

ORIGINAL

1 BELLSOUTH TELECOMMUNICATIONS, INC.
2 DIRECT TESTIMONY OF ALPHONSO J. VARNER
3 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
4 DOCKET NO. 991854-TP
5 February 14, 2000
6

7 Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH
8 TELECOMMUNICATIONS, INC. ("BELLSOUTH") AND YOUR
9 BUSINESS ADDRESS.

10

11 A. My name is Alphonso J. Varner. I am employed by BellSouth as Senior
12 Director for State Regulatory for the nine-state BellSouth region. My business
13 address is 675 West Peachtree Street, Atlanta, Georgia 30375.

14

15 Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR BACKGROUND
16 AND EXPERIENCE.

17

18 A. I graduated from Florida State University in 1972 with a Bachelor of
19 Engineering Science degree in systems design engineering. I immediately
20 joined Southern Bell in the division of revenues organization with the
21 responsibility for preparation of all Florida investment separations studies for
22 division of revenues and for reviewing interstate settlements.

23

24 Subsequently, I accepted an assignment in the rates and tariffs organization
25 with responsibilities for administering selected rates and tariffs including

1 preparation of tariff filings. In January 1994, I was appointed Senior Director
2 of Pricing for the nine-state region. I was named Senior Director for
3 Regulatory Policy and Planning in August 1994, and I accepted my current
4 position as Senior Director of Regulatory in April 1997.

5

6 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

7

8 A. The purpose of my testimony is to present BellSouth's position on many of the
9 unresolved issues in the negotiations between BellSouth and Intermedia
10 Communications, Inc. ("Intermedia"). On February 10, 2000, the Florida
11 Public Service Commission ("Commission") issued its Order Establishing
12 Procedure in this docket. In that Order, the Commission listed the issues that
13 are to be addressed in this arbitration. My testimony addresses Issues 2, 3, 4,
14 7, 12, 13, 15, 17, 18, 22, 25, 26, 31, 32, 35, 36, 37, 38, 39, 45 and 46. Mr.
15 Keith Milner's testimony addresses Issues 10, 17, 27, 29 and 30.

16

17 Q. IN THIS PROCEEDING, DOES BELL SOUTH PROPOSE RATES FOR
18 ANY UNBUNDLED NETWORK ELEMENTS ("UNEs")?

19

20 A. Yes. In this proceeding, BellSouth proposes interim rates for the following
21 UNEs:

- 22 • Sub-loop Feeder per 2-Wire Analog Voice Grade Loop
- 23 • Loop Channelization and CO Interface (Inside CO)
- 24 • High Capacity Unbundled Local Loop – DS3, OCn, STS-1
- 25 • Local Channel Dedicated – DS3, OCn, STS-1

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- Interoffice Dedicated Transport – DS3, OCn, STS-1
- Dark Fiber

BellSouth also proposes interim rates for Unbundled Loop Modification, which provides for conditioning (i.e., equipment and bridged tap removal) of unbundled copper loops. BellSouth has not yet conducted a cost study for these elements in Florida. However, BellSouth recently submitted a TELRIC study and proposed rates for these elements in the Intermedia arbitration in North Carolina. BellSouth proposes that the North Carolina cost study be used to establish interim rates in Florida. These rates, shown on Exhibit AJV-1, would be subject to true-up when Florida-specific rates, to be proposed in April, are adopted by the Commission.

Q. WHY DOES BELLSOUTH PROPOSE INTERIM PRICES SUBJECT TO TRUE-UP FOR THESE ELEMENTS?

A. The Commission has set a procedural schedule in Docket No. 990649-TP that requires UNE cost studies be filed on April 17, 2000. As part of that filing, BellSouth will sponsor a cost study for the elements listed above. BellSouth believes it is appropriate to set interim prices subject to true-up pending the Commission's determination of the appropriate permanent prices in Docket No. 990649-TP.

1 ***Issue 2: Should the definition of "Local Traffic" for purposes of the Parties'***
2 ***reciprocal compensation obligations under Section 251(b)(5) of the 1996 Act***
3 ***include the following:***

4 (a) ***ISP traffic,***

5 (b) ***False traffic deliberately generated for the sole purpose of obtaining***
6 ***increased reciprocal compensation (e.g., Router-Router traffic)?***

7

8 Q. WHAT IS BELLSOUTH'S PROPOSED DEFINITION OF LOCAL
9 TRAFFIC?

10

11 A. BellSouth proposes the following definition of local traffic for inclusion in the
12 Interconnection Agreement with Intermedia:

13 Local Traffic is defined as any telephone call that originates in
14 one exchange and terminates in either the same exchange, or
15 other **exchange within the same¹** local calling area associated
16 with the originating exchange as defined and specified in
17 Section A3 of BellSouth's General Subscriber Service Tariff.
18 As clarification of this definition and for reciprocal
19 compensation, Local Traffic does not include traffic that
20 originates from or is directed to or through an enhanced service
21 provider or information service provider. As further
22 clarification, Local Traffic does not include calls that do not
23 transmit information of the user's choosing. In any event,
24 neither Party will pay reciprocal compensation to the other if

25

¹ Reflects clarification of the local traffic definition as proposed by BellSouth. The proposed interconnection agreement between the parties should also be amended to reflect this clarification.

1 the "traffic" to which such reciprocal compensation would
2 otherwise apply was generated, in whole or in part, for the
3 purpose of creating an obligation on the part of the originating
4 carrier to pay reciprocal compensation for such traffic.

5
6 This basic definition appears in several places in the proposed agreement,
7 including the General Terms and Conditions – Part B and Section 6.1.1 of
8 Attachment 3.

9
10 Q. HOW DO THE ACT AND THE FCC'S FIRST REPORT AND ORDER IN
11 CC DOCKET 96-98 ADDRESS RECIPROCAL COMPENSATION?

12
13 A. Reciprocal compensation applies only when local traffic is terminated on either
14 party's network. One of the Act's basic interconnection rules is contained in
15 47 U.S.C. § 251(b)(5). That provision requires all local exchange carriers "to
16 establish reciprocal compensation arrangements for the transport and
17 termination of telecommunications." Section 251(b)(5)'s reciprocal
18 compensation duty arises, however, only in the case of local calls. In fact, in
19 its August 1996 Local Interconnection Order (CC Docket No. 96-98),
20 paragraph 1034, the FCC made it perfectly clear that reciprocal compensation
21 rules do not apply to interstate or interLATA traffic such as interexchange
22 traffic:

23 *We conclude that Section 251(b)(5), reciprocal compensation*
24 *obligation, should apply only to traffic that originates and terminates*
25 *within a local area assigned in the following paragraph. We find that*

1 *reciprocal compensation provisions of Section 251(b)(5) for transport*
2 *and termination of traffic do not apply to the transport and termination*
3 *of interstate or intrastate interexchange traffic.*

4
5 This interpretation is consistent with the Act, which establishes a reciprocal
6 compensation mechanism to encourage local competition.

7
8 Further, in Paragraph 1037 of that same Order, the FCC stated:

9 *We conclude that section 251(b)(5) obligations apply to all LECs in the*
10 *same state-defined local exchange areas, including neighboring*
11 *incumbent LECs that fit within this description.*

12
13 The FCC's interpretation of reciprocal compensation applying only to local
14 traffic is consistent with the Act, which established a reciprocal compensation
15 mechanism to encourage local competition.

16
17 **Q. WHAT IS BELLSOUTH'S POSITION ON THE APPLICABILITY OF**
18 **RECIPROCAL COMPENSATION TO ISP-BOUND TRAFFIC?**

19
20 **A. Because ISP-bound traffic is interstate traffic, not local traffic, it is not subject**
21 **to the reciprocal compensation obligations contained in Section 251 of the Act.**
22 **Payment of reciprocal compensation for ISP-bound traffic is inconsistent with**
23 **the law and is not sound public policy.**

24
25

1 Q. IS BELLSOUTH'S POSITION REGARDING JURISDICTION OF ISP-
2 BOUND TRAFFIC CONSISTENT WITH THE FCC'S FINDINGS AND
3 ORDERS?
4

5 A. Absolutely. BellSouth's position is supported by, and is consistent with, the
6 FCC's findings and Orders which state that, for jurisdictional purposes, traffic
7 must be judged by its end-to-end nature, and must not be judged by looking at
8 individual components of a call. Therefore, for purposes of determining
9 jurisdiction for ISP-bound traffic, the originating location and the final
10 termination must be looked at from an end-to-end basis. BellSouth's position
11 is consistent with long-standing FCC precedent.
12

13 In its Declaratory Ruling in Docket Nos. 96-98 and 99-68, dated February 25,
14 1999, the FCC noted that it would refer to providers of enhanced services and
15 providers of information services as ESPs, a category which includes Internet
16 Service Providers, which the FCC refers to in its order as ISPs (fn 1). The
17 FCC once again confirmed that ISP-bound traffic is access service subject to
18 interstate jurisdiction and is not local traffic when it concluded that "ISP-bound
19 traffic is non-local interstate traffic." (fn 87) The FCC noted in its decision
20 that it traditionally has determined the jurisdiction of calls by the end-to-end
21 nature of the call. In paragraph 12 of this same order, the FCC concluded "that
22 the communications at issue here do not terminate at the ISP's local server, as
23 CLECs and ISPs contend, but continue to the ultimate destination or
24 destinations, specifically at an Internet website that is often located in another
25 state." Further, in paragraph 12 of its Declaratory Ruling, the FCC finds that

1 “[a]s the Commission stated in *BellSouth MemoryCall*, the Commission has
2 jurisdiction over, and regulates charges for, the local network when it is used in
3 conjunction with the origination and termination of interstate calls.”

4
5 The FCC’s decision makes plain that no part of an ISP-bound communication
6 terminates at the facilities of an ISP. Once it is understood that ISP-bound
7 traffic “terminates” only at distant websites, which are almost never in the
8 same exchange as the end-user, it is evident that these calls are not local.

9
10 Q. DOESN’T AN ISP PAY BASIC LOCAL EXCHANGE RATES FOR THE
11 ACCESS SERVICE IT RECEIVES?

12
13 A. Yes. However, the fact that the FCC has exempted enhanced service
14 providers, including ISPs, from paying interstate switched access charges does
15 not alter the fact that the connection an ISP obtains is an access connection.
16 The FCC confirmed this fact in its Declaratory Ruling, at paragraph 16: “The
17 fact that ESPs are exempt from access charges and purchase their PSTN links
18 through local tariffs, does not transform the nature of traffic routed to ESPs.”
19 Instead, the exemption limits the compensation that an ILEC in providing such
20 a connection can obtain from an ISP. Further, under the access charge
21 exemption, the compensation derived by an ILEC providing the service to an
22 ISP has been limited to the rates and charges associated with business
23 exchange services. Nevertheless, the ISP’s service involves interstate
24 communications. The ISP obtains access service that enables a
25 communications path to be established by its subscriber. The ISP, in turn,

1 recovers the cost of the telecommunications services it uses to deliver its
2 service through charges it assesses on the subscribers of the ISP's service.

3

4 The interstate access connection that permits an ISP to communicate with its
5 subscribers falls within the scope of exchange access and, accordingly,
6 constitutes an access service as defined by the FCC:

7

8 *Access Service* includes services and facilities provided for the origination or
9 termination of any interstate or foreign telecommunications. (47 CFR Ch. 1
10 §69.2(b)) (emphasis added)

11

12 Q. HAS THIS COMMISSION PREVIOUSLY RULED ON THE INCLUSION
13 OF ISP-BOUND TRAFFIC IN THE DEFINITION OF LOCAL TRAFFIC
14 SUBJECT TO RECIPROCAL COMPENSATION?

15

16 A. Yes. In its Order No. PSC-00-0128-FOF-TP dated January 14, 2000, in the
17 ICG/BellSouth Arbitration Case, Docket No.990691-TP, the Commission
18 found that "the parties should continue to operate under the terms of their
19 current contract until the FCC issues its final ruling on whether ISP-bound
20 traffic should be defined as local and whether reciprocal compensation is due
21 for this traffic." (p. 5). The Commission noted that it reached this same
22 decision in its Order No. PSC-99-2009-FOF-TP dated October 14, 1999 in the
23 MediaOne/BellSouth Arbitration Case, Docket No. 990149-TP.

24

25

1 BellSouth recognizes that the Commission has established a docket (Docket
2 No. 000075-TP) to consider the appropriate methods to compensate carriers for
3 exchange of traffic subject to Section 251 of the Act. Depending on the scope
4 of that docket, this issue may be better addressed there. However, BellSouth
5 reiterates its position that Section 251 of the Act does not require development
6 of a compensation mechanism for this traffic.

7

8 Q. WHY IS IT NECESSARY TO INCLUDE IN THE DEFINITION OF LOCAL
9 TRAFFIC AN EXCEPTION FOR "FALSE TRAFFIC" DELIBERATELY
10 GENERATED FOR THE SOLE PURPOSE OF OBTAINING INCREASED
11 RECIPROCAL COMPENSATION?

12

13 A. Although this type of traffic has not yet been addressed in a case before this
14 Commission, it has been addressed in a complaint proceeding by another state
15 commission in BellSouth's region. Generally speaking, the "traffic" at issue in
16 that proceeding is false traffic created for the sole purpose of generating
17 reciprocal compensation for which BellSouth was billed. Router-to-router
18 connections were established on a 24-hour/7-days-per-week basis on
19 BellSouth's network by a company who had entered into a reciprocal
20 compensation sharing arrangement with a particular ALEC. That ALEC
21 agreed to share with the originating party the reciprocal compensation it
22 received from BellSouth for this "false traffic." Irrespective of any actual use
23 of the network connections established by its routers, the originating party kept
24 these connections open between the BellSouth network and the ALEC's
25 network on essentially a 24 hour-a-day basis so as to generate reciprocal

1 compensation payments from BellSouth to the ALEC for that entire period. In
2 effect, the originating party and the ALEC established a private network, and
3 reciprocal compensation obligations under the Act do not extend to such
4 private networks.

5
6 That complaint was heard in August 1999, has been extensively briefed by the
7 parties, and a decision is pending. By proposing to specifically exclude such
8 traffic from the Parties' definition of local traffic, BellSouth has attempted to
9 describe, albeit in a shorthand fashion, the type of traffic the third party
10 originated--either for itself or on behalf of its other customers--on BellSouth's
11 network and for which the ALEC attempted to collect reciprocal compensation
12 from BellSouth. BellSouth's position, of course, is that such "traffic" is not
13 local traffic subject to payment of reciprocal compensation. In fact, it isn't
14 traffic at all. It is important to specify at this time that such traffic is not local
15 traffic subject to payment of reciprocal compensation should it become an
16 issue in Florida at some point in the future.

17

18 Q. WHAT DOES BELLSOUTH REQUEST OF THIS COMMISSION?

19

20 A. BellSouth respectfully requests that this Commission find BellSouth's
21 proposed definition of Local Traffic to be consistent with the parties'
22 reciprocal compensation obligations under Section 251(b)(5) of the Act. In
23 order to avoid potential future disputes between the parties concerning the
24 applicability of reciprocal compensation to ISP-bound traffic, BellSouth
25 requests the Commission find that the definition of Local Traffic should

1 expressly exclude traffic to Internet Service Providers. Further, BellSouth asks
2 the Commission to find it appropriate to include in the definition of Local
3 Traffic an exception for "false traffic" deliberately generated for the sole
4 purpose of obtaining increased reciprocal compensation.

5

6 ***Issue 3: Should Intermedia be compensated for end office, tandem, and transport***
7 ***elements, for purposes of reciprocal compensation?***

8

9 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

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11 A. BellSouth agrees that Intermedia should be compensated for the functions that
12 its switches provide. In its Order No. PSC-96-1579-FOF-TP, dated December
13 31, 1996, the Commission established reciprocal compensation rates for end
14 office switching and tandem switching. In that same order, the Commission
15 determined rates for common transport.

16

17 Intermedia proposes that a composite rate be calculated and applied in every
18 instance, regardless of which actual elements are used to terminate and
19 transport the local traffic. However, BellSouth's position is that elemental
20 rates are the appropriate rates to use because they more closely represent the
21 costs incurred to transport and terminate such local traffic.

22

23 BellSouth contends that carriers should be compensated only for those
24 functions they actually perform. If a call is not handled by a switch on a
25 tandem basis, it is not appropriate to pay reciprocal compensation for the

1 tandem switching function. A tandem switch connects one trunk to another
2 trunk and is an intermediate switch or connection between an originating
3 telephone call location and the final destination of the call. An end office
4 switch is connected to a telephone subscriber and allows the call to be
5 originated or terminated. If Intermedia's switch is an end-office switch, then it
6 is handling calls that originate from or terminate to customers served by that
7 local switch, and thus Intermedia's switch is not providing a tandem function.
8 Intermedia is seeking to be compensated for the cost of equipment it does not
9 own and for functionality it does not provide.

10

11 Q. HOW DO THE FCC'S RULES DEFINE LOCAL TANDEM SWITCHING?

12

13 A. In its recently released Order No. FCC 99-238, the FCC's rules at 51.319(c)(3)
14 state:

15 *Local Tandem Switching Capability.* The tandem switching capability
16 network element is defined as:

17 (i) Trunk-connect facilities, which include, but are not limited to,
18 the connection between trunk termination at a cross connect
19 panel and switch trunk card;

20 (ii) The basic switch trunk function of connecting trunks to trunks;
21 and

22 (iii) The functions that are centralized in tandem switches (as
23 distinguished from separate end office switches), including but
24 not limited, to call recording, the routing of calls to operator
25 services, and signaling conversion features.

1 Q. DOES INTERMEDIA'S SWITCH SERVE A GEOGRAPHIC AREA
2 COMPARABLE TO BELLSOUTH'S TANDEM?

3
4 A. Without additional information, it is not possible to determine whether
5 Intermedia's switch would actually serve a geographic area comparable to
6 BellSouth's tandem. Even if one were to assume that Intermedia's switch
7 covers a geographic area similar to BellSouth's tandem, unless Intermedia's
8 switch is performing tandem functions, which the FCC has indicated is one of
9 the required criteria that an ALEC's switch must meet, Intermedia is not
10 eligible for the tandem switching element of reciprocal compensation.

11
12 Q. HAS THE FCC ADDRESSED TRANSPORT AND TERMINATION?

13
14 A. Yes. In paragraph 1039 of the FCC's First Report and Order, the FCC clearly
15 defines transport:

16 "We conclude that transport and termination should be treated as two
17 distinct functions. We define 'transport' for purposes of section
18 251(b)(5), as the transmission of terminating traffic that is subject to
19 section 251(b)(5) from the interconnection point between the two
20 carriers to the terminating carrier's end office switch that directly
21 serves the called party (or equivalent facility provided by the non-
22 incumbent carrier)."

23 Further, in paragraph 1040 of the FCC's First Report and Order,

24 "We define "termination" for purposes of section 251(b)(5), as the
25 switching of traffic that is subject to section 251(b)(5) at the

1 terminating carrier's end office switch (or equivalent facility) and
2 delivery of that traffic from that switch to the called party's premises."

3

4 Additionally in that same paragraph, the FCC states:

5 "As such, we conclude that we need to treat transport and termination
6 as separate functions – each with its own cost."

7

8 Clearly, the FCC recognized that transport and termination charges should
9 apply only if those functions are provided. Transport includes any flat-rated
10 dedicated services, tandem switching function and "common" transport
11 between the tandem switch and end office switch necessary to transport the
12 call from the interconnection point to the end office. Intermedia's switch is not
13 providing a common transport or tandem function, but is switching traffic
14 through its end office for delivery of that traffic from that switch to the called
15 party's premises.

16

17 Q. IS INTERMEDIA'S POSITION CONSISTENT WITH WHAT THE FCC
18 DETERMINED TO BE THE "ADDITIONAL COST" OF TERMINATING A
19 CALL?

20

21 A. No. In paragraph 1057, the FCC clearly indicates what should be charged for
22 terminating a call:

23 "We find that, once a call has been delivered to the incumbent LEC end
24 office serving the called party, the 'additional cost' to the LEC of
25 terminating a call that originated on a competing carrier's network

1 primarily consists of the traffic-sensitive component of local switching.
2 The network elements involved with the termination of traffic include
3 the end-office switch and local loop. The costs of local loops and line
4 ports associated with local switches do not vary in proportion to the
5 number of calls terminated over these facilities. We conclude that such
6 non-traffic sensitive costs should not be considered 'additional costs'
7 when a LEC terminates a call that originated on the network of a
8 competing carrier."

9

10 Obviously, the FCC intends for the terminating LEC to recover its loop costs
11 from the end user customer, not the originating LEC. Intermedia is clearly
12 attempting to recover its loop costs from BellSouth by inappropriately
13 classifying its end office switch as a tandem switch.

14

15 Q. HAS THIS COMMISSION PREVIOUSLY RULED ON THE ISSUE OF
16 APPLICABILITY OF RECIPROCAL COMPENSATION TO TANDEM
17 SWITCHING?

18

19 A. Yes. Most recently, in its January 14, 2000 Order No. PSC-00-0128-FOF-TP
20 in Docket No. 990691-TP (ICG/BellSouth Arbitration), this Commission
21 found that "the evidence of record does not provide an adequate basis to
22 determine that ICG's network will fulfill this geographic criterion." (p. 10)
23 Therefore, this Commission has determined that BellSouth is not required to
24 compensate ICG for the tandem switching element.

25

1 Earlier, the Florida Public Service Commission, in Order No. PSC-97-0294-
2 FOF-TP, Docket 961230-TP, dated March 14, 1997, concluded at pages 10-11:
3 “We find that the Act does not intend for carriers such as MCI to be
4 compensated for a function they do not perform. Even though MCI
5 argues that its network performs ‘equivalent functionalities’ as Sprint in
6 terminating a call, MCI has not proven that it actually deploys both
7 tandem and end office switches in its network. If these functions are
8 not actually performed, then there cannot be a cost and a charge
9 associated with them. Upon consideration, we therefore conclude that
10 MCI is not entitled to compensation for transport and tandem switching
11 unless it actually performs each function.”

12
13 Similarly, Florida Order No. PSC-96-1532-FOF-TP, Docket No. 960838-TP,
14 dated December 16, 1996, states at page 4:

15 “The evidence in the record does not support MFS’ position that its
16 switch provides the transport element; and the Act does not
17 contemplate that the compensation for transporting and terminating
18 local traffic should be symmetrical when one party does not actually
19 use the network facility for which it seeks compensation. Accordingly,
20 we hold that MFS should not charge Sprint for transport because MFS
21 does not actually perform this function.”

22 Reinstatement of the FCC’s rules previously vacated by the Eighth Circuit
23 Court of Appeals does not alter the correctness of this Commission’s
24 conclusions.

25

1 Q. WHAT DOES BELLSOUTH REQUEST OF THIS COMMISSION?

2

3 A. BellSouth urges this Commission to find that an elemental rate structure, rather
4 than a composite rate structure, is appropriate for compensation of end office
5 switching, tandem switching and common transport. BellSouth proposes that
6 the rates ordered by this Commission for these elements in its December 31,
7 1996 Order No. PSC-96-1579-FOF-TP are the appropriate rates for inclusion
8 in the new interconnection agreement. Further, BellSouth requests this
9 Commission find that Intermedia's end office switches do not perform the
10 same function as BellSouth's tandem switches, nor do they serve the same
11 geographic area. Subsequently, Intermedia is not due compensation for the
12 tandem switching element.

13

14 ***Issue 4: Should BellSouth be required to pay for additional transport charges where***
15 ***Intermedia has configured its network in such a way that its switch is in a different***
16 ***LATA than Intermedia's end user customer?***

17

18 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

19

20 A. This issue appears to consist of two parts:

21 (1) BellSouth's ability to designate a Point of Interface ("POI") for the
22 traffic that BellSouth originates to Intermedia, and

23 (2) having established the POI, whether each party is obligated to
24 provide the facilities necessary to transport traffic from that POI to
25 end users on its network.

1 Q. DO THE PROVISIONS OF THE ACT LIMIT BELLSOUTH'S ABILITY TO
2 DESIGNATE A POI FOR THE TRAFFIC THAT BELLSOUTH
3 ORIGINATES TO INTERMEDIA?

4
5 A. No, nothing in the Act limits BellSouth's ability to designate a Point of
6 Interface for traffic it originates to Intermedia. As clarification, the term Point
7 of Interface is synonymous with the term Point of Interconnection as used by
8 the FCC.

9
10 Q. WHAT IS THE FCC'S REQUIREMENT REGARDING POINTS OF
11 INTERFACE?

12
13 A. The FCC addresses the Point Of Interface (i.e., Point Of Interconnection as
14 defined by the FCC) in its First Report & Order, CC Docket 96-98, dated
15 August 1, 1996, in Section IV, Interconnection. In that section, the FCC
16 established the concept that, due to reciprocal compensation being paid by the
17 originating company, the originating company may seek to determine its POI
18 in order to minimize its reciprocal compensation obligation to the terminating
19 company. For example, in Subsection F, Technically Feasible Points Of
20 Interconnection, ¶ 209, the FCC states:

21 *"We conclude that we should identify a minimum list of technically*
22 *feasible points of interconnection that are critical to facilitating entry*
23 *by competing local service providers. Section 251(c)(2) gives*
24 *competing carriers the right to deliver traffic terminating on an*
25 *incumbent LEC's network at any technically feasible point on that*

1 *network, rather than obligating such carriers to transport traffic to less*
2 *convenient or efficient interconnection points. Section 251(c)(2) lowers*
3 *barriers to competitive entry for carriers that have not deployed*
4 *ubiquitous networks by permitting them to select the points in an*
5 *incumbent LEC's network at which they wish to deliver traffic.*
6 *Moreover, because competing carriers must usually compensate*
7 *incumbent LECs for the additional costs incurred by providing*
8 *interconnection, competitors have an incentive to make economically*
9 *efficient decisions about where to interconnect."*

10

11 This ruling only specifies that the ALEC must establish a POI on the
12 incumbent LEC's network for traffic originated by the ALEC. It does not
13 obligate the incumbent LEC to specify a POI on the ALEC's network for
14 traffic originated by the incumbent LEC.

15

16 Q. IS THERE A DISPUTE AS TO INTERMEDIA'S ABILITY TO
17 DESIGNATE A POI FOR ITS ORIGINATING TRAFFIC TERMINATING
18 ON BELLSOUTH'S NETWORK?

19

20 A. No. As is clear from the language quoted above, an ALEC may designate a
21 POI for its originating traffic at any technically feasible point on BellSouth's
22 network.

23

24 Q. HAS THE FCC RULED ON AN ILEC'S ABILITY TO DESIGNATE A POI
25 WHEN THE TRAFFIC ORIGINATES FROM THE ILEC'S NETWORK?

1 A. Yes. In the FCC's Order 96-325, MCI attempted to have the FCC limit the
2 ability of incumbent LECs to specify a POI for their originating traffic. In
3 paragraph 214 of that Order, the FCC states:

4 *"MCI also urges the Commission to require incumbents and*
5 *competitors to select one point of interconnection (POI) on the other*
6 *carrier's network at which to exchange traffic. MCI further requests*
7 *that this POI be the location where the costs and responsibilities of the*
8 *transporting carrier ends and the terminating carrier begins."*

9

10 In paragraph 220, the FCC rejected MCI's request, stating:

11 *"We also conclude that MCI's POI proposal, permitting*
12 *interconnecting carriers, both competitors and incumbent LECs, to*
13 *designate points of interconnection on each other's networks, is at this*
14 *time best addressed in negotiations and arbitrations between parties."*

15 By this conclusion, the FCC refused to limit the incumbent LEC's ability to
16 designate a POI with the interconnecting carrier, and left it up to the
17 negotiation and arbitration process.

18

19 Q. PLEASE EXPLAIN FURTHER BELLSOUTH'S POSITION.

20

21 A. As the originating company, BellSouth simply seeks the option to determine at
22 which points in the network it is more cost effective to deliver BellSouth's
23 originating traffic to an ALEC based upon 1) providing its own transport, or 2)
24 purchasing transport from a third party or 3) paying the terminating ALEC
25 transport reciprocal compensation. In turn, Intermedia must make these same

1 economic decisions for traffic it originates to BellSouth. Not having the option
2 to designate POIs based on such economic analyses would, by default, place
3 BellSouth and its end users at the mercy of delivering BellSouth originating
4 traffic to any ALEC-designated POI notwithstanding the detrimental economic
5 impact on BellSouth's network. The significant economic impact this issue
6 has on BellSouth is clearly demonstrated by the fact that during 1999, region-
7 wide, BellSouth originated and delivered to ALECs 49 billion minutes of use
8 compared to 2 billion minutes of use that ALECs originated and delivered to
9 BellSouth.

10

11 Taken to the extreme, Intermedia might want BellSouth to designate only one
12 POI per LATA; whereas, the most efficient option for BellSouth would be to
13 designate a POI at every end office and remote terminal. In the interest of
14 fairness and equity, a middle ground between the two extremes would appear
15 to be the most reasonable. At most, BellSouth wants to designate no more than
16 one POI in each local calling area. That POI could be at a tandem or at an end
17 office.

18

19 Q. HAVING ESTABLISHED THE POI, IS EACH PARTY OBLIGATED TO
20 PROVIDE THE FACILITIES NECESSARY TO TRANSPORT TRAFFIC
21 FROM THAT POI TO END USERS ON ITS NETWORK?

22

23 A. BellSouth's position is that each party is obligated to provide facilities
24 necessary to transport traffic from the established POI to end users on that
25 party's network. Intermedia's position appears to be that it is not required to

1 provision facilities to locations not on its network to provide transport service
2 to BellSouth. However, as explained above, BellSouth is not required to
3 establish the POI for BellSouth originated traffic at a point on Intermedia's
4 network.

5
6 BellSouth contends that if Intermedia wants to establish a presence in a
7 particular local serving area, it should invest in the facilities and transport to
8 interconnect with BellSouth in that local serving area. However, this doesn't
9 necessarily mean that Intermedia should construct new transport facilities
10 within that area. If BellSouth facilities exist, BellSouth may provide the
11 transport facilities, but Intermedia should compensate BellSouth for the
12 transport from the BellSouth established Point of Interface to the point where
13 Intermedia wants the traffic transported.

14
15 ***Issue 7: What charges should Intermedia pay to BellSouth for space preparataion***
16 ***for physical collocation?***

17
18 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

19 A. The issue of appropriate rates for physical collocation, including space
20 preparation charges, has been addressed by this Commission in its Order No.
21 PSC-98-0604-FOF-TP, dated April 29, 1998, wherein the Commission found
22 that it was appropriate to determine space preparation charges on an Individual
23 Case Basis ("ICB"). BellSouth proposes that it is appropriate for space
24 preparation charges to continue to be determined on an ICB until such time as
25 this Commission determines otherwise.

1 **Issue 12: What is the appropriate definition of “currently combines” pursuant to**
2 **Rule 51.315(b)?**

3

4 Q. WHAT IS BELLSOUTH’S POSITION ON THIS ISSUE?

5

6 A. BellSouth has proposed the following language to Intermedia:

7 Consistent with 47 C.F.R. § 51.315(b), Intermedia may request access
8 to existing combinations of network elements in BellSouth’s network,
9 and BellSouth shall not separate requested network elements that
10 BellSouth currently combines in its network, but shall provide such
11 currently combined elements to Intermedia in the existing combination.
12 For purposes of this Section, “currently combined” and “currently
13 combines” mean that such elements are in fact combined by BellSouth
14 in BellSouth’s network to provide service to a particular customer at a
15 particular location. Such currently combined network elements shall be
16 made available at cost-based rates and shall be used by Intermedia to
17 provide a significant amount of local exchange service to a particular
18 end user.

19

20 Q. DOES BELLSOUTH BELIEVE THAT INTERMEDIA IS AGREEABLE TO
21 THE LANGUAGE PROPOSED BY BELLSOUTH?

22

23 A. Not entirely. The dispute centers around the meaning of “currently combined”
24 and “currently combines.” BellSouth’s position is that it will provide
25 combinations to Intermedia at cost-based prices if the elements are already

1 combined and providing service to the customer. In other words, if BellSouth
2 does not have to perform any physical work to effect the combination, then the
3 combination will be provided at cost-based prices. However, Intermedia
4 apparently considers “currently combined” and “currently combines” to refer
5 to any service that BellSouth offers in its tariffs, whether or not the elements
6 are physically combined and serving the particular customer in question.

7

8 Q. WAS THIS ISSUE ADDRESSED IN THE FCC’S UNE REMAND ORDER?

9

10 A. Yes. The FCC confirmed that BellSouth presently has no obligation to
11 combine network elements for ALECs, when those elements are not currently
12 combined in BellSouth’s network. The FCC also confirmed that “except upon
13 request, an incumbent LEC shall not separate requested network elements that
14 the incumbent LEC currently combines.” 47 C.F.R. §51.315(b). For example,
15 when a loop and a port (at least for certain customers with fewer than four
16 access lines) are currently combined by BellSouth to serve a particular
17 customer, that combination of elements must be made available to requesting
18 carriers.

19

20 The FCC made clear in its UNE Remand Order that Rule 315(b) applies to
21 elements that are “in fact” combined. In that Order, the FCC found that “to the
22 extent an unbundled loop is in fact connected to unbundled dedicated transport,
23 the statute and our rule 315(b) require the incumbent to provide such elements
24 to requesting carriers in combined form.” (Para. 480 – emphasis added)
25 However, the FCC declined to adopt a definition of “currently combined” that

1 would include all elements “ordinarily combined” in the incumbent’s network,
2 which is apparently the definition advocated by Intermedia. *Id.*

3

4 ***Issue 13: Should BellSouth be required to:***

5 ***a) provide access to enhanced extended links (“EELs”) at UNE rates; and***

6 ***b) allow Intermedia to convert existing special access service to EELs at***

7 ***UNE rates?***

8

9 Q. WHAT IS BELL SOUTH’S POSITION ON THIS ISSUE?

10

11 A. First, the FCC declined to define the EEL as a separate network element in its
12 UNE Remand Order. (Para 478) Accordingly, except to the extent where
13 currently combined elements in BellSouth’s network that comprise an EEL are
14 located, BellSouth currently has no obligation to provide ALECs with the EEL.
15 However, it is virtually impossible to separate Part a) of this issue from Part b).

16

17 On the surface, it would appear that when an ALEC has purchased currently
18 combined elements that may comprise the EEL, the ILEC would have to
19 provide that combination at cost-based prices. However, an ALEC’s ability to
20 convert special access facilities to unbundled elements is constrained at least
21 until the FCC completes its Fourth Notice of Proposed Rulemaking. (Para.
22 489) The FCC ordered such constraints in order to allow the FCC to develop
23 an adequate record to examine the concern “that allowing requesting carriers to
24 obtain combinations of loop and transport unbundled network elements based
25 on forward-looking cost would provide opportunities for arbitrage of special

1 access services,” and thereby negatively impact universal service. (UNE
2 Remand Order, Para. 494; November 24, 1999 Supplemental Order, Para 4)
3 Until that rulemaking is complete, the FCC has made clear that carriers may
4 not convert special access services to combinations of unbundled network
5 elements unless the carrier uses combinations of network elements to provide a
6 significant amount of local exchange service, in addition to exchange access
7 service to a particular customer. (November 24, 1999 Supplemental Order
8 Paras. 2 & 4)

9

10 Q. HAS THIS COMMISSION PREVIOUSLY RULED ON THIS ISSUE?

11

12 A. Yes, in its Order No. PSC-00-0128-FOF-TP, dated January 14, 2000, the
13 Commission determined that EELs are not required to be made available to
14 ICG in the interconnection agreement as UNEs. (p. 9)

15

16 ***Issue 15: Should BellSouth be required to condition loops in accordance with the***
17 ***FCC's most recent ruling?***

18

19 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

20

21 A. BellSouth has proposed the following language, which is consistent with
22 §51.319(a)(3) of the FCC's UNE Remand Order and with Intermedia's
23 proposed language:

24

25

1 Subject to applicable and effective FCC rules and orders, BellSouth
2 shall condition loops, as requested by Intermedia, whether or not
3 BellSouth offers advanced services to the End User on that loop.

4
5 Loop conditioning is defined as the removal from the loop of any
6 devices that may diminish the capability of the loop to deliver high-
7 speed switched wireline telecommunications capability, including
8 xDSL service. Such devices include, but are not limited to, bridge taps,
9 low pass filters, and range extenders.

10
11 BellSouth shall recover the cost of loop conditioning requested by
12 Intermedia through a nonrecurring charge set forth in this Attachment.

13
14 To the extent technically feasible, BellSouth, using testing equipment
15 that is owned and operated by BellSouth, shall test and report trouble
16 for all the features, functions, and capabilities of conditioned loops, and
17 may not restrict testing to voice-transmission only.

18 As I previously explained, BellSouth is proposing interim rates for loop
19 conditioning. These rates, shown on Exhibit AJV-1, would be subject to true-
20 up when Florida-specific rates, to be proposed in April, are adopted by the
21 Commission.

22
23 ***Issue 17: Should BellSouth be required to offer subloop unbundling and access to***
24 ***BellSouth-owned inside wiring in accordance with the UNE Remand Order and***
25 ***FCC Rule 319(a)?***

1 Q. WHAT IS BELLSOUTH'S POSITION ON PROVISIONING OF ACCESS
2 TO SUBLOOP UNBUNDLING?

3

4 A. Please see Mr. Milner's testimony for a discussion of the technical aspects of
5 this issue. BellSouth has proposed the following language, which is consistent
6 with §51.319(a)(2) of the FCC's UNE Remand Order and with Intermedia's
7 proposed language:

8 Where facilities permit and subject to applicable and effective FCC
9 rules and orders, BellSouth shall offer access to its Unbundled Sub
10 Loop (USL), Unbundled Sub Loop Concentration (USLC) System and
11 Unbundled Network Terminating Wire (UNTW) elements. BellSouth
12 shall provide nondiscriminatory access, in accordance with § 51.311
13 and section 251(c)(3) of the Act, to the subloop, including inside wiring
14 owned or controlled by BellSouth, if any, on an unbundled basis
15 pursuant to the following terms and conditions and at the rates set forth
16 in this Attachment.

17

18 The subloop network element is defined as any portion of the loop that
19 is technically feasible to access at terminals in BellSouth's outside
20 plant, including inside wire owned and controlled by BellSouth, if any.

21 An accessible terminal is any point on the loop where technicians can
22 access the wire or fiber within the cable without removing a splice case
23 to reach the wire or fiber within. Such points may include, but are not
24 limited to, the pole or pedestal, the network interface device, the
25 minimum point of entry, the single point of interconnection, the main

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distribution frame, the remote terminal, and the feeder/distribution interface.

Technical feasibility. Subject to applicable and effective FCC rules and orders, if the Parties are unable to reach agreement, pursuant to voluntary negotiations, as to whether it is technically feasible, or whether sufficient space is available, to unbundle the subloop at the point where a carrier requests, BellSouth shall have the burden of demonstrating to the Commission, pursuant to state arbitration proceedings under section 252 of the Act, that there is not sufficient space available, or that it is not technically feasible, to unbundle the subloop at the point requested

Best practices. Once any state commission has determined that it is technically feasible to unbundle subloops at a designated point, BellSouth shall have the burden of demonstrating, pursuant to state arbitration proceedings under section 252 of the Act, that it is not technically feasible, or that sufficient space is not available, to unbundle its own loops at such a point.

Subloop access via collocation. Where requested by Intermedia, BellSouth shall provide access to the subloop in accordance with the FCC's collocation rules, 47 C.F.R. §§ 51.321-323.

1 *Single point of interconnection.* Subject to applicable and effective
2 FCC rules and orders, BellSouth shall provide a single point of
3 interconnection at multi-unit premises that is suitable for use by
4 multiple carriers. This obligation is in addition to BellSouth's
5 obligation to provide nondiscriminatory access to subloops at any
6 technically feasible point. If the Parties are unable to negotiate terms
7 and conditions regarding a single point of interconnection, issues in
8 dispute, including compensation due BellSouth under forward-looking
9 pricing principles, shall be resolved under the dispute resolution
10 processes set forth in this Agreement.

11

12 BellSouth will provide Intermedia with the ability to concentrate its
13 sub-loops onto multiple DS1s back to the BellSouth Central Office.
14 The DS1s will then be terminated into Intermedia's collocation space.
15 TR-008 and TR303 interface standards are available.

16

17 This Commission has already established rates for sub-loop distribution in
18 Order No. PSC-98-0604-FOF-TP, dated April 29, 1998. As I previously
19 indicated, BellSouth is proposing interim rates for sub-loop feeder and Loop
20 Channelization. These rates, shown on Exhibit AJV-1, would be subject to
21 true-up when Florida-specific rates, to be proposed in April, are adopted by the
22 Commission.

23

24 Q. WHAT IS BELL SOUTH'S POSITION ON PROVISIONING OF
25 BELL SOUTH-OWNED INSIDE WIRING?

1 A. Again, please see Mr. Milner's testimony for a discussion of the technical
2 aspects of this issue. In order to provide Intermedia with access to unbundled
3 Network Terminating Wire, BellSouth has proposed the following language to
4 Intermedia:

5 BellSouth will provide Intermedia with access to its Unbundled
6 Network Terminating Wire (UNTW) pursuant to the following terms
7 and conditions at rates as set forth in this Attachment, and in a manner
8 consistent with applicable and effective FCC rules and decisions,
9 including, but not limited to C.F.R § 51.319.

10

11 BellSouth will offer spare pairs that are available to an end user's
12 premises to Intermedia. Available spare pairs are defined as pairs that
13 are not being utilized by BellSouth or by a third party to provide an end
14 user with working service at the time of Intermedia's request for
15 UNTW. If BellSouth has relinquished the first pair to Intermedia and
16 the end user decides to change local service providers to BellSouth,
17 Intermedia will relinquish the first pair back to BellSouth.

18 Notwithstanding the foregoing, should BellSouth subsequently require
19 the use of additional pair(s) to provide for the activation of additional
20 lines in an end user's premises in response to a request from such end
21 user and no additional pairs are available, Intermedia agrees to
22 surrender its spare pair(s) upon request by BellSouth, provided that
23 Intermedia is not using such spare pair(s) to provide service to the end
24 user.

25

1 If an end user of Intermedia desires to receive local exchange service
2 from a service provider who is not a Party to this Agreement, and such
3 third party service provider needs access to the BellSouth UNTW to
4 provide local exchange service to the end user, then Intermedia agrees
5 to surrender the requisite number of its inactive spare pair(s) if no other
6 spare pair is available and upon request by BellSouth.

7
8 If Intermedia has placed NTW at a location and an end user desires to
9 receive local exchange service from BellSouth and BellSouth needs
10 access to Intermedia's NTW to provide local exchange service to the
11 end user, then Intermedia agrees to surrender the requisite number of its
12 spare pair(s) upon request by BellSouth.

13
14 In new construction, where possible, both Parties may at their option
15 and with the property owner's agreement install their own NTW. In
16 existing construction, BellSouth shall not be required to install new or
17 additional NTW beyond existing NTW to provision the services of
18 Intermedia.

19
20 This Commission approved rates for UNTW in Order No. PSC-99-2009-FOF-
21 TP issued October 14, 1999 in the MediaOne/BellSouth Arbitration
22 proceeding. Those rates are the appropriate rates to charge any ALEC in
23 Florida.

24
25

1 ***Issue 18: Should BellSouth be required to provide access on an unbundled basis in***
2 ***accordance with, and as defined in, the FCC's UNE Remand Order, to packet***
3 ***switching capabilities?***

4
5 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

6
7 A. BellSouth contends that neither the 1996 Act nor the FCC's Rules require it to
8 unbundle packet switching. In its UNE Remand Order, the FCC expressly
9 declined "to unbundle specific packet switching technologies incumbents
10 LECs may have deployed in their networks." (Para. 311) While the FCC
11 adopted "one limited exception" to this rule, which I will discuss below, the
12 FCC specifically rejected "e.spire/Intermedia's request for a packet switching
13 or frame relay unbundled element." (Para. 312) Indeed, the FCC concluded
14 that "e.spire/Intermedia have not provided any specific information to support
15 a finding that requesting carriers are impaired without access to unbundled
16 frame relay." *Id* Therefore, the Commission should not require BellSouth to
17 offer access to packet switching capabilities on an unbundled basis.

18
19 Q. PLEASE EXPLAIN THE "LIMITED EXCEPTION" TO WHICH YOU
20 EARLIER REFERRED.

21
22 A. Basically, in its Rule 51.319(c)(5), the FCC identified four conditions that, if
23 each condition were satisfied, would result in an ILEC having to unbundle
24 packet switching. Each of these conditions do not exist in BellSouth's
25 network. BellSouth has taken the necessary measures to ensure that ALECs

1 have access to necessary facilities so that BellSouth is not required to unbundle
2 packet switching.

3

4 Q. WHAT DID THE FCC FIND IN ITS DETERMINATION OF WHETHER
5 ACCESS TO UNBUNDLED PACKET SWITCHING MET THE FCC'S
6 "NECESSARY" STANDARD?

7

8 A. The FCC stated in its UNE Remand Order that "no party alleged that packet
9 switching was proprietary within the meaning of section 251(d)(2)" and "that
10 the record provides no basis for withholding packet switching from
11 competitors based on proprietary considerations or subjecting packet switching
12 to the more demanding 'necessary' standard set forth in section 251(d)(2)(A)."
13 (Para. 305) The FCC found it appropriate to examine packet switching under
14 the "impair" standard of section 251(d)(2)(B).

15

16 Q. WHAT DID THE FCC FIND IN ITS DETERMINATION OF WHETHER
17 ACCESS TO UNBUNDLED PACKET SWITCHING MET THE FCC'S
18 "IMPAIR" STANDARD?

19

20 A. The FCC determined that competing carriers would not be impaired without
21 unbundled access to the incumbent LEC's packet switching functionality.
22 (Para. 306) The FCC recognized that there are numerous carriers providing
23 service with their own packet switches, and that "competitors are actively
24 deploying facilities used to provide advanced services to serve certain
25

1 segments of the market - namely, medium and large business - and hence they
2 cannot be said to be impaired in their ability to offer service.” *Id.*

3

4 Q. DID THE FCC EMPOWER STATE COMMISSIONS TO REQUIRE
5 INCUMBENT LECs TO UNBUNDLE SPECIFIC NETWORK ELEMENTS
6 USED TO PROVIDE FRAME RELAY SERVICE?

7

8 A. Yes, but only to the extent that a competing carrier convinces the state
9 commission that it is impaired without access to such unbundled network
10 elements - a showing the FCC found that Intermedia failed to make. (UNE
11 Remand Order, Para. 312) In its UNE Remand Order, the FCC established the
12 “impair” standards by which it would determine if a network element should
13 be unbundled.

14 The FCC concluded that

15 “the failure to provide access to a network element would ‘impair’ the
16 ability of a requesting carrier to provide the services it seeks to offer if,
17 taking into consideration the availability of alternative elements outside
18 the incumbent’s network, including self-provisioning by a requesting
19 carrier or acquiring an alternative from a third-party supplier, lack of
20 access to that element materially diminishes a requesting carrier’s
21 ability to provide the services it seeks to offer.” (Para. 51)

22 The FCC went on to say that a materiality component “requires that there be
23 substantive differences between the alternative outside the incumbent LEC’s
24 network and the incumbent LEC’s network element that, collectively, ‘impair’

25

1 a competitive LEC's ability to provide service within the meaning of section
2 251(d)(2)." *Id.*

3

4 Even assuming a state commission is authorized to alter the conditions
5 established by the FCC for the unbundling of packet switching, Intermedia has
6 the burden of proof concerning whether it is impaired by not having access to
7 BellSouth's packet switching functionality on an unbundled basis. BellSouth
8 contends that Intermedia has not provided any evidence in this case that would
9 satisfy this burden. For the Commission's convenience, I have attached to my
10 testimony as Exhibits AJV-2 and AJV-3 the pertinent excerpts from
11 BellSouth's Comments and Reply Comments filed with the FCC in CC Docket
12 No. 96-98.

13

14 Q. HAS THIS COMMISSION PREVIOUSLY RULED ON THIS ISSUE?

15

16 A. Yes, in its Order No. PSC-00-0128-FOF-TP, dated January 14, 2000, the
17 Commission determined that BellSouth was not required to offer ICG access to
18 packet switching capabilities as UNEs. (p. 7)

19

20 ***Issue 22: Should BellSouth be required to provide nondiscriminatory access to***
21 ***interoffice transmission facilities in accordance with, and as defined in, the FCC's***
22 ***UNE Remand Order?***

23

24 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

25

1 A. BellSouth has proposed the following language, which is consistent with
2 §51.319(d) of the FCC's UNE Remand Order and with Intermedia's proposed
3 language:

4 BellSouth shall provide nondiscriminatory access, in accordance with
5 FCC Rule 51.311 and Section 251(c)(3) of the Act, to interoffice
6 transmission facilities on an unbundled basis to Intermedia for the
7 provision of a telecommunications service at the rates set forth in this
8 Attachment.

9 Interoffice transmission facility network elements include:

- 10 (i) Dedicated transport, defined as BellSouth's
11 transmission facilities, including all technically
12 feasible capacity-related services including, but not
13 limited to, DS1, DS3 and OCn levels, dedicated to a
14 particular customer or carrier, that provide
15 telecommunications between wire centers or
16 switches owned by BellSouth, or between wire
17 centers and switches owned by BellSouth and
18 Intermedia;
- 19 (ii) Dark Fiber transport, defined as BellSouth's optical
20 transmission facilities without attached multiplexing,
21 aggregation or other electronics;
- 22 (iii) Shared transport, defined as transmission facilities
23 shared by more than one carrier, including
24 BellSouth, between end office switches, between
25

1 end office switches and tandem switches, and
2 between tandem switches, in BellSouth's network.

3 BellSouth shall:

- 4 (i) Provide Intermedia exclusive use of interoffice
5 transmission facilities dedicated to a particular
6 customer or carrier, or shared use of the features,
7 functions, and capabilities of interoffice transmission
8 facilities shared by more than one customer or
9 carrier;
- 10 (ii) Provide all technically feasible transmission
11 facilities, features, functions, and capabilities that
12 Intermedia could use to provide telecommunications
13 services;
- 14 (iii) Permit, to the extent technically feasible, Intermedia
15 to connect such interoffice facilities to equipment
16 designated by Intermedia, including but not limited
17 to, Intermedia's collocated facilities; and
- 18 (iv) Permit, to the extent technically feasible, Intermedia
19 to obtain the functionality provided by BellSouth's
20 digital cross-connect systems in the same manner
21 that BellSouth provides such functionality to
22 interexchange carriers.

23
24 As I previously explained, BellSouth is proposing interim rates for high
25 capacity facilities and dark fiber. These rates, shown on Exhibit AJV-1, would

1 be subject to true-up when Florida-specific rates, to be proposed in April, are
2 adopted by the Commission.

3

4 ***Issue 25: Should BellSouth be required to furnish access to the following as UNEs:***
5 ***(i) User to Network Interface (“UNI”); (ii) Network-to-Network Interface (“NNI”)***
6 ***and (iii) Data Link Control Identifiers (“DLCI”), at Intermedia-specified committed***
7 ***information rates (“CIR”)?***

8

9 Q. WHAT IS BELLSOUTH’S POSITION ON THIS ISSUE?

10

11 A. This issue addressed specific components of Frame Relay service, and whether
12 BellSouth is required to furnish access to these components as UNEs. As I
13 discuss in more detail below, Frame Relay is a form of packet switching. Of
14 course, I explained in my response to Issue 18 that the FCC declined to
15 unbundle the packet switching functionality, of which frame relay is a type,
16 except in limited circumstances. Those circumstances do not apply to
17 BellSouth. Therefore, BellSouth requests this Commission find that BellSouth
18 is not required to provide access to these elements at TELRIC-based rates.
19 BellSouth has a tariffed Frame Relay service which is available for
20 interconnection of the parties’ frame relay networks.

21

22 Q. WHAT IS FRAME RELAY?

23

24 A. Frame Relay is a type of packet switching that allows the transfer of variable
25 length frames (packets of customer data) across large geographical areas to

1 provide LATA-wide, interLATA, interstate and international connectivity.
2 Frames are relayed from the source to the desired destination by means of
3 virtual connections. Bandwidth and switch capacity within the network are
4 only allocated to a virtual connection when frames are transported. Virtual
5 connections can be established and deleted either through administrative
6 procedures (referred to as Permanent Virtual Connections (PVCs)) or via
7 network signaling.

8
9 ***Issue 26: Should parties be allowed to establish their own local calling areas and***
10 ***assign numbers for local use anywhere within such areas, consistent with applicable***
11 ***law?***

12
13 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

14
15 A. BellSouth's position is that Intermedia should use its NPA/NXXs in such a
16 way that BellSouth can distinguish local traffic from intraLATA toll traffic and
17 interLATA toll traffic for BellSouth originated traffic. When an ALEC assigns
18 numbers having the same NPA/NXX to customers both inside and outside the
19 BellSouth local calling area where the NPA/NXX is homed, it would be
20 extremely difficult, if not impossible, for BellSouth to determine whether
21 BellSouth's end users are making a local or a long distance call when
22 BellSouth's end user calls the ALEC's end user. This situation is addressed in
23 Florida Statute 364.16(3)(a) wherein it states that:

24 No local exchange telecommunications company or alternative local
25 exchange telecommunications company shall knowingly deliver traffic,

1 for which terminating access service charges would otherwise apply,
2 through a local interconnection arrangement without paying the
3 appropriate charges for such terminating access service.

4 Intermedia should not be permitted to violate this statute.

5

6 Q. IS BELLSOUTH ATTEMPTING TO LIMIT INTERMEDIA'S ABILITY TO
7 ESTABLISH ITS OWN LOCAL CALLING AREAS?

8

9 A. No. BellSouth is indifferent to the manner in which Intermedia defines its
10 local calling areas for its own end users. However, in order to properly route
11 traffic, any telecommunications service provider such as BellSouth or an
12 ALEC must inform all other telecommunications service providers as to where
13 traffic for a given NPA/NXX code should be delivered for completion of the
14 calls. Telecommunications service providers then build translations and
15 routing instructions based on that information. For example, the ALEC may, if
16 it chooses, interconnect at the local tandem for exchange of local traffic.
17 Where more than one local tandem exists in a local calling area, the ALEC
18 must designate a "home" local tandem for its NPA/NXX codes and
19 interconnect at that tandem. The ALEC may deliver local traffic to all
20 BellSouth NPA/NXX codes in the local calling area by connecting to any one
21 of the local tandems. Alternatively, the ALEC may choose to establish trunk
22 groups directly between its switch(es) and each of the other local service
23 providers' switch(es) instead of delivering its traffic via the tandem.
24 BellSouth's interest in knowing Intermedia's NPA/NXX code homing
25 arrangements is in no way an effort to limit Intermedia's flexibility in how it

1 designs and operates its network. BellSouth's interest is simply in ensuring
2 that calls are successfully routed, completed and billed. This can not be
3 accomplished without Intermedia's informing BellSouth and other service
4 providers of how and where to deliver and receive traffic to and from
5 Intermedia's customers.

6

7 ***Issue 31: For purposes of compensation, how should IntraLATA Toll Traffic be***
8 ***defined?***

9

10 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

11

12 A. BellSouth has proposed the following language to Intermedia:

13 IntraLATA Toll Traffic is defined as any telephone call that is not local
14 or switched access per this Agreement.

15 The intent of BellSouth's definition is to identify the traffic specific to
16 BellSouth's General Subscriber Service Tariffs A18 and A19 as IntraLATA
17 Toll Traffic.

18

19 ***Issue 32: How should "Switched Access Traffic" be defined?***

20

21 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

22

23 A. BellSouth has proposed the following language for inclusion in the
24 Interconnection Agreement:

25

1 Switched Access Traffic is as defined in the BellSouth Access Tariff.
2 Additionally, IP Telephony traffic will be considered switched access
3 traffic.

4 BellSouth believes that it is not necessary to provide a detailed definition of
5 "switched access traffic" in a local interconnection agreement. The Access
6 Tariff is the document that defines such traffic.

7

8 Q. WHY HAS BELLSOUTH INCLUDED IN ITS PROPOSED DEFINITION
9 OF SWITCHED ACCESS TRAFFIC THE STATEMENT THAT INTERNET
10 PROTOCOL TELEPHONY ("IP TELEPHONY") IS SWITCHED ACCESS
11 TRAFFIC?

12

13 A. Due to the increasing use of IP technology mixed with traditional analog and
14 digital technology to transport voice long distance telephone calls, BellSouth's
15 position is that it is important to specify in the agreement that such traffic is
16 switched access traffic rather than local traffic, the same as any other long
17 distance traffic is not local traffic.

18

19 Q. WHAT IS IP TELEPHONY?

20

21 A. IP Telephony is telecommunications service that is provided using Internet
22 Protocol for one or more segments of the call. IP Telephony is, in very simple
23 and basic terms, a mode or method of completing a telephone call. The word
24 "Internet" in Internet Protocol Telephony refers to the name of the protocol; it
25 does not mean that the service uses the World Wide Web. Currently there are

1 various technologies used to transmit telephone calls, of which the most
2 common are analog and digital. In the case of IP Telephony originated from a
3 traditional telephone set, the local carrier first converts the voice call from
4 analog to digital. The digital call is sent to a gateway that takes the digital
5 voice signal and converts or packages it into data packets. These data packets
6 are like envelopes with addresses which “carry” the signal across a network
7 until they reach their destination, which is known by the address on the data
8 packet, or envelope. This destination is another gateway, which reassembles
9 the packets and converts the signal to analog, or a plain old telephone call to be
10 terminated on the called party’s local telephone company’s lines.

11

12 To explain it another way, Phone-to-Phone IP Telephony is where an end user
13 customer uses a traditional telephone set to call another traditional telephone
14 set using IP Telephony. The fact that IP technology is used, at least in part, to
15 complete the call is transparent to the end user. Phone-to-Phone IP Telephony
16 is identical, by all relevant regulatory and legal measures, to any other basic
17 telecommunications service, and should not be confused with calls to the
18 Internet through an ISP. Characteristics of Phone-to-Phone IP Telephony are:

- 19 • IP Telephony provider gives end users traditional dial tone (not
20 modem buzz);
- 21 • End user does not call modem bank;
- 22 • Uses traditional telephone sets (vs. computer);
- 23 • Call routes using telephone numbers (not IP addresses);
- 24 • Basic telecommunications (not enhanced);
- 25 • IP Telephone providers are telephone carriers (not ISPs).

1 Phone-to-Phone IP Telephony should not be confused with Computer-to-
2 Computer IP Telephony, where computer users use the Internet to provide
3 telecommunications to themselves.

4

5 Q. WHAT IS INTERNET PROTOCOL?

6

7 A. Technically speaking, Internet protocol, or any other protocol, is an agreed
8 upon set of technical operating specifications for managing and
9 interconnecting networks. In the above example, I referred to the gateways
10 which convert the digital carrier voice signal into data packets and then from
11 data packets back to a digital carrier. The Internet protocol is the language, or
12 signaling, that these gateways use to talk to each other. It has nothing to do
13 with the transmission medium (wire, fiber, microwave, etc.) that carries the
14 packets between the gateways, but rather the gateways, or switches, that are
15 found on either end of that medium.

16

17 Q. HOW ARE IP TELEPHONY CALLS DIFFERENT FROM INTERNET
18 SERVICE PROVIDER (ISP) BOUND TRAFFIC?

19

20 A. Even though IP Telephony and ISP traffic both have the word "Internet" in
21 their name, they are completely different services and should not be confused.
22 The FCC's April 10, 1998 Report to Congress states: "The record...
23 suggests... 'phone-to-phone IP telephony' services lack the characteristics that
24 would render them 'information services' within the meaning of the statute,
25 and instead bear the characteristics of 'telecommunication services'." Further,

1 Section 3 of the Telecommunications Act of 1996 defines
2 “telecommunications” as the “transmission, between or among points specified
3 by the user, of information of the user’s choosing, without change in the form
4 or content of the information as sent and received.” Thus, IP Telephony is
5 telecommunications service, not information or enhanced service.

6

7 Q. DOES THE FCC VIEW ISP-BOUND TRAFFIC DIFFERENTLY THAN IP
8 TELEPHONY IN TERMS OF APPLICABLE CHARGES?

9

10 A. Yes. Neither ISP-bound traffic nor IP Telephony traffic is local traffic;
11 however, the FCC has treated the two types of traffic differently in terms of the
12 rates that such providers pay for access to the local exchange company’s
13 network. ESPs, or ISPs, have been exempted by the FCC from paying access
14 charges for use of the local network in order to encourage the growth of these
15 emerging services – most specifically access to the Internet. The FCC has
16 found that ESPs and ISPs use interstate access service, but are exempt from
17 switched access charges applicable to other long distance traffic. Instead, ISP-
18 bound traffic is assessed at the applicable business exchange rate. On the other
19 hand, the transmission of long-distance voice services – whether by IP
20 telephony or by more traditional means -- is not an emerging industry. In fact,
21 it is a mature industry – one that is not exempt from paying access charges for
22 the use of the local network. These same access charges are currently paid by
23 all other long-distance carriers. BellSouth is required to assess access charges
24 on long distance calls. To do otherwise would be to discriminate between
25 long-distance carriers utilizing IP telephony and those who do not.

1 *Issue 35: How should Wireless Type 1 and/or Type 2A traffic be treated purposes of*
2 *the Parties' interconnection agreement?*

3

4 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

5

6 A. This issue deals with whether wireless traffic should be treated as transit traffic
7 for routing and billing purposes. "Transit traffic" is traffic that originates on
8 one Party's network, is switched and transported by a second Party and then is
9 sent to a third Party's network. The Party that switches the call from the first
10 Party to the third Party is due payment for that function. However, in many
11 cases, when a wireless company is one of the three Parties, neither BellSouth,
12 the wireless company nor the ALEC has the necessary system capabilities
13 required to bill each other using the normal Meet Point Billing process. In
14 addition, as discussed below, for Wireless Type 1 traffic, BellSouth is unable
15 to determine whether or not the transiting function is being performed. As a
16 result, BellSouth simply proposes that traffic involving wireless carriers be
17 treated as if it were land-line traffic originated by either BellSouth or the
18 ALEC until the involved parties have the necessary Meet Point Billing system
19 capabilities.

20

21 Q. PLEASE PROVIDE ADDITIONAL EXPLANATION OF WIRELESS TYPE
22 1 AND TYPE 2A TRAFFIC.

23

24 A. Wireless Type 1 traffic is wireless traffic that uses a BellSouth NXX. In other
25 words, the wireless carrier does not have its own NXX, but uses an NXX

1 assigned to BellSouth's land-line service. In this case, the Wireless Type 1
2 Traffic is indistinguishable from BellSouth-originated or BellSouth-terminated
3 traffic from a Meet Point Billing perspective. Therefore, for routing and
4 billing purposes, BellSouth is proposing to treat this transit traffic as
5 BellSouth-originated or terminated traffic. In reality, there is very little of this
6 type traffic, since most wireless carriers have distinct NXXs assigned.

7
8 Wireless Type 2A traffic is wireless traffic that is distinguishable from
9 BellSouth-originated or terminated traffic because the wireless carrier has
10 distinct NXXs assigned for its use. However, most wireless carriers have not
11 yet established Meet Point Billing arrangements with BellSouth. Such
12 arrangements are necessary in order for BellSouth to send the appropriate
13 billing records to the wireless carrier and to the ALEC. Therefore, until such
14 agreements with Type 2A wireless companies subtending BellSouth switches
15 are executed, BellSouth must treat Wireless Type 2A transit traffic as
16 BellSouth-originated or terminated traffic.

17
18 ***Issue 36: What should the appropriate compensation mechanism for transit traffic***
19 ***be for purposes of the Parties' interconnection agreement?***

20
21 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

22
23 A. The appropriate compensation for transit traffic depends on whether the call is
24 a local call or a long distance call. If it is a local call, then reciprocal
25 compensation is the appropriate compensation mechanism. If it is a long

1 distance call, then the applicable rate from either the state or the federal access
2 service tariff is the appropriate compensation mechanism.

3
4 The appropriate compensation mechanism for transit traffic involving a
5 wireless carrier is as I described in my discussion of Issue 35. Wireless Type 1
6 traffic will be compensated as local traffic. Wireless Type 2A traffic will be
7 compensated as local traffic until the wireless provider executes a meet-point
8 billing arrangement with BellSouth. Once that arrangement is established,
9 such traffic will be compensated as is any other transit traffic depending on
10 whether the call is local or long distance.

11

12 ***Issue 37: Should all framed packet data transported within a Virtual Circuit ("VC")***
13 ***that originate and terminate within a LATA be classified as local traffic?***

14

15 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

16

17 A. BellSouth has proposed the following language to Intermedia:

18 Frame Relay framed packet data is transported within Virtual Circuits
19 ("VC"). If all the data packets transported within a VC originate and
20 terminate within the LATA, then for purposes of establishing
21 interconnections between the Parties, such traffic will be treated the
22 same as local circuit switched traffic ("Local VC"). This traffic will
23 not be treated as Local Traffic for any other purpose under this
24 Agreement, including but not limited to reciprocal compensation.

25

1 BellSouth has proposed this language to facilitate the process of
2 interconnecting the two carriers' networks. However, frame relay traffic
3 originated and terminated in the LATA is not subject to reciprocal
4 compensation.

5

6 ***Issue 38: If there are no Virtual Circuits on a frame relay interconnection facility***
7 ***when it is billed, should the parties deem the Percent Local Circuit Use to be zero?***

8

9 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

10

11 A. BellSouth's position is that, if there are no Virtual Circuits on a frame relay
12 interconnection facility when it is billed, then the PLCU should be zero.

13 Conversely, Intermedia contends the PLCU should be 100% in this situation.

14

15 Q. WHAT IS THE IMPLICATION OF THE PLCU BEING ZERO VERSUS ITS
16 BEING ONE HUNDRED PERCENT?

17

18 A. Upon request from an ALEC such as Intermedia, BellSouth establishes
19 interconnection trunks between the two parties' frame relay networks. When
20 the trunks have been installed, BellSouth bills Intermedia a nonrecurring
21 charge as well as a monthly recurring charge. Once frame relay traffic is
22 flowing over the trunks, Intermedia advises BellSouth of the PLCU; that is,
23 Intermedia advises BellSouth what percent of the traffic is expected to be local
24 versus interLATA long distance. BellSouth reimburses Intermedia for a
25 portion of the interconnection trunk charges based on the PLCU. For example,

1 if the PLCU is 10%, then BellSouth reimburses Intermedia for 5% of the
2 charges (PLCU / 2). However, to the extent that the trunks are used for
3 interLATA frame relay, as is generally the case, Intermedia is solely
4 responsible for the trunk charges.

5
6 The limited situation addressed by this issue occurs when a frame relay
7 interconnection trunk is turned up for service, but no traffic has begun to flow
8 over the trunk. If, during this interim period of time, the PLCU is deemed to
9 be zero, as BellSouth proposes, then BellSouth does not reimburse Intermedia
10 for any trunk charges. On the other hand, if the PLCU is deemed to be 100%,
11 as Intermedia proposes, then BellSouth would have to reimburse Intermedia
12 for half of the trunk charges. BellSouth believes Intermedia's position is
13 inappropriate for two reasons. One, Intermedia requested the trunk, and
14 Intermedia controls when traffic begins to flow over the trunk. Therefore,
15 BellSouth should not incur any charges until Intermedia begins to flow traffic
16 over the trunk. Second, based on experience, frame relay interconnection
17 trunks primarily carry traffic outside the LATA. Therefore, once traffic is
18 flowing over the trunks and an accurate PLCU can be established, the PLCU is
19 likely to be much closer to zero than to 100%.

20
21 As a compromise, BellSouth has recently offered language to Intermedia
22 proposing that the PLCU be determined in aggregate by dividing the total
23 number of Local VCs in a given LATA by the total number of VCs in that
24 LATA. This language would result in the same PLCU being applied to all
25 Local VCs in a given LATA, even if there are no Virtual Circuits on a

1 particular frame relay interconnection facility when it is initially turned up for
2 service.

3

4 ***Issue 39: What are the appropriate charges for the following:***

5 ***a) interconnection trunks between the parties' frame relay switches,***

6 ***b) frame relay network-to-network interface ("NNI") ports,***

7 ***c) permanent virtual circuit ("PVC") segments (i.e., Data Link Connection***
8 ***Identifier ("DLCI") and Committed Information Rates ("CIR")), and***

9 ***d) requests to change a PVC segment or PVC service order record?***

10

11 Q. WHAT IS BELLSOUTH'S POSITION ON PART A?

12

13 A. BellSouth's position is that the appropriate charges for frame relay
14 interconnection trunks are from BellSouth's Access Tariff because frame relay
15 is typically transporting interLATA traffic. Currently, charges for
16 interconnection trunks that carry typical voice grade traffic on an interLATA
17 basis are billed from the interstate access tariff, and there is no reason to treat
18 frame relay service any differently.

19

20 Q. WHAT IS BELLSOUTH'S POSITION ON PART B?

21

22 A. BellSouth's position is that the appropriate charges for the frame relay NNI
23 ports are from BellSouth's Access Tariff because frame relay is typically
24 transporting interLATA traffic.

25

1 Q. WHAT IS BELLSOUTH'S POSITION ON PART C?

2

3 A. The DLCI and the CIR are two components of frame relay that Intermedia
4 proposes BellSouth must provide on an unbundled basis. As I explained in my
5 discussion of Issue 18(c), BellSouth is not obligated to unbundle packet
6 switching, of which frame relay is a subset. Therefore, BellSouth's position is
7 that the appropriate charges for the DLCI and the CIR are found in BellSouth's
8 Interstate Access Tariff FCC No. 1.

9

10 Q. WHAT IS BELLSOUTH'S POSITION ON PART D?

11

12 A. Again, BellSouth's position is that the appropriate charges for all aspects of
13 Frame Relay Interconnection and Service, including changes to existing
14 service, are found in BellSouth's Interstate Access Tariff FCC No. 1.

15

16 ***Issue 45: Should the interconnection agreement specifically state that the agreement***
17 ***does not address or alter either party's provision of Exchange Access Frame Relay***
18 ***Service or interLATA Frame Relay Service?***

19

20 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

21

22 A. BellSouth has proposed the following language for inclusion in the
23 Interconnection Agreement:

24 Except as expressly provided herein, this Agreement does not address
25 or alter in any way either Party's provision of Exchange Access Frame

1 Relay Service or interLATA Frame Relay Service. All charges by each
2 Party to the other for carriage of Exchange Access Frame Relay Service
3 or interLATA Frame Relay Service are included in the BellSouth
4 access tariff BellSouth Tariff FCC No. 1.

5 The purpose of this language is to make clear that the parties' obligations with
6 respect to access service are not affected by this local interconnection
7 agreement.

8

9 ***Issue 46: Should Intermedia's obligation to identify and report quarterly to***
10 ***BellSouth the PLCU of the Frame Relay facilities it uses cease when BellSouth***
11 ***obtains authority to provide in-region interLATA service?***

12

13 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

14

15 A. BellSouth's obtaining authority to provide in-region interLATA service would
16 have no impact on Intermedia's obligation to identify and report to BellSouth
17 the PLCU of the Frame Relay facilities it uses. As discussed earlier, the PLCU
18 is used to report what portion of the interconnection trunk is transporting local
19 versus interLATA traffic. This information is then used by BellSouth to
20 reimburse, to the extent the trunk is being used to transport local frame relay
21 traffic, a portion of the trunk charges to Intermedia. Regardless of the parties'
22 positions on this issue, BellSouth has proposed the following language be
23 included in the Frame Relay section of the Interconnection Agreement:

24

25

If during the term of this Agreement, BellSouth obtains authority to
provide interLATA Frame Relay in any State, the Parties agree to

1 renegotiate this arrangement for the exchange of Frame Relay Service
2 Traffic within one hundred eighty (180) days of the date BellSouth
3 receives interLATA authority. In the event the Parties fail to
4 renegotiate this Section 8 within the one hundred eighty day period,
5 they will submit this matter to the appropriate State commission(s) for
6 resolution.

7 BellSouth believes that this language should resolve the situation addressed by
8 Issue 46.

9

10 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

11

12 A. Yes.

13

14 DOCs # 196847

15

16

17

18

19

20

21

22

23

24

25

Cost Ref. #	Rate Element	Proposed Rates			Source
		Recurring	First	Non-Recurring Additional	
A.0	UNBUNDLED LOCAL LOOP				
A.2	SUB-LOOP 2-WIRE ANALOG				
A.2.1	Loop Feeder Per 2-Wire Analog Voice Grade Loop	10.29	287.82	236.80	Interim *
A.3	LOOP CHANNELIZATION AND CO INTERFACE (INSIDE CO)				
A.3.4	Channelization – Channel System DS1 to DS0	158.54	228.01	141.88	Interim *
A.3.5	Interface Unit – Interface DS1 to DS0 – OCU-DP Card	2.03	12.39	8.93	Interim *
A.3.6	Interface Unit – Interface DS1 to DS0 – BRITE Card	3.64	12.39	8.93	Interim *
A.3.7	Interface Unit – Interface DS1 to DS0 – Voice Grade Card	1.28	12.39	8.93	Interim *
A.3.8	Channelization – Channel System DS3 to DS1	236.35	331.54	241.81	Interim *
A.3.9	Interface Unit – Interface DS3 to DS1	10.65	12.39	8.93	Interim *
A.16	HIGH CAPACITY UNBUNDLED LOCAL LOOP				
A.16.1	High Capacity Unbundled Local Loop – DS3 – Facility Termination	413.09	757.25	534.95	Interim *
A.16.2	High Capacity Unbundled Local Loop – DS3 – Per Mile	11.40	-	-	Interim *
A.16.4	High Capacity Unbundled Local Loop – OC3 – Facility Termination	671.55	1075.00	521.14	Interim *
A.16.5	High Capacity Unbundled Local Loop – OC3 – Per Mile	8.65	-	-	Interim *
A.16.7	High Capacity Unbundled Local Loop – OC12 – Facility Termination	2,494.00	1296.00	521.14	Interim *
A.16.8	High Capacity Unbundled Local Loop – OC12 – Per Mile	16.29	-	-	Interim *
A.16.10	High Capacity Unbundled Local Loop – OC48 – Facility Termination	1,840.00	1296.00	521.14	Interim *
A.16.11	High Capacity Unbundled Local Loop – OC48 – Per Mile	34.93	-	-	Interim *

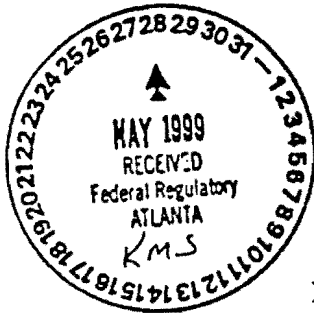
* BellSouth proposes interim rates subject to true-up by the Commission in its generic UNE proceeding. These interim rates are based on TELRIC studies filed by BellSouth in NC Docket No. P-55, Sub 1178. Although BellSouth believes that it is appropriate to establish nonrecurring rates that recover the cost of manually ordered UNEs, because the FPSC has not yet allowed BellSouth recovery of those costs, the applicable rates are not included here even though they were filed in North Carolina.

Cost Ref. #	Rate Element	Proposed Rates			Source
		Recurring	First	Non-Recurring Additional	
A.16.13	High Capacity Unbundled Local Loop – OC48 – Interface OC12 on OC48	645.27	653.99	422.54	Interim *
A.16.15	High Capacity Unbundled Local Loop – STS-1 – Facility Termination	428.93	757.25	534.95	Interim *
A.16.16	High Capacity Unbundled Local Loop – STS-1 – Per Mile	11.40	-	-	Interim *
A.17	UNBUNDLED LOOP MODIFICATION				
A.17.1	Load Coil/Equipment Removal per Pair for Loops up to 18kf		71.02	71.02	Interim *
A.17.2	Load Coil/Equipment Removal per Pair for Loops greater than 18kf		776.42	24.21	Interim *
A.17.3	Bridged Tap Removal per Pair		82.44	82.44	Interim *
D.5	LOCAL CHANNEL - DEDICATED				
D.5.8	Local Channel – Dedicated – DS3 – Facility Termination	515.07	757.25	534.95	Interim *
D.5.10	Local Channel – Dedicated – OC3 – Per Mile	7.45	-	-	Interim *
D.5.11	Local Channel – Dedicated – OC3 – Facility Termination	917.10	1075.00	521.14	Interim *
D.5.13	Local Channel – Dedicated – OC12 – Per Mile	10.65	-	-	Interim *
D.5.14	Local Channel – Dedicated – OC12 – Facility Termination	3,468.00	1296.00	521.14	Interim *
D.5.16	Local Channel – Dedicated – OC48 – Per Mile	34.93	-	-	Interim *
D.5.17	Local Channel – Dedicated – OC48 – Facility Termination	1,859.00	1296.00	521.14	Interim *
D.5.19	Local Channel – Dedicated – Interface OC12 on OC 48	647.82	653.99	422.54	Interim *
D.5.21	Local Channel – Dedicated – STS-1	512.26	757.25	534.95	Interim *
D.6	INTEROFFICE TRANSPORT – DEDICATED – DS3				
D.6.1	Interoffice Transport – Dedicated – DS3 – Per Mile	6.29	-	-	Interim *
D.6.2	Interoffice Transport – Dedicated – DS3 – Facility Termination	805.33	624.86	436.36	Interim *

* BellSouth proposes interim rates subject to true-up by the Commission in its generic UNE proceeding. These interim rates are based on TELRIC studies filed by BellSouth in NC Docket No. P-55, Sub 1178. Although BellSouth believes that it is appropriate to establish nonrecurring rates that recover the cost of manually ordered UNEs, because the FPSC has not yet allowed BellSouth recovery of those costs, the applicable rates are not included here even though they were filed in North Carolina.

Cost Ref. #	Rate Description	Proposed Rates			Source
		Recurring	Non-Recurring First	Additional	
D.7	INTEROFFICE TRANSPORT – DEDICATED – OC3				
D.7.1	Interoffice Transport – Dedicated – OC3 – Per Mile	6.10	-	-	Interim *
D.7.2	Interoffice Transport – Dedicated – OC3 – Facility Termination	2,189.00	942.61	422.54	Interim *
D.8	INTEROFFICE TRANSPORT – DEDICATED – OC12				
D.8.1	Interoffice Transport – Dedicated – OC12 – Per Mile	17.02	-	-	Interim *
D.8.2	Interoffice Transport – Dedicated – OC12 – Facility Termination	8,277.00	1164.00	422.54	Interim *
D.9	INTEROFFICE TRANSPORT – DEDICATED – OC48				
D.9.1	Interoffice Transport – Dedicated – OC48 – Per Mile	32.26	-	-	Interim *
D.9.2	Interoffice Transport – Dedicated – OC48 – Facility Termination	11,815.00	1164.00	422.54	Interim *
D.9.4	Interoffice Transport – Dedicated – OC48 – Interoffice OC12 on OC48	1,317.00	653.99	422.54	Interim *
D.10	INTEROFFICE TRANSPORT – DEDICATED – STS-1				
D.10.1	Interoffice Transport – Dedicated – STS-1 – Per Mile	6.29	-	-	Interim *
D.10.2	Interoffice Transport – Dedicated – STS-1 – Facility Termination	800.94	624.86	436.36	Interim *
J.0	OTHER				
J.1	DARK FIBER				
J.1.1	Dark Fiber, Per Four Fiber Strands, Per Route Mile or Fraction Thereof	41.62	1683.00	581.06	Interim *

* BellSouth proposes interim rates subject to true-up by the Commission in its generic UNE proceeding. These interim rates are based on TELRIC studies filed by BellSouth in NC Docket No. P-55, Sub 1178. Although BellSouth believes that it is appropriate to establish nonrecurring rates that recover the cost of manually ordered UNEs, because the FPSC has not yet allowed BellSouth recovery of those costs, the applicable rates are not included here even though they were filed in North Carolina.



BellSouth Telecommunications, Inc.
FPSC Docket No. 991854-TP
A. Varner Exhibit AJV-2

**PLEASE DATE-STAMP
AND RETURN**

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Implementation of the Local Competition) CC Docket No. 96-98
Provisions in the Telecommunications Act)
of 1996)

BELLSOUTH'S COMMENTS

RECEIVED
MAY 26 1999
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OFFICE OF THE SECRETARY

**BELLSOUTH CORPORATION
BELLSOUTH TELECOMMUNICATIONS, INC.**

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Date: May 26, 1999

VI. ANALYSIS OF SPECIFIC NETWORK ELEMENTS

The following sections analyze whether the Commission should order that particular elements be unbundled and provided at cost-based prices. The best place to look for evidence of the possibility that an efficient CLEC's meaningful opportunity to compete may have been impaired is the market. CLECs are competing successfully across the country without using incumbent LEC network elements. Much of the existing marketplace evidence is presented below.

A key common thread that emerges is that because the competitive situation for elements varies so enormously by geographic market, the Commission must examine specific markets (or groups of markets) in order to properly apply the necessary and impair standards. A single national treatment of transport or loops, for example, could never be justified under the Commission's well-established market definition precedents because the alternatives to network elements and the overall competitive situation in major urban areas differs so greatly from rural areas.

The elements analyzed below include all of the elements the Commission subjected to unbundling under its original analysis as well as "new" elements discussed in the *Second FNPRM*.²⁶ Operations support systems should be provided to support network elements that must be unbundled. Where an element is not subject to unbundling, unbundling of OSS for that element is not required by the section 251(d)(2).

Consistent with the approach outlined above, and the Commission's traditional approach to competitive analysis, each of the following sections defines a product and geographic market

²⁶ The Commission must approach each of these elements with a blank slate. *Iowa Utilities Board*, 119 S.Ct. 736-737.

(and, where appropriate, sets out the proper way to aggregate individual geographic markets across the country to make analysis both accurate and manageable). Each section then describes the current competitive facts. Next, the analysis compares facts to the Act's standards, and includes a specific discussion of the likely consumer effect of mandatory unbundling at cost-based prices. Finally, each section includes a conclusion as to whether a particular element can legally be unbundled.

A. Network Elements Used In The Provision Of Advanced Services

The *Second FNPRM* seeks comment on whether network elements used in the provision of advanced services should be unbundled. *Second FNPRM*, ¶ 35 (citing the *Advanced Services NPRM*). The Commission singles out the incumbent LEC digital subscriber line access multiplexer (DSLAM) and packet switch in particular for comment. *Id.* As described below, both these elements are used to provide advanced service over the networks of incumbent LECs. The Commission has previously defined advanced services by their speed, rather than their method of delivery -- transmission at speeds in excess of 200 kbps are, at least today, considered to be advanced services whether delivered over cable, wireless, satellite or traditional wireline telephony facilities.²⁷

It would be extraordinary for the Commission to order unbundling in the advanced services arena. This is a market that is just being created. An unbundling requirement here would apply essentially to investment dollars, not existing networks or equipment. BellSouth has deployed fewer than 150 DSLAMs. For perspective, BellSouth has about 1,600 central

²⁷ *In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, CC Dkt. No. 98-146, Report FCC 99-5, released February 2, 1999, ¶ 20 (*Advanced Services Report*).

offices. CLECs have installed more DSLAMs than "incumbents," and there is no shortage of capital that would stop them from continuing to do so. The Commission should be encouraging investment by all parties in this market. Unbundling incumbent LEC investment dollars does not do this, as AT&T has so vigorously, and successfully argued concerning the directly analogous investment it is making in upgrading its cable networks. C. Michael Armstrong, *Telecom and Cable TV: Shared Prospects for the Communications Future*, delivered to the Washington Metropolitan Cable Club (Nov. 2, 1998) available at <<www.att.com/speeches/98/981102.maa.html.

Unbundling is doubly unnecessary because the market facts demonstrate competitive advanced services may be provided equally well, or better, over other networks. In fact, both cable and wireless providers are ahead of incumbent LECs in rolling out advanced services.²⁸ As discussed more fully below, competition from alternative networks "opens the possibility of intermodal competition, like that between trucks, trains, and planes in transportation." *Advanced Services Report*, ¶ 48 (footnotes omitted). Competition between networks promises a "competitive 'broadband market.'" *Id.* ¶ 48 n. 46.

Unbundling the wireline network while leaving directly competing networks free of unbundling obligations would be a short-sighted, fundamentally anti-consumer and anti-Congress act because it would substitute regulation for competition instead of the reverse. Ignoring "intermodal" competition is exactly the shortsighted regulatory mistake that led to the deterioration of the nation's railroads, which labored under regulatory burdens not imposed on competitive forms of transportation. The Commission's analysis of unbundling in the advanced

²⁸ *Advanced Services Report*, ¶¶ 53-58.

services area must specifically account for the competitive discipline imposed by competing methods of delivering advanced services.

1. DSLAMs and Packet Switches in the Wireline Network

As detailed in the *UNE Fact Report: Advanced Services*,²⁹ high-speed services can be delivered over traditional wireline networks. Doing so requires a digital modem at the subscriber's premises and a DSLAM at the end of the subscriber's copper loop, generally the nearest central office. The DSLAM separates the xDSL subscriber's voice and data traffic.³⁰ Voice traffic is routed to a traditional circuit switch while data traffic is routed to its destination through a packet switch.³¹ The transport media used between the subscriber and the central office is the same twisted pair loop as that used for today's purely voice service.

To offer xDSL service to a particular subscriber, an incumbent LEC and a CLEC must go through exactly the same steps. First, a DSLAM must be purchased and located in the particular central office at which the subscriber's copper loop terminates. Because xDSL is a copper loop technology, the DSLAM cannot be located beyond the central office. Traffic beyond the central office is generally digitized and transported on fiber facilities. xDSL technology will not function in those circumstances. This technological fact means that enhanced extended links, for

²⁹ P. Huber and E. Leo *UNE Fact Report*, Prepared for Ameritech, Bell Atlantic, BellSouth, GTE, SBC, and US West, attached to the comments of the United States Telephone Association, filed in this proceeding (May 26, 1999).

³⁰ *In the Matter of Deployment of Wireline Services offering Advanced Telecommunications Capability*, CC Docket No. 98-147, *First Report and Order and Further Notice of Proposed Rulemaking*, FCC 99-48, released March 31, 1999, ¶¶ 11-12 (*Advanced Services Order*).

³¹ The packet switch can be a frame relay or ATM switch. Both provide the same basic functionality. The choice between them is driven by economics and quality of service needs. Both switches are also used for a broad array of other data services.

example, cannot be used by any carrier to provide xDSL service. All carriers, CLECs and incumbents alike, have to place DSLAMs at the end of the copper loop.³²

As far as purchasing, DSLAMs are available equally to incumbents and CLECs from several vendors. *UNE Fact Report: Advanced Services* at 24-26. There are no standards or manufacturer relationships that advantage Bell companies over CLECs. *Id.* To date, CLECs have purchased more DLSAMs than Bell companies, making CLECs the larger buyers. *Id.* CLEC relationships with well funded strategic partners, including the major IXCs, show that they are very unlikely to be at any disadvantage to incumbent LECs when it comes to purchasing DSLAMs.³³ *Id.*

DSLAMs are essentially modular. Once purchased, they can be installed in racks as demand warrants. Each central office DSLAM installed by BellSouth serve 576 lines. Remote terminal DSLAMs serve 192 lines. This allows both CLECs and incumbents to tailor deployment based on demand. Large start-up investments or traffic volumes are not necessary to cost-effectively deploy DSLAMs, and service can be efficiently added in relatively small increments. No CLEC has introduced evidence in any of the Commission's proceedings suggesting that they were at any disadvantage in purchasing DSLAMs.

Once purchased, by either a CLEC or an incumbent, a DSLAM must be installed. Installation of a CLEC DSLAM in an incumbent LEC's central office hardly impairs a CLEC's ability to offer services. There are about 1,000 CLEC collocation arrangements completed or

³² Current xDSL technology is designed to provide advanced service over copper facilities. In order to provide service to a particular subscriber, the DSLAM must connect directly to the copper loop serving the subscriber. Where a subscriber's copper loop is connected through digital loop carrier to fiber facilities before the central office, a DSLAM must be located in the field where the digital cross connect is made. A DSLAM must be located where subscriber copper facilities end. BellSouth provides CLECs the ability to locate DSLAMs in the field.

underway in BellSouth facilities. A cost analysis of CLEC collocation under the Commission's previous rules is attached. Attachment A. This analysis supports the market reality that collocation expenses are not impairing efficient CLECs' meaningful opportunities to compete.

The Commission's recent *Advanced Services Order* provides a broad new range of advantageous collocation opportunities for CLECs, further reducing their costs. The *Advanced Services Order* provides CLECs with, among many other things, claims to shared and cageless collocation in incumbent central offices, which provide opportunities to reduce collocation expenses.³⁴ BellSouth provides all these options. In addition, BellSouth provides CLECs and state commissions with detailed performance data on its provision of collocation. State commissions closely monitor BellSouth's provision of collocation.

Next, subscriber loops must be individually tested to determine if the loop can support advanced service. If the loop can support service, a modem must be available at the subscriber's premises.³⁵ In some cases, the local loop may need to be "conditioned" for service by removing equipment that would interfere with an xDSL signal.³⁶ BellSouth will condition loops for CLECs in a nondiscriminatory manner for a fee. In fact, under the Commission's rules, incumbents must "take affirmative steps to condition existing loop facilities to enable" CLEC provision of xDSL service. *Advanced Services Order*, ¶ 53. However, in some cases, the loop

³³ If any particular CLEC did not have sufficient purchase volumes to justify lower prices, it could pool its volume with other CLECs to get the lowest prices.

³⁴ A CLEC-to-CLEC market for shared collocation expense will quickly emerge if collocation does in fact represent a financial burden. If no market develops, that would suggest that CLECs with current collocation arrangements do not view the expense as substantial, otherwise they would seek to share the expense and the space.

³⁵ *Advanced Services Order* at ¶ 10.

³⁶ Standard equipment to provide voice service such as bridge taps and load coils may have to be removed to provide xDSL service.

simply cannot support the technology, and xDSL service cannot be provided by any carrier over the incumbent LEC network.³⁷

The next task is to connect the potential xDSL subscriber's loop to the DSLAM. This process is identical, whether the DSLAM is a CLEC's or an incumbent's. If voice service is being provided by the incumbent before xDSL service is initiated, the incumbent will disconnect the subscriber's loop from the MDF and provide a cross-connect to the DSLAM. The loop must then be connected to the DSLAM.

Transport facilities to the CLEC voice and packet switches are available from numerous CLECs in urban areas as set out in the Transport section below. BellSouth transport facilities will be available under 251(d)(2) where that standard is met, or under section 271 at market rates.

Finally, any CLEC offering xDSL service must be able to route data traffic to a packet switch to provide data service. Packet switches are available from several manufacturers. CLECs have deployed many packet switches. Because BellSouth cannot provide service across LATA boundaries, BellSouth must locate packet switches within each of its LATAs. CLECs are under no such obligation, and can locate switches to maximize network efficiency. Transport costs for data traffic are very low, and packet switches can effectively serve a very broad area. The provision of data services using packet switching is a new and rapidly growing market. *UNE Fact Report: Switching at 32-34.* Incumbent local providers trail the interexchange carriers by a very substantial margin in this market, in large part because this market demands national, not local, service. See Frost & Sullivan, U.S. Markets for ATM, Frame Relay, SMDS and X.25 Public Data Services, at 1-5 (1998) (AT&T, MCI and Sprint account for about 75% of

³⁷ For example, loops over 18,000 feet long generally cannot support xDSL technology. Of course, cable, wireless or satellite networks are not restrained by xDSL limitations, and can provide advanced service.

business data services and over 90% of more advanced ATM and frame relay services); *UNE Fact Report: Switching* at 32-34.

2. Competitive Provision of Advanced Service

As set out in Commission reports and orders and the *UNE Fact Report: Advanced Services*, advanced services are provided over competing cable, wireless, satellite and telephony networks.³⁸ The Commission has suggested that cable providers are farthest ahead in the race to provide advanced services, followed by wireless providers and CLECs. *Advanced Services Report*, ¶¶ 53, 57, 58. Incumbent LECs and satellite providers follow. *Id.* The Commission's conclusions were informed by market and technological facts. Incumbent LECs are not incumbents in the advanced services market. Inter-network competition in this market promises to be vigorous. "Numerous companies in virtually all segments of the communications industry are starting to deploy, or plan to deploy in the near future, broadband to the consumer market." *Advanced Services Report*, ¶ 12. These plans include enormous investment in facilities to provide service over the last mile to the home. *Id.*, ¶ 34.

a. Cable Providers

Cable providers are perceived to enjoy three key advantages over incumbent LECs in the advanced service race. These advantages may translate into permanent control of the advanced services market. As detailed in the *UNE Fact Report: Advanced Services*, advanced services are now available over cable networks to over 20 million homes, roughly 20 percent of the U.S. market. *UNE Fact Report: Advanced Services* at 7. Comparing the maps of cable and

³⁸ Advanced services are sometimes delivered over local elements like telephone or cable company wires to houses, and sometimes delivered over elements that can serve the entire nation, like satellites. Defining a geographic market for advanced services would be complex. Given the newness of the market and the fact that consumers are expected to face the same types

incumbent LEC advanced service deployment makes cable's present lead clear. *Id.* at 4, Maps 1 and 2. Cable providers add to this present advantage aggressive deployment plans. Cable advanced service will be available to over 30 million homes by the end of this year, while xDSL service is predicted to be available over no more than 1 million lines. *Id.* at 9.

Cable's broader rollout and other advantages has allowed it to develop a commanding lead. Industry observers predict that cable's "first mover" advantage is likely to translate into a commanding long-term position. *See, e.g.* Paul Kagan Associates, Inc., *Cable TV Technology, U.S. High-Speed Access Cable & ADSL Projection Model, 1997-2006* (Feb. 28, 1998) (predicting three quarters of U.S. households using advanced services will obtain service over cable networks); *UNE Fact Report: Advanced Services* at 11, n. 49 (collecting other citations).

Cable's perceived second advantage is the fact that its "broadband platform makes cable an optimal medium for transmitting large amounts of digital information - data, graphics, and video - at high speeds. *See, B. Esbin, Office of Plans and Policy, FCC, Internet Over Cable: Defining the Future in Terms of the Past* at 76, OPP Working Paper No. 30 (Aug. 1998); *see also UNE Fact Report: Advanced Services* at 11, n.49. That is, cable's last mile hybrid-coaxial cable infrastructure is generally perceived to be superior for advanced service to the twisted pair of the telephony network.³⁹

Cable's perceived third key advantage is its freedom from FCC imposed restrictions that hamper incumbent LEC investment in providing advanced services. Cable providers reject even the prospect of allowing competitors access to their network, through unbundling or otherwise.

of competitive choices in essentially every market, no particular geographic market is defined here.

³⁹ Of course, cable also has substantial advantages in constructing the long distance part of their networks because they are free of interLATA prohibitions.

"No company would invest billions of dollars ... if competitors which have not invested a penny of capital nor taken an ounce of risk can come along and get a free ride in the investments and risks of others." C. Michael Armstrong, *Telecom and Cable TV: Shared Prospects for the Communications Future*, delivered to the Washington Metropolitan Cable Club (Nov. 2, 1998) available at <<www.att.com/speeches/98/981102.maa.html.

b. Wireless Providers

Advanced services are also being provided over wireless networks. *UNE Fact Report: Advanced Services* at 11-15. Providers are using a variety of spectrum allocations to provide service and have aggressive rollout plans. *Id.* Wireless spectrum serves as a complete substitute for incumbent LEC last mile facilities. In fact, the Commission has ranked wireless providers ahead of incumbent LECs in the deployment of broadband facilities that serve the last mile. *Advanced Services Report* at ¶¶ 53, 57, 58. MCI WorldCom and Sprint have been investing in wireless providers to provide advanced services. *UNE Fact Report: Advanced Services* at 13. Wireless providers have forged alliances with many major firms and have access to substantial capital to fund additional service rollouts. *Id.* at 13-14 and Table 4.

c. Satellite Providers

Satellite networks are already providing advanced services nationwide. *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Telecommunications, Inc. to AT&T Corp.*, Memorandum Opinion and Order, CS Dkt. No. 98-178, FCC 99-245, ¶ 74 (rel. Feb. 18, 1999)(Direct TV provides nationwide Internet access at speeds up to 400 kbps). Satellite service avoids the incumbent LEC network completely. Satellite providers are rapidly deploying and upgrading facilities. *UNE Fact Report: Advanced Services*

at 15-16. AOL has recently signed with Direct TV to offer satellite access to AOL's huge subscriber base.

d. CLECs

The market facts set out in the *UNE Report: Advanced Services* at pp. 18-24 show that the process for CLECs to deliver advanced services over incumbent networks is working. CLEC business plans predict that it will continue to work. CLECs have used incumbent loops and central office collocation to provide advanced service using their own DSLAMs and packet switches to such an extent that the Commission recently ranked CLECs ahead of "incumbents" in providing xDSL service.⁴⁰ *Advanced Services Report* ¶ 53, 56, 58. ALTS claims, on behalf of facilities-based CLECs, that CLECs using incumbent loops and collocation are leading incumbents in providing advanced services. *UNE Report: Advanced Services* at 20. In fact, these CLECs offered advanced services to over five million homes as of December, 1998, and expect that number to quadruple by the end of 1999. *Id.* A CLEC study claims that CLECs have also used the current process to outstrip incumbent deployment of DSLAMs to provide advanced services in rural areas. Economics and Technology, Inc., "*Building a Broadband America: The Competitive Keys To The Future Of The Internet*," at iv. Aggressive CLEC service rollout suggests that the process is working.⁴¹

⁴⁰ It is misleading to suggest that there are "incumbents" in the race to provide advanced services. Incumbent LECs do have local loop and central office assets that CLECs may not have. But these assets are available on a nondiscriminatory basis to CLECs as ordered by the Commission. Thus, no incumbency advantage remains, and, if any did, the Commission could remedy directly. In the other areas, there is no advantage. Incumbent LECs are not "incumbents" in the deployment of DSLAMs and packet switching. Instead, they are behind other providers of advanced services.

⁴¹ To the extent collocation or other issues are raised as handicapping CLEC rollout of xDSL service, the Commission should address the issues directly, consistent with the Act and Commission rules on such concerns, rather than bootstrap an unbundling requirement.

3. Will An Efficient CLEC's Meaningful Opportunity To Compete Be Impaired Without Access to Incumbent LEC DSLAMs and Packet Switches at Cost-Based Prices?

Efficient advanced services competitors have more than meaningful opportunities to compete in the provision of advanced services without the Commission creating investment disincentives for both CLECs and incumbents by mandating cost-based access to incumbent LEC DSLAMs and packet switches. The answer to the question of whether consumers are likely to benefit from forced unbundling of incumbent LEC advanced services network elements is hardly theoretical. To-date, there has been no requirement that incumbents unbundle DSLAMs or packet switches and "there are, or likely will soon be, a large number of actual participants and potential entrants in this market." *Advanced Services Report*, ¶ 48 (footnotes omitted). As the Commission has noted, competition among cable, wireless, satellite and telephony networks mean that "the preconditions for monopoly appear absent in the 'last mile' of the advanced services market... There is no indicat[ion] that the consumer market is inherently a natural monopoly." *Id.* If the last mile for advanced services is not subject to monopoly, DSLAMs and packet switches readily available for purchase can hardly be an impediment to competition. Competition is serving consumers today without unbundling.

Advanced services competition comes from several sources. Cable networks appear to have the lead and are predicted to translate their earlier start, network topography into a long-term commanding lead in subscribers. The Commission has also ranked wireless providers ahead of incumbent LECs in deploying service. Today's market leaders have no need for incumbent LEC elements to provide advanced services over their networks. The lack of availability of those elements has not impaired, and could not impair, their opportunity to compete.

The Supreme Court's requirement that the Commission look outside incumbent LEC networks when considering whether not making an element available would impair competition dictates that the Commission give great weight to this evidence of actual competition between networks. This competition guarantees consumer welfare. By rights, the Commission should go no further. Antitrust precedent would end the analysis once it became apparent that firms could successfully compete without the facility. Requiring access to a facility that is "essential" or important simply to benefit one set of competitors bound to a particular business plan will not create any consumer benefits when competition already exists. Unbundling in these circumstances will have only negative consequences -- reduced investment and administrative cost burdens.

Even should the Commission seek to turn the impair test into a test of whether a particular sort of competitive strategy should be favored over competition-- by substituting a test of whether a "CLEC using an incumbent LEC's loops has a meaningful opportunity to compete without the incumbents DSLAMs and packet switches" test, the evidence shows that such CLECs are competing successfully today, without unbundled DSLAMs and packet switching.

CLECs have been collocating their own DSLAMs and using their own packet switches to provide advanced services over incumbent local loops. CLECs have been so successful at doing this that the Commission has ranked them ahead of incumbents in deploying advanced services. *Advanced Services Report*, ¶¶ 53, 56, 58. CLECs themselves claim that they provide advanced services to over five million homes, that they lead the incumbents in providing advanced services, and that their services will continue to be rolled out on an aggressive schedule. *UNE Fact Report: Advanced Services* at 20 (collecting citations).

In effect, the Commission has conducted an experiment and the results are in. CLECs have very successfully competed using their own DSLAMs and packet switching. Announced CLEC plans for continued aggressive service roll out, in both urban and rural areas, show that lack of access to unbundled DSLAMs and packet switches is not impairing tomorrow's CLEC advanced service. Without competitive impairment, there is no justification for unbundling these elements.

4. What Effect On Investment In DSLAMs And Packet Switches Will An Unbundling Obligation Have?

Given advanced service competition from other networks and from CLECs using basic elements of incumbent networks, there is no competitive or consumer benefit to be entered on the positive side of the ledger from unbundling incumbent DSLAMs and packet switches. However, unbundling these particular elements would give rise to some especially substantial negatives. As set out in the *Jorde, Sidak and Teece Affidavit*, unbundling reduces investment. Given a no-risk no-cost option to use incumbent DSLAMs and packet switches at cost-based prices, CLECs will exercise that option and forego investing in their own equipment in at least some circumstances. This effect will be especially pronounced in areas where CLECs can avoid risky investments in new technology by relying on incumbent LEC investments.

In addition, as set out in the *Jorde, Sidak and Teece Affidavit*, incumbent LEC investment in advanced services technology will suffer from imposing obligations to share the technology at cost-based prices. This effect will be especially pronounced in this innovative, relatively risky technology.⁴² That the reduction in investment is likely to be major is supported not just by

⁴² This results from the relatively high risks of deploying facilities to offer untried advanced services. Consumers may not accept the technology or may select alternative network providers, so incumbent LEC investments may not prove profitable in the market. If the investments are successful, forced unbundling at cost-based prices limits the investor's returns to a

academic analysis. AT&T, which is engaged in similarly upgrading its cable networks warns that "no company will invest billions of dollars to become a facilities-based ... services provider if competitors who have not invested a penny of capital nor taken an ounce of risk can come along and get a free ride on the investments and risks of others." Remarks of C. Michael Armstrong, Chairman and CEO, AT&T, delivered to Washington Metropolitan Cable Club, Washington, D.C. (Nov. 2, 1998).

5. Loop Spectrum May Not Be Unbundled Under Section 251(d)(2)

The Commission has raised the prospect of requiring unbundling of spectrum on incumbent LEC loops in another proceeding.⁴³ *Second Advanced Services Order* at ¶ 99. The Commission appears to be interested in spectrum unbundling based on the interests of a particular subset of CLECs. These CLECs would prefer to pay for only a "part of the loop to deliver advanced services, rather than the entire loop, as incumbents and CLECs now do. Spectrum unbundling may not be ordered under section 251(d)(2).

The Commission has rejected similar proposals on their merits in the past because they were not in the interests of competition. In rejecting those proposals, the Commission concluded correctly that "[g]iving competing providers exclusive control over network facilities dedicated to particular end users provides such carriers the maximum flexibility to offer new services to such end users." *First Report and Order*, 11 FCC Rcd at 15,693 ¶ 385.

governmentally-set cost of capital. The investment examples presented in the *Jorde, Sidak and Teece Affidavit* demonstrate how incumbent LEC investment in new technology will be reduced.

⁴³ Initially, loop spectrum is not likely to qualify as a network element under the Act. And, providing access to unbundled spectrum is unlikely to prove technically feasible. The operational problems alone of managing different carriers using the same loop are likely to rise to the level of technical infeasibility. BellSouth will detail the technical and operational issues with spectrum unbundling in its comments in the Commission's advanced services docket.

Loop spectrum will not pass section 251(d)(2)'s impair test because there are alternative facilities to unbundled spectrum on the local loop that are being used to compete in the provision of advanced services. As set out above, these alternative facilities include cable loops, wireless and satellite access and the use of the incumbent's local loop. Cable and wireless providers, using their own facilities, lead incumbents in deploying advanced services. As described above, CLECs have been able to provide advanced services over incumbent loops to the extent that they can also claim to be ahead of incumbents in rolling out service. The availability of these alternative facilities precludes a finding that failure to unbundle spectrum could impair an efficient CLEC's meaningful opportunity to compete.

Unbundling incumbent loop spectrum can have no consumer benefits because the advanced services market is already competitive.⁴⁴ Even CLECs that wish to provide only advanced services over the telephone local loop have competitive options open to them – they can ally with CLECs that offer voice services and offer voice and data separately or in a bundle over a loop. In this case, the loop would be taken in its entirety, then shared depending on the responsible CLEC's plans. Thus, CLECs have the same competitive options open to them as do the incumbent LECs. Forcing the incumbent to unbundle loop spectrum would create only a special advantage for particular CLECs.⁴⁵ Consumers benefit from rules that benefit competition not from rules that benefit only particular competitors.

Although there are no consumer benefits from spectrum unbundling, it would have substantial real costs. Unbundling under the Commission's TELRIC pricing scheme would

⁴⁴ Any benefit that could be advocated at this stage would be premature until after the industry and the Commission have gained experience with the Commission's recently changed collocation rules.

⁴⁵ Pricing unbundled spectrum under the Commission's TELRC pricing scheme, given the cost allocation issues, is certain to create a fertile field for profitable arbitrage. The Commission should not mistake requests to create the potential for arbitrage based on regulated prices with competition.

create a significant disincentive to incumbent LEC and CLEC investment in advanced services. *Jorde, Sidak and Teece* at ¶ 57, 65 (calculating no net public benefits from spectrum unbundling). The operational and regulatory costs to administer a spectrum unbundling scheme would also be extremely high.

6. Conclusion

Failure to unbundle incumbent LEC DSLAMs and packet switches would not impair the opportunities for efficient competitors to compete in the provision of advanced services. Cable, wireless and satellite providers have rolled out service broadly and successfully without these elements. In fact, incumbent LEC DSLAMs and packet switches have no place in these alternative networks. CLECs have competed successfully to-date without unbundled DSLAMs and packet switches and continue to publicly announce their future success. Thus, the impairment standard is not satisfied. On the other hand, forced unbundling of those elements would reduce investment in the provision of advanced services by incumbents and CLECs alike.

Similarly, the unbundling of loop spectrum cannot be justified under section 251(d)(2).

B. Interoffice Transmission Facilities

The Commission's *First Report and Order* recognized that "there are alternative suppliers of interoffice facilities in a few areas." *First Report and Order* at 15718. Although there have been competing providers of local transport for years,⁴⁶ the Commission ordered that these incumbent facilities be unbundled and provided at cost-based prices throughout the entire United States because it felt that competitors would be better off with more rather than fewer options. *Id.* The closer attention to competitive alternatives required by the Court and the

⁴⁶ *UNE Fact Report: Interoffice Transport Section* at 1. In fact, both MCI and Sprint argued at divestiture that local transport was not part of the local monopoly and should be opened to competition. *Id.* at 2.

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Before the
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In the Matter of)
)
Implementation of the Local Competition)
Provisions in the Telecommunications Act)
of 1996)

CC Docket No. 96-98

REPLY COMMENTS OF BELLSOUTH CORPORATION

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June 10, 1999

IV. ADVANCED SERVICES ELEMENTS

BellSouth's Comments and the *UNE Fact Report* spelled out just how new and how competitive the market for providing high-speed, advanced services is. BellSouth Comments at 32-47; *UNE Fact Report: Advanced Services* at VI. By rights, and aiming at regulatory parity, the Commission should not even consider unbundling network elements used to deliver advanced services.

No one has stated the case better than AT&T that regulating this market is likely to harm investment, competition and consumers. As AT&T explains, the market is highly competitive now—the market leading cable companies face competition from “RBOCs, CLECs, ISPs, wireless providers, satellite companies and others, who are investing billions of dollars to deploy broadband facilities and compete for customers.”⁴ AT&T's and TCI's economists state that “it is impossible to predict from today's vantage point who the leading competitors will be and how the competitive uncertainties concerning technologies, qualities and design of services, availabilities and prices will resolve.”⁵

AT&T and TCI take the position that the “[c]ompetition between [cable companies] and ILECs will promote consumer welfare.”⁶ The competition between these

⁴ *In the Matter of Joint Application of AT&T Corp. and Tele-Communications, Inc. for Transfer of Control to AT&T of Licenses and Authorizations Held by TCI and its Affiliates Or Subsidiaries*, AT&T's and TCI's Joint Reply To Comments And Joint Opposition To Petitions To Deny Or To Impose Conditions, CS Docket No. 98-178, at 34-35 (Nov. 13, 1998)(*AT&T-TCI Joint Reply*)(footnotes omitted).

⁵ Ordover and Willig Affidavit, Attached to *AT&T-TCI Joint Reply* at ¶ 23.

⁶ *Id.* at ¶ 27.

two networks is sufficient to ensure access to "broadband networks," presumably of any type, "so long as that access is efficient and consistent with consumers' demands"⁷

Given the degree of competition to provide advanced services, AT&T concludes that

far from promoting the widespread availability of advanced services, subjecting new entrants such as TCI [and incumbent LECs are even newer entrants] to the unbundling and other obligations" would thwart competition. Forced unbundling with its attendant regulatory uncertainty would likely slow down investment in the development of broadband last mile data transport.⁸

The entire cable industry echoes this advanced services refrain. Although cable providers have a substantial lead in deploying advanced services capabilities, they are confident that any regulatory mandate of access to advanced service elements will discourage or eliminate the prospect of further investment, reduce innovation and harm consumers.

requiring a particular provider of Internet access to make its facilities available to other Internet service providers would only stifle innovation, the development of facilities-based alternatives and the growth of the Internet....Mandating access to an Internet service provider's facilities, however, would not encourage competition because it would reduce substantially the incentives for competitors to develop additional facilities-based alternatives.

Cox Communications, Inc. 706 Comments at 3-4.⁹

⁷ *Id.* at ¶ 50.

⁸ *Id.* at ¶ 49. AT&T and TCI doubt whether it is even administratively possible to regulate access to advanced services facilities. *AT&T-TCI Joint Reply* at 49.

⁹ Comments of Cox Communications, Inc., *In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, CC Dkt No. 98-146 (filed October 8, 1998). Cites to other comments filed in this round of the 706 proceeding are referred to by the name of the commenter followed by "706 Comments."

Imposing unbundling and resale obligations on cable operators for the benefit of entities that chose not to construct their own networks would turn section 706 on its head by suppressing cable's incentives to invest in new broadband capability.

National Cable Television Association 706 Comments at 25.

One of the most durable barriers to new entry into telecommunications markets is the prospect that new entrants will be subject to burdensome regulation.

Comcast Corporation 706 Comments at 12.

Of course, AT&T's and the cable industry's comments set out above were made in other proceedings. Only AT&T has reversed course.

A. Section 251(d)(2) Can Be Stretched No Farther Than To Require Incumbent LECs To Provide Local Loops And Collocation To Aid CLECs In Providing Advanced Services Through xDSL Technology

The debate over whether to unbundle network elements used by incumbent LECs to provide advanced services cannot go beyond collocation and loops.¹⁰ Where collocation is available to allow CLEC xDSL competition over incumbent LEC local loops, an entitlement to free ride on incumbent LEC investment in DSLAMS could never meet section 251(d)(2)'s limiting standard. As described by AT&T and cable companies above, any such requirement could never be in the interests of competition or consumers. No such decision could be squared with the absence of an unbundling requirement for network elements used to provide the same advanced services over cable networks. Regulatory parity is a simple goal that would enable greater competition.

CLECs are using incumbent LEC local loops and collocation to compete very successfully today. "As a general matter, the collocation of DSLAMs in an ILEC central office is not an expensive, capital intensive exercise." Information Technology Industry Council Comments at 7. As set out in BellSouth's Comments, the process has worked well enough that CLECs can claim to have a substantial advanced services lead over incumbent LECs. CLECs predict that this lead will continue. BellSouth Comments at 41. In fact, "ILECs have no legacy advantage with respect to the installation and use of advanced services electronics ... ILECs must now acquire and install new equipment just like their advanced services competitors." Information Technology Industry Council Comments at 6-7.

¹⁰ Of course, cable operators are not required to offer, and do not provide, similar access to their facilities.

CLECs focusing on the advanced services market agree that the availability of collocation and loops is all that is required from incumbent LECs. Unbundled DSLAMs and packet switching are not. Northpoint sums this up.

To date, all of the competitive LECs have entered the advanced services market by installing their own DSLAMs in central office collocation cages purchased from the incumbent LECs. Where competitive LECs enjoy access to loops and collocation, any competitive LEC can provide the necessary infrastructure (DSLAMs and packet switches) required to provide advanced services.

Northpoint Comments at 18; Rhythms Comments at 12; Covad Comments at III; Information Technology Industry Council Comments at 6-8.

Northpoint concludes that only where "loops and collocation are unavailable" should the incumbent LEC "be required to provide competitive LECs with access to unbundled DSLAMs. Northpoint Comments at 19; Information Technology Industry Council Comments.

Of course, whether there is competition between xDSL providers should not be the issue. As described above, competition between advanced services networks exists. Focusing only on one technology is not the genuine look at alternatives that the Court ordered. Focusing on competition among DSL providers to the exclusion of competition from other networks is fundamentally identical to excluding PCS carriers from the wireless service market.¹¹

Nonetheless, BellSouth provides loops and collocation. Where conditioned loops are available, BellSouth makes them available to CLECs. Where they are not, BellSouth will condition them for CLECs. There are about 1,000 CLEC collocation arrangements already in place or in progress in BellSouth's region. Of BellSouth's approximately

¹¹ The Commission does not define wireless markets so narrowly. *Third CMRS Report*.

1,600 central offices, 251 have at least one completed collocation, and 99 more offices have arrangements in progress. Shortly, 350 BellSouth offices will have at least one collocation arrangement. Of course, CLEC collocation is occurring in the central offices that serve disproportionately high numbers of lines, so the competitive reach of CLEC collocation is very substantial.

The *Advanced Services Order*¹² provides CLECs more flexibility in collocating and creates additional options for reducing collocation costs substantially. BellSouth provides CLECs the ability to collocate DSLAMs in the field. For example, BellSouth allows CLECs to collocate DSLAMs adjacent to BellSouth remote terminals.

To the extent collocation could possibly be still viewed as impairing CLEC opportunities to compete, the right approach is to address the collocation issue, not to unbundle DSLAMs. In markets depending on risky, new investment unbundling requirements are all but certain to reduce investment and harm innovation and consumers.¹³

Some CLECs, particularly AT&T and MCI WorldCom, argue that they should be allowed to free ride on new incumbent LEC investment in new DSLAMs.¹⁴ AT&T

¹² *In the Matter of Deployment of Wireline Services offering Advanced Telecommunications Capability*, CC Docket No. 98-147, *First Report and Order and Further Notice of Proposed Rulemaking*, FCC 99-48, released March 31, 1999, (*Advanced Services Order*).

¹³ See, e.g., Kahn Declaration at ¶ 7.g. Information Technology Industry Council Comments at 8 ("the elimination of unbundling obligations for ILEC advanced service equipment would encourage ILECs to deploy advanced services technologies").

¹⁴ BellSouth's Comments pointed out that BellSouth has just begun deploying DSLAMs. Only 147 had been installed by the end of March. Thus, any unbundling requirement will in fact apply principally to future incumbent investment. Unbundling investment dollars is not the goal of section 251(d)(2). The potential return of that new investment would be

makes no mention of its directly opposing views on unbundling cable network elements used to provide advanced services. This is not a matter of different statutory contexts. AT&T is arguing exactly opposite policy points -- unbundling incumbent LEC advanced service elements will be pro-competitive while unbundling cable network advanced service elements will be anti-competitive. Or, in the alternative, market forces are strong enough to guarantee that cable providers will grant access to their facilities where it would benefit consumers, but those same competitive forces will have no effect on incumbent LECs. AT&T's arguments here are so directly counter to its cable positions that they cannot carry any weight.

MCI WorldCom chooses to argue that it needs unbundled incumbent LEC DSLAMS at risk-free TELRIC prices even though DSLAMs are "affordable." MCI WorldCom Comments at 50 (DSLAMs cost \$8,000-20,000 apiece and serve from 200-300 lines). It argues that collocation costs make deployment of DSLAMs "uneconomic." MCI WorldCom Comments at 50. This unsupported assertion not only runs counter to the actual experience of CLECs that are deploying DSLAMs (and CLECs have deployed DSLAMS in urban and rural areas),¹⁵ and to BellSouth's analysis of collocation costs attached to its Comments, but also gives no credit to the Commission's recent *Advanced Services Order*, which will further reduce collocation costs.¹⁶ That order "further

severely limited by an unbundling requirement at TELRIC prices. See Kahn Declaration at ¶ 7.g; Hausman and Sidak Reply Affidavit; T&T-TCI Joint Reply, Ordover and Willig Affidavit at ¶ 49.

¹⁵ See, e.g., Information Industry Technology Council Comments at 7 ("collocation of DSLAMs in an ILEC central office not an expensive, capital intensive exercise").

¹⁶ MCI WorldCom's argument illustrates the Court's caution that a return lower than one a CLEC could imagine cannot support a finding of that a CLEC's opportunities to compete would be impaired. No doubt providing advanced services over an incumbent

erode[s] arguments for requiring ILECs to offer the electronics associated with their advanced services." Information Industry Technology Council Comments at 9.

MCI WorldCom also argues that it should get unbundled access to DSLAMs because in rural areas revenue opportunities would make deployment by MCI WorldCom "difficult to justify." MCI WorldCom Comments at 50-51. This argument is belied by the market fact that other CLECs can justify rural deployment, as evidenced by their deploying in rural areas. The deployment by these CLECs shows that an efficient CLEC can operate in rural areas too.

MCI WorldCom's argument demonstrates the dangers of unbundling described by Professor Kahn and in the Jorde, Sidak and Teece Affidavit attached to USTA's Comments. In MCI WorldCom's example, a CLEC is free to make a risky investment in providing advanced services in rural areas, but does not view it as likely to be sufficiently profitable. An incumbent LEC may weigh the situation differently, and decide to invest. The CLEC could then claim the right to use the incumbent LEC's investment at TELRIC prices. This illustrates nicely the point that unbundling obligations reduce CLEC incentives to invest and will discourage incumbent incentives as well. The example also illustrates how unbundling obligations create regulation rather than competition. That, is real facilities-based competition that could have existed in MCI WorldCom's example is replaced with regulated access to the incumbent LEC's DSLAM. CLECs that have the opportunity to invest in providing services are not impaired if they choose not to.

LEC's network would be more profitable if collocation were free or DSLAMs grew on trees, but that is hardly the point.