

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

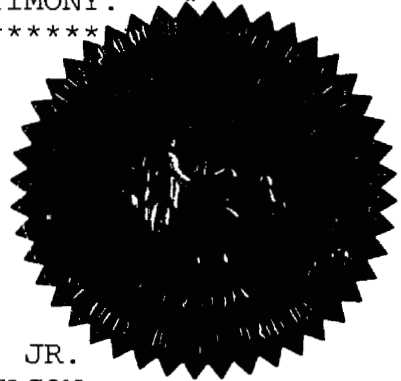
In the Matter of : DOCKET NO. 000828-TP

PETITION OF SPRINT COMMUNICATIONS  
COMPANY LIMITED PARTNERSHIP FOR  
ARBITRATION OF CERTAIN UNRESOLVED  
TERMS AND CONDITIONS OF A PROPOSED  
RENEWAL OF CURRENT INTERCONNECTION  
AGREEMENT WITH BELLSOUTH  
TELECOMMUNICATIONS, INC.

\*\*\*\*\*  
\* ELECTRONIC VERSIONS OF THIS TRANSCRIPT \*  
\* ARE A CONVENIENCE COPY ONLY AND ARE NOT \*  
\* THE OFFICIAL TRANSCRIPT OF THE HEARING \*  
\* AND DO NOT INCLUDE PREFILED TESTIMONY. \*  
\*\*\*\*\*

VOLUME 3

Pages 346 through 510



PROCEEDINGS: HEARING

BEFORE: CHAIRMAN E. LEON JACOBS, JR.  
COMMISSIONER J. TERRY DEASON  
COMMISSIONER LILA A. JABER  
COMMISSIONER BRAULIO L. BAEZ  
COMMISSIONER MICHAEL A. PALECKI

DATE: Wednesday, January 10, 2001

TIME: Commenced at 9:30 a.m.

PLACE: Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR  
FPSC Division of Records & Reporting  
Chief, Bureau of Reporting

APPEARANCES: (As heretofore noted.)

DOCUMENT NUMBER-DATE

00864 JAN 22 01

## I N D E X

## WITNESSES

3	NAME:	PAGE NO.
4	MICHAEL R. HUNSUCKER	
5	Direct Examination by Ms. Masterton	349
6	Prefiled Direct Testimony Inserted	351
6	Cross Examination by Mr. Meza	364
7	JOHN RUSCILLI	
8	Direct Examination by Mr. Edenfield	384
9	Prefiled Direct Testimony Inserted	387
9	Prefiled Rebuttal Testimony Inserted	474
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

**EXHIBITS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

<b>NUMBER:</b>		<b>ID.</b>	<b>ADMTD.</b>
5	Michael Ruscilli's Errata Sheet to Prefiled Testimony	383	
6	JAR-1	386	
	CERTIFICATE OF REPORTER		510

**P R O C E E D I N G S**

CHAIRMAN JACOBS: Next witness.

MS. MASTERTON: Sprint calls Mr. Hunsucker.

- - - - -

MICHAEL R. HUNSUCKER

was called as a witness on behalf of Sprint Communications Company Limited Partnership and, having been duly sworn, testified as follows:

**DIRECT EXAMINATION**

BY MS. MASTERTON:

Q Mr. Hunsucker, would you state your full name for the record, please?

A My name is Michael Hunsucker.

Q And by whom are you employed and in what capacity?

A I am employed by Sprint Communications as Director of Regulatory Policy.

Q Mr. Hunsucker, did you cause to be filed ten pages of direct testimony in this docket on November 1st, 2000?

A Yes, I did.

Q Do you have any changes or deletions to that testimony?

A No, I do not.

Q If I were to ask you the same questions as they

1 appear in your direct testimony today, would the answers  
2 be the same?

3 A Yes, they would.

4 MS. MASTERTON: Mr. Chairman, Sprint moves that  
5 Mr. Hunsucker's direct testimony be inserted into the  
6 record as though read.

7 CHAIRMAN JACOBS: Show Mr. Hunsucker's testimony  
8 entered as though read.

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1                   **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2                                   **DIRECT TESTIMONY**

3   **OF**

4                                   **MICHAEL R. HUNSUCKER**

5  
6  
7       **Q.     Please state your name, employer, current position and business address.**

8  
9       A.     My name is Michael R. Hunsucker. I am employed by Sprint/United  
10            Management Company as Director-Regulatory Policy. My business address is  
11            6360 Sprint Parkway, Overland Park, Kansas 66251.

12  
13       **Q.     Please describe your educational background and work experience.**

14  
15       A.     I received a Bachelor of Arts degree in Economics and Business Administration  
16            from King College in 1979.

17  
18            I began my career with Sprint in 1979 as a Staff Forecaster for Sprint/United  
19            Telephone - Southeast Group in Bristol, Tennessee, and was responsible for the  
20            preparation and analysis of access line and minute of use forecasts. While at  
21            Southeast Group, I held various positions through 1985 primarily responsible for  
22            the preparation and analysis of financial operations budgets, capital budgets and  
23            Part 69 cost allocation studies. In 1985, I assumed the position of Manager - Cost

1 Allocation Procedures for Sprint United Management Company and was  
2 responsible for the preparation and analysis of Part 69 allocations including  
3 systems support to the 17 states in which Sprint/United operated. In 1987, I  
4 transferred back to Sprint/United Telephone - Southeast Group and assumed the  
5 position of Separations Supervisor with responsibilities to direct all activities  
6 associated with the jurisdictional allocations of costs as prescribed by the FCC  
7 under Parts 36 and 69. In 1988 and 1991, respectively, I assumed the positions of  
8 Manager - Access and Toll Services and General Manager - Access Services and  
9 Jurisdictional Costs responsible for directing all regulatory activities associated  
10 with interstate and intrastate access and toll services and the development of Part  
11 36/69 cost studies including the provision of expert testimony as required.

12  
13 In my current position as Director - Regulatory Policy for Sprint/United  
14 Management Company, I am responsible for developing state and federal  
15 regulatory policy and legislative policy for Sprint's Local Telecommunications  
16 Division. Additionally, I am responsible for the coordination of regulatory/  
17 legislative policies with other Sprint business units.

18  
19 **Q. Have you previously testified before state regulatory commissions?**

20  
21 **A. Yes. I have previously testified before state regulatory commissions in South**  
22 **Carolina, Florida, Illinois, Pennsylvania, Nebraska and North Carolina.**

23  
24 **Q. What is the purpose of your testimony?**

1 A. The purpose of my testimony is to provide input to the Florida Public Service  
2 Commission ("FPSC") regarding Sprint's Petition for Arbitration of certain issues  
3 that Sprint and BellSouth Telecommunications, Inc. ("BellSouth") discussed  
4 during the course of negotiating a renewal of their Interconnection Agreement,  
5 but were unable to resolve. I will present Sprint's position relative to the ILEC's  
6 requirement to provision unbundled network element combinations and enhanced  
7 extended loops (EELS) as identified by Issue 4 and Issue 6 in this proceeding.

8  
9 **INTRODUCTION:**

10 **Q. Please provide an overview of all pertinent FCC and/or Court Orders that**  
11 **provide the foundation or framework for the provisioning of unbundled**  
12 **network element (UNE) combinations.**

13  
14 A. In August 1996, the FCC issued its First Report and Order in Docket No. 96-98 in  
15 which they addressed the provisioning of UNE combinations and promulgated rules  
16 in Section 51.315. The following are the original rules as adopted by the FCC in  
17 August 1996:

18  
19 **51.315 Combination of unbundled network elements.**

20 (a) An incumbent LEC shall provide unbundled network elements in a manner  
21 that allows requesting telecommunications carriers to combine such network  
22 elements in order to provide a telecommunications service.

23 (b) Except upon request, an incumbent LEC shall not separate requested network  
24 elements that the incumbent LEC currently combines.



1 (c) Upon request, an incumbent LEC shall perform the functions necessary to  
2 combine unbundled network elements in any manner, even if those elements are  
3 not ordinarily combined in the incumbent LEC's network, provided that such  
4 combination is:

5 (1) technically feasible; and

6 (2) would not impair the ability of other carriers to obtain access to  
7 unbundled network elements or to interconnect with the incumbent LEC's  
8 network.

9 (d) Upon request, an incumbent LEC shall perform the functions necessary to  
10 combine unbundled network elements with elements possessed by the requesting  
11 telecommunications carrier in any technically feasible manner.

12 (e) An incumbent LEC that denies a request to combine elements pursuant to  
13 paragraph (c)(1) or paragraph (d) of this section must prove to the state  
14 commission that the requested combination is not technically feasible.

15 (f) An incumbent LEC that denies a request to combine elements pursuant to  
16 paragraph (c)(2) of this section must prove to the state commission that the  
17 requested combination would impair the ability of other carriers to obtain access  
18 to unbundled network elements or to interconnect with the incumbent LEC's  
19 network.

20  
21 Subsequently, upon appeal, the Eighth Circuit Court vacated 51.315(b-f) on the  
22 grounds that the rules were inconsistent with Section 251(c)(3) of the Telecom Act.  
23

1 On January 25, 1999, the United States Supreme Court issued an order in which it  
2 reversed the Eighth Circuit's opinion on 51.315(b). The Supreme Court stated that:

3 In the absence of Rule 315(b), however, incumbents could impose  
4 wasteful costs on even those carriers who requested less than the whole  
5 network. It is well within the bounds of the reasonable for the  
6 Commission to opt in favor of ensuring against an anticompetitive  
7 practice.

8 (FCC Rule 51.315(c)-(f) remain vacated following the 8<sup>th</sup> Circuit's decision in Iowa  
9 Utilities Board. FCC, 219F.3d744 (Issued July 18<sup>th</sup>, 2000)).

10  
11 **Issue 4: Pursuant to Federal Communications Commission ("FCC") Rule 51.315**  
12 **(b), should BellSouth be required to provide Sprint at TELRIC rates combinations**  
13 **of UNEs that BellSouth typically combines for its own retail customers, whether or**  
14 **not the specific UNEs have already been combined for the specific end-user**  
15 **customer in question at the time Sprint places the order?**

16  
17 **Q. What UNE combinations should an ILEC be required to provide?**

18  
19 **A. FCC Rule 51.315(b) requires an ILEC to provide any UNE combination that the**  
20 **ILEC "currently combines". UNE combinations can occur in many different**  
21 **forms. Some carriers may want to combine loop and transport (commonly**  
22 **referred to as enhanced extended loop or EELs), other carriers may want to**  
23 **combine loop and port while providing their own transport (either through self-**  
24 **provisioning or through a third party) while other carriers may want to combine**

1 loop, port and transport. These examples are not intended to be all possible  
2 combinations but represent a sampling of what carriers may request from an  
3 ILEC.

4  
5 The standard that the Commission should employ is one of comparability between  
6 an ILEC retail product and the UNE combination requested by a particular carrier.  
7 For example, ILECs utilize the loop, port and transport when provisioning basic  
8 local service to end user customers, therefore, an ILEC should be required to  
9 provide a UNE combination of loop, port and transport on a wholesale basis to  
10 requesting carriers.

11  
12 **Q. Should there be any limitations on the retail comparability standard that the**  
13 **Commission should use?**

14  
15 **A. Yes.** Consistent with FCC's rules the provisioning of UNE combinations should  
16 be limited only by technical feasibility. In the short term, there may be technical  
17 or operational concerns that prevent the fulfillment of a request by a  
18 telecommunications carrier and the FCC has allowed for this in their definition of  
19 technically feasible. However, the FCC does not allow the consideration of such  
20 issues as economics, accounting or billing in making a technical feasibility  
21 determination. Additionally, ILECs may not provide retail services ubiquitously  
22 throughout their service territory. In this case, the provision of UNE

1 combinations consistent with the ILEC retail service would be limited to the  
2 appropriate retail service territory.

3  
4 **Q. What is the appropriate definition of “currently combines”?**

5  
6 A. Generally, there have been two positions taken on the issue of “currently  
7 combines”. First, most ILECs have argued that “currently combines” means  
8 “actually combined” on a customer specific basis. In other words, the ILEC must  
9 be providing existing service to the end user customer before an ALEC can  
10 request a UNE combination to provide service to that particular end user. The  
11 second position (and the one advocated by Sprint) is that “currently combines”  
12 means “ordinarily combines”. For example, if an ILEC normally combines the  
13 requested elements in the provision of a retail service to any customer (subject to  
14 the technical limitations discussed above), then the ILEC should be required to  
15 provision the requested UNE combination to the ALEC.

16  
17 **Q. You state that Sprint believes that the appropriate definition of “currently  
18 combines” is “ordinarily combines”. Please provide your rationale for why  
19 this is the appropriate definition.**

20  
21 A. Adoption of the “actually combined” definition is anti-competitive and imposes  
22 wasteful costs on both ILECs and ALECs. This “actually combined” definition  
23 requires that the ILEC must actually be providing service to the particular end

1 user customer at the time that the ALEC requests a UNE combination. This  
2 means that the ILEC has the upper hand in a competitive sense in that the ILEC  
3 does not have to compete for new customers (i.e., customers without existing  
4 ILEC service) against an ALEC that enters the market via a UNE combination  
5 strategy. It forces the ALEC to initially provide service to the end user via resale,  
6 with the associated non-recurring charges. Nothing prevents the ALEC from  
7 placing a UNE combination order the next day to convert the resale service to a  
8 UNE combination. At this point, the ALEC will incur additional non-recurring  
9 charges and the ILEC will be required to incur wasteful costs to convert the  
10 service from resale to UNE combination. This is totally unproductive, wasteful  
11 and not beneficial to consumers. The Supreme Court, in its review of the FCC  
12 rules, indicated that a high priority should be placed on ensuring against  
13 anticompetitive practices and the imposition of wasteful costs on carriers.

14  
15 **Q. What action does Sprint request that the Commission take on this issue?**

16  
17 **A. Sprint requests that the Commission order BellSouth to provide UNE combinations to**  
18 **Sprint that are “ordinarily combined” in BellSouth’s network for the provision of a**  
19 **retail service to any customer, subject only to technical feasibility limitations.**

20  
21 **Issue 6: Should BellSouth be required to universally provide access to EELs that it**  
22 **ordinarily and typically combines in its network at UNE rates?**

23

1       **Q.     Please provide a definition and overview of EELs.**

2

3       A.     An EEL is an enhanced extended loop, which is one form of an UNE  
4             combination. The EEL is the combining of loop and transport. It allows an  
5             ALEC to order loops from multiple ILEC wire centers and combine loops with  
6             transport to deliver loops from multiple wire centers to a single (or more)  
7             collocation site. This eliminates the need for multiple collocations with an ILEC.

8

9       **Q.     What has the FCC said in regards to the provisioning of EELs by ILECs?**

10

11      A.     The FCC addressed this issue in the Third Report and Order in Docket No. 96-98.  
12             The FCC stated in paragraph 480 of the Order that:

13                     To the extent an unbundled loop is in fact connected to  
14                     unbundled dedicated transport, the statute and our rule 51.315(b)  
15                     require the incumbent to provide such elements to requesting carriers  
16                     in combined form. They further state that, ... in specific  
17                     circumstances, the incumbent is presently obligated to provide access  
18                     to the EEL. In particular, the incumbent LECs may not separate loop  
19                     and transport elements that are currently combined and purchased  
20                     through the special access tariffs. Moreover, requesting carriers are  
21                     entitled to obtain such existing loop-transport combinations at  
22                     unbundled network element prices.

1           It is readily apparent that ILECs have the obligation to provision EELs at  
2           this time. The FCC has been very clear in their decision on this issue.  
3           ILECs should be required to provision EELs.

4

5           **Q. What action does Sprint request that the Commission take on this issue?**

6

7           A. Sprint requests that the Commission order BellSouth to universally provide access to  
8           EELs that it ordinarily and typically combines in its network at UNE rates.

9

10          **Q. Does this conclude your direct testimony?**

11          A. Yes, it does.

1 BY MS. MASTERTON:

2 Q Mr. Hunsucker, have you prepared a summary of  
3 your testimony?

4 A Yes, I have.

5 Q Please give that summary now.

6 A Okay. Good afternoon, Commissioners. My  
7 testimony focuses on two issues, Issue 4, which is  
8 BellSouth's obligation to provide unbundled network  
9 element combinations, or UNE combinations, and Issue 6,  
10 which is BellSouth's obligation to provide enhanced  
11 extended links, or as they are commonly referred to, EELs.

12 It is important to understand the history of  
13 where the industry is at on these issues. The FCC  
14 required in Rule 51.315(b) in its First Report and Order  
15 in Docket 96-98 that an incumbent LEC cannot separate  
16 network elements that the incumbent LEC currently  
17 combines. This rule was appealed to the Eighth Circuit,  
18 who originally vacated this rule along with other rules  
19 related to UNE combinations.

20 Subsequently, the U.S. Supreme Court reinstated  
21 Rule 315(b). In fact, the basis of their reinstatement,  
22 the Supreme Court stated in the absence of Rule 315(b),  
23 incumbents could impose wasteful costs on even those  
24 carriers who requested less than the whole network. It is  
25 well within the bounds of the reasonable for the



1 Commission, the FCC, to opt in favor of insuring against  
2 an anticompetitive practice.

3           The primary focus of this dispute between  
4 BellSouth and Sprint is the meaning or definition of  
5 currently combined as it is used in Rule 315(b).  
6 BellSouth argues that currently combines means actually  
7 combined, while Sprint believes that currently combined  
8 should be interpreted as ordinarily combined. Sprint  
9 believes that the appropriate definition is ordinarily  
10 combines based on Sprint's concerns and the Supreme  
11 Court's concerns on imposition of wasteful cost on ALECs  
12 and anticompetitive practices.

13           Rather than focus on the legal aspect of the  
14 issue, Sprint's position is focused on the practical  
15 reality of an ALEC's ability to get a UNE combination.  
16 Clearly there is nothing in the FCC's rules that prevents  
17 Sprint from ordering resale services from BellSouth and  
18 subsequently converting the resale service to a UNE  
19 combination. Adoption of BellSouth's actually combined  
20 definition will force Sprint and other ALECs to  
21 potentially enter the market via resale today, and convert  
22 the resold service to a UNE combination tomorrow.

23           The impact of such a scheme is to require  
24 BellSouth to perform work related to multiple service  
25 orders, one for resale and one for the UNE combination,

1 and to likewise charge Sprint for the processing of these  
2 multiple service orders. This imposes wasteful costs not  
3 only on Sprint, but also on BellSouth. Ultimately this  
4 scheme requires the end user customer to pay more as these  
5 wasteful costs become part of the cost recovery process  
6 embodied in end user rates.

7           In addition, this type of scheme does not afford  
8 Sprint with the opportunity to compete for new customers  
9 as BellSouth requires that customers have established  
10 service with BellSouth prior to allowing Sprint to  
11 purchase UNE combinations. Thus, the end user, if it is a  
12 new service, has limited choices in who provides their  
13 service. Only BellSouth can provide that service unless  
14 the ALEC does it through resale.

15           An EEL is defined as an enhanced extended link  
16 that allows ALECs to order loops from multiple ILEC wire  
17 centers, combine the loops with transport and deliver the  
18 loops from those multiple wire centers to a single  
19 collocation site. Simply, an EEL is one type of a UNE  
20 combination that results from the combining of loop and  
21 transport. The FCC has stated in its Third Report and  
22 Order that to the extent that an unbundled loop is  
23 connected to unbundled transport, the Telecom Act and the  
24 FCC's rules require an ILEC to provide such elements. The  
25 bottom line is that ILECs are required to provide EELs

1 today.

2 As with other forms of UNE combinations, an ALEC  
3 can purchase the EEL as a special access service today.  
4 And just like with other forms of UNE combinations,  
5 convert that to a UNE combination tomorrow. Again, the  
6 practical result is the imposition of wasteful costs.

7 In summary, Sprint respectfully requests this  
8 Commission to require BellSouth to provide UNE  
9 combinations, including EELs, that it ordinarily combines  
10 for its end user customers.

11 That concludes my summary.

12 MS. MASTERTON: Mr. Chairman, the witness is now  
13 available for cross-examination.

14 CHAIRMAN JACOBS: Very well. BellSouth.

15 CROSS EXAMINATION

16 BY MR. MEZA:

17 Q Mr. Hunsucker, good afternoon.

18 A Good afternoon.

19 Q You are familiar with FCC Rule 51-315(b), is  
20 that correct?

21 A Yes, I am familiar with the rule.

22 Q And would you agree with me that this rule  
23 states that except upon request, an ILEC shall not  
24 separate requested network elements that the ILEC  
25 currently combines?

1 A Yes, that is the rule.

2 Q And would you agree with me that the United  
3 States Supreme Court as well as the Eighth Circuit has  
4 interpreted this rule to mean that 315(b) applies to  
5 network elements that are already combined?

6 A I believe that the Eighth Circuit in its year  
7 2000 order was addressing only (c) through (f). They were  
8 not addressing Rule 315(b). They were addressing (c)  
9 through (f), which dealt with the, in their words, the  
10 combinations of new elements, new combinations.

11 Q In general, though, both of those courts, would  
12 you agree with me, sir, characterize Rule 315(b) as only  
13 applying when the elements are, in fact, combined?

14 A No, I would not agree with that. Again, as I  
15 said, the Eighth Circuit was specifically addressing (c)  
16 through (f).

17 Q Are you familiar with the United States Supreme  
18 Court opinion, sir?

19 A Yes.

20 Q Okay. Unfortunately, I don't have a copy for  
21 you to read, but subject to check I would like to read  
22 this sentence to you and see if you agree with it. On  
23 Page 736 of the opinion it states, "Rule 315(b) forbids an  
24 incumbent to separate already combined network elements  
25 before leasing them to a competitor." Do you agree with

1 that statement?

2 A Subject to check. I mean if you are reading  
3 that from the order, yes, I would have to agree with that  
4 statement.

5 Q Okay. And you do not interpret that statement  
6 to mean that 315(b) applies to already combined network  
7 elements?

8 A Well, again, as I have focused on, I think you  
9 can look at, you know, the actual wording of what might be  
10 there, one sentence taken out of the context of the whole  
11 order. But I think, again, what we are asking the  
12 Commission to do, as Mr. Edenfield was taking Mr. Felton  
13 through, was look at the practical side of this. Why do  
14 we want to force an ALEC to submit two service orders to  
15 BellSouth when they are ultimately going to get the same  
16 service.

17 And we have looked at that internally at Sprint  
18 in our ILEC operations and we have decided that, you know,  
19 we have got better use of our resources than trying to  
20 process two service orders to let the carrier get to the  
21 same point, the same end point.

22 Q But you are not disagreeing with what I just  
23 quoted to you, are you?

24 A No, I'm not disagreeing with that. But, again,  
25 I'm asking from a practical standpoint that that is the

1 way this issue needs to be decided.

2 Q And correct me if I'm wrong, but your opinion is  
3 that Rule 51-315(b) would require BellSouth to provide  
4 Sprint with UNE combinations even if these elements aren't  
5 currently combined in BellSouth's network, is that right?

6 A Repeat that, please.

7 Q That 315(b) requires BellSouth to provide Sprint  
8 with UNE combinations even if the elements are not already  
9 combined in BellSouth's network?

10 A Are not actually combined in BellSouth's  
11 network. And, again, BellSouth goes further in saying  
12 they have actually got to be providing service over those  
13 facilities before it would be eligible for UNE  
14 combination. And having just come out of a discussion on  
15 this issue in North Carolina in, I believe it was October,  
16 BellSouth relinquished on that requirement that it had to  
17 actually be providing service.

18 Q But is what I stated your opinion, yes or no?

19 A Will you restate what you want me to say yes or  
20 no to.

21 Q If you will promise to say yes or no. That  
22 315(b) requires BellSouth to provide Sprint with UNE  
23 combinations even if the elements are not already combined  
24 in BellSouth's network, is that your opinion?

25 A It is our opinion that we want BellSouth to

1 provide access to UNE combinations that it ordinarily  
2 combines for its end users in its network.

3 Q Even if those combinations aren't in existence  
4 today?

5 A Even if the customer is not being provided a  
6 service where those combinations are in service today.

7 Q And the basis of your opinion is that the  
8 phrase, open quote, currently combines, close quote, in  
9 315(b) means ordinarily combines, is that right?

10 A That it should be interpreted to mean ordinarily  
11 combines under a public policy decision to make sure that  
12 we are not adding uneconomic costs to end users.

13 Q And you are familiar with the FCC's UNE remand  
14 order, is that right?

15 A Yes, I am familiar with the UNE remand order.

16 Q And you cited this order in your testimony,  
17 right?

18 A Yes.

19 Q Okay. And can you agree with me, sir, that in  
20 that order the FCC expressly refused to adopt a definition  
21 of currently combines that you are espousing today?

22 A In that order they refused to pending the Eighth  
23 Circuit decision. In the First Report and Order they did  
24 adopt a conclusion that it meant ordinarily combines.

25 Q That may be true. But my question was in that

1 order, the November '99 order that we are referring to,  
2 the FCC expressly refused to adopt a definition of  
3 currently combines that requires an ILEC to provide UNES  
4 that it ordinarily combines, is that correct?

5 A In that order they declined to adopt that  
6 definition, yes.

7 COMMISSIONER DEASON: In your opinion why did  
8 they decline to do that?

9 THE WITNESS: Because they were -- the rationale  
10 that they used was that they were not going to reaffirm or  
11 adopt any definition until the Eighth Circuit ruled on the  
12 issue.

13 COMMISSIONER DEASON: Okay. Now, what should  
14 this Commission do, say we are not going to do anything  
15 until the Eighth Circuit makes a decision?

16 THE WITNESS: Well, you know, I have heard you  
17 ask that question of several witnesses. And,  
18 unfortunately, I think that the Commission as well as  
19 BellSouth and Sprint is in a difficult position because we  
20 have certain issues to be arbitrated under Section 252 of  
21 the Telecom Act. And we have -- you know, my opinion  
22 would be that we have to move forward with the state  
23 making a decision even in the absence of a --

24 COMMISSIONER DEASON: Are you willing to live by  
25 our decision, or you don't have the ability -- the Eighth



1 Circuit, whatever they say is going to preempt whatever we  
2 do?

3 THE WITNESS: Well, I think in the interim,  
4 there has to be a decision to do something.

5 COMMISSIONER DEASON: Are you willing to live by  
6 our decision regardless of what the Eighth Circuit says?

7 THE WITNESS: If the Commission issues a  
8 decision we will live with that decision in the interim  
9 until there is an FCC order or a court order that preempts  
10 that decision. But I think that is the unfortunate  
11 situation that we are all placed in with some of these  
12 issues.

13 COMMISSIONER DEASON: So we are asked to make an  
14 interim decision?

15 THE WITNESS: Well, it may not be interim if the  
16 Eighth Circuit rules or the FCC rules consistent with the  
17 state commission decision.

18 COMMISSIONER DEASON: So if the Eighth Circuit  
19 rules tomorrow, then we can just kick this issue out, is  
20 that what you are saying?

21 THE WITNESS: Well, I think if there was a  
22 definitive ruling on what it means by ordinarily combines,  
23 then the answer to that question is yes.

24 COMMISSIONER JABER: Mr. Hunsucker, you are  
25 asking us to make the interim decision?

1 THE WITNESS: Yes, that's correct.

2 COMMISSIONER JABER: Let me take Chairman  
3 Deason's question just a step further. For me it's not a  
4 question of whether the Commission should move forward,  
5 for me it's a question of can the state commission move  
6 forward at all. If the FCC has taken your argument with  
7 respect to ordinarily combines and rejected it for  
8 whatever reason, whether it was because the appeal of the  
9 Eighth Circuit order was pending or not, do we have the  
10 legal ability to consider and act on your definition of  
11 currently combines being ordinarily combined?

12 THE WITNESS: Well, first off, I will say I'm  
13 not an attorney, but I will give you my personal opinion  
14 is that, yes, you do. You have the authority to make  
15 decisions that are consistent with the Act and that are  
16 not inconsistent with any overriding FCC rule. In the  
17 absence of an FCC rule --

18 COMMISSIONER JABER: How do we know what is  
19 inconsistent with the FCC rule?

20 THE WITNESS: Well, the FCC on this issue has  
21 declined to take a position, so I think any decision that  
22 you make would not be inconsistent with an FCC rule.

23 COMMISSIONER JABER: But I thought you just said  
24 the FCC was waiting on the outcome of the Eighth Circuit  
25 appeal.

1 THE WITNESS: That was the FCC's decision, yes,  
2 that was their rationale.

3 COMMISSIONER JABER: Okay. So then isn't  
4 inherent in that that the FCC will live with whatever the  
5 outcome of the Eight Circuit appeal is?

6 THE WITNESS: Potentially. I mean, there is  
7 still other avenues. Once the Eighth Circuit rules it  
8 could be appealed to the Supreme Court if they would hear  
9 the case.

10 COMMISSIONER JABER: All right. So, in the  
11 effort of being completely efficient then, and in the  
12 effort to be consistent with the FCC, shouldn't we also  
13 wait for the Eighth Circuit appeal?

14 THE WITNESS: Well, I think the thing that  
15 happens in that process then is you are denying -- the  
16 practical result is the denying to the end user of the  
17 ability to get service from a competitor other than  
18 BellSouth that wants to use UNE combinations as their  
19 market entry strategy.

20 COMMISSIONER JABER: Did you make that argument  
21 to the FCC?

22 THE WITNESS: The FCC in the First Report and  
23 Order first said it was -- it meant ordinarily combines,  
24 then the Eighth Circuit ruled and vacated it. The U.S.  
25 Supreme Court reinstated it, the Eighth Circuit was going

1 to hear it again, so they declined to make that. I don't  
2 know that we have appealed any FCC decision or made any  
3 comments to the FCC specific to that issue. I mean, we  
4 have always advocated that it means ordinarily combines.  
5 I don't remember back in 1996 whether we specifically  
6 addressed this issue or not in those first round of  
7 comments.

8 COMMISSIONER DEASON: Well, what happens if --  
9 just as an example, hypothetically, if we agree with your  
10 position and that in the interim you are able to acquire  
11 UNES combined, that are ordinarily combined and you  
12 provision service to customers and then there is a  
13 contrary decision by a court of competent jurisdiction,  
14 does that impact the service you provide to services or  
15 does it just impact what you have to pay for the service  
16 you are providing to customers?

17 THE WITNESS: Well, I would think unless the  
18 court ruled that there had to be some retroactive  
19 treatment, that would only apply on a prospective basis to  
20 how we would acquire UNE combinations from BellSouth. I  
21 think the issue here that kind of clouds this is we can  
22 get there today, but it requires us to take additional  
23 steps to get there. We can order the services resale and  
24 BellSouth has to go out and do that combination today, and  
25 then we can convert it tomorrow to UNE combinations and

1 ultimately we get to the same point. It is just that we  
2 have -- BellSouth has had to handle two service orders, we  
3 have had to process two service orders in order to get to  
4 the same point. So that is the piece I think you have to  
5 keep in mind about where -- we can ultimately get there,  
6 it's just a matter of how many steps and how much cost we  
7 want to add to the equation of getting there.

8           COMMISSIONER DEASON: Can you provide to me a  
9 real world example of particular services that you would  
10 want combined and how you would go about doing that now if  
11 they weren't actually combined and you wanted them  
12 combined?

13           THE WITNESS: Yes. For example, I just moved  
14 into -- I can give you a personal example, kind of, from  
15 my standpoint. I just moved into a new house. And when I  
16 built the new house and moved in, I wanted Sprint local  
17 service. So, because that wasn't a new service, there was  
18 no way Sprint could order that as a UNE combination. What  
19 it would be required to do -- I could order service from  
20 BellSouth and -- or Southwestern Bell. Ultimately I was  
21 forced to order local service from Southwestern Bell just  
22 so I could then convert that service to the Sprint  
23 service.

24           Ultimately I had to pay BellSouth a nonrecurring  
25 charge for establishing service, then turn around and pay

1 Sprint a nonrecurring charge for establishing my local  
2 service. And, you know, my concern is that the people  
3 that really get hurt in that process are the end users.

4 COMMISSIONER DEASON: Now, you are fairly  
5 educated on this, what would someone in your situation  
6 that moved into a new house that wanted service from  
7 Sprint, but they did not have an established relationship  
8 with the incumbent telephone company, what would they do,  
9 and what would Sprint tell them when they came to them?

10 THE WITNESS: Sprint would tell them that, you  
11 know, that obviously we could do it via resale would be  
12 one option, but we are going to have to convert that the  
13 next day. And, you know -- well, we wouldn't tell them  
14 that we have to incur additional cost from Southwestern  
15 Bell to do that. What we would factor into our pricing  
16 would be that on some percentage of the time we have to  
17 recover that additional cost. So, I mean, we would figure  
18 out a way to provision service to the end user.

19 COMMISSIONER DEASON: But it is going to be at a  
20 higher price to the customer?

21 THE WITNESS: No, I think the price to every  
22 customer would be the same, but our overall cost structure  
23 goes up because of having to do this, which ultimately  
24 leads to some incremental flow-through to all the end  
25 users.

1           COMMISSIONER DEASON: Is it because of the  
2 duplicative ordering that is necessary, is that the  
3 reason?

4           THE WITNESS: Yes. I mean, there is duplicate  
5 orders. We have to -- you know, there is administrative  
6 costs of processing those orders. I don't know what that  
7 level is, but I do know that -- well, I don't know,  
8 either, what BellSouth's nonrecurring charges are for  
9 resale and conversion as is. I don't know what that rate  
10 level is.

11 BY MR. MEZA:

12           Q     Mr. Hunsucker, are you aware that this  
13 Commission has previously addressed this issue?

14           A     No, I'm not aware that they have.

15           Q     Okay. I'm going to show you Order Number 00159  
16 issued in Docket Number 991854, which is listed in the  
17 official recognition list, and ask that you look on Page  
18 22 and 23 of the order?

19           A     I'm sorry, on what page?

20           Q     Starting on Page 22, under the heading decision,  
21 and ending on Page 23, second paragraph.

22           A     Okay. Yes, I was reading the whole discussion.

23           Q     Okay. And you're ready?

24           A     Yes.

25           Q     Okay. And this is the first time you have seen

1 this order, sir?

2 A Yes, it is the first time I have seen this  
3 order.

4 Q Okay. And would you agree with me that in this  
5 order this Commission held that until the Eighth Circuit  
6 ruled, it was only going to require BellSouth to provide  
7 combinations that are, in fact, already combined and  
8 existing within BellSouth's network?

9 A That is what the decision says, but I don't know  
10 the particulars of all the arguments that were made in  
11 this particular arbitration. And, likewise, I don't think  
12 that that -- if these arguments that I'm making were not  
13 made necessarily precludes our ability to arbitrate that  
14 issue here.

15 Q So you are saying that the arguments that you  
16 provided to us today is a reason for this Commission to  
17 deviate from its previous decision only a couple of months  
18 ago?

19 A I think it is a reason for the Commission to  
20 look at the decision they made and see if they still  
21 believe that decision is accurate.

22 COMMISSIONER DEASON: Has anything changed  
23 between then and now?

24 THE WITNESS: No.

25 BY MR. MEZA:



1 Q I will ask you a couple of questions regarding  
2 EELs. Would you agree with me, sir, that in the FCC UNE  
3 remand order that the FCC declined to define an EEL as a  
4 separate network element?

5 A Yes, they declined to define an EEL as a  
6 separate network element. But they did say, in fact, that  
7 if those were actually combined today via special access  
8 that the ILEC had to make that available for the ALEC to  
9 convert that to an EEL.

10 Q And in your direct testimony, sir, you did, in  
11 fact, cite to this remand order, is that right?

12 A Yes. I assume you are referencing to Page 9?

13 Q Yes. And you actually quote it, right?

14 A Yes.

15 Q Okay. And in that quote, that block quote, the  
16 FCC states that EELs only are required to be provided when  
17 they are, in fact, connected, would you agree with that?

18 A Let me reread this, please. It says to the  
19 extent that the unbundled loop is connected to unbundled  
20 transport which is, again, what happens through special  
21 access.

22 Q And you skipped over, in fact, didn't you?

23 A I didn't intentionally skip over it, and if I  
24 did, I apologize. It does say, in fact, connected, yes.

25 Q Are you aware that this Commission has

1 previously recognized that BellSouth is only required to  
2 provide EELs that are currently combined and existing  
3 within their network?

4 A I assume that that is the next issue that was in  
5 this order that you just handed me, is that correct?

6 Q You read my mind.

7 A Yes, I read a little further.

8 Q Is there --

9 MR. MEZA: I'm sorry, Commissioner.

10 CHAIRMAN JACOBS: There obviously is a  
11 practical, some practical difference between what is  
12 normally combined and what is currently combined in the  
13 network. I assume that normally combined means some  
14 experience beyond BellSouth?

15 THE WITNESS: Yes. Let me see if I can clarify  
16 that. What is actually combined would mean is, in fact,  
17 actually combined on a customer specific basis.

18 CHAIRMAN JACOBS: Okay.

19 THE WITNESS: That is BellSouth's definition.  
20 Our definition of ordinarily combines means that if an end  
21 user customer came to BellSouth and wanted that retail  
22 service, they, in fact, would combine that service, but it  
23 is not actually being provided to that particular end user  
24 that we are requesting it for today.

25 CHAIRMAN JACOBS: So are there circumstances

1 where you would already have an example of that  
2 combination being provisioned already, or is it possible  
3 that it could be a brand new provisioning, a brand new  
4 combination to provision?

5 THE WITNESS: Yes. We are not asking for brand  
6 new combinations. We, in my testimony, argued that if  
7 BellSouth is doing that on a retail basis to provide  
8 service to their end users, then they should provide that  
9 to Sprint as an ALEC. If it is some combination that  
10 BellSouth does not do or technically cannot do, we are not  
11 asking them to provide us that combination.

12 CHAIRMAN JACOBS: Okay. Thank you.

13 BY MR. MEZA:

14 Q If you look on Page 27 of that order I gave to  
15 you, would you read the first full paragraph. Would you  
16 agree with me, sir -- after you have had a chance to read  
17 it, let me know.

18 A Yes.

19 Q Would you agree with me that in that order this  
20 Commission held that as a general matter, BellSouth was  
21 not required to provide EELs as UNEs on two previous  
22 occasions?

23 A That is correct. And we are not asking  
24 BellSouth to provide EELs as UNEs as a stand-alone UNE  
25 either, we are asking it to provide it as a UNE

1 combination which are still just combinations of separate  
2 and distinct unbundled elements.

3 COMMISSIONER DEASON: Okay. What is the  
4 difference? I mean, explain to me -- you just made a  
5 distinction and I didn't catch what the difference was  
6 between the two.

7 THE WITNESS: Okay. The FCC was looking -- you  
8 know, the loop is an unbundled network element. Switching  
9 is an unbundled network element. The port is an unbundled  
10 element. My distinction is that we are not -- the  
11 Commission said that -- or the way that I read this and  
12 maybe I'm wrong, because I'm reading it for the first  
13 time, is that an EEL is not a distinct element, it is a  
14 combination of elements. That is what the FCC has said,  
15 it is not a distinct stand-alone element, but it is a  
16 combination of elements covered by one of their separate  
17 rules.

18 COMMISSIONER DEASON: So it is a combination of  
19 elements and you should be allowed to request that  
20 combination?

21 THE WITNESS: Yes. If BellSouth is using it on  
22 a retail basis for their end user customers.

23 COMMISSIONER DEASON: If they you are ordinarily  
24 using it.

25 THE WITNESS: Yes.

1 MR. MEZA: I have no further questions. Thank  
2 you.

3 CHAIRMAN JACOBS: Staff.

4 MR. VACCARO: No questions.

5 COMMISSIONER JACOBS: Commissioners, any more  
6 questions? Redirect.

7 MS. MASTERTON: No redirect.

8 CHAIRMAN JACOBS: Outstanding. We had no  
9 exhibits, either, correct?

10 MS. MASTERTON: No exhibits.

11 CHAIRMAN JACOBS: Thank you. You are excused,  
12 Mr. Hunsucker.

13 THE WITNESS: Thanks.

14 CHAIRMAN JACOBS: Do we want to go into your  
15 witnesses now, Mr. Edenfield?

16 MR. EDENFIELD: I'm sorry, Chairman Jacobs.

17 CHAIRMAN JACOBS: Do you want to go ahead and  
18 proceed with your witnesses now or just get a fresh start  
19 in the morning?

20 MR. EDENFIELD: Could I impose on us to let's  
21 get started with Mr. Ruscilli. He has to be in an AT&T  
22 arbitration in South Carolina for Friday, which means he  
23 needs to get out of here as early as he can tomorrow.

24 CHAIRMAN JACOBS: Very well.

25 MR. WAHLEN: If we could take a quick break, I

1 may be able to cut down some of my cross-examination of  
2 Mr. Ruscilli.

3 CHAIRMAN JACOBS: Sounds like a winner. Let's  
4 take ten minutes.

5 (Recess.)

6 CHAIRMAN JACOBS: Let's go back on the record.  
7 Mr. Wahlen. Mr. Edenfield.

8 MR. EDENFIELD: Before I call Mr. Ruscilli to  
9 the stand, I have passed out and you have there in front  
10 of you what is Mr. Ruscilli's errata sheet for his direct  
11 and rebuttal testimony and a list of all the testimony and  
12 issues that have come out from BellSouth's perspective.

13 I thought it might be easier to just have this  
14 admitted as an exhibit rather than have to go through the  
15 time of having Mr. Ruscilli go page and line and take it  
16 out. If that suits -- Mr. Chairman, if that suits you, I  
17 would rather do it that way to save a little time.

18 CHAIRMAN JACOBS: That's fine. We will mark  
19 this as Exhibit 5.

20 (Exhibit Number 5 marked for identification.)

21 CHAIRMAN JACOBS: And now it is my understanding  
22 that we are going to proceed with Mr. Ruscilli. In fact,  
23 we may be able to complete testimonies of both Mr. Milner  
24 and Mr. Ruscilli today?

25 MR. WAHLEN: That would be our goal.

1 CHAIRMAN JACOBS: Okay. Then we will plan on --  
2 with the court reporter's indulgence, we will plan on  
3 trying to do that. I will gauge and see where we are in  
4 half an hour or so and we will go from there.

5 MR. EDENFIELD: That is perfectly fine to us.

6 CHAIRMAN JACOBS: Great. Thank you. Your  
7 witness, go ahead.

8 MR. EDENFIELD: With that I would call John  
9 Ruscilli to the stand.

10 - - - - -

11 JOHN RUSCILLI

12 was called as a witness on behalf of BellSouth  
13 Telecommunications, Inc., and, having been duly sworn,  
14 testified as follows:

15 DIRECT EXAMINATION

16 BY MR. EDENFIELD:

17 Q Mr. Ruscilli, will you confirm that you were  
18 previously sworn?

19 A Yes, I was.

20 Q Please state your name and employer?

21 A My name is John Ruscilli, I work for BellSouth  
22 Telecommunications in Atlanta, Georgia.

23 Q Are you the same John Ruscilli who caused to be  
24 filed in this proceeding direct testimony consisting of 87  
25 pages with one exhibit, and rebuttal testimony of 36 pages

1 with no exhibits?

2 A I am.

3 Q We have admitted into -- or at least marked for  
4 identification Exhibit 5 as an errata sheet for your  
5 direct and rebuttal testimony, as well as a list of those  
6 issues that have been resolved in the corresponding  
7 testimony. Have you had a chance to look at that  
8 document?

9 A Yes, I have.

10 Q Are those accurate?

11 A Yes, they are.

12 Q With that, do you have any other changes to your  
13 testimony?

14 A No, I do not.

15 Q If I asked you the same questions that appear in  
16 your testimony, would your answers be the same today?

17 A Yes, they would.

18 Q Have you prepared a summary of your testimony?

19 A Yes, I have.

20 MR. EDENFIELD: Before we do the summary,  
21 Chairman Jacobs, I would ask that Mr. Ruscilli's direct  
22 and rebuttal testimony be inserted into the record as if  
23 read.

24 CHAIRMAN JACOBS: Without objection, show his  
25 testimony inserted into the record.



1 MR. EDENFIELD: And he has one exhibit to his  
2 direct testimony that is identified as JAR-1, and I would  
3 ask that that be marked as Exhibit 6.

4 CHAIRMAN JACOBS: All righty. Show Exhibit 6 as  
5 JAR-1. I thought I saw more than one?

6 MR. EDENFIELD: There were. But JAR-2 and JAR-3  
7 were withdrawn as part of issues being resolved.

8 CHAIRMAN JACOBS: Very well.

9 (Exhibit Number 6 marked for identification.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1                   BELLSOUTH TELECOMMUNICATIONS, INC.  
2                   DIRECT TESTIMONY OF JOHN A. RUSCILLI  
3                   BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION  
4                   DOCKET NO. 000828-TP  
5                   NOVEMBER 1, 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 John Ruscilli. I am employed by BellSouth as Senior Director for  
12     State Regulatory for the nine-state BellSouth region. My business address is  
13     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 attended the University of Alabama in Birmingham where I earned a  
19     Bachelor of Science Degree in 1979, and a Master's Degree in Business  
20     Administration in 1982. After graduation I began employment with South  
21     Central Bell as an Account Executive in Marketing, transferring to AT&T in  
22     1983. I joined BellSouth in late 1984 as an analyst in Market Research, and in  
23     late 1985 I moved into the Pricing and Economics organization with various  
24     responsibilities for business case analysis, tariffing, demand analysis and price  
25     regulation. I served as a subject matter expert on ISDN tariffing in various

1 Commission and PSC staff meetings in Tennessee, Florida, North Carolina and  
2 Georgia. I later moved into the State Regulatory and External Affairs  
3 organization with responsibility for implementing both state price regulation  
4 requirements and the provisions of the Telecommunications Act of 1996 (the  
5 "Act"), through arbitration and 271 hearing support. In July 1997, I became  
6 Director of Regulatory and Legislative Affairs for BellSouth Long Distance,  
7 Inc., with responsibilities that included obtaining the necessary certificates of  
8 public convenience and necessity, testifying, FCC and PSC support, Federal  
9 and State compliance reporting and tariffing for all 50 states and the FCC. I  
10 assumed my current position in July 2000.

11

12 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY BEING FILED  
13 TODAY?

14

15 A. The purpose of my testimony is to present BellSouth's position on nineteen  
16 unresolved issues in the negotiations between BellSouth and Sprint  
17 Communications Company, L.P. ("Sprint"). BellSouth and Sprint have  
18 negotiated in good faith and have resolved many of the issues raised during the  
19 negotiations. There are, however, issues about which the companies have been  
20 unable to reach an agreement. Twenty-nine of those issues were included in  
21 the Petition for Arbitration (the "Petition") filed by Sprint with the Florida  
22 Public Service Commission ("FPSC" or Commission") on July 10, 2000. My  
23 testimony addresses Issues 1, 3-12, 23, and 26-31 included in that Petition.  
24 Issues 16, 18, 21, 22, and 32-34 are addressed by Mr. Keith Milner, Issues 24  
25 and 25 are addressed by Mr. Dave Coon, and Issue 35 is addressed by Ms.

1 Daonne Caldwell.

2

3 ***Issue No. 1: In the event that a provision of this Agreement or an Attachment***  
4 ***thereto, and a BellSouth tariff provision cannot be reasonably construed to***  
5 ***avoid conflict, should the provision contained in this Agreement prevail?***

6

7 Q. WHAT DOES BELLSOUTH UNDERSTAND ISSUE NO. 1 TO BE?

8

9 A. BellSouth understands that Sprint is asking the Commission to make the  
10 BellSouth/Sprint Interconnection Agreement the final word if a conflict arises  
11 between a provision of, or attachment to, the agreement and a BellSouth tariff  
12 provision and a resolution cannot be negotiated.

13

14 Q. WHAT IS BELLSOUTH PROPOSING?

15

16 A. BellSouth is proposing that services provided to Sprint, in its capacity as a  
17 Alternative Local Exchange Carrier ("ALEC"), be provided out of the  
18 Interconnection Agreement. The agreement may refer to the tariff for rates,  
19 terms or conditions of a specific service, if the parties agree that it should do  
20 so. Such references included in the agreement, however, are applicable only as  
21 stated in the agreement. Of course, Sprint can use BellSouth tariffs for services  
22 related to its IXC business for internal purposes.

23

24 Q. IN GENERAL, WHY DOES BELLSOUTH FILE TARIFFS?

25

1 A. As the Commission knows, BellSouth files tariffs as required by both Florida  
2 Statute and the Commission. BellSouth, generally, files tariffs to enable the  
3 Company to offer the same services, at the same terms and conditions, to large  
4 groups of similarly situated users. This is true for each of BellSouth's tariffs.  
5 Inherent in the tariff process is the offering of services in a non-discriminatory  
6 manner.

7

8 Q. PLEASE COMMENT ON THE STATEMENT MADE BY SPRINT IN ITS  
9 PETITION DISCUSSION OF ISSUE NO. 1, THAT "BELLSOUTH'S  
10 PROPOSAL TO . . .RETAIN THE ABILITY TO MODIFY THE  
11 SPRINT/BELLSOUTH INTERCONNECTION AGREEMENT BY  
12 UNILATERALLY AMENDING ITS TARIFFS IS ANTICOMPETITIVE  
13 AND CONTRARY TO THE SPIRIT OF THE ACT."

14

15 A. BellSouth disagrees with Sprint's statement. The conditions under which a  
16 tariff would be referenced in the interconnection agreement would be  
17 specifically stated, and both parties would agree to the language. If Sprint  
18 wants a specific rate for the life of the agreement, the simplest approach is to  
19 include that rate in the agreement. Moreover, BellSouth cannot unilaterally  
20 amend its tariff as Sprint claims. Parties have an opportunity to challenge a  
21 BellSouth tariff filing.

22

23 Q. DOES THE WORDING THAT SPRINT PROPOSES SOLVE THE  
24 PROBLEM THAT SPRINT CLAIMS TO EXIST?

25

1 A. No. It appears that what Sprint is seeking is a freeze on rates in effect at the  
 2 time the interconnection agreement is signed. Sprint's proposal does not lock  
 3 in any tariff rates in Sprint's Interconnection Agreement. The proposal does  
 4 not protect Sprint from price increases. Carriers such as AT&T, Sprint,  
 5 WorldCom and BellSouth file tariffs and changes to those tariffs frequently, as  
 6 the needs of their business change. To incorporate Sprint's language into the  
 7 Interconnection Agreement does not prevent BellSouth from making changes  
 8 to tariffs that Sprint and all BellSouth customers may use. What Sprint's  
 9 language does is place Sprint in a dictatorial position of using Most Favored  
 10 Nation conditions to pick and choose between the Interconnection Agreement  
 11 and BellSouth's tariff.

12  
 13 Q. IS SPRINT'S PROPOSAL PERMITTED UNDER THE ACT?

14  
 15 A. Although I am not a lawyer, the position described above appears to be a  
 16 violation of the Act. The US District Court for the District of Colorado, in a  
 17 Findings of Fact and Conclusions of Law issued June 23, 2000, in Civil Action  
 18 No. 97-D-152, US West Communications, Inc. v. Robert J. Hix, determined  
 19 that "a tariff is not 'an agreement approved under' Section 252." (Section  
 20 VI.B.-USWC'S PICK AND CHOOSE CLAIM-Conclusions of Law, ¶3)  
 21 Further, in paragraph 12, the Court states:

22 *Accordingly, the court holds that the MFN or pick and choose*  
 23 *provisions of the interconnection agreements, to the extent they permit*  
 24 *CLECs to incorporate tariff provisions into their interconnection*  
 25 *agreements, VIOLATE the Act and are VACATED. Judgment shall be*

1                    *entered in favor of USWC and against AT&T, MCI, Sprint and ICG on*  
2                    *the Second Claim for Relief in Civil Acton Numbers 97-D-152, 97-D-*  
3                    *1667 and 97-D-2096 to the extent that the claim seeks relief on this*  
4                    *issue. [Emphasis included in original text.]*

5                    MCI Telecommunications Corp. v. GTE Northwest, Inc., 41 F. Supp. 2d 1157  
6                    (D. Or. 1999) supports the Court's holding.

7

8 Q.                WHAT IS BELLSOUTH REQUESTING OF THIS COMMISSION?

9

10 A.                BellSouth asks the Commission to reject Sprint's language that it proposes to  
11                    be included in the BellSouth/Sprint Interconnection Agreement, General Terms  
12                    and Conditions.

13

14                **Issue No. 3: Should BellSouth make its Custom Calling features available for**  
15                    **resale on a stand-alone basis?**

16

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

18

19 A.                BellSouth agrees to make available for resale any telecommunications service  
20                    that BellSouth offers on a retail basis to subscribers that are not  
21                    telecommunications carriers. BellSouth does not offer Custom Calling services  
22                    (vertical services) to end users on a stand-alone basis, therefore, these services  
23                    are not available for resale on a stand-alone basis to Sprint.

24

25 Q.                WHAT HAS THE FCC DECIDED WITH REGARD TO THIS ISSUE?

1

2 A. Sprint's Petition quotes Section 251 (c)(4) of the Act as saying:

3 *The duty:*

4 *(A) to offer for resale at wholesale rates any*  
5 *telecommunications service that the carrier provides at*  
6 *retail to subscribers who are not telecommunications*  
7 *carriers; (BellSouth emphasis added.)*

8 BellSouth agrees that this is the correct section of the Act with regard to this  
9 issue. It does not, however, support Sprint's position.

10

11 As the FCC made clear in ¶877 of its First Report and Order:

12 *On the other hand, section 251(c)(4) does not impose on incumbent*  
13 *LECs the obligation to disaggregate a retail service into more discrete*  
14 *retail services. The 1996 Act merely requires that any retail services*  
15 *offered to customers be made available for resale.*

16 Sprint is not requesting a service that BellSouth offers at retail. On the  
17 contrary, Sprint is requesting BellSouth to create a new retail service (stand-  
18 alone custom calling services) and allow Sprint to resell it.

19

20 Q. HOW ARE CUSTOM CALLING SERVICES OFFERED IN BELLSOUTH'S  
21 TARIFF?

22

23 A. Section A13.9.2B. of BellSouth's General Subscriber Services Tariff (GSST)  
24 for Florida reads:

25 *Except where provided otherwise in this Tariff, Custom Calling*



1                    *Services are furnished only in connection with individual line residence*  
2                    *and business main service. The features are not available in*  
3                    *connection with Prestige® communications Service, Centrex-type*  
4                    *Service or Access Line Service for Payphone Service Provider*  
5                    *Telephones and SmartLine® Service.*

6                    The exceptions referred to in Section B. address primarily Custom Calling  
7                    Services offered for use with PBX Trunk Service or Outward WATS Service.  
8                    BellSouth does not offer its Custom Calling Services to its end-users  
9                    (subscribers) on a stand-alone basis. These services must be purchased in  
10                    conjunction with basic telephone service. Consequently, there is no retail  
11                    service to resell.

12

13 Q.                PLEASE ADDRESS SPRINT'S RELIANCE ON FCC RULE 51.613 (b).

14

15 A.                Sprint's reliance on 47 CFR 51.613(b) is misplaced. The issue here is not  
16                    whether a resale restriction applies, but whether there is a retail service being  
17                    offered to end-users that Sprint can resell. This rule, and Section 251(c)(4)(B),  
18                    address resale restrictions on "such telecommunications service". "Such  
19                    ...service" refers to specific services that BellSouth provides to its end-users.  
20                    Again, BellSouth does not provide Custom Calling services to end-users  
21                    without also providing basic exchange service. Similarly, BellSouth can not  
22                    provide vertical services to an ALEC's customer regardless of whether the  
23                    ALEC provides the service via resale or via its own facility.

24

25 Q.                PLEASE COMMENT ON SPRINT'S CATEGORIZATION, IN ITS

1 PETITION, OF HOW BELLSOUTH PROVIDES CUSTOM CALLING  
2 FEATURES TO END-USERS AS A "RESALE RESTRICTION."

3

4 A. First, in this case, whether BellSouth can technically offer Custom Calling  
5 services to Sprint on a stand-alone basis is questionable. I am not aware of any  
6 means to access Custom Calling Services except through a switch. Even if  
7 Sprint were to order these features as Unbundled Network Elements ("UNEs"),  
8 Custom Calling Features are only available in conjunction with local  
9 switching, and are defined as part of local switching.

10

11 Second, as stated in the previous answer, BellSouth is not applying a resale  
12 restriction to Sprint; however, BellSouth is concerned that a possible resale  
13 restriction could come into question. What happens in the case of a different  
14 ALEC requesting to resell the line (dial tone) of the BellSouth customer to  
15 whom Sprint is providing the stand-alone vertical services? An ALEC that  
16 resells a BellSouth customer's line is entitled also to resell vertical services to  
17 that customer. This is analogous to a previous ruling adopted by the FCC on  
18 September 27, 1996. In the Order on Reconsideration in CC Docket No. 96-  
19 98, the FCC states in ¶11:

20

21

22

23

24

25

*Thus, a carrier that purchases the unbundled local switching element to  
serve an end user effectively obtains the exclusive right to provide all  
features, functions, and capabilities of the switch, including switching  
for exchange access and local exchange service, for that end user.*

*[Emphasis added.]*

If the provider of service via UNEs has exclusive rights to the vertical services

1 of local switching, it would appear that the provider of service via resale also  
2 has the same exclusive rights. If the FPSC requires BellSouth to provide  
3 vertical services to Sprint on a stand-alone basis, BellSouth will not be able to  
4 provide non-discriminatory resale to another ALEC.

5

6 Q. IS BELLSOUTH TRYING TO PROHIBIT SPRINT FROM RESELLING  
7 CUSTOM CALLING FEATURES OR TO MAKE SPRINT PURCHASE  
8 THE SERVICES FROM BELLSOUTH AT RETAIL RATES?

9

10 A. Absolutely not. BellSouth is in no way creating any barrier to competition, as  
11 Sprint alleges. To the extent Sprint suggests that BellSouth is requiring some  
12 specific action with regard to vertical features, Sprint is mistaken. BellSouth is  
13 not requiring Sprint to do anything. In fact, BellSouth affords Sprint with  
14 several options to provide existing services, or introduce new services, to  
15 Sprint's customers. For example:

- 16 • Sprint has the option of purchasing for resale, at the prevailing resale  
17 discount rate, BellSouth's local service, including any optional services  
18 that also require local service dial tone. In doing this, Sprint becomes the  
19 customer's provider of local services, therefore, competing with BellSouth.
- 20 • In addition, Sprint can buy UNEs and Sprint can avail itself of BellSouth's  
21 UNE Platform ("UNE-P") offering for existing customers. With this  
22 option, Sprint can become the facility provider at substantially less than the  
23 retail price. With the purchase of UNEs, Sprint can provide any service it  
24 chooses, in competition with BellSouth.

25

1 Q. WHAT IS BELLSOUTH ASKING THIS COMMISSION TO DO WITH  
2 REGARD TO ISSUE NO. 2?

3

4 A. BellSouth requests the FPSC to confirm the FCC's rules and deny Sprint's  
5 request that BellSouth make stand-alone Custom Calling Services, that are not  
6 available on a stand-alone basis to its non-carrier end-users, available to Sprint  
7 for resale.

8

9 ***Issue No. 4: Pursuant to Federal Communications Commission ('FCC') Rule***  
10 ***51.315(b), should BellSouth be required to provide Sprint at TELRIC rates***  
11 ***combinations of UNEs that BellSouth typically combines for its own retail***  
12 ***customers, whether or not the specific UNEs have already been combined for the***  
13 ***specific end-user customer in question at the time Sprint places its order?***

14

15 ***Issue No. 6: Should BellSouth be required to universally provide access to EELs***  
16 ***that it ordinarily and typically combines in its network?***

17

18 ***Issue No. 7: In situations where an ALEC's end-user customer is served via***  
19 ***unbundled switching and is located in density zone 1 in one of the top fifty***  
20 ***Metropolitan Statistical Areas ('MSAs') and who currently has three lines or less,***  
21 ***adds additional lines, should BellSouth be able to charge market-based rates for all***  
22 ***of the customer's lines?***

23

24 Q. WHAT DOES BELLSOUTH UNDERSTAND THESE ISSUES TO BE?

25

1 A. BellSouth understands these issues to be whether BellSouth is obligated to  
2 combine UNEs for ALECs when the elements are not already combined in  
3 BellSouth's network.

4

5 Q. WHAT IS BELLSOUTH'S POSITION REGARDING ITS OBLIGATION TO  
6 COMBINE UNES?

7

8 A. As a general matter, it is neither sound public policy nor an obligation of  
9 BellSouth under the Act or the FCC's Rules to combine UNEs. In the FCC's  
10 Third Report and Order and Fourth Further Notice of Proposed Rulemaking,  
11 FCC 99-238, released November 5, 1999 ("UNE Remand Order"), the FCC  
12 confirmed that ILECs presently have no obligation to combine network  
13 elements for ALECs when those elements are not currently combined in the  
14 ILEC's network. The FCC Rules, Section 51.315(c)-(f), that purported to  
15 require incumbent LECs to combine unbundled network elements, were  
16 vacated by the Eighth Circuit, and those rules were neither appealed nor  
17 reinstated by the Supreme Court. On July 18, 2000, The Eighth Circuit  
18 reaffirmed its ruling that FCC Rules 51.315(c)-(f) are vacated.

19

20 BellSouth's position is that it will only provide combinations to Sprint at cost-  
21 based prices if the elements are, in fact, combined and providing service to a  
22 particular customer at a particular location. That is, BellSouth will make  
23 combinations of UNEs available to Sprint consistent with BellSouth's  
24 obligations under the Act and applicable FCC rules. In light of the Eighth  
25

25

1 Circuit's ruling, BellSouth requests that this Commission not order BellSouth  
2 to combine UNEs in this proceeding.

3

4 Q. HOW DID THE FCC ADDRESS BELLSOUTH'S OBLIGATION TO  
5 COMBINE UNES IN ITS UNE REMAND ORDER?

6

7 A. The FCC concluded that BellSouth has no obligation to combine UNEs. As  
8 the FCC made clear, Rule 51.315(b) applies to elements that are "in fact"  
9 combined, stating that "[t]o the extent an unbundled loop is in fact connected  
10 to unbundled dedicated transport, the statute and our rule 51.315(b) require the  
11 incumbent to provide such elements to requesting carriers in combined form."  
12 (§ 480) The FCC declined to adopt a definition of "currently combines" that  
13 would include all elements "typically combined" in the incumbent's network.  
14 *Id.* (declining to "interpret rule 51.315(b) as requiring incumbents to combine  
15 unbundled network elements that are 'ordinarily combined'...") It is  
16 nonsensical to suggest that the FCC meant for its Rule 51.315(b) to cover  
17 anything other than specific pre-existing combinations of elements for a  
18 customer when the FCC's orders specifically state that ILECs are not required  
19 to combine elements. As previously discussed, the Eighth Circuit has  
20 reaffirmed that BellSouth has no such obligation.

21

22 Q. WHY IS IT GENERALLY NOT IN THE PUBLIC INTEREST TO REQUIRE  
23 BELLSOUTH TO COMBINE UNES?

24

25 A. First, requiring BellSouth to combine UNEs does not benefit consumers as a

1 general matter, and would unnecessarily reduce the overall degree of  
2 competition in the market. Congress established several means to introduce  
3 competition, namely, resale, unbundling, and facilities constructed by new  
4 entrants. The requirements of the Act attempt to balance these three entry  
5 methods such that firms use the method that is most efficient for them. The  
6 greatest benefits, however, occur when firms build their own facilities.  
7 Expanding BellSouth's obligations beyond the Act's requirements would upset  
8 the balance intended by the Act. This is not just BellSouth's view – Justice  
9 Breyer of the Supreme Court agrees. As Justice Breyer points out in his  
10 opinion concurring in the Supreme Court's vacating of the FCC's unbundling  
11 rules:

12 *[i]ncreased sharing (unbundling) by itself does not automatically mean*  
13 *increased competition. It is in the unshared, not in the shared, portions*  
14 *of the enterprise that meaningful competition would likely emerge.*  
15 *Rules that force every firm to share every resource or element of a*  
16 *business would create, not competition, but pervasive regulation, for*  
17 *the regulators, not the marketplace, would set the relevant terms.*

18  
19 *The upshot, in my view, is that the statute's unbundling requirements,*  
20 *read in light of the Act's basic purposes, require balance. Regulatory*  
21 *rules that go too far, expanding the definition of what must be shared*  
22 *beyond that which is essential to that which merely proves*  
23 *advantageous to a single competitor, risk costs that, in terms of the*  
24 *Act's objectives, may make the game not worth the candle. (142 L. Ed.*  
25 *2d 834, 880)*

1  
2 Second, requiring BellSouth to combine UNEs at cost-based prices,  
3 particularly Total Element Long Run Incremental Cost (“TELRIC”)-based  
4 prices, reduces BellSouth’s incentive to invest in new capabilities. TELRIC-  
5 based prices do not cover the actual cost of the elements, let alone represent  
6 fair prices in the market place. Again, Justice Breyer agrees, as evidenced by  
7 his observation that:

8 *[n]or can one guarantee that firms will undertake the investment*  
9 *necessary to produce complex technological innovations knowing that*  
10 *any competitive advantage deriving from those innovations will be*  
11 *dissipated by the sharing requirement. The more complex the facilities,*  
12 *the more central their relation to the firm’s managerial responsibilities,*  
13 *the more extensive the sharing demanded, the more likely these costs*  
14 *will become serious. (142 L. Ed. 2d 834, 879)*

15  
16 Finally, requiring BellSouth to combine elements where such combinations do  
17 not, in fact, exist is inconsistent with the Act’s basic purpose, which is to  
18 introduce competition into the local market. The intent was not to subsidize  
19 competitors where reasonable alternatives, to BellSouth combining UNEs,  
20 exist. ALECs can combine the UNEs themselves in collocation spaces, use  
21 the assembly point option, or build their own facilities. Even utilizing  
22 collocation to combine UNEs, the cost to the ALEC is just a few cents a month  
23 per combination. This view is also supported in Justice Breyer’s opinion:

24 *[i]n particular, I believe that, given the Act’s basic purpose, it requires*  
25 *a convincing explanation of why facilities should be shared (or*



1                   *'unbundled') where a new entrant could compete effectively without the*  
2                   *facility, or where practical alternatives to that facility are available.*  
3                   *(142 L. Ed. 2d 834, 879)*

4

5                   Clearly, expanding BellSouth's obligation to include combining UNEs does  
6                   not benefit consumers. Such action only provides an unwarranted subsidy to  
7                   ALECs, disincentivizes BellSouth to invest in its network, and discourages ALECs  
8                   from building their own networks.

9

10 Q.           WHAT DID THE EIGHTH CIRCUIT COURT OF APPEALS ("EIGHTH  
11           CIRCUIT") RULE REGARDING THIS ISSUE?

12

13 A.           On July 18, 2000, the Eighth Circuit ruled that an ILEC is not obligated to  
14           combine UNEs, and it reaffirmed that the FCC's Rules 51.315(c)-(f) remain  
15           vacated. Specifically, referring to Section 251(c)(3) of the Act that requires  
16           ILECs to provide UNEs in a manner that allows requesting carriers to combine  
17           such elements in order to provide telecommunications services, the Eighth  
18           Circuit stated: "[h]ere Congress has directly spoken on the issue of who shall  
19           combine previously uncombined network elements. It is the requesting  
20           carriers who shall 'combine such elements.' It is not the duty of the ILECs to  
21           'perform the functions necessary to combine unbundled network elements in  
22           any manner' as required by the FCC's rule."

23

24 Q.           ARE THERE ANY EXCEPTIONS REGARDING COMBINING OF UNEs  
25           IN RELATION TO ISSUE 6?

1

2 A. There is one other exception to BellSouth's requirement to provide UNE  
3 combinations to Sprint. BellSouth has elected to be exempted from providing  
4 access to unbundled local switching to serve customers with four or more lines  
5 in Density Zone 1 of the Miami, Orlando and Ft. Lauderdale MSAs. To avail  
6 itself of this exemption, the FCC requires BellSouth to combine loop and  
7 transport UNEs (also known as the "Enhanced Extended Links" or "EELs") in  
8 the geographic area where the exemption applies. The FCC also requires that  
9 such combinations be provided at cost-based rates. BellSouth will combine  
10 loop and transport UNEs at FCC mandated prices as required in the FCC's  
11 UNE Remand Order in order to use the local circuit switching exemption.

12

13 Beyond this limited exception dictated by the FCC, BellSouth is under no  
14 obligation to physically combine network elements, where such elements are  
15 not, in fact, combined. Nevertheless, BellSouth is willing to negotiate rates for  
16 combining UNEs; however, such negotiations are outside of a Section 251  
17 arbitration, and the rates for this service are not subject to the pricing standards  
18 in Section 252 of the Act.

19

20 Q. CAN SPRINT STILL COMPETE VIGOROUSLY FOR LOCAL SERVICE  
21 WITHOUT HAVING BELL SOUTH COMBINE UNES AT COST-BASED  
22 PRICES?

23

24 A. It certainly can. There are over 6 million BellSouth lines in service in Florida  
25 today. Each of those lines consists of existing combined facilities that Sprint,

1 or any ALEC, in fact, can purchase today from BellSouth at cost-based rates.  
2 In addition, Sprint has several means other than having BellSouth combine  
3 UNEs to serve both new and existing customers. Any argument that Sprint  
4 cannot compete because BellSouth will not put UNEs together is nonsensical.

5

6 Q. WHAT IS BELLSOUTH ASKING THIS COMMISSION TO DO WITH  
7 REGARD TO THIS ISSUE?

8

9 A. BellSouth requests that the Commission find that BellSouth is required to  
10 provide UNE combinations to Sprint at cost-based prices only if the elements  
11 are, in fact, combined and providing service to a particular customer at a  
12 particular location.

13

14 Q. WHAT DOES BELLSOUTH UNDERSTAND THE DISPUTE ON  
15 UNBUNDLED LOCAL SWITCHING TO BE?

16

17 A. The dispute involves the application of the FCC's rules regarding the  
18 exemption for unbundling local circuit switching. BellSouth, in certain  
19 geographic areas, is not required to unbundle local switching for customers  
20 having four or more lines. Sprint asserts that even in such areas, BellSouth  
21 should not be allowed to raise prices for customers that have three or fewer  
22 lines, and that BellSouth should be required to provide up to forty lines at the  
23 cost-base rate. Sprint is apparently trying to rewrite the rules.

24

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

1

2 A. BellSouth believes that the FCC's position is quite clear. Even if it were not,  
3 simple logic will lead to the conclusion that when a specific customer has four  
4 or more lines, whether they were purchased all at once, gradually over time, at  
5 one location, or spread over multiple locations, BellSouth does not have to  
6 provide unbundled local switching as long as the other criteria for Rule  
7 51.319(c)(2) are met.

8

9 Q. WHAT IS THE FCC RULE THAT IS RELEVANT TO THE DISPUTE?

10

11 A. The relevant FCC Rule is 51.319(c)(2), which states:

12 (2) Notwithstanding the incumbent LEC's general duty to unbundled local  
13 circuit switching, an incumbent LEC shall not be required to unbundle  
14 local circuit switching for requesting telecommunications carriers when  
15 the requesting telecommunications carrier serves end-users with four or  
16 more voice grade (DS0) equivalents or lines, provided that the  
17 incumbent LEC provides non-discriminatory access to combinations of  
18 unbundled loops and transport (also known as the "Enhanced Extended  
19 Link") throughout Density Zone 1, and the incumbent LEC's local  
20 circuit switches are located in:

- 21 (i) The top 50 Metropolitan Statistical Areas as set forth in  
22 Appendix B of the Third Report and Order and Fourth  
23 Further Notice of Proposed Rulemaking in CC Docket No.  
24 96-98, and  
25 (ii) In Density Zone 1, as defined in § 69.123 of this chapter on

1 January 1, 1999.

2

3 Q. WHAT WAS THE FCC'S RATIONALE FOR THE FOUR OR MORE  
4 LINES CRITERIA IN RULE 51.319(c)(2)?

5

6 A. The FCC used the four-line cutoff to distinguish between the mass market and  
7 the medium to large business market. As long as the other criteria of Rule  
8 51.319(c)(2) were met, the FCC determined that competitors were not impaired  
9 in their ability to serve medium to large business customers. The following  
10 portions of the UNE Remand Order demonstrate the FCC's rationale:

11 We recognize that a rule that removes unbundling obligations based on  
12 line count will be marginally overinclusive or underinclusive given  
13 individual factual circumstances. We find, however, that in our expert  
14 judgment, a rule that distinguishes customers with four lines or more  
15 from those with three lines or less reasonably captures the division  
16 between the mass market – where competition is nascent – and the  
17 medium and large business market – where competition is beginning to  
18 broaden. ¶ 294

19

20 In contrast, marketplace developments suggest that competitors are not  
21 impaired in their ability to serve certain high-volume customers in the  
22 densest areas. ¶ 297

23

24 The FCC's logic here is that the biggest part of the consumer market involves  
25 customers who have three or fewer lines. By the time a customer has 4 or

1 more lines, the customer is either a mid-sized or a large customer, and ALECs  
2 are not impaired if they do not have access to unbundled switching to address  
3 the telecommunications needs of these classes of customers. Nowhere in the  
4 rule, nor in the rationale supporting it, does the FCC suggest that the  
5 incumbent LEC still has an obligation to unbundle local circuit switching for a  
6 portion of a medium to large business customer's lines, or for additional lines  
7 if the customer starts out with three lines or fewer.

8

9 Q. WHAT DOES THE PROVISION OF EELS HAVE TO DO WITH THIS  
10 ISSUE?

11

12 A. Basically, the thought is that if the incumbent LEC is willing to provide an  
13 EEL, the ALEC can haul the call anywhere in the area to the ALEC's switch.  
14 The FCC obviously concluded that, at least in the top 50 MSAs, switching is  
15 available from a number of sources. As long as the incumbent LEC allows the  
16 ALEC to have an EEL so that the end user could be connected to an ALEC's  
17 switch, it is not necessary for the incumbent LEC to unbundle local switching.

18

19 Q. WHAT DOES BELL SOUTH REQUEST OF THE COMMISSION?

20

21 A. BellSouth requests the Commission reject Sprint's attempt to rewrite the  
22 FCC's rules. Just as the FCC determined, ALECs are not impaired without  
23 access to unbundled local switching when serving customers with four or more  
24 lines in Density Zone 1 in the top 50 MSAs. Consequently, ALECs are not  
25 entitled to unbundled switching in these areas for any of an end user's lines

1 when the end user has four or more lines in the relevant geographic area, as  
2 long as BellSouth will provide the ALEC with EELs. There has been no  
3 demonstration in this proceeding that Sprint is impaired without such access.  
4

5 *Issue No. 5: Should the Commission require BellSouth to provide access to packet*  
6 *switching UNEs under the circumstances specified in the FCC's UNE Remand*  
7 *Order on a location- or customer-specific basis?*  
8

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

10

11 A. The Commission should not require BellSouth to provide packet switching  
12 UNEs to ALECs except as specified in the FCC's Rule 51.319(c)(5). Neither  
13 the 1996 Act nor the FCC's Rules require an ILEC to unbundle packet  
14 switching, outside of "one limited exception". The FCC rules do not address  
15 the issue of location- or customer-specific provisioning.  
16

17 Q. WHAT WOULD BE REQUIRED IN ORDER FOR THIS COMMISSION TO  
18 DETERMINE THAT AN ILEC MUST PROVIDE ALECs WITH  
19 UNBUNDLED ACCESS TO PACKET SWITCHING CAPABILITIES?  
20

21 A. The Commission would have to find that ALECs are impaired without access  
22 to these capabilities. Further, the Commission would have to find that the  
23 conditions established by the FCC that would trigger the unbundling of packet  
24 switching are insufficient.  
25

1 Q. WHAT IS THE BASIS FOR BELLSOUTH'S POSITION?

2

3 A. In its UNE Remand Order, the FCC expressly declined "to unbundle specific  
4 packet switching technologies incumbents LECs may have deployed in their  
5 networks." (Para. 311) While the FCC adopted "one limited exception" to  
6 this rule, which I will discuss below, the FCC specifically rejected  
7 "e.spire/Intermedia's request for a packet switching or frame relay unbundled  
8 element." (Para. 312) Indeed, the FCC concluded that "e.spire/Intermedia  
9 have not provided any specific information to support a finding that requesting  
10 carriers are impaired without access to unbundled frame relay." *Id.*

11

12 Q. PLEASE EXPLAIN THE "LIMITED EXCEPTION" TO WHICH YOU  
13 EARLIER REFERRED.

14

15 A. The FCC's Rule 51.319(c)(5) regarding packet switching requires that an ILEC  
16 provide unbundled packet switching only where all of the following conditions  
17 are satisfied:

- 18 (i) The incumbent LEC has deployed digital loop carrier systems,  
19 including but not limited to, integrated digital loop carrier or universal  
20 digital loop carrier systems; or has deployed any other system in which  
21 fiber optic facilities replace copper facilities in the distribution section  
22 (e.g., end office to remote terminal, pedestal or environmentally  
23 controlled vault);
- 24 (ii) There are no spare copper loops capable of supporting the xDSL  
25 services the requesting carrier seeks to offer;



1 (iii) The incumbent LEC has not permitted a requesting carrier to deploy a  
2 Digital Subscriber Line Access Multiplexer at the remote terminal,  
3 pedestal or environmentally controlled vault or other interconnection  
4 point, nor has the requesting carrier obtained a virtual collocation  
5 arrangement at these subloop interconnection points as defined under §  
6 51.319(b); and

7 (iv) The incumbent LEC has deployed packet switching capability for its  
8 own use.

9 BellSouth has taken the necessary measures to ensure that ALECs have access  
10 to required facilities and therefore BellSouth is not required to unbundle packet  
11 switching.

12

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

16

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

24

25

1 Q. WHAT DID THE FCC FIND IN ITS DETERMINATION OF WHETHER  
2 ACCESS TO UNBUNDLED PACKET SWITCHING MET THE FCC'S  
3 "IMPAIR" STANDARD?  
4

5 A. The FCC determined that competing carriers would not be impaired without  
6 unbundled access to the incumbent LEC's packet switching functionality.  
7 (Para. 306) The FCC recognized that there are numerous carriers providing  
8 service with their own packet switches, and that "competitors are actively  
9 deploying facilities used to provide advanced services to serve certain  
10 segments of the market - namely, medium and large business - and hence they  
11 cannot be said to be impaired in their ability to offer service." *Id.*  
12

13 Q. SHOULD THIS COMMISSION REQUIRE INCUMBENT LECs TO  
14 UNBUNDLE SPECIFIC NETWORK ELEMENTS USED TO PROVIDE  
15 PACKET SWITCHING?  
16

17 A. No. I am not aware of any evidence that would demonstrate that ALECs are  
18 impaired without access to packet switching. In its UNE Remand Order, the  
19 FCC established the "impair" standards by which it would determine if a  
20 network element should be unbundled. The FCC concluded that

21 [T]he failure to provide access to a network element would 'impair' the  
22 ability of a requesting carrier to provide the services it seeks to offer if,  
23 taking into consideration the availability of alternative elements outside  
24 the incumbent's network, including self-provisioning by a requesting  
25 carrier or acquiring an alternative from a third-party supplier, lack of

1 access to that element materially diminishes a requesting carrier's  
2 ability to provide the services it seeks to offer. (Para. 51)

3  
4 The FCC went on to say that a materiality component "requires that there be  
5 substantive differences between the alternative outside the incumbent LEC's  
6 network and the incumbent LEC's network element that, collectively, 'impair'  
7 a competitive LEC's ability to provide service within the meaning of section  
8 251(d)(2)." *Id.*

9  
10 Even though a state commission is authorized to alter the conditions  
11 established by the FCC for the unbundling of packet switching, an ALEC must  
12 prove that it is impaired by not having access to BellSouth's packet switching  
13 functionality on an unbundled basis.

14  
15 Q. HAS THIS COMMISSION PREVIOUSLY CONSIDERED THIS ISSUE?

16  
17 A. Yes.

18  
19 Q. WHAT DOES BELLSOUTH REQUEST OF THE COMMISSION?

20  
21 A. BellSouth requests that the Commission affirm the FCC's finding by reaching  
22 the same conclusion that it did in the Intermedia arbitration: Sprint has not  
23 demonstrated that it is impaired without access to unbundled packet switching  
24 from BellSouth, and that BellSouth is not required to provide packet switching

25

1 capabilities to Sprint, on a location- or customer-specific basis, on an  
 2 unbundled basis unless all four of the conditions in Rule 51.319(c)(5) are met.

3

4 ***Issue No. 8: Should BellSouth be able to designate the network Point of***  
 5 ***Interconnection ('POI') for delivery of BellSouth's local traffic?***

6

7 ***Issue 29: Should BellSouth be allowed to designate a virtual point of***  
 8 ***interconnection in a BellSouth local calling area to which Sprint has assigned a***  
 9 ***Sprint NPA/NXX? If so, who pays for the transport and multiplexing, if any,***  
 10 ***between BellSouth's virtual point of interconnection and Sprint's point of***  
 11 ***interconnection?***

12

13 Q. IN ESSENCE, WHAT IS THE NATURE OF THE DISPUTE BETWEEN  
 14 THE PARTIES ON THIS ISSUE?

15

16 A. The issue is pretty simple. BellSouth has a local network in each of the local  
 17 calling areas it serves in Florida. BellSouth may have 15, 20 or even more  
 18 such local networks in a given LATA. Nevertheless, Sprint wants to  
 19 physically interconnect its network with BellSouth's "network" in each LATA  
 20 at a single point. This approach simply ignores that there is not one "network"  
 21 but a host of networks that are generally all interconnected. Importantly,  
 22 BellSouth does not object to Sprint designating a single POI at a point in a  
 23 LATA on one of BellSouth's "networks", for traffic that Sprint's end users  
 24 originate. Further, BellSouth does not object to Sprint using the  
 25 interconnecting facilities between BellSouth's "networks" to have local calls

1 delivered or collected throughout the LATA. What BellSouth does want, and  
2 this is the real issue, is for Sprint to be financially responsible when it uses  
3 BellSouth's network in lieu of building its own network to deliver or collect  
4 these local calls.

5  
6 Sprint, to contrast its position with BellSouth's, expects BellSouth to collect its  
7 local traffic in each of BellSouth's numerous local calling areas in the LATA,  
8 and to be financially responsible for delivering these local calls, ultimately  
9 destined for Sprint local customers in the same local calling area, to a single  
10 point in each LATA. BellSouth agrees that Sprint can choose to build its own  
11 facilities to connect with BellSouth at a single, technically feasible point in the  
12 LATA selected by Sprint. Sprint, however, cannot impose a financial burden  
13 on BellSouth to deliver BellSouth's originating local traffic to that single point.  
14 If Sprint wants local calls completed between BellSouth's customers and  
15 Sprint's customers using this single Point of Interconnection, that is fine,  
16 provided that Sprint is financially responsible for the additional costs that  
17 Sprint causes.

18

19 Q. DOES BELLSOUTH'S POSITION MEAN THAT SPRINT HAS TO BUILD  
20 A NETWORK TO EVERY LOCAL CALLING AREA, OR OTHERWISE  
21 HAVE A POINT OF INTERCONNECTION WITH BELLSOUTH'S LOCAL  
22 NETWORK IN EVERY LOCAL CALLING AREA?

23

24 A. No. Sprint can build out its network that way if it chooses, but is not required  
25 to do so. Sprint can lease facilities from BellSouth or any other provider to

1 bridge the gap between its network (that is, where it designates its POI) and  
2 each BellSouth local calling area.

3

4 Q. WHAT IS A POINT OF INTERCONNECTION?

5

6 A. The term Point of Interconnection is used in the Agreement, and in this issue,  
7 to describe the point(s) where BellSouth and Sprint's networks physically  
8 connect. In its First Report and Order, at paragraph 176, the FCC defined the  
9 term "interconnection" by stating that:

10 *We conclude that the term "interconnection" under section 251(c)(2)*  
11 *refers only to the physical linking of two networks for the mutual*  
12 *exchange of traffic.*

13 Therefore, the term "Point of Interconnection" is simply the place, or places,  
14 on BellSouth's network where that physical linking of Sprint and BellSouth's  
15 networks takes place. Simply speaking, the Point of Interconnection is the  
16 place where facilities that Sprint builds connect to facilities built by BellSouth.

17

18 Q. IF SPRINT CAN INTERCONNECT WITH BELLSOUTH'S NETWORK AT  
19 ANY TECHNICALLY FEASIBLE POINT, WHY IS THIS AN ISSUE?

20

21 A. Recall that what we are talking about is interconnection with "local networks."  
22 The network architectures of the two companies are very important, and are  
23 actually why this issue exists. BellSouth has a number of distinct networks.  
24 For example, BellSouth has local networks, long distance networks, packet  
25 networks, signaling networks, E911 networks, etc. Each of these networks is

1 designed to provide a particular service or group of services. With regard to  
2 "local networks," BellSouth, in any given LATA, has several such local  
3 networks, usually interconnected by BellSouth's long distance network.

4  
5 For example, in the Jacksonville LATA, BellSouth has local networks in  
6 Jacksonville, Lake City, St. Augustine, Pomona Park, as well as several other  
7 locations. Customers who want local service in a particular local calling area  
8 must be connected to the local network that serves that local calling area. A  
9 customer that connects to the Jacksonville local network, for example, will not  
10 receive local service in the Lake City local calling area because Lake City is  
11 not in the Jacksonville local calling area. Likewise, an ALEC that wants to  
12 connect with BellSouth to provide local service in Lake City has to connect to  
13 the local network that serves the Lake City area. BellSouth's local calling  
14 areas, I would add, have been defined over the years either by this Commission  
15 or by BellSouth with the approval of this Commission.

16  
17 When Sprint has a single switch in a LATA, then, by definition, that switch is  
18 located in a single BellSouth local calling area, for example, the Jacksonville  
19 local calling area, if that is where the switch is located. When a BellSouth  
20 local customer in Jacksonville wants to call a Sprint customer in Jacksonville,  
21 BellSouth delivers the call to the appropriate point of interconnection between  
22 BellSouth's network and Sprint's network in Jacksonville. This network  
23 configuration is illustrated on Page 1 of Exhibit JAR-1 attached to my  
24 testimony. BellSouth would be financially responsible for taking a call from  
25 one of its subscribers located in the Jacksonville local calling area and

1 delivering it to another point in the Jacksonville local calling area, the Sprint  
2 Point of Interconnection. This scenario is not a problem.

3

4 The problem arises when a BellSouth customer located in a distant local  
5 calling area wants to call his next-door neighbor who happens to be a Sprint  
6 local subscriber. To illustrate this point, assume that Sprint has a single local  
7 switch in the Jacksonville LATA. A BellSouth customer in Lake City that  
8 wants to call a Sprint customer in Lake City picks up his or her telephone and  
9 draws dial tone from BellSouth's Lake City switch. The BellSouth customer  
10 then dials the Sprint customer. The call has to be routed from Lake City to  
11 Sprint's Point of Interconnection in the Jacksonville LATA, which, in my  
12 example, is in Jacksonville. Sprint then carries the call to its switch in  
13 Jacksonville and connects to the long loop serving Sprint's customer in Lake  
14 City. This call routing is shown on Page 2 of Exhibit JAR-1. The issue here  
15 involves who is financially responsible for the facilities that are used to haul  
16 local calls back and forth between Sprint's Point of Interconnection in  
17 Jacksonville and the BellSouth Lake City local calling area.

18

19 Q. HOW WOULD SPRINT CONNECT TO BELLSOUTH'S LOCAL  
20 NETWORKS THAT ARE OUTSIDE THE LOCAL CALLING AREA  
21 WHERE SPRINT'S SWITCH IS LOCATED?

22

23 A. It is my understanding that Sprint has agreed to establish at least one POI in  
24 each LATA. This is necessary because BellSouth is still not authorized to  
25 carry traffic across LATA boundaries. Sprint would build facilities from its



1 switch (wherever that is located) to the POI in the LATA where the BellSouth  
 2 local network is located. Once that POI is established, the issue remains the  
 3 same. Who is financially responsible for the facilities needed to carry calls  
 4 between that POI and the distant BellSouth local calling area in which a local  
 5 call is to be originated and terminated? Since Sprint must establish a POI in  
 6 each LATA, whether or not Sprint also has a switch in each LATA, is not  
 7 relevant to resolving the problem that Sprint's network design has created.

8

9 Q. WHY DO YOU SAY THAT SPRINT MUST BE FINANCIALLY  
 10 RESPONSIBLE FOR THE TRANSPORT OF THESE CALLS FROM  
 11 LOCAL CALLING AREAS THAT ARE DISTANT FROM THE POINT  
 12 WHERE SPRINT HAS CHOSEN TO INTERCONNECT ITS NETWORK  
 13 WITH BELLSOUTH'S?

14

15 A. First, that is the only approach that makes economic sense. I will explain the  
 16 rationale for that statement later. Second, the Eighth Circuit determined that  
 17 the ILEC is only required to permit an ALEC to interconnect with the ILEC's  
 18 existing local network, stating that:

19

20

21

22

23

24

25

*The Act requires an ILEC to (1) permit requesting new entrants  
 (competitors) in the ILEC's local market to interconnect with the  
 ILEC's existing local network and, thereby, use that network to  
 compete in providing local telephone service (interconnection)....  
 (Eighth Circuit Court Order dated July 18, 2000, page 2) [Emphasis  
 added.]*

This is a very important point. When Sprint interconnects with BellSouth's

1 local network in Jacksonville, it is not also interconnecting with BellSouth's  
2 local network in Lake City. It is only interconnecting with the Jacksonville  
3 local network. The fact that Sprint is entitled to physically interconnect with  
4 BellSouth at a single point cannot overcome the fact that the single POI cannot,  
5 by itself, constitute interconnection with every single local calling area in the  
6 LATA.

7  
8 Moreover, if that were true, think of the implications. Absent LATA  
9 restrictions, Sprint's theory would mean that Sprint could have a physical POI  
10 with BellSouth's "network" in Miami, and BellSouth would be required to  
11 haul local calls originating in Lake City and destined to terminate in Lake City  
12 all the way to Miami, at no cost to Sprint. That just does not make sense.  
13 Sprint can build whatever network it wants. It can interconnect with  
14 BellSouth's "network" wherever it is technically feasible. However, Sprint  
15 cannot shift the financial burden of its network design to BellSouth.

16  
17 Q. CAN YOU ILLUSTRATE WITH AN EXAMPLE WHY YOU SAY SPRINT  
18 IS ATTEMPTING TO SHIFT ITS FINANCIAL RESPONSIBILITY TO  
19 BELLSOUTH AND THAT BELLSOUTH IS INCURRING COSTS ON  
20 BEHALF OF SPRINT?

21  
22 A. Yes. The best way to describe these additional costs is to compare examples of  
23 two local calls in the same local area. One local call is between two BellSouth  
24 customers. The other local call is between a BellSouth customer and a Sprint  
25 customer. Let's assume that either set of customers are neighbors in Lake

1 City, to make the example more emphatic. First, let's examine what happens if  
2 both customers were served by BellSouth as depicted on page 3 of Exhibit  
3 JAR-1. When one neighbor calls the other, the call originates with one  
4 customer, and is transported over that customer's local loop to a local switch in  
5 Lake City, where the call is connected to the other customer's local loop.  
6 Importantly, the call never leaves the Lake City local calling area. Therefore,  
7 the only cost BellSouth incurs for transporting and terminating that call is end  
8 office switching in Lake City.

9  
10 Now, let's compare what happens when one of these two customers obtains its  
11 local service from Sprint. Assume that the BellSouth customer calls the Sprint  
12 customer next door, as depicted on page 2 of Exhibit JAR-1. The BellSouth  
13 customer is connected to BellSouth's switch in Lake City. The BellSouth  
14 switch then sends the call to Jacksonville because that is where Sprint told  
15 BellSouth to send the call. The call is then hauled over facilities owned by  
16 Sprint from the Jacksonville POI (e.g. access tandem) to Sprint's switch.  
17 Sprint then connects the call through its end office switch to the long loop  
18 serving Sprint's end user customer back in Lake City. Again, these two  
19 customers live next door to each other. In one case the call never left the Lake  
20 City local calling area. In the other, BellSouth hauled the call all the way to  
21 Jacksonville and the only reason that BellSouth did so was because that is what  
22 Sprint wanted.

23  
24 To make the point more simply, Sprint wants BellSouth to bear the cost of the  
25 facilities used to haul the call I just described between Lake City and

1 Jacksonville. There is nothing fair, equitable or reasonable about Sprint's  
2 position. Because Sprint has designed its network the way it wants, and has  
3 designed its network in the way that is most efficient and cheapest for Sprint,  
4 Sprint must bear the financial responsibility for the additional facilities used to  
5 haul the call between Lake City and Jacksonville. Sprint does not have to  
6 build the facilities. It does not have to own the facilities. It just has to pay for  
7 them. BellSouth objects to paying additional costs that are incurred solely due  
8 to Sprint's network design. It is simply inappropriate for Sprint to attempt to  
9 shift these costs to BellSouth.

10

11 Q. DO BELLSOUTH'S LOCAL EXCHANGE RATES COVER THESE  
12 ADDITIONAL COSTS?

13

14 A. No. BellSouth, in theory at least, is compensated by the local exchange rates  
15 charged to BellSouth's local customers for hauling local calls from one point  
16 within a specific local calling area to another point in that same local calling  
17 area. I say "in theory" because, as the Commission knows, there has always  
18 been a dispute over whether local exchange rates actually cover the costs of  
19 handling local calls. Certainly there can be no dispute that the local exchange  
20 rates that BellSouth's customers pay are not intended to cover and, indeed  
21 cannot cover, the cost of hauling a local call from one Lake City customer to  
22 another Lake City customer by way of Jacksonville.

23

24 Indeed, if Sprint is not required to pay for that extra transport which Sprint's  
25 network design decisions cause, who will pay for it? The BellSouth calling

1 party is already paying for its local exchange service, and certainly will not  
2 agree to pay more, simply for Sprint's convenience. Who does that leave to  
3 cover this cost? The answer is that there is no one else, and because Sprint has  
4 caused this cost through its own decisions regarding the design of its network,  
5 it should be required to pay the additional cost.

6

7 Q. DOES BELLSOUTH RECOVER ITS COSTS FOR HAULING LOCAL  
8 CALLS OUTSIDE THE LOCAL CALLING AREA THROUGH  
9 RECIPROCAL COMPENSATION CHARGES?

10

11 A. No. This is also a significant point. The facilities discussed in this issue  
12 provide interconnection between the parties' networks. Their costs are not  
13 covered in the reciprocal compensation charges for transport and termination.  
14 Paragraph 176 of FCC Order No. 96-325 clearly states that interconnection  
15 does not include transport and termination: "Including the transport and  
16 termination of traffic within the meaning of section 251(c)(2) would result in  
17 reading out of the statute the duty of all LECs to establish 'reciprocal  
18 compensation arrangements for the transport and termination of  
19 telecommunications' under section 251(b)(5)". Simply put, the cost of  
20 interconnection is to be recovered through interconnection charges and the cost  
21 for transport and termination is to be recovered separately through reciprocal  
22 compensation. Reciprocal compensation charges apply only to facilities used  
23 for transporting and terminating local traffic on the local network, not for  
24 interconnection of the parties' networks.

25

1 In the Lake City example, reciprocal compensation would only apply for the  
2 use of BellSouth's facilities within the Lake City local calling area. That is,  
3 reciprocal compensation would apply to the facilities BellSouth uses within its  
4 Lake City local network to transport and switch a Sprint originated call.  
5 Reciprocal compensation does not include the facilities to haul the traffic from  
6 Lake City to Jacksonville. In the illustrations I have been using, BellSouth's  
7 customer originates the call. BellSouth does not receive reciprocal  
8 compensation for calls that originate from a BellSouth customer and terminate  
9 to a Sprint customer. Ultimately, however, what Sprint is requesting is for  
10 BellSouth to provide facilities, at no cost, for calls in both directions between  
11 the distant exchanges.

12

13 Q. IS THE ARRANGEMENT THAT SPRINT IS PROPOSING EFFICIENT?

14

15 A. Sprint might believe it is. Sprint seems to equate efficiency with what is  
16 cheapest for Sprint. Of course, that is not an appropriate measure of efficiency.  
17 Indeed, to measure efficiency, the cost to each carrier involved must be  
18 considered. Presumably, Sprint has chosen its particular network arrangement  
19 because it is cheaper for Sprint. A principal reason that it is cheaper is because  
20 Sprint is expecting BellSouth's customers to bear substantially increased costs  
21 that Sprint causes by its network design. It simply makes no sense for  
22 BellSouth to bear the cost of hauling a local Lake City call outside the local  
23 calling area just because that is what Sprint wants us to do. Sprint, however,  
24 wants this Commission to require BellSouth to do just that. If Sprint bought  
25 these facilities from anyone else, Sprint would pay for the facilities. Sprint,

1           however, does not want to pay BellSouth for the same capability.

2

3           Sprint's method of transporting local traffic is clearly more costly to  
4           BellSouth, but Sprint blithely ignores the additional costs they want BellSouth  
5           to bear. Of course, these increased costs will ultimately be borne by  
6           customers, and if Sprint has its way, these costs will be borne by BellSouth's  
7           customers. Competition should reduce costs to customers, not increase them.  
8           Competition certainly is not an excuse for enabling a carrier to pass increased  
9           costs that it causes to customers it does not even serve. BellSouth requests that  
10          the Commission require Sprint to bear the cost of hauling local calls outside  
11          BellSouth's local calling areas. Importantly, Sprint should not be permitted to  
12          avoid this cost, nor should Sprint be permitted to collect reciprocal  
13          compensation for facilities that haul local traffic outside of the local calling  
14          area.

15

16 Q.       HOW HAS THE FCC ADDRESSED THE ADDITIONAL COSTS CAUSED  
17       BY THE FORM OF INTERCONNECTION AN ALEC CHOOSES?

18

19 A.       In its First Report and Order in Docket No. 96-98, the FCC states that the  
20       ALEC must bear the additional costs caused by an ALEC's chosen form of  
21       interconnection. Paragraph 199 of the Order states that "a requesting carrier  
22       that wishes a 'technically feasible' but expensive interconnection would,  
23       pursuant to section 252(d)(1), be required to bear the cost of the that  
24       interconnection, including a reasonable profit." Further, at paragraph 209, the  
25       FCC states that "Section 251(c)(2) lowers barriers to competitive entry for

1 carriers that have not deployed ubiquitous networks by permitting them to  
2 select the points in an incumbent LEC's network at which they wish to deliver  
3 traffic. Moreover, because competing carriers must usually compensate  
4 incumbent LECs for the additional costs incurred by providing interconnection,  
5 competitors have an incentive to make economically efficient decisions about  
6 where to interconnect." (Emphasis added.)

7  
8 Clearly, the FCC expected Sprint to pay the additional costs that it causes  
9 BellSouth to incur. If Sprint is permitted to shift its costs to BellSouth, Sprint  
10 has no incentive to make economically efficient decisions about where to  
11 interconnect.

12  
13 Q. HOW DOES BELLSOUTH PROPOSE TO DELIVER ITS ORIGINATING  
14 LOCAL TRAFFIC TO SPRINT?

15  
16 A. Although not required to do, BellSouth proposes to aggregate all of its end  
17 users' originating local traffic to a single location in a local calling area where  
18 such traffic will be delivered to Sprint. In the case of Lake City, BellSouth  
19 would transport the local traffic originated by all BellSouth customers in the  
20 Lake City local calling area to a single location in that calling area. This single  
21 location, where BellSouth aggregates its customers' local traffic, is not a Point  
22 of Interconnection as defined by the FCC. BellSouth, therefore, is using the  
23 term Virtual Point of Interconnection ("VPOI") to describe this central  
24 location. Sprint can pick up all local traffic originated by BellSouth end users  
25 in the Lake City local calling area at a single location, rather than having to



1 pick up the traffic at each individual office. Sprint, however, is not required to  
2 pick up the traffic at that point; if it chooses it can pick up the traffic at  
3 individual end offices instead. Again, Sprint can pickup this traffic wherever it  
4 wants, as long as it is financially responsible for doing so.

5

6 Q. PLEASE EXPLAIN IN MORE DETAIL WHAT YOU ARE REFERRING TO  
7 AS A VIRTUAL POINT OF INTERCONNECTION.

8

9 A. The VPOI is the Point of Interconnection specified by BellSouth for delivery  
10 of BellSouth originated traffic to Sprint. Sprint would pay BellSouth the  
11 TELRIC rates for Interoffice Dedicated Transport and associated multiplexing,  
12 as set forth in the Interconnection Agreement, for BellSouth to transport local  
13 traffic and Internet traffic over BellSouth facilities from the VPOI to the POI  
14 designated by Sprint. The Interoffice Dedicated Transport mileage will be the  
15 airline mileage between the Vertical and Horizontal (V&H) coordinates of the  
16 VPOI and the Sprint POI. In addition, Sprint will compensate BellSouth for all  
17 associated multiplexing.

18

19 Q. WOULD SPRINT'S ABILITY TO COMPETE BE HAMPERED BY  
20 SPRINT'S INABILITY TO OBTAIN FREE FACILITIES FROM  
21 BELLSOUTH?

22

23 A. Absolutely not. First, Sprint does not have to build or purchase  
24 interconnection facilities to areas that Sprint does not plan to serve. If Sprint  
25 does not intend to serve any customers in a particular area, its ability to

1 compete cannot be hampered.

2

3 Second, in areas where Sprint does intend to serve customers, BellSouth is not  
4 requiring Sprint to build facilities throughout the area. Sprint can build  
5 facilities to a single point in each LATA and then purchase whatever facilities  
6 it needs from BellSouth or from another carrier in order to reach individual  
7 local calling areas that Sprint wants to serve.

8

9 Q. WHAT IS BELLSOUTH ASKING THIS COMMISSION TO DO WITH  
10 REGARD TO ISSUE NO. 8?

11

12 A. BellSouth requests this Commission to find that Sprint is required to bear the  
13 cost of facilities that BellSouth may be required to install, on Sprint's behalf, in  
14 order to connect from a BellSouth local calling area to Sprint's POI located  
15 outside that local calling area. I believe this to be an equitable arrangement for  
16 both parties.

17

18 ***Issue No. 9: Should the parties' Agreement contain language providing Sprint with***  
19 ***the ability to transport multi-jurisdictional traffic over a single trunk group,***  
20 ***including an access trunk group?***

21

22 Q. PLEASE BRIEFLY EXPLAIN BELLSOUTH'S UNDERSTANDING OF  
23 THIS ISSUE.

24

25 A. BellSouth believes that there are actually two distinct and separate issues. The

1 first part of this issue appears to be that Sprint is asking for all 00- calls  
2 destined to Sprint to be routed by BellSouth over switched access trunks, and  
3 for BellSouth to recognize, for reciprocal compensation purposes, that a  
4 portion of the traffic over those trunks is actually local traffic.

5

6 Q. PLEASE COMMENT ON SPRINT'S REQUEST THAT NOT ALL  
7 OPERATOR SERVICE TRAFFIC (00-) ROUTED OVER ACCESS  
8 TRUNKS BE CLASSIFIED AS ACCESS TRAFFIC.

9

10 A. Operator Service (00-) traffic is a standard, accepted and well understood  
11 dialing pattern that switches traffic to Sprint, the interexchange carrier  
12 ("IXC"), for its use in providing operator services. Traffic using this dialing  
13 pattern is completed to the IXC over switched access facilities and is billed at  
14 switched access rates. Currently, when BellSouth end users who are  
15 presubscribed to Sprint the IXC for long distance service dial 00-, the call is  
16 sent forward to Sprint the IXC's switched access Feature Group D ("FGD")  
17 trunks. However, Sprint is now requesting that BellSouth allocate the billing  
18 for the 00- generated minutes between switched access and local, because  
19 Sprint apparently intends to use 00- for conventional long distance operator  
20 services, as well as for various local services through 00- access.

21

22 Q. WHAT IS BELL SOUTH'S POSITION ON THIS PART OF THE ISSUE?

23

24 A. 00- access is offered only as a dialing arrangement under Feature Group D  
25 access. It allows a customer to reach the operator of the carrier to which the

1 customer is presubscribed. There is no prohibition on carriers using access  
2 service to provide local service. The carrier simply pays the price for access  
3 service. The prices for local interconnection are available only to those carriers  
4 who are a customer's local service provider or who provide a significant  
5 amount of local exchange service in addition to exchange access service. The  
6 public policy reason for this is to encourage local competition. Sprint is  
7 providing neither of these services but wants the lower prices, as well as  
8 reciprocal compensation revenues, despite the fact that it is not performing the  
9 functions that the lower prices are meant to encourage.

10

11 BellSouth is also concerned that Sprint's requested arrangement will result in  
12 arguments as to whether a given 00- call is local or interstate in nature. For  
13 example, Sprint could assert that the call is terminated once its operator  
14 answers the call even though the operator forwards the call on to some other  
15 destination for completion. For this reason, BellSouth urges the Commission  
16 to deny Sprint's request, with regard to this portion of Issue 9.

17

18 Q. PLEASE EXPLAIN BELLSOUTH'S UNDERSTANDING OF THE  
19 SECOND PART OF THIS ISSUE.

20

21 A. Sprint is asking that BellSouth, in lieu of establishing a reciprocal trunk group,  
22 place local traffic that originates from a BellSouth end user who is  
23 presubscribed to Sprint onto Sprint the IXC's direct end office switched access  
24 Feature Group D trunks.

25

1 Q. DOES SPRINT'S REQUEST APPEAR TO BE TECHNICALLY FEASIBLE?

2

3 A. BellSouth is continuing to explore this portion of Sprint's request. The  
4 technical experts of Sprint and BellSouth are working together to determine the  
5 technical feasibility. BellSouth has determined that existing access service  
6 arrangements do not permit Sprint to receive the service it has requested. If  
7 this service is technically feasible, and if this Commission determines that  
8 BellSouth must offer the service, Sprint should bear the cost of the service. On  
9 the surface, Sprint's request appears to be simple and straightforward. Further  
10 investigation, however, has shown the request, at least as BellSouth  
11 understands it, to be quite complex.

12

13 Q. WHY DO YOU SAY SPRINT'S REQUEST IS COMPLEX?

14

15 A. First, there are numerous technical points regarding Sprint's request that  
16 BellSouth continues to investigate. BellSouth needs to ensure that the request  
17 is fully and sufficiently defined in terms of Sprint's expectations for traffic  
18 originating from BellSouth's end users, traffic terminating to BellSouth's end  
19 users, as well as transit traffic. Transit traffic is local traffic that originates and  
20 terminates between end users that are not BellSouth's customers, but that  
21 BellSouth handles on a tandem switching basis. As presented, the request  
22 appears to relate only to traffic originating from BellSouth.

23

24 In addition, for a long distance call originating from a BellSouth end user that  
25 is presubscribed to Sprint the IXC, BellSouth routes the long distance call to

1 Sprint's Switched Access trunks. To implement Sprint's proposal, BellSouth's  
2 routing process will most likely need to be manually altered to analyze all  
3 intraLATA NXX codes. The current call routing instructions are issued in  
4 compliance with the industry standard, Telecordia defined, Routing Rules for a  
5 Hierarchical Network. Industry standards require a "tandem company", of  
6 which BellSouth is naturally one, to route calls in this manner.

7  
8 It appears that if Sprint's request can be implemented, it will require  
9 "exception routing" to be performed on a non-standard, manually developed  
10 basis for each BellSouth end office and tandem, in order to circumvent  
11 established Routing Rules for Sprint NXX codes to Sprint IXC switched access  
12 trunks. BellSouth anticipates that the routing of subsequent Sprint NXX codes  
13 will also require updating on a manual basis. For BellSouth to determine  
14 which codes are assigned to Sprint requires a non-standard look-up of all codes  
15 to segregate those assigned to Sprint. This look-up does not occur today and  
16 would be unique to Sprint. It is important to note that, if BellSouth were to  
17 provide this capability to Sprint, it would be required to also offer the same  
18 capability to all carriers.

19

20 Q. WHAT IS BELLSOUTH REQUESTING OF THE COMMISSION ON THIS  
21 PORTION OF ISSUE NO. 9?

22

23 A. This issue is very complex from both a policy and a technical perspective. The  
24 technical experts of both companies have met and will continue to meet in an  
25 effort to more precisely define the details of Sprint's request. BellSouth hopes

1 to have a more complete understanding of the ramifications of this issue prior  
2 to filing its rebuttal testimony in this case.

3

4 ***Issue No. 10: Should Internet Service Provider ('ISP') –bound traffic be treated as***  
5 ***local traffic for purposes of reciprocal compensation in the new Sprint/BellSouth***  
6 ***interconnection agreement, or should it be otherwise compensated?***

7

8 Q. WHAT IS BELLSOUTH'S UNDERSTANDING OF THIS ISSUE?

9

10 A. BellSouth's position on this issue is that ISP-bound traffic is not local traffic  
11 eligible for reciprocal compensation, and should not be otherwise  
12 compensated. Our position has been presented to this Commission at length in  
13 three recent arbitration proceedings between BellSouth and ITC^DeltaCom,  
14 Intermedia and Global NAPS. As stated in my direct testimony, BellSouth  
15 agrees to apply the Commission's Order in the Intermedia Arbitration  
16 proceeding (Order No. PSC-00-1519-FOF-TP, dated August 22, 2000) to this  
17 case, as an interim mechanism. BellSouth, however, contends that the interim  
18 mechanism must be subject to true-up, pending an order from the FCC on  
19 inter-carrier compensation for ISP-bound traffic. BellSouth agrees to this as a  
20 conciliatory offer that avoids requiring the Commission to rehear this issue.  
21 BellSouth reserves the right, however, to appeal or seek judicial review on this  
22 issue.

23

24

25

1 Q. IF THIS COMMISSION DETERMINES THAT COMPENSATION  
2 SHOULD BE PAID FOR ISP-BOUND TRAFFIC, WHAT SHOULD BE  
3 THE RATES?

4  
5 A. BellSouth's position is that a minute-of-use (MOU) compensation  
6 arrangement should not be applied to ISP-bound traffic. However, if this  
7 Commission considers an MOU compensation arrangement, at a minimum it  
8 should consider the characteristics of ISP calls as distinguished from local  
9 calls, as this Commission found in its order in the Global NAPs arbitration  
10 with BellSouth (Order No. PSC-00-1680-FPF-TP, dated September 19, 2000).

11  
12 Local exchange rates do not take into account the calling characteristics of, nor  
13 do they compensate for access service such as ISP-bound traffic or traffic sent  
14 to IXCs. Access service characteristics were never considered when local rates  
15 were established. ISP-bound traffic bears little resemblance to local traffic.  
16 Indeed, for BellSouth, the typical call duration for a local call is between three  
17 and four minutes. On the other hand, an Internet call session generally lasts  
18 much longer than three to four minutes and may last several hours. As  
19 additional evidence, attached to my testimony as Exhibit JAR-2 is a Report of  
20 the NARUC Internet Working Group (March, 1998), and two supporting  
21 Bellcore studies which state that an average ISP-bound call is 20 minutes, as  
22 opposed to an average voice call of three minutes.

23

24

25



1 Q. HOW DO COSTS SUPPORTING COMMISSION APPROVED  
2 RECIPROCAL COMPENSATION RATES FOR LOCAL CALLS  
3 COMPARE TO COSTS FOR ISP CALLS?  
4

5 A. Costs per minute for ISP calls are lower than such costs for local calls. The  
6 cost for local calls is a combination of call set-up cost and a per minute rate. In  
7 the cost support for reciprocal compensation, the cost of call set-up is spread  
8 over the duration of the local call, based on the average duration of  
9 approximately 3 minutes. Assuming that the average duration of ISP calls is  
10 20-25 minutes (versus 3-4 minutes for an average local call), using the same  
11 reciprocal compensation rate for local and ISP calls means that call set up cost  
12 would be over recovered. Therefore, any per minute reciprocal compensation  
13 rate, if applied to ISP-bound traffic, should be a lower per minute rate to  
14 account for the longer call duration.  
15

16 Q. WHAT IMPACT WOULD THE DIFFERENCE IN HOLDING TIMES  
17 HAVE ON THE COMMISSION'S PREVIOUSLY APPROVED RATES?  
18

19 A. The Commission's previously approved reciprocal compensation rates are  
20 clearly overstated for a carrier that is predominately, if not entirely, serving  
21 ISPs. The effect is reflected most in the costs for end office switching. The  
22 Commission approved a rate of \$.002 per minute to recover end office  
23 switching. The cost study for that rate included call setup costs to be recovered  
24 on a per minute of use basis; the more minutes that a call takes, the lower the  
25 per minute setup cost. The cost of \$.002 per minute was based on local calls



1 A. In order for Sprint to appropriately charge tandem rate elements, Sprint must  
2 demonstrate to the Commission that: 1) its switches serve a comparable  
3 geographic area to that served by BellSouth's tandem switches; and 2) its  
4 switches perform local tandem functions. Sprint should only be compensated  
5 for the functions that it actually provides. Sprint is only entitled to charge for  
6 tandem switching on the local calls that are, in fact, switched by the tandem.  
7 Sprint is not entitled to tandem switching compensation on local calls not  
8 switched by a local tandem, even if Sprint has a local tandem. Finally, the  
9 current rate structure for common transport is appropriate and the Commission  
10 should reject Sprint's proposed structure.

11

12 Q. PLEASE DESCRIBE SPRINT'S POSITION ON THIS ISSUE.

13

14 A. Sprint's position is that when its local switch covers a geographic area  
15 comparable to BellSouth's tandem, Sprint should always receive the rate for  
16 reciprocal compensation. Sprint totally disregards the FCC's other criteria for  
17 qualifying for tandem switching compensation – that Sprint's switch actually  
18 performs a tandem function on a given call.

19

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

21

22 A. The FCC posed two requirements before an ALEC is entitled to compensation  
23 at both the end office and tandem-switching rate for any particular local call.  
24 The switch involved has to serve the appropriate geographic area, and it has to  
25 perform tandem switching functions for local calls. BellSouth notes that in

1 Section 51.711(a)(1) of its Local Competition Order, the FCC states that  
2 “symmetrical rates are rates that a carrier other than an incumbent LEC  
3 assesses upon an incumbent LEC for transport and termination of local  
4 telecommunications traffic equal to those that the incumbent LEC assesses  
5 upon the other carrier for the same services.” (Emphasis added) Again, in  
6 Section 51.711(a)(3), the FCC states that “[w]here the switch of a carrier other  
7 than an incumbent LEC serves a geographic area comparable to the area served  
8 by the incumbent LEC’s tandem switch, the appropriate rate for the carrier  
9 other than an incumbent LEC is the incumbent LEC’s tandem interconnection  
10 rate.”

11  
12 The FCC recognized that the ALECs might not use the same network  
13 architecture that BellSouth or any other incumbent carrier uses. That concern,  
14 however, is not an issue in this case. In order to ensure that the ALECs would  
15 receive the equivalent of a tandem-switching rate, if it were warranted, the  
16 FCC directed state commissions to do two things. First, the FCC directed state  
17 commissions to “consider whether new technologies (e.g., fiber ring or  
18 wireless network) performed functions similar to those performed by an  
19 incumbent LEC’s tandem switch and thus whether some or all calls  
20 terminating on the new entrant’s network should be priced the same as the sum  
21 of transport and termination via the incumbent LEC’s tandem switch.” (Local  
22 Competition Order ¶ 1090) (Emphasis added). Further, the FCC stated that  
23 “[w]here the interconnecting carrier’s switch serves a geographic area  
24 comparable to that served by the incumbent LEC’s tandem switch, the  
25

1 appropriate proxy for the interconnecting carrier's additional costs is the LEC  
2 tandem interconnection rate." Id.

3

4 Therefore, pursuant to Section 51.711, before charging BellSouth the tandem  
5 switching rate, Sprint must show not only that its switch covers the same  
6 geographic area as BellSouth's tandem switch, but that Sprint's switch is  
7 providing the same services as BellSouth's tandem switch for local traffic.

8

9 Q. HAS THE FCC DEFINED WHAT FUNCTIONS A TANDEM SWITCH  
10 MUST PROVIDE?

11

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

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

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

19 (iii) The basic switch trunk function of connecting trunks to trunks;  
20 and

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

25

1 Q. HOW DOES THE FCC'S DEFINITION OF TANDEM SWITCHING APPLY  
2 TO THIS ISSUE?

3

4 A. To receive reciprocal compensation for tandem switching, a carrier must be  
5 performing all of the functions described in the FCC's definition of tandem  
6 switching. It is not enough that the switch is simply "capable" of providing the  
7 function of a tandem switch, it has to be providing those functions for local  
8 calls. This is true, if for no other reason, because the reciprocal compensation  
9 rate for tandem switching is the same as the UNE rate for tandem switching.  
10 That rate recovers the cost of performing, for local calls, the functions  
11 described in the FCC's definition. Otherwise, the carrier would simply be  
12 receiving a windfall.

13

14 If Sprint's switches are only switching traffic for end users directly connected  
15 to that switch, then that is an end office switching function, not a tandem  
16 switching function. As stated in the FCC's definition, to provide tandem  
17 switching, Sprint's switch must connect trunks terminated in one end office  
18 switch to trunks terminated in another end office switch. Based on Sprint's  
19 testimony, Sprint does not claim that its switches provide that function. If,  
20 instead, Sprint's switches are connecting trunks to end users' lines, the local  
21 end office switching rate fully compensates Sprint for performing this function.

22

23 Q. WHAT OTHER SUPPORT DO YOU HAVE THAT CONTRADICTS  
24 SPRINT'S CLAIM THAT THE ONLY CRITERIA FOR DETERMINING

25

1 ELIGIBILITY FOR TANDEM SWITCHING CHARGES IS THE  
2 GEOGRAPHIC AREA SERVED?

3

4 A. As I have stated above, the FCC has a two-part test to determine if a carrier is  
5 eligible for tandem switching: 1) an ALEC's switch must serve the same  
6 geographic area as the ILEC's tandem switch; and 2) an ALEC's switch must  
7 perform tandem switching functions. This is not just BellSouth's view. In a  
8 case involving MCI (MCI Telecommunication Corp. v. Illinois Bell  
9 Telephone, 1999 U.S. Dist. LEXIS 11418 (N.D. Ill. June 22, 1999)), the U.S.  
10 District Court specifically determined that the test required by the FCC's rule  
11 is a functionality/geography test. In its Order, the Court stated:

12 *In deciding whether MCI was entitled to the tandem interconnection*  
13 *rate, the ICC applied a test promulgated by the FCC to determine*  
14 *whether MCI's single switch in Bensonville, Illinois, performed*  
15 *functions similar to, and served a geographical area comparable with,*  
16 *an Ameritech tandem switch.<sup>9</sup> (emphasis added)*

17

18 <sup>9</sup>*MCI contends the Supreme Court's decision in IUB affects resolution*  
19 *of the tandem interconnection rate dispute. It does not. IUB upheld the*  
20 *FCC's pricing regulations, including the 'functionality/geography' test.*  
21 *119 S. Ct. at 733. MCI admits that the ICC used this test. (Pl. Br. At*  
22 *24.) Nevertheless, in its supplemental brief, MCI recharacterizes its*  
23 *attack on the ICC decision, contending the ICC applied the wrong test.*  
24 *(Pl. Supp. Br. At 7-8.) But there is no real dispute that the ICC applied*  
25 *the functionality/geography test; the dispute centers around whether*

1           *the ICC reached the proper conclusion under that test. (Emphasis*  
2           *added)*

3

4           Indeed, the Ninth Circuit Court of Appeals viewed the rule in the same way,  
5           finding that:

6                     *[t]he Commission properly considered whether MFS's switch performs*  
7                     *similar functions and serves a geographic area comparable to US*  
8                     *West's tandem switch. (U.S. West Communications v. MFS Intelenet,*  
9                     *Inc. et. al., 193 F. 3d 1112, 1124)*

10

11 Q.       DOES SPRINT'S SWITCH SERVE A GEOGRAPHIC AREA  
12       COMPARABLE TO BELLSOUTH'S TANDEM?

13

14 A.       Without additional information, it is not possible to determine whether Sprint's  
15       switch actually serves a geographic area comparable to BellSouth's tandem.  
16       Although Sprint's petition tends to suggest that Sprint's switch covers an area  
17       comparable to BellSouth's tandem switches, Sprint offers absolutely no  
18       evidence to support such a position. Even if one were to assume that Sprint's  
19       switch covers a geographic area similar to BellSouth's tandem, unless Sprint's  
20       switch is performing tandem functions, which the FCC has indicated is one of  
21       the required criteria that an ALEC's switch must meet, Sprint is not eligible for  
22       the tandem switching element of reciprocal compensation.

23

24       To illustrate the importance of this point, assume Sprint has ten customers in  
25       Orlando, all of which are located in a single office complex next door to



1 Sprint's Orlando switch. Under no set of circumstances could Sprint seriously  
2 argue that, in such a case, its switch serves a comparable geographic area to  
3 BellSouth's switch. See Decision 99-09-069, In re: Petition of Pacific Bell for  
4 Arbitration of an Interconnection Agreement with MFS/WorldCom,  
5 Application 99-03-047, 9/16/99, at 15-16 (finding "unpersuasive" MFS's  
6 showing that its switch served a comparable geographic area when many of  
7 MFS's ISP customers were actually collocated with MFS's switch).

8

9 Q. HAS THIS COMMISSION PREVIOUSLY RULED ON THE ISSUE OF  
10 APPLICABILITY OF RECIPROCAL COMPENSATION TO TANDEM  
11 SWITCHING?

12

13 A. Yes. This issue was addressed by this Commission recently in its August 22,  
14 2000 Order No. PSC-00-1519-FOF-TP in Docket No. 991854-TP  
15 (Intermedia/BellSouth Arbitration). At page 12, the Order states:

16 *In evaluating this issue, we are presented with two criteria set forth in*  
17 *FCC 96-325, ¶1090, for determining whether symmetrical reciprocal*  
18 *compensation at the tandem rate is appropriate: similar functionality*  
19 *and comparable geographic areas.*

20 Further, at page 14, the Order concludes:

21 *We find the evidence of record insufficient to determine if the second,*  
22 *geographic criterion is met. We are unable to reasonably determine if*  
23 *Intermedia is actually serving the areas they have designated as local*  
24 *calling areas. As such, we are unable to determine that Intermedia*

25

1           *should be compensated at the tandem rate based on geographic*  
2           *coverage.*

3  
4           *As mentioned above, neither do we find sufficient evidence in the*  
5           *record indicating that Intermedia's switch is performing similar*  
6           *functions to that of a tandem switch. Therefore, we are unable to find*  
7           *that Intermedia should be compensated at the tandem rate based on*  
8           *similar functionality as well. This is consistent with past decisions of*  
9           *this Commission.*

10

11           Earlier, the Florida Public Service Commission, in Order No. PSC-97-0294-  
12           FOF-TP, Docket 961230-TP, dated March 14, 1997, concluded at pages 10-11:

13           *We find that the Act does not intend for carriers such as MCI to be*  
14           *compensated for a function they do not perform. Even though MCI*  
15           *argues that its network performs 'equivalent functionalities' as Sprint*  
16           *in terminating a call, MCI has not proven that it actually deploys both*  
17           *tandem and end office switches in its network. If these functions are*  
18           *not actually performed, then there cannot be a cost and a charge*  
19           *associated with them. Upon consideration, we therefore conclude that*  
20           *MCI is not entitled to compensation for transport and tandem switching*  
21           *unless it actually performs each function.*

22

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

25

1           *The evidence in the record does not support MFS' position that its*  
2           *switch provides the transport element; and the Act does not*  
3           *contemplate that the compensation for transporting and terminating*  
4           *local traffic should be symmetrical when one party does not actually*  
5           *use the network facility for which it seeks compensation. Accordingly,*  
6           *we hold that MFS should not charge Sprint for transport because MFS*  
7           *does not actually perform this function.*

8           Reinstatement of the FCC's rules previously vacated by the Eighth Circuit  
9           Court of Appeals does not alter the correctness of this Commission's  
10          conclusions.

11

12   Q.     WHAT DOES BELLSOUTH REQUEST THE COMMISSION DO?

13

14   A.     Absent evidence that Sprint's switches actually serve the same geographic area  
15          as BellSouth's tandems, and absent evidence that Sprint's switches do perform  
16          the functions of a tandem switch, BellSouth requests that this Commission  
17          determine that Sprint is only entitled, where it provides local switching, to the  
18          end office switching rate. BellSouth is not disputing Sprint's right to  
19          compensation at the tandem rate where the facts support such a conclusion. In  
20          this proceeding, however, Sprint is seeking a decision that allows it to be  
21          compensated for functionality it does not provide.

22

23                   ***Issue No. 12: Should voice-over-Internet ('IP Telephony') traffic be***  
24                   ***included in the definition of 'Switched Access Traffic'?***

25

1 Q. WHAT IS BELLSOUTH'S UNDERSTANDING OF ISSUE 12?

2

3 A. BellSouth understands this issue to be whether voice-over-Internet ("IP  
4 telephony") traffic should be included in the definition of "switched access  
5 traffic", which would obligate Sprint to pay switched access charges for such  
6 calls.

7

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

9

10 A. BellSouth believes that the jurisdiction of a call is determined by the end points  
11 of the call, not the technology used to transport the call. Therefore, phone-to-  
12 phone calls using IP telephony, which originate and terminate in different local  
13 calling areas, are subject to switched access today. Under no circumstance  
14 would such calls be subject to reciprocal compensation.

15

16 Q. DO YOU AGREE WITH SPRINT THAT THIS ARBITRATION  
17 PROCEEDING IS NOT THE APPROPRIATE FORUM TO ADDRESS THE  
18 QUESTION OF WHETHER IP TELEPHONY SHOULD BE INCLUDED IN  
19 THE DEFINITION OF SWITCHED ACCESS AND, THEREFORE,  
20 SUBJECT TO ACCESS CHARGES OR OTHER FORMS OF  
21 TRADITIONAL TELECOMMUNICATIONS REGULATIONS?

22

23 A. With respect to long distance phone-to-phone IP telephony, there is no public  
24 policy question to address. Access charges, not reciprocal compensation, apply  
25 to long distance telecommunications. As with the issue of reciprocal

1 compensation for ISP-bound traffic, the IP telephony issue is one that primarily  
2 should be addressed by the FCC. Although IP telephony should not be an  
3 issue in an arbitration of a local interconnection agreement, this Commission  
4 can address the questions regarding inter-carrier compensation for intrastate,  
5 interLATA, and local traffic.

6

7 Q. WHAT IS INTERNET PROTOCOL (“IP”) TELEPHONY?

8

9 A. IP telephony is telecommunications service that is provided using Internet  
10 Protocol for one or more segments of the call. IP telephony is, in very simple  
11 and basic terms, a mode or method of completing a telephone call. The word  
12 “Internet” in Internet Protocol telephony refers to the name of the protocol; it  
13 does not mean that the service uses the World Wide Web. Currently, there are  
14 various technologies used to transmit telephone calls, of which the most  
15 common are analog and digital. In the case of IP telephony originated from a  
16 traditional telephone set, the local carrier first converts the voice call from  
17 analog to digital. The digital call is sent to a gateway that takes the digital  
18 voice signal and converts, or packages, it into data packets. These data  
19 packets are like envelopes with addresses which “carry” the signal across a  
20 network until they reach their destination, which is known by the address on  
21 the data packet, or envelope. This destination is another gateway, which  
22 reassembles the packets and converts the signal to analog, or a plain old  
23 telephone call, to be terminated on the called party’s local telephone  
24 company’s lines.

25

1 To explain it another way, Phone-to-Phone IP telephony is where an end user  
2 customer uses a traditional telephone set to call another traditional telephone  
3 set using IP telephony. The fact that IP technology is used, at least in part, to  
4 complete the call is transparent to the end user. Phone-to-Phone IP telephony  
5 is identical, by all relevant regulatory and legal measures, to any other basic  
6 telecommunications service, and should not be confused with calls to the  
7 Internet through an ISP. Characteristics of Phone-to-Phone IP telephony are:

- 8 • IP telephony provider gives end users traditional dial tone (not modem  
9 buzz);
- 10 • End user does not call modem bank;
- 11 • Uses traditional telephone sets (vs. computer);
- 12 • Call routes using telephone numbers (not IP addresses);
- 13 • Basic telecommunications (not enhanced);
- 14 • IP Telephone providers are telephone carriers (not ISPs).

15 Phone-to-Phone IP telephony should not be confused with Computer-to-  
16 Computer IP telephony, where computer users use the Internet to provide  
17 telecommunications to themselves.

18

19 Q. WHAT IS INTERNET PROTOCOL?

20

21 A. Technically speaking, Internet protocol, or any other protocol, is an agreed  
22 upon set of technical operating specifications for managing and interconnecting  
23 networks. In the above example, I referred to the gateways that convert the  
24 digital carrier voice signal into data packets and then from data packets back to  
25 digital carrier. The Internet Protocol is the language, or signaling, that these

1 gateways use to talk to each other. It has nothing to do with the transmission  
2 medium (wire, fiber, microwave, etc.) that carries the data packets between the  
3 gateways, but rather the gateways, or switches that are found on either end of  
4 that medium.

5

6 Q. SHOULD IP TELEPHONY BE DEFINED AS SWITCHED ACCESS?

7

8 A. It depends. Calls utilizing Internet Protocol that originate and terminate in the  
9 same local calling area should be treated like any other local call. BellSouth's  
10 position is, if such traffic is truly local in nature, then it is not subject to  
11 switched access charges. Applicable switched access charges, however, should  
12 apply to a long distance telephone call regardless of whether Internet Protocol  
13 is used for a portion of the call.

14

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

17

18 A. Even though IP telephony and ISP-bound traffic both have the word "Internet"  
19 in their name, they are completely different services and should not be  
20 confused. The FCC's April 10, 1998 Report to Congress states: "The record...  
21 suggests... 'phone-to-phone IP telephony' services lack the characteristics that  
22 would render them 'information services' within the meaning of the statute,  
23 and instead bear the characteristics of 'telecommunication services'." Further,  
24 Section 3 of the Telecommunications Act of 1996 defines  
25 "telecommunications" as the "transmission, between or among points specified

1 by the user, of information of the user's choosing, without change in the form  
2 or content of the information as sent and received." Thus, IP telephony is  
3 telecommunications service, not information or enhanced service.

4

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

7

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

24

25



1 Q. WHY HAS BELLSOUTH INCLUDED AN EXCEPTION FOR LONG  
2 DISTANCE IP TELEPHONY IN ITS PROPOSED DEFINITION OF LOCAL  
3 TRAFFIC IN THE NEGOTIATIONS WITH SPRINT?

4

5 A. In seeking to include a sentence addressing IP telephony, BellSouth is simply  
6 attempting to be clear in the agreement that switched access charges, not  
7 reciprocal compensation, apply to phone-to-phone long distance calls that are  
8 transmitted using IP telephony. From the end user's perspective, and, indeed  
9 from the interexchange carrier's ("IXC's") perspective, such calls are  
10 indistinguishable from regular circuit switched long distance calls. The IXC  
11 may use IP technology to transport all, or some portion, of the long distance  
12 call, but that does not change the fact that it is a long distance call. Even if the  
13 Commission is unable to decide whether access charges apply, it is clear that  
14 reciprocal compensation does not.

15

16 Consider the example of a call from Jacksonville to Atlanta sent over Sprint's  
17 circuit switched network. Certainly, this call is a long distance call, and access  
18 charges would apply. If Sprint, however, transported that same call using IP  
19 telephony, Sprint's position is that the call from Jacksonville to Atlanta is a  
20 local call and that reciprocal compensation applies. Surely, Sprint's choice of  
21 transmission medium does not transform a long distance call into a local call.

22

23 Due to the increasing use of IP technology mixed with traditional analog and  
24 digital technology to transport voice long distance telephone calls, BellSouth's

25

1 position is that it is important to specify in the agreement that such traffic is not  
2 local traffic, the same as any other long distance traffic is not local traffic.

3

4 Q. HAS INTERNET PROTOCOL TELEPHONY BEEN ADDRESSED BY THE  
5 FCC?

6

7 A. Yes. In addition to the Report to Congress mentioned earlier, in ¶104 of FCC  
8 Docket No. 96-149, the FCC states “[w]e further conclude that, subject to the  
9 exceptions discussed below, protocol processing services constitute  
10 information services under the 1996 Act.” In ¶106, the FCC describes these  
11 exceptions.

12 . . . we have treated three categories of protocol processing services as  
13 basic services, rather than enhanced services, because they result in no  
14 net protocol conversion to the end-user. These categories include  
15 protocol processing: 1) involving communications between an end-user  
16 and the network itself. . . rather than between or among users; 2) in  
17 connection with the introduction of a new basic network technology. . . ;  
18 and 3) involving internetworking (conversions taking place solely  
19 within the carrier’s network to facilitate provision of a basic network  
20 service, that result in no net conversion to the end user. (Emphasis  
21 added.)

22

23 In the issue at hand, phone-to-phone IP telephony (exception 3 above), a voice  
24 call made at the originating end that ends up a voice call at the terminating end,  
25 is a “no net” protocol conversion and, therefore, is not an information service,

1 in accordance with the above FCC exceptions. Phone-to-phone Internet  
2 Protocol telephony has no net protocol conversion and should be treated as a  
3 telecommunications service.

4

5 Q. WHAT IS BELLSOUTH ASKING THIS COMMISSION TO DECIDE ON  
6 THIS ISSUE?

7

8 A. BellSouth agrees that the interstate portion of this issue should not be included  
9 in an arbitration proceeding on local interconnection. BellSouth urges the  
10 Commission to defer decision of whether IP telephony is switched access until  
11 the FCC makes a decision on the interstate issue. BellSouth, however, also  
12 urges the Commission to find, on this issue, that regardless of the FCC's  
13 decision on switched access, that reciprocal compensation is not due, under  
14 any circumstance, for non-local IP telephony transmitted traffic.

15

16 If the Commission determines that it must decide on contract language at this  
17 time, BellSouth requests that this Commission adopt the following language:

18 Switched Access Traffic. Switched Access Traffic is described in the  
19 BellSouth Access Tariff. Additionally, any Public Switched Telephone  
20 Network interexchange telecommunications traffic, regardless of  
21 transport protocol method, where the originating and terminating  
22 points, end-to-end points, are in different LATAs, or are in the same  
23 LATA and the Parties' Switched Access services are used for the  
24 origination or termination of the call, shall be considered Switched  
25 Access Traffic. Irrespective of transport protocol method used, a call

1                   that originates in one LATA and terminates in another LATA (i.e., the  
2                   end-to-end points of the call) shall not be compensated as local.

3

4 ***Issue No. 23: Should the Agreement contain a provision stating that if BellSouth***  
5 ***has provided its affiliate preferential treatment for products or services as***  
6 ***compared to the provision of those same products or services to Sprint, then***  
7 ***the applicable standard (i.e., benchmark or parity) will be replaced for that***  
8 ***month with the level of service provided to the BellSouth affiliate?***

9

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

11

12 A.    BellSouth believes that the retail analog is the appropriate analog for  
13        determining whether BellSouth provides service at parity to ALECs. Sprint  
14        seems to propose, inappropriately, that BellSouth's performance to its ALEC,  
15        if better than BellSouth's performance to its retail customers, serve as the basis  
16        from which parity should be measured. Moreover, under Sprint's proposal,  
17        some months the analog would be BellSouth's performance to its retail units,  
18        and some months it would be its performance to its ALEC. To make  
19        BellSouth's monthly standard a moving target is absurd and defeats the  
20        purpose of having self-effectuating, easily implemented performance standards  
21        in the first place.

22

23 Q.    HOW IS THE TERM AFFILIATE DEFINED IN THE ACT?

24

25 A.    The term "Affiliate" is defined in the Act as follows:

1 AFFILIATE - The term "affiliate" means a person that (directly or  
2 indirectly) owns or controls, is owned or controlled by, or is under  
3 common ownership or control with, another person. For purposes of  
4 this paragraph, the term "own" means to own an equity interest (or the  
5 equivalent thereof) of more than 10 percent. (47 U.S.C. 153(1))

6 This definition would apply under the Act for all purposes. The definition  
7 of affiliate in the Act, however, is irrelevant in Sprint's proposal. The real  
8 issue is the extent that affiliate performance is used to assess  
9 discrimination.

10

11 Q. SHOULD THIS COMMISSION ALTER A PERFORMANCE  
12 MEASUREMENT STANDARD IN A SPECIFIC MONTH IF BELL SOUTH  
13 PROVIDES SUPERIOR SERVICE TO ITS AFFILIATES FOR ANY  
14 PERFORMANCE MEASUREMENT?

15

16 A. Absolutely not. In the context of performance measurements and enforcement  
17 mechanisms, the only current BellSouth affiliate that could potentially be  
18 relevant to this discussion is BellSouth's ALEC, because it is the only affiliate  
19 that can provide local exchange services. Sprint's concern is at best  
20 hypothetical. Inclusion in this discussion of any other BellSouth affiliate, none  
21 of which offer local exchange service, would be inappropriate. Moreover,  
22 BellSouth has a legal obligation to provide non-discriminatory service to all  
23 ALECs, including its own.

24

25

1 Q. IS BELLSOUTH'S POSITION THAT PERFORMANCE SHOULD BE  
2 ASSESSED BASED ON RETAIL SERVICE OFFERINGS CONSISTENT  
3 WITH THE FCC'S RULINGS?

4

5 A. Yes. Although the FCC, has in some instances made mention of affiliates, all  
6 assessments made by the FCC have been based on the BOC's performance to  
7 its retail customers. The test that the FCC actually applied in the BA-NY  
8 application focused on Bell Atlantic's retail service offerings and not to  
9 offerings to an affiliate. In ¶ 68 of the Order, the FCC found that Bell Atlantic  
10 provided nondiscriminatory access to interconnection trunking because the  
11 trunking that it provides to CLECs "is equal in quality to the interconnection  
12 that Bell Atlantic provides to its own retail operations . . ." Likewise, the FCC  
13 found that Bell Atlantic was compliant with Checklist Item 6 (unbundled local  
14 switching) based upon a finding that "the features, functions and capabilities of  
15 the switch [provided to the CLEC] include the basic switching function as well  
16 as the same basic capabilities that are available to the incumbent LEC's  
17 customers." (¶ 343) Upon review of the BA-NY Order, it is clear that the  
18 analysis that was performed to determine whether a retail analog had been met  
19 was simply to compare the performance provided to the ALEC to the  
20 performance that Bell Atlantic provided to its retail customers. Thus, it is  
21 obvious that performance to affiliates played no role in the analysis.

22

23 With respect to services measured by benchmarks instead of retail analogs,  
24 Sprint's proposal is irrelevant. With benchmarks, the only relevant test is  
25 whether the predetermined benchmark is met. The benchmark does not change

1 from month to month, nor would the benchmark differ for ALECs and the  
2 BellSouth affiliate ALEC. Performance is measured and remedies are paid  
3 based on a constant benchmark.

4

5 Q. IF BELLSOUTH'S ALEC BEGINS PROVIDING SERVICE IN  
6 BELLSOUTH'S SERVICE AREA AT SOME POINT IN THE FUTURE,  
7 HOW SHOULD ITS PERFORMANCE BE USED?

8

9 A. As with all other ALECs, BellSouth will produce measurements for its ALEC,  
10 both individually and in the aggregate. In fact, BellSouth's ALEC will get the  
11 same treatment, use the same systems, receive the same measurements and be  
12 entitled to the same remedies as any other ALEC operating in BellSouth's  
13 service territory. In addition, the performance of the BellSouth ALEC will be  
14 included to develop the aggregate ALEC data used to determine performance  
15 for purposes of both Tier-2 and Tier-3. Further, BellSouth will provide to the  
16 Commission periodic performance results for its ALEC just as it does for any  
17 other ALEC operating in its territory. Thus, the Commission will have the  
18 opportunity to evaluate BellSouth's performance to its ALEC relative to all  
19 other ALECs. It would be more appropriate to address this issue if it becomes  
20 a problem, rather than unnecessarily complicate the plan to deal with a  
21 hypothetical occurrence.

22

23 Q. WHAT IS BELLSOUTH ASKING OF THIS COMMISSION WITH  
24 RESPECT TO ISSUE 23?

25

1 A. BellSouth is requesting that the Commission reject Sprint's proposal. The  
2 FCC has determined, and rightly so, that performance comparisons should be  
3 made to the service BellSouth provides its retail customers. There is no  
4 requirement, nor is there need for any, that BellSouth take one small aspect of  
5 "itself" (i.e., its CLEC) and create a separate standard based on performance to  
6 that affiliate.

7

8 ***Issue 26: Should the availability of BellSouth's VSEEM III remedies proposal to***  
9 ***Sprint, and the effective date of VSEEM III, be tied to the date that***  
10 ***BellSouth receives interLATA authority in Florida?***

11

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

13

14 A. BellSouth's position is that, because the FCC has identified the  
15 implementation of enforcement mechanisms and penalties to be a condition of  
16 271 relief, it would be inappropriate to implement such mechanisms prior to  
17 BellSouth's obtaining interLATA relief. The FCC's view of enforcement  
18 mechanisms and penalties is that such a plan would be an additional incentive  
19 to ensure that an ILEC continues to comply with the competitive checklist after  
20 interLATA relief is granted. However, the FCC has never indicated that  
21 enforcement mechanisms and penalties are either necessary or required to  
22 ensure that BellSouth meets its obligations under Section 251 of the Act.

23

24 Therefore, because performance penalties serve no purpose until after  
25 interLATA 271 relief is granted, BellSouth recommends that its VSEEM III



1 proposal take effect when the plan becomes necessary to serve its purpose; i.e.,  
2 after BellSouth receives interLATA authority. Under BellSouth's proposal,  
3 each Florida ALEC that has incorporated the plan into its interconnection  
4 agreement will be eligible for payment of penalties by BellSouth at such time  
5 as BellSouth obtains interLATA relief in Florida.

6

7 Q. HAS BELLSOUTH AGREED TO A DIFFERENT IMPLEMENTATION  
8 SCHEDULE FOR TIER – 1 PENALTIES WITH SOME ALECS?

9

10 A. Yes. As part of an overall contract negotiation and settlement process,  
11 BellSouth has included a different implementation schedule in its  
12 interconnection agreement with certain ALECs. This negotiated arrangement  
13 was part of a settlement of numerous arbitration issues and is not part of  
14 BellSouth's standard VEEMS III offering. Basically, the difference in this  
15 negotiated agreement as compared to BellSouth's standard VSEEMS III  
16 proposal is that Tier I damages will be payable to an ALEC in all states in  
17 which the ALEC has an interconnection agreement with BellSouth once long  
18 distance relief is granted in any state. Thus, any ALEC in Florida that has  
19 incorporated the negotiated plan into its interconnection agreements will be  
20 eligible to receive Tier I damages once BellSouth receives long distance  
21 authority in any state. As with BellSouth's standard VSEEM III proposal,  
22 Tier-2 and Tier-3 remedies would take effect in a particular state when  
23 BellSouth obtains interLATA relief in that state.

24

25 Q. IS IT APPROPRIATE FOR THE FPSC TO ORDER IMPLEMENTATION

1 OF A SELF-EXECUTING REMEDY PLAN WITHOUT BELLSOUTH'S  
2 CONSENT?

3

4 A. Because enforcement mechanisms are not required by the Act nor by any FCC  
5 rule, BellSouth does not think it is appropriate for a state commission to order  
6 BellSouth to implement a self-executing remedy plan without BellSouth's  
7 consent. To the extent that any breach of contract issue should arise, there are  
8 perfectly adequate State law and Commission procedures available to address  
9 such situations. BellSouth's SQMs are fully enforceable through Commission  
10 complaints in the event of BellSouth's failure to meet such measurements.

11

12 Further, nothing in the Act requires a self-executing enforcement plan. The  
13 FCC has acknowledged as much in its orders. In its August 1996 Local  
14 Competition Order, the FCC notes that several carriers advocated performance  
15 penalties. *See Local Competition Order, 11 FCC Rcd at 15658 [¶ 305]*. The  
16 FCC did not adopt such performance penalties in the Local Competition Order.  
17 Instead, it acknowledged the wide variety of remedies available to an ALEC  
18 when it believes it has received discriminatory performance in violation of the  
19 Act; *see FCC's Local Competition Order ¶ 129, 11 FCC Rcd. at 15565*  
20 *(emphasizing the existence of sections 207 and 208 FCC complaints for*  
21 *damages, as well as actions under the antitrust laws, other statutes and*  
22 *common law)*; and "encourage[d]" the States only to adopt reporting  
23 requirements for ILECs. Likewise, in its order approving Bell Atlantic's entry  
24 into long distance in New York, the FCC analyzed Bell Atlantic's performance  
25 plan "solely for the purpose of determining whether the risk of post-approval

1 non-compliance is sufficiently great that approval of its section 271 application  
2 would not be in the public interest.” Bell Atlantic Order, at ¶433 n.1326.

3  
4 Furthermore, in its October 13, 1998 order regarding BellSouth’s Section 271  
5 application for Louisiana, the FCC reiterated that the existence of such an  
6 enforcement plan is not a pre-requisite to compliance with the competitive  
7 checklist, but rather is a factor that the FCC will consider in assessing whether  
8 the RBOC’s entrance into the interLATA market would serve the “public  
9 interest.” See FCC’s Louisiana II Order, at ¶363 and n.1136. The FCC stated  
10 that “evidence that a BOC has agreed in its interconnection agreements to  
11 performance monitoring” (including performance standards, reporting  
12 requirements, and appropriate self-executing enforcement mechanisms) “would  
13 be probative evidence that a BOC will continue to cooperate with new entrants,  
14 even after it is authorized to provide in-region, interLATA services.” Id. at  
15 ¶¶363-64.

16  
17 In a recent Ninth Circuit decision, when discussing objective performance  
18 standards, the Court held that:

19 *Neither the Act nor any FCC rule affirmatively requires*  
20 *states to do so, however. The FCC might have wanted the*  
21 *WUTC to impose more specific requirements, such as*  
22 *objective performance standards, on an incumbent like U.S.*  
23 *West, but again, our review seeks to determine solely*  
24 *whether the lack of those requirements violates the Act. In*  
25 *the absence of an FCC rule, the law does not require them.*

1           *MCI Telecommunications, Inc. et al v. U.S. West Communications*, 204 F.3d  
2           1262 (9<sup>th</sup> Cir. March 2, 2000).

3

4           The FCC has made it clear that the primary, if not sole, purpose of a voluntary  
5           self effectuating remedy plan is to guard against RBOC “backsliding”; that is,  
6           providing discriminatory performance after it has received the so-called  
7           “carrot” of long distance approval.

8

9           ***Issue 27: Should BellSouth be required to apply a statistical methodology to the***  
10           ***SQM performance measures provided to Sprint?***

11

12    Q.   WHAT IS BELLSOUTH’S UNDESTANDING OF THIS ISSUE?

13

14    A.   BellSouth understands that in this issue Sprint is requesting the Commission to  
15           require BellSouth to provide the statistical methodology related to its VSEEM  
16           III plan, as part of its SQM.

17

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

19

20    A.   BellSouth is not required to provide information to Sprint that relates to a plan  
21           not being offered to Sprint. Sprint, inappropriately, is trying to merge the  
22           contents of two different plans. The statistical methodology that Sprint is  
23           requesting is part and parcel of BellSouth’s VSEEM III remedies proposal, and  
24           not a part of BellSouth’s SQM. As I stated before, VSEEM III is not being

25



1

2 ***Issue 30: Under what conditions, if any, should the parties be permitted to assign***  
3 ***an NPA/NXX code to end users outside the rate center in which the***  
4 ***NPA/NXX is homed?***

5

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

7

8 A. BellSouth is not attempting to restrict Sprint's ability to allocate numbers out  
9 of its assigned NPA/NXX codes to its end users. It does not matter to  
10 BellSouth how Sprint chooses to allocate its numbers to its end users. Sprint  
11 can assign a telephone number to a customer who is physically located in a  
12 different local calling area than the local calling area where that NPA/NXX is  
13 homed. If Sprint, however, chooses to assign its telephone numbers in this  
14 manner, calls originated by BellSouth end users to those distant Sprint  
15 customers are not local calls. Consequently, such calls are not local traffic  
16 under the agreement and no reciprocal compensation applies. Further, Sprint  
17 should identify such long distance traffic and pay BellSouth for the originating  
18 switched access service BellSouth provides on those calls.

19

20 Q. WHAT DO YOU MEAN WHEN YOU SAY AN NPA/NXX IS ASSIGNED  
21 TO A RATE CENTER?

22

23 A. When Sprint, or any other carrier, is given an NPA/NXX code by the North  
24 American Numbering Plan Administrator, the carrier must assign that  
25 NPA/NXX code to a rate center. All other carriers use this assignment

1 information to determine whether calls originated by its customers to numbers  
2 in that NPA/NXX code are local or long distance calls. When Sprint, or any  
3 other carrier, is given an NPA/NXX code by the North American Numbering  
4 Plan Administrator, the carrier must assign that NPA/NXX code to a rate  
5 center. All other carriers use this assignment information to determine whether  
6 calls originated by its customers to numbers in that NPA/NXX code are local  
7 or long distance calls. For example, assume that the administrator assigns the  
8 305/336 NPA/NXX to Sprint. Sprint tells the administrator where 305/336 is  
9 assigned. Let's say Sprint assigns the 305/336 code to the Jupiter, Florida rate  
10 center. When a local carrier's customer calls a number in the 305/336 code,  
11 the local carrier bills its customer based upon whether a call from the location  
12 where the call originates to the Jupiter, Florida rate center is a local call or a  
13 long distance call. If a BellSouth customer in the Jupiter local calling area  
14 calls a number in the 305/336 code in this example, BellSouth treats the call as  
15 a local call for purposes of billing its Jupiter, Florida customer. Likewise, if a  
16 BellSouth customer in Miami calls a number in the 305/336 code, BellSouth  
17 would bill the customer for a long distance call.

18

19 Q. IS SPRINT RESTRICTED TO GIVING NUMBERS, ASSIGNED TO A  
20 PARTICULAR RATE CENTER, TO CUSTOMERS WHO ARE  
21 PHYSICALLY LOCATED IN THAT SAME RATE CENTER?

22

23 A. No. In the example above, Sprint is not restricted to giving numbers in the  
24 305/336 code only to customers that are physically located in the Jupiter,  
25 Florida rate center. Sprint is permitted to assign a number in the 305/336 code

1 to any of its customers regardless of where they are physically located. Again,  
2 BellSouth is not attempting to restrict Sprint's ability to do this.

3

4 Sprint could assign a number, say 305-336-7777, to one of its customers who  
5 is physically located in Jupiter, Florida. A BellSouth customer in Jupiter who  
6 calls 305-336-7777 would be billed as if he or she made a local call. BellSouth  
7 agrees that this is a local call and, therefore, appropriate reciprocal  
8 compensation should apply.

9

10 However, let's see what happens if Sprint disassociates the physical location of  
11 a customer with a particular telephone number from the rate center where that  
12 NPA/NXX code is assigned. Assume that Sprint gives the number 305-336-  
13 2000 to one of its customers in Miami. If a BellSouth customer in Jupiter calls  
14 305-336-2000, BellSouth will bill its customer in Jupiter as if the customer  
15 made a local call. However, BellSouth would hand off the call to Sprint at a  
16 BellSouth designated point of interconnection. Sprint would then carry the call  
17 from that point of interconnection to its end user in Miami. The end points of  
18 the call are in Jupiter and Miami, and, therefore, would normally be a long  
19 distance call. To use a more extreme example, Sprint could elect to assign  
20 another number, say 305-336-3000 to one of its customers who is physically  
21 located in New York. A call from a BellSouth customer in Jupiter, Florida to  
22 305-336-3000 would be treated as if he made a local call, but the call would  
23 actually terminate in New York, which plainly would be a long distance call.  
24 Under Sprint's proposal, BellSouth would pay reciprocal compensation on  
25 those calls from Jupiter to Miami or from Jupiter to New York, which are



1 clearly long distance calls and should not be subject to reciprocal  
2 compensation.

3

4 Q. IS TRAFFIC JURISDICTION ALWAYS DETERMINED BY THE RATE  
5 CENTERS WHERE THE ORIGINATING AND TERMINATING  
6 NPA/NXXs ARE ASSIGNED, AS INDICATED IN SPRINT'S PETITION?

7

8 A. No. Traffic jurisdiction based on rate center assignment may be used for retail  
9 end user billing, but not for inter-company compensation purposes. The FCC  
10 has made it clear that traffic jurisdiction is determined based upon the  
11 originating and terminating end points of a call, not the NPA/NXXs of the  
12 calling or called number. One example is originating Feature Group A (FGA)  
13 access service. Even though the originating end user dials a number that  
14 appears local to him or her, no one disputes that originating FGA traffic is  
15 switched access traffic with respect to jurisdiction and compensation between  
16 the involved companies. As the Commission is aware, FGA access service is  
17 not a local service.

18

19 Another example is Foreign Exchange (FX) service. Here again, it appears to  
20 the originating customer that they are making a local call when, in fact, the  
21 terminating location is outside the local calling area. Further, because the call  
22 to the FX number appears local and the calling and called NPA/NXXs are  
23 assigned to the same rate center, the originating end user is not billed for a toll  
24 call. Despite the fact that the calls appear to be local to the originating caller,  
25 FX service is clearly a long distance service.

1

2 Q. WHAT IS THE CLOSEST PARALLEL TO THE SERVICE YOU HAVE  
3 DESCRIBED THAT IS THE SUBJECT OF THIS ISSUE?

4

5 A. The closest parallel is 800 service. While there are some comparable  
6 characteristics to the previously described Feature Group A (FGA) and Foreign  
7 Exchange (FX) service, the service described here does not use lines dedicated  
8 to a particular customer for transporting the call between rate centers. Instead,  
9 the calls in this issue are placed to a "toll free" number and routed over  
10 trunking facilities to a distant location that would normally incur a toll charge  
11 for the originating customer. By utilizing enough NPA/NXX codes, SPRINT  
12 could provide this "toll free" 800-like service throughout the state or the  
13 nation. Just as it is clear that 800 service is not local and that access charges  
14 apply rather than reciprocal compensation, it is also clear that service provided  
15 through the use of NPA/NXXs outside the local calling area where the  
16 NPA/NXX is assigned is not local and reciprocal compensation is not  
17 appropriate.

18

19 Q. WHEN SPRINT ASSIGNS NUMBERS IN THE MANNER YOU HAVE  
20 DESCRIBED, IS IT ATTEMPTING TO DEFINE ITS OWN LOCAL  
21 CALLING AREA?

22

23 A. No. When Sprint assigns numbers in the manner described, Sprint is not  
24 necessarily attempting to define a different local calling area for its customers  
25 than the local calling area offered by BellSouth. In fact, in the previous

1 hypothetical example of the 305/336 code that Sprint assigns to Jupiter, Sprint  
2 does not need to have any customers who are physically located in the Jupiter  
3 local calling area. What Sprint is doing is offering free interexchange calling  
4 to customers of other LECs (i.e. BellSouth). Sprint is offering a service that  
5 allows BellSouth's local service customers to make "local" calls to selected  
6 customers of Sprint who are physically located in a different local calling area.  
7 At best, in the Jupiter example, Sprint is attempting to redefine the local calling  
8 area of BellSouth's customers in Jupiter.

9  
10 Sprint is only permitted to define the local calling area for its customers. If, in  
11 the example, Sprint had any of its own local service customers in Jupiter, and  
12 offered those customers the ability to call Miami without long distance  
13 charges, then it could be said that Sprint was offering a local calling area in  
14 Jupiter that was different from BellSouth's. The local calling area, however,  
15 would be defined that way only for those customers to whom Sprint provided  
16 local service. Sprint is free to design whatever local calling area it wants for its  
17 customers. Sprint, however, is not free to determine the local calling area for  
18 BellSouth customers. Specifically, Sprint cannot provide interexchange  
19 service to BellSouth's local end-user customers and call that service local, even  
20 if it is provided on a toll-free basis.

21  
22 Q. HOW DOES THE RESOLUTION OF THIS ISSUE IMPACT THE DEGREE  
23 OF LOCAL COMPETITION IN FLORIDA?  
24  
25

1 A. Some ALECs have claimed that BellSouth's position on this issue would  
2 impede local competition. However, the service at issue here has nothing to do  
3 with local competition. Using the Jupiter example, the service described in this  
4 issue does not create a local service, let alone any local service competition, in  
5 Jupiter. Local service competition is only created where Sprint offers local  
6 service to its own customers. The service at issue here is offered to  
7 BellSouth's local service customers in Jupiter, regardless of whether Sprint has  
8 any local service customers physically located in Jupiter. When Sprint allows  
9 a BellSouth customer in Jupiter to make a toll free call to one of its 800 service  
10 numbers, no local competition is created in Jupiter. Likewise, in the example,  
11 when Sprint assigns a number out of the 305/336 code to one of its customers  
12 in Miami, precisely the same amount of local competition is created in Jupiter  
13 (where the 305/336 code is assigned) as is created by Sprint's 800 service  
14 offerings; i.e., none. In this case, Sprint has no contact or business relationship  
15 with the BellSouth customers for use of this service. These customers remain,  
16 in fact, BellSouth's local service customers. There is nothing that Sprint is  
17 providing in this case that even resembles local service. Yet, Sprint claims that  
18 it should be paid reciprocal compensation for providing this service.

19

20 Q. WHAT OTHER COMMISSIONS HAVE ADDRESSED WHETHER THE  
21 SERVICE DESCRIBED IN THIS ISSUE IS LOCAL OR  
22 INTEREXCHANGE?

23

24 A. To my knowledge, only the Maine Commission has definitively ruled on  
25 whether the service described in this issue is local or interexchange service.

1 The California Commission has heard the issue, but did not decide whether the  
2 service was local or interexchange and deferred the issue of appropriate inter-  
3 carrier compensation to a later date.

4

5 Q. BRIEFLY DESCRIBE THE MAINE COMMISSION'S ORDER THAT YOU  
6 REFERRED TO ABOVE.

7

8 A. The Maine Commission's Order, attached to my testimony as Exhibit JAR-3,  
9 was issued on June 30, 2000 in Docket Nos. 98-758 and 99-593. The service  
10 at issue in that order is the same type of service described in this issue. (Order  
11 at p. 4) Brooks Fiber ("Brooks" – a subsidiary of MCI WorldCom) had been  
12 assigned 54 NPA/NXX codes that it had subsequently assigned to various  
13 exchanges that are outside the Portland, Maine local calling area. Brooks had  
14 assigned numbers from those codes to its customers who were physically  
15 located in Portland. The Maine Commission was trying to determine whether  
16 Brooks was entitled to retain the NPA/NXX codes used for the service. If the  
17 service was local, Brooks was entitled to the codes; if the service was  
18 interexchange, Brooks Fiber had to relinquish the codes. The Maine  
19 Commission concluded that the service was interexchange. Since Brooks did  
20 not have any customers at all in the rate centers where 45 of the codes were  
21 assigned, the Maine Commission ordered the Numbering Plan Administrator to  
22 reclaim those codes (Order at p. 29).

23

24 Now, there is a potential misunderstanding that could arise when reading the  
25 Maine Order. There are several references to ISP in the Maine Order. The

1 reason is that Brooks had only given numbers in the NPA/NXX code to ISPs.  
2 This is not, however, the ISP reciprocal compensation that this Commission  
3 has previously addressed. Neither the Maine Commission findings on the  
4 nature of this traffic nor BellSouth's position on this issue depend on whether  
5 the number is given to an ISP. The same findings and the same position apply  
6 regardless of the type of customer who has been given the number. It is just a  
7 fact in the Maine case that Brooks had only given numbers to ISPs; therefore,  
8 there are references to ISPs in the Order.

9

10 Q. HOW DOES BELLSOUTH'S POSITION COMPARE TO THE MAINE  
11 COMMISSION ORDER?

12

13 A. BellSouth's position is completely consistent with the Maine Commission's  
14 Order. Most importantly, the Maine Commission found that the service was  
15 interexchange. (Order at pps. 4, 8-12, 18). The Maine Commission concluded  
16 that this service and FX service have some parallels but the closest parallel is  
17 800 service. (Order at pps. 11-12) The Maine Commission found that Brooks  
18 is not attempting to define its local calling area with this service. (Order at p.  
19 14) Finally, the Maine Commission concluded that this service has no impact  
20 on the degree of local competition. (Order at p. 13) Again, none of these  
21 findings depend on whether the number is given to an ISP or another type of  
22 customer.

23

24 Q. HAS THE COMMISSION ADDRESSED ASSIGNMENT OF NPA/NXXs IN  
25 ANOTHER PROCEEDING?

1

2 A. Yes. In its recent ruling in the Intermedia arbitration proceeding, Order No.  
3 PSC-00-1519-FOF-TP, Docket No. 991854-TP, dated August 22, 2000, this  
4 Commission stated, at p. 43,

5 *If Intermedia intends to assign numbers outside of the areas with which*  
6 *they are traditionally associated, Intermedia must provide information*  
7 *to other carriers that will enable them to properly rate calls to those*  
8 *numbers. We find no evidence in the record indicating that this can be*  
9 *accomplished.*

10

11 *Based on the foregoing, we find it appropriate that the parties be*  
12 *allowed to establish their own local calling areas. Nevertheless, the*  
13 *parties shall be required to assign numbers within the areas to which*  
14 *they are traditionally associated, until such time when information*  
15 *necessary for the proper rating of calls to numbers assigned outside of*  
16 *those areas can be provided.*

17

18 Q. WHAT IS BELL SOUTH REQUESTING OF THIS COMMISSION?

19

20 A. BellSouth is requesting that this Commission find that if Sprint assigns a  
21 telephone number to a customer who is physically located in a different local  
22 calling area than the local calling area where that NPA/NXX is homed, calls  
23 originated by BellSouth end users to those distant Sprint customers are not  
24 local calls and, therefore, reciprocal compensation does not apply. In addition,  
25 Sprint should be required to pay BellSouth for the originating switched access

1 service BellSouth provides on those calls.

2

3 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

4

5 A. Yes.

6

7 PC DOCS #234565

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25



1                   BELLSOUTH TELECOMMUNICATIONS, INC.  
2                   REBUTTAL TESTIMONY OF JOHN A. RUSCILLI  
3                   BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION  
4                   DOCKET NO. 000828 - TP  
5                   DECEMBER 1, 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 John Ruscilli. I am employed by BellSouth as Senior Director for  
12           State Regulatory for the nine-state BellSouth region. My business address is  
13           675 West Peachtree Street, Atlanta, Georgia 30375.  
14

15 Q.     ARE YOU THE SAME JOHN RUSCILLI WHO FILED DIRECT  
16           TESTIMONY IN THIS DOCKET ON NOVEMBER 1, 2000?  
17

18 A.     I am.  
19

20 Q.     WHAT IS THE PURPOSE OF YOUR TESTIMONY BEING FILED  
21           TODAY?  
22

23 A.     My testimony rebuts the testimony filed on November 1, 2000 by Sprint's  
24           witnesses Mr. Michael R. Hunsucker, Mr. James A. Lenihan, Dr. David T.  
25           Rearden, Mr. Mark G. Felton, Ms. Angela Oliver, and Ms. Melissa L. Closz.

1 Specifically, I will rebut Issue Nos. 3, 4, 6-8, 10-12, 23, and 26-29.

2

3 ***Issue No. 1: In the event that a provision of this Agreement or an***  
4 ***Attachment thereto, and a BellSouth tariff provision cannot be reasonably***  
5 ***construed to avoid conflict, should the provision contained in this Agreement***  
6 ***prevail?***

7

8 Q. WHAT IS YOUR UNDERSTANDING AS TO THE STATUS OF ISSUE  
9 NO. 1?

10

11 A. BellSouth understands that this issue has been settled and, therefore, requests  
12 the Commission to approve the following language agreed to by the parties:

13 19.7 Nothing in this Agreement shall preclude Sprint from  
14 purchasing any services or facilities under any applicable and  
15 effective BellSouth tariff. Each party hereby incorporates by  
16 reference those provisions of its tariffs that govern the provision  
17 of any of the services or facilities provided hereunder. In the  
18 event of a conflict between a provision of the Agreement and a  
19 provision of an applicable tariff, the parties agree to negotiate in  
20 good faith to attempt to reconcile and resolve such conflict. If  
21 any provision of the Agreement and an applicable tariff cannot  
22 be reasonably construed or interpreted to avoid conflict, and the  
23 parties cannot resolve such conflict through negotiation, such  
24 conflict shall be resolved as follows:

25 19.7.1 Unless otherwise provided herein, if the service

1 or facility is ordered from the tariff, the terms  
2 and conditions of the tariff shall prevail.

3 19.7.2 If the service is ordered from this Agreement  
4 (other than resale), and the Agreement expressly  
5 references a term, condition or rate of a tariff,  
6 such term, condition or rate of the tariff shall  
7 prevail.

8 19.7.3 If the service is ordered from this Agreement,  
9 and the Agreement references the tariff for  
10 purposes of the rate only, then to the extent of a  
11 conflict as to the terms and conditions in the  
12 tariff and any terms and conditions of the  
13 Agreement, the terms and conditions of this  
14 Agreement shall prevail.

15 19.7.4 If the service is a resale service, the terms and  
16 conditions of the Agreement shall prevail.

17

18 ***Issue No. 3: Should BellSouth make its Custom Calling features available***  
19 ***for resale on a stand-alone basis?***

20

21 Q. MR. FELTON STATES ON PAGE 8 OF HIS TESTIMONY, "BELLSOUTH  
22 SEEKS TO PLACE UPON SPRINT THIS SAME LIMITATION, WHICH IS  
23 INTENDED FOR SUBSCRIBERS WHO ARE NOT  
24 TELECOMMUNICATIONS CARRIERS." PLEASE COMMENT.

25

1 A. BellSouth is not trying to restrict Sprint from reselling any retail service being  
2 offered to BellSouth's end-users. As I stated at page 7 of my direct testimony,  
3 BellSouth does not offer stand-alone Custom Calling features to end-users,  
4 therefore, BellSouth is not required to offer Sprint the services that it is  
5 requesting. Even Sprint recognizes, on page 9 of Mr. Felton's testimony, "that  
6 Custom Calling Services are optional telecommunication services that simply  
7 provide additional functionality to basic telecommunications services."

8 (Emphasis added.)

9

10 Mr. Felton continues his argument, noting that BellSouth advertises its Custom  
11 Calling Services as "optional" services. Although this is true, BellSouth does  
12 not advertise that these services can be purchased without first having basic  
13 local service. Again, BellSouth is not restricting Sprint from buying a service  
14 that BellSouth offers to its end-users; stand alone Custom Calling Services are  
15 not offered to BellSouth's end-users.

16

17 Q. BEGINNING ON PAGE 10, MR. FELTON DISCUSSES SOME OF THE  
18 REASONS THAT SPRINT WANTS BELLSOUTH'S CUSTOM CALLING  
19 SERVICES ON A STAND-ALONE BASIS. PLEASE COMMENT.

20

21 A. Mr. Felton gives one specific example of an offering that Sprint has developed  
22 that requires Custom Calling Services – unified voice messaging. BellSouth is  
23 only required to provide ALECs services for resale, when they are available,  
24 for the development of local telecommunications competition. It appears to  
25 BellSouth that Sprint is trying to become most anything except a provider of

1 local service in BellSouth's Florida serving area. In this issue, Sprint is asking  
2 to be allowed to reap the benefits of being a local carrier (i.e., purchase Custom  
3 Calling Services from BellSouth at wholesale rates for resale) without even  
4 being the provider of an end-user's local service.

5

6 Q. ALTHOUGH NOT OBLIGATED TO DO SO, IS BELLSOUTH WILLING  
7 TO CONSIDER SPRINT'S REQUEST FOR CUSTOM CALLING  
8 SERVICES ON A STAND-ALONE BASIS?

9

10 A. BellSouth is currently considering Sprint's request; however, it is a complex  
11 issue to address. Because of the questions involved, BellSouth would prefer  
12 this issue be handled via the BFR process rather than through this arbitration.  
13 Nonetheless, the first question to be answered is whether or not the request is  
14 technically feasible. The second question is what will it cost.

15

16 If BellSouth determines that Sprint's request is feasible, Sprint must be willing  
17 to pay for the implementation. BellSouth would also need sufficient time to  
18 develop the methods and procedures and complete the actual implementation.

19

20 Q. WHAT IS BELLSOUTH ASKING THIS COMMISSION TO DO WITH  
21 REGARD TO ISSUE NO. 3?

22

23 A. BellSouth requests the Commission to confirm the FCC's rules and deny  
24 Sprint's request to require BellSouth to make stand-alone Custom Calling  
25 Services, that are not available on a stand-alone basis to its end-users, available

1 to Sprint for resale. Further, in the event that BellSouth determines that it is  
2 technically feasible to do what Sprint is asking, BellSouth requests that the  
3 Commission require Sprint to pay for the implementation of the service Sprint  
4 is requesting.

5

6 ***Issue No. 4: Pursuant to Federal Communications Commission ('FCC')***

7 ***Rule 51.315(b), should BellSouth be required to provide Sprint at TELRIC***  
8 ***rates combinations of UNEs that BellSouth typically combines for its own***  
9 ***retail customers, whether or not the specific UNEs have already been***  
10 ***combined for the specific end-user customer in question at the time Sprint***  
11 ***places its order?***

12

13 ***Issue No. 6: Should BellSouth be required to universally provide access to EELs***  
14 ***that it ordinarily and typically combines in its network?***

15

16 ***Issue No. 7: In situations where an ALEC's end-user customer is served via***  
17 ***unbundled switching and is located in density zone 1 in one of the top fifty***  
18 ***Metropolitan Statistical Areas ('MSAs') and who currently has three lines***  
19 ***or less, adds additional lines, should BellSouth be able to charge market-***  
20 ***based rates for all of the customer's lines?***

21

22 Q. ON PAGES 5 – 8 OF HIS TESTIMONY, MR. HUNSUCKER DISCUSSES  
23 SPRINT'S INTERPRETATION OF WHAT UNEs BELLSOUTH MUST  
24 PROVIDE TO SPRINT AT TELRIC RATES. HE GOES SO FAR AS TO  
25 STATE THAT "THE STANDARD THAT THE COMMISSION SHOULD

1 EMPLOY IS ONE OF COMPARABILITY BETWEEN AN ILEC RETAIL  
2 PRODUCT AND THE UNE COMBINATION REQUESTED BY A  
3 PARTICULAR CARRIER.” PLEASE COMMENT.  
4

5 A. Although Mr. Hunsucker refers to a number of FCC rules in his discussion, he  
6 also omits some very significant rulings with regard to the issue of UNE  
7 combinations. In the “UNE Remand Order”, the FCC concluded that BellSouth  
8 has no obligation to combine UNEs. The FCC declined to adopt a definition of  
9 “currently combines” that would include all elements “typically combined” in  
10 the incumbent’s network, which is exactly what Sprint is requesting. The  
11 Eighth Circuit vacated the FCC Rules, Section 51.315(c)-(f) that purported to  
12 require incumbent LECs to combine unbundled network elements, and those  
13 rules were neither appealed, nor reinstated by the Supreme Court. On July 18,  
14 2000, the Eighth Circuit ruled that an ILEC is not obligated to combine UNEs,  
15 and it reaffirmed that the FCC’s Rules 51.315(c)-(f) remain vacated. As I  
16 stated in my direct testimony, referring to Section 251(c)(3) of the Act that  
17 requires ILECs to provide UNEs in a manner that allows requesting carriers to  
18 combine such telecommunications services, the Eighth Circuit stated: “[h]ere  
19 Congress has directly spoken on the issue of who shall combine previously  
20 uncombined network elements. It is the requesting carriers who shall  
21 ‘combine such elements.’ It is not the duty of the ILECs to ‘perform the  
22 functions necessary to combine unbundled network elements in any manner’ as  
23 required by the FCC’s rule.” Sprint appears to be trying to rewrite the rules to  
24 serve its own purpose.  
25

1 Q. PLEASE COMMENT ON MR. HUNSUCKER'S STATEMENT, ON PAGE  
2 10, THAT "ILECs SHOULD BE REQUIRED TO PROVISION EELS" ON A  
3 UNIVERSAL BASIS.

4  
5 A. Again, Sprint is attempting to rewrite the FCC's rules – rules that leave very  
6 little room for interpretation. The FCC rules require BellSouth to combine loop  
7 and transport UNEs ("Enhanced Extended Links" or "EELs"), in a specific  
8 geographic area, in order to avail itself of the FCC's exemption from providing  
9 access to unbundled local switching to serve customers with four or more lines  
10 in Density Zone 1 in the top 50 MSAs.

11  
12 Since BellSouth has elected to be exempted from providing access to  
13 unbundled local switching to serve the Miami, Orlando, and Ft. Lauderdale  
14 MSAs, BellSouth will provision EELs in those geographic areas where such  
15 exemption applies. The FCC also requires that these combinations be provided  
16 at cost-based rates. BellSouth will combine loop and transport UNEs at such  
17 rates, in compliance with the FCC's UNE Remand Order, in order to take  
18 advantage of the local circuit switching exemption. Beyond this limited  
19 exception dictated by the FCC, BellSouth is under no obligation to physically  
20 combine network elements, where such elements, in fact, are not combined.

21  
22 Further, BellSouth finds it reasonable that if the FCC had intended for the  
23 provision of EELs to be universally mandatory, the FCC would have stated as  
24 such. If ILECs were required to universally provide EELs, there would be no  
25 need for the ILECs to make a choice with regard to the FCC's limited



1 exemption from providing access to unbundled local switching. There would  
2 be no reason for the FCC to offer ILECs any exemption as an incentive.

3

4 Q. HAS THIS COMMISSION ADDRESSED THE ISSUE OF “CURRENTLY  
5 COMBINES” AND/OR THE PROVISION OF EELs?

6

7 A. Yes. In the Intermedia/BellSouth Arbitration proceeding, Order No. PSC-00-  
8 1519-FOF-TP, dated August 22, 2000, the Commission stated, “the  
9 appropriate definition of ‘currently combines’ pursuant to FCC Rule 51.315(b)  
10 is currently pending before the Eighth Circuit Court. Until the Eighth Circuit  
11 Court renders its decision, where combinations are in fact already combined  
12 and existing within BellSouth’s network, we find, at a minimum, that  
13 BellSouth shall be required to make those combinations available...in the  
14 combined format UNE rates.” Further, in its discussion of EELs, Section VII  
15 of the same Order, “...at this time incumbent LECs are not required to  
16 combine network elements for other telecommunications carriers.” And  
17 specifically with respect to EELs, “[T]herefore, per FCC Order No. 99-238,  
18 BellSouth shall be required to provide access only to EELs that are ‘currently  
19 combined’ within its network at UNE rates.”

20

21 Q. DO YOU AGREE WITH MR. FELTON’S CONTENTION, ON PAGES 18  
22 AND 19, THAT WHEN A CUSTOMER WITH THREE LINES INCREASES  
23 HIS SERVICE TO FOUR OR MORE LINES, BELL SOUTH IS STILL  
24 OBLIGATED TO PROVIDE ACCESS TO UNBUNDLED LOCAL  
25 CIRCUIT SWITCHING FOR THE FIRST THREE LINES.

1 A. Absolutely not. Sprint also is apparently trying to rewrite the FCC's rules with  
2 regard to this portion of the exemption for unbundling local circuit switching.  
3 BellSouth, in certain geographic areas, is not required to unbundle local  
4 switching for customers having four or more lines. Sprint asserts that even in  
5 such areas, BellSouth should not be allowed to charge negotiated rates for the  
6 first three lines of an existing customer that adds additional lines.

7  
8 The FCC drew a clear distinction between competition in the mass market  
9 (customers having less than four lines) and competition in the medium and  
10 large business market (customers with four or more lines). After an exhaustive  
11 analysis, the FCC determined that an ALEC would not be impaired without  
12 access to unbundled local switching when serving a customer with four or  
13 more lines in Density Zone 1 in a top 50 MSA. No reading of the FCC's  
14 discussion on this issue, or of its rule, indicates that, for a customer with four  
15 or more lines, the ILEC must provide the ALEC with access to unbundled  
16 local switching for the first three lines. Indeed, such a reading defies logic,  
17 given the FCC's distinction between the mass market and the medium and  
18 large business market. If an end user has four or more lines, the end user is in  
19 the medium or the large business market. The end user is not in the mass  
20 market for the first three lines and then in the medium business market with  
21 regard to the fourth line. That is just a nonsensical conclusion and cannot be  
22 sustained.

23  
24 Although I am not a negotiator, I can say that if Sprint prefers for BellSouth to  
25 continue to provide local switching to the customer for lines one through three

1 - or even for the rest of the customer's lines, BellSouth is willing to negotiate  
2 such an arrangement and the associated pricing. Such an arrangement,  
3 however, would not be subject to Section 251 arbitration, nor would the  
4 pricing be subject to the Act's pricing standards.

5

6 Q. PLEASE COMMENT ON SPRINT'S CONTENTION THAT THE FCC'S  
7 FOUR LINE CUT-OFF IS INAPPROPRIATE.

8

9 A. BellSouth understands that Sprint has withdrawn from this proceeding its  
10 proposal that rather than the four-line cut-off determined by the FCC, that this  
11 Commission should find that 40 lines would be a more appropriate cut-off.  
12 BellSouth reserves its right to rebut this proposal should Sprint include  
13 additional testimony with regard to this proposal.

14

15 Q. DOES BELLSOUTH AGREE WITH SPRINT'S PROPOSED LANGUAGE  
16 WITH RESPECT TO BELLSOUTH'S OBLIGATION TO OFFER  
17 UNBUNDLED LOCAL CIRCUIT SWITCHING, AS SET FORTH BY MR.  
18 FELTON, ON PAGE 21 OF HIS TESTIMONY?

19

20 A. No. BellSouth requests this Commission to reject Sprint's proposed language.  
21 ALECs are not impaired without access to unbundled local switching when  
22 serving customers with four or more lines in Density Zone 1 in the top 50  
23 MSAs. Consequently, ALECs are not entitled to unbundled switching in these  
24 areas for any of an end user's lines when the end user has four or more lines in  
25 the relevant geographic area, as long as BellSouth will provide the ALEC with

1 EELs.

2

3 Further, BellSouth requests the Commission to adopt the following language:

4 Notwithstanding BellSouth's general duty to unbundle local circuit  
5 switching, BellSouth shall not be required to unbundle local circuit  
6 switching for Sprint when Sprint serves end-users with four (4) or more  
7 voice-grade (DS-0) equivalents or lines in locations served by  
8 BellSouth's local circuit switches and BellSouth has provided non-  
9 discriminatory cost based access to the Enhanced Extended Link (EEL)  
10 though out Density Zone 1 as determined by NECA Tariff No. 4 as in  
11 effect on January 1, 1999.

12

13 ***Issue No. 5: Should the Commission require BellSouth to provide access to packet***  
14 ***switching UNEs under the circumstances specified in the FCC's UNE***  
15 ***Remand Order on a location- or customer-specific basis?***

16

17 Q. PLEASE COMMENT ON MR. FELTON'S DISCUSSION OF ISSUE 5, ON  
18 PAGES 14 – 17.

19

20 A. BellSouth understands that this issue has been settled. BellSouth believes that  
21 the clarification requested by Sprint, with regard to BellSouth's responsibility  
22 to offer packet switching is covered in the following language, agreed to by the  
23 parties, which the Commission is requested to adopt:

24

25

- 1           12.3   BellSouth shall be required to provide nondiscriminatory access  
2                   to unbundled packet switching capability only where each of the  
3                   following conditions are satisfied:
- 4           12.3.1 BellSouth has deployed digital loop carrier systems, including  
5                   but not limited to, integrated digital loop carrier or universal  
6                   digital loop carrier systems; or has deployed any other system in  
7                   which fiber optic facilities replace copper facilities in the  
8                   distribution section (e.g., end office to remote terminal, pedestal  
9                   or environmentally controlled vault);
- 10          12.3.2 There are no spare copper loops capable of supporting the  
11                   xDSL services Sprint seeks to offer;
- 12          12.3.3 BellSouth has not permitted Sprint to deploy a Digital  
13                   Subscriber Line Access Multiplexer at the remote terminal,  
14                   pedestal or environmentally controlled vault or other  
15                   interconnection point, nor has Sprint been permitted to obtain a  
16                   virtual collocation arrangement at these subloop interconnection  
17                   points as defined by 47 C.F.R. § 51.319 (b); and,
- 18          12.3.4 BellSouth has deployed packet switching capability for its own  
19                   use.
- 20          12.4   BellSouth will determine whether packet switching will be  
21                   available as a UNE on a remote terminal by remote terminal  
22                   basis.

23

24   ***Issue No. 8: Should BellSouth be able to designate the network Point of***  
25           ***Interconnection('POI') for delivery of BellSouth's local traffic?***

1

2 ***Issue 29: Should BellSouth be allowed to designate a virtual point of***  
3 ***interconnection in a BellSouth local calling area to which Sprint has***  
4 ***assigned a Sprint NPA/NXX? If so, who pays for the transport and***  
5 ***multiplexing, if any, between BellSouth's virtual point of interconnection***  
6 ***and Sprint's point of interconnection?***

7

8 Q. ON PAGE 5 OF MS. CLOSZ'S TESTIMONY, SPRINT STATES  
9 BELLSOUTH'S POSITION ON THIS ISSUE TO BE "THAT IT  
10 (BELLSOUTH) SHOULD HAVE THE ABILITY TO DESIGNATE THE  
11 POI(S) FOR THE DELIVERY OF ITS LOCAL TRAFFIC TO SPRINT." IS  
12 THIS CORRECT?

13

14 A. Yes, BellSouth should have the ability to designate the POI for the delivery of  
15 its originated local traffic. In addition, BellSouth should be allowed to  
16 designate a Virtual Point of Interconnection ("VPOI") in a BellSouth local  
17 calling area to which Sprint has assigned a Sprint NPA/NXX, if that local  
18 calling area is different than the local calling area where Sprint has established  
19 its POI. Ms. Closz, however, has neglected to even discuss the real issue with  
20 regard to designating a POI or a VPOI. That issue is: Sprint would pay  
21 BellSouth the TELRIC rates for Interoffice Dedicated Transport and associated  
22 multiplexing, as set forth in the Interconnection Agreement, for BellSouth to  
23 transport local traffic and Internet traffic over BellSouth facilities from the  
24 VPOI (in the BellSouth local calling area, different from the local calling area

25

1 where Sprint has established its POI, where Sprint has assigned an NPA/NXX)  
2 to the POI designated by Sprint.

3

4 Q. ON PAGE 6 OF MS. CLOSZ'S TESTIMONY, SPRINT TALKS ABOUT  
5 ESTABLISHING THE POINT OF INTERCONNECTION "SO AS TO  
6 LOWER ITS COSTS". PLEASE COMMENT.

7

8 A. BellSouth agrees that Sprint can choose its own POI for Sprint's originating  
9 traffic, wherever and however Sprint deems most efficient. BellSouth would  
10 certainly expect Sprint to establish its POI "so as to lower its costs" and  
11 presumably, Sprint has chosen its particular network arrangement because it is  
12 cheaper for Sprint. Lower costs, however, are not the only consideration when  
13 establishing a POI. The FCC has issued several rulings with regard to  
14 establishing a point of interconnection, and the costs associated with  
15 interconnection. Not one of these rulings has stated that the only consideration  
16 for establishing the POI is lower costs for an ALEC. In fact, as discussed on  
17 page 38 of my direct testimony in this proceeding, "[I]n its First Report and  
18 Order in Docket No. 96-98, the FCC states that the ALEC must bear the  
19 additional costs caused by an ALEC's chosen form of interconnection." It is  
20 not appropriate for Sprint to lower its costs by having BellSouth's customers  
21 bear substantially increased costs that Sprint causes by its network design.

22

23 Q. ON PAGE 6, MS. CLOSZ ALSO STATES "BELLSOUTH MAY WISH TO  
24 DESIGNATE ITS END OFFICES AS THE POINTS OF

25

1 INTERCONNECTION FOR TRAFFIC IT ORIGINATES.” PLEASE  
2 COMMENT.

3

4 A. I know of no reason for Sprint to believe that BellSouth would consider forcing  
5 “Sprint to build facilities to each BellSouth end office”, because as far as I am  
6 aware, BellSouth has never suggested this in any negotiations with Sprint.  
7 BellSouth certainly is not attempting to force Sprint to build facilities  
8 throughout the LATA (or to “potentially decrease the entrant’s network  
9 efficiencies” Closz at p.7), as Sprint states. BellSouth does not require Sprint  
10 to duplicate BellSouth’s network architecture. Sprint can configure its network  
11 in whatever manner it chooses. The issue here is not, however, how Sprint  
12 configures its network, but whether BellSouth will be compensated for hauling  
13 Sprint’s traffic from one local calling area to another. Plainly, BellSouth is  
14 entitled to compensation for this service.

15

16 Q. DOES SPRINT’S PROPOSAL WITH REGARD TO DESIGNATING THE  
17 POI ENCOURAGE COMPETITION IN THE LOCAL  
18 TELECOMMUNICATIONS MARKET?

19

20 A. No. As with several other of Sprint’s proposals, this does not encourage  
21 competition in the local telecommunications market. In fact, this does little  
22 more than shift costs from Sprint to BellSouth and BellSouth’s customers.  
23 Instead of encouraging competition, Sprint is asking BellSouth’s customers to  
24 subsidize Sprint’s network. Competition is supposed to reduce costs to  
25 customers, not increase them, regardless of whose customers they are.



1 Competition certainly is not an excuse for enabling a carrier to pass increased  
2 costs that it causes to customers it does not even serve.

3

4 Q. WHAT DOES BELLSOUTH ASK THIS COMMISSION TO DO WITH  
5 RESPECT TO ISSUES 8 AND 29?

6

7 A. BellSouth requests that the Commission require Sprint to bear the cost of  
8 hauling local calls outside BellSouth's local calling areas. Importantly, Sprint  
9 should not be permitted to avoid this cost by any of the principles or concepts  
10 that Sprint is proposing. Nor should Sprint be permitted to collect reciprocal  
11 compensation for facilities that haul local traffic outside of the local calling  
12 area.

13

14 Further, BellSouth requests that the Commission adopt the following  
15 BellSouth proposed agreement language:

16

17 2.7.1 Pursuant to the provisions of this Attachment, each Party as an  
18 originating Party, may establish Points of Interconnection for  
19 the delivery of its originated Local and IntraLATA toll Traffic  
20 to the other Party for call transport and termination by the  
21 terminating Party.

22 2.7.2 If the Parties mutually agree to utilize two-way interconnection  
23 trunking for the exchange for Local and IntraLATA Toll Traffic  
24 between each other, the Parties shall mutually agree to the  
25 location of Points of Interconnection.

1                   2.7.3 To the extent Sprint assigns Sprint NPA/NXXs to BellSouth  
 2                   rate centers in BellSouth basic local calling areas in which  
 3                   Sprint does not have a Point of Interconnection, and Sprint does  
 4                   not desire to establish a Point of Interconnection in that basic  
 5                   local calling area, Sprint may request and BellSouth shall  
 6                   designate a Virtual Point of Interconnection for such basic local  
 7                   calling area.

8                   2.7.4 At a minimum, Sprint shall establish interconnection trunking  
 9                   to BellSouth at a single point within the LATA for the delivery  
 10                  of Local and IntraLATA toll Traffic to BellSouth and for the  
 11                  receipt and/or delivery of Transit Traffic and Switched Access  
 12                  Traffic to and/or from third party carriers served by that tandem.

13  
 14 ***Issue No. 10: Should Internet Service Provider ('ISP') –bound traffic be treated as***  
 15 ***local traffic for purposes of reciprocal compensation in the new***  
 16 ***Sprint/BellSouth interconnection agreement, or should it be otherwise***  
 17 ***compensated?***

18  
 19 Q. ON PAGE 4 OF THE TESTIMONY OF DR. REARDEN, SPRINT STATES  
 20 “BELLSOUTH’S POSITION IS IN DIRECT OPPOSITION TO THE  
 21 COMMISSION’S RECENT RULINGS ON THIS ISSUE.” DO YOU  
 22 AGREE?

23  
 24 A. Although BellSouth’s position on this issue is that ISP-bound traffic is not  
 25 local traffic eligible for reciprocal compensation, and should not be otherwise

1 compensated, as stated in my direct testimony, BellSouth agrees to apply the  
2 Commission's Order in the Intermedia Arbitration proceeding (Order No.  
3 PSC-00-1519-FOF-TP, dated August 22, 2000) to this case, as an interim  
4 mechanism. BellSouth still contends, however, that this interim mechanism  
5 must be subject to true-up, pending an order from the FCC on inter-carrier  
6 compensation for ISP-bound traffic.

7

8 Q. ON PAGES 12 AND 13 OF HIS TESTIMONY, DR. REARDEN  
9 DISCUSSES "COMPENSATION ARRANGEMENT OR  
10 METHODOLOGY" THAT CARRIERS SHOULD EMPLOY TO  
11 COMPENSATE EACH OTHER FOR ISP-BOUND TRAFFIC. PLEASE  
12 COMMENT.

13

14 A. As stated in my direct testimony, a minute-of-use (MOU) compensation  
15 arrangement is not appropriate for inter-carrier compensation. If, however, the  
16 Commission determines that such an arrangement is appropriate, the  
17 characteristics of ISP calls should be considered. In addition to the  
18 Commission findings in the Global Naps/BellSouth arbitration Order No. PSC-  
19 00-1680-FPF-TP, other options may be available.

20

21 One such option the Commission could consider would be to calculate a single  
22 inter-carrier compensation rate. If the Commission were to select this option,  
23 an updated average call duration would be developed using all local minutes  
24 and all ISP-bound minutes that would qualify for such compensation. The  
25 same set up costs would be used, but these costs would be spread over the

1 updated average duration minutes. If the updated average duration minutes is  
2 higher than the average duration minutes in the study used to calculate the  
3 current reciprocal compensation rate (which is likely, given that the updated  
4 averaged duration minutes will account for the fact that calls to ISPs have  
5 higher average duration minutes than local calls), the single inter-carrier  
6 compensation rate will be lower than the current reciprocal compensation rate.

7  
8 Again, BellSouth is not proposing to apply reciprocal compensation to ISP-  
9 bound traffic. This analysis is provided to show only that the previously  
10 adopted rates for reciprocal compensation would overstate costs of ISP-bound  
11 traffic. If, however, the Commission decides to consider an MOU  
12 compensation arrangement, it should carefully develop an updated average call  
13 duration that accounts for the fact that the average call duration for calls to  
14 ISPs is higher than the average call duration for local calls. The Commission  
15 could consider these issues in Docket No. 000075-TP – Investigation into  
16 appropriate methods to compensate carriers for exchange of traffic subject to  
17 Section 251 of the Telecommunications Act of 1996.

18

19 Q. DO YOU AGREE WITH THE RECIPROCAL COMPENSATION  
20 PROPOSAL DR. REARDEN PUTS FORTH ON PAGES 13 – 15 OF HIS  
21 TESTIMONY?

22

23 A. No. Sprint proposes what Dr. Rearden refers to as “a refinement” of the  
24 reciprocal compensation structure. What Sprint is actually proposing is a  
25 bifurcated structure of reciprocal compensation for local calls (which they

1 define as “both voice calls and calls to ISPs”.) Sprint is requesting a change in  
2 the reciprocal compensation structure that this Commission has adopted. Such  
3 a change is inappropriate in a two-party arbitration.

4  
5 Sprint’s proposal asks the Commission to ignore the approved rate structure,  
6 and even the Commission’s recent decision in the Global Naps/BellSouth  
7 arbitration proceeding, and adopt a more complex structure. It is not apparent  
8 that this more complex structure provides significant overall benefit. Until the  
9 Commission can examine this arrangement in full, including implementation  
10 and marketplace effects, such an approach should not be adopted. Sprint has  
11 also requested the FCC to address this issue. Instead of preempting the FCC, it  
12 would be appropriate to at least allow the FCC to begin to address this issue.

13  
14  
15 Q. WHAT IS BELLSOUTH ASKING THIS COMMISSION TO DO WITH  
16 REGARD TO SPRINT’S COMPENSATION PROPOSAL?

17  
18 A. BellSouth requests that, at least until after the FCC addresses this issue, the  
19 Commission deny Sprint’s request. If the Commission should choose to  
20 examine Sprint’s reciprocal compensation structure proposal more completely,  
21 BellSouth contends that, due to the far-reaching outcome of such a decision, it  
22 is more appropriate to resolve this issue as a separate matter, possibly in a  
23 generic proceeding. Because the proposal covers more than just inter-carrier  
24 compensation for ISP-bound traffic, BellSouth believes that consideration of  
25 Sprint’s proposal is not appropriate for consideration in the currently open

1 generic ISP docket, Docket No. 000075-TP.

2

3 ***Issue 11: Where Sprint's switch serves a geographic area comparable to the area***  
4 ***served by BellSouth's tandem switch, should the tandem interconnection rate***  
5 ***apply to local traffic terminated to Sprint?***

6

7 Q. PLEASE COMMENT ON THE DISCUSSION IN THE TESTIMONY OF  
8 MR. FELTON ON THE TANDEM SWITCHING ISSUE.

9

10 A. On page 24 of Mr. Felton's testimony, Sprint quotes ¶1090 of the FCC's First  
11 Report and Order in CC Docket No. 96-98. In part the quote states, "[w]here  
12 the interconnecting carrier's switch serves a geographic area comparable to  
13 that served by the incumbent LEC's tandem switch..." (Emphasis added.)  
14 BellSouth agrees emphatically with Mr. Felton's next statement: "The meaning  
15 of this paragraph and associated rule is abundantly clear and in need of no  
16 interpretation." BellSouth, however, does not agree with Sprint's  
17 interpretation. The FCC is very clear when it states that where the ALEC's  
18 switch serves a comparable area. It does not say "that its switch(es) are  
19 capable of serving" as Sprint says on page 25, that it is willing to self-certify.

20

21 Q. EVEN IF GEOGRAPHIC AREA WERE THE ONLY TEST IN THE  
22 TANDEM SWITCHING ISSUE, SHOULD SPRINT BE ALLOWED TO  
23 "SELF-CERTIFY" THAT ITS SWITCH(ES) SERVE A COMPARABLE  
24 AREA TO THE BELL SOUTH TANDEM?

25

1 A. No. The determination of the application of the tandem switching rate element  
2 should be based on the evidence presented by each carrier, and Sprint offers  
3 absolutely no evidence to demonstrate that its switch covers an area  
4 comparable to BellSouth's tandem switches.

5

6 Q. ON PAGE 24, MR. FELTON SUGGESTS THAT SWITCH  
7 FUNCTIONALITY IS NOT A REQUIREMENT IN ORDER TO ENTITLE  
8 AN ALEC TO CHARGE THE TANDEM SWITCHING  
9 INTERCONNECTION RATE. DO YOU AGREE?

10

11 A. No. Mr. Felton states that ¶1090 if the FCC's First Report and Order does "not  
12 require that the ALEC switch perform a specific functionality to entitle the  
13 ALEC to charge the tandem switching interconnection rate as long as the  
14 switch serves a comparable geographic area." Mr. Felton conveniently, and  
15 incorrectly, omits an earlier portion of ¶1090. In the earlier part of the  
16 paragraph, the FCC states: "We, therefore, conclude that states may establish  
17 transport and termination rates in the arbitration process that vary according to  
18 whether the traffic is routed through a tandem switch or directly to the end-  
19 office switch. In such event, states shall also consider whether new  
20 technologies (e.g., fiber ring or wireless networks) perform functions similar to  
21 those performed by an incumbent LEC's tandem switch. . ." (Emphasis added.)  
22 This should leave no doubt that, in addition to geographic coverage, there is  
23 also a functionality requirement.

24

25

1 Q. HAS THE COMMISSION PREVIOUSLY RULED ON THIS ISSUE?

2

3 A. Yes. In its Order No. PSC-00-0128-FOF-TP in Docket No. 990691-TP,  
4 ICG/BellSouth Arbitration, the Commission said “[I]n addition, since tandem  
5 switching is described by both parties as performing the function of  
6 transferring telecommunications between two trunks as an intermediate switch  
7 or connection, we do not believe this function will or can be performed by  
8 ICG’s single switch. As a result, we cannot at this time require that ICG be  
9 compensated for the tandem element of termination.”

10

11 More recently, in its Decision in Order No. PSC-00-1519-FOF-TP in Docket  
12 No. 991854-TP, Intermedia/BellSouth Arbitration, issued on August 22, 2000,  
13 the Commission stated, “[I]n evaluating this issue, we are presented with two  
14 criteria set forth in FCC 96-325, ¶1090, for determining whether symmetrical  
15 reciprocal compensation at the tandem rate is appropriate, similar functionality  
16 and comparable geographic areas.” (Emphasis added.) Further, on page 14 of  
17 that Order, the Commission refers to “evidence of record insufficient to  
18 determine if the second, geographic criterion is met.” Also, “neither do we  
19 find sufficient evidence in the record indicating that Intermedia’s switch is  
20 performing similar functions to that of a tandem switch.” (Emphasis added in  
21 both quotes.)

22

23 Q. DOES BELLSOUTH AGREE WITH THE ACTION BEING REQUESTED  
24 BY SPRINT?

25



1 A. No. It seems obvious that what Sprint is requesting is not appropriate.  
2 BellSouth requests that the Commission determine that Sprint is only entitled,  
3 where it provides local switching, to the end office switching rate. BellSouth  
4 is not disputing Sprint's right to compensation at the tandem rate where the  
5 facts support such a conclusion. In this proceeding, however, Sprint is seeking  
6 a decision that allows it to be compensated for functionality it has not shown  
7 that it provides. Further, BellSouth requests that the Commission adopt  
8 BellSouth's proposed agreement language:

9           5.1.2 The Parties shall provide for the mutual and reciprocal  
10           recovery of the costs for the elemental functions performed in  
11           transporting and terminating Local Traffic on each other's  
12           network pursuant to 47 CFR §51.701, 47 CFR §711(a) and  
13           Paragraph 1090 of the FCC First Report and Order (96-325).  
14           Charges for transport and termination of calls on the Parties'  
15           respective networks are as set forth in Exhibit A to this  
16           Attachment.

17  
18 ***Issue No. 12: Should voice-over-Internet ('IP Telephony') traffic be included in the***  
19 ***definition of 'Switched Access Traffic'?***

20  
21 Q. DOES BELLSOUTH AGREE WITH SPRINT THAT THE TREATMENT OF  
22 IP TELEPHONY IS BEYOND THE SCOPE OF THIS ARBITRATION  
23 PROCEEDING, AND THAT THE INTERCONNECTION AGREEMENT  
24 REMAIN SILENT ON THE ISSUE?

25

1 A. BellSouth requests that the Commission defer its decision on whether IP  
2 telephony is switched access until the FCC makes a decision on the interstate  
3 issue. BellSouth, however, also requests the Commission to find, on this issue,  
4 that regardless of the FCC's decision on switched access, that reciprocal  
5 compensation is **not** due, under any circumstance, for non-local IP telephony  
6 transmitted traffic.

7  
8 Access charges, not reciprocal compensation, apply to long distance  
9 telecommunications. As with the issue of reciprocal compensation for ISP-  
10 bound traffic, the IP Telephony issue is one that primarily should be addressed  
11 by the FCC. Although IP Telephony should not be an issue in an arbitration of  
12 a local interconnection agreement, this Commission can address the questions  
13 regarding intrastate, interLATA, and local traffic. Further, BellSouth requests  
14 if the Commission determines that it must decide on contract language at this  
15 time, BellSouth requests that this Commission adopt the Agreement language  
16 found in my direct testimony.

17  
18 ***Issue No. 23: Should the Agreement contain a provision stating that if BellSouth***  
19 ***has provided its affiliate preferential treatment for products or services as***  
20 ***compared to the provision of those same products or services to Sprint, then***  
21 ***the applicable standard (i.e., benchmark or parity) will be replaced for that***  
22 ***month with the level of service provided to the BellSouth affiliate?***

23  
24  
25

1 Q. MR. LENIHAN, BEGINNING ON PAGE 2, DISCUSSES SPRINT'S  
2 POSITION ON TREATMENT OF AFFILIATE WITH RESPECT TO  
3 PERFORMANCE MEASURES. PLEASE COMMENT.

4  
5 A. Sprint's position is that "if BellSouth has provided its affiliate preferential  
6 treatment for products and services as compared to provision of those same  
7 products and services provided to any alternative local exchange carrier  
8 ('ALEC'), then the standard, either parity with retail operations or a pre-  
9 established benchmark, should be replaced for that month with the superior  
10 level of service provided to the BellSouth affiliate." (Lenihan, p.3)

11

12 First, with respect to benchmarks, as stated in my direct testimony, Sprint's  
13 proposal is irrelevant. A benchmark is a benchmark-a predetermined level. It  
14 does not change from month to month. With benchmarks, the only relevant test  
15 is whether the required level is met. What Sprint is asking would be similar to  
16 asking for the benchmark to be moved to reflect the month's average, every  
17 month. This defeats the purpose of setting a benchmark.

18

19 Although at present a moot point, Sprint's proposal to use BellSouth's ALEC  
20 performance, if it is better than what BellSouth provides to its retail customers  
21 in any one month, is also inappropriate. Parity for BellSouth's performance is  
22 measured in comparison to its retail operations, not in comparison to its ALEC.  
23 If Sprint considers parity for BellSouth's performance to be a comparison to  
24 the BellSouth ALEC, is Sprint also proposing to use the ALEC's results if they  
25 are worse than BellSouth's performance to its retail customers? I would doubt

1 that. BellSouth's measurement of parity should be applied to its ALEC, just  
2 like any other ALEC. The appropriate test, as discussed in the FCC's Order  
3 approving Bell Atlantic's New York 271 application, is developed based upon  
4 BellSouth's retail operations, not based on its ALEC.

5  
6 The Commission has access to BellSouth's performance measurements, and  
7 can determine if BellSouth is giving preferential treatment to its ALEC. If this  
8 were to be the case, the Commission could then decide if it is appropriate to  
9 take action to prevent such treatment. Further, as pointed out in my direct  
10 testimony, Sprint's proposal is hypothetical at best. BellSouth's ALEC is not  
11 providing local telecommunications service in the BellSouth serving area in  
12 Florida.

13  
14 ***Issue 26: Should the availability of BellSouth's VSEEM III remedies proposal to***  
15 ***Sprint, and the effective date of VSEEM III, be tied to the date that***  
16 ***BellSouth receives interLATA authority in Florida?***

17  
18 ***Issue 27: Should BellSouth be required to apply a statistical methodology to***  
19 ***theSQM performance measures provided to Sprint?***

20  
21 Q. ON PAGE 9 OF HIS TESTIMONY, MR. LENIHAN STATES "SPRINT  
22 MUST HAVE A READILY AVAILABLE ADEQUATE PERFORMANCE  
23 MEASUREMENTS PLAN AND ASSOCIATED PENALTIES." DO YOU  
24 AGREE?

25

1 A. No. BellSouth agrees that it has an obligation to provide parity service to  
2 Sprint, as well all other ALECs operating in the BellSouth service area.  
3 Neither performance measures nor penalties, however, are necessary to ensure  
4 that BellSouth fulfills that obligation.

5  
6 The FCC has never indicated that enforcement mechanisms and penalties are  
7 either necessary or required to ensure that BellSouth meets its obligations  
8 under Section 251 of the Act. Enforcement mechanisms are not a part of the  
9 FCC's Local Competition Order. They are not a requirement for 271 relief.  
10 The FCC only looked at enforcement mechanisms as part of its public interest  
11 analysis in the review of Bell Atlantic's Section 271 Application. The FCC  
12 views enforcement mechanisms and penalties as additional incentive to ensure  
13 that an ILEC continues to comply with the competitive checklist after  
14 interLATA relief is granted.

15

16 Q. HOW DOES MR. LENIHAN'S TESTIMONY RELATE TO ISSUE NO. 27?

17

18 A. Issue No. 27 is requesting the merger of two separate, mutually exclusive,  
19 plans. BellSouth's SQM or Performance Measurements Plan does not include  
20 the proposed VSEEM III. The statistical information being requested by  
21 Sprint is part and parcel of VSEEM III, not BellSouth's SQM. BellSouth has  
22 withdrawn its VSEEM III plan from the negotiations with Sprint, and Sprint is  
23 therefore not entitled to the information that is being requested.

24

25

1 Q. WHAT IS BELLSOUTH REQUESTING OF THIS COMMISSION?

2

3 A. BellSouth has withdrawn its VSEEM III plan from the negotiation process  
4 with Sprint. Sprint has shown no concrete evidence why it “must have a  
5 readily available adequate performance measurements plan and associated  
6 penalties.” Because performance penalties serve no purpose until after  
7 interLATA 271 relief is granted, BellSouth requests the Commission not  
8 approve Sprint’s request that the BellSouth VSEEM III proposal take effect  
9 prior to BellSouth receiving interLATA authority. BellSouth further requests  
10 that the Commission rule that Sprint is not entitled to the statistical  
11 methodology of a plan that is not being offered to them.

12

13 *Issue 28a: Should BellSouth be required to provide Sprint with two-way trunks*  
14 *upon request?*

15

16 *Issue 28b: Should BellSouth be required to use those two-way trunks for BellSouth*  
17 *originated traffic?*

18

19 Q. IS BELLSOUTH REQUIRED TO PROVIDE TWO-WAY TRUNKING, AS  
20 STATED BY MS. OLIVER?

21

22 A. Yes. BellSouth is required to provide two-way trunking upon request.

23

24 Q. WHAT IS BELLSOUTH’S OBLIGATION WITH REGARD TO THE USE  
25 OF TWO-WAY TRUNKING?

1 A. BellSouth's position is that it is only obligated to provide and use two-way  
2 local interconnection trunks where traffic volumes are too low to justify one-  
3 way trunks. In all other instances, BellSouth is able to use one-way trunks for  
4 its traffic if it so chooses. Nonetheless, BellSouth is not opposed to the use of  
5 two-way trunks where it makes sense, and the provisioning arrangements and  
6 location of the Point of Interconnection can be mutually agreed upon.

7

8 Q. ON PAGE 19 OF HER TESTIMONY, MS. OLIVER REFERS TO  
9 EFFICIENCIES IN THE USE OF TWO-WAY TRUNKING. ARE TWO-  
10 WAY TRUNKS ALWAYS MORE EFFICIENT THAN ONE-WAY  
11 TRUNKS?

12

13 A. No. Two-way trunks may be more efficient than one-way trunks only under  
14 some circumstances. Due to busy hour characteristics and balance of traffic,  
15 however, two-way trunks are not always the most efficient, as Sprint seems to  
16 suggest. For example, trunk groups are engineered based upon the amount of  
17 traffic that uses the trunk group during the busiest hour of the day. If the  
18 traffic on the trunk group in both directions occurs in the same or similar busy  
19 hour, there will be few, if any, savings obtained by using two-way trunks  
20 versus one-way trunks. The trunk termination costs will still have to be  
21 incurred on the total number of trunks required to accommodate the total two-  
22 way traffic in the busy hour. In addition, if the traffic is predominately flowing  
23 in one direction, there will be little or no savings in two-way trunks over one-  
24 way trunks.

25

1 BellSouth has informed Sprint on several occasions that it is willing to employ  
2 two-way trunks consistent with basic two-way trunking principles. However,  
3 if there are no efficiencies to be gained, BellSouth is entitled to use one-way  
4 trunks for its traffic just as Sprint is entitled to use one-way trunks for its  
5 traffic. BellSouth, however, upon request will install two-way trunks.

6

7 Q. CONTRARY TO SPRINT'S PREMISE, WHY SHOULD BELLSOUTH  
8 HAVE THE RIGHT TO ESTABLISH ONE-WAY TRUNKS FOR  
9 BELLSOUTH ORIGINATED TRAFFIC?

10

11 A. BellSouth should have the flexibility to use one-way trunks for its originated  
12 traffic for the following reasons:

13 1. If the majority of traffic exchanged between the companies originates on  
14 BellSouth's network, which is usually the case, BellSouth must have the  
15 ability to establish direct trunk groups from its end offices to the point of  
16 interconnection when traffic volumes dictate. BellSouth must retain the  
17 option to utilize one-way trunks if Sprint or another ALEC is  
18 uncooperative in establishing direct end office to end office trunks or in  
19 providing a sufficient number of two-way trunks (e.g., to remedy blocking  
20 situations).

21

22 2. Because two-way trunks carry both companies' originated traffic, requiring  
23 two-way trunks raises an issue as to which carrier will determine the  
24 Interconnection Point for BellSouth originated traffic. The FCC

25



1 specifically declined to give ALECs such control over BellSouth's internal  
2 network costs for handling local traffic originated by BellSouth end users.

3

4 Further, allowing the ALEC to designate the Point of Interconnection for  
5 BellSouth originated traffic allows the ALEC to inappropriately increase  
6 BellSouth's costs. If an ALEC could require two-way trunks, the ALEC  
7 would most likely select a Point of Interconnection very close to its switch,  
8 and elect two-way trunks via a tandem switch. In such a case, the ALEC  
9 could eliminate the majority of its internal costs by increasing BellSouth's  
10 costs of delivering its traffic to the ALEC. The FCC specifically declined  
11 to give ALECs this ability.

12

13 3. Two-way trunks involve a variety of complex issues that must be addressed  
14 by the parties. For example, two-way trunk installation involves agreement  
15 on: 1) the number of trunks required; 2) when trunk augmentation is  
16 required; 3) whether to install direct end office to end office trunk groups  
17 or tandem trunk groups; 4) whose facilities will be used to transport the  
18 two-way trunk groups when both companies have available facilities; 5)  
19 where the Point of Interconnection will be located; 6) which company will  
20 order and install the trunk group and who will control testing and  
21 maintenance of the trunk group; and 7) the method of compensation  
22 between the parties for two-way trunks that carry multi-jurisdictional  
23 traffic. All of these issues must be resolved between the parties in order to  
24 make two-way trunks a viable arrangement.

25

1 Q. AT PAGE 20 OF HER TESTIMONY, MS. OLIVER REFERS TO ¶ 219 OF  
2 THE FCC'S LOCAL COMPETITION ORDER TO SUPPORT HER  
3 POSITION THAT TWO-WAY TRUNKS ARE REQUIRED. PLEASE  
4 COMMENT.

5

6 A. Ms. Oliver attempts to make a case that two-way trunks are required by ¶ 219  
7 of the FCC's Local Competition Order. However, this paragraph does not  
8 support Ms. Oliver's position. Paragraph 219 states in part:

9 We conclude here, however, that where a carrier requesting  
10 interconnection pursuant to section 251(c)(2) does not carry a sufficient  
11 amount of traffic to justify separate one-way trunks, an incumbent LEC  
12 must accommodate two-way trunking upon request where technically  
13 feasible. [Emphasis added]

14

15 It is clear that the FCC only requires two-way trunks where technically feasible  
16 and where there is not enough traffic to justify one-way trunks. Nonetheless,  
17 BellSouth will provide two-way trunks upon request by Sprint. However,  
18 BellSouth will only send its traffic over those trunks when traffic volumes  
19 between BellSouth and Sprint are insufficient to justify one-way trunks.

20

21 Q. ON PAGE 18, MS. OLIVER STATES THAT "THE PROVISION OF TWO-  
22 WAY TRUNKING SHOULD INCORPORATE BOTH 'TWO-WAY'  
23 TRUNKING AND 'SUPER-GROUP' INTERCONNECTION TRUNKING  
24 AS DEFINED IN THE DRAFT INTERCONNECTION AGREEMENT."  
25 PLEASE COMMENT.

1 A. First, it should be understood that Super-Group interconnection trunking is  
2 simply a type of two-way trunking arrangement. Second, Super Group  
3 trunking arrangements are included in Attachment 3, Section 2.8.8.2.1, to the  
4 proposed interconnection agreement. BellSouth is not sure why Ms. Oliver has  
5 expressed concern with regard to Super Groups.

6  
7 Q. HOW DOES BELL SOUTH RECOMMEND THE COMMISSION RESOLVE  
8 THIS ISSUE?

9  
10 A. Based on the preceding discussion, BellSouth requests the Commission to  
11 adopt BellSouth's position on this issue and not require BellSouth to use two-  
12 way trunking except as required by the FCC. The Commission is requested to  
13 adopt the following BellSouth contract language that allows the parties to  
14 reach mutual agreement on the use of two-way trunks:

15 2.8.6.2.1 Two-way interconnection trunking may be utilized by the  
16 Parties to transport Local and IntraLATA Toll Traffic between  
17 Sprint's end office or switch and BellSouth's access tandem or  
18 end office. Two-way interconnection trunking may also be  
19 used to transport Local Traffic between Sprint's end office or  
20 switch and BellSouth's local tandem. Because both Parties'  
21 Local and IntraLATA Toll Traffic shall utilize the same two-  
22 way trunk group, the Parties shall mutually agree to use this  
23 type of interconnection trunking. The Parties shall mutually  
24 agree upon the quantity of trunks and provisioning shall be  
25 jointly coordinated. Furthermore, the Physical Point(s) of

1 Interconnection for two-way interconnection trunking  
2 transporting both Parties' Local and IntraLATA Toll shall be  
3 mutually agreed upon. Upon determination that two-way  
4 interconnection trunking will be used, Sprint shall order such  
5 two-way trunking via the Access Service Request (ASR)  
6 process in place for Local Interconnection. Furthermore, the  
7 Parties shall jointly review such trunking performance and  
8 forecasts on a periodic basis. The Parties' use of two-way  
9 interconnection trunking for the transport of Local and  
10 IntraLATA Toll Traffic between the Parties does not preclude  
11 either Party from establishing additional one-way  
12 interconnection trunks within the same local calling area for the  
13 delivery of its originated Local and IntraLATA Toll Traffic to  
14 the other Party.

15  
16 Although included in a different section of the proposed Interconnection  
17 Agreement, this language is also proposed for the provision of Super Groups,  
18 modified where appropriate to show applicability to Super Groups. The above  
19 method has proven effective where BellSouth and other ALECs have  
20 addressed the provision of two-way trunks.

21

22 Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

23

24 A. Yes.

25

1 STATE OF FLORIDA)

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON )

4

5 I, JANE FAUROT, RPR, Chief, FPSC Bureau of Reporting  
6 Official Commission Reporter, do hereby certify that the  
7 Hearing in Docket No. 000828-TP was heard by the Florida  
8 Public Service Commission at the time and place herein  
9 stated.

7

8 It is further certified that I stenographically  
9 reported the said proceedings; that the same has been  
10 transcribed under my direct supervision; and that this  
11 transcript, consisting of 225 pages, Volume 3 constitutes  
12 a true transcription of my notes of said proceedings and  
13 the insertion of the prescribed prefiled testimony of the  
14 witness(s)..

11

12 I FURTHER CERTIFY that I am not a relative, employee,  
13 attorney or counsel of any of the parties, nor am I a  
14 relative or employee of any of the parties' attorneys or  
15 counsel connected with the action, nor am I financially  
16 interested in the action.

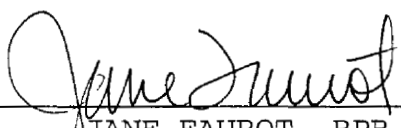
14

15 DATED THIS 23RD DAY OF JANUARY, 2001.

15

16

17

  
\_\_\_\_\_  
JANE FAUROT, RPR  
FPSC Division of Records & Reporting  
Chief, Bureau of Reporting  
(850) 413-6732

18

19

20

21

22

23

24

25