BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by MCImetro Access Transmission Services LLC and MCI WorldCom Communications, Inc. for arbitration of certain terms and conditions of a proposed agreement with BellSouth Telecommunications, Inc. concerning interconnection and resale under the Telecommunications Act of 1996.	DOCKET NO. 000649-TP ORDER NO. PSC-01-0824-FOF-TP ISSUED: March 30, 2001

The following Commissioners participated in the disposition of this matter:

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FINAL ORDER ON ARBITRATION

BY THE COMMISSION:

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I. BACKGROUND

On May 26, 2000, MCImetro Access Transmission Services, LLC and MCI WorldCom Communications, Incorporated (collectively WorldCom) filed a Petition for Arbitration pursuant to 47 U.S.C. Section 252(b) of the Telecommunications Act of 1996 (the Act), seeking arbitration of certain unresolved issues in the interconnection negotiations between WorldCom and BellSouth Telecommunications Incorporated (BellSouth). The petition enumerated 111 issues. On June 20, 2000, BellSouth filed its response. The administrative hearing was held on October 4-6, 2000.

Prior to the administrative hearing, the parties reached agreement on a number of issues. We note that although some additional issues were settled prior to hearing, nevertheless, the parties brought 50 disputed matters to arbitration. Given the relatively straightforward nature of many of the issues in dispute, we are dismayed that settlement of more of these issues eluded the parties. We note that a large-scale arbitration is a labor-intensive and time-consuming process that is governed by specific deadlines and has the potential for constraining our resources. Therefore, we are hopeful that negotiation will be more successful in future arbitration so that we can continue to provide the detailed level of analysis and overall standard of excellence currently provided. Subsequent to the hearing, additional issues were settled. To date, the resolved issues are: 4, 7, 7A, 10-14, 16, 17, 20, 21, 24-27, 29-33, 35, 38, 41, 43, 44, 48-50, 52-54, 69-74, 76, 77, 79, 82-90, 92, 93, 97-99, 102-104, 106, and 111. Issues 40, 46, 51, and 105 were referred to generic proceedings.

On November 9, 2000, WorldCom filed its position and support on all unresolved issues, including Issues A-C, in its Post Hearing Brief. BellSouth's Post Hearing Brief, which was also filed on November 9, 2000, set forth its final position on all unresolved issues, but did not present a specific position for Issues A-C. However, BellSouth's Post Hearing Brief contained a short section entitled "Statutory Overview."

On January 24, 2001, BellSouth filed a letter which addressed Issues A-C. BellSouth positions have not been addressed in this

recommendation because the letter was not timely filed and BellSouth did not request leave to late-file these positions.

This Order addresses the remaining interconnection issues for arbitration and three additional issues of a legal nature added by the Prehearing Officer. Issues A, B, and C refer to the Commission's jurisdiction regarding arbitration, as well as the Commission's authority, and obligations relating to arbitration of Issues 107 & 108, liquidated damages and specific performance, respectively, in light of WorldCom Telecommunications Corp. vs. BellSouth Telecommunications, Inc., Order on Merits, issued June 6, 2000, in Case No. 4:97cv141-RH, and what legal standard should be applied in resolving these issues.

II. LIST OF ACRONYMS

AC	Alternating Current
ADSL	Asymmetric Digital Subscriber Line
ADUF	Average Daily Usage File
AIN	Advanced Intelligent Network
ALEC	Alternative Local Exchange Carrier
ANI	Automatic Number Indentification
ASR	Access Service Request
AT&T	AT&T Communications of the Southern States, Inc. Inc.nccnnc
CABS	Carrier Access Billing System
CCA	Collocation Conversion Application
CCP	Change Control Process
CDF	Conventional Distribution Frame
CEV	Controlled Environmental Vault
CFA	Connecting Facility Assignment
C.F.R.	Code of Federal Regulations
CLEC	Competitive Local Exchange Carrier
CO	Central Office
CSR	Customer Service Record

DA	Directory Assistance
DC	Direct Current
DOE	Direct Order Entry
DSL	Digital Subscriber Line
DSLAM	Digital Subscriber Line Access Multiplexer
EDI	Electronic Data Interchange
EMI	Exchange Message Interface
EODUF	Enhanced Optional Daily Usage File
ERS	Extended Reach Service
FCC	Federal Communications Commission
FGC	Feature Group C
FGD	Feature Group D
FX	Foreign Exchange
HVAC	Heating Ventilation and Air Conditioning
ILEC	Incumbent Local Exchange Carrier
INP	Interim Number Portability
IXC	Interexchange Carrier
ISP	Internet Service Provider
LEC	Local Exchange Carrier
LERG	Local Exchange Routing Guide
LCC	Line Class Code
LSR	Local Service Request
LTR	Local Transport Restructure
MCIm	WorldCom
MCIW	WorldCom
MOS	Modified Operator Signaling
NEBS	Network Equipment and Building Specifications
NEC	National Electric Code
NRC	Non-Recurring Charge
NXX	Central Office Code/Prefix
ODUF	Optional Daily Usage File
OLNS	Originating Line Number Screening

OS	Operator Services
OSS	Operational Support Systems
OTS	Operator Transfer Service
PIU	Percent Interstate Usage
PLU	Percent Local Usage
POI	Point of Interconnection
POT	Point of Termination
RCF	Remote Call Forwarding
ROS	Regional Ordering System
SOCS	Service Order Communications Systems
PUC	Public Utilities Commission
TOPS	Traffic Operator Position Systems
UNE	Unbundled Network Element
UNE-P	Unbundled Network Element-Platform

III. COMMISSION JURISDICTION

The issue before us is what is the Commission's jurisdiction in this matter.

A. Analysis

WorldCom asserts that the under Section 252 (b)(1) of the Act, we are empowered to arbitrate any "open issue" involving a proposed interconnection agreement which the parties have been unable to resolve. WorldCom states that to the extent the FCC does not have rules in place and there is no controlling judicial precedent, we have the authority to independently construe the requirements of the Act, subject to judicial review. In addition, we are required to ensure that the arbitration provisions comply with the requirements of the Act and FCC rules.

In addition, WorldCom asserts that under Section 252(e)(3) and Section 261 (c) of the Act, we have authority to exercise our independent state law authority under Chapter 364, Florida Statutes, so long as those requirements are not inconsistent with those imposed by the Act. WorldCom contends that Chapter 364, Florida Statute, provides us with broad authority to set prices,

terms and conditions for unbundled elements and for resale. WorldCom contends that we can exercise our authority under Chapter 364, Florida Statutes, to impose additional obligations on BellSouth where we determine that such obligations represent good public policy for Florida consumers and is not inconsistent with the Act or FCC Rules. WorldCom states that we can and should exercise our state law authority to require more whenever we determine that doing so will hasten the day that the Florida consumers can benefit from robust local competition.

In its brief, BellSouth states that Section 251 (c) of the Act provides that parties negotiating an interconnection agreement have the duty to negotiate in good faith. BellSouth states that the Act permits either party to petition a state commission for arbitration of unresolved issues. BellSouth contends that the petition must identify the issues resulting from the negotiation that are resolved, as well as those that are unresolved. BellSouth states the petition must submit all relevant documention regarding the unresolved issues, the parties' positions on those issues, and any other issues discussed and resolved by the parties. BellSouth states that the non-petitioning party has 25 days to respond to the petition and provide such additional information to the state commission. BellSouth contends that the Act limits a state commission's consideration of any petition to the unresolved issues set forth in the petition and in the response. BellSouth states that through the arbitration process, we must then resolve the remaining disputed issues in a manner which ensures the requirements of Section 251 and 252 of the Act are met. BellSouth contends that the obligations contained in Sections 251 and 252 of the Act are the obligations that form the basis for negotiation, and if negotiations are unsuccessful, they then form the basis for arbitration. BellSouth states that once we provide guidance on the unresolved issues, the parties will incorporate those resolutions into a final agreement that will then be submitted to us for our final approval.

B. Decision

As noted previously, WorldCom filed for arbitration of an interconnection agreement with BellSouth pursuant to the Act. Pursuant to Section 252 (b) of the Act, a incumbent local exchange carrier or any other party to a negotiation under the Act after a

prescribed period of time for voluntary negotiation, may petition a state commission to arbitrate any open issues. Pursuant to Section 252 (b)(4) of the Act, the state commission must limit its consideration of any petition and any response thereto, to the issues set forth in the petition and the response. Under Section 252(c) of the Act, the state commission shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions to implement the standards for arbitration set forth in Section 252 (c), of the Act. Pursuant to Section 252 (c) of the Act, a state commission in resolving any open issue and imposing conditions upon the parties to the agreement, shall ensure that the resolution and conditions meet the requirements of Section 251, including the regulations prescribed by the FCC; establish any rates for interconnection, services, or network elements according to Section 252 (d) of the Act; and provide a schedule for implementation of the terms and conditions by the parties to the agreement. In addition, we have the authority to construe the requirements of the Act, subject to controlling FCC Rules, FCC Orders and controlling judicial precedent.

We agree that Section 252(e) of the Act reserves the state's authority to impose additional conditions and terms in arbitration that are not inconsistent with Act and its interpretation by the FCC and the courts. We find that under Section 252(e) of the Act, we could impose additional conditions and terms in exercising our independent state law authority under Chapter 364, Florida Statutes, so long as those requirements are not inconsistent with the Act, FCC rules and orders, and controlling judicial precedent.

Based on the foregoing, we have jurisdiction pursuant to Section 252 of the Act to arbitrate interconnection agreements. Section 252 states that a State Commission shall resolve each issue set forth in the petition and response, if any, by imposing the appropriate conditions as required. Further, we find that Section 252(e) of the Act reserves the state's authority to impose additional conditions and terms in an arbitration not inconsistent with Act and its interpretation by the FCC and the courts.

Further, we considered the issues of what are our authority and obligations relating to arbitration of liquidated damages and specific performance, respectively, in light of WorldCom Telecommunications Corp. vs. BellSouth Telecommunications, Inc.,

Order on Merits, issued June 6, 2000, in Case No. 4:97cv141-RH, and what legal standard to be applied in resolving these issues. Due to the direct relationship of these issues to the liquidated damages and specific performance issues before us, our analysis and decision are set forth in those sections.

IV. NONRECURRING CHARGES

The issue, as framed, was to address whether electronically ordered nonrecurring charges (NRC) were to apply when an order was submitted manually because electronic interfaces were not available or were not functioning within specified standards or parameters. (NRCs for a manually placed order are higher than the NRCs for an electronically placed order). However, in its post-hearing brief, WorldCom states that this issue has been narrowed to now address whether BellSouth should be permitted to charge a manual nonrecurring charge for service orders when BellSouth makes available to itself an electronic ordering process and makes available to ALECs a manual ordering process[1].

BellSouth does not specifically state in its post-hearing brief that this issue has been narrowed; however, based on its testimony and brief, we find that the focus of this issue has changed for both parties. We note that the overwhelming majority of the testimony on this issue focused on whether or not BellSouth's sales representatives use an electronic interface when ordering MegaLink service, a service which WorldCom believes is similar to DS-1 combinations which WorldCom must order manually.

A. Analysis

Under the Telecommunications Act of 1996, BellSouth is obligated to provide access to its Operational Support Systems (OSS) in substantially the same time and manner that BellSouth provides to itself. According to BellSouth witness Pate, for certain resale and UNE services that must be submitted manually, BellSouth complies with the FCC's requirement expressed in

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[1] The parties agreed that the electronic ordering charge would apply (on orders that would have been submitted electronically) when an order is submitted manually because electronic interfaces are not functioning within specified standards or parameters.

paragraph 87 of its Order on BellSouth's second 271 application for Louisiana. According to witness Pate, this order states:

> . . . a BOC must offer access to competing carriers that is analogous to OSS functions that a BOC provides to itself. Access to OSS functions must be offered in 'substantially the same time and manner' as the BOC. For those OSS functions that have no retail analogue . . . a BOC must offer access sufficient to allow an efficient competitor a meaningful opportunity to compete.

According to WorldCom witness Price, BellSouth should not be allowed to charge a manual ordering charge when it provides an electronic interface for itself but a manual interface to ALECs. Further, he states that if BellSouth uses electronic processes for its own OSS and does not provide electronic processes to its competitors to obtain what amounts to substantially the same element or service, it is not providing parity. As an example of disparity, the witness notes that WorldCom now must submit orders for DS-1 loop-transport combinations (DS-1 combos) using a manual LSR (local service request) process rather than the electronic ASR (access service request) process it had been using. According to witness Price, BellSouth has an electronic interface that its sales representatives use when ordering MegaLink service, a service which also has loop and transport elements.

When witness Price was asked if he believed a MegaLink circuit provided to an end user customer by BellSouth, and a DS-1 loop and DS-1 dedicated transport combination used by WorldCom are equivalent, he responded, "They may well be, yes." The witness was then asked to review the testimony of an MCImetro witness that testified in a prior Commission hearing in Docket Number 981182-TP. In that testimony, the MCImetro witness noted that he strongly disagreed that a MegaLink circuit provided to an end use customer by BellSouth and a DS-1 loop/DS-1 dedicated transport combination used by MCImetro as part of an MCIm switch-based local service offering are in any way equivalent in the eyes of the customer. Witness Price did not comment on the assertions made by the MCImetro witness.

WorldCom witness Price also addressed what he believes are the public policy reasons why BellSouth should not be able to charge

ALECs for manual OSS when it provides electronic OSS to itself. He notes that BellSouth should not be encouraged to use inefficient, costly systems to serve ALECs when it provides substantially the same elements or services to its own customers using electronic processes. He believes BellSouth should be strongly encouraged to do just the opposite. Witness Price asserts that if BellSouth is not providing parity with respect to ordering, it is violating the Telecommunications Act of 1996, applicable FCC regulations, and probably orders of this Commission. He notes that the point of WorldCom's proposed language is to try to put a specific situation in place so that BellSouth has the incentive to do the right thing.

According to BellSouth witness Cox:

> . . . if BellSouth provides an electronic interface, and an order is submitted electronically, an electronic ordering charge will apply. If BellSouth provides an electronic interface, and an order is submitted manually, a manual ordering charge will apply. If BellSouth does not provide an electronic interface, manual ordering charges apply for any submitted order.

On cross-examination, witness Cox was asked to assume that BellSouth has an electronic interface for itself for a certain type of order, but provides WorldCom only a manual interface. The witness was then asked, if BellSouth is in the process of developing an electronic interface that will be available in the future, is it BellSouth's position that until it is available the manual charge would apply? Witness Cox responded that was correct. When asked if there was an outside time limit on how long it might take to develop the electronic ordering capability for WorldCom or the other ALECs, the witness replied:

> I don't know the time frames that would be required to develop it. Your assumption was that we have the electronic interface for ourselves, so therefore it is an obligation and we would need to develop the electronic interface, so we would do it diligently because it is an obligation. So I don't think it would drag on and on.

According to witness Cox, she is not aware of any instance where BellSouth has an electronic interface for itself and the

ALECs do not. When asked what we should do to provide BellSouth an incentive to create a complete electronic interface system, the witness responded that she did not believe BellSouth needed any additional incentive. She explained that the costs of a manual order are higher than an electronic order, and that BellSouth already has an incentive to lower its costs. Furthermore, she asserted that BellSouth has electronic interfaces for the vast majority of services; however, she noted that complex orders are very difficult to convert to an electronic system. Finally, witness Cox stated " . . . I really can't give you anything that you could do that is not already an incentive for us, which is cost reduction."

BellSouth witness Pate also addressed this issue. He notes his strong disagreement with WorldCom's petition, which states WorldCom's belief that BellSouth is unreasonable and discriminatory, and does not provide parity when it provides and charges ALECs for a manual process, without making an electronic process available, when BellSouth provides an electronic process for its retail business. He asserts, "I am not aware of any situation of the type described by MCI on page 5, paragraph 10 of its petition . . . ."

Witness Pate observes that the LSRs for most complex services must be submitted manually. The manual processes BellSouth uses for a resold complex service offered to WorldCom are substantially the same in time and manner as the processes used for BellSouth's retail complex services. BellSouth's retail service orders for similar complex retail services also utilize manual processes. He believes that because the same manual processes are in place for both WorldCom and BellSouth retail orders, the processes are nondiscriminatory and competitively neutral.

Specifically with regard to MegaLink, witness Pate agreed that functionally a DS-1 combo is the same thing as a MegaLink circuit. When asked if BellSouth representatives can order MegaLink electronically or partially electronically, the witness noted that MegaLink point-to-point circuits can be ordered through BellSouth's regional ordering system (ROS). ROS is the system BellSouth's business units use. He clarifies that the term "partially electronic" is used to signify that BellSouth has a system where a representative is actually sitting at a presentation screen and

developing an order. The witness states "But I don't want to leave the wrong impression. It is not electronic in terms of a translation of that order as you would think from a local service request. There is a significant difference here."

Under cross-examination, the witness stated that when a BellSouth representative uses ROS to prepare a MegaLink point-to-point circuit order, the representative can build the order using point and click technology, and can then transmit that order electronically. This is because ROS displays work flows which walk the representative through the various steps needed to build the order. For other types of MegaLink services, such as channelized MegaLink and MegaLink ISDN, there are no work flows built into ROS. The witness also noted, "but the significant thing you need to understand is this is building nothing more than an already acceptable formatted order that the service order communications system, SOCS, can accept directly. So it is transmitting an order built in the proper format for provisioning by our systems."

According to witness Pate, until recently, WorldCom submitted DS-1 combo orders using an electronic ASR process, because that was the mechanism that was utilized. By letter dated August 28, 2000, from BellSouth to WorldCom, BellSouth notified WorldCom that after September 5, 2000, it would no longer accept electronic ASRs for DS-1 combos. When asked if WorldCom was using the ASR process to order their DS-1 combinations, witness Pate replied:

> They were using that process because that is what existed. But what I am trying to get clear is really they weren't ordering DS-1 combinations. We had to then -- BellSouth had to then do additional steps to -- at this point they were just crediting the bill at the UNE rate. And there should have been another action taken, that is to convert those to the combinations. And MCI, we have had a challenge getting them to give us the information to do that actual conversion even. So they continue to have the special access which we credited their bill for.

He continues:

> We put that methodology in place for them to order -- essentially, they are ordering a DS-1 combination from their perspective, but the reality of it is, it's not; it is special access, because that is the only process we had in place at that point in time.

Today BellSouth requires WorldCom, as well as all other ALECs, to use the manual LSR process to order DS-1 combos. Witness Pate notes that what is actually being ordered by WorldCom on the ASR when it orders a DS-1 loop transport combination is special access under the access tariff. Further, he explains that the ASR submitted does not contain an order for an unbundled DS-1 loop and an order for an unbundled DS-1 transport.

Within the August 28, 2000 letter, it was stated "Your assertion that BellSouth retail units order MegaLink service electronically is simply incorrect." When witness Pate was asked about this statement, in light of his prior testimony that BellSouth representatives do order MegaLink using the electronic ROS system, he testified:

> They order MegaLink using the ROS system. The issue here is how we are defining electronic. Now, once again, this is an important distinction. Electronic there means they are using a system to just enter the order. You have got to enter it somewhere. Then that system transmits that formatted order that is acceptable for our downstream provisioning systems. That's not the same as a local service request, which is coming in that OBF format that then has to be translated into a SOCS acceptable format, which is what ROS builds. That SOCS acceptable format is critical. That is what we have to have received by our downstream systems for provisioning. That is what generates the FOC once we had that acceptable format built.

As a point of clarification, BellSouth witness Pate was asked whether a WorldCom representative must use a pencil and paper to fill out the LSR form, feed it into the fax machine, and send it to BellSouth in order to place a DS-1 order. Further, he was asked whether a BellSouth representative can build an order for a MegaLink private line circuit using the ROS system and then submit

it electronically to BellSouth's SOCS system. Witness Pate agreed that both situations are correct "from the standpoint of the way you described it." He contends that the ROS system is fairly new and that BellSouth representatives used to use the direct order entry (DOE) system, which is the same system that is utilized today in the LCSC. He explains that MegaLink orders have to go through some system, in order to go into SOCS. He explains that ROS provides more functionality to the business retail units, and they have developed that system to replace DOE. According to witness Pate, BellSouth has offered many times, for those who are interested, to sit down and talk about allowing access to DOE. However, he contends that some ALECs have said they do not want access to DOE. He believes one reason is because the system is archaic. It is more of a DOS format, not the point and click Windows-based technology that most people are accustomed to using today.

With regard to BellSouth's retail complex orders, witness Pate explains that the BellSouth representative who enters the complex retail order into the ROS system is not the same BellSouth person who deals directly with the customer. He notes that the account team usually develops the complex order. He states:

> . . . they are the ones that are really working with the end user customer. And they are getting information. They have a system designer on that team just like we have system designers dedicated to the account teams to the ALECs. And that systems designer, along with another person, typically a services consultant, they sit down and develop all of that information. They typically fill out a paper order that is then given to the representative that goes and inputs that from paper into the system, the ROS system, for transmittal of that order.

He further explains that the submission of a manual paper order to a representative who then inputs it into ROS is substantially the same process that is made available to ALECs for complex orders. He notes:

> Because for the ALEC community they are submitting that manual order using an LSR, which they have to fill it

> out. And they are transmitting it to us via facsimile, that we then turn around and enter. So there in that situation a representative is working from the paper order written up by the ALEC, just as, you know, in correlation to our retail, a representative is working from the paperwork that has been developed by the retail account team.

B. Decision

As framed and subsequently clarified, this issue is to determine whether BellSouth should be permitted to charge WorldCom a lower priced electronic ordering charge or a higher priced manual ordering charge when BellSouth makes available to itself an electronic ordering process but makes available to WorldCom only a manual ordering process. However, based on the testimony provided, the parties have focused more specifically on whether or not BellSouth is providing parity between its MegaLink retail ordering processes and its wholesale DS-1 combos ordering processes.

The FCC has emphasized the importance to ALECs of access to an ILEC's OSS:

> . . . if competing carriers are unable to perform the functions of pre-ordering, ordering, provisioning, maintenance and repair, and billing for network elements and resale services in substantially the same time and manner than an incumbent can for itself, competing carriers will be severely disadvantaged, if not precluded altogether, from fairly competing. Thus providing nondiscriminatory access to these support systems functions, which would include access to the information such systems contain, is vital to creating opportunities for meaningful competition. (FCC 96-325, ¶518)

As noted by BellSouth witness Pate, in ¶ 87 of the FCC's Order on BellSouth's second 271 application for Louisiana, the FCC specified two standards for evaluating whether an ILEC is providing nondiscriminatory access to OSS:

> . . . a BOC must offer access to competing carriers that is analogous to OSS functions that a BOC provides to

> itself. Access to OSS functions must be offered in 'substantially the same time and manner' as the BOC. For those OSS functions that have no retail analogue . . . a BOC must offer access sufficient to allow an efficient competitor a meaningful opportunity to compete.

To resolve this issue, it must first be determined whether one or both of these two criteria is satisfied.

The issue of parity was raised by WorldCom witness Price. Witness Price claims that BellSouth has an electronic interface that its sales representatives use when ordering MegaLink service, but BellSouth only provides a manual ordering process for WorldCom to order its DS-1 combos. Witness Price believes MegaLink and DS-1 combos amount to substantially the same element or service. We note that the MegaLink/DS-1 combo issue was the only example of disparity provided by WorldCom.

WorldCom presented little direct evidence to support its claim of disparity. The majority of testimony came from BellSouth's witness Pate on cross-examination. No testimony was presented that contradicted witness Pate's claims that the manual processes used for a resold complex service offered to WorldCom are substantially the same in time and manner as those used for BellSouth's complex retail services. BellSouth's retail service orders for similar retail complex services utilize manual processes. No testimony contradicted BellSouth witness Pate's assertion that the submission of a manual paper order to a representative who then inputs it into ROS is substantially the same process that is made available to ALECs for complex orders.

If MegaLink and DS-1 combos are analogous, BellSouth is required to offer WorldCom access that is analogous to OSS functions that it provides to itself. We are persuaded that BellSouth's account team must perform some front-end manual activities in order for a BellSouth end-user customer to be provided MegaLink. These activities are analogous to those WorldCom now must undertake to order DS-1 combinations. Therefore, in the case of DS-1 combinations, we find that BellSouth is providing WorldCom access similar to the access it provides itself. Since this access presently involves manual processes, it is reasonable for BellSouth to assess a manual ordering charge.

If MegaLink is not a retail analog to DS-1 combos, then BellSouth is required to offer access sufficient to allow WorldCom a meaningful opportunity to compete. No testimony was presented that demonstrates that WorldCom is being denied a meaningful opportunity to compete. In the absence of such a showing, a manual ordering charge is reasonable.

Finally, with regard to the issue as framed, we find that where it is determined that BellSouth has an electronic interface in place for its retail offerings, but there is no analogous system in place for comparable services obtained by an ALEC, it would be a reasonable presumption that an ALEC is being denied a meaningful opportunity to compete; where such a finding is made, BellSouth should charge an electronic ordering charge. However, such a determination will need to be made on a case-by-case basis.

V. INTERCONNECTION AGREEMENT PRICES

According to the testimony of both parties, this issue has been substantially narrowed. With the exception of line sharing and collocation, WorldCom has accepted the prices proposed by BellSouth in Exhibit 25 as interim, subject to true-up pending the outcome of Docket No. 990649-TP. The remaining disagreement is with respect to line sharing and collocation, and whether the rates proposed by BellSouth in this docket should be established as final rates, or should they too be interim, subject to true-up. BellSouth filed a cost study for line sharing; however, no cost study was filed for collocation. We note that there was limited testimony on this issue.

A. Analysis

WorldCom asserts that the rates for line sharing and collocation should be considered interim, subject to true-up, until permanent rates are established by us. According to the testimony of WorldCom witness Price, the interim nature and the issue of true-up was tied to the UNE cost docket. Witness Price notes that collocation and line sharing are not issues within Docket No. 990649-TP, but it is his understanding that separate proceedings would occur to address these elements. He believes that the rates for collocation and line sharing should not be established here

because, based on his experience, these issues are " . . . best resolved in a generic docket."

When asked if it would be inappropriate for us to set rates in this proceeding just because there are not other carriers involved, witness Price replied:

> I think the point that I'm trying to make here is that there has not been in the context of this proceeding anywhere near the degree of focus and attention on the costing issues that has occurred in the past in the generic proceedings.
>
> And it is -- the process of examining the cost studies and getting behind them, if you will, is -- is one that requires a great deal of time and effort. And in fact, many of these proceedings, you know take a year or more because of the -- of detail that's presented in the cost studies and the amount of back-up material that has to be reviewed and all.
>
> So I don't think I'm trying to say that it would be inappropriate, just that the level of focus and attention has not yet been brought to bear to the same extent that it was in the generic proceedings.

BellSouth believes the rates for collocation and line sharing should be established in this docket. The rates it proposes for virtual collocation are those ordered by us in Order PSC-98-0604-FOF-TP in Docket No. 960833-TP, and the rates for physical collocation and adjacent collocation are those found in Section 20 of BellSouth's Florida Access Services Tariff.

BellSouth filed a cost study for line sharing in this proceeding. According to BellSouth witness Caldwell, the cost development for line sharing followed the same cost methodology used in Docket No. 990649-TP. Witness Caldwell notes that we should set rates for line sharing in this docket, with the understanding that any adjustments ordered in Docket No. 990649-TP can be incorporated into the line sharing cost study. WorldCom did not produce any testimony or evidence regarding the line sharing

cost study, nor did it provide any discussion on the record regarding BellSouth's rates for collocation.

Under cross-examination, BellSouth witness Cox stated that most of the rates that BellSouth is proposing, except for collocation and line sharing, are interim subject to true-up because there are currently dockets underway where those rates are going to be established in the near future. The witness also noted that BellSouth often sets rates subject to true-up. She notes:

> our only distinction on the ones where we have suggested they not be interim subject to true-up are, for example, in the collocations, they are already permanent rates or they are from a tariff. And in the line sharing there is just no real proceeding underway, so we don't see why we would wait and do them interim subject to true-up. So that is the distinction.

BellSouth witness Cox makes an important distinction regarding the true-up issue for collocation and line sharing. Although there is a generic collocation proceeding opened in which we intend to set collocation rates, no explicit dates have yet been set. Additionally, to date a generic line sharing docket has not been established. Furthermore, WorldCom witness Price acknowledged the fact that rate proceedings can take a year or more.

B. Decision

We find that WorldCom's arguments to have the collocation rates and line sharing rates be interim, subject to true-up having little support in the record. It is troubling that WorldCom did not provide any discussion, comment, or evidence for us to review regarding BellSouth's line sharing cost study or the proposed collocation rates. As noted above, we do not currently have a firm schedule to address line sharing or collocation rates. Therefore, in the absence of any testimony from WorldCom contesting BellSouth's proposed rate levels, we find that the prices to be included in the Interconnection Agreement should be those found in the revised direct exhibit of BellSouth witness Cox. Since WorldCom's testimony focused not on BellSouth's proposed rates, but whether those rates should be interim subject to true-up, our decision is limited to the issues as narrowed and addressed by

WorldCom. Consequently, no decision is being made as to the reasonableness of BellSouth's proposed rates, because there is no evidence contrary to the evidence provided by BellSouth supporting its rates. With the exception of the prices for collocation and line sharing, these prices should be interim and subject to true-up upon establishment of permanent rates by us. The rates for collocation shall not be subject to true-up. The cost study for line sharing shall be modified to incorporate the adjustments, if any, ordered by us in Docket No. 990649-TP and the price shall be adjusted prospectively. However, the rate for line sharing is not subject to true-up. We note that under the provisions of the Act WorldCom is free to opt into other agreements that may offer it more favorable rates for line sharing and collocation.

VI. RESALE DISCOUNT

This issue seeks to address whether the resale discount applies to all end user telecommunications service offerings regardless of the tariff in which the service is contained.

A. Analysis

In her testimony, BellSouth witness Cox testifies that BellSouth is obligated under the Act and FCC rules to offer a resale discount on a ". . . telecommunications service that BellSouth provides at retail to subscribers who are not telecommunications carriers." Witness Cox further testifies that exchange access services are ". . . generally not offered at retail to subscribers who are not telecommunications carriers." Witness Cox then concludes that the resale discount does not apply to services in the access tariffs, particularly since the FCC ruled that ". . . BellSouth does not avoid any 'retail' costs in selling access services at 'wholesale'". The BellSouth witness further testifies that her position is supported by the FCC Order approving Bell Atlantic-New York's application for interLATA authority[2], where the FCC stated that:

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[2] Memorandum and Order, cc Docket No. 99-295, In re: Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region InterLATA Service in the State of New York, Order No. FCC 99-404, (December 22, 1999), (Bell Atlantic Order)

> . . . we agree with Bell Atlantic that it is not required to provide an avoided-cost discount on its wholesale ADSL offering because it is not a retail service subject to the discount obligations of section 251(c)(4).

BellSouth witness Cox also argues that all ALECs, WorldCom inclusive, are ". . . entitled to purchase BellSouth's retail services at a resale discount." She further asserts that these retail services are those contained in ". . . BellSouth's General Subscriber Services Tariff ("GSST") and BellSouth's intrastate Private Line Tariff." Witness Cox testifies that services offered in BellSouth's intrastate and federal access tariffs will be available for resale, but without the wholesale discount. Witness Cox further testifies that services offered in the federal access tariffs are available to end user customers other than telecommunications carriers. However, witness Cox argues that all services contained in the access service tariffs are exchange access service according to the FCC. BellSouth witness Cox testifies that exchange access service is defined as:

> [T]he term exchange access means the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of toll services.

WorldCom witness Price agrees that BellSouth is obligated by law to offer a resale discount on all telecommunications services that it offers on a retail basis to customers that are not telecommunications carriers. Witness Price further testifies that "The Act requires BellSouth 'not to prohibit', and not to impose unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications services." WorldCom witness Price disagrees with BellSouth's witness Cox that the resale discount is only applicable to services in certain tariffs, and argues that:

> [T]he key questions under the rule thus is whether BellSouth offers the telecommunications service in question on a retail basis to subscribers that are not telecommunications carriers. The rule makes no distinction based on the tariff in which the service is contained.

Witness Price further argues that BellSouth's application of this portion of the First Report and Order, CC Docket No. 96-98, In the Matter of Implementation of Local Competition Provisions in the Telecommunications Act of 1996, FCC Order 96-325 (August 8, 1996),(Local Competition Order), is flawed as BellSouth has proceeded to include in its federal and state access tariffs service offerings that are clearly not access services. Witness Price testifies that BellSouth's SmartRing service offering is contained in the federal and state Access Tariffs, and also in BellSouth's Private Line Tariff. Witness Price thus argues that the SmartRing offering cannot be an access service when it is offered in the Access Tariffs, and later ceases to be an access service for the mere fact that it is offered in the Private Line Tariff. The WorldCom witness concludes that the ". . . exception discussed in the Local Competition Order for exchange access services therefore does not apply in the case of SmartRing and other non-access services."

Regarding the Bell Atlantic 271 exception, witness Price testifies that the FCC exempted ADSL service from the resale discount requirements on the basis that ADSL was offered as a wholesale service. Witness Price contends that "Presumably, therefore, Bell Atlantic did not make that service available to its end user customers . . . " and further testifies that "In contrast, the ADSL service that Bell Atlantic made available to its retail customers was offered to ALECs at the resale discount." Witness Price concludes that:

> When BellSouth makes a service offering available to its end user customers, the offering should be classified as a retail service and offered to ALECs at the resale discount.

Section 251(b)(1) of the Act provides that the incumbent local exchange carrier has "The duty not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications services." Section 251(c)(4)(A) and (B) of the Act states, in part, that the ILECs have the duty

> . . . to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications

> carriers; and not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, resale of such telecommunications service . . .

Accordingly, in FCC Order No 96-325, the FCC found that ILECs are not required to ". . . make a wholesale offering of any service that the incumbent LEC does not offer to retail customers." FCC 96-325 at ¶872. The FCC further ruled that "Exchange access services are not subject to the resale requirements of section 251(c)(4)." Id. at ¶873. The FCC concluded that section 251(c)(4) " . . . does not require incumbent LECs to make services available for resale at wholesale rates to parties who are not "telecommunications carriers" or who are purchasing service for their own use." Id. at ¶875.

B. Decision

The BellSouth and WorldCom witnesses agree that BellSouth is required by both the Act and FCC orders to offer a resale discount on all telecommunications services that BellSouth offers on a retail basis to subscribers who are not telecommunications carriers. We note that exchange access services are generally not offered at retail to end user customers; however, we question BellSouth's assertion that the resale discount is not applicable to services offered in its access tariffs, with no distinction as to whether the service offering is an exchange access service. We find that the lack of such distinction could provide BellSouth with an incentive to classify a service offering as an exchange access service offering in order to avoid offering a resale discount. We also agree with WorldCom that BellSouth's application of this portion of Order FCC 96-325 is flawed. We are not convinced that a resale discount is applicable to a service offering based on the tariff the service offering is contained in. When asked why the price for BellSouth's SmartRing service offered in its federal access is lower then the price for virtually idential SmartRing services in its private line tariff and state access tariff as testified to by witness Price, BellSouth witness Cox replied that "I don't know all the specific prices. I do know the services are similar . . . I don't know that they are identical, so it could be true what [witness Price] is saying there." She further states that:

> I don't know the specifics of how we determine the cost in those tariffs that you mentioned. We would put a service in the access tariff to the extent it is predominantly designed to be provided for carriers, we would put one in the interstate tariff if it is an interstate type service. The intrastate services would go in the intrastate access tariff. And then those services that are really designed for end users would go in the private line tariff.

In determining how a service would be classified, we find that the test should be whether a service offering is an exchange access service offering due to its use, and not that a service offering becomes an exchange access service from the mere fact that the service offering is contained in the access tariffs. While the FCC ruled that the Act's provisions for a resale discount excludes exchange access services, the same FCC concluded that "The 1996 Act merely requires that any retail services offered to customers be made available for resale." FCC 96-325 at ¶877. We find that while it may be the exception, it appears there may be instances where BellSouth service offerings contained in its access tariffs are not strictly wholesale inputs, but are also retail service offerings to end users. See, FCC 96-325 at ¶874.

We disagree with BellSouth that the resale discount is only applicable to retail service offerings contained in BellSouth's General Subscriber Services and intrastate Private Line Tariffs. We agree with WorldCom that the FCC Order makes no distinction as to the applicability of the resale discount based on the tariff in which the service offering is contained; instead, the FCC based its ruling on the presence, or lack thereof, of avoidable "retail" costs. The Order provides that a resale discount applies to those services that have " . . . an appreciable level of avoided costs that could be used to generate a wholesale rate." Id. at ¶874. WorldCom concurs with BellSouth that the Bell Atlantic Order exempted the application of the resale discount to Bell Atlantic's wholesale ADSL offering, but argues that the resale discount is applicable on all ADSL service offerings that are made available to retail customers. We find that this reasoning is consistent with the provisions of the Bell Atlantic Order, which reads, in part, that:

> . . . DSL services designed for and sold to residential and business end-users are subject to the discounted resale obligations of section 251(c)(4), where the incumbent LEC offers DSL services as an input component to ISPs who combine the DSL service with their own Internet service, the discount resale obligations of section 251(c)(4) do not apply.

FCC 99-404 at ¶393. While we agree with WorldCom in principle, that where a service offering is offered to end-user customers, the resale discount is applicable and where the service offering is offered as an input component, no resale discount is applicable. However, we believe that when BellSouth <u>provides</u> a service offering to end users on a retail basis, that BellSouth is required to offer a retail discount on that service offering to requesting ALECs, consistent with Section 251(c)(4)(A) of the Act.

We find that both the Act and pertinent FCC rulings are very explicit regarding BellSouth's obligation as it pertains to the application of the resale discount to telecommunications service offerings made to end-user customers on a retail basis. We find that the two key elements employed by the FCC in applying the resale discount requirements are: 1) the presence of an appreciable level of avoided costs that could be used to generate a wholesale rate, and 2) the fact that such a service offering is available to end-user customers on a retail basis. <u>See</u>, FCC 96-325 at ¶¶874, 877. Neither of these key requirements is explicitly dependent on which tariff the service offering is contained. Further, neither of these key requirements is satisfied by the simple fact that a service offering is contained in either the federal or state access tariffs. Indeed, it is conceivable that a service offering could be located in the access tariffs and not necessarily be an exchange access service per the Act's definition of exchange access " . . . the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services." Under the definition set forth in Section 3(16) of the Act, all exchange access service offerings that are provisioned consistent with the Act's definition and the provisions of 47 C.F.R. §51.607 (b) are exempted from all resale discount requirements. Likewise, any service offering to end users on retail basis out of the access tariffs that does not comport with the Act or the Rule, is subject to the resale discount

requirements. Therefore, we find that BellSouth shall offer WorldCom a resale discount on all retail telecommunications services BellSouth provides to end-user customers, regardless of the tariff in which the service is contained.

VII. OPERATOR SERVICES OR DIRECTORY ASSISTANCE AS A UNE

The issue present is whether BellSouth is required to provide OS/DA as a UNE if it does not provide the requesting ALEC customized routing[3] or a compatible signaling protocol. Specifically, 47 C.F.R. §51.319(f) states that:

> an incumbent LEC shall provide nondiscriminatory access in accordance with §51.311 and section 251(c)(3) of the Act to operator services and directory assistance on an unbundled basis to any requesting telecommunications carrier for the provision of telecommunications service only where the incumbent LEC does not provide the requesting telecommunications carrier with customized routing or a compatible signaling protocol.

A. Analysis

According to BellSouth witness Milner, BellSouth provides various methods of customized routing consistent with the requirements of the FCC. These methods are a Line Class Code (LCC) and an Advanced Intelligent Network (AIN) solution. The LCC uses end office switch translations capabilities to effect customized routing. The AIN method uses the AIN "hub" concept and allows use of common trunk groups for the ALECs using customized routing in a given end office. In contrast, the LCC solution requires a separate trunk group for each ALEC that wants custom branding of its calls. Both the LCC and AIN methods have been tested and are available for ALECs in Florida.

According to WorldCom witness Messina, BellSouth must provide OS/DA as a UNE until it complies with the FCC's Third Report and

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[3] Customized routing allows calls from ALEC customers served by a BellSouth switch to reach the ALEC's choice of operator service or directory assistance service platforms instead of BellSouth's OS/DA platforms. (Milner TR 1187)

Order, CC Docket No. 96-98, In the Matter of Implementation of the Local Competition Provision of the Telecommunications Act of 1996, Order No. FCC 99-238, (November 5, 1999), (UNE Remand Order). Witness Messina expressed concerns with BellSouth's routing methods. Specifically, he notes that the LCC method of customized routing proposed by BellSouth would not provide effective selective routing to WorldCom because the LCC requires a separate trunk group for each office. This would require WorldCom to use an overlay network to process OS/DA traffic, which he believes would be inefficient and expensive. Furthermore, the witness does not believe BellSouth's AIN hubbing method provides effective selective routing because, ". . . each ALEC still would be required to lease dedicated transport from each AIN hub to the ALEC's chosen OS/DA platform. Depending on the number of hubs, this proposal still could be quite inefficient for the low levels of traffic involved."

Although critical of BellSouth's routing methods, on cross examination witness Messina agreed that BellSouth currently is offering ALECs customized routing. He states: "There are two methods that have been proposed. Each of these methods, as I understand it, would require new trunking to be established from any end office switch serving a WorldCom customer to a tandem or hub arrangement." In addition, he agreed that BellSouth has no obligation to unbundle OS/DA if it is offering customized routing.

B. Decision

We note that while WorldCom may not like BellSouth's customized routing methods, its own witness agreed that BellSouth is currently offering ALECs customized routing. In addition, WorldCom has not demonstrated that BellSouth's offering of customized routing is not in compliance with the FCC's Remand Order. While witness Messina appears to be troubled that the LCC method requires a separate trunk group for each office, he does not provide any testimony or evidence that shows the FCC's rules contemplate a particular trunking method for customized routing. Therefore, we shall not required BellSouth to provide operator services or directory assistance services as a UNE because it provides customized routing.

VIII. COMBINING UNBUNDLED NETWORK ELEMENTS

The issue before us is to determine whether BellSouth Telecommunications, Inc. ("BellSouth") is obligated to combine unbundled network elements that are ordinarily combined in its network for WorldCom upon WorldCom's request. The dispute centers around the parties' conflicting interpretations of the ILEC's obligation under FCC Rule 47 C.F.R. §51.315(b). The rule states:

> Except upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines.

47 C.F.R. §51.315(b).

A. Analysis

WorldCom contends that FCC Rule 47 C.F.R. §51.315(b) requires BellSouth to provide combinations of elements where it "currently combines" such elements in its own provision of services, regardless of whether those elements are combined today to serve the particular customer that WorldCom wishes to serve. Accordingly, WorldCom proposes the following language:

> At MCIm's request, BellSouth shall provide Typical Combinations of Network Elements to MCIm. Typical Combinations are those that are ordinarily combined within the BellSouth network, in the manner which they are typically combined. Thus, MCIm may order Typical Combinations of Network Elements, even if the particular Network Elements being ordered are not actually physically connected at the time the order is placed.

BellSouth argues that it is neither sound public policy nor a federally mandated obligation of BellSouth to combine unbundled network elements for requesting carriers. BellSouth asserts that FCC Rule 47 C.F.R. §51.315(b) only requires BellSouth to make available unbundled network elements in combination where such elements are in fact already combined and physically connected at the time the order is placed. In other words, at the time the requesting carrier places an order for a particular customer, there is no work that either BellSouth or the requesting carrier has to

do to combine the elements; they are already in a combined form and a combined state. BellSouth witness Cox notes that requesting carriers such as WorldCom are entitled to obtain such pre-existing combinations "at unbundled network element prices." To further justify BellSouth's interpretation of FCC Rule 47 C.F.R. §51.315(b), Witness Cox adds that, indeed, if the elements are not already combined, there is nothing for the incumbent to "separate."

WorldCom claims that the Supreme Court's decision to reinstate Rule 315(b) and the FCC's UNE Remand Order supports its position that BellSouth should be directed to perform, upon request, the functions necessary to combine unbundled network elements that are ordinarily combined in BellSouth's network. WorldCom witness Price states that in reinstating Rule 315(b), the Supreme Court agreed that the FCC reasonably concluded that the Act does not require an ALEC to own any facilities in conjunction with UNEs leased from an ILEC. Instead, witness Price contends that according to the Supreme Court ALECs are entitled to "an entire preassembled network." In addition, witness Price further states that, according to the FCC, an incumbent LEC must provision network element combinations where such elements are "ordinarily combined within [the] network, in which they are typically combined." He concludes that Rule 315(b), by its own terms, applies to elements that the incumbent "currently combines," not merely elements that are "currently combined." Accordingly, witness Price states:

> . . .ALECs can purchase UNEs in combination, such as a loop and a port, even when the network elements supporting the underlying service are not physically connected at the time the service is ordered, because those UNEs are typically combined. ALECs can then obtain UNE combinations at UNE prices.

BellSouth counters that, in its July 18, 2000 ruling, the Eighth Circuit stated that an ILEC is not obligated to combine UNEs, and it reaffirmed that the FCC's Rules 315(c)-(f) remain vacated. Hence, BellSouth is not required to combine UNEs that are "ordinarily" or "typically" combined in its network. According to BellSouth witness Varner, the terms "typically" and "ordinarily combined" include network elements that can be, and often are, combined in BellSouth's network but are not, in fact, already combined in the network. He further clarifies that elements can be

"typically combined" or "ordinarily combined", but not "in fact combined." Witness Varner reiterates that BellSouth's only obligation under Rule 315(b) is to make available elements in combination where such elements are in fact combined.

In criticism of BellSouth's position, WorldCom states that BellSouth's argument creates an absurd dichotomy between existing customers and new customers. Witness Price states that:

> . . .[I]f the recall end user were to come in and request service from BellSouth, . . .BellSouth would in short order make the necessary connections between those elements [loop and port] to accomplish the service requested by the end user. Whereas it would refuse to do that, as I understand it based on BellSouth's position, if the same request were made by WorldCom on behalf of that same end user. Whereas if that end user requested service from BellSouth and BellSouth provided the service requested, then presumably, you know, a day or two or a month later if WorldCom were to request service to that same end user, then somehow that would be okay, whereas it would not have been okay previously.

WorldCom witness Price states it is bad public policy to draw a line between a new customer who could get service immediately if BellSouth were to provide that service, but somehow if WorldCom wanted to serve that very same new customer, BellSouth would refuse to combine the elements for WorldCom at TELRIC prices simply because the line and port had not been hooked up previously. He adds, not only is this practice discriminatory, it is not conducive to opening up the market for competition, specifically residential competition.

BellSouth witness Cox responds that WorldCom could provide a new customer the same service as BellSouth. For example, WorldCom could purchase the loop and port separately, and BellSouth would combine them under a separate negotiation. She explains that, although it is not obligated by the 1996 Act, BellSouth is willing to negotiate a voluntary commercial agreement with WorldCom to combine certain UNEs on behalf of WorldCom, but not at TELRIC prices. BellSouth witness Varner emphasizes that this voluntary agreement is not an obligation under the Act and therefore will not

be included in the interconnection agreement to avoid confusion. He explains that an interconnection agreement incorporates BellSouth's responsibilities under Section 251 of the Act and is subject to being adopted by others. He further explains that to the extent BellSouth incorporated into the agreement provisions beyond its obligations, yet were agreed upon with a particular carrier for whatever reason, there might be some confusion as to whether or not the provisions were available to other carriers.

B. Decision

As stated earlier, the issue before us is to determine whether FCC Rule 315(b) requires BellSouth to perform, upon request, the functions necessary to combine unbundled network elements that are ordinarily combined in its network for WorldCom. WorldCom believes that the only reasonable interpretation of the "currently combines" requirement is that BellSouth is obligated to provide the types of combinations that ordinarily exist in its network regardless of whether those elements are combined today to serve the particular customer that WorldCom wishes to serve. WorldCom witness Price adds that any other limited interpretation by us of FCC Rule 315(b) would impede competition and encourage BellSouth to separate previously combined elements. BellSouth maintains that Rule 315(b) makes it clear that BellSouth has no obligation to combine UNEs that it typically or ordinarily combines in its network for ALECs such as WorldCom.

We believe that the Eighth Circuit Court has made clear the correct meaning of FCC Rule 315(b). In its July 18, 2000 ruling, the Eighth Circuit Court reaffirmed its decision to vacate FCC Rules 47 C.F.R. §51.315(c)-(f), which addressed who shall be required to do the combining and required ILECS to perform the functions necessary to combine unbundled network elements in any technically feasible manner. Iowa Utils. Bd. v. FCC, 219 F.3d 744 at 758-759. The Court stated:

> Unlike 51.315(b), subsections (c)-(f) pertain to the combination of network elements. Section 251(c)(3) specifically addresses the combination of network elements. It states, in part, "An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting

> telecommunication carriers to combine such elements in order to provide such telecommunication service." Here, Congress has directly spoken on the issue of who shall combine previously uncombined network elements. It is the requesting carriers who shall "combine such elements." It is not the duty of the ILECs to "perform the functions necessary to combine unbundled network elements in any manner" as required by the FCC's rule.

Iowa Utils. Bd. at 759. Indeed, the Eighth Circuit Court's ruling supersedes the FCC's interpretation of its Rule 315(b), which is the interpretation WorldCom cites as support for its position. However, WorldCom failed to mention that, in that very same Order, FCC 99-238, the UNE Remand Order, the FCC declined to defend what it meant by its Rule 315(b), opting to wait on the Eighth Circuit Court decision. Additionally, in AT&T Corp. v. Iowa Utils. Bd., 525 U.S. 366 (1999), the Supreme Court agreed that FCC Rule 315(b) is a reasonable interpretation of Section 251(c)(3), but provided no guidance on how "currently combines" should be interpreted, thus leaving the decision in the hands of the Eighth Circuit Court.

With regard to WorldCom witness Price's statement that a limited definition of "currently combines" will only impede our objectives of opening up the market for residential competition, we note that the FCC has addressed this concern. In its Supplemental Order Clarification, CC Docket No. 96-98, In the Matter of Implementation of Local Competition Provisions in the Telecommunications Act of 1996, FCC Order 00-183 (June 2, 2000), (Supplemental Order Clarification), the FCC has extended and clarified the temporary constraint adopted in its Supplemental Order, CC Docket No. 96-98, In the Matter of Implementation of Local Competition Provisions in the Telecommunications Act of 1996, FCC Order 99-370, (November 24, 1999), (Supplemental Order) which allows IXCs to convert special access services to combinations of unbundled loops and transport network elements if, and only if, they are providing a significant amount of local exchange service to a particular customer. In FCC Order No. 00-183, the FCC found that a requesting telecommunications carrier is providing a "significant amount of local exchange service" if at least one of the following criteria is met:

> (1) . . . the requesting carrier certifies that it is the exclusive provider of an end user's local exchange service. . . .
>
> (2) The requesting carrier certifies that it provides local exchange and exchange access service to the end user customer's premises and handles at least one third of the end user customer's local traffic measured as a percent of total end user customer local dialtone lines; and for DS1 circuits and above, at least 50 percent of the activated channels on the loop portion of the loop-transport combination have at least 5 percent local voice traffic individually, and the entire loop facility has at least 10 percent local voice traffic. . . .
>
> (3) The requesting carrier certifies that at least 50 percent of the activated channels on a circuit are used to provide originating and terminating local dialtone service and at least 50 percent of the traffic on each of these local dialtone channels is local voice traffic, and that the entire loop facility has at least 33 percent local voice traffic. . . .

FCC 00-183 at ¶22. The FCC clarified that the three circumstances above represent a safe harbor for determining the minimum amount of local exchange service that a requesting carrier must provide in order for it to be deemed "significant." Id. at ¶23. The FCC further clarified that in the event that a carrier is providing a significant amount of local exchange service, but does not qualify under any of the three options above, that requesting carrier may petition the Commission for a waiver of the safe harbor requirements. Id. The FCC further stated that ILECs must allow requesting carriers to self-certify that they are providing a significant amount of local exchange service over combinations of unbundled network elements. FCC 00-183 at ¶29. Subsequently, the ILECs can conduct limited audits through an independent third party to verify the carrier's compliance with the significant local usage requirements. See, FCC 00-183 at ¶29.

Based on the foregoing, we find that BellSouth is not required to combine unbundled network elements that are ordinarily combined in its network for ALECs at TELRIC rates. However, we note that BellSouth is willing to negotiate with WorldCom, under a separate commercial agreement, rates to perform the functions necessary to combine unbundled network elements that are not, in fact, already combined and currently existing within BellSouth's network. Finally, a carrier may convert special access services to combinations of unbundled loops and transport network elements if the carrier is providing a significant amount of local exchange service as defined in Supplemental Order Clarification, FCC 00-183.

IX. UNE SPECIFICATIONS

This issue concerns the selection of a particular set of UNE specifications to be included for the purposes of the parties' interconnection agreement. The core matter under consideration in this issue is to establish a set of UNE specifications for the parties to consult which can accommodate the industry-standard or non-industry standard specifications, depending upon the requested UNE by WorldCom.

A. Analysis

BellSouth witness Milner states that while industry standards provide useful guidance for the provision and maintenance of UNEs, industry standards do not exist for every UNE. He states that:

> [T]he standards bodies have not yet provided standards for unbundled loops. Despite the absence of such industry standards, BellSouth still is required to make certain unbundled loops available and offer them to all ALECs.

The witness further states that BellSouth has developed proprietary specifications for UNEs where no such industry standard previously existed, and that these specifications should be incorporated into the parties' interconnection agreement. Witness Milner contends that WorldCom wants BellSouth to commit to an as-yet undefined set of standards for unbundled loops, which BellSouth is unwilling to do.

BellSouth supports the proprietary UNE specifications found in its Technical Requirement 73600 document and believes these should be included for the purposes of this interconnection agreement. The witness states that the Technical Requirement 73600 document is available to WorldCom and all other ALECs via BellSouth's internet site. Witness Milner concludes that if WorldCom seeks a certain specification for an unbundled loop or any other UNE that is not found in the Technical Requirement 73600 document, they may request the specification and bear the cost of developing it.

WorldCom's position, as stated by witness Messina, is that national industry standard loop specifications should be included for the purposes of the parties' interconnection agreement. Witness Messina states that there is no need for BellSouth to introduce proprietary specifications, and that specifications should provide parameters that the parties can rely on when designing their networks. Witness Messina states that WorldCom opposes BellSouth's proprietary specifications and believes they should not be included because:

> BellSouth's proposed "specification" [Technical Requirement 73600] in fact includes many provisions that are contractual in nature, stating the terms and conditions on which BellSouth will offer the described services. The document goes much further than providing loop specifications . . . and would subject WorldCom to terms and conditions that are not found in the body of the interconnection agreement.

He contends that the inclusion of the BellSouth requirements would "impose burdensome restrictions on WorldCom and would inject inconsistencies that could well lead to contract disputes."

Witness Messina states that the "local loop" has been a part of the public switched telephone network since the early days of the telephone and that industry standard specifications for local loops are already in place. The witness affirms that the same specifications that apply to local loops when they are used by BellSouth as part of its network also apply when those same loops are unbundled for ALECs.

B. Decision

We agree in part with testimony from each witness, but believe that for the purposes of this interconnection agreement, UNE specifications should not include non-industry standard, BellSouth proprietary specifications.

We agree with BellSouth witness Milner's assertion that industry standards are a useful guide for the provision and maintenance of UNEs. Witnesses Messina and Milner for WorldCom and BellSouth, respectively, agree that an industry standard does not exist for "every UNE." We find, however, that WorldCom is not seeking, and has not at any time sought a specification for "every UNE," or for "those UNEs for which no industry standard exists." We find that witness Messina advocates a non-proprietary industry standard specification for WorldCom's unbundled loops. On the other hand, BellSouth witness Milner contends that its proprietary specifications for UNEs provide some description of its product where no such industry standard previously existed, "since the standards bodies have not yet provided standards." Although the witness stops short of saying that BellSouth's Technical Requirement 73600 document should be the appropriate standard, we conclude that to be BellSouth's position.

We, however, do not agree that BellSouth's proprietary Technical Requirement 73600 document should provide the applicable UNE specification standards for the purposes of this interconnection agreement. We agree with witness Messina's statement that the proprietary document "goes much further than providing loop specifications," since the Technical Requirement 73600 also includes certain terms and conditions not found elsewhere in the parties' interconnection agreement. We find that there is a possibility of conflicting terms and conditions if BellSouth's proprietary Technical Requirement 73600 becomes the benchmark for UNE standards. We conclude, therefore, that a non-proprietary industry standard is a more appropriate specification for UNEs than a proprietary one. Furthermore, a request for a UNE for which no industry standard exists is a matter which may prompt the parties to explore an alternative standard. The alternative standard may be the BellSouth-proprietary standard, or another one agreed to through negotiation.

Therefore, we find that for the purposes of this interconnection agreement, UNE specifications should not include non-industry standard, BellSouth proprietary specifications. If there is an industry standard for a UNE requested by WorldCom, the parties shall use the industry-standard specification. If there is no industry standard for a UNE requested by WorldCom, then the parties should agree through negotiation to use the BellSouth proprietary specification, or use an alternative specification, if any.

X. ANI-II DIGITS VIA FEATURE GROUP D

The issue before us is to determine whether BellSouth should be required to transmit the ANI-II digits to WorldCom via Feature Group D signaling from the point of origination when WorldCom acquires the UNE-platform. As discussed previously, FCC rule 51.319(f) requires BellSouth to unbundle operator services and directory assistance (OS/DA) where BellSouth does not provide WorldCom with customized routing or a compatible signaling protocol. BellSouth asserts that because it provides customized routing in accordance with FCC rules, it is not required to provide unbundled OS/DA.

A. Analysis

WorldCom witness Messina explains that WorldCom's operator services and directory assistance platform require Automatic Number Identification in conjunction with Feature Group D (FGD) or "Equal Access" signaling. However, BellSouth end offices use Feature Group C (FGC) or modified operator signaling (MOS). Witness Messina asserts that a protocol conversion from the point of origin is necessary for WorldCom to handle the call.

We note that Automatic Number Identification (ANI) is a set of digits that are identified by the switch of the calling party. The digits are used in the billing process to establish the calling party and to time stamp the call as to when it was placed, answered, and disconnected.

BellSouth witness Milner asserts that when WorldCom acquires the UNE-Platform, BellSouth will provide customized routing. BellSouth offers customized routing via its Advanced Intelligent

Network (AIN) where the database query is done by a Nortel DMS 100 hub. The automatic number identification digits are not passed to the AIN hub switch from the end office because it uses FGC signaling. BellSouth uses this method for two reasons:

> 1. The Nortel DMS 10 and Stromberg Carlson DCO (two end office switch types BellSouth uses in its network) do not have the capability of Offhook Delay Triggers necessary to make the AIN customized routing method work.
>
> 2. The Offhook Delay Trigger would cause queries on calls that are not included in the customized routing offering thereby creating an unnecessary load on BellSouth's database.

According to BellSouth, technical limitations of the switches inhibit BellSouth from converting FGC to FGD from the caller's point of origination.

BellSouth explains that there are several ways to provide FGD signaling to WorldCom:

> For BellSouth end office switches subtending a Nortel DMS Access Tandem, the end office switch will prefix a pseudo code in front of the dialed digits to instruct the Nortel DMS Access Tandem switch which trunk group to select. The Nortel DMS Access Tandem will then convert the signaling to Equal Access Signaling and route the appropriate MCI Feature Group D trunk group.
>
> For all other BellSouth end office switches (that is, those subtending an Access Tandem other than a Nortel Access Tandem), BellSouth will designate one or more Nortel DMS switches in the LATA as the Operator Services office(s) for MCIW, and the end office switch will prefix the pseudo code as described previously.
>
> As an alternative to the second method described immediately above, the end office switch will add the pseudo code, send the call to its normal Access Tandem (if that tandem is a Nortel tandem), then the Access Tandem will forward the call to a designated Nortel DMS

> switch for the conversion to Equal Access Signaling and routing to the appropriate MCIW FGD trunk group.

BellSouth witness Milner asserts that the pseudo method passes ANI-II intact. However, witness Milner clarifies that BellSouth's Lucent 5ESS end offices require direct trunking to the ALEC's OS/DA platform to pass ANI-II digits with FGD signaling.

B. Decision

It appears to us that BellSouth is willing to provide customized routing with the signaling that WorldCom requires for its OS/DA platform. BellSouth witness Milner testifies:

> BellSouth is willing to incorporate these methods in MCIW's interconnection agreement that will allow MCIW to use customized routing functionality with Feature Group D signaling including ANI-II digits.

We note WorldCom witness Messina's testimony that preliminary testing by WorldCom indicates positive results. However, WorldCom has not validated BellSouth's routing solutions in a real traffic environment. BellSouth witness Milner contends that BellSouth has completed testing in a real traffic environment, although he admits, not in a commercial application. Witness Milner asserts that BellSouth does not have a commercial customer that has selected one of these methods of routing.

We observe that both parties' briefs seem to indicate that BellSouth should transmit the ANI-II digits to WorldCom via Feature Group D signaling with customized routing. We note that WorldCom witness Messina believes BellSouth should provide the agreed upon routing and signaling from the end office. However, we find that WorldCom provided no evidence to support a requirement that BellSouth must perform routing and signaling conversion at the end office level. Moreover, we are persuaded that there may be technical limitations at certain end offices which preclude signaling conversion at the end office.

Therefore, we find that where a WorldCom customer served via the UNE-platform makes a directory assistance or operator call, BellSouth shall be required to transmit the ANI-II digits to

WorldCom via Feature Group D signaling with customized routing. However, BellSouth shall not be required to convert Feature Group C to Feature Group D signaling at the point of origination.

XI. UNBUNDLED DEDICATED TRANSPORT TO SWITCHES OR WIRE CENTERS

The issue presented to us is whether BellSouth is required to provide all technically feasible unbundled dedicated transport between locations and equipment designated by WorldCom so long as the facilities are used to provide telecommunications services, including interoffice transmission facilities to network nodes connected to WorldCom switches and to the switches or wire centers of other requesting carriers. However, at the crux of this issue is the question whether a single UNE can be used to connect two locations between WorldCom and BellSouth facilities as designated by WorldCom.

A. Analysis

BellSouth witness Cox testifies that the FCC strictly requires BellSouth to unbundle dedicated transport in its existing network, and that the FCC has " . . ., specifically excluded transport between other carrier's locations." Witness Cox argues that BellSouth is neither required to offer nor to build dedicated transport facilities between locations on WorldCom's network and those of other carriers. Witness Cox asserts that BellSouth's position is supported by the provisions of the FCC in the Local Competition Order, FCC 96-325, which states that BellSouth is only required to " . . . provide unbundled access to dedicated transmission facilities between LEC central offices or between such offices and those of competing carriers."

BellSouth witness Cox contends that BellSouth is not required to construct facilities between locations where the ILEC has not deployed facilities for its use, and argues that this position is congruent with the provisions of the UNE Remand Order, FCC 99-238, that states:

> . . . the Commission limited an incumbent LEC's transport unbundling obligation to existing facilities, and did not require incumbent LECs to construct facilities to meet a

> requesting carrier's requirements where the incumbent LEC has not deployed transport facilities for its own use.

Witness Cox further testifies that for dedicated transport, BellSouth needs ". . . to be on one end; that we are not obligated to put dedicated transport in between two switches, for example, of two other carriers." Witness Cox asserts that BellSouth does not have a single UNE that can connect BellSouth's wire center and WorldCom's switch, and that BellSouth can only connect these two locations using two separate UNEs. Witness Cox testifies that BellSouth will utilize a local channel and an interoffice transport piece to connect the two locations.

WorldCom witness Price contends that BellSouth is obligated to provide WorldCom with dedicated interoffice transmission facilities to locations and equipment designated by WorldCom. Witness Price asserts that BellSouth's obligations cover network nodes connected by WorldCom wire centers and switches, and those of other requesting carriers. Witness Price argues that BellSouth is required to " . . ., permit a requesting carrier to connect unbundled interoffice transmission facilities to equipment designated by the requesting carrier." Witness Price further argues that BellSouth is obligated to unbundle its ubiquitous transport network; however, " . . . BellSouth is not required to build new transport facilities to meet specific requests by ALECs for point-to-point service, but it is required to provide unbundled service where it has facilities in place."

WorldCom witness Price testifies that WorldCom local loops ride SONET rings and could traverse several serving wire centers to get to a customer and the serving switch. He contends that WorldCom loops can be routed through many transport nodes within its network in an effort to connect a customer to the network. Witness Price argues that the SONET rings that connect the switching node to the transport nodes function in a similar way with BellSouth's common transport. He concludes that it is efficient for WorldCom to " . . . link transport nodes to BellSouth dedicated transport rather than making the link at the WorldCom switch." He further argues that WorldCom's request is consistent with the provisions of the UNE Remand Order which rejected the ILECs' claims " . . . that unbundled transport should not be made available because competitive alternatives are available, . . ."

Witness Price contends that the FCC's Local Competition Order provides that BellSouth must provide unbundled transport to locations such as an IXC's point of presence and concludes that this provision " . . . indicated that an ALEC can order unbundled transport to another carrier, an IXC."

B. Decision

In the Local Competition Order, FCC 96-325, the FCC addressed interoffice transmission facilities. In this ruling, the FCC found that:

> . . . incumbent LECs must provide unbundled access to dedicated transmission facilities between LEC central offices or between such offices and those of competing carriers. . . . We conclude that an incumbent LEC may not limit the facilities to which such interoffice facilities are connected, provided such interconnection is technically feasible, or the use of such facilities. . . ., this means that incumbent LECs must provide interoffice facilities between wire centers owned by incumbent LECs or requesting carriers, or between switches owned by incumbent LECs or requesting carriers. . . . We agree with the Texas Commission that a competitor should have the ability to use interoffice transmission facilities to connect loops directly to its switch.

FCC 96-325 at ¶440. The FCC clarified its ruling in the UNE Remand Order when it ruled that:

> . . . we reject Sprint's proposal to require incumbent LECs to provide unbundled access to SONET rings. . . . Although we conclude that an incumbent LEC's unbundling obligation extends throughout its ubiquitous transport network, including ring transport architectures, we do not require incumbent LECs to construct new transport facilities to meet specific competitive LEC point-to-point demand requirements for facilities that the incumbent LEC has not deployed for its own use.

FCC 99-238 at ¶324.

While we believe that BellSouth is obligated to provide unbundled dedicated transport facilities to points designated by WorldCom, we are not persuaded that this obligation extends to include access to other carriers' locations. We agree with WorldCom that BellSouth is required to provide unbundled service where facilities exist. We find that the law is unambiguous with respect to the construction of new facilities, and the parties agree that BellSouth is not required to build dedicated transport facilities in an effort to meet a carrier's specific point-to-point service. While the Local Competition Order, FCC 96-325, provides that BellSouth is obligated to provide unbundled access facilities between LEC central offices and those of competing carriers, this Order also requires BellSouth to provide unbundled transport to locations such as IXCs' points of presence. We are not convinced that this provision allows ALECs to request unbundled transport between other carriers' locations for interconnection purposes.

The record is unclear if BellSouth is required by the FCC to provide dedicated transport between two switches of two different carriers. While BellSouth does not explain why it is necessary for it to connect the two locations with a single UNE, WorldCom does not provide an explanation why it believes a single UNE should be used to connect the two locations. We find that for interconnection purposes, it appears reasonable that BellSouth must be on one end of an unbundled dedicated transport facility provision. However, we note that BellSouth insists that it is not possible to connect the two offices with a single UNE, and it also appears that WorldCom is agreeable to be provisioned unbundled dedicated transport service using two UNEs.

Based upon the foregoing reasons, we find that BellSouth is not required to provide WorldCom with unbundled dedicated transport between other carriers' locations, or between WorldCom switches. However, outside the provisions of this proceeding, the parties are not foreclosed from negotiating a dedicated transport configuration between WorldCom and other carrier's locations as they see fit.

XII. ROUTING OF OPERATOR SERVICES AND DIRECTORY ASSISTANCE TRAFFIC

The issue before us is to determine whether BellSouth should be required to route operator services and directory assistance (OS/DA) traffic over shared transport via BellSouth's tandem when

WorldCom acquires the UNE-Platform. The UNE-Platform allows WorldCom to purchase switch ports from BellSouth. BellSouth routes its own OS/DA calls directly from BellSouth's end offices to BellSouth's TOPS platform using modified operator signaling (MOS). However, WorldCom believes that BellSouth should be required to route WorldCom OS/DA traffic over shared transport to BellSouth's tandem.

A. Analysis

BellSouth witness Milner argues that BellSouth should not be required to route WorldCom OS/DA traffic "over shared transport via a BellSouth tandem or over dedicated trunks that overflow to shared transport." Witness Milner explains that BellSouth does not overflow its OS/DA traffic. Therefore, BellSouth should not be required to treat WorldCom traffic differently. However, witness Milner explains that BellSouth's AIN method (as described in Section X) allows WorldCom to use shared transport from the end office to the AIN "hub." Moreover, witness Milner asserts that the trunk group from the end offices to the AIN hub would be shared by all ALECs which chose the AIN method of customized routing. He further clarifies that trunks from the AIN hub to WorldCom's OS/DA platform are dedicated, because only WorldCom's traffic would traverse those trunks.

Witness Milner asserts that WorldCom could choose the Line Class Code method of customized routing which would allow traffic to flow through the tandem. He points out that the pseudo code method does allow WorldCom to "route its traffic as it desires including via BellSouth's tandem switches." He asserts:

> BellSouth is entitled to be paid for any unbundled tandem switching that it provides to MCIW for the carriage of MCIW's operator services or directory assistance traffic handled in such a manner.

Moreover, he testifies that "not every type of operator services traffic, such as busy line verification traffic, can be handled by a tandem switch."

WorldCom witness Messina contends that it is technically feasible for BellSouth to convert its OS/DA signaling protocol at

its end offices; thus, OS/DA could be sent over shared transport. He references the following FCC rule:

> The incumbent LEC shall provide all technically feasible transmission facilities, features, functions, and capabilities that the requesting telecommunications carrier could use to provide telecommunications services.

47 C.F.R. §51.319(d)(2)(B). Witness Messina argues that "BellSouth must provide Feature Group D signaling from the point of origination (that is, at the BellSouth end office providing the unbundled switching)."

Further, WorldCom witness Messina testifies:

> For WorldCom to provide its own operator services and directory assistance (OS/DA) service efficiently for its customers served by unbundled switching, WorldCom must be able to obtain OS/DA traffic over shared transport via a BellSouth tandem, and over dedicated trunks that can overflow to shared transport trunks as needed. Without shared transport, WorldCom would be required to lease dedicated trunk groups from every BellSouth end office serving its customers, which would be prohibitively expensive and grossly inefficient.

BellSouth witness Milner argues that converting OS/DA signaling protocol at the end offices is not technically feasible. Witness Milner explains that calls are converted by a "loop-around" process where the calls are sent from the tandem and looped back to the tandem. When the calls reach the tandem the second time, the conversion from MOS to FGD takes place. Witness Milner asserts that BellSouth's end offices do not connect outgoing and incoming trunks together. Therefore, WorldCom is requesting that BellSouth apply tandem switching capabilities to each of BellSouth's end offices. He believes that BellSouth is not required to modify its end offices in such a manner.

B. Decision

We note that the issue as framed does not specifically identify WorldCom's customers served via BellSouth's UNE-Platform;

however, WorldCom's customers are at issue. As discussed in previous sections of this Order, we find that BellSouth has met its customized routing obligations as outlined by the FCC. We observe that BellSouth is willing to incorporate its customized routing methods with compatible signaling protocol into the parties' interconnection agreement. Moreover, we note witness Messina's testimony that he is unaware of any FCC requirement that obligates BellSouth to provide more than customized routing or a compatible signaling protocol. We further note that WorldCom witness Messina agrees that BellSouth is only obligated to offer unbundled switch ports with FGC signaling.

Based on the evidence, we agree with WorldCom witness Messina that it may be technically feasible for BellSouth to convert its OS/DA signaling protocol at its end offices. However, we conclude that it may be unreasonable to require BellSouth to modify its internal network to support WorldCom's network architecture. Further, we note that witness Milner identifies at least one ALEC which uses the MOS protocol used by BellSouth. Also, we believe that requiring an end office protocol modification could be economically burdensome to BellSouth, and may have a negative impact on BellSouth's relationship with other carriers using FGC signaling. Moreover, WorldCom witness Messina admits that BellSouth is only obligated to offer unbundled switch ports with FGC signaling. Therefore, we are not persuaded that BellSouth should be required to convert its signaling protocol at the end office level.

We agree with WorldCom witness Messina that requiring WorldCom to "lease dedicated trunks groups from every BellSouth end office serving it customers," is expensive, inefficient, and cost prohibitive to a new entrant. However, we note witness Milner's testimony that WorldCom could use shared transport to the extent the traffic is on BellSouth's side of the network. The AIN method allows end office traffic from all ALECs to traverse one trunk group to the AIN hub switch. We also note that the pseudo code method, as described in Section X of this Order, allows sharing of transport facilities for portions of the call. Witness Milner explains that dedicated trunking is required from BellSouth's end offices to the tandem; however, WorldCom could combine its other traffic types with the OS/DA traffic bound for routing through the tandem. Moreover, he explains that traffic from end offices could

be aggregated with traffic from other end offices at the tandem. We note BellSouth witness Milner's testimony that BellSouth's concern is not whether it is technically feasible to handle WorldCom's OS/DA traffic via tandem switching. BellSouth merely believes that they should be compensated for doing so. We are persuaded that BellSouth should be compensated for tandem switching where WorldCom requests routing through the tandem. Accordingly, we find that BellSouth shall be required to make available both the Line Class Code and AIN routing methods as described in Section X, using shared transport where technically feasible.

Although BellSouth shall be required to offer all of the customized routing methods described above, WorldCom would be required to order customized routing. In the absence of WorldCom selecting a customized routing method, WorldCom's OS/DA calls should terminate in the same manner as BellSouth's OS/DA calls at the TOPS platform.

Therefore, we find that where WorldCom acquires unbundled switching from BellSouth, BellSouth shall only be required to route OS/DA calls to BellSouth's TOPS platform. However, we also find that BellSouth shall be required to route operator services and directory assistance traffic to WorldCom's operator services and directory assistance platforms via Feature Group D using customized routing at WorldCom's request.

XIII. TERMS ADDRESSING LINE SHARING

The issue before us is to determine whether the new WorldCom/BellSouth Interconnection Agreement should contain WorldCom's proposed line sharing terms, including line sharing in the UNE-P and unbundled loop configurations. Both parties acknowledge that there is no dispute regarding whether line sharing terms should be included in the new Interconnection Agreement; instead, the dispute centers around what those line sharing terms should be.

A. Analysis

WorldCom witness Price states that we should adopt the line sharing and loop qualification language proposed by WorldCom. He asserts that this language is based upon BellSouth's agreement with

COVAD with certain other terms and conditions, and is consistent with the FCC's regulations. BellSouth witness Cox states that BellSouth offers line sharing to ALECs throughout its nine-state region, and its proposed language is the result of numerous meetings between BellSouth and various ALECs. She states that "BellSouth has entered into line sharing agreements with other ALECs and has made the same rates, terms and conditions of those agreements available to [WorldCom]."

BellSouth witness Cox asserts that BellSouth is willing to incorporate line sharing terms into the new WorldCom Interconnection Agreement, but those terms should be consistent with the FCC's rules. Witness Cox's contention is that under the FCC's rules, BellSouth has no obligation to offer line sharing over the UNE-P, loop/port combinations. Witness Cox refers to the FCC's The Third Report and Order and Fourth Report and Order in CC Docket Nos. 98-147 and 96-98, In the Matters of Deployment of Wireline Service Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Order No. FCC 99-355, (December 9, 1999), (Line Sharing Order) which states that "the provision of xDSL-based service by a competitive LEC and voiceband service by an incumbent LEC on the same loop is frequently called 'line sharing.'" FCC 99-355 at ¶4.

Witness Cox states that BellSouth is obligated to provide line sharing to ALECs only where BellSouth is providing the voice service. She contends that when an ALEC, such as WorldCom, purchases the UNE-P, the ALEC becomes the voice service provider. Witness Cox asserts that in this situation, BellSouth is not obligated to provide the equipment necessary to provide line sharing capability. She explains:

> The FCC's Line Sharing Order specifically concluded in paragraph 72 "that incumbent LECs must make available to competitive carriers only the high frequency portion of the loop network element on loops on which the incumbent LEC is also providing analog voice service." (emphasis added). In that same paragraph, the FCC stated that "incumbent carriers are not required to provide line sharing to requesting carriers that are purchasing a combination of network elements known as the platform.

In that circumstance, the incumbent no longer is the voice provider to the customer." The platform referred to is the loop/port combination.

Witness Cox states that the FCC reiterated its position in the SBC-Texas Section 271 Application Order, in CC Docket No. 00-65 dated June 30, 2000, in which it stated that "the obligation of an incumbent LEC to make the high frequency portion of the loop separately available is limited to those instances in which the incumbent LEC is providing, and continues to provide, voice service on the particular loop to which the requesting carrier seeks access." Witness Cox states that when an ALEC purchases a loop/port combination, the ALEC becomes the voice service provider, not BellSouth. She contends that WorldCom's position is clearly inconsistent with FCC orders.

WorldCom witness Price argues that under BellSouth's position, if WorldCom were to win the voice customer from BellSouth, WorldCom would have no knowledge that another ALEC was providing xDSL to WorldCom's new voice customer. He contends that BellSouth would cease providing line sharing, and the DSL service would be disconnected without warning to the data ALEC, the customer, or WorldCom. Witness Price argues that WorldCom would be blamed by the data ALEC and the customer for the loss of xDSL service. Witness Price asserts that BellSouth's position that a customer's DSL service will be disconnected if BellSouth loses the voice service is "fundamentally anti-competitive."

B. Decision

As mentioned above, the issue before us is to determine whether WorldCom's language regarding line sharing, including line sharing in the UNE-P and unbundled loop configurations, should be included in the new WorldCom/BellSouth Interconnection Agreement. BellSouth witness Cox contends that the FCC requires ILECs to provide line sharing to ALECs only over loops where the ILEC is providing the voice service. We agree. We believe that the FCC is clear in its Line Sharing Order. In particular, the FCC states that "incumbent carriers are not required to provide line sharing to requesting carriers that are purchasing a combination of network elements known as the platform. In that circumstance, the

incumbent no longer is the voice provider to the customer." FCC 99-355 at ¶72.

While we acknowledge WorldCom's concern regarding the status of the DSL service over a shared loop when WorldCom wins the voice service from BellSouth, we believe the FCC addressed this situation in its Line Sharing Order. The FCC states that "We note that in the event that the customer terminates its incumbent LEC provided voice service, for whatever reason, the competitive data LEC is required to purchase the full stand-alone loop network element if it wishes to continue providing xDSL service." FCC 99-355 at ¶72. BellSouth witness Cox states under cross examination that, in the event that WorldCom wins the voice service for a customer served by a data ALEC through a line sharing agreement, BellSouth would offer the data ALEC the first opportunity to purchase the entire loop. We believe this procedure is consistent with the above mentioned language from the FCC's Line Sharing Order.

Therefore, we find that WorldCom's terms addressing line sharing in the UNE-P and unbundled loop configurations shall not be included the new WorldCom/BellSouth Interconnection Agreement. Instead, we find that BellSouth's language regarding line sharing shall be included in the new interconnection agreement. We believe the FCC requires BellSouth to provide line sharing only over loops where BellSouth is the voice provider. If WorldCom purchases the UNE-P, WorldCom becomes the voice provider over that loop/port combination. Therefore, BellSouth is no longer required to provide line sharing over that loop/port combination.

XIV. SONET RINGS

The issue present to us is does WorldCom's right to dedicated transport as an unbundled network element include SONET rings. However, this issue is not truly about whether WorldCom's right to obtain dedicated transport as an unbundled network element includes SONET rings; instead, at the heart of this issue is the question of who pays for the electronics necessary to provide the SONET ring architecture as unbundled dedicated transport.

A. Analysis

BellSouth witness Cox testifies that BellSouth is obligated to provide WorldCom with dedicated transport using SONET ring architecture where such architecture currently exists. She argues that WorldCom's proposed language seeks to obligate BellSouth to construct new facilities in order to provide WorldCom with unbundled dedicated transport where BellSouth currently does not have facilities, and also contends that ". . . MCI wants BellSouth to 'add the necessary electronics to existing fiber transport facilities.'" The BellSouth witness further testifies that

> Adding such necessary electronics involves major construction at both ends of the fiber facility. This work constitutes construction of new facilities which BellSouth is not obligated to do.

Witness Cox asserts that BellSouth's position is supported by the FCC's UNE Remand Order, where Sprint's proposal to require incumbent LECs to provide unbundled access to SONET rings was rejected. Witness Cox contends that the FCC's decision was based on the fact that unbundling SONET rings necessarily involves ". . . constructing facilities to meet a requesting carrier's specific requirements . . ."

BellSouth witness Cox testifies that BellSouth is not obligated to provide the entire SONET ring architecture on an unbundled basis, and states that " . . . to the extent transport is going over that ring, we are willing to do that, and you would get the functionality of the ring." Witness Cox further testifies that BellSouth will only provide WorldCom with transport on the ring between two points, since there are conceivably more than two points on the ring. She further testifies that WorldCom will " . . . get the redundancy and all of that of the ring. But that doesn't also give you all the other points on the ring necessarily."

WorldCom witness Price testifies that WorldCom only requires BellSouth to " . . . provide unbundled transport as a SONET ring wherever BellSouth has existing fiber facilities in place for a SONET ring." Witness Price further testifies that "WorldCom has not proposed that BellSouth construct new facilities where

facilities do not exist," and argues that where SONET capability does not exist that WorldCom should be advised that

> . . . the SONET capability does not exist and then for WorldCom to perhaps get a bid . . . for what it would take for that fiber to be enhanced . . . from the point-to-point use that it is currently in to a SONET capability.

Witness Price concurs with BellSouth that the FCC ruled that LECs are not obligated to construct new transport facilities to meet specific competitive LEC point-to-point demand for facilities where such facilities do not exist. However, witness Price argues that the FCC also ruled that ". . . an incumbent LEC's unbundling obligation extends through its ubiquitous transport network, including ring transport architectures . . ." and concludes that BellSouth is obligated to provide unbundled transport such as a SONET ring architecture where such facilities exist.

WorldCom witness Price disagrees with BellSouth's assertion that WorldCom's proposed language requires BellSouth to construct new fiber facilities, and testifies that the proposed language only calls for the addition of " . . . the necessary electronics to existing fiber transport facilities to provide unbundled transport in a SONET ring architecture." Witness Price argues that BellSouth's interpretation of the pertinent parts of the UNE Remand Order is flawed and further argues that nothing in the UNE Remand Order states that:

> . . . ILECs are not required to provide access to existing SONET rings. Rather, the FCC rejected a particular proposal by Sprint, which apparently would have required ILECs to build SONET rings for ALECs.

WorldCom witness Price asserts that SONET functionality provides a carrier a number of features that are absent from a point-to-point dedicated transport facility, and argues that BellSouth should not be permitted to " . . . discriminate by affording itself such functionalities while preventing WorldCom from using them, even though the companies are using the same facilities."

B. Decision

In its UNE Remand Order, the FCC found that:

> Notwithstanding the fact that we require incumbents unbundle high-capacity transmission facilities, we reject Sprint's proposal to require incumbent LECs to provide unbundled access to SONET rings. In the *Local Competition First Report and Order*, the Commission limited an incumbent LEC's transport unbundling obligation to existing facilities, and did not require incumbent LECs to construct facilities to meet a requesting carrier's requirements where the incumbent LEC has not deployed transport facilities for its own use. Although we conclude that an incumbent LEC's unbundling obligation extends throughout its ubiquitous transport network, including ring transport architectures, we do not require incumbent LECs to construct new transport facilities to meet specific competitive LEC point-to-point demand requirements for facilities that the incumbent LEC has not deployed for its own use.

FCC 99-238 at ¶324.

The FCC's UNE Remand Order provides that BellSouth is required to provide dedicated transport provisioned on existing SONET rings on an unbundled basis. We note that the confusion about new facilities construction has been clarified, as WorldCom has provided that where such facilities do not exist, WorldCom will put in a bid for this service. We note that the FCC in the UNE Remand Order rejected Sprint's proposal to have the ILECs provide unbundled access to SONET rings. The record supports BellSouth's argument that the process of unbundling SONET ring architectures necessarily requires the construction of new facilities at the carrier's request. We note that the electronics necessary to unbundle the SONET ring architecture enhance the fiber network and give the SONET rings their capability. We agree with BellSouth that the SONET ring architecture provides redundancy, and that there are conceivably more than two points on the ring architecture where a carrier can connect for the provision of transport transmission. We note BellSouth's offer that " . . . to the extent transport is going over the ring, we are willing to do that, and

you would get the functionality of the ring." Accordingly, we find that BellSouth is required to provide unbundled access to dedicated transport using SONET rings only where such SONET rings currently exist.

XV. CALLING NAME DATABASE

The issue presented is whether BellSouth should provide the calling name database via electronic download, magnetic tape, or via similar convenient media. The CNAM database contains subscriber information (including name and telephone number) used to show the customer name of an incoming call on a display attached to the telephone. WorldCom witness Price testified, "the calling name database is needed in order to provide a number of services to WorldCom's customers, including Caller ID with name service."

A. Analysis

WorldCom has proposed language to the interconnection agreement requiring BellSouth to provide an electronic download of its CNAM database to WorldCom. BellSouth witness Cox testified that the incumbent is required by FCC rules to provide access to the data in its CNAM database, which it currently provides, but has no obligation to give the database to competitors.

BellSouth witness Cox maintains the incumbent currently meets its obligations under the FCC's UNE Remand Order by providing access to its calling name database on a per inquiry basis. FCC 99-238 at ¶402. FCC's UNE Remand Order states:

> We find, that as a general matter, requesting carriers' ability to provide the services they seek to offer is impaired without unbundled access to the incumbent LECs' call-related databases. Thus, we require incumbent LECs, upon request, to provide nondiscriminatory access to their call-related databases on an unbundled basis, for the purpose of switch query and database response through the SS7 network. We conclude that requesting carriers' ability to provide the services they seek to offer is impaired without unbundled access to the incumbent LECs' AIN platform and architecture. Thus, we find that incumbent LECs, upon request, must provide

> nondiscriminatory access to their AIN platform and architecture. We also conclude, however, that service software created in the AIN platform and architecture is proprietary and thus analyzed under the "necessary" standard of Section 251(d)(2)(A). Based on our "necessary" standard, we conclude that incumbent LECs are not required to unbundle the services created in the AIN platform and architecture that qualify for proprietary treatment.

FCC 99-238 at ¶402.

WorldCom witness Price contends unbundled access is insufficient:

> For WorldCom to provide CNAM information on a call, it must first dip into its database in search of the information. If the calling party is not a WorldCom customer, WorldCom must do a table look-up, based on the calling party's NPA-NXX, and determine the database that must be searched and then query that database. That is both time consuming, in that the call in progress must be held while this activity is going on, and costly because WorldCom is required to establish facilities that duplicate BellSouth's facilities in addition to the facilities and circuitry necessary for its own database access.

However, when asked if any analysis had been performed to quantify any delay resulting from the scenario he described, witness Price responded, "No, and I don't believe it is necessary."

In support for his view that BellSouth should provide WorldCom a download of the CNAM database, witness Price also cites the Executive Summary of the UNE Remand Order, FCC 99-238, which reads:

> Incumbent LECs must offer unbundled access to signaling links and signaling transfer points (STPs) in conjunction with unbundled switching, and on a stand-alone basis. The signaling network element includes, but is not limited to, signaling links and STPs. Incumbent LECs must also offer unbundled access to call-related

> databases, including, but not limited to, the Line Information database (LIDB), Toll Free Calling database, Number Portability database, Calling Name (CNAM) database, Operator Services/Directory Assistance databases, Advanced Intelligent Network (AIN) databases, and the AIN platform architecture. We do not require incumbent LECs to unbundle access to certain AIN software that qualify for proprietary treatment.

Witness Price also refers to 47 C.F.R. § 51.217(c)(3)(ii), Access to Directory Listings, in an effort to establish WorldCom's right to assume physical possession of BellSouth's CNAM database.

In his rebuttal testimony witness Price offers this quote of Rule 51.217(c)(3)(ii):

> A LEC shall provide directory listings to competing providers in readily accessible magnetic tape or electronic formats in a timely fashion upon request. A LEC also must permit competing providers to have access to and read the information in the LEC's directory assistance databases.

From this recitation of Rule 51.217(c)(3)(ii), witness Price reasons, "the same principle applies here. To provide reasonable and nondiscriminatory access to the CNAM database, BellSouth should give ALECs the option of using a download or accessing BellSouth's database."

B. Decision

We note that witness Price misquotes Rule 51.217(c)(3)(ii), which actually states that "A LEC that compiles directory listings shall share directory listings with competing providers in the manner specified by the competing provider, including readily accessible tape or electronic formats . . . ."

Regardless of which version of Rule 51.217(c)(3)(ii) WorldCom witness Price utilizes, he fails to distinguish between access to the CNAM database, which the FCC requires in FCC 99-238, and which BellSouth witness Cox testified it currently provides, and actual physical possession of the database, which WorldCom seeks in these

proceedings. Witness Price apparently believes that it is reasonable to infer that because the FCC mandates physical sharing of directory assistance databases, we should extend the same reasoning to the CNAM database.

BellSouth witness Cox testifies that the UNE Remand Order, FCC 99-238, is the guiding authority on this issue, and asserts that in accordance with ¶ 402:

> Access to BellSouth's calling name database is made available to ALECs regardless of whether the ALEC has its end user names stored in BellSouth's calling name database or whether the ALEC elects to maintain its own database for its end users' names. In either situation, the ALEC would provision its switch to appropriately route calling name queries to BellSouth's calling name database in order to obtain real time access to the name of an originating caller whose name is stored in BellSouth's calling name database.

Witness Cox's testimony that competitors can achieve real time access to BellSouth's CNAM database is not disputed by WorldCom witness Price. Additionally, witness Price's testimony does not identify any competitive disparity that would result from WorldCom having access to the CNAM database as opposed to the actual physical possession that WorldCom seeks.

Witness Cox asserts that BellSouth currently meets its obligations pursuant to the UNE Remand Order, FCC 99-238, by offering competitors nondiscriminatory unbundled access to its CNAM database. WorldCom witness Price does not offer any evidence or testimony to challenge BellSouth's assertion, leaving us to conclude that access to BellSouth's CNAM database is not in dispute. WorldCom witness Price contends that in order for WorldCom to function on an equivalent basis with BellSouth, WorldCom must have a download of BellSouth's CNAM database to provide services such as Caller ID. However, witness Price offered no evidence or testimony to support his claim that mere access to the CNAM database is insufficient to allow WorldCom to achieve the same service efficiencies as BellSouth. WorldCom witness Price offers no ruling from any relevant jurisdictional authority to support WorldCom's demand for physical possession of the CNAM

database. Instead, witness Price relies on FCC decisions mandating the physical transfer of Directory Assistance databases and suggests that the same principle should apply to the CNAM database. We do not agree. The FCC in the UNE Remand Order, FCC 99-238, clearly delineates an incumbent's obligations for sharing Directory Assistance databases, which must be physically transferred on request, and CNAM databases, for which access must be provided only on an unbundled basis.

It appears from the record that BellSouth currently meets its obligation to provide unbundled access to its CNAM database. WorldCom has not demonstrated that it would be impaired if it did not have physical custody of BellSouth's CNAM database. Accordingly, we find that BellSouth is not required to provide WorldCom the calling name database via electric download, magnetic tape, or via similar convenient media.

XVI. UNISERVE TERMINATION POINT

The specific issue presented to us is whether calls from WorldCom customers to BellSouth customers served via Uniserve, Zipconnect, or any other similar service, should be terminated by BellSouth from the point of interconnection in the same manner as other local traffic, without a requirement for special trunking. However, the issue argued by the parties appears to be whether BellSouth may require WorldCom to terminate its traffic to BellSouth's special access customers, in particular Uniserve, at BellSouth's Traffic Operator Position Systems (TOPS) platform or whether WorldCom may terminate special access traffic at the point of interconnection (POI) for local traffic.

A. Analysis

WorldCom witness Price explains that Uniserve is a retail business service offered by BellSouth which allows customers to contact a service location by dialing a single telephone number anywhere in the LATA. The call is free to the caller with BellSouth receiving compensation by the business customer. BellSouth witness Milner offers Pizza Hut as an example. He explains that billboards around the city would display one telephone number. Upon a customer dialing the number, BellSouth would query the customer's telephone number and route the call to

the closest Pizza Hut. Witness Milner further explains that BellSouth provides this service to its customers by utilizing direct trunking from each end office to the TOPS platform. The TOPS platform then routes the call to the appropriate location. Witness Milner testifies:

> BellSouth's Uniserv® service utilizes operator services switching functionality, and as a result, MCIW must bring its own facilities, or lease facilities from BellSouth, to BellSouth's Traffic Operator Position System (TOPS) platform in order for MCIW customers to reach BellSouth's Uniserv® service customers. This is consistent with what BellSouth and other Telecommunications carriers are required to do.

Witness Milner believes that WorldCom has an obligation to terminate calls to the place where service is provided, i.e., the TOPS platform.

WorldCom witness Price believes that WorldCom should not be required to transport traffic over special trunk groups to access Uniserve customers. Witness Price asserts that Uniserve calls should be terminated in the same manner as other local and intraLATA calls. Moreover, he testifies:

> BellSouth will not accept calls over the existing FGD local interconnection trunks for termination to a BellSouth Uniserv customer. BellSouth designed Uniserve to work on its TOPS platform using FGC MOSS trunking. In those areas where BellSouth has deployed this service, its design has required WorldCom to install new trunk groups from our local switches to the BellSouth TOPS platform.

WorldCom witness Price asserts that BellSouth's proposed requirement imposes additional network complexities, additional cost, and reduces trunking efficiencies.

WorldCom witness Price contends that BellSouth's position is in violation of the Telecommunications Act and the FCC's <u>Local Competition Order</u> which allows WorldCom to interconnect at any technically feasible point it chooses. Witness Price believes that

"BellSouth's position is inconsistent with its duty to transport and terminate all traffic that is delivered to the interconnection point." However, BellSouth witness Milner argues:

> BellSouth has violated neither the Act nor the FCC's rules regarding network interconnection by requiring that MCI gain access to customers using BellSouth's Uniserv® service the same way as does BellSouth and other local service providers.

Moreover, witness Milner asserts that WorldCom wants to be treated in a manner differently than BellSouth treats itself or other carriers.

WorldCom witness Price contends that the decision of other carriers to interconnect with BellSouth's TOPS platform does not obligate WorldCom to do the same. Witness Price believes that the required trunking expense is unnecessary and provides no benefit to WorldCom. Moreover, witness Price contends that WorldCom should not be required to acquire redundant or separate trunking solely to accommodate a BellSouth retail service. WorldCom witness Price asserts that financial responsibility for traffic begins and ends at the POI.

BellSouth witness Milner contends that WorldCom could deliver calls to the POI; however, it remains WorldCom's responsibility to transport those calls to the TOPS platform. Witness Milner explains that BellSouth is willing to explore transporting calls from tandems or other points of interconnection to the TOPS platform if WorldCom is willing to compensate BellSouth for doing so.

B. Decision

We observe that when WorldCom serves its customers via unbundled switching acquired from BellSouth, there is no dispute. The dispute arises where WorldCom provides service in a facilities based environment. Also, it appears to us that Zipconnect is no longer at issue between the two carriers. BellSouth witness Milner asserts that Zipconnect calls are routed via BellSouth's advanced intelligent network (AIN) which does not require WorldCom to deliver traffic to a location other than the established POI.

Again, we find that the dispute is to determine whether BellSouth may require WorldCom to terminate its traffic to BellSouth's Uniserve customers at BellSouth's TOPS platform or whether WorldCom may terminate Uniserve traffic at the POI for local traffic. Moreover, there is a fundamental question of whether BellSouth may require WorldCom to terminate its traffic at a point other than WorldCom's designated POI.

The FCC defines interconnection as "the linking of two networks for the mutual exchange of traffic. This term does not include the transport and termination of traffic." 47 C.F.R. § 51.5. As discussed in a later section of this Order, we find that WorldCom as the requesting carrier has the right pursuant to the Act, the FCC's Local Competition Order and FCC regulations, to designate the network point (or points) of interconnection at any technically feasible point.

BellSouth witness Milner believes that regardless of the POI, WorldCom is financially responsible for transporting traffic "to the place where it is actually going to be handled." Witness Milner offers an analogy:

> Transit traffic is traffic from MCI, let's say, to AT&T. The local traffic, BellSouth offers to switch that traffic for a fee through our tandems. So that means that WorldCom doesn't have to interconnect with each and every ALEC in the local calling area. We are willing to do that. We get paid for it. We're happy to do so. So the analog is exactly the same. If WorldCom chooses not to avail itself of the transit traffic feature that we offer, then its duty is to get its traffic to those other places on its own.

We are not persuaded that requiring WorldCom to terminate traffic "where it will actually be handled" is analogous to transit traffic, because transit traffic involves the exchange of traffic between multiple carriers, not multiple POIs, within a particular carriers' network. Moreover, it appears that BellSouth's position is more similar to AT&T, the recipient of the transit traffic in the above analogy, requiring WorldCom to direct trunk only certain traffic to a special AT&T switch while allowing other traffic from WorldCom to continue transiting through BellSouth's tandem to

AT&T's POI. We find that requiring special trunking to support AT&T's special services to its customers would be inappropriate. Likewise, we find that requiring special trunking to support BellSouth's special services to its customers would be inappropriate. We are persuaded that WorldCom should not be required to deliver traffic to a location other than the POI. We note witness Milner's testimony that calls could be local, intraLATA toll, or interLATA toll. Therefore, we find that requiring WorldCom to route local or toll traffic to a location different than the established POI is contrary to the FCC Rule 51.321(a), which states:

> (a) Except as provided in paragraph (e) of this section, an incumbent LEC shall provide, on terms and conditions that are just, reasonable, and non-discriminatory in accordance with the requirements of this part, any technically feasible method of obtaining interconnection or access to unbundled network elements at a particular point upon a request by a telecommunications carrier.

47 C.F.R. § 51.321(a).

However, we agree with BellSouth witness Milner that BellSouth is not obligated to transport traffic from one local calling area to another at BellSouth's expense. We find that the delivery of traffic from one local calling area to an entirely different local calling area would change the jurisdiction of the traffic to intraLATA toll or switched access. We agree with BellSouth witness Milner that WorldCom should be required to establish a local POI in areas where WorldCom has NPA/NXX "homed." We find that WorldCom has not provided evidence of an industry approved routing system which would allow call termination in a different manner than current central office code assignment guidelines, which require a POI in the local exchange where NXXs are "homed." Therefore, we find that BellSouth only has an obligation to deliver and receive local traffic in the manner set forth by these industry guidelines. We are persuaded that BellSouth should be compensated for transporting local traffic from one local calling area to another where WorldCom designates a POI outside of the local calling area that NPA/NXXs are "homed."

Again, we agree with WorldCom witness Price that Uniserve calls should terminate in the same manner as other local, intraLATA toll, or interLATA toll calls. Moreover, we agree with WorldCom witness Price that BellSouth should not be able to mandate that WorldCom acquire special or separate trunking to access BellSouth's Uniserve customers. We note that WorldCom would have to configure its network to recognize telephone numbers of Uniserve customers and route the traffic over special trunking to the TOPS platform. We are persuaded that requiring WorldCom to establish special trunking to access BellSouth's Uniserve customers increases WorldCom's costs and decreases trunking efficiencies without any benefit to WorldCom. Moreover, we find it is BellSouth duty to transport traffic from the appropriate POI to BellSouth's switches, platforms, or end-users. Therefore, we find that traffic from WorldCom's network to BellSouth's customers served via Uniserve, Zipconnect, or any other similar services, shall be delivered to the local point of interconnection for local traffic or the access point of interconnection for access traffic without special trunking.

XVII. TWO-WAY TRUNKS

The issue before the Commission is to determine whether BellSouth is obligated to provide and use two-way trunks that carry each party's traffic upon the request of WorldCom. 47 C.F.R. §51.305(f) states that, "If technically feasible, an incumbent LEC shall provide two-way trunking upon request."

More precisely, in paragraph 219 of Local Competition Order, FCC 96-325, the FCC states:

> We conclude here, however, that where a carrier requesting interconnection pursuant to section 251(c)(2) does not carry a sufficient amount of traffic to justify separate one-way trunks, an incumbent LEC must accommodate two-way trunking upon request where technically feasible. Refusing to provide two-way trunking would raise costs for new entrants and create a barrier to entry. Thus, we conclude that if two-way trunking is technically feasible, it would not be just, reasonable, and nondiscriminatory for the incumbent LEC to refuse to provide it.

While both parties agree that BellSouth is obligated to provide two-way trunks upon WorldCom's request since it is technically feasible, the parties dispute whether BellSouth is obligated to use those two-way trunks.

BellSouth does not believe that FCC Rule 51.305(f) or paragraph 219 of the Local Competition Order, FCC 96-325, requires it to use two-way trunking solely based on WorldCom's request. Instead, BellSouth's interpretation of paragraph 219 supports the use of one-way trunks. BellSouth witness Cox states that, according to paragraph 219 of the FCC's Local Competition Order, the only instance where two-way trunks must be accommodated is when a carrier does not have sufficient volume to justify one-way trunks. She further states that in all other cases, BellSouth is permitted to utilize one-way trunks. Hence, BellSouth's position is that it will install two-way trunks that provide two-way trunking for WorldCom's traffic at WorldCom's request; however, BellSouth is not obligated to put its originating traffic over those trunks unless volumes are too low to justify one-way trunks.

WorldCom witness Olson counters that nothing in the FCC's regulations provides BellSouth with the right to use one-way trunking for its traffic if an ALEC such as WorldCom requests two-way trunking. He states that the correct interpretation of paragraph 219 of the Local Competition Order permits the ALEC, not BellSouth, to opt to use one-way trunks if the ALEC's traffic justifies one-way trunks. He further states that if the ALEC finds that its traffic does not warrant one-way trunks, it has the right to order two-way trunks and BellSouth is obligated by paragraph 219 of the Local Competition Order and FCC Rule 51.305(f) to provide them. Therefore, WorldCom's position is that paragraph 219 of the Local Competition Order, like FCC Rule 51.305(f), requires BellSouth to provide and use two-way trunks at WorldCom's request. Accordingly, WorldCom has proposed the following language:

> One-way and two-way trunks. The parties shall use either one-way or two-way trunking or a combination, as specified by WorldCom.

According to WorldCom witness Olson, the difference between one-way and two-way trunking is that in a one-way trunk traffic flows in one direction, and in a two-way trunk traffic flows in

both directions and can accommodate different types of traffic over different time periods. Consequently, he states that two-way trunking is generally more efficient than one-way trunking for traffic that flows in both directions, since with two-way trunking fewer trunks are needed to establish the interconnection than are needed when ILECs insist only on one-way trunking. Witness Olson further states that two-way trunking is also more efficient in that it minimizes the number of trunk ports needed for interconnection.

BellSouth witness Cox argues that two-way trunks are only more efficient than one-way trunks in certain circumstances. For example, she states two-way trunks are not always the most efficient due to busy hour characteristics and the balance of traffic. She explains:

> If traffic on the trunk group in both directions occurs in the same or similar busy hour, there will be few, if any, savings obtained by using two-way trunks versus one-way trunks. The trunk termination costs will still have to be incurred on the total number of trunks required to accommodate the total two-way traffic in the busy hour. In addition, if the traffic is predominantly flowing in one direction, there will be little or no savings in two-way trunks over one-way trunks.

In addition, BellSouth witness Varner explains that the administrative cost of handling two-way trunks is higher than it is with one-way trunks since there will be an increased degree of coordination between the parties necessary to operate those trunks and process the traffic through them. Therefore, he states that in order for two-way trunks to be more efficient, the savings that you realize in facilities has to be enough to offset the increased administrative cost.

WorldCom witness Olson contends that from a trunk termination, switch termination or facility arrangement standpoint, there is no difference in cost regarding one-way versus two-way trunking. He asserts that the only difference is that with one-way a port on both switches is being used that could work two ways instead of one, but the same equipment is used for both. He admits that two-way trunking is not always more efficient than one- way trunking.

He states that one-way trunking is preferred when a specific service is being provided. He states that:

> It depends on what you're trying to accomplish with the trunk. I mean if you're doing 911 and you just want one way out or if you're doing directory assistance or something like that but aside from that two-ways are always more efficient.

Witness Olson contends that if BellSouth is allowed to use its own one-way trunks, the benefits and efficiencies that two-way trunks provide will be lost.

BellSouth maintains that it should have the right to establish one-way trunks for BellSouth originated traffic. Witness Cox asserts that if the majority of traffic exchanged between the companies originates on BellSouth's network, then BellSouth must have the ability to establish direct trunk groups from its end offices to the point of interconnection, when traffic volumes dictate, in case WorldCom is uncooperative in establishing a sufficient number of two-way trunks. She continues that because two-way trunks carry both companies' originated traffic, requiring two-way trunks allows WorldCom to determine the interconnection point for BellSouth originated traffic. Witness Cox explains that allowing WorldCom to designate the interconnection point for BellSouth originated traffic allows WorldCom inappropriately to increase BellSouth's costs. In addition, she contends that two-way trunks involve a variety of complex issues that must be resolved by the parties in order to make two-way trunks a viable arrangement. She states that:

> For example, two-way trunk installation involves agreement on: 1) the number of trunks required; 2) when trunk augmentation is required; 3) whether to install direct end office to end office trunk groups or tandem trunk groups; 4) whose facilities will be used to transport two-way groups when both companies have available facilities; 5) where the Interconnection Point will be located; 6) which company will order and install the trunk group and who will control testing and maintenance of the trunk group; and 7) the method of

> compensation between the parties for two-way trunks that carry multi-jurisdictional traffic.

WorldCom witness Olson replies that BellSouth has interconnected with non-competing independent telephone companies for years and has not raised any concerns regarding this issue with them. He directly addresses each of the complex issues that BellSouth witness Cox raises:

> 1) The number of trunks required is the regular, day to day work of our companies' traffic engineers, who meet periodically to discuss the relevant factors, such as traffic volumes and blocking criteria; 2) Facility augmentation occurs when the 75% trigger of trunk utilization is reached; 3) Tandem trunk groups will always be required, and direct end office trunk groups should be considered when traffic volumes justify (again, part of the traffic engineers' day-to-day functions); 4) The facilities to be used will be WorldCom's facilities on its side of the joint optical midspan fiber meet, the joint optical midspan fiber meet itself (which both companies own), and BellSouth's facilities on its side of the joint SONET midspan fiber meet; 5) The interconnection point(s) will be where the joint optical midspan fiber meet is - so one point will be at WorldCom's fiber optic terminal (FOT), and the other will be at BellSouth's FOT; 6) WorldCom will perform the administrative control function of the two way trunks; [and] 7) Compensation - the basic principle is that WorldCom will pay when it uses BellSouth's network to deliver traffic to the latter's customers, and also for transiting functions, and BellSouth will pay when it uses WorldCom's network to deliver traffic to WorldCom's customers.

Regarding witness Cox' statement about the possibility of WorldCom being uncooperative, witness Olson responds that it is WorldCom's position and practice to establish direct end office trunks between BellSouth's end offices and WorldCom's switch where traffic volumes warrant so that its customers' calls can be completed, as well as for its customers to receive calls. He adds that this practice makes good engineering and economic sense and assures that

WorldCom would always have trunks through the tandem to handle the volume to other end offices. He further adds that WorldCom is willing to compensate BellSouth for its use of the tandem to reach those geographic areas.

B. Decision

As stated previously, the crux of the issue is whether FCC Rule 51.305(f) and paragraph 219 of the Local Competition Order, FCC 96-325, obligate BellSouth to "provide and use" two-way trunks that carry each parties' traffic at WorldCom's request. We agree with WorldCom's positition that FCC Rule 51.305(f) and paragraph 219 of the Local Competition Order, FCC 96-325, require BellSouth to provide and use two-way trunks at WorldCom's request. As WorldCom stated, any other interpretation would negate the effect of the rule. According to BellSouth's interpretation, BellSouth is only obligated to provide two-way trunks -- not use them -- at WorldCom's request. This interpretation is neither logical nor efficient since only WorldCom would be utilizing the trunk, thus making the trunk a "one-way, two-way trunk." We do not believe that BellSouth's interpretation was the meaning intended by the FCC. Moreover, if BellSouth uses one-way trunks for its own originating traffic, it will effectively deny WorldCom the two-way trunks that BellSouth agrees is required by the FCC.

In addition, we note that both BellSouth and WorldCom agree that two-way trunking is at least as efficient as one-way trunking, from a network standpoint, where traffic flows in both directions. Both parties also agree that two-way trunking also helps to alleviate tandem exhaust by decreasing the number of ports used, an efficiency BellSouth states it would like to enhance.

We find that the efficiencies gained by using two-way trunks outweigh the additional administrative costs that BellSouth claims are associated with provisioning them. Moreover, WorldCom has acknowledged circumstances when one-way trunks are more efficient than two-way and has in place, in its network, one-way trunks for those instances. There is no evidence that WorldCom will change its practices to impede BellSouth's network efficiency. WorldCom witness Olson assures that WorldCom does not intend to change all one-way trunks to two-way if we find in favor of WorldCom. He states that both BellSouth's and WorldCom's engineers can

collaborate to make a sound engineering decision on what is best and most efficient for both companies.

We agree that WorldCom's and BellSouth's trunk engineers should cooperatively work together to decide when to use two-way trunking on a case-by-case basis that is mutually beneficial for both parties. We note that both parties agree with this suggestion. We further note that in the event the parties cannot agree, that WorldCom reserves the right to make the final decision. However, it should be noted that the outcome may be that WorldCom's network design takes precedent over BellSouth's. As a result, BellSouth's network may suffer, since WorldCom's economics would control. Notwithstanding that, although the FCC's rules allow WorldCom to order two-way trunks, and require BellSouth to use them, we trust that good engineering will determine the parties' practices. Therefore, we find that BellSouth is obligated to provide and use two-way trunks that carry each party's traffic at WorldCom's request.

XVIII. NETWORK POINT(S) OF INTERCONNECTION

The issue presented to us is whether WorldCom, as the requesting carrier, have the right pursuant to the Act, the FCC's Local Competition Order, and FCC regulations, to designate the network point (or points) of interconnection at any technically feasible point. Neither party disputes the right of a competitive local exchange company to designate the technically feasible point or points of interconnection on an incumbent's network to which the competitor will deliver its traffic, and the parties concur that interconnection must occur in each LATA where WorldCom seeks to serve customers owing to prohibitions against BellSouth originating interLATA traffic. BellSouth witness Cox, however, contends the incumbent is likewise imbued with the right to designate the point or points on its network where it will deliver its traffic to a competitor. BellSouth also seeks language in the agreement requiring WorldCom to bear the cost of extending BellSouth's network to the point or points of interconnection designated by WorldCom.

A. Analysis

Witness Cox testified that BellSouth's authority to designate interconnection points derives from the FCC's Local Competition Order, FCC 96-325, at ¶209, which reads:

> Section 251(c)(2) of the Act gives competing carriers the right to deliver traffic terminating on an incumbent LEC's network at any technically feasible point on that network, rather than obligating such carriers to transport traffic to less convenient or efficient interconnection points. Section 252(c)(2) lowers barriers to competitive entry for carriers that have not deployed ubiquitous networks by permitting them to select the points in an incumbent LEC's network at wish they wish to deliver traffic. Moreover, because competing carriers must usually compensate incumbent LECs for the additional costs incurred by providing interconnection, competitors have an incentive to make economically efficient decisions about where to interconnect.

BellSouth's Cox contends, "This ruling requires the ALEC to establish a Point of Interconnection on the incumbent LEC's network and only permits the ALEC to designate that point for traffic originated by the ALEC. It does not allow the ALEC to designate that point for traffic originated by the incumbent LEC." Subsequently, witness Cox asserts, "As stated in my direct testimony, BellSouth has the right to establish a POI (point of interconnection) for its originating traffic."

BellSouth witness Cox takes the analysis a step further, testifying that because BellSouth's local network architecture comprises a number of distinct networks, this infrastructure dictates the selection of more than one POI in a LATA:

> Most telecommunications companies structure their networks as a group of specialized networks. The important point is that for a customer to have a particular service, the customer must be connected to the network where that service is provided. Consequently, if an ALEC wants to deliver or receive a particular kind of traffic from a BellSouth customer, the ALEC must connect

> to the BellSouth network where the service is provided.

Based upon the FCC's Local Competition Order, FCC 96-325, at ¶209 and the legacy of its network architecture, BellSouth's Cox testified, "BellSouth proposes to aggregate all of its customer's originated local traffic to a single location in a local calling area where such traffic will be delivered to the ALEC."

WorldCom witness Olson testified that BellSouth's Cox has chosen to misinterpret one paragraph of FCC's Local Competition Order, FCC 96-325, and ignores several other references in the same order that explicitly grant ALECs the right to designate the point or points of interconnection on an incumbent's network for the mutual exchange of traffic:

> . . . the FCC's regulations impose an obligation on BellSouth to permit interconnection of new entrant facilities at any technically feasible point, but they do not grant BellSouth the right to designate a point of interconnection. Moreover, BellSouth's proposal to designate several points of interconnection per LATA for traffic it originates would either require WorldCom to build facilities to BellSouth offices unnecessarily or pay to transport BellSouth originated traffic.

Witness Olson maintains that interconnection issues are addressed in a number of locations in the Local Competition Order, FCC 96-325, which, when taken as a whole, undermine BellSouth witness Cox's assertion that an incumbent is entitled to designate points of interconnection for traffic originated on its network. The FCC expressed its intent to allow competitors to choose interconnection points, witness Olson testified, in the Local Competition Order, FCC 96-325, at ¶172, which reads:

> The interconnection obligation of section 251(c)(2), discussed in this section, allows competing carriers to choose the most efficient points at which to exchange traffic with incumbents, thereby lowering the competing carriers cost of, among other things, transport and termination of traffic.

Further evidence of the FCC's intent, witness Olson testified, is found in the Local Competition Order, FCC 96-325, at ¶ 220, footnote 464, which reads: "Of course, requesting carriers have the right to select points of interconnection at which to exchange traffic with an incumbent LEC under section 251(c)(2)."

WorldCom witness Olson asserted that BellSouth's position is also contradicted by FCC rule 47 C.F.R. § 51.305(a)(2), which identifies the minimum number of technically feasible points for interconnections, including the line side of a local switch; the trunk side of a local switch; the trunk interconnection points for a tandem switch; and central office cross-connect points. Witness Olson testified that access to unbundled network elements is described in 47 C.F.R. § 51.319. From this rule, witness Olson concludes, ". . . it is clear that the FCC rules do not limit potential IPs (interconnection points) to a location at every tandem within a LATA."

Witness Olson testified that federal courts have rejected incumbents' arguments that new entrants are required to interconnect at multiple points on an incumbent's network. Witness Olson cites a ruling by the United States District Court for the Middle District of Pennsylvania in MCI v. Bell Atlantic, Civil No. CV-97-1857, Memorandum and Order, June 30, 2000, which affirmed a magistrate's ruling rejecting a decision by the Pennsylvania Utilities Commission requiring WorldCom to interconnect at every access tandem in a Bell Atlantic serving area. Witness Olson also cites a 1999 decision by the Ninth Circuit Court of Appeals upholding a provision of the MFS Intelenet/US West interconnection agreement permitting a single point of interconnection on an incumbent's network. US West Communications v. MFS Intelenet, 193 F.3d 1112 (9th Cir. 1999). These decisions lead witness Olson to conclude, "WorldCom's right under the Act to choose the point of interconnection has been affirmed by every court to review the issue."

The obligations imposed by the Act do not apply equally to ALECs and incumbent LECs, witness Olson testified, and FCC rules do not require WorldCom to duplicate BellSouth's network by establishing multiple interconnection points within a LATA. (TR 270) Single interconnection points per LATA are contemplated,

witness Olson testified, in 47 C.F.R. § 51.321(a), which reads:

> "...an incumbent LEC shall provide any technically feasible method of obtaining interconnection or access to unbundled network elements at a particular point upon a request by a telecommunications carrier."

(emphasis added by the witness). The right of ALECs to designate a single interconnection point on an incumbent's network was affirmed, witness Olson contends, by the FCC in an order granting SBC Communications' application to provide long distance service in Texas. See, Memorandum of Opinion and Order, CC Docket No. 00-65, In the Matter of Application by SBC Communications Inc., et. al. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provied In-Region, InterLATA Services in Texas, FCC 00-238, (June 30, 2000), (Texas Order). Witness Olson asserts that in the Texas Order the FCC found "'Section 251, and our implementing rules, require an incumbent LEC to allow a competitive LEC to interconnect at any technically feasible point. This means that a competitive LEC has the option to interconnect at only one technically feasible point in each LATA.'" FCC 00-238 at ¶78.

BellSouth witness Cox testified that a decision by us allowing WorldCom to establish a single POI in a LATA will precipitate a shifting of the cost for WorldCom's network design to BellSouth customers. This cost shift will occur, witness Cox testified, if BellSouth is required to bring traffic from its local calling areas to a POI designated by WorldCom in another local calling area without compensation.

In her testimony, witness Cox describes a WorldCom network with a switch in one LATA (Orlando), and a POI in a distant LATA (Jacksonville) made up of several local exchanges, some of which are geographically noncontiguous (Lake City), where WorldCom customers are located. The dispute between the parties, according to Cox arises:

> . . . over whether MCI is required to pay for the facilities that BellSouth provides to them between MCI's Point of Interconnection and BellSouth's local network. In the example above, MCI wants BellSouth to incur the additional cost of providing facilities for MCI between

> Jacksonville and Lake City. BellSouth believes that MCI should pay for those facilities.

WorldCom witness Olson testified BellSouth will be fairly compensated in the instances described by witness Cox:

> Naturally, any decision on where an IP is located or whether to use more than one IP will have an impact on the transport portion of any transport and termination compensation paid to the ILEC (and visa versa). If WorldCom chooses to have only one IP in the LATA, for example, the transport charges that WorldCom must pay as part of the "transport and termination" for local calls will reflect the increased distance that calls must travel from the IP to the particular end office where they terminate. Thus, BellSouth is compensated for the use of its network to transport and terminate calls from the interconnection point.

BellSouth witness Cox disagrees, contending incumbents are barred by the FCC's Local Competition Order, FCC 96-325, at ¶176 from collecting transport and termination charges for interconnection facilities. The language to which witness Cox refers reads:

> We conclude the term "interconnection" under section 251(c)(2) refers only to the physical linking of two networks for the mutual exchange of traffic. Including the transport and termination of traffic within the meaning of 251(c)(2) would result in a reading out of the statute the duty of all LECs to establish "reciprocal compensation arrangements for the transport and termination of telecommunications," under section 251(b)(5).

Nonetheless, witness Cox testified, BellSouth is entitled to some form of compensation according to the Local Competition Order, FCC 96-325, because of language in ¶199 and ¶209. Specifically, witness Cox contends, ¶199 states, in part, that "a requesting carrier that wishes a 'technically feasible' but expensive interconnection would, pursuant to section 251(d)(1), be required to bear the cost of that interconnection, including a reasonable

profit" (emphasis added by the witness). Witness Cox states that the FCC reinforces its view that incumbents may receive compensation for interconnection in ¶209, the relevant portion of which reads:

> Section 251(c)(2) lowers barriers to competitive entry for carriers that have not deployed ubiquitous networks by permitting them to select the points in an incumbent LEC's network at which they wish to deliver traffic. Moreover, because competing carriers must usually compensate incumbent LECs for additional costs incurred by providing interconnection, competitors have an incentive to make economically efficient decisions about where to interconnect.

(emphasis added by the witness). Based on these sections, witness Cox argues that "Clearly the FCC expected MCI to pay the additional costs that it causes BellSouth to incur. If MCI is permitted to shift those costs to BellSouth, it has no incentive to make economically efficient decisions about where to interconnect." The only way to guarantee WorldCom makes economically efficient decisions regarding interconnection witness Cox concludes, is for this Commission to adopt BellSouth's position. Witness Cox states that "BellSouth simply requests the Commission find that MCI is required to pay for facilities that BellSouth installs on MCI's behalf in order to extend BellSouth's local networks to MCI."

Under cross examination, witness Cox defines the facilities with greater specificity by stating that "Now, what we are really arguing about is whether or not you will pay for those interconnection trunks, as I understand it, to get to the Lake City calling area."

WorldCom witness Olson believes the FCC deliberately set out to make competitive entry a less expensive proposition for competitors and points to language in FCC Order 96-325 at ¶172 as evidence:

> The interconnection obligation of section 251(c)(2), discussed in this section, allows competing carriers to choose the most efficient points at which to exchange traffic with incumbent LECs, thereby lowering the

> competing carriers' costs of, among other things, transport and termination of traffic.

From this language, witness Olson concludes, "The FCC has not only clearly set forth the right of new entrants to choose the points of interconnection but has indicated that they have this right so that they may lower their costs."

Witness Olson contends BellSouth witness Cox's request that WorldCom be assessed charges for use of BellSouth's interconnection trunks contradicts 47 C.F.R. §51.703(b), which reads, "A LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network." Witness Olson testifies that 47 C.F.R. §51.703(b) "unambiguously bars BellSouth from imposing such charges. Moreover, BellSouth is not permitted to accomplish by indirect means -- that is, designating a point of interconnection which shifts the cost of transporting BellSouth to WorldCom -- what the regulation above flatly prohibits."

The interconnection architecture WorldCom proposes, witness Olson states, requires each party to deliver its traffic to its respective fiber optic terminal connected to the interconnection facility. He asserts that this makes each party financially responsible for delivering its traffic to the interconnection point, "In contrast, BellSouth's position requires WorldCom to bear the cost of transporting BellSouth's traffic by requiring WorldCom to build unnecessary facilities or by charging WorldCom a transport charge for BellSouth's traffic."

WorldCom witness Olson contends BellSouth witness Cox's arguments about payment for interconnection trunks ignore that portion of the Local Competition Order, FCC 96-325, at ¶198, which states "'technically feasible', . . . 'refers solely to technical or operational concerns, rather than economic, space or site considerations.'"

A related issue emerges from the testimony on this issue, which is how BellSouth would be compensated, if at all, when it is required to bring all its originated traffic within a LATA to a single interconnection point. We note that the record on cost and compensation in this issue was treated by the parties as an

ancillary matter and is not as clearly articulated or as fully addressed as the POI issue.

In her testimony, BellSouth witness Cox expresses concern that if we grant WorldCom the right to establish a single POI within a LATA, BellSouth will be saddled with the expense of moving its originated traffic from various BellSouth local calling areas within the LATA to WorldCom's designated interconnection point. This will occur, witness Cox believes, because ¶176 of the Local Competition Order, FCC 96-325, prohibits recovery of transport and termination charges for interconnection purposes. However, witness Cox argues that the FCC in this same order, at ¶199 and ¶209, provides for compensation if interconnection points are technically feasible but expensive, or when incumbents incur additional costs by providing interconnection. Essentially, witness Cox testifies that BellSouth is concerned about whether it will receive appropriate compensation for the interconnection it will be required to provide under WorldCom's proposal for single POIs in a LATA.

WorldCom witness Olson testifies that BellSouth's witness Cox's request for compensation relating to interconnection contradicts the plain language of 47 C.F.R. §51.703(b), which witness Olson contends bars BellSouth from seeking recovery. Witness Olson states that the sole criterion for interconnection is technical feasibility and both parties are responsible for facilities on their respective side of the interconnection point.

B. Decision

Although this issue was framed as an interconnection dispute, the evidence and testimony of the witnesses segues into collateral cost and compensation matters. As a result, this decision is bifurcated, dealing first with points of interconnection and dealing second with the parties' arguments over compensation.

As stated at the beginning of this section, the parties do not dispute an ALEC's right to designate a point or points of interconnection on an incumbent's network at which the competitor will deliver its traffic to the incumbent. The parties agree that in this case, interconnection must occur in each LATA where WorldCom wishes to serve customers, owing to prohibitions on

BellSouth originating interLATA traffic. The dispute is whether BellSouth has the right to designate its own interconnection point(s) on its network to hand off to WorldCom traffic originating on BellSouth's network.

We find that the evidence supports WorldCom witness Olson's position, giving WorldCom the right, for purposes of this agreement, to choose one or, at its discretion, more technically feasible points of interconnection in a LATA. The FCC's Local Competition Order is unambiguous when it states at ¶172 that "The interconnection obligation of section 251(c)(2), discussed in this section, allows competing carriers to choose the most efficient points at which to exchange traffic with incumbent LECs, thereby lowering the competing carriers' cost of, among other things, transport and termination of traffic." Subsequently, at ¶176 of the Local Competition Order, FCC 96-325, the FCC states that "We conclude the term "interconnection" under section 251(c)(2) refers only to the physical linking of two networks for the mutual exchange of traffic" (emphasis added). We believe that the plain language of the order, coupled with the inherently reciprocal nature of an exchange of traffic, more specifically a mutual exchange of traffic, undermines the argument articulated by BellSouth witness Cox that incumbents enjoy comparable rights to designate their own POIs in a LATA. To accept BellSouth witness Cox's position that the incumbent may designate POIs for BellSouth-originated traffic would render meaningless the Order's finding that an ALEC is the party that selects POIs for the "mutual exchange" of traffic alluded to by the FCC.

While we concur with the testimony of both witnesses that the creation of entrance opportunities for competitors imposes admittedly asymmetrical obligations on incumbents in favor of competitors, the FCC has expressed the view, most recently in the Texas Order cited by witness Olson, that new entrants should not have to replicate an ILEC's existing network architecture and must be allowed to select an interconnection point (or points) that create economic efficiencies for themselves. Accordingly, we find that WorldCom, as the requesting carrier, has the exclusive right pursuant to the Act, the FCC's Local Competition Order and FCC regulations, to designate the network point (or points) of interconnection at any technically feasible point for the mutual exchange of traffic.

We note that the Act specifically provides for the establishment of interconnection and network element charges at section 252(d)(1), giving us the right to determine the just and reasonable rate for interconnection of facilities and equipment, based on the cost (determined without reference to a rate-of-return or other rate-based proceedings) of providing the interconnection, provided the charge is non-discriminatory. However, while we acknowledge that BellSouth's FCC-mandated obligation to deliver its originated traffic to ALEC-designated POIs raises troubling issues of compensation and definition, we find that the record in the proceeding is inadequate to support resolution of these aspects. We note that these issues will be addressed in our generic docket on reciprocal compensation, Docket No. 000075-TP.

XIX. FRAGMENTATION OF TRAFFIC BY TRAFFIC TYPE

The issue before us is to determine whether BellSouth should be permitted to require WorldCom to fragment its traffic by traffic type so it can interconnect with BellSouth's network. Although the wording of this issue focuses primarily on traffic fragmentation, which refers to putting different types of traffic on different trunk groups, there are two interrelated parts to this issue. The first part concerns whether BellSouth must provide and use two-way trunking upon request by WorldCom, which is a separately addressed in this arbitration. The second part involves whether separate interconnection trunk groups must be used for different types of traffic. More specifically, this issue is whether transit traffic should be routed on a separate trunk group or whether it should be carried on the same trunk group as local and intraLATA toll traffic. Transit traffic is traffic to or from a WorldCom end user, from an end user of a third-party carrier whose traffic transits BellSouth's network. WorldCom and the third party carrier are not directly interconnected with each other; however, both are directly interconnected with BellSouth. With regard to transit traffic, billing is the key component in this issue.

A. Analysis

We note that neither party presented much testimony on this issue. However, since part one of this issue is identical to a previously discussed issue, we refer to the parties' arguments regarding the provisioning and use of two-way trunks discussed in

that section. The parties' arguments regarding part two of this issue, which involves traffic fragmentation, are discussed below.

As noted in Section XVII, WorldCom believes that BellSouth should be required to provide and use two-way trunking upon WorldCom's request. Further, WorldCom believes that it should be able to combine local, intraLATA and transit traffic on one trunk group. Accordingly, WorldCom has proposed the following language:

> BellSouth shall provision trunks without any user restriction (e.g., option for two-way trunking where mutually agreed to, and no trunk group fragmentation by traffic types except as specified in this Agreement.

WorldCom witness Olson reasons that WorldCom is proposing that these traffic types be carried on one trunk group over the joint optical mid-span fiber meet between WorldCom and BellSouth for network efficiency reasons. He contends that by combining transit traffic with local and intraLATA traffic, you get better trunk utilization. He further contends that there is no technical reason why this cannot be done.

BellSouth disagrees with WorldCom's proposal for several reasons. First, BellSouth witness Milner argues that WorldCom's proposal prohibits BellSouth from using direct end office trunks, despite the fact that BellSouth maintains such separate trunk groups for itself. Second, he states that signaling associated with platforms such as E911 and Operator Services/Directory Assistance (OS/DA) would be affected if there were no trunk fragmentation. Witness Milner further states that congestion could occur that would adversely impact 911 calls if the traffic group were overloaded temporarily. He adds that, for technical reasons, there are certain two-way trunk groups that will automatically fail when used with specific switches in certain instances. Third, witness Milner argues, as in Section XVII, that WorldCom should not have the ability to require BellSouth to provide and use two-way trunks. Therefore, he concludes that BellSouth should be allowed to provision its trunks for its originating traffic as it sees fit. Accordingly, BellSouth believes that transit traffic should be carried on separate trunk groups.

WorldCom witness Olson addresses each of BellSouth witness Milner's points. First, he disputes that an agreement to put different kinds of traffic on a single trunk would prevent BellSouth from using direct end office trunking. Regarding witness Milner's second point, witness Olson agrees that there are certain types of traffic, such as E911, that are routed over separate trunk groups, and explains that WorldCom has no problem making it clear that it does not intend for such special purpose traffic to be routed over combination trunk groups. He reiterates that, most importantly, WorldCom wants to be able to combine local, intraLATA and transit traffic on one trunk group. Third, witness Olson maintains WorldCom's position that BellSouth is obligated to provide and use two-way trunks upon WorldCom's request.

With regard to traffic fragmentation, WorldCom questions why BellSouth opposes putting different types of traffic on the same trunk, since BellSouth has available what it calls "super group" trunks that can accommodate local, transit and intraLATA traffic on the same trunk.

In response, BellSouth witness Milner argues that even though "super group" trunks intended for the purpose of combining different types of traffic are available, BellSouth segregates the traffic for billing purposes. He explains:

> . . . [T]he problem has to do with the capabilities of using Feature Group D signaling over those trunk groups. The mixing of transit traffic and other kinds of local traffic really would require that two different signaling formats be accommodated on the same trunk group. That is part of the problem. The other part is that the tandem switches through which the transit traffic is delivered cannot take Feature Group D traffic on an incoming basis and put it on a trunk group that has Feature Group D signaling on the outbound portion of it.

He clarifies that while super group trunks solve the problem of conflicting signaling protocols in the case of mixing traffic on the same trunk group, the problem remains with taking Feature Group D in and out of the tandem.

> Feature Group D is needed on the transit part for the ALEC that is going to terminate the call to be able to render a bill for reciprocal compensation. But the technical capability is that you can't mix local traffic that is not transit traffic on that same trunk group, because the switch itself can't handle Feature Group D on both ends of the connection.

Therefore, with respect to transit traffic, BellSouth explains that separate trunk groups are essential in order to ensure proper billing by each party. Further, BellSouth explains, with respect to transit traffic, BellSouth is neither the originating nor the terminating carrier and thus must be able to segregate such traffic in order to ensure that it only bills the originating carrier for the transiting function performed by BellSouth.

WorldCom witness Olson states that a technical reason why transit traffic could not be included on the same trunk group as local traffic is if BellSouth has old switches or old equipment. He further states his belief that BellSouth has a pretty robust and new network with up-to-date electronic systems and state of the art tandems that would enable the commingling of traffic on one trunk group to be technically feasible, especially on a tandem level.

B. Decision

Although the focus of this issue appears to be traffic fragmentation, based on the testimony, the real dispute between the parties appears to be whether BellSouth is obligated to provide and use two-way trunks, which is discussed in Section XVII of this Order. Hence, we refer to Section XVII for the parties' arguments regarding the provisioning and use of two-way trunking. The following analysis will address traffic fragmentation, or more precisely, whether a separate interconnection trunk group should be used for transit traffic. The key factor in this issue appears to be billing.

BellSouth contends that, absent the use of a super group trunking arrangement, it is essential that transit traffic be carried on separate trunk groups in order to ensure the correct billing of such traffic. BellSouth argues that under WorldCom's proposal, BellSouth would be prohibited from having separate trunks

that carry local and toll traffic, even though BellSouth maintains such separate trunk groups for itself. BellSouth maintains that it should be allowed to provision its trunks in any technically feasible and nondiscriminatory manner it decides.

WorldCom, on the other hand, asserts that it should have the right to require the use of two-way trunks and combine local, intraLATA and transit traffic on one trunk group for network efficiency reasons. Further, WorldCom asserts that there is no technical reason why this cannot be done.

We are not persuaded by BellSouth's arguments. First, we disagree with BellSouth that an agreement to commingle traffic on a single trunk group would prohibit BellSouth from using direct end office trunking since the option for direct end office trunking is not prohibited in the agreement. Moreover, we note that BellSouth witness Milner acknowledges that the parties have agreed to language in the parties' draft interconnection agreement that addresses the situations where traffic would justify direct end office trunking. Second, regarding one-way traffic, witness Milner admits that there is no dispute between the parties that certain types of traffic, such as E911 and OS/DA, must go over separate trunk groups. WorldCom witness Olson stated in his deposition, which was admitted at the hearing, that special purpose traffic would not be included in WorldCom's request that interconnection traffic not be fragmented. At any rate, in the event a dispute arises, witness Milner states that any concern regarding special purpose traffic over one-way trunks could be worked out between the parties. Third, as discussed previously in Section XVII, we find that BellSouth is required by FCC regulations to provide and use two-way trunks upon WorldCom's request.

However, we are not persuaded by WorldCom's claim that there is no technical reason why local, intraLATA and transit traffic cannot be combined on a single trunk group. We note that while BellSouth witness Milner acknowledges that BellSouth's supergroup trunks may accommodate WorldCom's request to combine local, intraLATA and transit traffic on one trunk group, he also explains the technical incapability of Feature Group D. He explains that Feature Group D is needed on the transit part for the ALEC that is going to terminate the call to be able to render a bill for reciprocal compensation.

We find witness Milner's testimony to be inconsistent. Based on his testimony, it is unclear whether there is an inherent technical problem in mixing transit and non-transit traffic on a single trunk group. Further, it is unclear whether use of a super group trunk can solve such a problem. If not, it is unclear why these supergroup trunks are available if they cannot be used for their intended purpose. Notwithstanding that, it appears that there is a billing problem that prevents the commingling of transit and non-transit traffic on a single trunk group. Witness Milner's testimony is consistent in explaining that commingling transit traffic with local and intraLATA toll traffic on a single trunk group would present a billing problem, regardless of whether that trunk is a supergroup trunk.

Based on the testimony, it appears that, absent use of a supergroup trunk arrangement, it is not possible to combine local, intraLATA and transit traffic due to signaling protocols. However, even though the super group trunking arrangement may solve the problem of conflicting signaling protocols, this arrangement is not conducive to proper billing practices. That is, since the switch cannot handle Feature Group D on both ends of the connection, WorldCom presumably would only be able to render a bill to BellSouth and not to the third party ALEC. Likewise, the third party ALEC would only be able to render a bill to BellSouth and not to WorldCom. This technical incapability would leave BellSouth responsible for collecting or remitting any reciprocal compensation from the third party ALEC to WorldCom. Therefore, it appears that in order for each party to be able to render a bill and to ensure proper billing practices, transit traffic must be carried on a trunk separate from local and inraLATA traffic. Therefore, we find that in order to ensure proper billing of transit traffic, BellSouth shall be permitted to require WorldCom to separate transit traffic from local and intraLATA traffic to interconnect with BellSouth's network.

XX. TREATMENT OF WIRELESS TYPE 1 AND TYPE 2A TRAFFIC

The issue before us is to determine for purposes of the interconnection agreement between WorldCom and BellSouth, how Wireless Type 1 and Type 2A traffic should be treated under the Interconnection Agreements. Wireless traffic is "transit traffic" in that it originates on one party's network, is switched and

transported by a second party and then is sent to a third party's network. Specifically, this issue deals with whether wireless traffic should be treated as transit traffic or land-line traffic for routing and billing purposes.

A. Analysis

Witness Cox explains that:

> Wireless Type 1 traffic is wireless traffic that uses a BellSouth NXX. In other words, the wireless carrier does not have its own NXX, but uses an NXX assigned to BellSouth's land-line service. In this case, the Wireless Type 1 traffic is indistinguishable from BellSouth-originated or BellSouth-terminated traffic from a Meet Point Billing Perspective.
>
> Wireless Type 2A traffic is wireless traffic that is distinguishable from BellSouth-originated or terminated traffic because the wireless carrier has distinct NXXs assigned for its use. However, . . .the necessary system capabilities required to bill through the Meet Point billing process are not yet available. Such arrangements are necessary in order for BellSouth to send the appropriate billing records to the wireless carrier and to the ALEC.

BellSouth proposes to treat Wireless Type 1 and Type 2A transit traffic as BellSouth-originated or terminated traffic. BellSouth witness Cox reasons that when a wireless company is one of the three parties, neither BellSouth, the wireless company, or the ALEC has the necessary system capabilities required to bill each other using the normal Meet Point Billing process. She continues that for Wireless Type 1 traffic, BellSouth is unable to determine whether or not the transiting function is being performed, which is why BellSouth proposes to treat such traffic involving wireless carriers as land-line traffic originated by either BellSouth or the ALEC. Likewise, with regard to Type 2A traffic, witness Cox proposes that the same billing arrangement used for Type 1 traffic continue for Type 2A traffic until the involved parties have the necessary Meet Point Billing system

capabilities. Accordingly, BellSouth has proposed the following language:

> Rates for transiting local transit traffic shall be as set forth in Attachment 1 of this Agreement. Wireless Type 1 traffic shall not be treated as transit traffic from a routing or billing perspective. Wireless Type 2A traffic shall not be treated as transit traffic from a routing or billing perspective until BellSouth and the Wireless carrier have the capability to properly meet-point-bill in accordance with MECAB guidelines.

Witness Cox adds that BellSouth is currently in the process of developing systems, methods and procedures that will allow Wireless carriers' Type 2A traffic to participate in meet point billing by the end of this year.

WorldCom opposes BellSouth's proposed language on this issue. WorldCom witness Price explains that WorldCom's main concern is that BellSouth currently does not pass on WorldCom's reciprocal compensation payments to the wireless carriers. For this reason, WorldCom believes that BellSouth's proposed language should be modified to require BellSouth to pass on reciprocal compensation payments to the wireless carrier, or, at least, indemnify WorldCom as to any claim the wireless carriers may raise concerning those reciprocal compensation payments.

Witness Price agrees that BellSouth should retain the transiting fee for tandem switching traffic to the third-party wireless carrier; however, he disagrees that BellSouth should also retain the reciprocal compensation it charges the ALEC originating carrier. He argues that the carrier that ultimately terminates the call, the third carrier in this three-carrier transaction, should receive the reciprocal compensation payment. Therefore, witness Price further argues that BellSouth should be directed to turn over to the terminating carrier the reciprocal compensation payment which BellSouth collects from the originating carrier. He contends that if BellSouth is not directed to do so, BellSouth's practice of retaining reciprocal compensation payments on this traffic could subject WorldCom to liability to the CMRS provider. Witness Price states that:

> For example, where WorldCom originates traffic to a CMRS provider and BellSouth transits the call, BellSouth will charge reciprocal compensation to WorldCom and retain it. The CMRS provider, which should be entitled to the payment, may seek such payment from WorldCom which had originated the call and had turned over the payment to BellSouth. Clearly, WorldCom should not have to pay reciprocal compensation twice. Therefore, if the Commission does not direct BellSouth to remit the reciprocal compensation to the terminating carrier, it should at minimum direct BellSouth to indemnify WorldCom against any lawsuit filed by the CMRS provider that results from BellSouth's practices of retaining the reciprocal compensation payment.

With regard to Type 2A traffic, WorldCom believes that BellSouth should continue to treat this traffic as land-line and provide the billing function as it does today with Type 1 traffic, even after the necessary meet point billing capabilities become available. WorldCom argues that changing the treatment of Type 2A traffic would effectively place a burden on WorldCom to go out and enter into some sort of arrangement with every Type 2A wireless carrier that interconnects with BellSouth.

BellSouth witness Cox contends that each party should bill for its applicable portion of the call when the capability to perform meet point billing on wireless Type 2A traffic becomes available. She explains that the only reason this is not being done today is due to lack of meet point billing capability. However, with regard to Type 1 traffic, witness Cox agrees with WorldCom that in witness Price's example above, the wireless carrier is due reciprocal compensation, not BellSouth. She further agrees that since BellSouth receives the payment from WorldCom, BellSouth should protect WorldCom from any liability to the wireless carrier in this situation.

B. Decision

As stated previously, this issue involves wireless Type 1 and Type 2A traffic, which is transit traffic originated by one carrier, delivered to BellSouth's tandem, tandem switched by BellSouth to the network of the third carrier, and then terminated

by the third carrier. More precisely, the issue before us is to determine whether this traffic should be treated as transit traffic or as BellSouth's land-line traffic.

With regard to wireless Type 1 traffic, we think that the party ultimately terminating the call, not BellSouth, should receive the reciprocal compensation payment. We disagree with BellSouth's practice of retaining reciprocal compensation it gets from WorldCom for originating Type 1 traffic. We note that BellSouth witness Cox acknowledges that BellSouth is not the carrier terminating the traffic, but justifies retaining the reciprocal compensation since the traffic is indistinguishable. We further note that in the event a wireless Type 1 carrier, which should be entitled to reciprocal compensation payment, seeks such payment from WorldCom, which had originated the call and had turned over the payment to BellSouth, BellSouth has agreed that it should protect WorldCom from any liability to the wireless carrier in this situation. Thus, we find that BellSouth's language shall be modified accordingly to include such an indemnification clause for Type 1 traffic.

We are not persuaded by WorldCom's argument that treating wireless Type 2A traffic in a manner different from Type 1 traffic would pose an undue burden on WorldCom. We find that once meet point billing capabilities have been established, WorldCom should deal directly with the wireless carrier on billing issues. This will prevent the potential for three-party disputes. Moreover, it should not be BellSouth's obligation to be WorldCom's reciprocal compensation banker because WorldCom does not want to consummate interconnection agreements with the wireless carriers with whom it does business. In addition, if WorldCom handles its own billing, any dispute that arises would be less complicated as it would only involve two parties rather than three.

Therefore, we find that wireless Type 1 traffic shall be treated as BellSouth's own traffic since this traffic is indistinguishable. We further find that BellSouth's proposed language shall be modified to require BellSouth to pass on reciprocal compensation payments for Type 1 traffic to the wireless carrier, or, at minimum, indemnify WorldCom as to any claims the wireless carriers may raise concerning those reciprocal compensation payments. We note that, in this case, since Type 1

traffic is indistinguishable there is no other alternative than BellSouth acting as the middle man. However, we further note that there is very little of this traffic. In fact, BellSouth witness Cox concurs that most wireless providers have distinct NXXs assigned. Moreover, with the increase in wireless traffic, Type 1 traffic is rapidly diminishing. With respect to wireless Type 2A traffic, we find that when meet point billing capabilities become available, Type 2A traffic should no longer be treated as Type 1 traffic. At that time, WorldCom should deal directly with the wireless carriers it exchanges traffic with on billing issues.

In summary, we find that, for billing purposes, wireless Type 1 traffic shall be treated as BellSouth's own traffic since this traffic is indistinguishable. BellSouth's proposed language shall be modified to require BellSouth to pass on reciprocal compensation payments it receives from WorldCom to the wireless carrier, or, at minimum, indemnify WorldCom as to any claim the wireless carriers may raise concerning those reciprocal compensation payments. For the present, Type 2A traffic shall be treated as Type 1 traffic. Once meet point billing capabilities are established in accordance with MECAB guidelines, wireless Type 2A traffic shall no longer be treated as Type 1 traffic. Instead, WorldCom will be required to deal directly with the wireless carriers it exchanges traffic with on billing issues.

XXI. DEFINITION OF INTERNET PROTOCOL AND TREATMENT OF IP TELEPHONY

The issue presented for arbitration was for purposes of the interconnection agreement between WorldCom and BellSouth, what is the appropriate definition of Internet Protocol (IP) and how should outbound voice calls over IP telephony be treated for purposes of reciprocal compensation. However, on January 24, 2001, BellSouth and WorldCom filed a Stipulation, whereby the parties agreed to incorporate language reflecting the our future decision in the pending generic docket, Docket No. 000075-TP. Further, the parties agreed that on an interim basis neither parties' proposed language and that the interconnection agreement shall reflect the parties' positions on this issue. Both parties agreed that our decision in the generic docket shall be retroactive from the effective date of the interconnection agreement for this issue. Therefore, we find it appropriate to approve the Stipulation regarding this issue.

XXII. ROUTING OF ACCESS TRAFFIC

The issue presented to us is should MCIW be permitted to route access traffic directly to BST end offices or must it route such traffic to BST's access tandem. Specifically, this issue concerns the contractual language that would require WorldCom to deliver its switched access traffic to BellSouth over switched access trunks.

A. Analysis

WorldCom witness Price asserts that the disputed language would require that WorldCom deliver its switched access traffic exclusively over switched access trunks. BellSouth's proposed language would " . . . require WorldCom to route all terminating switched access traffic to a BellSouth access tandem." The witness states that WorldCom seeks to "compete in a portion of the switched access world where no competition has yet existed . . ., between the access tandem and the end office." Witness Price concludes that this contractual language will perpetuate BellSouth's monopoly and "will prevent future growth of competition in this market."

The WorldCom witness Price believes the BellSouth language should be rejected because:

> The prohibition BellSouth proposes effectively would require WorldCom to route all toll traffic to BellSouth's access tandems using special access facilities, and would preclude WorldCom from routing toll traffic from its own tandem switches to BellSouth end offices. BellSouth's language would ensure that it always would be able to charge for tandem and transport when terminating toll traffic, and would eliminate competition for tandem and transport services.

Witness Price believes that BellSouth's proposed language ties the provision of access services to BellSouth's existing network and processes. Witness Price states that BellSouth's witness Cox believes that if WorldCom ordered both local interconnection trunks and switched access trunks to the same BellSouth end office, WorldCom might route its switched access traffic over its local interconnection trunks. The WorldCom witness Price states that BellSouth's concern is that if WorldCom's switched access traffic

were routed over local interconnection trunks, BellSouth would not be able to determine the traffic for which switched access charges would apply. Witness Price states that he is "puzzled" by BellSouth's two primary concerns over this issue. Specifically, witness Price believes that BellSouth opposes WorldCom's contractual language based on the impression that WorldCom is attempting to disguise its switched access traffic as local traffic, and route it over local interconnection trunks. Witness Price believes BellSouth's other concern is the billing for switch access provisioned over UNE facilities.

Witness Price believes that these concerns would be mitigated since

> WorldCom has agreed to provide a monthly PIU/PLU report to BellSouth on any such trunk group. WorldCom will provide an EMI record with ANI, time and duration of call. As part of the Meet Point Billing terms of the contract, WorldCom would provide this information which will enable BellSouth to bill for the switched access services it provides.

Witness Price asserts that BellSouth's proposed contractual requirements are "anticompetitive," and may "stifle innovation and the development of new approaches to the delivery of access services by ALECs." He states:

> The prohibition BellSouth proposes effectively would require WorldCom to route all toll traffic to BellSouth's access tandems using access facilities, and would preclude WorldCom from routing toll traffic from its own tandem switches to BellSouth end offices via UNE facilities. BellSouth's language would ensure that it always would be able to charge for tandem and transport when terminating toll traffic, and would eliminate competition for tandem and transport services. BellSouth's proposed language . . . should be rejected.

BellSouth witness Cox believes that this issue has to do with ensuring the payment of switched access charges. She believes that allowing WorldCom to terminate switched access traffic into BellSouth's network via non-access trunks and established processes

would eliminate BellSouth's ability to properly bill for this traffic. Witness Cox states:

> BellSouth developed its existing switched access network configuration which is comprised of (1) access tandem switches and subtending end office switches (as reflected in the national Local Exchange Routing Guide (LERG), (2) switched access interconnection facilities resulting from the FCC's Local Transport Restructure (LTR) and Access Reform orders, and (3) switch recordings and Carrier Access Billing Systems (CABS) to ensure parity treatment of IXCs in ordering, provisioning, maintenance, transmission levels, and billing. BellSouth's ability to properly route and bill switched access traffic between BellSouth and IXCs is dependent upon established switched access processes and systems.

Witness Cox is concerned that WorldCom's proposed language may allow it to "disguise switched access traffic as local traffic," and, therefore, avoid paying access charges. Witness Cox asserts that WorldCom

> . . . wants access traffic to be delivered to BellSouth through MCI's [WorldCom's] local switch and not from MCI's [WorldCom's] access tandem to BellSouth's access tandem. If such traffic is not exchanged through the companies' respective access tandems, but is delivered to BellSouth end offices over local interconnection trunks, BellSouth is unable to identify and properly bill switched access traffic.

Witness Cox summarizes that BellSouth and WorldCom's disagreement is " . . . whether or not MCI [WorldCom] can send us access traffic, local traffic, everything over local interconnection trunks, or whether the switched access traffic needs to go over the access trunks."

Witness Cox disagrees with WorldCom's contention that it is "monopolizing the tandem services business." To the contrary, Witness Cox believes that BellSouth's proposed language in no way affects WorldCom's ability to provide tandem services. "BellSouth

fully embraces competition for tandem services," states witness Cox.

Witness Cox believes that BellSouth's established switched access processes and systems allow them to properly route and bill ALECs, IXCs, Independent Telephone Companies, and other companies subtending BellSouth's access tandems. Witness Cox affirms that BellSouth's obligations to other carriers is very important to them, and BellSouth's ability to provide call records to them is dependent upon its established switched access processes and systems. In fact, BellSouth witness Scollard believes that if WorldCom was allowed to mix access and non-access traffic on a local trunk group, certain records necessary for billing would be missing and may not be replaceable. In summary, BellSouth believes that WorldCom should not be allowed to route switched access over its local interconnection trunks, and that the handling of switched access traffic be governed in accordance with switched access tariffs.

B. Decision

This issue concerns the contractual language that would require WorldCom to deliver its switched access traffic to BellSouth over switched access trunks from BellSouth. Based on the evidence, we believe that WorldCom should not be permitted to route access traffic directly to BellSouth end offices for the reasons stated below. WorldCom should route its access traffic to BellSouth access tandem switches.

We agree with witness Price that BellSouth's proposed language ties the provision of access services to BellSouth's existing network. BellSouth witness Cox believes that allowing WorldCom to terminate switched access traffic into BellSouth's network via non-access trunks and established processes would eliminate BellSouth's ability to properly bill for this traffic, and therefore affect the payment of switched access charges. We acknowledge BellSouth's concerns, and agree with witness Cox. We believe that BellSouth's existing network configuration should be utilized to ensure the accurate delivery and billing of switched access services. We also agree with witness Cox that BellSouth's established switched access processes and systems allow them to properly route and bill ALECs, IXCs, Independent Telephone Companies, as well as other companies

subtending BellSouth's access tandems. Witness Cox affirms that BellSouth's obligations to these other carriers are very important to them, and BellSouth's ability to provide call records to them is dependent upon its established switched access processes and systems.

While WorldCom witness Price believes that BellSouth's language limits ". . . the development of new approaches to the delivery of access services by ALECs," we are not persuaded that the alternative of combining local and access traffic on local interconnection trunks is a reliable alternative, particularly in light of BellSouth's stated concerns about billing. To the contrary, BellSouth "fully embraces competition for tandem services," states witness Cox. We think that the development of alternative methods for the delivery of switched access traffic should be encouraged, but not without due consideration for the reliability of the existing networks, including billing mechanisms.

BellSouth witness Cox believes that allowing WorldCom to terminate switched access traffic into BellSouth's network via non-access trunks and circumventing established processes - though technically feasible - could pose problems for BellSouth. BellSouth witness Cox raises concerns that WorldCom's proposed language may allow it to "disguise switched access traffic as local traffic," and, therefore, avoid paying access charges. We agree, and conclude that this configuration of traffic may conceivably violate Chapter 364.16(3)(a), which states:

> 364.16 <u>Connection of lines and transfers; local interconnection; telephone number portability</u>.-
>
> (3)(a) No local exchange telecommunications company or alternative local exchange telecommunications company shall knowingly deliver traffic, for which terminating access service charges would otherwise apply, through a local interconnection arrangement without paying the appropriate charges for such terminating access service.

We firmly believe that BellSouth's ability to bill subtending companies in an accurate manner is in doubt if the local and switched access traffic were delivered on the same trunk group. In this case, we find that BellSouth's established process of routing

access traffic on access trunks should be continued. Therefore, we find that WorldCom shall not be permitted to commingle local and access traffic on a single trunk and route access traffic directly to BellSouth end offices. WorldCom shall route its access traffic to BellSouth access tandem switches via access trunks.

XXIII. ROUTING AND BILLING THIRD PARTY TRANSIT TRAFFIC

The issue before us is to determine how third party local transit traffic should be routed and billed by BellSouth and WorldCom. With respect to routing, the issue concerns whether BellSouth must put transit traffic over the same interconnection trunk groups as local and intraLATA toll traffic. With respect to billing, the central dispute concerns proper billing practices, specifically who should pay whom reciprocal compensation for third party local transit traffic. Transit traffic is traffic to or from an ALEC end user, to or from an end user of a third party carrier whose traffic transits BellSouth's network.

A. Analysis

WorldCom believes that transit traffic, whether the jurisdiction of the call is local or intraLATA toll, should be routed and billed in the most efficient way possible for all LECs. WorldCom witness Price asserts that from a routing perspective, transit traffic should be exchanged over the same logical trunk group as all other local and intraLATA toll traffic in order to reduce the number of trunk groups needed for both companies and keep translations simple for both companies since, typically, the volume of transit traffic does not warrant its own trunk group to each tandem. From a billing perspective, he further asserts that it is also efficient to minimize the number of bills and record exchange for transit traffic. Witness Price explains if a call is originated from WorldCom, transited by BellSouth, and terminated to an independent LEC, WorldCom proposes that BellSouth bill WorldCom for a transiting charge and the call termination charges. He continues that BellSouth would then pay the independent LEC reciprocal compensation. As a result of this billing practice, witness Price claims that the independent LEC would not have to go through the network expense of separate trunk groups and billing expense for billing this small volume of traffic from WorldCom.

Instead, he states, the independent LEC would obtain payment from BellSouth since BellSouth billed WorldCom.

In the reciprocal fashion, if a call is originated from an independent LEC, transited through BellSouth, and terminated to WorldCom, witness Price explains that WorldCom's proposal is that BellSouth bill the independent for a transiting charge (if applicable), and WorldCom bill BellSouth for terminating the call on WorldCom's network. Again, he states, BellSouth would obtain payment from the independent LEC for the reciprocal compensation charge. In short, WorldCom believes that BellSouth should bill the originating carrier consistent with the Ordering and Billing Forum (OBF) Meet Point Billing Guidelines (single bill/single tariff option). Accordingly, WorldCom has proposed the following language:

> 9.7.1 For calls that transit BellSouth's network, whether they originate from MCIm and terminate to a third party LEC, CLEC or CMRS provider, or originate from that third party and terminate to MCIm, and transit BellSouth's network, MCIm may require BellSouth to make arrangements directly with that third party for any compensation owed in connection with such calls on MCIm's behalf, or deal directly with that third party, at MCIm's option.
>
> 10.7.1.1 If MCIm requires BellSouth to make arrangements directly with a third party LEC, CLEC or CMRS provider on MCIm's behalf, BellSouth shall compensate MCIm for such calls terminating to MCIm using MCIm's rates as described herein, and charge MCIm for such calls terminating to that third party as if such calls had terminated in BellSouth's network, using BellSouth's rates as described herein.

Witness Price clarifies that WorldCom is merely asking that the existing business relationships that BellSouth has with third party carriers, for the exchange of traffic between BellSouth and the other carrier, be augmented slightly to handle the exchange of records that is necessary when BellSouth is in the middle of the traffic that is exchanged between WorldCom and the third party.

BellSouth objects to WorldCom's proposal for two main reasons. First, BellSouth argues that routing transit traffic in the manner proposed by WorldCom would cause major billing issues. BellSouth witness Scollard explains that to route transit traffic over the same trunk group as local and intraLATA toll traffic, would require the use of facilities which would not produce any call records. He clarifies:

> In some cases transit traffic coming into the BellSouth tandem on a local trunk cannot be routed to the destination carrier. This is the reason that the transit trunks were developed in the first place. Other types of trunks that provide for all transit traffic to be routed do not create usage records. It is not probable that WorldCom could provide the records in this case because in the case of most transit traffic it would have recorded a retail record on its switch which cannot be used to bill interconnection. The interconnection billing is what BellSouth would be required to do in these cases.

He continues that lack of a call record would not only preclude BellSouth from billing WorldCom for this traffic, but it would also keep BellSouth from providing meet point billing records to the third party as required in contracts with those carriers.

Second, BellSouth does not believe it is obligated to pay reciprocal compensation to WorldCom for local traffic originated from another carrier. BellSouth witness Cox states that section 251(b) of the 1996 Act required all LECs to negotiate interconnection contracts to set the terms and conditions of traffic exchange. She continues that if an ALEC desires that BellSouth perform the transit function, the ALEC is not only responsible for ordering from and payment to BellSouth for the applicable transiting interconnection charges, but the ALEC is also responsible for negotiating an interconnection agreement with other ALECs with which they intend to exchange traffic.

Furthermore, witness Cox states, the multiple bill approach for local traffic initiated by BellSouth based upon the Multiple Bill, Multiple Tariff process designed and implemented by the national OBF was accomplished in order to avoid interfering with

the contract arrangements negotiated and agreed to between ALECs and third party LECs. Accordingly, she states, as the "transit company" BellSouth provides the records needed by the ALECs to bill a third party carrier for terminating traffic from that third party carrier and, in turn, BellSouth recovers its transit traffic costs from the originating LEC. Therefore, while it is willing to route third party local transit traffic, BellSouth does not believe it is obligated to pay reciprocal compensation for such traffic terminating to WorldCom. Instead, BellSouth believes that WorldCom should seek compensation from the originating carrier.

BellSouth witness Cox lists other reasons why BellSouth objects to WorldCom's proposal. She explains that BellSouth is only assisting ALECs in their efforts to reduce their speed to market time as well as their interconnection costs by allowing ALECs to access other LECs via BellSouth's network; however, BellSouth is not required to provide this transiting function which, in turn, implies that BellSouth should not be required to pay reciprocal compensation on behalf of the originating carrier. Witness Cox further explains the potential for delay in the billing process if WorldCom's proposal is put into place, since before BellSouth would have to make any payments to WorldCom, it would actually first have to collect the money from the third party carrier. Moreover, she continues, if there is a dispute between WorldCom and the third party carrier as to the reciprocal compensation that is either owed or due, there is a potential for all three carriers to get involved in a reciprocal compensation dispute, since BellSouth is in the middle, as opposed to a less complex two carrier dispute.

With regard to witness Cox's other objections to WorldCom's proposal, witness Price asserts that since the parties have been unable to reach agreement in principle on this issue, there have not been in-depth discussions that would allow the companies to explore the possible ramifications of WorldCom's proposal. As for BellSouth's objection to transit traffic being routed over the local interconnection trunk, WorldCom maintains its position to route transit, local and intraLATA traffic on a combined trunk group. WorldCom witness Price adds that there are tremendous network efficiencies gained by combining these three traffic types from a facilities, trunking and switch port perspective as well as translations table maintenance. In response to BellSouth's

position on billing, WorldCom witness Price points out that BellSouth currently renders bills for reciprocal compensation on third party transit traffic. He contends that for Wireless Type 1 and Type 2A traffic, BellSouth bills the originating carrier for call termination. WorldCom believes that this process should also apply to other types of third party transit traffic.

BellSouth witness Cox retorts that the circumstances surrounding Wireless Type 1 and Type 2A traffic are unique. She reiterates that the current arrangement surrounding Wireless Type 1 and Type 2A traffic is temporary or driven by technical constraints. Witness Cox continues that, unlike Wireless Type 1 and Type 2A traffic, wireline third-party traffic is distinguishable and the billing capabilities are available. Therefore, she concludes, WorldCom should bill its own reciprocal compensation. Witness Cox alleges that WorldCom only wants BellSouth to pay reciprocal compensation for local traffic originated from a third-party carrier terminating to WorldCom so that WorldCom does not have to consummate an interconnection agreement with the third-party carrier. Further, she alleges that WorldCom is simply attempting to shift, to BellSouth, the cost to perform this billing function.

B. Decision

As stated previously, the issue pertains to the routing and billing of third party local transit traffic by BellSouth and WorldCom. As noted in previous issues, this dispute involves whether transit traffic should be put over the same interconnection trunk groups as local and intraLATA toll traffic, and the proper billing practices, specifically who should pay who reciprocal compensation for third party local transit traffic, respectively.

In support of its position that BellSouth should bill the originating carrier and remit payment to the terminating carrier, WorldCom contends that its proposal reduces the number of trunk groups, record exchanges, and number of bills (to render and audit) for all carriers. WorldCom further contends that its proposal should be adopted because it is consistent with the OBF and the way that BellSouth handles the Wireless Type 1 and Type 2A traffic today.

In addition, WorldCom argues that having BellSouth render reciprocal compensation bills for third- party transit traffic makes sense because BellSouth is interconnected with all other carriers and the transit traffic only represents a small portion of the total traffic between BellSouth and the other carriers. Moreover, WorldCom does not believe that other small CLECs would want to engage in billing on their own behalf as opposed to having BellSouth take care of that for them as part of BellSouth's existing business relationships with the other carrier. WorldCom maintains that its proposal will increase billing efficiencies for all companies in the Florida telecommunications industry. With respect to the routing of third-party transit traffic, WorldCom believes that BellSouth should be required to route transit traffic over the same interconnection trunk groups as all other local and intraLATA toll traffic due to the tremendous network efficiencies gained by combining the three traffic types. WorldCom notes that BellSouth is capable of routing traffic in this manner on its supergroup trunks.

BellSouth disputes WorldCom's proposed language and requests that we reject it. BellSouth contends that it is not obligated to pay reciprocal compensation for third-party transit traffic as it is neither originating nor terminating traffic in this case. BellSouth alleges that WorldCom only wants this type of arrangement so that it does not have to consummate an interconnection agreement with the third-party carrier. Further, BellSouth contends that combining transit, local and intraLATA toll traffic on the same trunk group will cause major billing problems. Therefore, BellSouth's position is that while BellSouth is willing to route local transit traffic, WorldCom should seek reciprocal compensation from the originating carrier.

We are not persuaded by WorldCom's arguments. When BellSouth performs a transit network function, ALECs do not have to establish direct interconnection with the other LECs, which eases ALECs' recording and billing requirements. We do not find that BellSouth should have to relieve WorldCom of all the associated billing and administrative activities involved in third party transit traffic, especially since BellSouth is neither the originating nor the terminating carrier in this arrangement. We believe that the Telecommunications Act of 1996 requires WorldCom to negotiate interconnection agreements with ALECs with whom it intends to

exchange traffic. Accordingly, WorldCom should be responsible for its own billing. Moreover, we think it is unfair to place the burden of "augmenting existing business relationships" on BellSouth for no reason other than to lighten the load of WorldCom when BellSouth is merely the middle man in this arrangement. Despite the benefits that WorldCom describes its proposal brings, we do not believe that BellSouth should be made to act as WorldCom's reciprocal compensation banker. The multiple bill approach for local traffic was designed and implemented so that ALECs, such as WorldCom, could deal directly with third-party carriers. Furthermore, WorldCom witness Price admits that nothing in the Telecommunications Act of 1996 obligates BellSouth to perform the billing function proposed by WorldCom.

Further, it appears that the only reason WorldCom's proposal is consistent with the way BellSouth currently handles wireless Type 1 and Type 2A traffic is because of the unique circumstances surrounding this wireless traffic. Absent the fact that wireless Type 1 traffic is indistinguishable from BellSouth traffic, making any other billing alternative impossible, and the fact that the meet point billing capabilities for wireless Type 2A traffic are not yet available, this traffic would not be handled consistent with WorldCom's proposal. In fact, we note that once the billing capabilities become available for Type 2A traffic at the end of this year, BellSouth proposes that WorldCom deal directly with the party with which it exchanges traffic on billing issues. We further note that third-party transit traffic is neither indistinguishable nor incapable of being billed.

In addition, the potential ramifications of implementing WorldCom's proposal must be considered. First, there is a possibility that a third-party carrier may not be agreeable to WorldCom's proposal. Instead, it may prefer to deal directly with WorldCom as BellSouth suggests, in which case implementation problems could occur if WorldCom prevails. Second, billing as WorldCom proposes increases the potential for delay in the billing process. Third, if BellSouth acts as the banker, then any dispute that may arise between WorldCom and the third party would involve BellSouth, thus creating a more complex three-party reciprocal compensation dispute that otherwise would just have involved two carriers.

With regard to routing transit traffic, we agree that BellSouth is capable of mixing transit, local and intraLATA toll traffic on its supergroup trunks. However, as discussed before, it appears that mixing transit traffic on local trunks will cause severe billing issues that will ultimately preclude BellSouth from being able to bill WorldCom for transit traffic. Further, it appears that routing traffic over the same interconnection trunk groups as local and intraLATA toll traffic will prevent BellSouth from providing meet point billing records to the third-party carrier as required in contracts. Therefore, for billing purposes, third party transit traffic shall be routed on a trunk separate from local and intraLATA toll traffic. Further, reciprocal compensation for third party transit traffic shall be billed by the terminating carrier directly to the originating carrier. BellSouth shall bill the originating carrier a transiting fee for third party transit traffic.

XXIV. ASSIGNMENT OF NPA/NXX CODES

The issue presented for arbitration was under what conditions, if any, should the parties be permitted to assign an NPA/NXX code to end users outside the rate center in which the NPA/NXX is homed. However, on January 24, 2001, BellSouth and WorldCom filed a Stipulation, whereby the parties agreed to incorporate language reflecting our future decision in the pending generic docket, Docket No. 000075-TP. Further, the parties agreed that on an interim basis neither parties' proposed language and that the interconnection agreement shall reflect the parties' positions on this issue. Both parties agreed that our decision in the generic docket shall be retroactive from the effective date of the interconnection agreement for this issue. Therefore, we find it appropriate to approve the Stipulation regarding this issue.

XXV. RECIPROCAL COMPENSATION FOR ISP-BOUND TRAFFIC

The issue before us is to determine whether reciprocal compensation payments should be made for calls bound for Internet Service Providers (ISPs).

A. Analysis

WorldCom witness Price states that, like other ALECs who have arbitrated this issue in Florida, WorldCom focuses on which party incurs a cost when determining if compensation is due for ISP-bound traffic. Witness Price asserts that "since a BellSouth customer who uses WorldCom's network to complete a call [to an ISP] causes costs for WorldCom, BellSouth must compensate WorldCom for such costs." Witness Price cites the Declaratory Ruling, CC Docket No. 96-98, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 Inter-Carrier Compensation for ISP-Bound Traffic, Order No. FCC 99-38, (February 26, 1999), (Declaratory Ruling), at paragraph 29, in which the FCC states that "no matter what the payment arrangement, LECs incur a cost when delivering traffic to an ISP that originates on another LEC's network."

Regarding payment arrangements, witness Price explains that when two LECs jointly provide interstate access they will share the access revenues to recover incurred costs. Conversely, when two LECs collaborate to complete a local call, the originating carrier will pay reciprocal compensation to the terminating carrier pursuant to section 251(b)(5) of the Act. Witness Price states that while the FCC has construed this provision of the Act to apply only to local telecommunications traffic, he argues that ISP-bound traffic has been treated as local traffic for years.

Witness Price cites Commission and FCC orders, as well as court decisions in support of WorldCom's position. Referring to the FCC's Declaratory Ruling, witness Price argues that the FCC specifically affirmed the right of state commissions to determine that reciprocal compensation should be paid for ISP-bound traffic. Pointing out that the FCC has no federal rule that would conflict with an arbitration decision establishing reciprocal compensation for ISP-bound traffic, witness Price again quotes the Declaratory Ruling which states that "our policy of treating ISP-bound traffic as local for purposes of interstate access charges would, if applied to the separate context of reciprocal compensation, suggest that such compensation is due for that traffic."

On March 24, 2000, in Bell Atlantic Telephone Companies v Federal Communication Commission, 206 F. 3d. 416 (D.C. Cir. 2000),

the Circuit Court vacated the FCC's Declaratory Ruling. Witness Price cites to the D.C. Circuit Court's decision in which the court called into question many of the FCC's conclusions as to the interstate nature of ISP-bound traffic. He states that "the D.C. Circuit Court has rejected every basis for BellSouth's position. There is now no FCC order regarding this issue that even suggests that calls to ISPs are anything but local, and the Court's analysis strongly suggests these calls are local."

Witness Price asserts that our Orders are entirely consistent with WorldCom's position on this issue. He cites the ITC^DeltaCom Arbitration decision in Order No. PSC-00-0537-FOF-TP, issued May 15, 2000, in Docket No. 990750-TP, in which we determined that parties should continue to operate under the terms of their existing agreement with respect to this issue until the FCC issues binding rules regarding ISP-bound traffic. Witness Price states that in WorldCom's case, we previously found that their existing agreement requires the payment of reciprocal compensation for ISP-bound traffic. See, Order No. PSC-98-1216-FOF-TP, issued September 15, 1998, in Docket Nos. 971478-TP, 980184-TP, 980495-TP, and 980499-TP.

In addition, witness Price asserts that the issue of compensation for ISP-bound traffic has recently been decided by this Commission in the Global NAPs Arbitration, Order No. PSC-00-1680-FOF-TP, issued September 19, 2000, as amended by Order No. PSC-00-1680A-FOF-TP, issued September 21, 2000, in Docket No. 991220-TP. In that decision, we held that reciprocal compensation payments should be made for ISP-bound traffic. Witness Price states:

> At a minimum, the Commission should stay the course with its previous conclusions and require that the provisions of the parties' previous agreement, which requires reciprocal compensation for ISP-bound traffic, stay in effect. In my judgment, however, the Commission should go further and require that the new agreement affirmatively contain WorldCom's proposed language which explicitly treats ISP-bound traffic as local traffic.

BellSouth witness Cox argues that reciprocal compensation should not apply to ISP-bound traffic. She states that based on

the FCC's Local Competition Order, FCC 96-325, and the 1996 Act, reciprocal compensation obligations under Section 251(b)(5) only apply to local traffic. Witness Cox argues that ISP-bound traffic constitutes access service, which is not local traffic. She contends that WorldCom has not provided any evidence that ISP-bound calls are local calls.

However, witness Cox states that BellSouth recognizes that we have decided in the ITC^DeltaCom, Intermedia, and ICG arbitrations that parties should continue to operate under the terms of their current agreements until the FCC issues a final ruling regarding ISP-bound traffic. She states that in this proceeding "BellSouth is willing to abide by our previous decisions until the FCC establishes final rules associated with ISP-bound traffic." Witness Cox suggests that this be on an interim basis, with parties engaging in a retroactive true-up based upon the established intercarrier compensation mechanism resulting from the FCC's final rules. Witness Cox disagrees with WorldCom witness Price, stating that "MCI's position that the Commission should adopt its language that 'explicitly treats ISP-bound traffic as local traffic' is not appropriate and disregards the Commission's previous decisions that final disposition of this issue should follow a decision by the FCC."

B. Decision

As stated above, the issue is whether reciprocal compensation payments should be paid for ISP-bound traffic. While there remains a difference in opinion as to whether ISP-bound traffic is local or access in nature, the parties appear to be in agreement to a certain degree on how to handle this issue. Both parties recognize our previous decisions regarding ISP-bound traffic and agree to abide by these decisions. Specifically, BellSouth witness Cox states that BellSouth will accept our decisions in the ICG, ITC^DeltaCom, and Intermedia Arbitrations, which state that parties will continue under the terms of their current agreement as it relates to this issue until the FCC issues a final ruling regarding compensation for ISP-bound traffic.

WorldCom witness Price cites these decisions as well, pointing out that WorldCom's current agreement requires the payment of reciprocal compensation for ISP-bound traffic. However, witness

Price also cites our most recent decision in the Global NAPs Arbitration, in which we found that ISP-bound traffic should be treated as local traffic for the purposes of reciprocal compensation. While BellSouth witness Cox made no mention of the Global NAPs decision in her testimony, under cross examination she acknowledged that BellSouth was willing to abide by this decision as well.

In the Global NAPs arbitration, we decided that ISP-bound traffic should be treated as local traffic for the purposes of reciprocal compensation. In that decision, we determined that compensation was due for this traffic, and reciprocal compensation was the most appropriate mechanism presented in the record. Order No. PSC-00-1680-FOF-TP at p. 14. However, in that decision we also determined that due to the special characteristics of ISP-bound traffic, namely longer call durations, lower reciprocal compensation rates should apply to ISP-bound traffic. Order No. PSC-00-1680-FOF-TP at p. 25.

We find that the same analysis can be applied to the record in this proceeding, with regards to whether compensation is appropriate for ISP-bound traffic. We agree with WorldCom witness Price that WorldCom incurs a cost in terminating calls to ISPs. We also agree with witness Price that when two or more interconnecting carriers collaborate to deliver a call, the carriers recover their costs for the transport and termination of traffic originated by another carrier through either reciprocal compensation or access charges. In light of the ESP exemption, by which ISPs are exempt from paying access charges, we find that reciprocal compensation is the appropriate mechanism to apply to ISP-bound traffic. FCC 99-38 at ¶5.

BellSouth witness Cox states that "on an interim basis, BellSouth is willing to abide by the Commission's previous decisions until the FCC establishes final rules associated with ISP-bound traffic." However, WorldCom witness Price suggests that "there is no need for this Commission to await further FCC action; instead, the Commission should confirm the independent determination in [sic] made in Global NAPs that reciprocal compensation should apply to this traffic." While this is not an "interim" decision, we do recognize that it is possible that the FCC may ultimately promulgate rules regarding the jurisdictional

treatment and compensation for ISP-bound traffic that preempts our jurisdiction on this issue. Thus, it may be necessary to revisit this decision should the FCC's final rule conflict with our decision. However, such preemption would only occur if the rule is in conflict with our decision or if the FCC's final rule classifies traffic to ISPs as falling entirely within the interstate jurisdiction.

Therefore, based upon the record, and the fact that parties agree to abide by our previous decisions on this issue, we find that reciprocal compensation payments shall be made for ISP-bound traffic in the new WorldCom/BellSouth Interconnection Agreement. While we acknowledge that in the Global NAPs arbitration, Docket No. 991220-TP, we found that lower rates should apply to ISP-bound traffic, the parties in this case have not introduced any evidence in the record that would support alternative rates or rate structures. Therefore, we are unable to find that lower rates should be applied to ISP-bound traffic in this arbitration. We note that this decision stops short of deciding that ISP-bound traffic is to be considered local traffic; only that it should be treated as local traffic for purposes of reciprocal compensation.

XXVI. TANDEM CHARGES FOR LOCAL TRAFFIC

The issue presented for arbitration was under what circumstances is BellSouth required to pay tandem charges when WorldCom terminates BellSouth local traffic. However, on January 24, 2001, BellSouth and WorldCom filed a Stipulation, whereby the parties agree to incorporate language reflecting our future decision in the pending generic docket, Docket No. 000075-TP. The parties agree that it may be necessary to conduct further proceedings basis upon our decision in the generic docket. Both parties reserve the right to request such further proceedings. The parties agree that on an interim basis neither parties' proposed language shall be included in the interconnection agreement. Further, the parties agree on an interim basis that WorldCom shall not bill a tandem rate when it does not use a tandem to terminate BellSouth's originating traffic, subject to the right to retroactively bill a tandem rate upon a determination by us that it is appropriate. Therefore, we find it appropriate to approve the Stipulation regarding this issue.

XXVII. DC POWER TO ADJACENT COLLOCATION SPACE

The issue before us is to determine whether BellSouth should be required to provide DC power to adjacent collocation space. In the First Report and Order, CC Docket No. 98-147, In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability, Order No. FCC 99-48, (March 31, 1999), (Advanced Services Order), the FCC requires the following:

> . . . we require incumbent LECs, when space is legitimately exhausted in a particular LEC premises, to permit collocation in adjacent controlled environmental vaults or similar structures to the extent technically feasible.
>
> . . . In general, however, the incumbent LEC must permit the new entrant to construct or otherwise procure such an adjacent structure, subject only to reasonable safety and maintenance requirements. The incumbent must provide power and physical collocation services and facilities, subject to the same nondiscriminatory requirements as traditional collocation arrangements.

FCC 99-48 at ¶ 44.

A. Analysis

WorldCom witness Messina believes that the "nondiscriminatory requirements" obligate BellSouth to provide DC power to adjacent collocation arrangements. Witness Messina explains that "BellSouth clearly is required to provide DC power to traditional collocation arrangements; it is therefore required by the nondiscriminatory standard to provide that power to adjacent collocation arrangements as well."

BellSouth witness Milner agrees that the FCC rules require BellSouth to provide power. However, witness Milner notes that the type of power is not specified. BellSouth witness Milner contends that providing adjacent collocators with AC power is at parity with BellSouth. Witness Milner explains that BellSouth's remote terminals are fed AC power. BellSouth then converts the power from

AC to DC. Moreover, BellSouth performs this conversion at all its remote sites.

WorldCom witness Messina contends that WorldCom would incur costs significantly higher than the costs associated with collocating within a central office. Witness Messina asserts that to accommodate AC power, WorldCom would be required to install AC-to-DC conversion equipment, as well as battery back-up within its collocation space. Witness Messina testifies:

> The opportunity for discrimination against ALECs is particularly acute in this situation. Adjacent collocation space does not have to be employed for collocation unless space in BellSouth's central office is legitimately exhausted.

Moreover, witness Messina explains that the Texas PUC has ordered that DC power must be made available to adjacent collocation space; therefore, it is technically feasible. He cites the Investigation of Southwestern Bell Telephone Company's Entry into the Texas InterLATA Telecommunications Market, Public Utility Commission of Texas, Project No. 16251:

> The Commission finds that SWBT should provide power in multiples of the following DC power increments: 20, 40, 50, 100, 200, and 400 AMPS. SWBT should provide reference to the definition of the term "Legitimately Exhausted." The Commission notes that provision of DC power to adjacent on-site collocation facility may include increments of 600 and 800 Amps . . . .

Section 6.1.1(E) BellSouth witness Milner asserts that the National Electrical Code (NEC) prohibits BellSouth from providing DC power to an adjacent collocation arrangement. Witness Milner believes that in order for BellSouth to provide power to WorldCom's adjacent collocation structure, BellSouth would have to seek a waiver from the local authorities. Witness Milner identifies the NEC language which he believes precludes BellSouth from providing DC power to an adjacent collocation arrangement. In particular, the NEC prohibits electrical service in one "dwelling unit" from being used on a branch circuit basis to provide power to any other "dwelling unit." Also, witness Milner identifies language

requiring that properly insulated cables are necessary for outdoor use. Moreover, he testifies:

> The NEC does not specifically state that DC power cable can not be used in the outdoor environment, but it does state that whatever cable (AC or DC) is to be used has to be rated for the environment in which it's used. The cable used in the telecommunications industry for DC power (KS 548201) inside central offices is rated for indoor use, and not for use in an outdoor environment.

WorldCom witness Messina argues that the NEC does not prohibit BellSouth from provisioning DC power to WorldCom's adjacent collocation space. Witness Messina asserts that WorldCom is aware of DC power cable that meets national electrical standards. Moreover, witness Messina asserts that WorldCom is willing to provide the cabling to BellSouth's power distribution board, but BellSouth should provide the conduit.

B. Decision

We note that BellSouth typically uses unshielded KS548201 power cable within a central office. We agree with BellSouth that this cable is not suitable for an outdoor environment. BellSouth witness Milner asserts that BellSouth is not aware of DC power cables which meet specification for outside use. However, witness Milner admits that BellSouth has not requested such information from cable manufacturers. We acknowledge WorldCom witness Messina's testimony that there are DC cables manufactured for outside use. Moreover, WorldCom is willing to provide the cable to BellSouth where adjacent collocation is requested. Therefore, we are persuaded that DC cable is manufactured which meets NEC specifications for outside use.

We considered BellSouth witness Milner's testimony that the NEC prohibits electrical service in one "dwelling unit" from being used on a branch circuit basis to provide power to any other "dwelling unit." However, we think that BellSouth may be interpreting the language of Article 225 of the NEC out of context. We believe that the referenced language applies to separate structures or "dwelling units" which seek an unauthorized linking of a single point to share power offered by another entity. We

note that an example would be where two neighbors share power by running an extension cord from one house to the other. We believe that the extension cord itself, limitations of feeder wire to a "dwelling unit," and proper fuse protection are some of the factors which make this arrangement a safety hazard. However, we think that the referenced language does not apply to entities providing or supplying power. We note that power suppliers typically feed power to a single distribution point where it branches to "dwelling units." Therefore, we are not persuaded that the NEC precludes BellSouth from supplying power to an adjacent collocation arrangement.

Both parties agree that an adjacent collocation arrangement fed AC power would require rectifiers to convert AC-to-DC, and batteries in the event there is a loss of commercial power. We observe that a generator may also be necessary to provide competitive reliability in situations where there is a long absence of commercial power. Therefore, we are persuaded that under BellSouth's proposed adjacent collocation arrangement, WorldCom would experience significantly higher cost as compared to collocating within the central office.

We considered witness Milner's assertion that BellSouth is required to convert AC-to-DC at all of its remote sites. However, we conclude that the type of power fed to BellSouth's remote sites is not relevant in this matter. We note that BellSouth provides DC power to collocators within central offices and within remote terminals. The Advanced Services Order at paragraph 44 states that "the incumbent must provide power and physical collocation services and facilities, subject to the same nondiscriminatory requirements as traditional collocation arrangements." We find that a change in the type of power supplied is discriminatory, on a cost and space efficiency basis. We note that batteries and power conversion equipment would require additional space.

We note that the Texas PUC Order No. 54, Investigation of Southwestern Bell Telephone Company's Entry into the Texas InterLATA Telecommunications Market, Public Utility Commission of Texas, Project No 16251, requires SWBT to provide DC power to adjacent collocation structures. Therefore, we are persuaded that requiring BellSouth to provide DC power is technically feasible. Moreover, BellSouth witness Milner testifies:

> . . . BellSouth's position is not based on the manner in which the cable between the two structures is supported or installed. The issue to BellSouth is conformance with the electrical code.
>
> So, whatever the code allows is what BellSouth is willing to do.

As stated above, we are persuaded that the NEC does not prohibit BellSouth from providing DC power to adjacent collocation arrangements. Moreover, we are persuaded that providing AC power to an adjacent collocation space is discriminatory. Therefore, we find that BellSouth shall be required to provide DC power to WorldCom's adjacent collocation space, at WorldCom's request, where local ordinances do not prohibit. However, WorldCom must provide the appropriate direct current cabling certified for outside use.

XXVIII. CABLE FACILITY ASSIGNMENTS

The issue present to us was should collocation space be considered complete before BellSouth has provided WorldCom with cable facility assignments (CFAs). More specifically, this issue addresses the timing aspects for BellSouth's provisioning of CFAs to WorldCom. The central dispute in this issue concerns whether the collocation space should be considered "complete" before BellSouth has provisioned CFAs.

A. Analysis

WorldCom witness Messina contends that collocation space is not usable unless WorldCom has been provided with CFAs. Witness Messina defines a CFA as a tie cable placed between a collocator's space and an incumbent's demarcation point, typically the main distribution frame. He believes that CFAs pertain to the naming and inventorying of cable facilities within a central office and are necessary for WorldCom to order service. Witness Messina states that "The tie cable has to be given a naming convention for provisioning purposes, and it is that name of the cable . . . which is commonly referred to as a CFA."

Witness Messina believes that the collocation space is not complete and WorldCom is not obligated to pay for use of it until

WorldCom receives CFAs. He contends that "the common sense meaning of 'complete' is that everything that is necessary for the ALEC to occupy the space and turn up power has been done."

WorldCom contends that BellSouth should provide CFAs before the space is considered complete. Witness Messina believes BellSouth's position to be that it will give CFAs to a collocating ALEC when the ALEC installs its equipment, but will render a final bill to the ALEC and begin charging for the space once all the work done by BellSouth or a BellSouth certified vendor has been "completed." According to witness Messina "WorldCom cannot attach its equipment to BellSouth's cables without CFAs." He believes CFAs should be made available and assigned to WorldCom as part of BellSouth's response to the initial request for collocation. He concludes by stating:

> . . . [E]arly on in the process when we apply for collocation, we list the equipment which we intend to install and we also give a forecast to the size that CFA cable . . . I don't understand why early on in the process or parallel to the installation process BellSouth can't develop the CFA nomenclature and provide that.

BellSouth witness Milner states that the essence of the dispute in this issue is the determination of when the collocation space is considered to be complete. BellSouth believes that provisioning an ALEC's collocation space can be "completed" before providing CFAs. The witness contends that BellSouth is " . . . entitled to be compensated for collocation as soon as the collocation space is available for use by MCIW, not when MCIW begins to actually use the space to provide end user service." Witness Milner believes that BellSouth's proposed language is appropriate, since BellSouth has no control over the work activities of WorldCom.

Witness Milner asserts that BellSouth will complete all work under its control, including the space preparation. At the point that BellSouth finishes this work, he believes that collocation space is considered "complete," since it is available for use by WorldCom, which can then have its vendor install its equipment and cable runs for connecting facilities. Witness Milner maintains

> If the space were not to be considered complete once BellSouth finishes its work (and, hence, billing would not start) until after the CFAs are provided, MCIW [WorldCom] would be able to occupy the space indefinitely without paying floor space charges until it actually gets around to installing its equipment . . .

He further states:

> Our concern is that billing commence for the collocation arrangement at the time that we make it available to the collocator. Our experience has been that sometimes - sometimes months go by before the collocator even begins the installation of its equipment, and more months go by before that completes. So under our proposal, when we would finish that work that we are responsible for, we think we ought to be paid.

Witness Milner defends BellSouth's position because he believes that the alternative argument (that billing should be instituted when the collocator actually begins using that facility) is flawed because "our experience is that sometimes that is months apart."

B. Decision

We agree with WorldCom witness Messina that the common sense meaning of "complete" is that everything that is necessary for the ALEC to occupy the space and turn up power has been done. BellSouth witness Milner states that BellSouth is entitled to be compensated for collocation as soon as the collocation space is available for use by WorldCom, and we agree with that as well. However, we find that the provisioning of CFAs is a condition for use that should be met in order for WorldCom or any other ALEC to truly "use" its collocation space. We acknowledge BellSouth witness Milner's concern, but disagree with him on exactly "when" the collocation space is available for use.

We conclude that the intended function of CFAs is to interconnect the incumbent's and the ALEC's central office equipment, or networks. WorldCom witness Messina states that collocation space is not usable unless CFAs from BellSouth have been provided. We agree. Under cross examination, witness Milner

agreed that WorldCom needs CFAs in order to use its telecommunications equipment with BellSouth's network.

We acknowledge witness Milner's concern about having no control over the ALEC's provisioning of its equipment. However, we do not believe that this concern is sufficient justification for not, at a minimum, preparing to provision CFAs during the pendency of the space preparation. We believe that to the extent it is technically able to provision CFAs concurrently with its other space preparation functions, BellSouth should do so. WorldCom acknowledged that the information that BellSouth needs to provide CFAs is included in its original collocation application. We think that this information should be adequate, at a minimum, for BellSouth to begin its preparations to provide CFAs concurrently with other space preparation activities. We believe that the CFA information BellSouth may need beyond that which was included in WorldCom's initial application could be sought through the joint meeting process, or in a similar fashion. We think that WorldCom and BellSouth should address their respective concerns about CFAs, if any, prior to or during their joint planning meeting.

Therefore, we find that collocation space shall not be considered complete until BellSouth has provided WorldCom with CFAs. To the extent that it is technically able to provision CFAs concurrently with its other space preparation functions, BellSouth shall do so. WorldCom and BellSouth shall address their respective concerns about CFAs, if any, prior to or during their joint planning meeting.

XXIX. JOINT PLANNING MEETING COLLOCATION INFORMATION

The issue presented to us is whether BellSouth should provide WorldCom with specified collocation information at the joint planning meeting. This issue addresses the mutual exchange of information in planning for the provisioning of collocation space. The setting for this mutual exchange, the joint planning meeting, is when BellSouth meets with and provides crucial data to the ALEC, WorldCom, for the purpose of designing its collocation space.

A. Analysis

BellSouth witness Milner asserts that BellSouth has committed to providing WorldCom the information it reasonably requires to begin design plans for collocation space, to the extent the information is available. He states Witness Milner believes " . . . that the area of disagreement is on what information is needed by MCIW [WorldCom]." He states:

> If the information is not available at the joint planning meeting, BellSouth will provide such information within thirty (30) calendar days thereafter . . . For the demarcation point at the BellSouth distributing frame, BellSouth will provide the exact cable location termination requirements (e.g., bay/panel and jack location) within the central office that should be used. . . . For older collocation arrangements where the demarcation point is at the Point of Termination (POT) bay, BellSouth will run the cables from its distributing frame to the POT bay. . . .

Witness Milner contends that even though BellSouth has committed to providing this information to WorldCom, "BellSouth does not believe that MCIW reasonably requires BellSouth to provide this information to them to begin its design plans for collocation space." Witness Milner states that WorldCom could seek the information from the certified vendor actually performing the work, as opposed to pursuing the information through BellSouth. Witness Milner also offers that for the older collocation arrangements that use POT bays, WorldCom would not need the cable assignment information at all, since the work will be done by BellSouth's certified vendor, not WorldCom's.

Witness Milner contends that WorldCom's proposals indicate that the collocating ALEC should be able to designate the interconnection point within the BellSouth central office at any technically feasible point. To this, witness Milner states:

> There is simply no basis for this belief. Pursuant to 47 C.F.R. 51.323(d)(1), BellSouth must provide an interconnection point(s) at which the fiber optic cable enters the premises, provided that BellSouth must

> designate the interconnection point(s) as close as reasonably possible to the premises. Consequently, when MCIW chooses physical collocation, . . . the point of interconnection is dictated by FCC Rule. Where MCIW's [WorldCom's] collocation arrangement is located within the BellSouth central office should be determined by BellSouth.

Witness Milner maintains that the recent decision by the D.C. Circuit Court of Appeals held that the ALEC may not select space for its collocation arrangement within an ILEC's central office. Witness Milner asserts that

> BellSouth's right to designate the collocation site and where that collocation arrangement interconnects with BellSouth's network falls squarely within BellSouth's responsibility and is essential if BellSouth is to control and manage the space within a central office in the most efficient manner and to the benefit of all ALECs.

In summary, BellSouth believes that the language WorldCom has proposed goes well beyond requiring BellSouth to provide specified collocation information at the joint planning meeting, and that the manner in which demarcation points are established is governed by FCC rules and Commission Orders.

WorldCom witness Messina believes that BellSouth should provide "all" specified information at the joint planning meeting, as opposed to BellSouth only providing "certain" specified information at the meeting, and providing "all" of the information within thirty (30) days thereafter. He states:

> Our position is based on common sense: WorldCom needs certain key information to begin its design plans for a collocation space. This information includes (i) power connectivity information, including size, and number of power feeders; (ii) the exact cable type and termination requirements for the WorldCom provided Point of Termination ("POT") bays; and (iii) identification of technically feasible demarcation points . . . As a practical matter, the providing of this information

> commences the period for the ALEC to do its engineering work . . . .

Although witness Messina concedes that BellSouth has stated its willingness to provide the specified information at the joint planning meeting, or within thirty (30) calendar days thereafter, he is concerned that BellSouth believes that ". . . much of the information we seek . . . is not available, or is not required to be provided." Witness Messina contends that any information that BellSouth does not provide to WorldCom during the joint planning meeting could be withheld for the purpose of delay.

Witness Messina states that the specified collocation information would benefit both parties, and furthermore, that "both parties should walk away from the meeting knowing how to engineer their respective ends of the collocation process." He asserts that an ALEC such as WorldCom will not know how to complete its collocation arrangement unless it has the requested information.

Witness Messina believes that ALECs have the right to designate the interconnection point. He states that BellSouth's reluctance to even identify technically feasible interconnection points stems from its belief that the ILECs - not the ALECs - have this right. He cites ¶23 of the FCC's Advanced Services First Report and Order, and also ¶558 of the FCC's Local Competition Order as his justification, as well as 47 C.F.R. §51.323.

"WorldCom wants predictable, specific provisions for ordering and provisioning collocation space," according to witness Messina. To this end, WorldCom believes that the specified collocation information should be provided at the joint planning meeting.

Witness Messina claims that identification of the key information which WorldCom seeks ". . . allows choices for ordering and provisioning collocation space, much like the tariff process that exists for other services today, and, more specifically, enables an ALEC to begin its design plans for collocation space." BellSouth's approach, according to witness Messina, advances an individual case basis (ICB) approach to collocation, which subjects WorldCom and other ALECs to "uncertainty, expense, and delay." WorldCom aspires to reduce the opportunities for uncertainty, delay and litigation.

B. Decision

Based upon a review of the record of this proceeding, we believe that BellSouth's and WorldCom's joint planning meetings could be more productive. We agree with WorldCom witness Messina that "Both parties should walk away from the meeting knowing how to engineer their respective 'ends' of the collocation process." Based on this statement from WorldCom witness Messina, we find that this is not happening now, and, furthermore, that each party could implement procedures to improve the current status. We think that if improvements were implemented, the parties could conceivably " . . . walk away from the meeting knowing how to engineer their respective 'ends' of the collocation . . .," and thereby reduce the "uncertainty, expense and delay" that witness Messina references.

We commend BellSouth's commitment to providing WorldCom the information it reasonably requires either at the joint planning meeting or within thirty (30) calendar days thereafter, but believe efficiencies can be gained if the parties alter their respective procedures. Based on witness Messina's testimony, we conclude that WorldCom is faced with waiting up to thirty (30) calendar days after their joint planning for specific information from BellSouth, as opposed to getting the information it seeks during the joint planning meeting. If so, we believe that WorldCom is subjected to unwanted delays and that a more productive solution should be sought.

We think that BellSouth can only reasonably predict, but not know conclusively, what information WorldCom will seek in a joint planning meeting. Accordingly, the parties should explore providing advance notification of their respective expectations for the joint planning meeting. While this decision is primarily intended for WorldCom to identify what specific information it seeks from BellSouth, we believe the reciprocal arrangement is appropriate to the extent that BellSouth seeks information from WorldCom. The record, however, is silent on whether or not the parties provide advance notification of the specific collocation information they seek prior to any given joint planning meeting.

While we agree in concept with BellSouth that each collocation interconnection should be treated on an individual case basis, we believe that if each party had prior knowledge of the information

sought by the other, the joint planning meeting would be more productive, and BellSouth and WorldCom could both improve the time frames for provisioning collocation space. We think that a fourteen (14) calendar day interval should be adequate for BellSouth to prepare for the joint planning meeting, and that BellSouth should be required to provide WorldCom with specified collocation information at the joint planning meeting, or in a mutually agreeable time frame thereafter.

With respect to the selection of the interconnection point, or points, we find that BellSouth witness Milner is correct in stating that FCC regulations govern this, and that this obligation rests with the incumbent. We conclude that FCC Rule 47 C.F.R. §51.323(d)(1) clearly demonstrates this:

> When an incumbent LEC provides physical collocation, virtual collocation, or both, the incumbent LEC shall:(1) Provide an interconnection point, or points, physically accessible by both the incumbent LEC and the collocating telecommunication carrier, at which the fiber optic cable carrying an interconnector's circuits can enter the incumbent LEC's premises, provided that the incumbent LEC shall designate interconnection points as close as reasonably possible to its premises.

Although the parties failed to specifically identify it, we find that the recent decision by the D.C. Circuit Court of Appeals referenced by the parties is Iowa Utilities Board v. Federal Communications Commission, 219 F.3d 744(8th Cir. 2000). We find that this decision had no bearing on Rule 47 C.F.R. §51.323(d)(1), which contemplates the designation of the interconnection point or points. Therefore, we are not persuaded by witness Messina's statement that ALECs have the right to designate the interconnection point. We find that, pursuant to FCC Rule 47 C.F.R. §51.323(d)(1), this responsibility belongs to the incumbent, BellSouth.

Therefore we find that to the extent that WorldCom requests specific collocation information from BellSouth at least fourteen (14) calendar days before the joint planning meeting, BellSouth shall be required to provide WorldCom with such information at the joint planning meeting, or in a mutually agreeable time frame

thereafter. If WorldCom requests specific collocation information from BellSouth less than fourteen (14) calendar days before the joint planning meeting, BellSouth shall be required to provide WorldCom with such information within thirty (30) calendar days following the joint planning meeting.

XXX. AMPERE RATE FOR DC POWER

The issue presented to us is whether the per ampere rate for the provision of DC power to MCIW's collocation space should apply to amps used or to fused capacity. Specifically, this issue addresses how power consumption in WorldCom's collocation space should be measured.

A. Analysis

WorldCom witness Messina asserts that the rate for power consumption should be applied on a per used ampere basis. According to witness Messina:

> WorldCom's proposal, simply stated, is based on the fact that the parties' original interconnection agreement, which was approved by the Commission, prices power simply on a per ampere basis. . . . It is clear from the previous agreement that BellSouth would measure how much power each ALEC was using and would bill the ALEC accordingly.

BellSouth maintains that the per amp charge should apply to the fused capacity (rated power consumption) for the equipment WorldCom installs in its collocation space. According to BellSouth witness Milner, equipment manufacturers provide the rated power consumption for their equipment, and BellSouth builds its power plant accordingly. Additionally, the reason BellSouth proposes that charges for power must be based upon the certified vendor engineered and installed power feed fused amp capacity is:

> That BellSouth must design and install the power equipment on behalf of the collocator in response to the peak power requirement that that equipment will need. Some pieces of equipment, the so-called nominal and peak loads are pretty much the same, so there is no

> difference. Other pieces of equipment there is some difference. BellSouth must design the power plant for peak loads because to do otherwise may mean that in, you know, certain times of the day the power supply would be inadequate to handle all the equipment.

Witness Milner notes that witness Messina does not identify our Order to which he refers; therefore, witness Milner "found it difficult to respond to his argument."

It is WorldCom witness Messina's understanding that BellSouth fuses the collocation power at 150 percent of what is being ordered. For example, he notes that if WorldCom requests 100 amps, power feeders are installed to the collocation space and that is fused at 100 amps. However, while BellSouth fuses at 100 amps, it is actually building the infrastructure to support 150 amps. When asked "Isn't it common in power engineering to fuse the capacity at a level that is higher than the rated capacity of the equipment in order to take care of things like peak usage times or power spikes?", Witness Messina replied, "Well, we don't think that that is necessary for the fuse which is feeding the collocation. It is common engineering practice for the infrastructure behind that to be capable of carrying 150 percent of the requested amount."

BellSouth witness Milner notes that in order to do what WorldCom wants, BellSouth would have to install monitoring equipment for each collocation arrangement in each central office (CO) and would have to have someone read the meter on each collocation arrangement in each CO in order to obtain the information to bill power to each ALEC. He notes that this could be costly and time-consuming. In addition, he believes that WorldCom's proposal does not take into consideration that BellSouth's costs for its power plant are a function of the peak power loads to be handled, rather than average or nominal loads. This is because the power plant must be built to withstand peak aggregate power demands for both BellSouth's equipment and all collocators' equipment.

WorldCom witness Messina agrees that BellSouth would need to meter the service in order to bill WorldCom for only the power it consumed. When asked if WorldCom would be willing to have a per amp rate that recovered BellSouth's costs associated with obtaining

the meter, Witness Messina responded, "Well, I'm not sure of what methodology is really practiced to recover those types of costs. But there would have to be some way for you to recover that cost." When asked if WorldCom would be willing to bear the costs to have someone or some system read the meter, he responded in the affirmative, noting that those costs would have to be allocated in some fashion. Finally, when asked if WorldCom is paying for electricity in any other state or region with a metering system, he was not aware of any such situation. Further, witness Messina stated that he is not aware of any other ILEC which has agreed to a metering system.

B. Decision

We believe that the per ampere rate for the provision of DC power to WorldCom's collocation space should apply to fused capacity for two reasons. First, it appears that WorldCom witness Messina agrees that BellSouth's power plant must be capable of accommodating 150 percent of the requested amount of power. However, it appears that witness Messina contends that the fuse feeding WorldCom's collocation space should be sized at WorldCom's requested amperage, but the infrastructure behind that space should be capable of carrying 150 percent of the requested amperage. We find that if BellSouth must construct its overall power plant to accommodate 150 percent of the aggregate amperage requested by collocators then it should be compensated for this level of capacity. Furthermore, both parties believe that it is a generally accepted power engineering practice to fuse capacity in excess of the amperage needed.

Second, we agree with BellSouth witness Milner that metering WorldCom's actual usage would be costly and time-consuming. While specific numbers were not provided, we suspect that the costs of metering could exceed the difference in costs of applying the rate to fused capacity versus amperes used. Therefore, we find that the per ampere rate for the provision of DC power to WorldCom's collocation space shall apply to fused capacity.

<u>XXXI. CABLE ENTRANCE</u>

We have also been asked to address whether WorldCom entitled to use any technically feasible entrance cable, including copper

facilities. More precisely, the issue before us is whether BellSouth should be obligated to accommodate non-fiber cable entrance facilities in its central offices.

A. Analysis

In Section IV of the Generic Collocation Order, Order No. PSC-00-0941-FOF-TP, issued May 11, 2000, in Docket No. 981834, we determined that ALECs requiring adjacent collocation shall be allowed to use copper entrance facilities unless BellSouth provides evidence that entrance facilities are at or near exhaustion in a particular central office. Id. at pp. 24-25. WorldCom witness Messina believes that the same requirement should be applied to physical collocation within a central office. Moreover, witness Messina argues that BellSouth has access to copper entrance facilities; therefore, WorldCom should be allowed the same. He states:

> We are asking the Commission to require BellSouth to provide parity, and allow WorldCom to use copper entrance facilities in situations where BellSouth uses such facilities for itself.

Witness Messina believes that access to entrance facilities should be another factor in determining whether space and facilities are available in a central office. Moreover, an ILEC is required to reserve entrance space for the future needs of itself and current collocators on a competitively neutral basis.

BellSouth witness Milner acknowledges that copper cables currently enter BellSouth's central offices; however, these cables are older cables associated with loop distribution facilities. However, ALEC entrance facilities are a form of interconnection. Witness Milner states:

> All of BellSouth's interconnection trunk cables entering BellSouth's central office are optical fiber facilities.

Moreover, with the exception of adjacent collocators, "BellSouth does not install new copper cable through its entrance facilities in its central offices, and has not for quite a while."

As a basis for their positions, both parties referenced FCC Rule 47 C.F.R. § 51.323 (d)(3). However, their interpretations of how the rule applies in this case differ. WorldCom witness Messina believes that the FCC rule entitles WorldCom to copper entrance facilities because the basic principles applicable to adjacent and physical collocation are the same, while BellSouth witness Milner believes there is a distinction between the two which would require WorldCom to prove to us on a case-by-case basis that copper facilities are necessary. The FCC Rule 51.323(d)(3) states:

> (d) When an incumbent LEC provides physical collocation, virtual collocation, or both, the incumbent LEC shall:
>
> (3) Permit interconnection of copper or coaxial cable if such interconnection is first approved by the state commission;...

Further, BellSouth witness Milner states "For any state commission to permit copper entrance facilities universally would undermine the importance the FCC attributed to this issue and would be to the detriment of other ALECs desiring to collocate in an office with limited entrance space availability." We note that WorldCom witness Messina agrees that entrance space is a finite commodity which should be looked at on a case-by-case basis. Moreover, witness Messina agrees that fiber optic cable is probably the most efficient way to use and conserve such space. Therefore, we are persuaded that allowing copper entrance facilities universally may have a negative competitive impact. We note that current and potential collocators, as well as the ILEC, could be adversely affected by a premature exhaustion of entrance facilities.

WorldCom witness Messina believes that requiring WorldCom to use only fiber entrance facilities may preclude WorldCom from providing advanced services. He explains:

> ...certain advanced services, DSL type services are dependent on copper facilities. If we are limited to placing fiber entrance facilities, then the DSL equipment would always have to be placed in a collocation cage and we would be limited to ordering copper loops from BellSouth. Allowing us to feed the collocation with

> copper facilities gives us flexibility to different network architectures.

Witness Messina also refers to this Commission's decision in the Generic Collocation Order, which states:

> As for the provision of DSL over fiber, the evidence supports that this is technically feasible, and that there is equipment available which accommodates DSL over fiber. An ALEC would, however, be required to obtain additional equipment to utilize this technology. Requiring an ALEC to purchase such equipment could significantly increase the ALEC's collocation costs. Therefore, we believe that requiring fiber optic entrance facilities could be a competitive obstacle for certain ALECs requesting collocation facilities and are persuaded that ALECs shall be allowed to use copper entrance cabling.
>
> We have considered the fact that entrance facilities have a certain capacity per central office and that allowing copper cabling could accelerate the entrance facility exhaust interval. Therefore, ILECs shall be allowed to require an ALEC to use fiber entrance cabling after providing the ALEC with an opportunity to review evidence that demonstrates entrance capacity is near exhaustion at a particular central office. The evidence of record is insufficient to determine what percentage of entrance facility should be in use before requiring fiber optic cabling; however, factors for consideration should include, but not be limited to, subscriber growth, "off-site collocation" growth and cabling request, and cabling requirements of the ILEC. Order No. PSC-00-0941-FOF-TP at pp. 24-25.

B. Decision

We believe that the referenced order does not apply in the context of collocation within a central office for two reasons. First, an ALEC with adjacent collocation would place its DSL equipment in its collocation space located outside of the central office. The ALEC would not have direct copper loop-to-equipment

access as carriers within a central office. We note that the input/carrier side of first generation DSL equipment supports either fiber or non-fiber feeds. However, the output/customer side of DSL equipment must be copper. Therefore, if an ALEC is required to use fiber entrance facilities, it would be precluded from providing DSL in the same manner as carriers located within a central office. However, we are not persuaded that WorldCom would be precluded from providing DSL in the same manner as the ILEC when it collocates within the central office.

Second, we agree that WorldCom should have the flexibility to configure its network how it chooses. Moreover, we agree with WorldCom witness Messina that BellSouth should provide entrance facilities at parity with those it provides itself. However, BellSouth witness Milner testifies that "BellSouth does not install new copper cable through it's entrance facilities in its central offices, and has not for quite a while." Therefore, we are persuaded that BellSouth's requirement is at parity with what BellSouth provides to itself. We note that WorldCom does have access to existing copper loop distribution facilities within a central office. Therefore, we find that BellSouth shall not be required to allow the use of non-fiber entrance facilities except where WorldCom has an adjacent collocation arrangement.

<u>XXXII. AVAILABILITY OF DUEL ENTRANCE FACILITIES AND WAIT LIST</u>

This issue before us is to determine to what extent WorldCom should be able to verify BellSouth's assertion that dual entrance facilities are not available, and if facilities are not available, whether BellSouth should be required to maintain a waiting list. We note that dual entrance facilities provide an opportunity for network redundancy which reduces outages due to cable cuts or other failures.

A. Analysis

WorldCom witness Messina believes that WorldCom should have the right to verify BellSouth's claim that dual entrance facilities are not available. Witness Messina cites FCC Rule 51.321(f):

> An incumbent LEC shall submit to the state commission, subject to any protective order as the state commission

> may deem necessary, detailed floor plans or diagrams of any premises where the incumbent LEC claims that physical collocation is not practical because of space limitations. An incumbent LEC that contends space for physical collocation is not available in an incumbent LEC premises must also allow the requesting carrier to tour the entire premises in question, not just the area in which space was denied, without charge, within ten days of the receipt of the incumbent LEC's denial of space.

47 C.F.R. §51.321(f). However, BellSouth witness Milner argues that the right to tour referenced in the above rule only applies when BellSouth "contends space is not available" in a given central office. Witness Milner asserts that a lack of dual entrance facilities does not inhibit WorldCom from acquiring collocation space or access to unbundled elements within a central office.

WorldCom witness Messina believes that it is reasonable for us to expand an ALEC's right to tour when BellSouth asserts dual entrance facilities are not available. However, BellSouth witness Milner contends that where collocation space and entrance facilities are available, it is not a reasonable conclusion to require a "formal" tour due to the lack of dual entrance facilities. He states that "no FCC rule compels this result," and if the FCC believed a "formal" tour was necessary under these conditions, they would have required the ILEC to do so. Moreover, witness Milner testifies:

> BellSouth provides ALECs information as to whether there is more than one entrance point for BellSouth's cable facilities. In the event there is only one entrance point, MCIW can visually verify that another entrance point does not exist, which does not require a formal tour. In the event that dual entrance points exist but space for entrance facilities is not available, BellSouth will provide documentation, upon request and at MCIW's expense, so that MCIW can verify that no space is available for new entrance facilities.

BellSouth witness Milner states that "when there is only one entrance point, MCIW can visually verify that another entrance

point does not exist" without a tour. He believes that WorldCom's review of the building floor plans should suffice.

WorldCom witness Messina also believes that BellSouth should be required to maintain a waiting list for central offices where dual entrance facilities are exhausted. Witness Messina references the FCC Rule 51.321(h):

> (h) Upon request, an incumbent LEC must submit to the requesting carrier within ten days of the submission of the request a report indicating the incumbent LEC's available collocation space in a particular LEC premises. This report must specify the amount of collocation space available at each requested premises, the number of collocators, and any modifications in the use of the space since the last report. This report must also include measures that the incumbent LEC is taking to make additional space available for collocation. The incumbent LEC must maintain a publicly available document, posted for viewing on the incumbent LEC's publicly available Internet site, indicating all premises that are full, and must update such a document within ten days of the date at which a premises runs out of physical collocation space.

47 C.F.R §51.321(h). Witness Messina asserts that it is reasonable to maintain a waiting list for dual entrance facilities. However, BellSouth witness Milner argues that maintaining a waiting list for each central office involves a considerable amount of time and expense. Witness Milner explains that adding entrance facilities is a major undertaking, and "some central office buildings will never have a second entrance facility." Therefore, BellSouth believes maintaining a waiting list under these circumstance would be unnecessary.

WorldCom witness Messina believes that a waiting list is necessary for WorldCom to establish a position in line for entrance facilities on a first-come, first-serve basis. He testifies:

> Moreover, since the lack of dual entrances, as a practical matter, will determine whether collocation is advisable at a given location, a waiting list is

> reasonable and not overburdensome. This Commission has the authority to require ILECs to engage in practices that are in addition to the minimal standards that the federal rules require, and what WorldCom proposes is certainly consistent with those rules.

However, BellSouth witness Milner contends that entrance facilities would be offered on a first-come, first-served basis when space becomes available.

B. Decision

Both parties agree that according to FCC rules BellSouth must provide at least two interconnection points at a premises "at which there are at least two entry points for the incumbent LEC's cable facilities, and at which space is available for new facilities in at least two of those entry points." We believe that BellSouth should be required to provide verification of dual entrance facilities at WorldCom's request. We observe that the level of verification is at issue. We agree with WorldCom witness Messina that visual verification outside a central office would not reveal whether dual entrance facilities exist in all situations. BellSouth witness Milner agrees that there may be underground entrances that are undetectable from outside a central office. Moreover, we note that BellSouth agrees to provide architectural drawings, at WorldCom's request and expense, for verification. We note that WorldCom witness Messina agrees that when BellSouth asserts that one entry point exists in a central office, a review of the central office architectural drawings would be acceptable verification. Therefore, we are persuaded that under these circumstance architectural drawings are appropriate at WorldCom's expense.

We agree with BellSouth witness Milner that a "formal" tour should not be required to verify the lack of dual entrance facilities. We believe that the lack of dual entrance facilities does not limit an ALEC's ability to acquire collocation space or access to unbundled elements. Therefore, we are not persuaded that the FCC requirement for a "formal" tour when collocation space is denied should apply in this instance. However, we think that BellSouth should provide architectural drawings where WorldCom requests verification. Moreover, we find that BellSouth should

include records of duct usage and an explanation for ducts which are not available in the documentation it provides to WorldCom. We note that BellSouth maintains this information.

We considered WorldCom witness Messina's testimony that "the lack of dual entrances, as a practical matter, will determine whether collocation is advisable at a given location." We note BellSouth witness Milner's testimony that BellSouth is not opposed to a visual inspection of the cable vault. However, if WorldCom "wanted to trace the path of each cable that comes through there to find out if it is in use, or spare," then BellSouth is not willing to voluntarily comply. We are persuaded that where BellSouth asserts that dual entrance facilities exist, but one entrance point is exhausted, WorldCom should be allowed to visually verify BellSouth's assertion from within the central office. We think that this verification should only be to determine whether entrance ducts are in use.

We agree with WorldCom witness Messina that "the parties' agreement should provide predictability and a clear expression of WorldCom's and BellSouth's respective rights." Therefore, we are persuaded that the agreement language must specify WorldCom's right to visually inspect the cable vault, as described above, within ten days of BellSouth's assertion that dual entrance facilities are exhausted. We note that ten days is consistent with tour intervals where collocation space is denied.

We agree with BellSouth witness Milner that requiring BellSouth to maintain a waiting list for access to dual entrance facilities could be burdensome. We observe that additional facilities would require plant construction, and may not occur in many central offices. We considered WorldCom's position that a waiting list would be necessary to offer facilities on a first come, first serve basis. However, we are persuaded that BellSouth should not be required to maintain a waiting list until entrance space becomes available.

We conclude that BellSouth must notify all carriers of plans to expand its entrance facilities where facilities previously were exhausted. We think that notification should be via BellSouth's publicly available website and should include the date facilities are scheduled for completion. Also, we think the website should be

updated as regularly as necessary to accurately reflect the date facilities will become available. Moreover, we note that BellSouth is required to consider ALECs' forecasts when planning central office additions. Therefore, we will not require BellSouth to maintain a waiting list until the date facilities become available.

Therefore, we find that WorldCom shall be allowed to visually verify BellSouth's assertion that dual entrance facilities are not available. However, BellSouth is not required to conduct a "formal tour" of the central office. Further, we find that BellSouth shall not be required to maintain a waiting list for dual entrance facilities. However, BellSouth shall be required to post notice on its public website of the date dual entrance facilities will become available in a central office where dual facilities previously were not available.

XXXIII. VENDOR CERTIFICATION INFORMATION

This issue pertains to the question of what information BellSouth must provide WorldCom regarding its vendor certification process.

A. Analysis

Witness Messina contends that BellSouth must provide WorldCom with sufficient information on the specifications and training requirements for a vendor to become BellSouth certified. WorldCom would like this information to be able to train its own proposed vendors. Witness Messina explains

> BellSouth must allow WorldCom to use its own vendors to provision and maintain its collocation space. BellSouth 0may approve the criteria by which these vendors are certified to perform such work, under 47 C.F.R. §51.323(j), but per that section it may not "unreasonably withhold approval of contractors." BellSouth is permitted to approve vendors hired by WorldCom to construct its collocation space, provided that such approval is based on the same criteria that BellSouth uses in approving vendors for its own purposes.

Witness Messina concedes, as BellSouth states, that BellSouth provides WorldCom with the same information it provides its own vendors concerning the vendor certification process. This information consists of ". . . brochures [that] generally describe what BellSouth's vendors are required to observe, for purposes of certification." He, however, contends that " . . . BellSouth misses the point." Witness Messina believes that while these brochures "may be precisely the same information BellSouth provides its vendors, he maintains that the information is not what BellSouth itself may require as part of its approval process. He states:

> It is not sufficient or reasonable, as a matter of contract between two competitors, to expect WorldCom to content itself in having been invited informally to "contact the BellSouth vendor certification group for further information." There must be contractual assurances that the same information that BellSouth uses to certify its vendors will, in fact, be provided WorldCom. Otherwise, there is introduced into the interconnection agreement the opportunity for delay and further litigation. It is reasonable and necessary that BellSouth be required as a matter of contract to provide the information needed for certification.

BellSouth witness Milner believes that BellSouth is permitted to approve vendors hired by an ALEC, provided that such approval is based on the same criteria that BellSouth uses in approving vendors for its own purposes. Furthermore, he asserts

> It is clear from the FCC rule that it is BellSouth, not MCIW [WorldCom], that is responsible for ensuring that a vendor has met the criteria for certification. 47 C.F.R. §51.323(j) states "An incumbent LEC shall permit a collocating telecommunications carrier to subcontract the construction of physical collocation arrangements with contractors approved by the incumbent LEC . . . ."

Witness Milner states that BellSouth has provided WorldCom with precisely the same information that BellSouth provides its own vendors concerning the vendor certification process. The brochure that summarizes all of the vendor certification information is

"meant to tell you the certification process," and ALECs, including WorldCom, may contact BellSouth's vendor certification group for specific information on how to become a BellSouth certified contractor. He concedes that the vendor certification process is " . . . an elaborate process, as it ought to be." He continues by stating:

> We are talking about resources that are vital to our way of life. That is, installing equipment badly in the central office can have pretty devastating effects if it is not done well. So that is what these certification processes are all about.

B. Decision

We believe BellSouth should be required to continue furnishing WorldCom with precisely the same information it has been providing them concerning the vendor certification process. Additionally, we firmly believe that WorldCom is entitled to parity treatment in this matter. Furthermore, we think that BellSouth should also provide WorldCom with non-discriminatory access to its Vendor Certification Group's resources for additional information, or questions regarding the vendor certification process.

We consider the oversight of vendor certification to be a privilege that BellSouth should continue to manage, for the incumbent LEC ultimately is responsible for the central offices where collocation occurs. We believe this is consistent with the provisions of FCC Rule 47 C.F.R. §51.323(j).

We do not agree with witness Messina's contention that BellSouth must provide WorldCom with sufficient information on the specifications and training requirements for a vendor to become BellSouth certified. We find that 47 C.F.R. §51.323(j) clearly sets forth the incumbent's obligations:

> An incumbent LEC shall permit a collocating telecommunications carrier to subcontract the construction of physical collocation arrangements with contractors approved by the incumbent LEC, provided, however, that the incumbent LEC shall not unreasonably withhold approval of contractors. Approval by an

> incumbent LEC shall be based on the same criteria it uses in approving contractors for its own purposes.

We find that this record does not include a demonstration that BellSouth has "unreasonably withheld approval of contractors" from WorldCom. Witness Milner states that WorldCom would "undergo the same certification process as anyone else," were they to seek to become a BellSouth certified vendor. We believe that this illustrates BellSouth's willingness to administer its vendor certification process in a non-discriminatory manner for WorldCom. Additionally, BellSouth repeatedly states that the vendor certification information it provides to WorldCom is precisely the same for any other ALEC, or prospective vendor. We, therefore, find that BellSouth's vendor certification process is consistent with FCC 47 C.F.R. §51.323(j).

Therefore, we find that BellSouth shall be required to provide WorldCom with precisely the same information that BellSouth provides its own vendors concerning the vendor certification process. BellSouth shall also provide WorldCom with non-discriminatory access to its Vendor Certification Group's resources for additional information, or questions regarding the vendor certification process.

XXXIV. INDUSTRY GUIDELINES OR PRACTICES TO GOVERN COLLOCATION

The issue before us is for purposes of the interconnection agreement between WorldCom and BellSouth, what industry guidelines or practices should govern collocation. However, the issue for us to determine is whether BellSouth should be obligated to include WorldCom's proposed technical references as guidelines for collocation.

A. Analysis

WorldCom witness Messina proposes the following standards:

> 9.1 Institute of Electrical and Electronics Engineers (IEEE) Standard 383, IEEE Standard for Type Test of Class 1 E Electric Cables, Field Splices, and Connections for Nuclear Power Generating Stations.

9.2 National Electric Code (NEC) latest issue.

9.3 GR-1089-CORE Electromagnetic Compatibility and Electrical Safety - General Criteria for Network Telecommunications Equipment.

9.4 GR-63-CORE Network Equipment Building System (NEBS) Requirements: Physical Protection.

9.5 TR-EOP-000151, Generic Requirements for -24, -48, -130, and -140 Volt Central Office Power Plant Rectifiers, Issue 1 (Bellcore, May 1985).

9.6 TR-EOP-000232, Generic Requirements for Lead-Acid Storage Batteries, Issue 1 (Bellcore, June 1985).

9.7 TR-NWT-000154, Generic Requirements for -24, -48, -130, and -140 Volt Central Office Power Plant Control and Distribution Equipment, Issue 2 (Bellcore, January 1992).

9.8 TR-NWT-000295, Isolated Ground Planes: Definition and Application to Telephone Central Offices, Issue 2 (Bellcore, July 1992)

9.9 TR-NWT-000840, Supplier Support Generic Requirements (SSGR), (A Module of LSSGR, FR-NWT-000064), Issue 1 (Bellcore, December 1991)

9.10 GR-1275, issue 01, March 1998.

9.11 Underwriters Laboratories Standard, UL 94. (TR 154)

WorldCom witness Messina believes that in the wake of the Telecommunications Act and FCC orders, we should require that collocation be more specific and "user friendly" to WorldCom. Witness Messina explains:

> GR-63 identifies the minimum spatial and environmental criteria for equipment used in a telecommunications network. The environmental criteria covers temperature and humidity, fire resistance, earthquake and vibration, airborne contaminates, acoustic noise, and illumination.

> The spatial section includes criteria for equipment and associated cable distribution systems. GR-1275 provides the Telecordia view of requirements associated with the support that installation suppliers are expected to provide with their services. The services might be associated with the installation of new or expanded equipment as well as the removal of existing equipment.

BellSouth witness Milner contends that BellSouth is willing to comply with generally accepted industry practices to the extent BellSouth has control. However, BellSouth does not control all activities within a central office where ALECs have collocation space. Therefore, BellSouth should not be required to meet any standards to the extent BellSouth does not have control. However, witness Messina clarifies that "WorldCom is asking that BellSouth comply with industry standards with respect to matters within its responsibility or under its control."

Witness Milner explains that several of the standards proposed by WorldCom embody subject matters that are not relevant to the relationship between BellSouth and a collocator. He testifies:

> One is the so-called N-E-B-S, or NEBS standard. That standard just talks about the size and the shape of equipment and that sort of thing. Parts of the NEBS standard we agree to where it relates to fire safety and things of that nature. But there are also performance levels of the NEBS standards, higher levels, that say it should perform at this level.

Moreover, WorldCom's proposed standards include an array of "suggested" methods and "discussions" which have not been embraced by the telecommunications industry.

B. Decision

We agree with BellSouth witness Milner that BellSouth should not be responsible for all activities within a central office where other ALECs occupy collocation space. We conclude that requiring BellSouth to comply with these standards could necessitate that BellSouth have monitoring personnel in each central office to inspect ALEC installations and to perform periodic inspections. We

find that the costs associated with a monitoring group would increase the costs of collocation for ALECs not represented in the arbitration.

Both parties agree that BellSouth should only be required to comply with subject matters within its responsibility or under its control. However, we think that determining a distinction between violations caused by BellSouth or by other collocators could be difficult for specific standards. For example, the GR-63 standard includes specifications for airborne contaminants and acoustic noise. We believe that it is in BellSouth's best interest to comply and require ALEC compliance to the extent BellSouth has control. However, where there are other collocators, we are not persuaded that BellSouth should be responsible for these specific standards in every instance.

Also, we are not persuaded that the standards only include specifications relevant to an ILEC and collocator's relationship. We believe that certain standards may require BellSouth to impose a higher level of equipment standards on ALEC collocators. We note witness Milner's testimony:

> There are higher levels in the NEBS standards that talk about the functionality and the efficiency by which the equipment performs certain tasks. BellSouth does not impose NEBS level 2 functional standards upon collocators, because we believe that's a decision that the collocator needs to make for itself as to which equipment it chooses and the relative efficiency of the functioning of that equipment.

We agree that BellSouth should comply with WorldCom's proposed standards where they apply to the collocation relationship between WorldCom and BellSouth. However, we think that these standards may include specifications that go beyond collocation and industry accepted practices. Moreover, they may affect the relationship between BellSouth and other collocators. We note that WorldCom witness Messina agrees that standards of conduct would apply to all collocators. Therefore, we find that these standards should not be included in the context of an interconnection agreement. In addition, we find that BellSouth shall be required to comply with generally accepted industry practices which include many aspects of

the technical references proposed by WorldCom. However, WorldCom's proposed standards shall not be included in the interconnection agreement as guidelines for collocation between WorldCom and BellSouth.

XXXV. RIGHTS-OF-WAY

The issue presented to us is whether BellSouth should be required to convey the property subject to WorldCom's license, when WorldCom has a license to use BellSouth rights-of-way, and BellSouth wishes to convey the property to a third party.

A. Analysis

WorldCom Witness Price states the issue is whether, when WorldCom has a license to use BellSouth rights-of-way, and BellSouth wishes to convey the property to a third party, BellSouth should be required to convey the property subject to WorldCom's license. Witness Price asserts that allowing BellSouth to convey its poles, conduits, and like property without regard to WorldCom's licensing agreements is contrary to the Act. Witness Price states that the Act's clear intent is to facilitate competition for telecommunications services and that BellSouth has a clear obligation to open up their markets in order to facilitate competition. Therefore, Witness Price contends that allowing BellSouth to just convey the property without any regards to WorldCom's licensing agreements with respect to a pole attachment or some other right-of-way would lead to a result that is inconsistent with competition.

In its brief, WorldCom contends that BellSouth's proposal would allow BellSouth to convey its property subject to its own facilities being allowed to remain on the property, but not WorldCom's facilities. Further, WorldCom asserts that even assuming no ill intent by BellSouth, the BellSouth position would result in WorldCom being forced to negotiate a right of way agreement with a new owner when its property is already present. WorldCom argues that this would result in very little negotiation and would place WorldCom in the position of paying whatever price the new owner demands or removing its facilities.

BellSouth Witness Cox states that BellSouth should be allowed to convey its property without restriction so long as BellSouth gives reasonable notice of the sale or conveyance to WorldCom. Witness Cox asserts that as reflected in the Rights-Of-Way agreement, such license to WorldCom does not constitute an easement; does not give WorldCom ownership rights of this property; and does not give WorldCom the right to restrict BellSouth's sale or conveyance of its own property.

In its brief, BellSouth argues that WorldCom's position would purport to control the disposition of BellSouth's property. BellSouth uses the illustration that if a third party wished to purchase a pole line without the BellSouth and WorldCom facilities already present, and BellSouth was willing to remove their facilities but WorldCom was not, WorldCom could preclude BellSouth from selling the property. BellSouth further contends that WorldCom could effectively veto the sale even if the third party was willing to allow the facilities to remain at a higher rental fee for use of the poles. When asked whether witness Cox could conceive of a situation which might lead to anticompetitive practice such as BellSouth selling its poles to another carrier, making a licensing agreement with that carrier for an extended period of time and leaving other parties without a way of getting onto those poles, witness Cox responded she could not conceive of such a situation and did not think that would occur.

B. Decision

As noted above, the area of contention identified in this issue is whether BellSouth should be required to convey its property subject to WorldCom's license when WorldCom has a license to use BellSouth rights-of-ways. We believe the issue should be considered in light of Section 251(b), of the Telecommunications Act of 1996 (the Act) which imposes certain duties on incumbent local exchange carriers (ILEC's). Section 251 (b)(4) states:

> Access To Rights-Of-Way.- The duty to afford access to the poles, ducts, conduits, and rights-of-way of such carrier to competing providers of telecommunications services on rates, terms, and conditions that are consistent with section 224.

Further, Section 251 (c) (2), imposes additional obligations on the ILEC. Pursuant to Section 251 (c)(2), the ILECs are required to allow a requesting telecommunications carrier to interconnect with its networks that is at least equal in quality to that provided to itself and on just, reasonable and nondiscriminatory rates, terms, and conditions. The Act clearly imposes an obligation on BellSouth to provide access to its poles, conduits, and rights-of-way, but it does not expressly create a duty that BellSouth must convey its property subject to these types of licensing agreements. We note that a licensing agreement could create such an additional right.

We have concerns that permitting BellSouth to convey this type of property without regard to these types of licensing agreements may result in BellSouth avoiding its obligation under the Act. We are concerned that the language BellSouth proposes could result in a situation in which BellSouth would sell it poles, conduits, or right-of-way to a third party subject only to its own licensing agreement. We are concerned that such a result would frustrate the purpose of the Act, in that, BellSouth could effectively strand their competitor's facilities.

However, we find that the Act does not impose the obligation that WorldCom is requesting. We note that WorldCom would not be prohibited from seeking relief pursuant to the Act if it believes that BellSouth is attempting to convey its property in such a way that the conveyance results in discriminatory anticompetitive behavior. However, we do not believe those facts are before us at this time.

Based on the foregoing, we find that the Act does not expressly create a duty that BellSouth must convey its property subject to licensing agreements for use of its rights-of-ways. Therefore, we find that when WorldCom has a license to use BellSouth rights-of-way, and BellSouth wishes to convey the property to a third party, BellSouth shall not be required to convey the property subject to WorldCom's license. We note that BellSouth has agreed to provide reasonable notice to WorldCom of any proposed conveyance or sale of its property.

XXXVI. PAYMENT FOR MAKE-READY WORK

The issue before us involves the timing of payments for make-ready work projects from WorldCom to BellSouth.

BellSouth witness Milner states that WorldCom "should be required to pay in advance for any work MCIW requests BellSouth to perform as do other ALECs that have signed BellSouth's standard license agreement." Witness Milner contends that it is not unusual for contractors to require payment in advance. He believes that BellSouth should not be required to finance MCIW's business plans. He acknowledges, however, WorldCom's representation that it will pay BellSouth invoices promptly.

With respect to the scheduling activities of make-ready work projects, BellSouth states that it follows a nondiscriminatory, first-come, first-served format in which the scheduling process customarily begins within twenty (20) days of receipt of full payment, unless the period is extended for good cause. Witness Milner contends that there is "no harm" in requiring full payment prior to the scheduling of make-ready work projects.

WorldCom witness Price contends that BellSouth's proposed requirement for advanced payment would "create delays and would not be commercially reasonable." Witness Price states:

> A pre-payment requirement would delay the work and would not be commercially reasonable. BellSouth should be required to begin work once it has sent WorldCom an invoice stating the amount that it will be charged for the project in question. WorldCom is willing to pay the invoice within fourteen days (14), which would give WorldCom time to process payment, and would be commercially reasonable.

Witness Price asserts that WorldCom has offered to fax to BellSouth a written authorization upon receipt of an invoice to begin a make-ready work project rather than face a probable delay. He contends that during the period of time in which WorldCom is processing the BellSouth invoice for payment, BellSouth could begin scheduling the project, as opposed to waiting for full payment to do so. He states that the parties have reached agreement on credit and

deposit language for the purposes of their interconnection agreement, but not for the payment of make-ready work, and further, that BellSouth has failed to adequately justify its reasoning for the pre-payment requirement.

B. Decision

This issue apparently hinges both on whether the payment for make-ready work projects should be made up-front or not, and also on the timing, or commencement of provisioning activities. We think this issue is ripe for compromise.

Although we agree with BellSouth witness Milner's statement that " . . . It is not unusual for contractors to require payment in advance," we do not unequivocally agree that the pre-payment requirement should be in full, as his testimony infers. We believe that BellSouth and WorldCom should strive to establish a "middle ground," and suggests a fifty percent (50%) advance and a fifty (50%) percent upon completion framework. We believe that all payments should be rendered in certified funds, or in a mutually agreeable medium.

We agree that BellSouth's scheduling and provisioning of make-ready work projects should be on a nondiscriminatory, first-come, first-served basis. We find, however, that BellSouth shall begin scheduling activities for make-ready work projects within twenty days of receipt of an initial payment for such, which contrasts with BellSouth's stated position that a full payment is required.

We agree with WorldCom witness Price's statements that BellSouth's proposed requirement for advanced payment would "create delays." We believe the delays would come from BellSouth's reluctance to begin its work activities while WorldCom was processing a full payment for BellSouth. However, we think that the "middle ground" approach may have the effect of reducing the delays that witness Price is concerned about. Therefore, for the purposes of the interconnection agreement between WorldCom and BellSouth, BellSouth may require advance payment for make-ready work. In addition, we encourage BellSouth to be flexible in negotiating advanced payment for make-ready work.

XXXVII. INTERIM NUMBER PORTABILITY PAYMENT ARRANGEMENT

This issue seeks to address whether the end-user or the end-user's LEC is responsible for compensating the terminating LEC for handling certain traffic on behalf of the end-user's LEC with respect to the provisioning of interim (temporary) number portability.

A. Analysis

In his testimony, BellSouth witness Scollard testifies that for purposes of interim number portability (INP), WorldCom is BellSouth's customer of record when INP is employed. Thus, WorldCom will have all the information necessary to bill the end-user customer who, in this instance, is a WorldCom customer. Witness Scollard further testifies that when WorldCom elects to provide service to a customer using INP, WorldCom becomes the customer of record for all services associated with the telephone services provided by BellSouth. He contends that this arrangement obligates WorldCom for any charges billed on that telephone number. Witness Scollard asserts that this arrangement is identical to the set-up used when WorldCom serves an end-user customer via a resale arrangement. Witness Scollard further testifies that following the above set-up, BellSouth will furnish WorldCom with " . . . a copy of the call record so it [WorldCom] can perform the needed billing to its end user." Alternatively, witness Scollard contends that WorldCom " . . . can elect to serve its end users using Local Number Portability in Florida central offices. Therefore, this issue is isolated with respect to those few cases where INP customers have not converted to LNP."

BellSouth witness Scollard testifies that the calls this issue is addressing are " . . . calls that a local exchange company has carried on behalf of a customer of another local exchange company." Witness Scollard contends that while it is possible for IXCs to bill end-users directly, the nature of the traffic in question does not allow for direct billing. Witness Scollard further testifies that the calls in question are " . . . billed via message exchange processes between the companies and not directly to the end user."

WorldCom witness Price testifies that BellSouth's proposed language would require the end-user's LEC, whose customer is being

served via INP, to compensate the terminating LEC for collect calls, third party billed or other operator assisted calls. Witness Price argues that this arrangement seeks to impose on WorldCom the responsibility of billing the customer and the risk of non-payment. Witness Price further argues that this is not consistent with industry practice where the toll carrier bills the end-user directly. Witness Price argues that BellSouth should not be allowed to use the mere fact it provides a number for portability to " . . . override the established industry practice of billing the end user for collect and third party calls."

In their draft Interconnection Agreement, Attachment 7, Section 2.2, the parties agree that "[I]NP is available through either remote call forwarding ("INP-RCF"), or direct inward dialing trunks ("INP-DID"). . . ." The parties further agreed that BellSouth shall provide RCF at those central offices where local number portability is not available. Further, the draft agreement provides that INP-RCF is a temporary method for subscribers to get service-provider portability. The draft agreement explains that INP-RCF is achieved by redirecting calls within the telephone network. Specifically,

> . . . calls to a ported number will be first route to the Party's switch to which the ported number was previously assigned. That switch will then forward the call to a number associated with he other Party's designated switch to which the number is ported. . . . INP-RCF provides a single call path for the forwarding of no more than one simultaneous call to the receiving Party's specified forwarded-to number.

B. Decision

We agree with BellSouth that for purposes of interim number portability, WorldCom is the customer of record similar to a resale arrangement between WorldCom and BellSouth. We further agree with BellSouth that with WorldCom being the "customer of record" for purposes of INP, all information necessary to bill the end-user resides with WorldCom, because the end-user is a customer of WorldCom and not BellSouth. We disagree with WorldCom that BellSouth's proposed language seeks to impose on WorldCom the responsibility of billing the customer and any risk associated with

non-payments. We find that WorldCom takes on the responsibility of billing, except as otherwise arranged, when it wins this end-user over. We further find that the risk of non-payment is not peculiar to this arrangement; instead, it is inherent in the industry. We also disagree with WorldCom that BellSouth's proposed language is inconsistent with industry practice with respect to toll carriers' billing of end-users directly. We note that when WorldCom provides an end-user INP, WorldCom is not acting in the capacity of a toll service provider, instead, WorldCom is the end-user exchange service provider. Further, we find that in provisioning INP, WorldCom is the NXX code holder for the end-user customer and not BellSouth. We agree with BellSouth that INP is fast becoming the exception in Florida as Local Number Portability is widely deployed, especially in the BellSouth's service territory.

Therefore, we find that for purposes of INP, that WorldCom is the customer of record for BellSouth. We find that the local carrier providing Interim Number Portability (INP) to the end user shall be responsible for paying the terminating carrier for collect calls, third party billed calls or other operator assisted calls.

XXXVIII. APPLICATION-TO-APPLICATION ACCESS SERVICE ORDER INQUIRY PROCESS

The issue before us is whether BellSouth should be required to provide an application-to-application access service order inquiry process. WorldCom proposes language to the interconnection agreement requiring BellSouth to "design, develop, implement, test and maintain" an application-to-application pre-ordering interface, referred to as an access service request (ASR), which WorldCom could use at its discretion for ordering local service from BellSouth.

A. Analysis

The parties agree that the ASR process was developed originally to provide an electronic interface between interexchange carriers and incumbent local exchange carriers. WorldCom witness Lichtenberg testified that the ASR process also was used to order DS-1 combinations until September 5, 2000, after which BellSouth notified WorldCom that it would only accept special access orders through the ASR system. BellSouth witness Pate, however, disputed

Lichtenberg's testimony on the uses to which the ASR process has been put, but acknowledged that BellSouth now requires local service orders be placed using an Local Service Request (LSR).

WorldCom witness Lichtenberg maintains the ASR process is used for pre-ordering functions and to order loop and transport combinations "Such an application-to-application inquiry process is needed to obtain pre-order information electronically for UNEs ordered via an access service request and should be provided." She testifies that WorldCom has used the ASR process to order local services "Indeed, most of the local facilities WorldCom orders from BellSouth in Florida today to supply dial tone to its customers are combinations of DS1 loop and DS1 transport ("DS1 combos"), which are ordered using an ASR."

BellSouth witness Pate disputes Lichtenberg's characterization of WorldCom's use of the ASR process stating that

> MCI implies that it has used the ASR to order unbundled network elements, specifically DS-1 combinations, which is a type of the enhanced, extended loop, known as the EEL. However, let me clarify what is actually being ordered by MCI. The reality is MCI is using the ASR to order special access service from an end user's location to the MCI switch. BellSouth is provisioning and installing special access, then manually crediting MCI monthly with the difference between special access and unbundled network elements, UNE rates.

Witness Pate's testimony on this issue is not contested by WorldCom's Lichtenberg.

WorldCom wants to continue using the ASR system for local service ordering because of the electronic nature of its interface, which witness Lichtenberg contends allows for greater accuracy and fewer rejected service applications. Witness Lichtenberg testifies that because MCI has used the ASR system to order previously from BellSouth, it would like to continue using the system with which it is familiar.

BellSouth witness Pate contends that if WorldCom wishes to continue using the ASR process for placing orders, BellSouth has

defined a process for WorldCom to utilize to convert its special access orders to UNE combination orders but that WorldCom has refused to utilize the conversion process. Witness Pate states:

> Where you have several items to convert, we have offered a method for a spreadsheet that they would fill out that really simplifies the process, and they submit that spreadsheet information to us and we take care of it. It is a spreadsheet that has, I believe, nine common elements for each one they would convert, and then 11 things they would have to provide to us specific to that individual conversion. And based with that information, we will do essentially, the record conversion associated with changing that from an access service to the combination service.

Despite the availability of a conversion mechanism, witness Pate acknowledges BellSouth will no longer accept DS-1 combination orders through the ASR interface. The reason, witness Pate testifies, is "The national standard for ordering UNEs and resale service is through the submission of an LSR, not an ASR."

WorldCom's Lichtenberg acknowledges that the LSR is the national, industry-approved format for submitting requests for local service and that WorldCom can order all of its local services utilizing the LSR process. However, witness Lichtenberg testifies "A requirement that WorldCom use a manual ordering process would be a major step backward that would lead to errors, delays and customer dissatisfaction." Witness Lichtenberg offers only anecdotal testimony to support her assertion that errors and customer dissatisfaction will result from using the LSR process. Under cross-examination, witness Lichtenberg was asked if using the LSR process BellSouth currently has in place would prevent WorldCom from competing in local service markets. She responded, "No, it would not prevent it."

Witness Pate contends BellSouth's LSR process offers competitors nondiscriminatory access to its Operational Support Systems for pre-ordering network elements and resale services pursuant to Section 251 of the Act. He further states that WorldCom's request for an application-to-application interface for the ASR process is an effort to enhance its interexchange

offerings, which should not be considered in this proceeding. In addition, he states that the LSR is the process used by all other competitors, and is the format prescribed by the Ordering and Billing Forum, a subgroup of the Carrier Liaison Committee of the Alliance for Telecommunications Industry Solutions.

BellSouth witness Pate contends WorldCom can have an application-to-application interface through systems other than the ASR

> BellSouth provides ALECs with access to the same pre-ordering, ordering and provisioning OSS access by BellSouth's retail organizations through the machine-to-machine Telecommunications Access Gateway ("TAG") electronic interface.

WorldCom's Lichtenberg does not address the availability of the TAG interface in her testimony.

B. Decision

WorldCom's request that BellSouth be ordered to develop and implement an application-to-application access service order inquiry process is unpersuasive. WorldCom's Lichtenberg repeatedly asserts that WorldCom uses the ASR system to order loop and transport combinations and local facilities to supply dialtone. However, according to the undisputed testimony of BellSouth witness Pate, WorldCom has never used the ASR system for this purpose. The record reflects WorldCom has used the ASR system to order special access to which BellSouth subsequently credits manually with the difference between special access and UNE rates for billing purposes.

BellSouth witness Pate testified that the incumbent meets its obligations under Section 251 of the Act to provide nondiscriminatory access to its Operational Support System for pre-ordering and resale, an assertion not challenged by WorldCom witness Lichtenberg.

While we are inclined to agree with witness Lichtenberg that some form of fully electronic, application-to-application interface for ordering local services is likely to be more efficient than the

current LSR system utilized by BellSouth, and likely to result in fewer errors, witness Lichtenberg offers only anecdotal testimony from other states where WorldCom is competitively engaged but presents no data that can be independently evaluated. Witness Lichtenberg acknowledges that using the LSR system currently in place will not prevent WorldCom from entering competitive markets in Florida. We also note that witness Linchtenberg does not cite any federal, state or our rulings to support its request on this issue.

In summary, we are not persuaded by arguments from WorldCom's Lichtenberg that BellSouth should develop an application-to-application interface and convert a system developed for interexchange access to local service ordering for use by a single competitor. The evidence in this record indicates that BellSouth is providing nondiscriminatory access to OSS ordering and pre-ordering, and the availability of an industry standard means of ordering local service leads us to conclude that competitive entry would not be impaired by using the existing BellSouth LSR system. Accordingly, we find that BellSouth shall not be required to provide an application-to-application access service order inquiry process to WorldCom.

XXXIX. PRE-ORDERING FUNCTION FOR LOCAL SERVICES

The issue before us is to determine whether BellSouth should provide a service inquiry process for local services as a pre-ordering function. WorldCom proposes language to the interconnection agreement requiring that "BellSouth shall perform service inquiry as a pre-ordering function as requested by WorldCom."

A. Analysis

WorldCom seeks a service inquiry process through which it can determine whether or not the services it wishes to sell to a potential customer are available at the customer's location before submitting an order to BellSouth. WorldCom witness Lichtenberg states that "Knowing facilities availability enables us to manage customer expectations and likewise enables customers to adjust their plans based on when they can expect to receive the services they wish to order."

BellSouth witness Pate counters that the FCC's UNE Remand Order in ¶426 and ¶427, determines what information incumbents must provide and that BellSouth has no obligation to go beyond the FCC requirements. Witness Pate states that BellSouth's obligations are defined in FCC 99-238 at ¶427, which reads

> For example, the incumbent LEC must provide to the requesting carriers the following: (1) the composition of the loop material, including, but not limited to, fiber optics, copper; (2) the existence, location and type of any electronic or other equipment on the loop, including, but not limited to, digital loop carrier or other remote concentration devices, feeder/distribution interfaces, bridge taps, load coils, pair gain devices, disturbers in the same or adjacent binder groups; (3) the loop length, including the length and location of each type of transmission media; (4) the wire gauge(s) of the loop; and (5) the electrical parameters of the loop, which may determine the suitability of the loop for various technologies.

Witness Pate maintains this information is available to ALECs when needed to determine whether facilities are available to meet technical requirements for specific services, but is not generally needed for "simple services, some complex services and some types of loops, such as 2-wire unbundled voice grade loops."

Witness Pate describes two possible means of determining whether facilities are available to an ALEC. In the one scenario, a service inquiry is submitted when an ALEC submits a Local Service Request(LSR). Upon completion of the service inquiry to determine facilities availability, the ALEC submits its LSR and its service inquiry to either the BellSouth account team or the BellSouth Complex Resale Support Group, depending upon which unit is appropriate to the placed order. This is referred to as a service inquiry with a firm order. Then the BellSouth unit working with the company placing the firm order, submits the order to BellSouth's Service Activation Center, which confirms the availability of facilities and reserves the facilities for the company placing the order.

An alternate situation may arise when an LSR is filed without a service inquiry, witness Pate testifies. In this case, the LSR is entered into BellSouth's provisioning system, which selects loop facilities which serve the address(es) on the service order.

WorldCom witness Lichtenberg contends that neither of the two processes described by witness Pate are acceptable because both take place during the ordering phase, not the pre-ordering phase. She asserts that

> I do know that as a new entrant into the market, I want to be able to say to a customer, "I would like to sell you a Chevrolet and I have one on my lot." I wouldn't like to say, "I would like to sell one to you," and after you buy it find out that I only have Fords, or that it will take six months to get that Chevrolet. That is all we are asking for here.

BellSouth witness Pate contends the incumbent meets its obligations under the Act and all subsequent FCC orders, and therefore has no obligation to provide the information WorldCom requests. The critical issue, witness Pate states, is whether BellSouth provides equal access to competitors, which he contends the incumbent does. He states that "BellSouth provides ALECs with access to the necessary information for requesting services in substantially the same time and manner as BellSouth provides its retail units."

WorldCom witness Lichtenberg asserts that how BellSouth makes available information to its own retail sales units is not the issue. She states that

> We want to be able to make sure that information is available on a pre-ordering basis before we order it for the customer, before we sell it to the customer so we can offer that customer something he or she can get. Regardless of how BellSouth makes that information available to their own salespeople, that is how we do business and that is the information we need.

Witness Lichtenberg contends that BellSouth's Pate does not address situations in which a competitor may wish to inquire about

service availability without submitting an LSR. She states that "It is often the case that WorldCom needs facilities information as part of its efforts to close a sale -- that is, before WorldCom is in a position to submit an LSR."

BellSouth witness Pate testified that what WorldCom witness Lichtenberg is requesting is beyond the scope of the Act. He asserts that "MCI's request deals with the gathering of data to have assurance of facilities availability for the purpose of developing sales proposals. That was not contemplated by the Act and as such BellSouth has no statutory obligation to provide such."

Witness Pate acknowledges that BellSouth personnel working with a large business order, may have access to facilities availability and location information on a pre-ordering basis, and that this access is not available to competitors. The access witness Pate describes is accomplished by having a BellSouth employee who is not a member of the sales team, contact an outside plant engineer for availability information. However, witness Pate states that the process is rarely used because it does not include provisions for reserving facilities.

BellSouth witness Pate contends that if WorldCom wants access to BellSouth outside plant engineering databases, WorldCom should utilize the change control process (CCP). He states that "The CCP is the process by which BellSouth and participating ALECs manage requested changes to BellSouth Local Interfaces, the introduction of new interfaces, and the identification and resolution of issues related to Change Requests."

BellSouth witness Pate also states that the incumbent is testing an electronic loop make-up data query process to allow ALECs to obtain loop make-up information electronically on a pre-ordering basis. Once testing is completed, witness Pate states, interested ALECs will be able to obtain this information in advance of placing an order.

WorldCom witness Lichtenberg does not address whether WorldCom has any interest in participating in the CCP or whether the electronic interface BellSouth is currently testing will meet its needs.

WorldCom witness Lichtenberg does not dispute BellSouth witness Pate's testimony that BellSouth meets the requirements of FCC 99-238 governing the provision of nondiscriminatory access to the same detailed information about the loop that is available to the incumbent. Witness Lichtenberg argues this information should be made available on a pre-ordering basis, which it currently is not, according to witness Lichtenberg.

Witness Pate states that BellSouth is currently engaged in testing a system that will provide electronic access to loop make-up information prior to submission of an order to allow ALECs to make decisions about whether the loop is capable of supporting the services and equipment the ALEC intends to install. However, witness Lichtenberg does not address the suitability of the system BellSouth is developing for WorldCom.

Under cross-examination, witness Pate acknowledges that BellSouth personnel, working with an account team, may have access to facilities availability and location information on a pre-ordering basis for large business customers through contact with outside plant engineers. Witness Pate states this access is not available to competitors. It appears from the record that the access BellSouth personnel have to outside plant engineers is available on an *ad hoc* basis. Witness Pate asserts that it is seldom utilized because facilities cannot be reserved through outside plant engineering. Nonetheless, BellSouth's obligations under FCC Order 99-238 are to provide competitors nondiscriminatory access to information in substantially the same time and manner as it provides its own personnel. Witness Pate contends that the issue of access to outside plant engineers has arisen in the context of recent arbitrations and that if WorldCom is interested in developing an inquiry procedure or an interface, the appropriate route is through the Change Control Process. We are inclined to agree with witness Pate that the Change Control Process is the appropriate avenue. The record on the issue of access to BellSouth's outside plant engineers, does not offer a comprehensive base from which a procedural decision can be advanced. Further, the record on this issue reflects BellSouth is currently testing a pre-ordering information system that may provide the information WorldCom seeks.

B. Decision

With the above-noted possible exception, the record shows that BellSouth provides nondiscriminatory access to the same detailed information about the loop that is available to the incumbent, as required by FCC Order 99-238. While we recognize the merit in WorldCom's argument that information regarding loop make-up has value in advance of placing an order, we also agree that BellSouth meets its obligations under FCC Order 99-238. WorldCom witness Lichtenberg did not cite to any court decision or decision by a regulatory authority that compels BellSouth to go beyond the provisions of FCC Order 99-328 to provide WorldCom with services and information not currently available to BellSouth's own retail units, as suggested by witness Lichtenberg. We note that testimony on this issue indicates BellSouth is developing an electronic interface to provide loop make-up information at the pre-ordering stage that can potentially serve WorldCom's needs.

The obligations of the incumbent in the provision of loop make-up information are unambiguous and the record is undisputed that BellSouth meets these obligations. While we agree with WorldCom that having access to not only loop make-up information but to facilities availability in the pre-ordering stages would be of value to competitors, no legal obligation exists in the record for such a decision. Therefore, we shall not require BellSouth to provide a service inquiry process for local services as a pre-ordering function.

XL. DISCONNECTION OF SERVICE

The issue before us is to determine whether BellSouth should be permitted to disconnect service to WorldCom for nonpayment of billed charges.

A. Analysis

WorldCom contends that disconnection is an inappropriate remedy. Instead, WorldCom believes that BellSouth should avail itself of some dispute resolution mechanism, such as going to the state commission in order to get approval to discontinue service for nonpayment. Accordingly, WorldCom proposes the following language:

> Nonpayment. Absent a good faith billing dispute, if payment of account is not received by the bill day in the month after the original bill day, the billing Party may pursue dispute resolution according to the provisions of Part A.

BellSouth, on the other hand, believes that disconnection is a viable remedy and it should therefore be permitted to disconnect service if a two-pronged test is met. That is, if WorldCom fails to pay billed charges and there is no good faith billing dispute, then BellSouth has every right to discontinue service to WorldCom. Consequently, BellSouth proposed the following language concerning disconnection for nonpayment:

> Absent a good faith billing dispute, if payment of account is not received by the bill day in the month after the original bill day, the billing Party may provide written notice to billed Party, that additional applications for service will be refused and that any pending orders for service will not be completed if payment is not received by the fifteenth day following the date of the notice. In addition the billing Party may, at the same time, give thirty days notice to the person designated by the billed Party to receive notices of noncompliance, and discontinue the provision of existing services to the billed Party at any time thereafter without further notice.

We note that neither party presented much testimony on this issue.

WorldCom witness Price argues that the consequences to Florida consumers and to local exchange competition are too great to permit BellSouth to have the contractual right to give thirty days notice that it will terminate service to its dependent competitor one month after a bill is rendered. He explains that customers would have their basic local service cut off and would naturally blame WorldCom for terminating service. WorldCom does not believe that BellSouth should be the judge of what a good faith billing dispute is.

> Assume BellSouth has sent us a bill, we dispute it, we give you [BellSouth] our reasons. You say that it is not

> good faith, we say yes it is. You cut our customers off. We come to the Commission, we ultimately prevail, our customers were still cut off. . . .

WorldCom notes that under the limitation of liability provision in the agreement, BellSouth has no liability to WorldCom for having terminated that service unless BellSouth acted willfully or in gross negligence.

BellSouth witness Cox counters that while BellSouth does not believe there should be an exception in the limitation of liability for material breach, there are steps that WorldCom can take in order to protect its customers. For example, she states that WorldCom could pay the disputed amounts before service is disconnected, and complain to us and get its money back if we ruled that WorldCom's dispute was in good faith. Witness Cox continues that, unlike BellSouth's proposal, WorldCom's proposed language does not even require there to be a dispute. She states that WorldCom could not pay its bills and continue to get service. In defense of BellSouth's proposed language, she explains that BellSouth is not going to take a hard line on what a good faith billing dispute is. She further explains that BellSouth needs to have some reason as to what the dispute is about, which is where good faith comes in, otherwise WorldCom could very well say that the dispute is that we are not going to pay. She states

> . . . the whole purpose that we are trying to distinguish here is that we are not saying that we are going to disconnect you for services when you have a dispute with us over the billing. But, likewise, there needs to be some reason for the dispute, we believe, in order for us not to have the right to disconnect service.

Witness Cox contends that WorldCom should not be, and by terms of the 1996 Act cannot be, treated differently from any other ALEC with respect to disconnection of service for nonpayment. BellSouth should be permitted to disconnect service to WorldCom or any ALEC that fails to pay billed charges that are not disputed within the applicable time period. It would not be a reasonable business practice for BellSouth to operate "on faith" that an ALEC will pay its bills. She adds that a business could not remain viable if it were obligated to continue to provide service to customers who

refuse to pay lawful charges. Moreover, if BellSouth were to exempt WorldCom from this requirement, from a parity perspective, it could hardly disconnect any other ALEC for non-payment of undisputed charges. Furthermore, the terms and conditions of any agreement BellSouth reaches with WorldCom is subject to being adopted by another ALEC. Therefore, BellSouth must be able to deny service in order to obtain payment for services rendered to prevent additional past due charges from accruing.

Witness Price maintains that the language proposed by WorldCom would adequately protect both billing parties (ILEC and ALEC) against the risk of non-payment. WorldCom's proposal would enable BellSouth to pursue dispute resolution, which could entail bringing an enforcement action before us or suing in a court of law, if WorldCom does not pay. He continues that these procedures are standard and do not contain the risks inherent in permitting a billing party to unilaterally determine that a billing dispute is not made in good faith.

B. Decision

As stated previously, this issue deals with the extent to which BellSouth should have the right to discontinue service if WorldCom fails to pay undisputed amounts it owes to BellSouth. WorldCom's main concern is that parties often differ in opinion as to whether a dispute is made in good faith. Hence, WorldCom does not believe that BellSouth should be granted the leverage (the threat of turning off customers' dial tone) to exact settlement from WorldCom when disputes arise. Instead, WorldCom's position is that the normal dispute resolution process should be followed when a party claims that payment is being withheld in bad faith. BellSouth, however, claims that without the ability to disconnect service for nonpayment, WorldCom has little incentive to pay its bills. Accordingly, BellSouth contends that it should be permitted to disconnect service to WorldCom if WorldCom fails to pay billed charges that are not disputed within the applicable time frame.

In its testimony, WorldCom argues that disconnection would have a negative impact on consumers and WorldCom, especially given BellSouth's limitation of liability provision, and therefore the appropriate remedy should be determined in dispute resolution. However, in its own local exchange service tariffs WorldCom does

not follow this logic. Sections 2.5.6.1 and 2.6.4(A) in WorldCom's tariffs read, respectively:

> Upon nonpayment of any amounts owing to the Company, and after 30 days from the due date, the Company may, by giving ten days' prior written notice to the customer, discontinue or suspend service without incurring any liability.
>
> Upon nonpayment of any amounts owing to the Company for 2 consecutive billing cycles, the company may, by giving 48 hours prior written notice to the Customer, discontinue or suspend service without incurring any liability.

Based on the above language, we find WorldCom's arguments lacking since what it is asking of BellSouth is not something WorldCom practices itself. In other words, WorldCom does not "practice what it preaches." WorldCom's position is inconsistent in that WorldCom retains the right to disconnect service to its customers while, at the same time, seeking to deny BellSouth of a similar right. In fact, under WorldCom's terms for discontinuance of service, there appears to be no consideration for a billing dispute, which we believe poses an even greater threat to customers.

WorldCom argues that, under its language, any problem that arises would automatically be subject to dispute resolution. In this case we would determine which party is acting in good faith, thus giving BellSouth the ability to collect disputed amounts if we rule in its favor. We note that BellSouth's proposed language does not preclude this option. The only difference is that the burden of summoning us for relief would be on WorldCom.

We suggest that the simplest way to resolve this issue would be for WorldCom to pay undisputed amounts within the applicable time frames, and this portion of the agreement will never become an issue. In the event that a billing dispute arises that BellSouth deems is "bad faith," we further suggest that WorldCom pay the disputed amount, in order to avoid disconnection, and make a formal complaint to us so that the opportunity for WorldCom to be reimbursed will become available.

BellSouth is within its rights to deny service to customers that fail to pay undisputed amounts within reasonable time frames. Therefore, absent a good faith billing dispute, if payment of account is not received in the applicable time frame, BellSouth shall be permitted to disconnect service to WorldCom for nonpayment.

XLI. EMI STANDARD FIELDS FOR BILLING RECORDS

This issue concerns whether BellSouth should be required to provide WorldCom with Exchange Message Interface (EMI) standard fields for billing purposes. The issue also centers on the type and format of the billing records as well.

A. Analysis

BellSouth witness Scollard states that "BellSouth provides and is willing to continue to provide MCI with billing records consistent with EMI guidelines." He contends that the EMI records themselves contain usage data for various types of calls, with differing types of records, record fields, and data formats depending upon the type of usage being recorded. BellSouth provisions this information to WorldCom through up to four different usage records interfaces, and performs this function in accordance with industry-developed EMI guidelines, states witness Scollard.

BellSouth witness Scollard regards the current language in the parties' interconnection agreement as "confusing." Witness Scollard states that:

> the goal of BellSouth is to clarify the confusing language that currently exists in the agreement between the parties so that no misunderstanding is left between BellSouth and MCI [WorldCom] as to what records will be provided and how these records will be sent.

Witness Scollard states that BellSouth's proposed language will clarify the exact nature of how these records will be provided. Further, he allows that the "language proposed by BellSouth clearly defines which types of records will be included on the differing interfaces and the processes used to create each." In summary,

BellSouth believes it provides every field that is required in order for WorldCom to bill its customers.

WorldCom witness Price contends, as does BellSouth witness Scollard, that the industry guidelines determine what is required for differing types of records, record fields, and data formats, depending on what type of usage is being recorded. However, witness Price alleges that BellSouth provisions to WorldCom a "subset of the fields contained in an EMI record." He asserts

> The EMI format is the industry standard used by all other Bell companies. WorldCom should be entitled to receive complete billing information with all EMI fields. BellSouth should be contractually obligated to provide EMI billing records; otherwise, it will be free to move away from the industry standard and develop proprietary records, if it has not done so already.

WorldCom witness Price contends that the BellSouth interfaces provide billing records using BellSouth tariffed services known as access daily usage files (ADUF) and optional daily usage files (ODUF), which appear to be developed from a subset of the fields contained in the EMI record. He states that the parties' interconnection agreement requires that EMI records be provided, and WorldCom is simply requesting that the existing contractual language be kept in the new agreement.

Witness Price contends that BellSouth's proposed language represents "their view of the appropriate subsets . . . and we do not want to be held to their view." He provides that BellSouth's promise to provide billing records that are consistent with EMI guidelines falls short of a commitment to provide the EMI records themselves, and WorldCom finds this unacceptable.

B. Decision

We believe that BellSouth should be required to provide WorldCom with billing records in the industry-standard EMI format, with all EMI standard fields, as opposed to a record which only provisions a portion of the EMI standard fields. Although witness Scollard contends that BellSouth " . . . provides and is willing to continue to provide MCI with billing records consistent with EMI

guidelines," we think that opens the matter up to interpretation in terms of what billing records one party or the other deems "consistent with EMI guidelines." We believe that the concern over interpretation is mitigated, if not totally eliminated, by requiring that the parties adhere to an industry-standard EMI format, with all EMI standard fields.

We note that the parties' current agreement specifies that billing records be provided in the EMI format, with all of the EMI standard fields. Witnesses Scollard and Price agree that the industry guidelines determine what is required for the various records, record fields, and data formats. While witness Scollard stops short of acknowledging that the EMI format is the industry standard, witness Price asserts that it is. We agree. Furthermore, witness Price points out that each party can -- and does -- participate in forum to develop the industry standard. We believe that it is paramount that the parties adhere to industry standard formats with respect to billing records, so as not to encourage the development of proprietary formats or records.

We find that concerns over the type and format of the billing records can be reduced, if not totally eliminated, by deciding that the parties adhere to an industry-standard EMI format, with all EMI standard fields. Therefore, we find that BellSouth shall be required to provide WorldCom with billing records in the industry-standard EMI format, with all EMI standard fields.

XLII. CENTRAL OFFICE CONVERSION

The issue presented to us is whether BellSouth should be required to give written notice when a central office conversion will take place between midnight and 4 a.m. This issue seeks to address how BellSouth should notify WorldCom when a central office conversion scheduled to take place between the hours of midnight and 4:00 a.m. has to be rescheduled to occur at a different time.

A. Analysis

BellSouth witness Milner testifies that BellSouth provides notification to ALECs concerning central office (CO) conversions via website postings. He asserts that this medium of notification is used for all ALECs and therefore treats all ALECs in a

nondiscriminatory manner. Witness Milner states that for an ALEC to become aware of CO conversion changes, the ALEC has to monitor BellSouth's website for any posted changes.

BellSouth witness Milner acknowledges that a CO conversion can result in taking down an ALEC's, and BellSouth's, switched service. Witness Milner explains that:

> . . . [W]hen we say a central office conversion, we are not talking about just a loop cutover for an individual customer. We are talking about a major event in the life of the switch. It could be to add big parts of equipment or even replace the entire switch with a newer model or something of that nature.

Witness Milner testifies that BellSouth's CO conversions are carefully coordinated events. Witness Milner notes that all CO conversions he has personally participated in " . . . usually start at midnight on Saturday night, because that is generally the time where traffic on the switch is the lowest." He contends that there is ample time to address any problem that may arise in a CO conversion between Saturday midnight and Sunday.

BellSouth witness Milner contends that WorldCom's proposal for additional forms of notification " . . . would not improve the delivery of these notifications and would only drive up BellSouth's costs of making such notifications." He asserts that "indeed, slow paper mail delivery or malfunctioning facsimile equipment could slow rather than speed up delivery of these notifications." Witness Milner concedes that ". . . to the extent that we had even more upfront knowledge, and if we needed to reschedule a conversion, then we would send out, you know, perhaps other forms of notification." When asked how difficult it would be for BellSouth to develop an e-mail distribution list that includes all potentially effected ALECs, witness Milner testified that:

> Well, there would be time and there would be expense associated with that. I am not sure that that would necessarily be any more reliable than our web posting. Likewise, we could send you letters, you know, via U.S.

> Mail. That is not necessarily more reliable, either. We have found that the most reliable method is to post it on our web. The servers themselves are redundant. If one piece of equipment fails, then you get in through the other way. You can't say that about facsimile machines and sending you letters and notifications of that nature.

Then, witness Milner was asked why BellSouth could not simply place such notification on its website and send an e-mail, witness Milner stated that, "Well, because there is more -- for two reasons. I don't think it increases the reliability any, plus it adds another level of expense."

WorldCom witness Price testifies that the parties have agreed that CO conversions will take place between the hours of midnight and 4:00 a.m., except if WorldCom is otherwise notified. He contends that the question that is unanswered is " . . . if it does not happen in the time when it is supposed to, what is the appropriate means of notifying WorldCom in this event." Witness Price argues that when a CO conversion takes place outside of the agreed upon window, there is a higher likelihood that there will be disruptions associated with the conversion. Witness Price argues that this likelihood calls for the most direct notice possible. Witness Price also argues that a CO conversion can likely result in taking down an ALEC's switched service, and thus contends that ". . . it is critical that WorldCom receive written notice in the event such a conversion is expected to take place at another time." Witness Price further testifies that website postings of these notices is not adequate for " . . . something as monumental as a central office conversion . . . ."

B. Decision

We observe that this issue is not whether BellSouth should notify WorldCom if a CO conversion will not take place within the agreed upon time of between midnight and 4:00 a.m. Instead, this issue addresses what form of notification is adequate when the agreed upon window changes. For the agreed upon window between midnight and 4:00 a.m., it appears there is no dispute that this is noticed via website postings. While we agree with BellSouth that website postings of all scheduled CO conversions is a nondiscriminatory form of notification for all ALECs, we find that

this is not the most efficient form of notification since there is no "active" process through which the ALECs will be aware of any schedule changes other than a constant surveillance of BellSouth's website.

Both parties agree that a CO conversion could result in taking down the network, thereby affecting all carriers. We agree with WorldCom that the very likelihood that a CO conversion can take down a network and therefore result in a service interruption for any customer " . . . calls for the most direct notice possible." We note that when this occurs, BellSouth, and not the ALECs, will be fully aware of the pending status of the network and thus should forewarn its customers of the potential service disruption. Nondiscriminatory treatment of all carriers will require that all carriers operate from the same set of information, we therefore find that for BellSouth to forewarn its customers while all ALECs are not able to, is discriminatory.

We believe that the mere fact that BellSouth's CO conversions are carefully coordinated events tells how significant and critical these events are. We believe that it is the same significant and critical nature of the events that underscores WorldCom's insistence to have the most direct form of notification when a CO conversion is rescheduled. BellSouth testified that CO conversions are " . . . carefully coordinated events . . . ." as to say that CO conversions are rarely rescheduled and when such rescheduling is necessary, there is ample time to notify ALECs of schedule changes, as posted on the website. We believe with that amount of careful coordination on the part of BellSouth, a rescheduling should be known well in advance to allow BellSouth enough time to appropriately notify the ALECs. We observe that an additional form of notification can be construed to be a "safety valve" or an "insurance policy" that will most likely not be used; however, it is available should the need arise.

We agree with BellSouth that WorldCom's proposal for additional forms of notification would increase " . . . BellSouth's costs of making such notifications." Nevertheless, we think that WorldCom's proposal will potentially improve the delivery of these notifications. We believe that an additional form of notification will potentially double the chances that any rescheduling is known by all affected parties. We are not persuaded by BellSouth's

argument that e-mail notification is unreliable. We think that an e-mail notification is an active form of notification, because most electronic mail messengers notify the receiver of new mail, and often provide an audible sound that signals the arrival of new mail.

Therefore, we find that failure to notify ALECs of a CO conversion that could potentially disrupt service to these carriers' customers, while BellSouth and its customers are fully aware of and appropriately prepared to handle such service disruption, is discriminatory. Due to the critical nature of the potential impact of the lack of another form of notification, we find that in addition to its website posting, BellSouth shall be required to notify WorldCom using e-mail when a central office conversion is rescheduled to take place outside of the agreed upon window of between midnight and 4 a.m.

XLIII. CUSTOMER SERVICE RECORD INFORMATION FORMATTING

The issue presented to us is to determine for purposes of the interconnection agreement between WorldCom and BellSouth, should BellSouth be required to provide customer service record (CSR) information in a format that permits its use in completing an order for service. More specifically, the issue is whether BellSouth should be required to parse CSR information in such a way as to enable WorldCom to electronically populate a Local Service Request (LSR). According to BellSouth witness Pate, "To parse means to receive a stream of data from the CSR and break down that data into certain fields for further use."

WorldCom witness Lichtenberg contends that "BellSouth should either parse CSR information in accordance with industry standards or, if no industry standards exist, should address the parsing of CSR information through the established Change Control Process (CCP)." Witness Lichtenberg states that while BellSouth has agreed to provide CSR information, that information is provided in a format that does not allow WorldCom to complete a LSR electronically. She explains that the LSR requires information parsed at the field level (e.g., the street number must be provided in a different field than the street name). However, this is a lower level of parsing than is provided in the CSR.

Witness Lichtenberg contends that "BellSouth today uses CSR information to populate automatically orders in its own ordering system." She states that WorldCom has proposed language that would require BellSouth to parse CSR information according to industry standards in such a manner that would enable the information to be readily applied to an LSR. Witness Lichtenberg asserts that if no industry standards exist, parsing should be addressed through BellSouth's established CCP for implementing changes to its OSS.

BellSouth witness Pate argues that this "is exactly what BellSouth is doing." Witness Pate explains that a request for Parsed CSRs was submitted to the CCP in August of 1999. He states that this request was prioritized by the participating ALECs in September of 1999, as one of eleven pending change requests to be considered for implementation in 2000. He further explains that during the June 28, 2000 Change Review Meeting this change request was prioritized by participating ALECs as the number one pre-ordering request. A sub-team made up of BellSouth and ALEC representatives was formed in August 2000 to address this change request. Witness Pate contends that "any changes to BellSouth's OSS that [WorldCom] may desire should be handled through the CCP process where the entire industry can participate, rather than through an individual arbitration proceeding."

Nonetheless, BellSouth witness Pate argues that "ALECs with on-line access, view and print CSR information in substantially the same time and manner as BellSouth service representatives can view and print this information for BellSouth's own retail customers." Witness Pate explains that BellSouth provides a stream of data via the machine-to-machine TAG pre-ordering interface based on the Common Object Request Broker Architecture (CORBA) industry standard. He states that this information is identified by section with each line uniquely identified and delimited, and is provided to ALECs in the same manner as it is provided to BellSouth's retail units.

Witness Pate further explains that the TAG pre-ordering interface can be integrated with the TAG ordering interface or the Electronic Data Interexchange (EDI) ordering interface, allowing information received via TAG to be further parsed by the ALEC to exactly the level needed on an order. He states that ALECs can integrate these interfaces with their own OSS, allowing the ALECs

to manipulate the data obtained via the TAG pre-ordering interface, He states that "This includes the ability to further parse the CSR."

B. Decision

As mentioned above, the issue before us is to determine if BellSouth should be required to provide CSR information in a manner that permits its use in completing an order for service. The crux of this issues lies in the level of parsing to be provided in the CSR, as compared to the level of parsing required in the LSR. WorldCom witness Lichtenberg states that WorldCom wants the CSR information provided in such a manner that it can be placed directly into the LSR. She argues that this means the parsing must be at the field level, instead of the line level as currently provided in the CSR.

BellSouth witness Pate argues that subline parsing of the CSR is not available today. However, witness Pate explains that TAG will allow ALECs to parse CSRs in the same way BellSouth can parse CSRs. He states that the CSR information is provided by TAG in the same form as that provided to the BellSouth retail units accessing the same CRIS database. Witness Pate contends that BellSouth provides WorldCom and all other ALECs with nondiscriminatory access to the CRIS database for pre-ordering and ordering. We find no evidence in the record to show that this is not the case. Instead, the record indicates that BellSouth's retail units receive CSR information in the same format as WorldCom.

In addition, witness Pate states:

> In her testimony Ms. Lichtenberg suggests that BellSouth utilize the change control process to develop parsing for CSRs. Hence, this as being an issue for an arbitration perplexes me, as this is exactly what BellSouth is doing. BellSouth concurs with Ms. Lichtenberg's implication that the change control process is the proper forum for this request to be managed.

We agree with BellSouth witness Pate that the CCP is the proper industry forum to resolve CSR parsing. As witness Pate states, "This will ensure input from all interested ALECs participating in

CCP in order that the best solution for the community as a whole can be evaluated."

WorldCom witness Lichtenberg admits that "WorldCom is working with the other ALECs on a special subcommittee [CCP] to fully define and to work with BellSouth to provide the fully fielded and parsed CSR." She states that in this arbitration WorldCom is merely asking us to establish the importance of this issue by agreeing with WorldCom that parsing is needed. While we agree that it would be reasonable for parsing of the CSR and the LSR to match, we believe, as the parties stated, that this issue is best addressed in the CCP.

The evidence in the record indicates that BellSouth provides its retail units with CSRs that are parsed at the same level as those provided to WorldCom, and as such we do not find that BellSouth is discriminating against WorldCom in the provision of CSRs. While we believe it is reasonable and desirable for pre-ordering information provided by BellSouth to be parsed at the same level as information required by BellSouth in a LSR, we find that the proper forum to address this issue is the Change Control Process currently under way. We expect that the parties will be able to reach a reasonable and timely solution to issue of parsing the CSRs to the same level as the LSR in the CCP. Therefore, we find that the parties' positions that the issue of parsing CSRs should be addressed and resolved in the CCP is appropriate.

XLIV. OPERATOR INQUIRING CALLERS CARRIER OF CHOICE

The issue before this Commission is to determine for purposes of the interconnection agreement between WorldCom and BellSouth, whether BellSouth should be required to ask callers for their carrier of choice when the callers request a rate quote or time and charges.

A. Analysis

WorldCom's proposed language would require BellSouth operators to inquire as to the customer's carrier of choice, and also forward the caller to that carrier. WorldCom witness Price contends that "the language proposed by WorldCom is included in the current

interconnection agreement and is consistent with sound public policy." WorldCom's proposed language in this issue states:

> Upon a subscriber request for either a rate quote or time and charges, BellSouth shall, through a neutral response, inquire of the subscriber from which carrier the rate or time and charges is requested. The operator will connect the call to that carrier.

Witness Price states that today BellSouth operators ask the caller for his or her carrier of choice, and then forward the caller to that carrier.

WorldCom witness Price asserts that WorldCom's proposed language only applies when BellSouth is providing operator services to a WorldCom customer on WorldCom's behalf. He explains:

> Given the fact that the service is being provided to an [SIC] WorldCom customer, and that WorldCom is paying BellSouth for providing operator services, it is reasonable that BellSouth ask the customer for its carrier of choice, rather than assuming that BellSouth is the carrier of choice.

Witness Price contends that WorldCom pays BellSouth on a per minute of work time basis; therefore, WorldCom will pay BellSouth for having its operators ask the customers for their carrier of choice.

However, BellSouth witness Milner argues that WorldCom's proposal ignores the fact that BellSouth operators will have to ask every caller for this information, but will only be paid for those callers actually transferred to WorldCom. He contends that BellSouth will not be paid for those queries that do not result in a transfer to WorldCom's long distance unit.

Witness Milner states that BellSouth's operators may respond to customer inquiries concerning rates and time charges for BellSouth's retail services, but they are not obligated to inquire about a customer's carrier of choice. He explains:

> Customers who inquire about long distance rates are advised they should seek that information from their long

> distance carrier. If that long distance carrier is an Operator Transfer Service (OTS) customer, BellSouth will offer to transfer the caller to that carrier so that the rate can be quoted immediately by the long distance carrier itself.

Witness Milner argues that WorldCom's proposed language would require BellSouth operators to ask a caller for his or her long distance carrier of choice and forward the caller to that carrier every time a customer requests rate quotes or time and charges, regardless of whether their carrier of choice subscribes to BellSouth's OTS. He contends that BellSouth is willing to do what WorldCom has requested, but they are not willing to do it for free.

Witness Milner states that despite WorldCom's willingness to pay for calls forwarded to WorldCom, WorldCom witness Price ignores the obvious requirement that BellSouth operators will be required to determine the long distance carrier of choice for all callers, not just for those served by WorldCom. He argues that "The cost of such operator work time for customers not choosing [WorldCom] long distance service would be borne by BellSouth rather than by [WorldCom]."

B. Decision

As mentioned above, the issue is should BellSouth operators be required to ask WorldCom callers for their long distance carrier of choice when such customers request a rate quote or time and charges. More specifically, WorldCom proposes that BellSouth operators inquire of callers from which carrier they would like to receive the rate quote or time and charges, and then connect the call to that carrier.

BellSouth witness Milner states that BellSouth is willing to do what WorldCom requests, but not for free. In fact, witness Milner's contention is that under WorldCom's proposal, BellSouth will have to bear the cost of operator inquiries that do not result in a transfer to WorldCom's long distance service. While WorldCom witness Price suggests that BellSouth operators will only be required to ask WorldCom customers for their carrier of choice, there is no evidence in the record indicating that BellSouth operators will know which callers are WorldCom customers. Instead,

the record indicates that BellSouth operators will be required to make these inquiries of all callers, with BellSouth only being compensated for those that are eventually forwarded to WorldCom's long distance unit. We agree that it would be unreasonable to require BellSouth to incur a cost on behalf of WorldCom, that is only partially recoverable from WorldCom.

In addition, witness Milner argues that WorldCom's proposal would require BellSouth to forward calls to long distance carriers regardless of whether they subscribe to BellSouth's OTS service. As mentioned above, describing BellSouth's procedure for handling requests for rate quotes and time and charges, witness Milner explains:

> Customers who inquire about long distance rates are advised they should seek that information from their long distance carrier. If that long distance carrier is an Operator Transfer Service (OTS) customer, BellSouth will offer to transfer the caller to that carrier so that the rate can be quoted immediately by the long distance carrier itself.

We find this procedure is reasonable. We agree that it would be inappropriate to require BellSouth to provide the OTS service for carriers that have not subscribed to it. We find that this would force BellSouth to bear a cost that would be unrecoverable, namely forwarding calls to carriers that are not obligated to pay for that service.

Therefore, we find that BellSouth operators shall not be required to ask WorldCom customers for their carrier of choice when such customers request a rate quote or time and charges. We find that requiring BellSouth operators to do so would force BellSouth to bear the cost of all inquiries, while only being compensated for those which result in a transfer to WorldCom. We also find that WorldCom's proposed language would force BellSouth to transfer calls to carriers that have not subscribed to BellSouth's OTS, again creating a cost that will be unrecoverable. We find that the procedure outlined by BellSouth witness Milner in his testimony is reasonable.

XLV. SHARED TRANSPORT IN CONNECTION WITH CUSTOM BRANDING

This issue before the Commission is to determine whether for purposes of the interconnection agreement between WorldCom and BellSouth, BellSouth should be required to provide shared transport in connection with the provision of custom branding. WorldCom is seeking to acquire a method of customized routing which does not require dedicated transport.

A. Analysis

WorldCom witness Price explains that "BellSouth must provide branding for WorldCom's OS/DA traffic routed to BellSouth's OS/DA platform without requiring dedicated trunking." He further explains that custom branding allows the routing of WorldCom's OS/DA traffic to BellSouth's TOPS platform in the name of the ALEC whose customer places the call. Witness Price cites FCC Rule 47 C.F.R. § 51.217(d) which states:

> The refusal of a providing local exchange carrier (LEC) to comply with the reasonable request of a competing provider that the providing LEC rebrand its operator services and directory assistance, or remove its brand from such service, creates a presumption that the providing LEC is unlawfully restricting access to its operator services and directory assistance. The providing LEC can rebut this presumption by demonstrating that it lacks the capability to comply with the competing providers request.

Witness Price asserts that where WorldCom does not have enough traffic to justify dedicated transport from an end office, shared transport is necessary to handle traffic in an efficient manner.

BellSouth witness Milner contends that:

> Whether shared transport is available between a BellSouth end office from which BellSouth provides unbundled local switching to MCIW depends upon the type of customized routing functionality requested by MCIW.

In particular, witness Milner asserts that BellSouth's AIN method of customized routing does allow WorldCom to use shared transport from the end offices to the AIN hub switch.

WorldCom witness Price argues that "both Bell Atlantic and SBC have developed the capability to provide branding [for] OS/DA calls using shared transport." He believes BellSouth has the capability to provide the same.

BellSouth witness Milner explains that Southwestern Bell Corporation (SBC or SWBT) chose to use a method of routing which determines the carrier of the calling party at its operator platform. Though SBC's method of routing offers the benefit of common transport to its OS/DA platform, it has the drawback of traffic being routed to the OS/DA platform, even though it is destined for another location. According to witness Milner, SBC's arrangement does not allow calls to be routed from SBC's platform to an ALEC's platform. However, BellSouth's methods allow ALECs to route calls to platforms designated by the ALEC. Witness Milner believes that BellSouth does not have an obligation to provide a routing solution analogous to SBC's method. Currently, BellSouth's platform can not determine the carrier of the end user without the use of separate trunking. Therefore, if WorldCom wanted to have its calls branded "WorldCom" at the TOPS platform, dedicated trunks from BellSouth's end offices or AIN hub are necessary. Moreover, witness Milner asserts that if WorldCom wanted OS/DA on an unbranded basis, ALECs could share trunk groups from end offices to BellSouth's platform. Witness Milner explains that acquiring trunks in this manner would reduce ALEC's trunking expense and increase efficiencies.

B. Decision

As previously stated in this Order, we find that where WorldCom acquires unbundled switching from BellSouth, BellSouth should only be required to route OS/DA calls to BellSouth's TOPS platform. However, BellSouth should be required to route operator services and directory assistance traffic to WorldCom's operator assistance and directory assistance platforms via Feature Group D using customized routing, at WorldCom's request.

At first blush, it appears that the AIN method of customized routing allows WorldCom to acquire shared transport in conjunction with custom branding to the AIN hub where WorldCom would have one OS/DA POI for the state. Therefore, we agree with BellSouth witness Milner that the AIN method does satisfy WorldCom's requirements. However, WorldCom witness Price argues that BellSouth should provide methods employed by Bell Atlantic and SBC. He testifies:

> Bell Atlantic uses an ANI solution that calls for a WorldCom branded message to be played from the end office. SWBT uses an ANI solution in which the ANI triggers a message for the SWBT operator to use for WorldCom customers.

We note that Bell Atlantic's ANI method is limited because it does not allow calls to be routed to an OS/DA platform other than the ILEC's. Again, we agree with witness Milner that all of the customized routing methods, including those employed by Bell Atlantic and SBC, offer benefits and drawbacks. BellSouth should not be required to offer a method analogous to SBC's method. We are persuaded that functionally BellSouth's methods of customized routing are comparable, at minimum, to methods provided by SBC and Bell Atlantic.

However, we note in response to why the ALECs have not used the ANI hubbing method, witness Milner stated that:

> I think because it's a -- it's a more robust situation. It requires more of a financial commitment up front. So to date, ALECs have not said we want that solution. We have provided the line class code method to at least one ALEC, maybe more. But I think it just reflects how they have chosen to enter the market. They have stepped more slowly through the line class code method rather than committing a lot of money to the AIN method, which has a much broader sort of application field to it.

BellSouth witness Milner acknowledges that the AIN method requires a higher initial investment by ALECs, of approximately $400,000 to $500,000. We have concerns that the AIN method may be cost prohibitive to market entry. Also, we have concerns that the Line

Class Code method, which is more receptive to market entry, does not offer routing over shared transport from end offices.

However, we note that BellSouth has been developing a third method of customized routing, which would allow WorldCom's OS/DA traffic to traverse the same trunk group as BellSouth's. The method is termed the Originating Line Number Screening (OLNS) method. BellSouth witness Milner explains that BellSouth has installed database access, similar to the database described in the AIN method, which would allow BellSouth to query incoming traffic at its TOPS platform. Moreover, the OLNS method allows the routing of WorldCom's OS/DA traffic from BellSouth's end office to the TOPS platform over shared transport. We note that previously these trunks were dedicated for BellSouth traffic only.

Again, BellSouth witness Milner expresses that this method has a trade-off. Unlike the other methods which allow WorldCom to choose an OS/DA platform, the OLNS method requires traffic to terminate at BellSouth's TOPS platform. Witness Milner asserts that the traffic to BellSouth's platform would be branded. Moreover, the OLNS method requires no dedicated trunking. We note that this method is analogous to methods offered by SWBT and Bell Atlantic.

BellSouth witness Milner asserts that OLNS is not available at this time. However, he believes the OLNS method will be offered by the end of the first quarter 2001. Regardless, witness Milner indicates that if OLNS is released after the contract is drafted, BellSouth agrees to amend the parties' interconnection agreement so that the OLNS method would be available without requiring WorldCom to renegotiate the entire contract. Therefore, we are persuaded that BellSouth has provided several options where WorldCom could use shared transport in conjunction with custom branding.

We conclude that although BellSouth did not commit to a firm delivery date for the OLNS method, based upon witness Milner's testimony of "sometime the first quarter of next year," we find that March 31, 2001, is an appropriate deadline. However, if BellSouth is unable to provide the OLNS method to WorldCom by March 31, 2001, BellSouth may seek a waiver of this requirement from this Commission.

Therefore, we find that BellSouth shall be required to provide shared transport in conjunction with custom branding. More specifically, BellSouth shall be required to offer its AIN method of customized routing which currently accomplishes this requirement. Also, BellSouth shall make available the Originating Line Number Screening method to WorldCom by March 31, 2001, or the release date, if earlier.

XLVI. LIMITED LIABILITY PROVISION

The issue presented to us to determine is whether the interconnection agreement should contain language which excludes a liability cap for material breaches of the contract.

A. Analysis

Witness Price states in his direct testimony that the language at issue is as follows:

> . . . Notwithstanding the foregoing, claims for damages by MCIm, any MCIm customer or any other person or entity resulting from the gross negligence or willful misconduct of BellSouth **and claims for damages by MCIm resulting from the failure of BellSouth to honor in one or more material respects any one or more of the material provisions of this Agreement** shall not be subject to such limitation on liability.

(emphasis in original). In witness Price's direct testimony the language is applicable to both parties.

WorldCom witness Price states that there should be no limitation on liability for material breaches of the Agreement because the parties need the proper incentives to comply. Witness Price argues that without an exception to the liability cap for material breaches BellSouth would have an incentive to breach the contract when the benefits of such a breach outweighed the possible liability. He contends that WorldCom's language should be adopted because it is commercially reasonable.

WorldCom witness Price agrees that WorldCom limits its liability to its end users with the exception of cases of willful misconduct. He admits that WorldCom did not have an exemption or

exception for material breaches of any material obligation it owed its own customers in its Florida tariffs. However, witness Price testifies that he could not think of any reasons why a carrier would have an incentive to breach a contract in a carrier/end user relationship where that carrier obviously wants to maintain a good relationship with its end user. Witness Price makes the distinction between the carrier/carrier relationship which is at the core of the disputed language because there is a different incentive structure. Witness Price asserts that there is a different bargaining position between BellSouth and WorldCom in that WorldCom relies heavily on BellSouth to provide service to its end users. Whereas, witness Price states that there is very little that BellSouth needs from WorldCom. Witness Price contends that lifting the liability cap for material breaches would level the parties' positions. Witness Price further contends that this a commercially reasonable position. Witness Price states that we must be able to address general contract provisions in the interconnection agreement. Witness Price asserts that this is necessary because to do otherwise the party with no incentive to bargain, the incumbent provider, will be able to veto commercially reasonable terms.

BellSouth Witness Cox asserts that the language proposed by WorldCom regarding the liability cap for damages is not subject to the Section 251 requirements of the Act. Therefore, Witness Cox states that WorldCom's proposed language is not appropriate for inclusion in the interconnection agreement. Witness Cox further states that we should reject WorldCom's language and approve only the language agreed to by the parties.

Witness Cox states that even though it is BellSouth's position that we should not arbitrate this issue, if WorldCom's proposed language is adopted, then BellSouth's additional language should also be adopted. Witness Cox explains BellSouth's proposed additional language would clarify the meaning of WorldCom's proposed language; otherwise, there would be no limitation on liability in cases of a material breach. BellSouth Witness Cox asserts that the limitation of liability should be the same for WorldCom as it is for BellSouth customers. Witness Cox contends that under WorldCom's proposed language, BellSouth is more liable to WorldCom for a missed deadline to a WorldCom's customer than BellSouth would be to its own customer under similar circumstances.

The issue of our authority and obligations to arbitrate a liquidated damages provision must be determined in light of WorldCom Telecommunication Corp. v. BellSouth Telecommunications, Inc., Order on the Merits, issued June 6, 2000, in Case No. 4:97cv141-RH. In addition, if it is appropriate to arbitrate a liquidated damages provision, then the issue of what legal standard should we apply in resolving this issue must also be addressed. Prior to Order on the Merits issued in WorldCom Telecommunication Corp. v. BellSouth Telecommunications, Inc., we have declined to arbitrate liquidated damages or specific performance provisions.

WorldCom in its brief states that pursuant to the Order on the Merits, we were required by federal law to arbitrate the issue of liquidated damages in the prior WorldCom/BellSouth arbitration. WorldCom further asserts that pursuant to the Order on the Merits, the fact that we did not have independent state law authority to award damages did not detract from our jurisdiction under the Act to arbitrate all issues properly presented to it for arbitration.

In its brief, WorldCom stated that the Order on the Merits did not specify the legal standard to be applied when arbitrating terms and conditions of an interconnection agreement that are not subject to the specific standards in the Act or FCC Rules. WorldCom further asserts that in the absence of a federal law standard by which to make the initial decision, our underlying goal should be to determine what type of provisions would best serve the public interest in promoting competition in Florida. WorldCom states that the best way to promote competition is to ensure that the requirements of the interconnection agreement are commercially reasonable and provide appropriate incentives for all parties to comply with the terms of the agreement. WorldCom contends that its proposed language best meets the standard of commercially reasonable.

In its brief, BellSouth did not address the effect of the Order on the Merits on the arbitration of a liquidated damages provision or what legal standard should be applied if these issues are appropriate for arbitration. However, in its brief, BellSouth asserts that the issue of liquidated damages is not a Section 251 requirement pursuant to the Act and thus is not properly the subject of arbitration under Section 252. BellSouth insists that the language which both parties have agreed upon in negotiation

should be the language approved. BellSouth states that it is willing to forego any language WorldCom disagrees with if WorldCom will forego any language with which BellSouth disagrees. BellSouth contends that it has sufficient incentive to fulfill its obligations without the language proposed by WorldCom.

B. Decision

In Order on the Merits, the Court rejected this Commission's two arguments. WorldCom Telecommunication Corp. v. BellSouth Telecommunications, Inc., Order on the Merits, issued June 6, 2000, in Case No. 4:97cv141-RH, at 32. We argued that we did not have the authority to arbitrate the liquidated damages issue because the liquidated damages issue was not an enumerated item to be arbitrated under Sections 251 and 252 of the Act. Id. Second, we argued that under state law we did not have the authority to mandate a compensation mechanism of this type. Id. The Court rejected our "narrow reading" of the arbitration provisions of the Act. Id.

The Court states that the Act sets forth two methods that an incumbent carrier and a competitive carrier use to determine the terms and conditions of an interconnection agreement. Id. The Court states that the first and preferable method is through voluntary negotiation between the incumbent carrier and the competitive carrier. Id. at 33. The Court states that the second method, applicable only to the extent voluntary negotiation fail, is arbitration of "any open issue." Id. The Court held that the statutory terms "any open issues" make it clear that the freedom to arbitrate is as broad as the freedom to agree. Id. The Court found that any issue on which a party seeks agreement and is unsuccessful, may then be submitted for arbitration. Id. The Court concluded that because nothing in the Act foreclosed the parties from voluntarily entering into a compensation mechanism for breaches of the agreement, the liquidated damages issue became an open issue which the party was entitled to submit for arbitration. Id. Thus, the Court found that this Commission was obligated to arbitrate and resolve "any open issue." Id. at 33-34.

However, the Court distinguishes between our obligation to arbitrate and our obligation to adopt a provision of this type. Id. at 34. The Court stated that had this Commission as a matter

of discretion, decided not to adopt this type of provision, that the complainant would bear a substantial burden attempting to demonstrate that the decision was contrary to the Act or arbitrary and capricious. Id. The Court further found that if this type of provision was truly required by the Act and could be adopted in a form that would not impose an unconstitutional burden, then any contrary Florida law would not preclude the adoption of such a provision. Id. at 36.

We believe that in the Order on the Merits, the Court makes it clear we have the authority and the obligation pursuant to the Act to arbitrate "any open issue." However, we conclude that the Court makes a distinction regarding whether we are obligated to adopt a liquidated damages provision. Pursuant to Section 252(c) of the Act, a State Commission in resolving any open issue and imposing conditions upon the parties to the agreement, shall ensure that the resolution and conditions meet the requirements of Section 251. In U.S. West Communications v. MFS Intelenet, Inc. et. al., 193 F. 3d 1112 (9th Cir. 1999), the Court stated:

> State Commissions impose "appropriate conditions as required" only to "ensure that such resolutions and conditions meet the requirements of section 251." 47 U.S.C. Sections 252 (b)(4)(c), 252 (c)(1). Id at 1125. (emphasis added)

We find that while "any open issue" may be arbitrated, we may only impose a condition or term required to ensure that such resolutions and conditions meet the requirements of Section 251.

WorldCom states that in the absence of a federal law standard, the Commission should make its determination based upon what provision would best serve the public interest by promoting competition in Florida. BellSouth states that this issue is not an enumerated item under Sections 251 and 252 of the Act which govern the terms and requirements of an interconnection agreement. We find it appropriate to make our determination on whether or not to impose a condition or term based upon whether the term or condition is required to ensure compliance with the requirements of Sections 251 or 252. We note that liquidated damages is not an enumerated item under Sections 251 and 252 of the Act. We find that the record does not support a finding that a liquidated damages provision is

required to implement an enumerated item under Sections 251 and 252 of the Act.

WorldCom has argued that because there are inequities in the bargaining powers of the parties, the Commission should adopt a liquidated damages provision to level the playing field. WorldCom asserts that in the absence of any federal law, the Commission should make its determination based on what is commercially reasonable. However, we find that there is no evidence in the record to demonstrate why we should apply a "commercially reasonable" standard. Furthermore, WorldCom did not provide sufficient evidence that its disputed language would result in promoting competition or leveling the playing field. We do not find that WorldCom's mere suppositions are sufficient evidence on which to base a finding that the appropriate standard to be applied is whether the disputed language is "commercially reasonable". Further, we find that neither party has presented evidence that a liquidated damages provision is truly required to implement the Act.

Based on the foregoing, we find that the record does not provide sufficient evidence upon which a decision can be made as to whether or not to impose the disputed language in the limited liability provision. Therefore, we find it appropriate not to impose adoption of any disputed terms contained in the limited liability provision whereby the parties would be liable in damages, without a liability cap, to one another for their failure to honor in one or more material respects any one or more of the material provisions of the Agreement.

XLVII. SPECIFIC PERFORMANCE PROVISION

The issue presented to us to determine is for purposes of the interconnection agreement between WorldCom and BellSouth, should WorldCom be able to obtain specific performance as a remedy for BellSouth's breach of contract.

A. Analysis

WorldCom witness Price states that WorldCom has proposed the following language related to specific performance:

> 14.1 The obligations of BellSouth and the Services offered under this Agreement are unique. Accordingly, in addition to any other available rights or remedies, Mcim may seek specific performance as a remedy.

Witness Price states that the services under the Agreement are unique and specific performance is an appropriate remedy for BellSouth's failure to provide the services as required in the interconnection agreement. Witness Price argues that without a specific performance this Commission would be hamstrung in discharging our responsibility to enforce the interconnection agreement. WorldCom contends that the right to specific performance is included in the current interconnection agreement and WorldCom should continue to have the right to seek that remedy. Witness Price contends that we would be obligated to enforce a specific performance provision in the interconnection agreement.

In its brief, WorldCom avers that specific performance is a basic principle of law. WorldCom asserts that a specific performance provision is standard for commercial contracts. WorldCom agues that in the most basic sense, the interconnection agreement resulting from this arbitration is nothing more than a commercial agreement obligating BellSouth and WorldCom to fulfill certain obligations created in contract. WorldCom asserts that requiring specific performance by BellSouth of its obligations in the interconnection agreement is needed to ensure that BellSouth provides services that are necessary for WorldCom to conduct business. WorldCom argues that it has proposed standard specific performance language in its proposed interconnection agreement. WorldCom asserts that BellSouth proposes a case-by-case resolution in every instance about whether specific performance should occur but has not offered any proposed language. WorldCom contends that the agreement will create contractual obligations and BellSouth must fulfill those obligations. WorldCom argues that there should be no *ex post facto* determination of whether BellSouth should fulfill its obligations under the Act.

BellSouth witness Cox asserts that specific performance is a remedy which is not a requirement of Section 251 nor appropriate for arbitration under Section 252 of the Act. Witness Cox further asserts that to the extent WorldCom can demonstrate it is entitled

to specific performance pursuant to Florida law, it does not require agreement from BellSouth.

In its brief, BellSouth asserts that specific performance is a remedy to which WorldCom may or may not be entitled under Florida law. BellSouth contends that specific performance is not a requirement of Section 251 of the Act nor is it an appropriate subject for arbitration under Section 252. BellSouth acknowledges that while certain services provided under the agreement may be unique that this is certainly not the case universally. BellSouth contends that WorldCom can assert that it is entitled to specific performance under Florida law without agreement from BellSouth.

As stated in the previous section of this Order, the issue of our authority and obligations to arbitrate a specific performance provision must be determined in light of WorldCom Telecommunication Corp. v. BellSouth Telecommunications, Inc., Order on the Merits, issued June 6, 2000, in Case No. 4:97cv141-RH.

In its brief, WorldCom states that pursuant to the Order on the Merits, we are required to arbitrate the question of what specific performance provision, if any, should be included in the agreement. WorldCom states that the Order on the Merits did not specify the legal standard to be applied when arbitrating terms and conditions of an interconnection agreement that are not subject to the specific standards in the Act or FCC Rules. WorldCom asserts that in the absence of a federal law standard by which to make the initial decision, our underlying goal should be to determine what type of provisions would best serve the public interest in promoting competition in Florida. WorldCom states that the best way to promote competition is to ensure that the requirements of the interconnection agreement are commercially reasonable and provide appropriate incentives for all parties to comply with the terms of the agreement. WorldCom contends that the specific performance provision best meets this standard of commercial reasonability.

In its brief, BellSouth did not address the effect of the Order on the Merits on the arbitration of a specific performance provision or what legal standard should be applied if this issue is appropriate for arbitration. However, in its brief, BellSouth asserts that the issue a specific performance provision is not a

Section 251 requirement pursuant to the Act and thus is not properly the subject of arbitration under Section 252. BellSouth insists that WorldCom does not need BellSouth's agreement before it can seek specific performance under Florida law.

B. Decision

Again, as stated in the previous section of this Order, in the Order on the Merits, the Court rejected this Commission's two arguments. WorldCom Telecommunication Corp. v. BellSouth Telecommunications, Inc., Order on the Merits, issued June 6, 2000, in Case No. 4:97cv141-RH, at 32. The Court rejected our "narrow reading" of the arbitration provisions of the Act. Id.

As stated previously, we believe that in the Order on the Merits, the Court makes it clear we have the authority and the obligation pursuant to the Act to arbitrate "any open issue." However, we believe that the Court makes a distinction regarding whether we are obligated to adopt a provision of this type. Pursuant to Section 252 (c) of the Act, a state commission in resolving any open issue and imposing conditions upon the parties to the agreement, shall ensure that the resolution and conditions meet the requirements of Section 251. In U.S. West Communications v. MFS Intelenet, Inc. et. al., 193 F. 3d 1112 (9th Cir. 1999), the Court stated:

> State Commissions impose "appropriate conditions as required" **only** to "ensure that such resolutions and conditions meet the requirements of section 251." 47 U.S.C. Sections 252 (b)(4)(c), 252 (c)(1).

(emphasis added) Id. at 1125. We find that while "any open issue" may be arbitrated, we may only impose a condition or term required to ensure that such resolutions and conditions meet the requirements of Section 251.

WorldCom admits in its brief that the Act does not speak to the issue of what legal standard should be applied in evaluating this type of provision. BellSouth states that the arbitration of a specific performance provision is not an enumerated item under Sections 251 and 252 of the Act which govern the terms and requirements of an interconnection agreement.

We agree that a specific performance provision is not an enumerated item under Sections 251 and 252 of the Act. We conclude that the record does not support a finding that a specific performance provision is necessary to implement the requirements of Sections 251 and 252 of the Act. WorldCom has argued that the specific performance provision is necessary for us to require BellSouth to act. WorldCom admits in its brief that specific performance is a remedy available under law. WorldCom does not dispute BellSouth's position that this judicial remedy would be available to it on a case-by-case basis. WorldCom witness Price argues that such a case-by-case determination would just delay resolution of any future disputes in which specific performance is sought.

We do not find that WorldCom's reasoning is sufficient for us to impose a disputed provision on either party. First, it is clear from the record that a specific performance provision is not a required enumerated item under Section 251. Second, the parties recognize that specific performance is a remedy available under Florida law. WorldCom did not dispute that it can seek specific performance on a case-by-case basis from a court. WorldCom's underlying assumption in its argument is that the inclusion of a specific performance provision provides us with the authority to order specific performance. We find that WorldCom has failed to provide evidence to support its assumption that we have the authority to order specific performance. Moreover, we find that WorldCom's assumption is flawed because specific performance is a judicial remedy under a court's equitable powers. Moreover, we are not convinced that the lack of a specific performance provision would result in an *ex post facto* determination of whether BellSouth should fulfill its obligations under the interconnection agreement. If a specific performance remedy is sought, it necessarily indicates that one party believes another party to the contract has failed to fulfill its obligations. A determination of whether such a failure has occurred can only take place after the fact.

Therefore, we find that it is not appropriate to impose adoption of a disputed specific performance provision when it is not required under Section 251 of the Act. However, we note that since both parties agree that specific performance should be available at least on a case-by-case basis as recognized under Florida law, the parties shall not adopt any terms or conditions in

the Interconnection Agreement that would prohibit either party from exercising the right to seek specific performance on a case-by-case basis.

XLVIII. EFFECTIVE DATE FOR ADOPTIONS AND WEB SITE POSTINGS

Here, we have been asked to address when WorldCom's request for substitution of terms and conditions from a third party agreement should become effective, and whether BellSouth should be required to post all new agreements on their web site within fifteen days of filing of these agreements with us. This issue deals primarily with the application of Section 252(i) of the Telecommunications Act of 1996 (Act).

A. Analysis

Section 252(i) reads:

> Availability to Other Telecommunications Carriers. -- A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

WorldCom witness Price explains that Section 252(i) of the Act entitles WorldCom to obtain any rate, term or condition that a third party obtains from BellSouth. He states that this right prevents BellSouth from bestowing special rates, terms and conditions on certain carriers that would give them a competitive advantage. Witness Price argues that "When WorldCom elects to adopt a rate, term or condition from another party's interconnection agreement, the effective date should be when WorldCom elects to adopt the term and condition." Witness Price contends that WorldCom's proposed language for this issue is nearly identical to the language contained in the current agreement.

BellSouth witness Cox states that BellSouth agrees to make available any interconnection, service, or network element provided under any other agreement at the same rates, terms and conditions as provided in that agreement, pursuant to Section 252(i) of the

Act and FCC Rule 51.809. However, witness Cox argues that the effective date for terms and conditions adopted from a third party agreement is the date an amendment is signed by BellSouth and WorldCom. She contends that "BellSouth is under no obligation to give [WorldCom] the benefit of those terms and conditions before such terms and conditions have been incorporated into BellSouth's agreement with [WorldCom]."

WorldCom witness Price disagrees, stating that terms and conditions adopted under section 252(i) should be effective as of the date of WorldCom's request. He holds that this right under Section 252(i) provides for nondiscriminatory treatment by BellSouth. In addition, witness Price argues that in order for WorldCom to take advantage of this right, WorldCom must have ready access to BellSouth agreements with third parties. To accomplish this, witness Price contends that BellSouth should be required to provide WorldCom with these agreements within fifteen days of them being filed with the Commission. If BellSouth does not file the agreement, witness Price states that BellSouth should provide a copy within fifteen days of execution. However, while the current interconnection agreement between WorldCom and BellSouth requires BellSouth to provide copies of agreements entered into with other ALECs, witness Price states that in order to make this process as efficient as possible, "WorldCom is willing to allow BellSouth to discharge this obligation by posting the agreements on its web site."

Witness Price contends that requiring BellSouth to post third party agreements on its website will greatly facilitate the goals of Section 252(i). He explains that in order for WorldCom to opt into favorable terms, WorldCom must become aware that those terms exist. The most efficient way to achieve this is for BellSouth to post those agreements on its website within fifteen days of filing with us.

BellSouth witness Cox argues that neither the Act nor the FCC's rules require BellSouth to provide WorldCom with agreements filed with the state commissions. She states that there is no need for BellSouth to be WorldCom's library or copy service, since WorldCom can get these agreements from the state commissions. Regarding posting these agreements on BellSouth's website, witness Cox asserts that BellSouth is simply not obligated to do so under

the 1996 Act or the FCC's rules. She explains that although the Act does address the provision of agreements to ALECs, the obligation to provide these agreements is placed on the state commissions. Witness Cox cites Section 252(h) which reads:

> A State commission shall make a copy of each agreement [negotiated or arbitrated] approved under subsection (e) and each statement [Statement of Generally Available Terms and Conditions] approved under subsection (f) available for public inspection and copying within 10 days after the agreement or statement is approved.

Witness Cox states that WorldCom can readily obtain copies of agreements from us just like any other ALEC. In addition, she contends that beyond the fact that BellSouth has no obligation to post agreements on its website, BellSouth is certainly not obligated to post agreements that have yet to be approved by us.

B. Decision

As mentioned above, there are two areas of contention to be decided by us in this issue. The first aspect is to determine whether BellSouth should be required to permit WorldCom to substitute more favorable terms and conditions obtained by a third party through negotiation or otherwise, effective as of the date of WorldCom's request. BellSouth witness Cox agrees that pursuant to Section 252(i) of the Act and FCC Rule 51.809, WorldCom is entitled to obtain any interconnection, service, or network element provided under any other agreement at the same rates, terms and conditions as provided in that agreement. However, witness Cox argues that these terms and conditions should not become effective until they are incorporated into the interconnection agreement through a signed amendment. On the other hand, WorldCom witness Price argues that these terms and conditions should become effective upon WorldCom's request of such terms and conditions.

While we agree with BellSouth's position that new terms and conditions cannot become effective until incorporated in writing by both WorldCom and BellSouth, we disagree that the written amendment to the interconnections agreement would become effective as of the date that the parties sign it. Since Section 252 (i) of the Act allows WorldCom to "pick and choose" terms and conditions from a

third party negotiated agreement, we find that the combination of these "pick and choose" terms and conditions with the other terms and conditions creates a new agreement. Since a new negotiated agreement is created in accordance with Section 252 (a), the agreement "shall be submitted to the State commission under subsection (e) of this section." Subsection (e)(1) states "Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission." Pursuant to Section 252 (e)(4), should we fail to approve or reject an agreement adopted by negotiation within 90 days after submission by the parties, the agreement is deemed approved. Therefore, we find that the effective date for these terms and conditions would be the issuance date of the order approving the agreement or if we fail to act, 90 days after submission of the agreement by the parties for our approval.

However, we are concerned that the parties not unduly delay the process of submitting these new terms and conditions for our approval. We note that the FCC addressed this to a certain degree in its Local Competition Order, FCC 96-325. Paragraph 1321 of the Local Competition Order, FCC 96-325, reads in part:

> We further conclude that a carrier seeking interconnection, network elements, or services pursuant to section 252(i) need not make such requests pursuant to the procedures for initial section 251 requests, **but shall be permitted to obtain its statutory rights on an expedited basis.** We find that this interpretation furthers Congress's stated goals of opening up local markets to competition and permitting interconnection on just, reasonable, and nondiscriminatory terms, and that we should adopt measures that ensure competition occurs as quickly and efficiently as possible. We conclude that the nondiscriminatory, pro-competition purpose of section 252(i) would be defeated were requesting carriers required to undergo a lengthy negotiation and approval process pursuant to section 251 before being able to utilize the terms of a previously approved agreement.

(emphasis added) FCC 96-325 at ¶1321. We find the intent and purpose of Section 252(i), as stated by the FCC, was to ensure that

competition occurs as quickly and efficiently as possible. This is reflected in FCC Rule 51.809(a) which reads in part:

> An incumbent LEC shall make available **without unreasonable delay** to any requesting telecommunications carrier any individual interconnection, service, or network element arrangement contained in any agreement to which it is a party that is approved by a state commission pursuant to section 252 of the Act . . . .

(emphasis added) 47 C.F.R. §51.809. We note that neither party provided testimony regarding what length of time would result in an unreasonable delay. However, we suggest that it would be prudent for BellSouth and WorldCom to submit this type of amendment for our approval within 30 days of WorldCom's request.

The second determination we must make in this issue is whether BellSouth should be required to post on its website all of BellSouth's interconnection agreements with third parties within fifteen days of the filing of such agreements with us. WorldCom witness Price states that requiring BellSouth to post all interconnection agreements on its website greatly facilitates the goals of Section 252(i). BellSouth witness Cox, however, states that BellSouth is simply not obligated under the Act and the FCC's rules to post these agreements on its website. On the contrary, witness Cox contends that the Section 252(h) of the Act places the obligation to provide copies of the agreements upon state commissions.

We find that Section 252(e) of the Act reserves the state's authority to impose additional conditions and terms in an arbitration not inconsistent with Act and its interpretation by the FCC and the courts. We note that Witness Cox states BellSouth is simply not obligated, rather than prohibited, from placing said agreement on its website. Section 364.01 (4)(d), Florida Statutes, authorizes us to "Promote competition by encouraging new entrants into telecommunications markets . . ."

We believe that it would be simpler for ALECs to track BellSouth's agreements if they were posted on BellSouth's website. Further, we conclude that it would be appropriate if BellSouth, which is in the best position to post its agreements on its

website, did post its agreements in addition to our website postings. We believe that this will promote competition by dissemination information for the benefit of the ALECs so that they have access to the interconnection agreements and can download them off the Website. Pursuant to Section 364.01 (4), Florida Statutes, we find that in order to promote competition in Florida, BellSouth should be required to post its interconnection agreement with ALECs on its website. We, further, find that BellSouth should post its agreements with ALECs on or before five (5) days after the issuance date of our Order approving the agreement.

Therefore, we find that BellSouth shall be required to permit WorldCom to substitute more favorable terms and conditions obtained by a third party through negotiation or otherwise. We further find that the effective date for these terms and conditions would be the issuance date of our order approving the agreement or if we fail to act, 90 days after submission of the agreement by the parties for our approval. In addition, we find that BellSouth shall be required to post BellSouth's interconnection agreements with third parties on its website on or before five (5) days after the issuance date of our Order approving the agreement.

XLIX. CONFIDENTIAL INFORMATION

The issue present to us to determine whether BellSouth should be required to take all actions necessary to ensure that WorldCom confidential information does not fall into the hands of BellSouth's retail operations, and should BellSouth bear the burden of proving that such disclosure falls within enumerated exceptions.

A. Analysis

WorldCom Witness Price states that the one portion of the disputed language in this provision is whether BellSouth should be required to take "all action necessary" or "take all reasonable measures" to protect confidential information. Witness Price states that it is critical that WorldCom's confidential information does not fall into the hands of BellSouth's retail operations which could use the information to its competitive advantage. Witness Price contends that BellSouth's language does not go far enough to protect WorldCom's confidential information from its retail operations. Witness Price asserts that it is appropriate to insist

that BellSouth take all necessary actions to protect WorldCom's confidential information because BellSouth's wholesale and retail personnel's incentives and ability to share the information are compelling.

Moreover, WorldCom Witness Price states that the following additional language proposed by WorldCom is in dispute:

> In the event that the retail operations, any employee thereof, or retail customer representatives of BellSouth or any BellSouth Affiliate, or any independent contractors to any of the foregoing, possess or have knowledge of any MCIm Confidential Information, that fact will establish a rebuttable presumption that BellSouth breached its obligations under this Section 20, and BellSouth will bear the full burden of showing that BellSouth as to such Confidential Information is subject to one or more of the exceptions set forth in Section 20.1.2.

Witness Price argues that it would be nearly impossible for WorldCom to determine how a BellSouth retail unit would obtain WorldCom confidential information. Witness Price states that it would be relatively easy for BellSouth to prove, if that information is disclosed to a BellSouth retail unit by a source other than BellSouth wholesale, how its retail unit obtained the confidential information.

In its brief, WorldCom argues that this issue is of great importance because WorldCom is both a customer in the wholesale markets and a competitor in the retail markets of BellSouth. WorldCom asserts that it is natural that BellSouth's divisions would want to share all valuable information to achieve their common goal and the employees of BellSouth's wholesale divisions and retail divisions would likely know each other and may often interact. WorldCom states for these reasons it is appropriate to require BellSouth to take all actions necessary to secure its confidential information. In its brief, WorldCom argues BellSouth's position would require WorldCom to "prove a negative" and show that BellSouth did not obtain the information by some permissible means. WorldCom contends that the contract must set

forth exactly what the presumption will be if WorldCom's confidentiality is breached.

BellSouth Witness Cox states that BellSouth is willing to take all reasonable actions necessary to ensure that WorldCom confidential information does not fall into the hands of its retail operations hands. Witness Cox states that BellSouth should not be strictly liable to take all necessary actions to protect WorldCom's confidential information as proposed by WorldCom. Witness Cox asserts WorldCom's "rebuttable presumption" that BellSouth has done something wrong simply because information may be disclosed is unreasonable. Witness Cox states that BellSouth takes its obligation to protect confidential information seriously and is willing to take all reasonable measures to protect such information. In addition, Witness Cox stated that BellSouth would be willing to take all reasonably necessary actions to keep WorldCom information confidential.

In its brief, BellSouth states that this issue concerns the extent to which BellSouth must protect WorldCom's confidential information. BellSouth argues that WorldCom's proposed language would ostensibly require that BellSouth "take all actions" to protect such information without any limitation and without specifying what actions WorldCom has in mind. BellSouth claims that WorldCom's proposal is fraught with difficulties and is an invitation to ongoing disputes. BellSouth states that under WorldCom's language one action BellSouth could take is to administer daily polygraph test of employees who have access to WorldCom confidential information. BellSouth argues that even though WorldCom does not want BellSouth to take this action, there is nothing in WorldCom's proposed language which would impose such a limitation. BellSouth states that it is responsible under the law and will abide by the law in taking all reasonable measures to protect confidential information. BellSouth asserts that it is unreasonable to shift the burden to it because WorldCom's confidential information could be disclosed by any number of sources, including WorldCom itself or its vendors and contractors. BellSouth asserts that it is improper and absurd to assume that the disclosure of such information, by default, must have come from BellSouth. BellSouth argues that the only actions should be required to take are those that are "reasonable," which is the language it has proposed and that we should adopt.

B. Decision

The first dispute is whether BellSouth should be required to take all actions necessary or all reasonable measures to protect WorldCom's confidential information which comes into it's possession. The second dispute is whether there should be a rebuttable presumption if BellSouth's retail operations obtain or possess WorldCom's confidential information.

To determine what the appropriate language to be adopted in the interconnection agreement, we believe that it is essential to review Sections 222(a) and (b) of the Act. Under Section 222(a) of the Act, telecommunications carriers have a duty to protect the confidentiality of proprietary information of its customers including telecommunication carriers reselling telecommunications services provided by a telecommunication carrier. Furthermore, Section 222 (b) states as follows:

> A telecommunication carrier that receives or obtains proprietary information from another carrier for purposes of providing any telecommunications service shall use such information only for such purpose, and shall not use such information for its own marketing efforts.

This language creates a strict prohibition against using proprietary information obtained by a telecommunication carrier's wholesale unit in its retail marketing. We find that it is reasonable to infer that this strict prohibition applies to a telecommunications carrier's retail units obtaining proprietary information from the wholesale units.

WorldCom argues that "by virtue of BellSouth's position as WorldCom's sole supplier of many services and elements, BellSouth comes into possession of WorldCom's confidential information." It is evident that this confidential information comes into BellSouth's possession because the exchange of such information is necessary to implement interconnection agreement pursuant to the Act. BellSouth argues that the only actions it should be required to take to protect WorldCom's confidential information are those that are "reasonable". BellSouth asserts that it will abide by the law in taking all reasonable measures to protect confidential information.

We believe that confidential information must be afforded the highest level of protection. The disclosure of WorldCom's confidential information to BellSouth's retail operations would result in a competitive disadvantage to WorldCom. Since WorldCom is required to disclose confidential information to BellSouth for purposes of obtaining telecommunications services, WorldCom does not have any reasonable way of protecting its information from disclosure to BellSouth. Further, once the confidential information is in the possession of BellSouth's wholesale operations, WorldCom has no way of implementing safeguards to ensure that BellSouth's retail units do not obtain this information. WorldCom must rely on BellSouth to protect this information. Further, it is reasonable to infer that WorldCom would take all necessary actions to protect its own confidential information from those outside its own operations. Unless BellSouth takes all action necessary to protect this information, there could be no way to ensure the same level of protection to WorldCom that WorldCom would afford itself.

Moreover, we think that BellSouth would take all actions necessary to protect its own confidential information to ensure that such information was not disclosed to a competitor. Additionally, we are not persuaded that WorldCom's language would result in an absurd application such as BellSouth's example that it could be required to administer daily polygrams. Therefore, we find that BellSouth is required by the Act to take all necessary action to protect against the inappropriate use of proprietary information.

As noted above, WorldCom proposes that language which creates a "rebuttable presumption" should be adopted in the interconnection agreement. The language WorldCom is proposing shifts the burden where such information is disclosed to BellSouth retail operations. Under WorldCom's proposed language, a rebuttable presumption would not be created unless WorldCom's confidential information is disclosed to BellSouth's own retail operations.

BellSouth argues that the fact that confidential information has been obtained by its retail units should not result in a "rebuttable presumption" that BellSouth did anything wrong. We do not find this argument persuasive for two reasons. First, it is reasonable to infer that BellSouth's retail operations obtained WorldCom confidential information internally because BellSouth has exclusive control and possession of such information within its own

organization. Second, we agree with WorldCom that if such information is in the possession of the BellSouth retail operations, BellSouth is the best position to determine how its retail operations obtained the information because of its exclusive control over the information within its own organization. Therefore, we find that it is appropriate to adopt the "rebuttable presumption" burden shifting language proposed by WorldCom which would require BellSouth to demonstrate that WorldCom's confidential information obtained by its retail operations was under circumstances permitted by the interconnection agreement.

Therefore, we find that it is appropriate to require that BellSouth take "all actions necessary" to protect WorldCom's confidential information. Furthermore, we find that it is appropriate to impose the adoption of the "rebuttable presumption" burden shifting language proposed by WorldCom.

L. CONCLUSION

We have conducted these proceedings pursuant to the directives and criteria of Sections 251 and 252 of the Act. We believe that our decisions are consistent with the terms of Section 251, the provisions of FCC rules, applicable court orders and provision of Chapter 364, Florida Statutes.

Based on the foregoing, it is

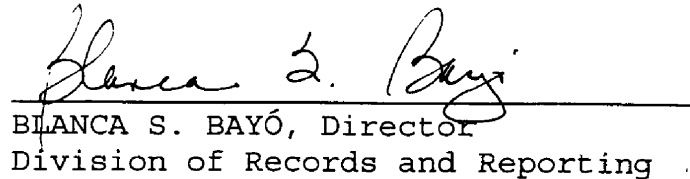
ORDERED by the Florida Public Service Commission that the specific findings set forth in this Order are approved in every respect. It is further

ORDERED that the issues for arbitration identified in this docket are resolved as set forth with the body of this Order. It is further

ORDERED that the parties shall submit a signed agreement that complies with our decisions in this docket for approval within 30 days of issuance of this Order. It is further

ORDERED that this docket shall remain open pending our approval of the final arbitration agreement in accordance with Section 252 of the Telecommunications Act of 1996.

By ORDER of the Florida Public Service Commission this 30th day of March, 2001.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

PAC

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 Records and Reporting, 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 in Federal district court pursuant to the Federal Telecommunications Act of 1996, 47 U.S.C. § 252(e)(6).