s. 364.16, or a network access service described in s. 364.163." BellSouth argues that transit traffic falls within the nonbasic category, because it does not fit into any other category. Transit service is clearly an interconnection arrangement under Section 364.16, Florida Statutes. Section 364.051(5)(a) provides that price regulated LECs shall maintain tariffs with this Commission for each of its nonbasic service offerings.[10] Tariffing is appropriate where a nonbasic service is involved; however, it is an inappropriate mechanism for transit arrangements. Additionally, we have stand-alone authority under Section 364.16(1), Florida Statutes, to require parties to interconnect for the purpose of transiting.

In addition, Section 364.16(2) read in conjunction with Section 364.162, Florida Statutes, provides this Commission with the authority to require carriers to interconnect directly or indirectly, as well as, "negotiate mutually acceptable prices, terms and conditions." Section 364.16(2) provides in part that

> Each competitive local exchange telecommunications company shall provide access to, and interconnection with, its telecommunications service to any other provider of local exchange telecommunications services requesting such access and interconnection at nondiscriminatory prices, terms, and conditions.

---

[10] Recent legislative changes to Section 364.051(5)(a), Florida Statutes, provided price-regulated LECs the option of publicly publishing their rates, terms and conditions for each of their nonbasic service offerings. On September 5, 2006, we issued Order No. PSC-06-0751-PAA-TL, in Docket No. 060499-TL, approving guidelines for publicly publishing nonbasic services.

Based on our authority under Sections 364.16(1) and (2) and 364.162, Florida Statutes, we require BellSouth and any other parties in this proceeding who do not have a transit arrangement in place with BellSouth to establish rates, terms, and conditions for transiting.

Based upon the foregoing discussion, we hereby find BellSouth's Tariff invalid and find that the Tariff is an inappropriate mechanism to address transit services. Furthermore, we require the parties to establish rates, terms, and conditions for transit service.

4. Federal Law and Policy

There is no clear and decisive federal law on this issue. The following discussion takes into consideration persuasive federal authority. Nonetheless, we have stand-alone authority to decide this issue as long as our decision is consistent with federal law and policy.

Recently, the FCC issued its T-Mobile Order holding that a tariff is not an appropriate means to impose intercarrier compensation obligations for non-access traffic upon CMRS providers.[11] In the T-Mobile Order, the FCC addressed the issue of whether an ILEC may impose compensation obligations on wireless carriers for non-access traffic pursuant to a tariff. The FCC held, on a prospective basis, that an ILEC is prohibited from imposing such compensation obligations for non-access traffic pursuant to tariff and amended Section 20.11 of the FCC rules to add subsection 20.11(e), which provides:

> Local exchange carriers may not impose compensation obligations for traffic not subject to access charges upon commercial mobile radio service providers pursuant to tariffs.

The FCC amended section 20.11 of its rules "to make clear [its] preference for contractual arrangements for non-access CMRS traffic."[12] Consequently, that section now prohibits LECs from using a tariff as a means to impose compensation obligations on wireless carriers for non-access traffic. The FCC also adopted new rules to allow LECs the option of invoking the Section 252 process with CMRS providers, and establishing interim compensation arrangements.[13] An important question is whether the decision in the T-Mobile Order applies to the dispute in this proceeding. We recognize that the T-Mobile decision addresses non-access CMRS traffic specifically; however, the T-Mobile decision is significant in its overarching principle that contractual arrangements are preferred to a default mechanism. The compensation arrangements at issue in T-Mobile were for transport and termination of traffic, which include transit traffic. Our goal is to stay consistent with this policy. As the Joint CMRS Carriers point out, the FCC based its rule change on the rationale that "[p]recedent suggests that the Commission intended for compensation arrangements to be negotiated agreements and [...] that [such] agreements are more consistent with the pro-competitive process and policies reflected in the 1996 Act."

---

[11] T-Mobile Order at ¶16.
[12] T-Mobile Order at ¶14.
[13] Id. at fn 57.

In addition, the Joint CMRS Carriers cite to rulings from the Sixth Circuit and Seventh Circuit, both of which found that "state tariffs for intercarrier compensation are incompatible with the Act and, thereby, void under federal law."[14] We note that this authority is not binding and merely persuasive.

Upon considering the relevant case law, the Act, and the FCC rules in conjunction with this Commission's independent authority under Florida state law, it is clear that BellSouth's Tariff is invalid and an inappropriate mechanism to address transit services. Accordingly, we find that there is overwhelming evidence in this record to support a finding that BellSouth's Tariff is invalid and an inappropriate mechanism to address transit services.

5. Is BellSouth's Tariff Presumptively Valid?

BellSouth argues that its Tariff is presumptively valid as a matter of law, and this Commission has consistently held that its tariffs are "presumptively valid" This argument could imply that this Commission lacks the authority to decide whether the Tariff in this proceeding is valid. However, a tariff's presumed validity under Section 364.051(5)(a) does not in any way prevent this Commission from subsequently reviewing the tariff, especially when that tariff is challenged. In the instant case, the parties have challenged the validity of BellSouth's Tariff, and therefore, our jurisdiction has been invoked. We certainly have an obligation and duty to determine whether the Tariff is appropriate. Moreover, the question of whether the Tariff is presumptively valid as a matter of law is moot and does not warrant further analysis or consideration, because transit service is not a nonbasic service.

C. Decision

Based upon the foregoing analysis and the record, we find that BellSouth's Transit Service Tariff is not an appropriate mechanism to address transit service in the absence of an interconnection agreement or transit arrangement because it is invalid under Florida law. Furthermore, the parties are required to establish an interconnection agreement or transit arrangement containing the rates, terms and conditions for use of BellSouth's transit service. Accordingly, BellSouth's Transit Service Tariff shall be cancelled on the 71st day after this Order is issued.

III. If an originating carrier utilizes the services of BellSouth as a tandem provider to switch and transport traffic to a third party not affiliated with BellSouth, what are the responsibilities of the originating carrier?

Which carrier should be responsible for providing compensation to BellSouth for the provision of the transit transport and switching services?

[14] Verizon v. Strand, 367 F.3d 577 (6th Cir. 2004) (Verizon II); Verizon v. Strand, 309 F.3d 935 (6th Cir. 2002) (Verizon I).

A. Parties' Arguments

Small LECs believe that the CLECs and the CMRS carriers are the cost causers because they decided to use BellSouth's network to indirectly interconnect with the Small LECs' network, presumably driven by their own cost savings. Small LECs witness Watkins explains that with the opening of local markets to competition, traditional Extended Area Service (EAS)[15] calls from a Small LEC to BellSouth may now involve local calls from the Small LEC's customer to a CLEC or CMRS customer. Witness Watkins believes that CLECs and CMRS providers could have interconnected with the Small LECs at the border of the Small LECs' networks as BellSouth has done for EAS, but instead chose to utilize the BellSouth network to have the traffic switched and trunked through a BellSouth tandem, commingled with other BellSouth traffic either over toll/access facilities or over EAS trunks.

Small LECs argue in their brief that the principle of cost causation is driven by a rule of law that the Small LECs are required only to interconnect, directly or indirectly, with the CLECs and CMRS carriers for the purpose of exchanging local traffic at a technically feasible point on the actual network of the Small LECs. (47 CFR 51.701-717; §251(b)(5), (c)(2)(a)-(c); Local Competition Order ¶¶26, 87, 173, and 186) Small LECs argue that "It is illogical, inequitable and unlawful to require the Small LECs to pay for and subsidize the CLECs and CMRS providers' use of BellSouth's network to establish an indirect interconnection with the Small LECs." (§251(c)(2)(A)-(C); 8th Circuit 2000) Small LECs argue the following points:

- BellSouth has never imposed any charges on the Small LECs for the tandem transit traffic service arrangement that BellSouth has with the CLECs and CMRS providers.
- BellSouth did not involve the Small LECs in the establishment of interconnection terms with CLECs and CMRS carriers.
- In the Level 3 Arbitration Order, this Commission noted that "[a] competitive LEC has the authority to designate the point or points of interconnection on the incumbent's network for the mutual exchange of traffic."
- In this Commission's Phase 1 Compensation Order, this Commission held "that ALECs have the exclusive right to unilaterally designate single POIs for the mutual exchange of telecommunications traffic at any technically feasible location on an incumbent's network within a LATA." (Phase 1 Compensation Order, p. 25)
- BellSouth, CLECs and CMRS providers are attempting to impose competitively unfair conditions and relationships on the Small LECs without their consent and may intend to limit the alternatives for the Small LECs.
- The FCC makes clear in its TSR Order that the terminating carrier, not the originating carrier, is required to pay for transit service.
- The Georgia Transit Order and the Tennessee CELLCO Arbitration Order create no obligation for a Small LEC to involuntarily route its originating local traffic in that manner.

---

[15] EAS is basically an arrangement established pre-Act whereby customers are provided greater non-toll calling capability between specific areas at increased local service rates. The extended service area allows "community of interest" calls to local governments, schools, and doctors located in adjacent service areas. EAS arrangements were established for local calling between specific areas at increased local service rates.

In contrast, AT&T, BellSouth, FCTA, the Joint CLECs, the Joint CMRS Carriers, and Verizon Wireless aver that (1) BellSouth should be compensated for the use of its network when providing the transit function, and (2) such compensation should come from the carrier that originates a call that transits BellSouth's network. Specifically, these parties assert that the originating carrier is the cost causer. This cost allocation is fair, opines BellSouth witness McCallen and Verizon Wireless witness Sterling, because the originating carrier may choose alternative routes if the indirect route is not economically efficient. As support for the position that the originating carrier should pay transit costs, AT&T, BellSouth, FCTA, Joint CLECs, Joint CMRS Carriers, and Verizon Wireless assert that:

- The originating carrier decides whether to send its traffic to BellSouth for completion or connect directly with other carriers and collects the revenue from the originating caller.
- General industry concepts regarding cost causation, the notion that the originating provider pays for call termination, and the ICAs with CLECs and CMRS carriers, support the "originating carrier pays" concept.
- FCC Rule 51.703(b), in connection with reciprocal compensation obligations, precludes an originating carrier from imposing costs on a terminating carrier for calls that originate on the originating carrier's network.
- Two federal Circuit Courts of Appeal[16] rulings make clear that the originating carrier is responsible for transit costs.
- The Tennessee CELLCO Arbitration Order and the Georgia Transit Order conclude that the originating carrier is responsible for transit charges. (Georgia Transit Order, p. 8)

AT&T, BellSouth, Joint CLECs, Joint CMRS Carriers, and Verizon Wireless advocate that other responsibilities of the originating carrier include:

- The responsibility for delivering the traffic to the terminating party's network (or the terminating carrier's point of interconnection with the transit carrier) and compensating the terminating carrier for terminating the transit traffic to the end user.
- The obligation to negotiate rates, terms, and conditions related to the transit traffic with both the terminating LEC as well as the transiting company.
- The responsibility for delivering its traffic to BellSouth in a manner that the traffic can be identified, routed, and billed.

B. Analysis

All parties agree that BellSouth should be compensated for providing a transit function. The dispute is over which carrier should compensate BellSouth. AT&T, BellSouth, FCTA, Joint CLECs, Joint CMRS Carriers, and Verizon Wireless assert that the originating carrier is responsible for transiting compensation; Small LECs contend that the CLECs and CMRS carriers are responsible.

---

[16] Tenth Circuit Court of Appeals, Atlas Telephone Co. v. Oklahoma Corporation Commission, 400 F.3d 1256 (10th Cir. 2005) and D.C. Circuit Court of Appeals, Mountain Communications v. FCC, 355 F.3d 644 (D.C. Cir. 2004).

The record evidence is persuasive that the originating carrier utilizing BellSouth's transit service is responsible to compensate BellSouth for that service. Any decision to the contrary would appear to conflict with 47 CFR 51.703(b), which prohibits a LEC from assessing charges on any other carrier for traffic originating on its network. Furthermore, the Small LECs have provided no valid reason to deviate from the "originating carrier pays" policy. The Small LECs' claims that CLECs and CMRS providers, as the terminating carriers of transit traffic, are direct beneficiaries of transit connections and thus, should be responsible for compensating BellSouth for the transit function, are unsupported and have no basis in law, policy, or principles of equity. AT&T and FCTA both assert that the Small LECs' argument ignores the undisputed evidence that the Small LECs and their customers benefit equally when they terminate transit traffic originated by CLECs or CMRS providers. The Small LECs did not refute this assertion.

Regarding the Small LECs argument that the imposition of transit costs will cause the Small LECs to incur new and additional costs, it appears that transit costs have existed for as long as Small LEC end users have originated calls that terminated on the network of a CLEC or CMRS carrier. Just because BellSouth has not chosen until now to seek compensation for these costs is inconsequential to the issue at hand. Transiting does involve costs for the use of BellSouth's network, and all parties agree that BellSouth should be compensated.[17] Any "new" cost is the result of the Act, not because other carriers entered into transit service arrangements with BellSouth.

We agree with AT&T, BellSouth, FCTA, Joint CLECs, and Joint CMRS Carriers that the "calling party's network pays" (CPNP) concept is well-established policy based on principles of cost causation. FCC Rule 51.703(b) states that "A LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network." (47 CFR 51.703(b)) Read in conjunction with Rule 51.701(b)(2), Rule 51.703(b) requires LECs to deliver traffic, without charge, to a CMRS provider's switch anywhere within the Major Trading Area (MTA) in which the call originated. Thus, the Small LECs' claim that there should be no compensation impact on them when they originate traffic is nonsensical. If customers of the Small LEC place a call that transits BellSouth's network, it is because the Small LEC and the terminating carrier have not established a direct interconnection. The Small LEC's customer is the cost causer; the Small LEC should pay the transit costs as a cost of doing business. Even if a Small LEC directly interconnects with a CLEC thereby not using BellSouth's transit function, rules of intercarrier compensation require that the Small LEC be responsible for transporting its originating traffic; the Small LECs' use of a transit provider does not change this obligation. The terminating carrier has no control over how a call is sent to its network and thus should not be required to bear the cost of transporting the call to its network. It is only equitable and competitively fair that the Small LEC, when using BellSouth's transit service to deliver traffic to providers who are also connected to BellSouth's tandem, be treated the same as any other carrier that uses the transiting function.

[17] BellSouth explains that the reason it is now taking steps to obtain compensation for the use of its network is because of the increase in the number of transit calls being carried over its network due to the explosive growth of wireless and ISP-bound traffic.

Small LECs cite to this Commission's Level 3 Arbitration Order and the Phase 1 Compensation Order to support the position that the Small LECs' obligation is only to interconnect with a CLEC on a Small LEC's network. These orders address Point of Interconnection (POI) issues. POI issues are associated with direct interconnection; this proceeding involves indirect interconnection. Because carriers that use BellSouth's transit service are not directly interconnected, it follows that such carriers have no need to establish a POI on each other's respective network. Absent a direct interconnection, there may be no POI between a CLEC or CMRS carrier and a Small LEC. Additionally, the Phase 1 Compensation Order actually supports the position that the originating carrier should be responsible for the costs of calls it originates. (Phase 1 Compensation Order, p. 26) In any event, the POI between a CLEC or CMRS provider and an ILEC is not an issue in this proceeding.

Small LECs also rely on the FCC's TSR Order to support their view that the terminating carrier, not the originating carrier, is required to pay the transit charge. The Small LECs' interpretation of the TSR Order is incorrect. The TSR Order held that the transit carrier is not responsible for the portion of the interconnection facilities between the paging carrier and the ILEC that was used to deliver third-party transit traffic; it does not address the originating carrier's responsibility. Further, there is no language in the TSR Order that would provide for calls originated or terminated by the Small LECs through the BellSouth network to be treated any differently than calls originated or terminated by the CMRS providers or CLECs through the BellSouth network.

We agree with the arguments proffered by AT&T, BellSouth, FCTA, Joint CLECs, Joint CMRS Carriers, and Verizon Wireless that the Small LECs position would result in traffic originating from the Small LECs' customers being paid by everyone but the Small LEC, essentially giving the Small LECs a "free ride." Interestingly, the Small LECs argue that if they are required to pay transit charges, then they are essentially subsidizing CLECs and CMRS carriers. If the Small LECs' position is adopted, it is the CLECs and CMRS carriers that would be subsidizing the Small LECs. The choice of how the originating call is delivered to the end user is not the choice of the terminating carrier, but rather the choice of the originating carrier, even if the originating carrier is a Small LEC.

The parties rely on several Circuit Court decisions and FCC orders to support their respective positions. Atlas, Mountain, Texcom, and Texcom Reconsideration are all consistent with FCC Rule 51.703(b), holding that the originating carrier is responsible for transit costs. In Atlas, the 10th Circuit concluded that CMRS providers should not have to bear the costs of transporting calls that originated on the networks of rural LECs across the ILEC's network. (Atlas fn 11) [The 10th Circuit also found that the §251(a) obligation of all telecommunications carriers to interconnect directly or indirectly is not superseded by the more specific obligations under §251(c)(2).] In the Texcom Order, the FCC held that for third-party originating traffic, "the originating third party carrier's customers pay for the cost of delivering their calls to the LEC, while the terminating CMRS carrier's customers pay for the cost of transporting that traffic from the LEC's network to their network. (Texcom Order ¶6) On reconsideration, the FCC stated that the carrier providing the transit service may charge the terminating carrier "for the cost of the portion of these facilities used for transiting traffic, and [the terminating carrier] may

seek reimbursement of these costs from originating carriers through reciprocal compensation." (Texcom Recon Order ¶4) Thus, costs should be borne by the originating carrier. The Texcom Order and the Texcom Recon Order reflect the FCC's intent to allow the transiting LEC to recover its cost of providing the transiting service from the originating LEC. Under the Texcom Recon Order, the terminating provider may seek reimbursement of these costs from the originating carrier. There is no mention that the terminating carrier would not be able to recover these costs, and no basis for the argument that the terminating carrier should have to bear any of the costs of transporting a call to the terminating carrier across the transiting carrier's system.

The reasoning in the Atlas and the Texcom Orders is compelling. They are consistent with and appear to confirm the principle that the originating party must bear the costs of transiting the call. The Small LECs should not be exempted from paying for transit costs incurred when a Small LEC's end user originates a call that transits BellSouth's network and terminates to a CLEC or CMRS end user. The Small LECs are not without options. The Small LECs could establish a direct connection with CLECs and CMRS carriers, rather than using BellSouth's transit service. The Small LECs have not provided any valid reason to change the "originating carrier pays" regime currently in place in the industry.

Finally, AT&T, BellSouth, Joint CLECs, Joint CMRS Carriers, and Verizon Wireless advocate additional responsibilities of the originating carrier that no party challenged. These responsibilities include negotiating rates, terms, and conditions related to transit traffic with both the terminating LEC as well as the transiting company, delivering traffic to the terminating party's network (or the terminating carrier's POI with the transit carrier), and delivering traffic to the transiting carrier, if used, in a manner that the traffic can be identified, routed, and billed.

C. Decision

Based upon the foregoing analysis and the record, we find that the originating carrier shall enter into a transit arrangement with BellSouth, and shall compensate BellSouth for providing the transit service. Additionally, the originating carrier is responsible for delivering its traffic to BellSouth in such a manner that it can be identified, routed, and billed. The originating carrier is also responsible for compensating the terminating carrier for terminating the traffic to the end user. Issue 3 is subsumed by our decision.

IV. What is BellSouth's network arrangement for transit traffic and how is it typically routed from an originating party to a terminating third party?

This issue addresses the network arrangement utilized by BellSouth to transit traffic from an originating carrier to a third-party carrier for termination. BellSouth witness McCallen provides a description of how traffic is transited, and no party challenges this description. Specifically, he states that transit traffic is generally routed through a BellSouth tandem office to the terminating third-party carrier. The witness asserts that Meet-Point-Billed traffic is then routed over the common trunk group to the ICO network for termination. Sprint Nextel witness Pruitt states that transit traffic from an originating carrier is delivered to the BellSouth tandem and then routed by BellSouth to intraLATA interconnection facilities of the terminating carrier. This testimony is consistent with BellSouth witness McCallen's testimony.

Based on the record, the parties do not appear to disagree on this issue. The Small LECs, however, appear to disagree on how this traffic is identified, which is discussed in Issues 7 and 16. Accordingly, we find that BellSouth's current network arrangement for transit traffic and its typical routing from an originating party to a terminating third party is appropriate.

V. **Should the FPSC establish the terms and conditions that govern the relationship between an originating carrier and the terminating carrier, where BellSouth is providing transit service and the originating carrier is not interconnected with, and has no interconnection agreement with, the terminating carrier? If so, what are the appropriate terms and conditions that should be established?**

Should the FPSC establish the terms and conditions that govern the relationship between BellSouth and a terminating carrier, where BellSouth is providing transit service and the originating carrier is not interconnected with, and has no interconnection agreement with, the terminating carrier? If so, what are the appropriate terms and conditions that should be established?

Should the FPSC establish the terms and conditions of transit traffic between the transit service provider and the Small LECs that originate and terminate transit traffic? If so, what are the terms and conditions?

Issues 5, 8, and 9 describe various scenarios involving parties that are utilizing BellSouth's transit service. The carriers, regardless of whether or not they are a small LEC, CLEC or CMRS carrier, will originate or terminate calls that transit BellSouth's network. There is an abundance of testimony suggesting this Commission should not establish the terms and conditions governing the transit function. The majority of the parties point to successfully negotiated and arbitrated interconnection agreements that include terms and conditions for BellSouth's transit service, and the sheer volume of interconnection agreements as compared to the number of telecommunications service providers electing to not negotiate the transit function.

A. **Parties' Arguments**

AT&T witness Guepe states that under §251(b)(5) of the Act each local exchange carrier has a duty to establish reciprocal compensation arrangements for the transport and termination of local traffic. Therefore, he surmises, indirectly connected carriers fall under the umbrella of §251(b)(5) and are obligated to establish such arrangements. The AT&T witness concludes this Commission should order the continuation of bill and keep arrangements based on an assumption that the traffic being exchanged is equal, and when the traffic is no longer balanced, the parties should negotiate further arrangements.

Small LECs witness Watkins argues that physical interconnections should not be "forced" on other carriers in the absence of an agreement that defines the terms and conditions related to that interconnection. He contends that BellSouth, because it is interconnected directly with the Small LECs' networks, should be required to establish contractual provisions that at a minimum:

(a) Identify the trunking facilities, physical interconnection point and scope of traffic.
(b) Establish authority for delivery of traffic from third parties over such facilities.
(c) Address abuse of the delivery of subject traffic.
(d) Ensure accurate and complete usage records are provided and identify procedures to address incomplete records.
(e) Coordinate billing, collection, compensation and auditing rights.
(f) Establish dispute resolution procedures.
(g) Define network change procedures regarding the tandem arrangement.
(h) Establish transit traffic threshold levels above which transit service would not be available.
(i) Define enforcement actions by the transit provider for non-payment of transit service.

Witness Watkins states the list is not exhaustive and that these issues are "typically expected to be addressed through negotiations and agreements (and arbitrations, if necessary)." He further explains that the terms and conditions would be for all the carriers involved and would not just apply between the originating and terminating carriers, but would include the responsibilities of the transit provider. Thus, the agreement would be multilateral, encompassing at the very least, three parties.

In addition, witness Watkins expresses concern that there are no statutory rights that would force CLECs into interconnection agreements with the Small LECs. He also indicates that based on his experience, BellSouth is resistant to "meaningful discussions" and this Commission should approach the resolution of this issue in such a way as to prompt meaningful discussions.

BellSouth witness McCallen states that carriers have alternatives in deciding how they wish to route traffic. He argues carriers may elect to utilize BellSouth's transit service either through an interconnection agreement or the transit tariff. He explains carriers may elect to forego BellSouth altogether and use an alternative transit provider or in the extreme, block the traffic completely. Ultimately, argues witness McCallen, it comes down to a business decision. A carrier has a set of choices it must weigh if and when it decides to utilize BellSouth's transit service or elects to forego the transit function altogether and directly connect to the other carrier. The BellSouth witness concludes that under the Act originating and terminating carriers have an obligation to negotiate interconnection agreements and that both carriers have options, such as those above, in deciding how to deliver traffic to one another.

FCTA witness Wood also supports the §251/252 interconnection/arbitration process for agreements between carriers that elect to utilize BellSouth's transit service. He argues that the FCC changed its rules to promote agreements for intercarrier compensation arrangements. Witness Wood observes that the present proceeding arose from a dispute between the Small LECs and BellSouth. He argues that this Commission should focus on the dispute and not disrupt or set aside the interconnection agreements other carriers currently utilize to exchange traffic.

The Joint CLECs in their brief state that this Commission should reject the Small LECs three-party interconnection agreement as being "unnecessary, unworkable and administratively burdensome." In the opinion of the Joint CLECs, this Commission should reach the same conclusion that the Tennessee Regulatory Authority (TRA) did, citing the TRA as a state commission grappling with the same circumstances concerning transit traffic. The Joint CLECs submit that the TRA rejected the Small LECs' position concerning three-party interconnection agreements claiming the FCC discourages three-party agreements. Additionally, Joint CLECs witness Gates states that he agrees with BellSouth witness McCallen that this Commission should not establish the terms and conditions concerning the transit function between carriers. He argues that BellSouth's tariff, if it is allowed to remain in effect, sets the stage for terms and conditions that are "one-sided terms in favor of BellSouth" and that the more appropriate terms and conditions for transit service should be arrived at through negotiation and, if necessary, arbitration with state commissions.

Joint CMRS Carriers witness Pruitt argues that there is precedent to conclude the FCC envisioned interconnection agreements between adjacent LECs such as BellSouth and the Small LECs when the FCC found in the Local Competition Order that the meaning of §252(i) is that "any interconnection agreement approved by a state commission, *including one between adjacent LECs,* must be made available to requesting carriers pursuant to section 252(i)." (Emphasis by witness) Witness Pruitt also states, when a Small LEC utilizes BellSouth's transit service without compensation, there is no reason BellSouth cannot seek to establish a §251/252 interconnection agreement within the requirements of the Act.

Verizon Wireless witness Sterling argues that the T-Mobile Decision "made it clear that the 1996 Act calls for negotiation and arbitration of direct and indirect interconnection arrangements." He bases his conclusion upon a carrier weighing network efficiency and opting for BellSouth's transit service; regardless of whether it is a CMRS provider or a Small LEC, the carrier is entitled to request interconnection and negotiate/arbitrate the arrangement. Witness Sterling states that the choice a carrier makes, such as utilizing indirect connections to transit its originated traffic to a third party, does not impose the same obligation on any other carrier. The other carriers, such as the Small LECs, should be free to determine exactly how they wish to route their end-user originated traffic.

B. Analysis

Issues 5, 8 and 9 delve into the transit function and the fundamental relationships between carriers. Regardless of whether a carrier was originating or terminating transit traffic, all the parties were reluctant to have this Commission establish terms and conditions governing the transiting relationship. The parties approached Issues 5, 8 and 9 by confining their arguments to a single issue and cross referencing the other issues. For example, the Small LECs witness Watkins stated in his analysis of Issue 8 that he had already discussed the issue in his responses to the other issue statements.

In every party's discussion, whether it was within Issue 5, 8 or 9, they all pointed to interconnection agreements already in place. BellSouth witness McCallen listed over 275 companies within Florida that had agreements containing terms and conditions for transit

service. By setting the terms and conditions for BellSouth's transit service, this Commission could undermine bargaining positions of carriers as they negotiate interconnection agreements at some later date. We agree with witness Woods that a carrier is in the best position to weigh terms and conditions in relation "to their traffic patterns, to their balance of traffic, to their locations, all of those things." The terms and conditions that are appropriate for one carrier are unique to that single carrier and establishing terms and conditions that would work for all carriers is highly unlikely. As witness Woods states, ". . . this is not a one size fits all."

The Small LECs seem reluctant to negotiate and instead want this Commission to order BellSouth to address the matters identified in "a" through "i" above. An interconnection agreement or transit arrangement would be more appropriate because it involves negotiation and possible arbitration between the Small LECs and BellSouth. Additionally, we do not support the argument regarding the multilateral agreement suggested by Small LECs witness Watkins. We agree with the TRA's analysis and subsequent rejection of the Small LECs' multilateral agreements for transiting since the TRA relied on the FCC finding that ". . . opening the process to all third parties would be unwieldy and would delay the process."

We also agree with the Joint CMRS Carriers that the FCC clearly envisioned there would be interconnection agreements between adjacent LECs and believes it is applicable to the current situation between the Small LECs and BellSouth. We note Verizon Wireless' argument that the T-Mobile Order indicated that negotiations and arbitrations were recognized by the FCC as the more appropriate vehicle to deal with intercarrier relationships.

We conclude that carriers have options in deciding whether or not to connect directly or indirectly, and when indirectly connected, to utilize BellSouth's transit service or the transit service of another carrier (if it is available), or as a last resort to block their originating traffic by not activating certain NPA/NXXs within their switches. There are a myriad of business decisions concerning the operation of a carrier's telecommunications network. We find that the best avenue for carriers to develop terms and conditions for the various scenarios addressed in Issues 5, 8 and 9 is through negotiating transit arrangements.

C. Decision

Based upon the foregoing analysis and the record, we will not establish the terms and conditions governing the relationship between the originating carrier and the terminating carrier where BellSouth is providing transit service. The relationship shall continue to be defined within bilateral interconnection agreements. Additionally, we find that those situations involving Small LECs as originators and terminators utilizing BellSouth's transit service are best defined within bilateral transit arrangements. Issues 8 and 9 are subsumed by our decision.

VI. Should the FPSC determine whether and at what traffic threshold level an originating carrier should be required to forego use of BellSouth's transit service and obtain direct interconnection with a terminating carrier? If so, at what traffic level should an originating carrier be required to obtain direct interconnection with a terminating carrier?

This issue addresses whether or not a traffic threshold level should be established for carriers transiting traffic through the BellSouth tandem. Small LECs witness Watkins believes that this Commission should set the traffic threshold at a DS1 level that applies to all carriers. However, all other parties are in agreement that this Commission should not set a traffic threshold level and argue that the decision to establish a direct interconnection should be left to the carriers using the transit service, based on the economic and engineering needs of the carriers.

A. Parties' Arguments

Small LECs witness Watkins states that this Commission should establish a threshold level at which CLECs and CMRS providers would be required to establish direct interconnection with the Small LECs, thereby no longer commingling traffic with BellSouth and other carriers' traffic. While witness Watkins supports establishing a traffic threshold level, he does not believe that a rigid requirement would be appropriate. Instead, the witness believes the threshold level should be flexible because some carriers may want to continue to exchange traffic indirectly, even when some distinct threshold has been reached and exceeded, and they should be allowed do so under voluntary terms. Witness Watkins contends that the Small LEC is not required to subtend its end office to a BellSouth tandem, and BellSouth has no automatic right to commingle third-party traffic delivered to the Small LECs with its access or local traffic. The witness states that just because a specific level of traffic may be exceeded, this does not mean that the CLEC or CMRS provider has to build its own facilities to meet the Small LEC on its network. He asserts that the CLEC or CMRS provider could continue to interconnect indirectly with the Small LEC, but would do so using dedicated trunks, instead of commingling their traffic on BellSouth's common trunk group. Witness Watkins asserts that a reasonable level of traffic for a threshold, at which direct trunking could be required, would be the amount of traffic that constitutes one DS1.

Small LECs witness Watkins in his rebuttal testimony expresses disagreement with Joint CLECs witness Gates' assertion that the market can and should determine when it is appropriate to establish dedicated trunking arrangements. Witness Watkins asserts that traffic exchanged between Small LECs and CLECs is often out of balance. The witness contends that the CLECs want an interconnection arrangement that unduly burdens the Small LECs. He asserts that where there is EAS calling between the rural markets of the Small LECs and the urban markets of the CLEC, an ISP is able to offer Internet access to rural customers and to receive dial-up calls. However, he believes it is inequitable if the Small LEC, in order to send dial-up traffic to the ISP served by the CLEC, must pay BellSouth to transport traffic to the CLEC on its way to the ISP. Witness Watkins notes that the Small LECs agree with Joint CLECs witness Gates that if a threshold is established that it should be based on a sustained level of traffic over three consecutive months to account for isolated variations.

Joint CLECs witness Gates asserts that the market can, and should, determine when it is appropriate to establish a direct interconnection between two carriers that are transiting traffic through BellSouth's network. To support his assertion witness Gates provides four reasons why this Commission should not set a direct interconnection threshold.

- First, the market already provides the proper signals to determine the appropriate form of interconnection.
- Second, an arbitrary threshold will cause network duplication by forcing an originating carrier to interconnect directly with a terminating carrier.
- Third, a threshold would place inappropriate limitations on carriers that utilize transit service provided by BellSouth pursuant to §251 of the Act.
- Fourth, there is absolutely no basis for establishing a traffic threshold.

Witness Gates believes direct interconnections between originating and terminating carriers are more efficient and economical when they are driven by the market. He asserts that if a traffic threshold level is set, it should be higher than a DS1 and based on traffic patterns over three consecutive months to account for isolated spikes in transit traffic that could send a false signal that a direct interconnection should be established. Consequently, in rebuttal testimony the witness contends that Small LECs witness Watkins did not provide any basis for setting a direct trunk threshold at the DS1 level. He asserts that no threshold should be set because all direct trunking thresholds are by definition rigid and inflexible. Witness Gates asserts that witness Watkins' proposal for a flexible threshold is not a realistic option. The witness believes that direct trunking decisions are most flexible when they are reached through negotiation between the parties, and he contends that the DS1 threshold level recommended by Small LECs witness Watkins may be the lowest capacity threshold available. He opines that while witness Watkins advocates a flexible threshold, he proposed possibly the most inflexible threshold available.

Witness Gates also contends that witness Watkins' proposal is vague and does not specify who would be required to pay for the dedicated facilities or whether the trunk would be one-way or two-way. He asserts that if the Small LECs' proposal is implemented, the Small LECs' customers could originate 100% of the DS1 level traffic, and the Small LECs would inappropriately shift their costs to the CLECs or CMRS providers who would be required to bear the cost to establish a direct connection when the threshold level is exceeded. Witness Gates also disagrees with witness Watkins' assertion that carriers could still interconnect with Small LECs indirectly even if a threshold is established, but would do so using dedicated trunks instead of commingling their traffic on a BellSouth's common trunk group. The witness contends that a dedicated connection between a CLEC and a Small LEC, regardless of who actually owns the dedicated facility, is a direct connection – not an indirect interconnection.

Sprint Nextel and T-Mobile witness Pruitt testifies that the originating carrier is responsible for paying the cost to deliver its traffic to the terminating carrier and, therefore, the originating carrier should decide when it is best to establish a direct interconnection with the terminating carrier. The witness asserts that direct trunks between the originating carrier's switch and the terminating carrier's switch should be based on the trunk capacity requirements of the traffic and the most economic means of transporting that traffic to the terminating carrier. He further asserts that facility prices vary by LEC and that an artificial threshold could create an unfair economic advantage for BellSouth and the Small LECs if dedicated meet-point facilities are established when it has been determined to be more economical to continue to utilize BellSouth's transit service. Witness Pruitt asserts in rebuttal testimony that the distance between

a tandem and end offices varies and transport costs are mileage-sensitive; therefore, the originating carriers should determine when direct interconnection is justified. The witness contends that the FCC addressed and rejected the threshold issue in the Virginia Arbitration Order, and that there is no basis for a threshold to be set by this Commission that would be contrary to FCC precedent.

AT&T witness Guepe contends that the Act does not require carriers to establish direct trunking arrangements, which can be cumbersome and time consuming to develop. He believes that a regulatory mandated threshold for direct interconnection with another carrier could impose unreasonable constraints on telecommunications carriers that may not be technically feasible. In a discovery response, Verizon Wireless witness Sterling agrees with witness Guepe that direct trunking arrangements to rural LEC networks can be more cumbersome and time consuming to develop. Except for the Small LECs' witness, all the other witnesses agree that the decision to connect directly or indirectly with another carrier should be left to the originating carrier's discretion, based upon his network architecture and associated costs. They also agree that transport costs are mileage-sensitive, no volume threshold should be mandated, and that carriers should negotiate and arbitrate ICAs. BellSouth states in a discovery response that based on economics, if certain factors determine that it is more economical to establish a direct interconnection, and there is enough traffic to fill a DS1 (24 trunks) in one of the average Time-Consistent Busy Hours, a direct trunk group should be built.

B. Analysis

Other than the Small LECs, all of the parties oppose this Commission establishing a traffic threshold level at which a carrier would be required to forego the use of the transit service provided by BellSouth. These parties believe that the decision to shift from an indirect interconnection to a direct interconnection should be made by the originating carrier based on its existing network and the costs to supplement its facilities. They testify that it is a business decision to choose when to directly interconnect with a Small LEC.

Small LECs witness Watkins is alone in his assertion that a threshold should be set by this Commission. The witness recommends a DS1 threshold but fails to provide a thorough justification to substantiate his proposal. Also, the Joint CLECs witness Gates argues that if a threshold is set by this Commission then it should be at a level higher than a DS1. The witness asserts that the DS1 threshold that the Small LECs propose is not flexible and may be the lowest capacity threshold available, which could increase costs in the greatest number of circumstances.

This Commission should not establish a traffic threshold because the parties are in the best position to make decisions regarding their networks. Specifically, the establishment of any threshold level for transit traffic should be decided by the carriers utilizing BellSouth's transit service because the economic crossover from indirect to direct interconnection will vary depending on volume, mileage, and the LEC's prices. Therefore, we find that the record evidence weighs heavily on the side of not mandating direct interconnection based upon a specified threshold of any kind.

C. Decision

Based upon the foregoing analysis and the record, we hereby find that this Commission shall not set a traffic threshold level.

VII. How should transit traffic be delivered to the Small LEC's networks?

This issue was primarily addressed by the Small LECs and BellSouth, and concerns the termination of traffic on the Small LECs network that has transited BellSouth's network. The Small LECs want this Commission to require separate and distinct trunk groups for CLEC and CMRS carrier traffic, which it claims, is being commingled on common carrier trunk groups used for local access.

A. Parties' Arguments

AT&T, the Joint CLECs, the Joint CMRS Carriers and Verizon Wireless all indicate that transit traffic should be delivered to the Small LECs in the most economically and technically feasible manner possible. The FCTA and Verizon Access did not address this issue.

AT&T witness Guepe argues there is no need to change the way transit traffic is delivered unless the parties mutually agree to effect changes. Both parties have to weigh the various options and decide what the best solution is. He states it is the Small LECs that decide to send traffic indirectly because that is the way they choose to interconnect; there is nothing preventing them from asking for direct interconnection other than the fact that none have asked to do so.

Small LECs witness Watkins argues that the trunking arrangements between the Small LECs and BellSouth following the breakup of AT&T address intraLATA toll traffic that is subject to the terms and conditions of access tariffs. He surmises that BellSouth unilaterally decided to provide its transiting service to CMRS carriers and CLECs using those same intraLATA toll trunks, including ones established for Commission-ordered EAS routes. He argues that at the request of a Small LEC, BellSouth should be required to establish separate trunks to deliver third-party transit traffic rather than commingle it with "toll traffic."

BellSouth witness McCallen states that calls from third party carriers (CLECs and CMRS carriers) interconnect with the BellSouth network at the tandem office and that the calls are then routed over the common trunk group to the Small LECs' network. He also indicates that some traffic may be routed over the EAS trunk group. The witness contends that BellSouth is "willing to provide an efficient and valuable means" for Small LECs to send their originated traffic over a common trunk group to other carriers networks through BellSouth's network; it simply wants to be compensated for the service. Moreover, BellSouth asserts in its brief that the Small LECs provide no authority for segregating traffic that has traditionally been delivered over the common trunk group onto separate and distinct trunk groups for a particular carrier.

In addressing the Small LECs' argument regarding EAS trunks, the BellSouth witness admits that previously no carrier, other than BellSouth, served an EAS destination. However,

because circumstances have changed a CLEC could be serving that former BellSouth EAS destination. A small LEC would not only have to perform a local number portability query to determine the proper routing of the call, but it would also incur the transit service fee. He indicates the small LEC may not know that the former BellSouth EAS customer had ported his number to a CLEC. Witness McCallen argues that it is "just part of the business and industry of where we are now." He states the Small LECs could elect to not activate the NPA/NXX codes in their switches. This would result in the Small LECs' end users not being able to complete local calls to certain carriers, which is known in the industry as blocking. Witness McCallen states it is a viable option to avoid paying a transit service fee. He recalls a scenario involving a rural LEC that employed this technique (call blocking) to get a CLEC to the negotiating table.

Joint CMRS Carriers witness Pruitt agrees that the commingling of traffic on trunk groups is an efficient method of routing traffic, is technically feasible and is a common industry practice. Witness Pruitt argues that should this Commission require the establishment of distinct trunks for transiting CLEC traffic, it would be contrary to an interconnecting carrier's right under the Act to choose to either connect directly or indirectly with a small LEC's network. He states "[a] common pipe also works efficiently in the opposite direction, allowing the small LEC to bundle its outbound traffic on a single facility, gaining economies of scale." He believes BellSouth should be allowed to continue its practice of commingling transit traffic as long as it can provide properly timed calls and industry standard records.

B. Analysis

Directing BellSouth to deliver transit traffic to the Small LECs on specific and distinct trunk groups, in lieu of using existing common transport trunk groups, is not supported by the record in this proceeding. We are not swayed by the Small LECs' argument concerning EAS routes and the possibility that CLECs acquired BellSouth's customers. The Small LECs witness indicated that TDS Telecom, GT Com, and Northeast Florida Telephone Company do not exchange any transit traffic on the EAS routes with BellSouth.

In lieu of using BellSouth's transit service, it was suggested that the Small LECs could de-activate the NPA/NXX codes of CLECs or CMRS carriers which prevents the Small LECs' end users from being able to complete certain calls as local calls. We are reluctant to support this option since there are alternatives available. Specifically, the Small LECs may elect to utilize the transit service of BellSouth with its associated fees, or request interconnection and negotiation with the terminating carrier for direct interconnection. These options, as indicated by the arguments above, are best left to the parties based on their evaluation of the economics of the situation.

We recognize that BellSouth, through its legacy network, is in the best position to offer transit service. At this time, changing the way transit traffic is being delivered may place additional costs on both BellSouth and the Small LECs. Requiring distinct trunk groups and direct interconnection does not appear warranted, particularly when the Small LECs suggest the change only when there is not an agreement already in place. There is support for distinct trunk groups for CLECs and CMRS carriers to be non-existent and believes the requirement should not be imposed on BellSouth, particularly when there are successful agreements in existence.

We agree that BellSouth should furnish sufficiently detailed call information to allow billing by the terminating carrier to the originating carrier. The Small LECs responded that they did not have the independent means to bill transit traffic that is commingled on common trunk groups. However, the Small LECs supported the option of being able to voluntarily continue their subtending arrangements with BellSouth or to discontinue and deploy their own tandem switch. This is indicative of the business decisions involved in the transiting arrangement. Having this Commission mandate how CLEC and CMRS carriers interconnect, while allowing Small LECs to negotiate interconnection terms, is inconsistent and inequitable. We find that the appropriate solution involves negotiated agreements between the Small LECs and BellSouth that address the individual situations of the Small LECs and BellSouth rather than a one-size-fits-all regulatory requirement.

C. Decision

Based upon the foregoing analysis and the record, we find that transit traffic shall be delivered to the Small LECs' networks utilizing efficient network engineering developed through mutual agreement between BellSouth and the Small LECs.

VIII. What effect does transit service have on ISP-bound traffic?

This issue addresses the effect of routing ISP-bound traffic over an intermediary carrier's network.

A. Parties' Arguments

AT&T, BellSouth, and Joint CLECs opine that transiting ISP-bound traffic is no different than transiting voice traffic; the transiting function is indifferent with regard to the types of traffic being transited. Small LECs argue that such a position ignores the jurisdictional nature of ISP-bound calls, as well as the financial implications to the originating carriers and the pronouncement of the FCC regarding intercarrier compensation for ISP-bound calls. Small LECs argue in their brief that this Commission lacks authority to authorize a transit fee for ISP-bound traffic because this traffic is jurisdictionally interstate. (ISP Remand Order ¶¶55, 57, 58, 65)

BellSouth witness McCallen asserts that Independent Telephone Companies (ICOs) that send their originated ISP-bound traffic to BellSouth are using BellSouth's network and transit service, and should compensate BellSouth. Witness McCallen explains that the transit tariff addresses traffic that uses the BellSouth network -- that is, traffic exchanged between two non-BellSouth Telecommunications Service Providers (TSPs). As such, adds the witness, the tariff has nothing to do with reciprocal compensation that BellSouth pays to or receives from other TSPs; it simply provides for compensation from TSPs that use BellSouth's network. Notwithstanding this, because the hold times for a call terminated to an ISP are typically longer than a traditional local voice call, BellSouth witness McCallen and the Small LECs' witness Watkins note that the resulting transit charges could be substantial and may exceed the amount billed by the originating carrier to its subscriber for local service. Joint CLECs witness Gates contends the problem centers on BellSouth's transit tariff rate.

Joint CLECs witness Gates explains that in an ISP-bound situation, the transit function allows a dial-up Internet subscriber to access the Internet without the subscriber's service provider being directly interconnected with an ISP carrier. This, the witness believes, fosters choice and expands the benefits of the Internet to a larger group of Floridians. The witness asserts that dial-up Internet access is the universal service equivalent of a primary line for voice service. Dial-up access is important to rural consumers where broadband is not always available, and competitive alternatives such as Digital Subscriber Line (DSL) and cable broadband are limited.

In contrast, Small LECs witness Watkins believes it is the CLECs and CMRS providers that have requested and are using BellSouth's transit service, whether transiting voice or ISP-bound traffic, and those carriers, not the small LECs, should provide compensation to BellSouth. In any event, contends witness Watkins, BellSouth and the CLECs have been providing dial-up ISP-bound transit traffic service to ISPs without any charge to the Small LECs for as long as ISP-bound traffic has existed and for as long as BellSouth has been providing transit arrangements.

1. Effect of transit tariff rate on ISP-bound traffic

Joint CLECs witness Gates and Small LECs witness Watkins believe that BellSouth's transit tariff rate will significantly increase and detrimentally impact the availability of ISP service. Witness Gates and witness Watkins point out that in the ISP Remand Order, the FCC reduced compensation rates for ISP-bound traffic to $0.0007 per MOU. BellSouth's transit tariff rate is 329% higher than the ISP-bound total intercarrier compensation rate, thus contradicting the FCC's holdings in the ISP Remand Order. Such an increase in transit costs, contends Joint CLECs witness Gates, will translate into increased customer rates that could well result in end users canceling Internet accounts, thus detrimentally impacting the market. Small LECs witness Watkins contends that the FCC's $0.0007 per MOU intercarrier compensation rate recovers all costs for ISP-bound traffic and so no separate compensation for transiting is warranted.

Nonetheless, asserts witness Watkins, if the Small LECs are "forced" to pay for BellSouth's transit service, the Small LECs would be subjected to adverse economic consequences. The amount of originated dial-up ISP-bound traffic could be large for some Small LEC end users, resulting in potentially high charges to the Small LEC. "The Small LECs do not intend to be responsible for such compensation and would not voluntarily participate in such transit arrangements if they were to be subjected to such compensation obligations."

B. Analysis

In the Core Decision, the D.C. Court of Appeals explained that before the advent of high-speed broadband connections, customers generally gained access to the Internet through dial-up connections provided by the LEC. In such a situation, a customer uses a phone line provided by the LEC to dial the local telephone number of an ISP, which then connects the customer to the Internet. Typically, the ISP subscribes to a CLEC that interconnects with the incumbent. A customer who dials-up to the Internet usually obligates an originating ILEC to transfer the call to a CLEC, which then delivers the call to the ISP. (Core Decision, p. 3)

In its ISP Remand Order, the FCC determined that the categories of traffic listed in §251(g)[18] are excluded from the mandatory reciprocal compensation obligations of §251(b)(5).[19] (ISP Remand Order ¶¶31-37) The FCC held that ISP-bound traffic is properly classified as interstate and subject to the FCC's regulatory authority under §201. (ISP Remand Order ¶¶1, 3, 30, 52) The FCC stated that the record in that proceeding failed to demonstrate there were different costs in delivering ISP-bound and local voice traffic to warrant disparate treatment under §251(b)(5). (ISP Remand Order ¶92) These holdings were upheld by the D.C. Circuit Court in the Core Decision.

It appears that the central theme to the Small LECs' arguments is that they should not be assessed a transit rate because 1) BellSouth has not assessed a charge in the past and 2) the FCC's interim intercarrier compensation rate in the ISP Remand Order recovers all costs for ISP-bound traffic including transit costs. The arguments as to whether or not the Small LECs should pay transit costs are addressed in Issue 2 and will not be restated here. This issue does not address intercarrier compensation for ISP-bound traffic, but simply addresses compensation for the routing of ISP traffic over an intermediary carrier's network to a third-party carrier, who terminates the traffic. As such, transiting of ISP-bound traffic is independent from the reciprocal compensation requirements set forth in the ISP Remand Order.

AT&T, BellSouth, Joint CLECs, and Joint CMRS Carriers assert that an ISP call that transits BellSouth's network uses the same facilities under the same processes that any other similarly-routed local call uses. The functions performed in transiting a call are not dependent on the call's termination point, terminating carrier, the type of call, or the network protocol used on the terminating end. The transit provider performs a switching function when an originating and terminating carrier are both directly interconnected to the transit provider's network, and a transport function is required to meet the facilities of one or both of the interconnected carriers. Therefore, the charges for transiting ISP-bound traffic should be the same as transiting other types of traffic, although there is disagreement with respect to the transit rate.

The record evidence overwhelmingly supports the conclusion that the routing of ISP-bound traffic over BellSouth's network has no effect on the compensation associated with terminating this traffic. There is nothing to suggest a need to change the FCC's reciprocal compensation requirements. Simply stated, whether a call originates from an ICO end user, transits BellSouth's network, and ultimately is delivered to a CLEC's end user or a CLEC's ISP provider, we agree with BellSouth, AT&T, and the Joint CLECs that BellSouth's network has been used, and BellSouth is entitled to compensation.

C. Decision

Based upon the foregoing analysis and the record, transiting ISP-bound traffic is no different than transiting voice traffic. In both cases, the intermediary carrier's facilities being

[18] Section 251(g) provides that "each local exchange carrier . . . shall provide exchange access, information access, and exchange services for such access to interexchange carriers and information service providers . . ."

[19] Section 251(b)(5) imposes a duty on all LECs to "establish reciprocal compensation arrangements for the transport and termination of telecommunications."

used to route or transit the traffic to a third-party terminating carrier are the same. Therefore, we find that transiting has no effect on ISP-bound traffic.

IX. How should charges for BellSouth's transit service be determined? (a) What is the appropriate rate for transit service? (b) What type of traffic do the rates identified in (a) apply?

This issue addresses the rate to be paid to BellSouth when it transits traffic, thereby connecting carriers that are not directly interconnected. The salient question before this Commission is whether or not BellSouth has a duty to provide a transiting function, as this answer directly affects the pricing standard and appropriate rate.

A. Parties' Arguments

1. How should charges for BellSouth's transit service be calculated?

BellSouth witness McCallen asserts that BellSouth will apply the transit traffic rate to the local usage transited between other carriers. The witness explains that the local traffic can be identified by one of the following means:

- The originating carrier recording and reporting the actual local usage;
- The originating carrier providing a Percent Local Usage (PLU) factor based on their own traffic study; or
- BellSouth providing a PLU factor for the originating carrier based on traffic studies.

Aside from the parties' disagreement on the appropriate rate, no other party presented testimony on how charges for BellSouth's transit service should be calculated.

2. Is provisioning transit service a §251 obligation?

BellSouth maintains it has no §251 obligation or any other obligation to provide transit service, but will do so voluntarily as long as it is fairly compensated for the use of its network. BellSouth is willing to provide transiting because it has a ubiquitous network that is interconnected with most Telecommunications Service Providers (TSPs) in its region. BellSouth witness Blake asserts that §251(a)(1) imposes obligations on any two carriers to interconnect their networks either directly or indirectly; it does not address a third carrier's obligation to facilitate the indirect interconnection. Therefore, such an obligation is beyond what Congress intended. Moreover, purports witness Blake, the FCC specifically declined to require transiting in the TRO, and the Wireline Competition Bureau declined to require such in the Virginia Arbitration Order; the FCC is seeking comment on this issue in the ICF FNPRM. (TRO ¶534, fn 1640) Witness Blake contends that while the FCC has not expressly held that transit service is not a §251 obligation, it has "refused to make it a requirement to date, notwithstanding many opportunities to do so." Additionally, states witness Blake, this Commission concluded that transit service is not a §251 obligation in the Joint Petitioners' Order. (Joint Petitioners' Order, p. 52) Finally, contends witness Blake, the issue of whether transiting is a §251 requirement is not an issue identified to be addressed in this proceeding.

FCTA, Joint CLECs, and Joint CMRS Carriers aver that transit service is a §251 obligation, a point they claim BellSouth conceded in a North Carolina proceeding.[20] Joint CMRS Carriers and Joint CLECs opine that even though the word "transit" is not used in §251, §251(a)(1) specifically calls for direct and indirect interconnection, and indirect interconnection is dependent on transit service, thereby implying a transit obligation. Moreover, asserts Joint CLECs witness Gates, BellSouth's allowance that it will provide transiting because it has an interconnected ubiquitous network is the very reason why Congress imposed additional obligations in §251(c) on ILECs. Additionally, FCTA purports that no evidence was provided, other than a website, that there are alternative transit providers in Florida. Joint CLECs believe that if transit service is not a §251 obligation, as BellSouth alleges, carriers will be required to establish direct interconnection facilities with every local carrier regardless of cost. Finally, Joint CLECs argue in their brief that if transiting is not a §251 obligation, it makes no sense that BellSouth has included it in hundreds of ICAs.

FCTA witness Wood asserts that contrary to BellSouth's contention, the TRO and the Virginia Arbitration Order simply note that the FCC has not yet made a determination whether or not transit service is a §251 obligation. (Virginia Arbitration Order ¶¶117-118) However, contends the witness, in the ICF FNPRM the FCC recognizes the importance of transit service in establishing indirect interconnection, stating that transiting is an explicit form of interconnection supported by the Act, and seeks comment on its legal authority to require transit obligations pursuant to §251. (ICF FNPRM ¶¶125-126) Thus, opines witness Wood, the FCC is considering the very same issues as BellSouth is attempting to force this Commission to address now.

Joint CLECs argue that this Commission's decision in the Joint Petitioners' Order, that transit service is not a §251 obligation, is not controlling in this instant proceeding because that was a bilateral arbitration where non-arbitrating parties were not allowed to intervene, and the record in the instant proceeding is significantly different. (Joint Petitioners' Order, p. 52)

MetroPCS witness Bishop believes the FCC's Qwest Declaratory Ruling and subsequent Qwest NAL indicate that the FCC believes that transit service is governed by §251(c). (Qwest Declaratory Ruling ¶¶8, 12, fn 26; Qwest NAL ¶¶15, 25-42) The witness asserts that when the FCC proposed to fine Qwest for failing to file agreements that dealt with transit service, a requirement that the FCC previously held applies to agreements that provide for ongoing obligations under §251(b) and §251(c), the FCC necessarily found that transit service is governed by §251(c). Finally, FCTA witness Wood, Joint CLECs witness Gates, and Sprint Nextel and T-Mobile witness Pruitt, cite to other state commission and district court decisions[21] they believe conclude that ILECs are obligated to provide transit service.

---

[20] Recommended Arbitration Order, issued July 26, 2005, Docket Nos. P-772, Sub 8, P-913, Sub 5, P-989, Sub 3, P-824, Sub 6, P-1202, Sub 4, In Re: Joint Petition of NewSouth Communications Corp. et al. for Arbitration with BellSouth Telecommunications, Inc., pp. 52-54.

[21] Arbitration Award Track 1 Issues, Public Utility Commission of Texas, issued February 22, 2005, In Re: Arbitration of Non Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreements (Texas Arbitration Award). Order 11: Commission Order on Arbitrator's Award, State Corporation Commission of Kansas, Docket No. 05-ABIT-507-ARB, issued July 21, 2005. Michigan Bell Telephone Co, d/b/a Ameritech Michigan v Laura Chappelle, et al., Case No. 01-CV-71517, United States Court for the Eastern District of Michigan, Southern

3. *Should this Commission establish a rate for transit service?*

All parties agree with BellSouth that it should be compensated when providing transit service. BellSouth witness McCallen testifies that BellSouth has negotiated transit-related provisions with many carriers and continues to negotiate with carriers that do not have transit agreements. However, there are service providers who have not negotiated with BellSouth and yet continue sending transit traffic over BellSouth's network without compensating BellSouth. Through its filed tariff, BellSouth seeks a transit rate to apply in order to be compensated for providing transit services when there is no negotiated agreement in place.

Joint CLECs witness Gates opines that transit rates should be established through the interconnection negotiation process. Small LECs witness Watkins opines that this Commission has no authority to set a transit rate for ISP-bound traffic because it is an interstate service. This argument is addressed in Issue 10.

4. *What is the appropriate transit rate?*

BellSouth witnesses Blake and McCallen assert that there is no legal requirement that the transit service BellSouth voluntarily provides be priced at Total Element Long-Run Incremental Cost (TELRIC) or at cost-based rates, arguing that the interconnection provisions of §251 do not require BellSouth to provide the service. The witnesses allege that even if the FCC were to impose a transiting obligation, there is no indication that TELRIC rates would apply. As support for BellSouth's view, witness Blake proffers that this Commission held in the Joint Petitioners' Order that transit service should not be priced at TELRIC since it has not been determined to be a §251 Unbundled Network Element (UNE). A similar conclusion should be afforded in this instant proceeding, asserts the witness. (Joint Petitioners' Order, pp. 49-53) Also, the witness notes that the Kentucky Commission found that BellSouth has a requirement to transit third-party traffic, but that requirement is not a §251 obligation and therefore not subject to TELRIC pricing.

BellSouth witness McCallen proffers that BellSouth's transit rate of $0.003 per MOU is a market-based composite rate. The rate, opines the witness, is comparable to the transit rates in agreements recently negotiated between BellSouth and CLECs and between BellSouth and CMRS carriers, thus establishing a valid market-based rate level. Witness McCallen readily admits that BellSouth did not submit any cost support for its transit rate; there was no reason to do so, contends the witness, since the rate is market-based.

Division, 222 F. Supp. 2d 905; 2002 U.S. Dist. LEXIS 15269, August 12, 2002. (Chapelle Decision) Order of Arbitration Award, Tennessee Regulatory Authority, Docket No. 03-00585, issued January 12, 2006, In Re: Petition of Arbitration of Cellco Partnership d/b/a Verizon Wireless; Petition for Arbitration of BellSouth Mobility LLC, BellSouth Personal Communications, LLE Chattanooga MSA Limited Partnership, collectively d/b/a Cingular Wireless; Petition for Arbitration of AT&T Wireless PCS, LLC d/b/a AT&T Wireless; Petition for Arbitration of T-Mobile USA, Inc.; and Petition for Arbitration of Sprint Spectrum L.P. d/b/a Sprint PCS. Kentucky Public Service Commission Order in Case No. 2004-00044, issued September 26, 2005, In Re: Joint Petition for Arbitration of NewSouth Communications Corp., Nuvox Communications, Inc., KMC Telecom V, Inc., KMC Telecom III LLC, and Xspedius Communications, LLC on behalf of its operating subsidiaries Xspedius Management Co. of Lexington, LLC and Xspedius Management Co. of Louisville, LLC of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as amended.

BellSouth witness McCallen describes the cost components of transit service as:

- Tandem switching per MOU;
- Tandem trunk port per MOU;
- Common transport per mile; and
- Common transport facilities termination per MOU.

However, rather than using separate elemental rates, BellSouth has chosen to establish a single composite rate.

BellSouth witness McCallen states that the transit rate is intended to recover not only the cost of providing the transit service, but also an "added value." Witnesses McCallen and Blake assert that BellSouth's transit service is a valuable service in that it allows the originating carriers to place calls to the networks of other TSPs in instances where the originating carrier and the terminating carrier are not directly connected. This arrangement allows originating carriers to avoid the expense of building facilities to directly interconnect with all other TSPs. Witness McCallen opines that BellSouth is willing to provide the efficient and valuable transiting service in return for "receiving appropriate market comparable compensation for the use of its network."

In contrast, all other parties urge this Commission to reject BellSouth's transit rate. They believe the rate should be cost-based and established through negotiations and arbitration, if needed. FCTA, Joint CLECs, and Joint CMRS Carriers contend that a rate predicated only on the fact that it is comparable to rates that some parties have negotiated reflecting company-specific business needs and constraints is inappropriate and not evidence of a "market" rate. Joint CLECs and Joint CMRS Carriers espouse that negotiated agreements involve "gives" and "takes" by the respective negotiating parties to reach a final agreement; thus, all of the terms are interdependent. If a carrier does not use transit service, then the transit rate being negotiated would not matter because it would have no effect. For this reason, many witnesses believe that "negotiated rates" should carry no weight in this proceeding, and that it is inaccurate to imply that a \$0.002 to \$0.006 transit rate a competing carrier may have obtained through negotiations would still be considered acceptable by that carrier if obtained on a stand-alone basis.

FCTA, Joint CLECs, and CMRS Carriers assert that even if transit is determined not be a §251(c) interconnection service, the service would still be required to meet the "just and reasonable" pricing standards of §§201 and 202, which BellSouth's rate does not. (TRO ¶¶663-664) Small LECs, FCTA, Joint CLECs, and Joint CMRS Carriers argue that BellSouth's transit rate is discriminatory and anticompetitive. The basis for this view is the fact that BellSouth provided no cost support, even though asked by many parties to do so. Small LECs, Joint CLECs, and Joint CMRS Carriers believe the following facts demonstrate that BellSouth's transit rate should be rejected:

- BellSouth's transit rate is 114% higher than its Florida interstate tandem switching and common transport elemental rates.
- BellSouth's transit rate is more than 400% higher than the FCC's intercarrier compensation charge for ISP-bound traffic (\$0.0007 per MOU).

- BellSouth's transit rate is about three times the total transit charge a proper forward-looking cost-based analysis would produce.
- BellSouth's transit rate is higher than the total transit charge currently assessed on some CLECs, including those paying a Transit Intermediary Charge (TIC).
- BellSouth's transit rate is 600% higher than BellSouth's intrastate tandem switching rate ($0.0005 per MOU) which BellSouth has previously claimed is above cost, thus creating an uneconomic subsidy.
- Joint CLECs and Joint CMRS Carriers do not dispute which elements comprise transit service, as explained by BellSouth witness McCallen.

Since BellSouth witness McCallen admits that no other costs are associated with the transit function, Joint CLECs witness Gates recommends that this Commission require BellSouth to assess the Commission-approved tandem switching and common transport TELRIC-based elemental rates yielding a single composite rate of $0.0009368[22] per MOU, at least until the FCC renders a decision on this matter in the ICF FNPRM proceeding; Sprint Nextel and T-Mobile witness Pruitt recommends a single composite rate in the range of $0.0009441.[23] (BellSouth UNE Order p. 574; BellSouth UNE Recon Order pp. 50-51) As discussed by Joint CLECs witness Gates, Sprint Nextel and T-Mobile witness Pruitt, and FCTA witness Wood, TELRIC prices not only recover the costs of providing the transit service, but also include an allocation of joint and common costs, and a fair level of profit. Witness Gates alleges that anything above TELRIC would provide a windfall to BellSouth, which he estimates could be as much as $45 million annually assuming BellSouth's $0.003 per MOU transit rate is applied.

Small LECs witness Watkins believes that if a transit rate is established, it should be no higher than the rate that would apply for the equivalent interstate access service functions. To the extent BellSouth has offered a lower transit rate to some carriers, then that rate should be available to all carriers.

Joint CLECs and Joint CMRS Carriers agree with BellSouth that its transit service is an important and valuable service in that it is the primary means by which indirect interconnection can be accomplished. Indeed, asserts Sprint Nextel and T-Mobile witness Pruitt, the FCC has stated that "[w]ithout the continued availability of transit service, carriers that are indirectly interconnected may have no efficient means by which to route traffic between their respective networks." (ICF FNPRM ¶125) However, if transit service is not available at reasonable rates, each carrier would be forced into directly interconnecting with other TSPs, which is inefficient, costly, and contrary to the Act, and results in duplication of facilities. The Joint CLECs argue in their brief that only BellSouth's network can provide the ubiquity needed by carriers to transit traffic with all other carriers. While the Joint CLECs have no issue with BellSouth being compensated for the costs it incurs in providing transit service, they object to BellSouth's "added

[22] The composite rate consists of a tandem switching rate of $.0001263 per MOU plus a tandem port shared rate of $0.0002252 per MOU plus a common transport rate of $0.000136 plus a common transport facility rate of $0.0004493. (The witness' rate for common transport assumes 40 miles at .0000034 per mile).

[23] The composite rate consists of a tandem switching rate of $.0001319 per MOU plus a tandem port shared rate of $0.0002350 per MOU plus a common transport rate of $0.00014 plus a common transport facility rate of $0.0004372. (The witness' rate for common transport assumes 40 miles at .0000035 per mile).

value" component. The Joint CLECs argue in their brief that no evidence was presented for this "added value."

FCTA, Joint CLECs, and Joint CMRS Carriers note that other state commissions have found that transit service should be priced at TELRIC.

5. To what type of traffic does the transit rate apply?

BellSouth witness McCallen asserts that the transit rate[24] applies to local traffic and local ISP-bound traffic originated by a TSP, and handed to BellSouth for transiting and ultimate delivery to a terminating third-party TSP.

Sprint Nextel witness Pruitt agrees. No other witnesses addressed the type of traffic to which the transit rate applies.

B. Analysis

1. Is provisioning transit service a §251 obligation?

There is extensive discussion in the parties' testimonies as to whether or not transiting is a §251 obligation. While BellSouth adamantly contends that transiting is not a §251 obligation and thus not subject to the negotiation and arbitration processes mandated by §252, it concedes that transit rates, terms, and conditions have been included in many §252 agreements.

Section 251 sets forth three tiers of obligations applicable to three sets of carriers. Section 251(a) imposes on all telecommunications carriers[25] the obligation to "interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." Section 251(b) imposes five additional obligations applicable to all LECs[26], such as the small LECs in this case, including the duty to establish "reciprocal compensation arrangements for the transport and termination of telecommunications."[27] (§251(b)(5)) Section 251(c) imposes six additional obligations solely on ILECs, such as BellSouth. These additional obligations include the express duty of BellSouth and the requesting carrier "to negotiate in good faith in accordance with section 252 the particular terms and conditions of agreements" to fulfill the obligations of §251(b). (§251(c)(1)) Section 251(c)(2) specifically obligates BellSouth to provide interconnection with its network "for the transmission and routing of telephone exchange service and exchange access" traffic "that is at least equal in quality to that provided by" BellSouth to itself, "on rates, terms and conditions that are just, reasonable, and nondiscriminatory, in accordance with . . . the requirements of . . . section 252 [of the Act]." (§251(c)(2)(A)-(D))

---

[24] Either the tariff rate or the rate established within an agreement addressing transit traffic with the originating carrier.
[25] A telecommunications carrier is defined as any provider of telecommunications service. This would include ILECs, CLECs, IXCs, and CMRS providers.
[26] A LEC is defined as a provider of telephone exchange service, exchange access, or both.
[27] The originating and terminating carriers are compensated according to the roles they play in the transport and termination of the traffic as provided in the ICA between the parties.

Section 252 provides for a system of negotiation and arbitration for parties to arrive at agreements.

In the Local Competition Order, the FCC held that under §251(a), carriers "should be permitted to provide interconnection pursuant to section 251(a) either directly or indirectly, based upon their most efficient technical and economic choices." (Local Competition Order ¶997) The FCC also held that the term "interconnection" under §251(c)(2) refers only to the physical linking of two networks for the mutual exchange of traffic, and not the transport and termination of traffic. (Local Competition Order ¶¶26, 176) Additionally, the FCC held that the duty to route and terminate traffic applies to all LECs and is clearly expressed in §251(b)(5). (Id. at ¶176)

In the ICF FNPRM, the FCC discusses transit issues and the reciprocal compensation rules; while the outcome of this rulemaking will have prospective applicability, the FCC's discussion is still pertinent. The FCC observes that it has not adopted rules governing the charges of intermediary (i.e., transiting) carriers. The FCC recognizes at ¶¶120 and 132 that reciprocal compensation provisions set forth in §252(d)(2)(A)(i) address the exchange of traffic between two carriers, but do not explicitly address the intercarrier compensation to be paid to the transit service provider for carrying §251(b)(5) traffic. Further, at ¶125 the FCC states that CLECs, CMRS providers, and small LECs often rely on transit service to facilitate indirect interconnection with each other and without its availability, these carriers may have no efficient means to route traffic between their respective networks. At ¶128, the FCC questions whether §251(a) should be read to encompass an obligation to provide transit service, or whether a transiting obligation could arise under §251(b)(5) or other sections of the Act, including §201.

BellSouth relies heavily on the FCC Wireline Competition Bureau's Virginia Arbitration Order for the proposition that there is no ILEC obligation to provide transit service. Contrary to BellSouth's representations, we find that in the Virginia Arbitration Order, the FCC Wireline Competition Bureau declined to declare whether or not an ILEC is obligated to provide transit service, in view of the fact that the FCC had not previously decided the issue. (Virginia Arbitration Order ¶117) The Bureau specifically stated:

> In the absence of such a precedent or rule, we decline, on delegated authority, to determine for the first time that Verizon has a section §251I(2) duty to provide transit service at TELRIC rates. Furthermore, any duty Verizon may have under section 251(a)(1) of the Act to provide transit service would not require that service be priced at TELRIC. (Id.)

The FCC thus has not yet decided if ILECs have a §251I(2) duty to provide the transiting function, and thus has neither accepted nor rejected a specific pricing standard for the function.

In the Qwest Declaratory Ruling, the FCC held that an agreement entered into by an ILEC "that creates an ongoing obligation pertaining to resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, interconnection, unbundled network elements, or collocation must be filed . . ." with a state commission under § 252(a)(1). (Qwest Declaratory Ruling ¶8) Further, the FCC concluded that "only those agreements that contain an ongoing

obligation relating to section 251(b) or (c) must be filed under § 252(a)(1)." (Id. fn 26, ¶ 12) Qwest filed copies of thirty ICAs with the Minnesota PUC, one of which only addressed transit services, the exchange of call detail records for transit traffic, and the confidentiality of those records. The FCC agreed with the Minnesota PUC that the agreements were ICAs in whole or in part and rejected Qwest's arguments that the filed agreements were not ICAs. (Qwest NAL ¶¶15, 25-42) Some parties may conclude from the Qwest rulings that transit service is an ongoing §251 obligation. However, if the answer were so clear, the FCC would not be seeking comment on this very issue in the ICF FNPRM.

We agree that §251 contains no explicit obligation to provide transit service, but as the FCC has stated, the question is whether there is an implied obligation. Indeed, the FCC has acknowledged that this issue needs to be decided and has teed it up in the ICF FNPRM. (ICF FNPRM ¶128) This Commission need only acknowledge in this proceeding that §251(a) requires all telecommunications carriers to interconnect directly or indirectly, and that transit service has been expressly recognized by the FCC as a means to establish indirect interconnection. (ICF FNPRM ¶125)

2. Should this Commission establish a transit rate for BellSouth?

As addressed in Issue 2, BellSouth has a right to be compensated for the use of its network. Also, a negotiated transit rate is preferable to confrontation in a regulatory environment. This issue exists, however, because BellSouth and the Small LECs have not been able to negotiate agreements with respect to transit traffic. For this reason, BellSouth asks this Commission, albeit through a tariff mechanism, to establish a transit rate to use when negotiations fail.

The only party objecting to this Commission establishing a transit rate in this proceeding is the Small LECs, specifically with respect to ISP-bound traffic. As discussed in Issue 10, transiting ISP-bound traffic over BellSouth's network has no effect on the compensation associated with terminating this traffic or in any way interferes with the FCC's jurisdiction over ISP traffic.

We agree with the parties that transit arrangements are best established through negotiations. For this reason and because of uncertainty in the record, this Commission will not mandate a transit rate, but rather require the parties to negotiate a rate.

C. Decision

Based upon the foregoing analysis and the record, we will not establish a rate for transit service and instead require the parties to negotiate a rate.

X. Consistent with Order Nos. PSC-05-0517-PAA-TP and PSC-05-0623-CO-TP, have the parties to this docket ("parties") paid BellSouth for transit service provided on or after February 11, 2005? If not, what amounts if any are owed to BellSouth for transit service provided since February 11, 2005?

In effect, Issue 12 sets February 11, 2005, which is the effective date of BellSouth's Transit Tariff, as a critical date. The issue examines whether payments for transit service provided on and after February 11, 2005 have been made. The amount of record evidence for Issue 12 is very limited.

A. Parties' Arguments

Although Issue 12 remains an "open" issue in this proceeding, it appears that all parties are in agreement. Joint CLECs witness Gates states: "The transit service provided by BellSouth to the CompSouth members is provided via ICA. CompSouth members have paid BellSouth for transit service pursuant to these agreements prior to February 11, 2005 as well as on and after February 11, 2005. To my knowledge, the CompSouth members do not owe BellSouth for any unpaid transit service charges."

The Joint CMRS providers have their own respective interconnection agreements (ICAs) with BellSouth, and they have fulfilled their obligations under those agreements.

AT&T's ICA with BellSouth also contains the rates, terms, and conditions for the provision of transit traffic service to AT&T, and as a result, the transit tariff is not applicable to AT&T. There is no testimony on behalf of AT&T that indicates whether or not payment has been made pursuant to its ICA.

Verizon Wireless witness Sterling testifies that "Verizon Wireless has paid, and continues to pay BellSouth for transit service both before and after February 11, 2005."

Small LECs witness Watkins acknowledges that BellSouth has been billing the Small LECs, and the Small LECs have been making payment for the transit services billed by BellSouth. Witness Watkins also claims that while they have provided compensation to BellSouth for transit traffic service received on or after February 11, 2005, they have no obligation to do so. He contends that the compensation due to BellSouth for transiting service is not their responsibility; instead, he believes the responsibility rests with the competitive local exchange companies (CLECs) or the commercial mobile radio service (CMRS) providers.

In response to Commission Staff's First Set of Interrogatories, No. 7, BellSouth witness McCallen states "All ICOs have paid for local transit services for which they have been billed after February 11, 2005."

B. Analysis

Issues 12 and 13 both revolve around the critical date of February 11, 2005, and the compensation mechanism BellSouth had in place to receive payment for its transiting service. Before February 11, 2005, BellSouth received compensation for providing transit service through ICAs with other telecommunications providers. On February 11, 2005, BellSouth's General Subscriber Services Tariff § A.16.1, Transit Traffic Service, went into effect. This tariff sets forth certain default rates, terms and conditions that apply when carriers receive transit

service from BellSouth but have not entered into an agreement with BellSouth that sets forth rates, terms and conditions for the provision of transit traffic service.

BellSouth has ICAs with CompSouth, Joint CMRS Carriers, AT&T and Verizon Wireless. This leaves the Small LECs as the only party that does not have ICAs that address compensation for transit services; thus, the Small LECs are the only entities subject to BellSouth's transit traffic service tariff. As noted above, the Small LECs have paid the tariffed charges billed by BellSouth, and all other parties have paid for transit service pursuant to their ICAs.

C. Decision

Based upon the foregoing analysis and the record, all parties have paid, and continue to pay, BellSouth for transit service provided on or after February 11, 2005. Therefore, no amounts are owed to BellSouth for transit service provided on or after the Tariff effective date of February 11, 2005.

XI. Have parties paid BellSouth for transit service provided before February 11, 2005? If not, should the parties pay BellSouth for transit service provided before February 11, 2005, and if so, what amounts, if any, are owed to BellSouth for transit service provided before February 11, 2005?

Issue 13 specifically asks whether BellSouth was compensated for the provision of transit service it provided to the parties prior to February 11, 2005, the effective date of its transit traffic service tariff, and if not, what amounts are owed to BellSouth. It appears that BellSouth did not bill any of the Small LECs for transit service prior to February 11, 2005. BellSouth was unable to charge the Small LECs because no mechanism existed – either an interconnection agreement or a tariff – until the transit traffic tariff became effective. Accordingly, while the Small LECs did not pay BellSouth for transit service, no amounts are owed.

A. Parties' Arguments

As in Issue 12, all parties except for the Small LECs have ICAs that address compensation for transit service. Joint CLECs witness Gates states: "The transit service provided by BellSouth to the CompSouth members is provided via ICA. CompSouth members have paid BellSouth for transit service pursuant to these agreements prior to February 11, 2005 as well as on and after February 11, 2005. To my knowledge, the CompSouth members do not owe BellSouth for any unpaid transit service charges."

The Joint CMRS providers have their own respective interconnection agreements (ICA) with BellSouth, and the parties have fulfilled their obligations under those agreements.

AT&T's ICA with BellSouth also contains the rates, terms, and conditions for the provision of transit traffic service to AT&T, and as a result, the transit tariff is not applicable to

AT&T. There is no testimony on behalf of AT&T that indicates whether or not payment has been made pursuant to its ICA.

Verizon Wireless has paid, and continues to pay BellSouth for transit service both before and after February 11, 2005.

Small LECs witness Watkins asserts: "No amounts are owed to BellSouth for periods prior to February 11, 2005. To the extent any money is owed to BellSouth, it is the CLEC, or CMRS providers' responsibility for payment. BellSouth has knowingly provided transit service without charge and has no right to now impose charge for doing so."

In response to Commission Staff's First Set of Interrogatories, No. 7, BellSouth witness McCallen states "There are no ICOs that BellSouth has billed and not received payment for local transit service prior to February 11, 2005."

B. <u>Analysis</u>

As in Issue 12, compensation for transit service only becomes a concern where there is no ICA in place between BellSouth and a carrier that contains rates, terms and conditions for this offering. Only the Small LECs did not have such an ICA. However, the Small LECs chose to route traffic over the BellSouth network. BellSouth witness McCallen testified that its transit traffic service tariff is meant to address this situation and serve as a default mechanism for transiting compensation.

By not having an ICA or tariff in place, BellSouth had no means to levy charges upon the Small LECs for local transit traffic, and thus no amounts are owed for transit service provided prior to February 11, 2005. All parties paid for transit service pursuant to ICAs; hence, no amounts are owed.

C. <u>Decision</u>

Based upon the foregoing analysis and the record, all parties except the Small LECs paid BellSouth for the provision of transit service prior to February 11, 2005. However, the Small LECs were not required to pay BellSouth for transit service prior to February 11, 2005, and thus no amounts are owed.

XII. <u>What action, if any, should the FPSC undertake at this time to allow the Small LECs to recover the costs incurred or associated with BellSouth's provision of transit service?</u>

This issue addresses whether the Small LECs should recover costs incurred as a result of the imposition of a transit rate. The Small LECs assert that they should recover such costs, *i.e.* assess a rate increase, because requiring them to compensate BellSouth for its transit service constitutes a substantial change in circumstances under Section 364.051(4), Florida Statutes.

A. Parties' Arguments

All of the parties,[28] except for the Small LECs, share the opinion that this Commission should not take any action regarding recovery of costs incurred by the Small LECs resulting from BellSouth's Tariff.

The Joint CLECs maintain that the originating carrier should be responsible for transiting costs based on the established concept that the originating carrier pays because it chooses to route traffic on BellSouth's network. The Joint CLECs further note that the costs associated with a call originating on the Small LECs' network is an "ordinary" cost of doing business and not an extraordinary cost as the Small LECs assert.

The Joint CMRS Carriers' position is that only issues pertaining to transiting should be considered by this Commission in this docket, and the Small LECs should simply absorb the costs associated with use of BellSouth's transit service.

Verizon Wireless points out that the FCC's decision in the T-Mobile Order provides the Small LECs the opportunity to recoup costs associated with transit traffic by initiating negotiations with originating carriers.

The Small LECs request that we authorize recovery of the additional costs that may be imposed upon them in the event there is a finding that a transit rate applies. The Small LECs aver that they have historically exchanged EAS traffic and transit traffic on a bill and keep basis with BellSouth. The Small LECs request that these "new" costs be recouped by way of a rate increase pursuant to Section 364.051(4), Florida Statutes. Small LECs witness Watkins asserts, that the imposition of a transit rate on the Small LECs would constitute "a substantial change in circumstances which would trigger the right to increased local rates." Witness Watkins further asserts that a finding of a substantial change in circumstances in this proceeding would save the Small LECs the expense of filing a separate petition under Section 364.051(4), and would be sufficient to comply with the requirements under that statutory provision.

B. Analysis

Pursuant to Section 364.051 (4)(a), Florida Statutes, a price-regulated ILEC may petition this Commission for a rate increase based on a substantial change in circumstances.[29] More specifically, that section provides that:

> any local exchange telecommunications company that believes circumstances have changed substantially to justify any increase in the rates for basic local telecommunications services may petition the commission for a rate increase, but the commission shall grant the petition only after an opportunity for a hearing and a *compelling showing of changed circumstances*. (emphasis added)

[28] BellSouth, AT&T and Verizon Access did not take a position on this issue.

[29] This particular issue arose at the issue identification meeting and was not addressed in the Small LECs' Joint Petition filed on February 11, 2005.

Our interpretation of this provision is that the petitioning party has the burden of making a compelling showing of changed circumstances. To date, the Small LECs have not formally petitioned this Commission for a rate increase associated with BellSouth's transit rate, or any transit rate for that matter. Moreover, there are many important factors to consider in determining whether a rate increase is justified for the Small LECs. Determinations made under Section 364.051(4), Florida Statutes, should not be made lightly. Case in point, we recently found that Sprint-Florida, Incorporated's (Sprint) costs associated with four consecutive hurricanes in 2004 met the requirements pursuant to Section 364.051, Florida Statutes, and constituted a compelling showing of changed circumstances.[30] Furthermore, we noted that the provision requiring a "compelling showing of changed circumstances" is a safety valve obviously put in place so that the provision would be used "sparingly."[31] In that case, this Commission had the benefit of a stipulation between Sprint and the Office of Public Counsel, which included cost data and the overall impact sustained by Sprint.

In the instant proceeding, this Commission has no cost data to consider with respect to the financial impact BellSouth's transit rate has had on the Small LECs. Without such data, we would be unable to accurately determine the impact any transit rate has had or would have on the Small LECs. It is also impossible at this time to determine the financial impact this Commission's decisions may have on the Small LECs, particularly since any rate resulting from a transiting arrangement would likely be an important factor in determining financial impact. In the event a negotiated rate is incorporated into an ICA or transiting arrangement between BellSouth and the Small LECs, that rate would apply. In other words, at this time, we do not have the benefit of knowing the transit rate that will apply to the Small LECs. Consequently, this issue is not ripe[32] for determination. This issue has not sufficiently developed for there to be an adequate showing as to whether a rate increase is justified for the Small LECs.

C. Decision

Based upon the foregoing analysis and the record, this issue is not ripe and a determination at this time would be premature. Therefore, we will not make a determination as to whether the imposition of a transit rate on the Small LECs constitutes a substantial change in circumstances under Section 364.051(4), Florida Statutes.

XIII. Should BellSouth issue an invoice for transit services and if so, in what detail?

The core of this issue is ensuring that BellSouth provides accurate and verifiable invoices to the carriers that purchase its transit service.

---

[30] See In re: Petition for approval of storm cost recovery surcharge, and stipulation with Office of Public Counsel, by Sprint-Florida, Incorporated, Docket No. 050374-TL, Commission Order No. PSC-05-0946-FOF-TL at 3, Issued October 3, 2005.
[31] Id. at 2.
[32] "Ripeness" is defined in Black's Law Dictionary 1328 (7th ed., West 1999), as "[t]he circumstance existing when a case has reached, but has not passed, the point when the facts have developed sufficiently to permit an intelligent and useful decision to be made."

A. Parties' Arguments

Witness McCallen asserts that BellSouth includes the transit traffic charges on the existing settlements system reports/statements as a line item that is identified with the month of usage on the Miscellaneous Settlement report. The billed carrier has the ability to verify the call-related detail that BellSouth used in calculating the line item charge via a BellSouth website. Witness McCallen states that all of the input variables come from in-house measurement records, and that the supporting data on the website includes:

- A summary by date of the minutes of use and messages
- The type of terminating carrier
- The name and operating company number (OCN) of the terminating carrier.

According to witness McCallen, BellSouth bills for transit traffic using a long-established system that Florida Independent Telephone Companies (ICOs) are used to seeing. He contends that BellSouth is currently billing for transit services in "the standard way we do business," and that is through a process of settlement summaries and reports that track monthly payments and charges for other services.

Joint CLECs witness Gates asserts that the current level of detail in invoices provided by BellSouth to carriers is acceptable, and states that transit service arrangements for the parties he represents are captured in IAs. Member companies of CompSouth are not overly concerned about Issue 15, but are more troubled that the existence of a tariff "would be damaging to future negotiations."

Small LECs witness Watkins contends that to the extent the Small LECs are billed, invoices for transit services should provide accurate and verifiable information, to include at least the following three items: 1) the dates for the billing period; 2) a carrier-specific summary of the number of calls and transited minutes; and 3) a total summary of the calls and minutes to which the transit rate applies.

Witness Watkins, however, objects to BellSouth's current practice of "netting" transit service charges against other traditional access and settlement assessments. He argues that when transit service charges are "netted" in this manner, resolving billing disputes becomes more problematic since BellSouth would have already taken its payment prior to the dispute being resolved. In its brief, the Small LECs urge this Commission to forbid BellSouth from taking a payment prior to resolving a dispute; the brief describes this as a "self help" approach that is advantageous for BellSouth.

FCTA witness Wood asserts generally that the "parties should go negotiate, which is what ought to be happening here between BellSouth and the Small LECs." Witness Wood also asserts that if BellSouth's tariff is not rejected by this Commission, this Commission should clearly state that "the existence of the tariff cannot interfere in any way with the rates or terms of future interconnection agreements." AT&T witness Guepe did not address specific aspects of Issue 15, though he claims that AT&T's interconnection agreement with BellSouth currently governs the rendering of bills between the two carriers. According to the Verizon Wireless witness, BellSouth's invoice for transit service should identify the minutes transited by each

terminating end office CLLI code. Sprint Nextel and T-Mobile witness Pruitt states that invoices for transit services should be provided in an industry standard format, and should minimally include the following:

- the total minutes of use transited in that billing period;
- the tandem switching elements billed in the transiting;
- the number of transport minutes; and
- CLLI code information.

B. Analysis

Evidence demonstrates that BellSouth bills for transit traffic using a long-established system that is familiar to Florida ICOs. Transit service charges are listed on a settlement summary along with monthly payments and charges for other services. Small LEC witness Watkins explicitly states that BellSouth's transit invoices should set "forth sufficient details of call records and any other information necessary to determine the accuracy and completeness of usage." We note that BellSouth's summary reports include the information the Small LECs request: 1) the dates for the billing period; 2) a carrier-specific summary of the number of calls and transited minutes; and 3) a total summary of the calls and minutes to which the transit rate applies. Because BellSouth makes its website resource available to all billed carriers, it appears that such carriers are able to verify BellSouth's invoices, which is an important objective.

The "netting of payments" practice that witness Watkins discusses appears to be a component of the standard billing protocol that BellSouth follows for all ICO billings. BellSouth witness McCallen points out that the billing method BellSouth adopted for transit service charges is not new, and the same is true regarding the "netting of payments." We are not swayed by the allegations that this practice is problematic with respect to resolving transit service disputes, since it appears that BellSouth follows the same practice for resolving disputes for all non-transit settlement assessments. We note that no other witness or party made similar assertions regarding this topic.

We find no changes are necessary in BellSouth's current settlements mechanism for transit service. Joint CLECs witness Gates appears to agree; he states that BellSouth should do "just as it does today."

C. Decision

Based upon the foregoing analysis and the record, we find that BellSouth's current settlements system for transit service is appropriate. If applicable, carriers should follow the terms and conditions of current interconnection agreements to address invoicing for transit services.

XIV. Should BellSouth provide to the terminating carrier sufficiently detailed call records to accurately bill the originating carrier for call termination? If so, what information should be provided by BellSouth?

In its role as the transiting carrier, BellSouth provides a record of each transited call to the terminating carrier (TC), which that carrier may use to bill the originating carrier (OC). Issue 16 addresses the provision of these transit records. The points of contention in this matter concern the level of detail in such records.

A. Parties' Arguments

CompSouth witness Gates believes the accuracy of call records is critical in carrier-to-carrier relationships, and claims that BellSouth is uniquely positioned to collect accurate records since it has an easily identifiable physical interconnection with the OC, and physically transports a transited call to a TC. He asserts that TCs need the Operating Company Number (OCN), the Carrier Identification Code (CIC), the Location Routing Number (LRN), and the Calling Party Number (CPN) in order to accurately bill OCs. Conceptually, Small LEC witness Watkins agrees. He states that BellSouth is "the only carrier that can completely and accurately identify and measure the traffic it switches." The Small LECs brief includes a specific discussion on a transit service billing matter one member company has with BellSouth. The brief states, in part, that "BellSouth should be required to provide . . . unaltered call detail records . . . including the actual *originating telephone number*, the 'Carrier Identification Code' of the originating carrier, and the 'Local Routing Number,' if present." (emphasis in original)

Verizon Wireless witness Sterling believes BellSouth should provide to the terminating carrier sufficiently detailed call records. He states that such records should minimally identify the OC name and operating company name, plus the number of minutes transited by each terminating end office CLLI code. Sprint Nextel witness Pruitt states that TCs need to know the OCN of the originating carrier, the called and calling telephone numbers, and the call timing information in order to accurately bill OCs for call termination.

According to CompSouth witness Gates, a point of emphasis in Issue 16 is that the provision of such records should be done without any "manipulation of this data by BellSouth." Small LECs witness Watkins claims that BellSouth's practice of inserting billing telephone numbers (BTNs) into such records yields an incomplete and inaccurate record. He asserts that this practice can result in TCs not knowing the originating telephone number, and this is a concern to the Small LECs because TCs may not be able to discern the jurisdiction of such calls, which impacts the accuracy of intercarrier billing between TCs and OCs. He explains that different traffic types can be subject to different terms and conditions, and asserts that "BellSouth is terminating calls for which the call record information would suggest are local (non access) but are calls that are actually subject to access charges." He claims that BellSouth's practice regarding BTNs "diminishes our ability to police and to correctly identify calls and the jurisdiction of calls." A BellSouth discovery response flatly denies the allegation that BellSouth adds, deletes, modifies, or manipulates its carrier access call records.

BellSouth witness McCallen explains that BellSouth assigns BTNs to CLEC trunk groups, and states that BellSouth will use the BTN designations as needed to identify call records. When this occurs, such billing records will not provide the actual originating number for transited calls, and the witness admits that this practice could mask the jurisdiction of

transited calls. Witness McCallen states that "our systems that have been in place for years to generate these records and provide them to terminating carriers."

Witness McCallen asserts that BellSouth follows industry guidelines in providing such records in the industry-standard EMI format. In addition, he states that BellSouth participates in the collaborative forum that set the standards for industry participants. He acknowledges the concerns other witnesses raise regarding the jurisdictional component of EMI records, but states that those very topics are teed up in the forum, and that BellSouth is engaged in deriving an industry-wide solution. Witness McCallen believes this is significant because in this proceeding, BellSouth is facing allegations that its use of BTNs for identification purposes could be masking the jurisdiction of transited calls, yet he believes information provided by OCs may be masking the jurisdiction. He also states:

> the intention [of EMI records] is not to establish jurisdiction. The intention . . . is to give the terminating carrier sufficient and adequate information to know who the originating carrier was, and we provide that by information in those records and the number of minutes so that they can bill the originating carrier for the traffic they have terminated.

Witness McCallen concludes by stating "what BellSouth provides already today is as much information as we can gather from the originating carrier to provide to the terminating carrier." He states repeatedly that BellSouth does not alter its call records and that BellSouth's Summary Report contains adequate information for TCs to bill OCs. Finally, he asserts that BellSouth's billing systems "seem to be working fine."

Terminating carriers may also have other options rather than relying on BellSouth for billing records. Verizon Wireless witness Sterling suggests that carriers may implement their own measurement devices, although he did not elaborate. CompSouth witness Gates states that "some carriers have deployed SS7 networks that obviate the need for BellSouth providing separate call records." Small LEC witness Watkins advocates what he believes is a far simpler solution; he believes this Commission should order BellSouth to "send the complete record [to TCs] as it is recorded."

B. <u>Analysis</u>

This issue centers on whether the call-related information from BellSouth is sufficient for TCs to bill OCs for call termination. However, as the transit provider, BellSouth has no direct role in the billing arrangements between TCs and OCs.

Several parties allege that BellSouth provides TCs "altered" call records, including Small LECs witness Watkins. As noted previously, BellSouth witness McCallen emphatically denies this. Although the Small LECs brief cites a specific example where BellSouth provided BTN entries rather than actual originating telephone numbers, Small LEC witness Watkins acknowledges that there may be technical reasons why information is not available in some instances; the witness did not elaborate. BellSouth witness McCallen contends that it provides to

TCs "as much information as we can gather from the originating carrier." We infer from this statement that the amount of information from OCs can fluctuate.

BellSouth's practice of inserting a BTN is done out of necessity when data is not provided by an OC. BellSouth acknowledges that it can identify the originating carrier by attaching the BTN to the calling record, which it does. Although a BTN may not be as useful for jurisdictional purposes as an originating telephone number, BellSouth's practice of providing the BTN, when necessary, allows BellSouth to meet its stated objective of giving TCs sufficient and adequate information to identify OCs.

BellSouth witness McCallen acknowledges that BellSouth provides BTNs to TCs as a component of the call record for a transited call, as necessary. Although BellSouth has identifiable trunking arrangements to accommodate in-bound calls from OCs, we note that BellSouth has no control over whether in-bound calls include an originating telephone number. Some do not, and quite simply, BellSouth cannot provide what it does not possess. Furthermore, this illuminates what may be a widespread matter that affects the entire industry, and not just the parties to this proceeding. Although we recognize the claims made by the Small LECs in its brief, they made an attempt to utilize the instant docket to address carrier-specific matters. This may not be feasible since issues related to the exchange of records are such large-scale concerns, and such matters are also currently teed up at the federal level.[33] An industry-wide collaborative effort may be necessary to "fix" the problems identified, although in the interim, BellSouth should continue in its efforts to provide sufficiently detailed call records to enable TCs to bill for call termination.

As CompSouth witness Gates points out, BellSouth's unique trunking arrangement with OCs enables it to capture the data that it later delivers to TCs. BellSouth records such data in the industry-standard EMI format and entered into evidence two sample EMI records.[34] Although the samples themselves provide over 70 fields that could be populated, several fields in the sample were "reserved for future use." We make this point to demonstrate that carriers may require or use different portions of the EMI call record for various purposes. Transit call records should, at a minimum, include:

- The date, time, and duration of a given transited call;
- the telephone numbers of the calling and called parties;
- the OCNs for the originating and terminating carriers;
- in and out-bound trunking data that is recorded
- terminating end office CLLI codes.

With this most basic information, TCs should be able to accurately bill OCs for call termination, although individual carriers may have specific arrangements or requirements with BellSouth for more or less data. We find that BellSouth currently provides such call records, where available.

[33] The FCC is seeking comment on this and other broad policy matters that will impact all carriers in its ICF FNPRM.

[34] The EMI 11-01-01 sample from BellSouth captures two call records for transit IntraLata calls terminating to a Florida ICO; the first is a call that originates from a CLEC, and the second sample is of a similar call originating from a CMRS carrier.

Although terminating carriers may use the subject records for billing purposes, we note that BellSouth has no direct role in the billing arrangements between the terminating and originating carriers.

C. Decision

Based upon the foregoing analysis and the record, we find that BellSouth shall continue to provide to terminating carriers sufficiently detailed call records with as much information as it has available to it from originating carriers. Furthermore, such call records shall be delivered unaltered in the EMI Category 11 format. Nothing precludes individual parties from agreeing to other arrangements, and if applicable, carriers should follow the terms and conditions of current interconnection agreements that address the provision of call records.

XV. How should billing disputes concerning transit service be addressed?

The answer to this issue must distinguish between situations where BellSouth is providing its transit service pursuant to the Transit Tariff, and situations where it is providing transit service pursuant to an interconnection agreement, or other contractual arrangement.

A. Parties' Arguments

Many witnesses believe that disputes involving transit service should be addressed in accordance with the contract or IA that BellSouth may have with an individual entity. Small LEC witness Watkins asserts that in billing disputes, "BellSouth necessarily must be involved and has some financial responsibility because what cannot be billed to one carrier has to be billed to one or more of the others, including BellSouth." A discovery response from the Small LECs states that "BellSouth has provided no assurance to the Small LECs that BellSouth will be responsible for the resolution of disputes in a manner under which the Small LECs would not be harmed."

BellSouth witness McCallen believes that billing disputes should be addressed in accordance with the nature of the dispute. He states:

> Any disputes involving the validity of the TC's billing to the OC, or the authority of the TC to bill the OC should be resolved by the controlling regulatory body or pursuant to the dispute resolution process in accordance with their contract. To the extent the dispute involves questions related to the minutes of use billed or other issues surrounding the record information supplied by BellSouth, BellSouth will provide support regarding questions on that data.

B. Analysis

In the transiting scenario, BellSouth is "the middle carrier," although we do not believe BellSouth needs to be in the middle of dispute resolution matters between OCs and TCs. BellSouth witness McCallen conveys a willingness on BellSouth's part to provide to such carriers the support material for traffic or records-related billing disputes, but commits to nothing

more. We find this is appropriate and should be the extent of BellSouth's involvement in such disputes. We disagree with Small LEC witness Watkins that BellSouth should assume some level of financial responsibility in the resolution of disputes, since it is only providing back-up data upon request.

The decision to this issue is two-fold, since transit service was provided either pursuant to the Transit Tariff, or pursuant to an interconnection agreement or other contractual arrangement. Furthermore, billing disputes concerning transit service should be addressed based on how such service was purchased.

1. Dispute Resolution for Transit Service Pursuant to the Tariff

BellSouth's Transit Tariff contains dispute resolution provisions in Sections (H) through (J) of A16.1.2. In summary fashion, the terms are as follows:

- in the event of a dispute, BellSouth will continue to bill until the specific dispute is resolved; and
- if negotiations to resolve a dispute are unsuccessful after 30 days, the aggrieved party may seek dispute resolution with the appropriate regulatory body; and
- once a dispute is resolved, the parties shall negotiate a retroactive true-up.

We note that no party specifically voiced an objection to these particular provisions in BellSouth's Transit Tariff, and upon review, we find the terms therein are clear, adequate, and reasonable.

2. Dispute Resolution for Transit Service Pursuant to an IA or Contract

Presumably, an IA or contract for transit services would include dispute resolution provisions, and if so, such terms should be followed. No party offers a contrasting position. We note that the Transit Tariff itself reinforces this approach in Section (B) of A16.1.2. In part, this Section of the Tariff states:

> If Transit Traffic is specifically addressed in a separate agreement . . . then the rates, terms, and conditions contained in that separate agreement will apply in lieu of this tariff.

C. Decision

Based upon the foregoing analysis and the record, we find that billing disputes concerning transit service shall be addressed in one of two ways, based on how transit service was purchased: 1) for carriers that have IAs or contractual arrangements with BellSouth that contain billing dispute provisions, such provisions shall be followed to resolve transit service billing disputes; and 2) for carriers that have purchased transit services from BellSouth pursuant to the Transit Tariff, the billing dispute provisions therein shall govern the resolution of billing disputes, unless a transit arrangement exists. BellSouth's role in billing disputes between OCs

and TCs shall be to provide to such carriers the support material for traffic or records-related data it supplied.

XVI. <u>Implementation Matters</u>

In Section II, we find that BellSouth's Tariff is invalid and an improper mechanism to address compensation for use of its transit service. In making this finding, we order that the Tariff be cancelled on the 71st day after this Order is issued. Accordingly, the following implementation matters need to be addressed: (1) cancellation of the Tariff; (2) establishment of transit arrangements; (3) the issuance of refunds under the Tariff; and closing the consolidated dockets.[35] We note that the first two enumerated matters are addressed together.

1. Cancellation of the Tariff and Establishment of Transit Arrangements

In order to implement our decision to cancel the Tariff, it is necessary for the parties to have some arrangement for transit service in place with BellSouth prior to the Tariff's cancellation. When the Tariff is cancelled, there will be no mechanism available for BellSouth to provide its transit service and receive compensation without a transit arrangement. As such, we find that parties that wish to obtain such service from BellSouth shall establish the rates, terms, and conditions for use of BellSouth's transit service within 70 days of the issuance of this Order. During those 70 days, BellSouth is prohibited from blocking transit service. Additionally, the same prohibition applies in the event negotiations fail to result in a transit service arrangement, and if any party files for arbitration under Section 364.16, Florida Statutes. We note that BellSouth or any other party may file for arbitration under Section 364.16, Florida Statutes.

2. Issuance of Refunds Under the Tariff

We have wide latitude under Rule 25-4.114, Florida Administrative Code, to order refunds. In Order No. PSC-05-0517-PAA-TP, issued May 11, 2005, we ruled that the

> "revenues from the tariff [are to] be held by BellSouth *subject to refund* pending the outcome of this proceeding. Furthermore, at the end of the proceeding, if the tariff is found to be invalid, a refund would be appropriate."[36] (emphasis added)

Based on our decision in Issue 1 that the Tariff is invalid, we find that refunds shall be issued.

While Section 364.05(5), Florida Statutes, does not apply to price regulated LECs such as BellSouth, we find that this statutory provision establishes the customary meaning of the phrase "subject to refund" and provides guidance, absent anything more specific in Order No. PSC-05-

---

[35] For clarification, this case is not a generic proceeding; therefore, our decisions shall not affect existing ICAs with BellSouth, whether the carrier is a party to this proceeding or not. Some parties to this docket already have existing ICAs containing transit provisions with BellSouth, and have not expressed a desire to change those rates, terms, and conditions.

[36] See Notice of Proposed Agency Action Order Consolidating Dockets and Denying Suspension of Tariff at 4.

0517-PAA-TP. Section 364.05(5) describes refunding "such portion of the increased rate or charge as by its decision shall be found not justified," and we believe the word "portion" seems relevant and supports the idea of refunding the difference between the tariffed rate and the rate established in the transit service arrangement.

There are two periods for purposes of determining refunds. First, there is the period beginning February 11, 2005 and ending May 10, 2005, which is the time between the Tariff becoming effective and the issuance of the previously mentioned Order. Second, there is the period beginning May 11, 2005 and ending upon the cancellation of the Tariff.

3. February 11, 2005 through May 10, 2005

One approach within this timeframe is for the parties who paid under the Tariff from February 11, 2005 through May 10, 2005 to receive a full refund with interest. The rationale behind this approach is that if the Tariff is found to be invalid, then the parties were paying under an invalid Tariff and should therefore be made financially whole. Moreover, if this Commission's "subject to refund" determination in Order No. PSC-05-0517-PAA-TP is only applicable going forward, a full refund for the first three months may be warranted if the Tariff is deemed invalid. From a policy perspective, this approach would deter price regulated LECs from filing tariffs that have a likelihood of later being deemed invalid. It could also be argued that BellSouth made a business decision and should have known the costs and risks associated with such a decision.

Since there is no explicit guidance in the law as to which refund approach is appropriate in this instance, we look to the principles of equity to render a sound decision.[37] If BellSouth is required to issue a full refund to the parties who paid under the Tariff, then arguably those parties have been unjustly enriched.[38] We note that under the legal theory of quantum meruit, BellSouth should receive the reasonable value of the services it has rendered.[39] Those parties received a service for the period beginning February 11, 2005 and ending May 10, 2005. If they were to receive a full refund, then a windfall could result in their favor, which is neither fair nor equitable. Accordingly, we require BellSouth to issue a partial refund, including interest, for the period beginning February 11, 2005 and ending May 10, 2005. The partial refund shall be based on the difference between the tariffed rate and the rate in the resulting transit arrangement.

4. May 11, 2005 through the Date the Tariff is Cancelled

May 11, 2005 is the date the previously mentioned Order was issued. That Order provided that if this Commission ultimately found the Tariff to be invalid, then a refund would

---

[37] By applying principles of equity we may attain a just result "where the prescribed or customary forms of ordinary law seem to be inadequate." 22 Fla. Jur. 2d Equity §1 (2005).
[38] Unjust enrichment is defined as "the retention of a benefit conferred by another, without offering compensation, in circumstances where compensation is reasonably expected." See *Black's Law Dictionary* 1536 (7th ed., West 1999).
[39] "Quantum meruit is still used today as an equitable remedy to provide restitution for unjust enrichment. It is often pleaded as an alternative claim in a breach-of-contract case so that the plaintiff can recover even if the contract is voided." Id. at 1255.

be appropriate. The customary meaning of "subject to refund," as discussed earlier, suggests that a partial refund is appropriate for the period beginning May 11, 2005, the date on which this Commission memorialized its "subject to refund" determination in Order No. PSC-05-0517-PAA-TP. The fair and equitable approach, discussed above, also applies during the time period beginning May 11, 2005 and ending upon the Tariff's cancellation, which would be the 71st day after this Order is issued.

The final implementation matter addressed herein is whether we should close these consolidated dockets? We find that these dockets shall remain open to allow the parties in this proceeding who do not have rates, terms and conditions in place for BellSouth's transit service additional time to establish a transit arrangement prior to cancellation of the Tariff. We require BellSouth and any party without a transit arrangement to establish such an arrangement within 70 days of the issuance of this Order. Additionally, we order BellSouth to issue a partial refund, including interest, to those parties who paid under BellSouth's Tariff during the period beginning February 11, 2005 and ending upon cancellation of the Tariff.

Based upon the foregoing, it is

ORDERED by the Florida Public Service Commission that the specific findings set forth in this Order are approved in every respect. It is further

ORDERED that the issues identified in these consolidated dockets are resolved as set forth within the body of this Order. It is further

ORDERED that BellSouth Telecommunications, Inc.'s Transit Traffic Service Tariff is hereby rendered invalid and shall be cancelled on the 71st day after this Order is issued. It is further

ORDERED that BellSouth Telecommunications, Inc. and any party without a transit arrangement are required to establish such an arrangement within 70 days of the issuance of this Order. It is further

ORDERED that BellSouth Telecommunications, Inc. is prohibited from blocking during the 70 days after this Order is issued, and in the event negotiations fail to produce a transit service arrangement and any party files for arbitration under 364.16, Florida Statutes. It is further

ORDERED that BellSouth Telecommunications, Inc. or any other party may file for arbitration under Section 364.16, Florida Statutes. It is further

ORDERED that BellSouth Telecommunications, Inc. shall issue a partial refund, including interest, to those parties who paid under the Tariff during the period beginning February 11, 2005 and ending upon cancellation of the Tariff. It is further

ORDERED that these dockets shall remain open to allow the parties in this proceeding who do not have rates, terms and conditions in place for BellSouth's transit service additional time to establish a transit arrangement prior to cancellation of the Tariff.

By ORDER of the Florida Public Service Commission this 18th day of September, 2006.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By:
Kay Flynn, Chief
Bureau of Records

(S E A L)

KS

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.