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ORIGINAL

February 13, 2001

Mrs. Blanca S. Bayó
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 000828-TP (Sprint Arbitration)

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Brief of the Evidence, which we ask that you file in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

E. Earl Edenfield Jr. (BW)

E. Earl Edenfield Jr.

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey
Nancy B. White

APP ___
CAF ___
CMP 5
COM ___
CTR ___
ECR ___
LEG 1
OPC ___
PAI ___
RGO ___
SEC 1
SER ___
OTH ___

CERTIFICATE OF SERVICE
Docket No. 000828-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via U.S. Mail and Hand Delivery on the 13th day of February, 2001 to the following:

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E. Earl Edenfield Jr.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

In the Matter of:	)	
	)	Docket No. 000828-TP
Petition of Sprint Communications Company L.P. for Arbitration with BellSouth Telecommunications, Inc, Pursuant to Section 252(b) of the Telecommunications Act of 1996.	)	Filed: February 13, 2001

BELLSOUTH TELECOMMUNICATIONS, INC.
BRIEF OF THE EVIDENCE

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[1] There are a number of issues that have been resolved by the Parties and/or transferred to Generic Dockets. The Parties have settled issues 1, 2, 5, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 30, 31, 33, 34 and 35 (issue 22 was settled after the hearing). Issues 23, 24, 25, 26 and 27 were moved to Generic Docket No. 000121-TP. Issue 12 was moved to Generic Docket No. 000075-TP.

STATEMENT OF THE CASE

The Telecommunications Act of 1996 ("1996 Act") requires interconnection negotiations between local exchange companies and new entrants. Parties that cannot reach a satisfactory resolution of their negotiations are entitled to seek arbitration of the unresolved issues by the appropriate state commission. 47 U.S.C. § 252(b)(1). BellSouth Telecommunications, Inc. ("BellSouth") and Sprint Communications Company L.P. ("Sprint") entered into a three-year Interconnection Agreement ("Agreement") on June 27, 1997. In anticipation of the expiration of the Interconnection Agreement, the Parties began negotiating a new interconnection agreement on February 1, 2000.

While the Parties made substantial progress, all of the issues between the Parties could not be resolved. Thus, Sprint filed a Petition for Arbitration on July 10, 2000 seeking the assistance of the Florida Public Service Commission ("Commission") in resolving the remaining issues. BellSouth filed a Response to that Petition on August 8, 2000. The Petition set forth a total of thirty-five issues to be resolved by the Commission. Since the date of the filing of the Petition, the Parties continued to negotiate, resulting in only ten issues remaining for consideration by the Commission.

The hearing in this matter was held on January 10, 2001. At the hearing, BellSouth submitted the direct and rebuttal testimony of John Ruscilli and Keith Milner. Sprint submitted direct and rebuttal testimony from Melissa Closz, Angela Oliver, Mark Felton and Michael Hunsucker. This Brief of the Evidence is submitted in accordance with the post-hearing procedures set forth in the Commission's PreHearing Order (PSC-00-2487-PHO-TP) dated December 22, 2000 and Rule 25-22.056, Florida Administrative Code. A summary of

BellSouth's position on each issue to be resolved in this docket is set forth in the following pages and marked with a double asterisk.

STATEMENT OF BASIC POSITION

The Commission's goal in this proceeding is to resolve each issue in this arbitration consistent with the requirements of Section 251 of the 1996 Act, including the regulations prescribed by the Federal Communications Commission ("FCC"), and to establish rates for interconnection services and network elements in accordance with Section 252(d) of the 1996 Act. The Commission should adopt BellSouth's positions on the issues in dispute. BellSouth's positions on these issues are reasonable and consistent with the 1996 Act, which cannot be said about the positions advocated by Sprint.

STATEMENT OF POSITION ON THE ISSUES

Issue 3: Should BellSouth make its Custom Calling features available for resale on a stand-alone basis?

*** No. BellSouth is only obligated to make available for resale any telecommunications service that BellSouth offers on a retail basis to its end-users. BellSouth does not offer stand-alone Custom Calling features to its end-users and, therefore, is not legally obligated to offer them to Sprint. ***

DISCUSSION

BellSouth's resale obligations are set forth in the §251(c)(4) of the 1996 Act. Under that provision, BellSouth has "the duty to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers." In its *First Report and Order*[2], the FCC further refined BellSouth's resale obligations:

> The 1996 Act does not require an incumbent LEC to make a wholesale offering of any service that the incumbent LEC does not offer to retail customers. (¶ 872)

[2] First Report and Order, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98 (August 8, 1996) ("*First Report and Order*").

***

> On the other hand, section 251(c)(4) does not impose on incumbent LECs the obligation to disaggregate a retail service into more discrete retail services. The 1996 Act merely requires that any retail services offered to customers be made available for resale. (¶ 877)

Notwithstanding the FCC's admonition to the contrary, Sprint is seeking to have the Commission disaggregate a retail service into discrete subparts by separating Custom Calling Features from the basic local exchange service (dialtone). Even more puzzling is why Sprint would request this service at all given the fact that Sprint has no residential resale customers in Florida (TR, at 78) and is abandoning the residential resale market in Georgia. (*See*, Hearing Exhibit 2)

Under the 1996 Act, BellSouth is only required to allow Sprint to resale the same services that BellSouth provides to BellSouth's end-user customers – no more, no less. (TR, at 312) BellSouth provides service to its end-user customers in accordance with the terms and conditions set forth in BellSouth's General Subscriber Service Tariffs. The specific tariff defining the terms and conditions under which BellSouth provides Custom Calling Features to BellSouth's end-user customers is A13.9. (Hearing Exhibit 4) (TR, at 312-13) There are two subsections of A13.9 that are particularly instructive on this issue: 13.9.1A, which provides that "Custom Calling services are auxiliary features provided *in addition to* basic telephone service" and 13.9.2B, which provides that "Custom Calling Services are furnished *only in connection with individual line residence and business main service*." (Emphasis Added) In fact, Sprint basically concedes that the tariff requires an end-user customer to have basic local service as a prerequisite for having Custom Calling Features, but contends that the restriction is unreasonable and should apply only to the end-user customer, not Sprint. (TR, at 313)

Sprint's contention that the restriction is reasonable as to the end-user customer but is unreasonable as to Sprint misses the point of the resale obligation. (TR, at 315) BellSouth is not limiting Sprint's right to resale the Custom Calling Features that BellSouth provides to the end-user customer. To the contrary, BellSouth is only insisting that Sprint resale Custom Calling Features under the same terms and conditions that BellSouth provides those services to BellSouth's end-user customers. Ironically enough, the resale restriction that Sprint claims is unreasonable can also be found in Sprint's General Exchange Tariff A13(E)(1)(c), which provides that "Custom calling features are furnished only in connection with individual line service and rotary line service...."

Even assuming for the sake of argument that the requirement for Sprint to purchase basic local exchange service in order to resale the Custom Calling Features could be viewed as a limitation, it is reasonable, non-discriminatory and narrowly tailored to comport with the requirements of section 251(c)(4) of the 1996 Act. A BellSouth end-user customer simply cannot obtain Custom Calling Features without the underlying basic local exchange service because the customer cannot use these features without first having dialtone. (TR, at 311) Since it is imperative that an end-user customer have dialtone as a prerequisite to having Custom Calling Features, Sprint's suggestion that the tariff poses an "unreasonable limitation" on Sprint's ability to resale Custom Calling Features is baseless.

While Sprint cites the decision of the California Public Utilities Commission[3] as authority for its position, the underlying facts of that decision are distinguishable from the facts in this

[3] Opinion, *Application by Sprint Communications Company, L.P. for Arbitration of Interconnection Rates, Terms, Conditions and Related Arrangements with Pacific Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Application 00-05-053 (Decision 00-10-031 dated October 5, 2000).

arbitration. In its discussion, the California PUC notes that "Pacific cannot claim technical infeasibility because its CNS tariff allows for certain vertical features to be sold without an access line...." Clearly, that is not the situation with BellSouth's A.13.9 tariff, which provides that "Custom Calling Services are furnished only in connection with individual line residence and business main service." Further, the California PUC's conclusion that Pacific Bell sold vertical features on a stand-alone basis, at retail, is based on sales to enhanced service providers (ESPs). The FCC has held that such sales are not at retail, and therefore, do not trigger the requirement under section 251(c)(4) to resell at a wholesale discount. (*See*, Second Report and Order, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147 (rel. Nov. 9, 1999), at ¶ 19 ("*Second Advanced Services Order*"). The FCC also amended its rules "to clarify that advanced services sold to Internet Service Providers as an input component to the Internet Service Provider's own retail Internet service offering are not subject to the discounted resale obligations of section 251(c)(4)." *Id.*, at ¶ 22. Thus the Commission should not find the decision of the California PUC to be persuasive.

More analogous to the facts in this proceeding is the decision from the Massachusetts Department of Telecommunications and Energy ("DTE")[4] , which is based on tariff provisions similar to those of BellSouth's A13.9 tariff. The Massachusetts DTE concluded at page 23 of the Order that:

> Verizon does not provide Custom Calling Features on a stand-alone basis to its retail customers, but such services are offered only in conjunction with its basic exchange service. See D.T.E. MA No. 10. The Department notes that, based on the information provided to us by the Parties on this issue, Verizon's refusal to offer vertical features on a stand-alone basis to Sprint at the wholesale discount

[4] Order, *Petition of Sprint Communications Company, L.P., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration of an Interconnection Agreement between Sprint and Verizon-Massachusetts,* D.T.E. 00-54, dated December 11, 2000.

does not violate the Act or the FCC's Local Competition rules. Therefore, we find that Verizon is not required to offer vertical features at the wholesale discount rate, on a stand-alone basis.

Consistent with the 1996 Act and FCC rules, the Commission should not require BellSouth to provide Custom Calling Features on a stand-alone basis to Sprint.

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

*** No. On July 18, 2000, the Eighth Circuit Court of Appeals declined to reinstate 47 C.F.R. Sec. 51.315(c)-(f) that it had previously vacated. The Court found that subsections (c)-(f), which require the ILECs to do the work of combining network elements for the competitors, violate Section 251(c)(3) of the Act. ***

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

*** No. The EEL is not a mandatory UNE, and therefore, BellSouth should not be required to provide it at TELRIC rates. In addition, to provide the EEL, BellSouth would have to combine the loop and dedicated transport for Sprint, which BellSouth is not required to do. ***

DISCUSSION

As both of these issues revolve around the interpretation of the term "currently combines," as found in FCC Rule 51.319(b), BellSouth will address both of these issues together. Pursuant to the Commission's request for an update on the law as it pertains to combinations of unbundled network elements (UNEs), BellSouth provides below a chronology of the law.

Section 251(c)(3) of the 1996 Act requires incumbent LECs such as BellSouth to "provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service." From the plain wording of the 1996 Act, there is no doubt that the ALECs are required to combine the network

elements. The FCC, however, interpreted the 1996 Act to require the incumbent LECs to combine the UNEs, upon the request of an ALEC, even if the UNEs were not ordinarily combined in the incumbent LEC's network. The FCC's interpretation was codified in FCC Rules 51.315(c)-(f).

The FCC's decision was appealed to the United States Court of Appeals for the Eighth Circuit, which ruled that "[w]hile the Act requires incumbent LECs to provide elements in a manner that enables the competing carriers to combine them, unlike the Commission, we do not believe that this language can be read to levy a duty on the incumbent LECs to do the actual combining of elements." *Iowa Utils. Bd. v. F.C.C.*, 120 F.3d 753, 813 (8th Cir, 1997) ("*Iowa Utilities I*"). Consequently, the Eighth Circuit vacated, among other things, subsections (c) through (f) of FCC Rule 51.315.

Not surprisingly, the *Iowa Utilities I* decision was appealed to the United States Supreme Court in *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999). While the Supreme Court reversed and remanded the Eighth Circuit's vacatur of FCC Rule 51.315(b), the Supreme Court did not address the Eighth Circuits vacatur of FCC Rules 51.315 (c)-(f). Thus, on remand, the Eighth Circuit reaffirmed its previous ruling vacating FCC Rules 51.315(c)-(f). See, *Iowa Utils. Bd. v. F.C.C.*, 219 F.3d 744 (8th Cir, 2000) ("*Iowa Utilities II*"). The Eighth Circuit noted that requiring incumbents to combine network elements for competitors "cannot be squared with the terms of subsection 251(c)(3)." *Id.* at 759 The Eighth Circuit's decision in *Iowa Utilities II* sets forth the current state of the law: incumbent LECs cannot be required to combine network elements for ALECs.

Sprint now relies on FCC Rule 51.315(b) as support for its position that BellSouth should be required to combine network elements for Sprint. The FCC, however, in its Third Report and Order in CC Docket 96-98 ("*UNE Remand Order*") confirmed that BellSouth presently has no obligation to combine network elements for ALECs, when those elements are not currently combined in BellSouth's network. The FCC found that "to the extent an unbundled loop is *in fact connected* to unbundled dedicated transport the statute and our rule 315(b) require the incumbent to provide such elements to requesting carriers in combined form." *UNE Remand Order*, ¶ 480 (Emphasis Added) The FCC also confirmed that "except upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines." 47 C.F.R. § 51.315(b).

Sprint admitted on cross-examination that the FCC declined to adopt a definition of "currently combines" that would include all elements "ordinarily combined" in the incumbent's network. (TR, at 369) Notwithstanding, this "ordinarily combines" language is precisely the definition advocated by Sprint in this proceeding. (TR, 367-68) When confronted with the Commission's prior decision in the Intermedia/BellSouth Arbitration (Docket No. 991854-TP; Order No. PSC-00-1519-FOF-TP) Sprint was forced to acknowledge that the Commission had rejected Sprint's interpretation of "currently combines" and instead ordered BellSouth "to provide combinations that are, in fact, already combined and existing in BellSouth's network." Order No. PSC-00-1519-FOF-TP, at 22-23. While the Commission's Order noted that the Eighth Circuit had not ruled, Sprint was forced to admit that nothing had changed between the Commission's Order and the date of the hearing in this proceeding. (TR, at 377)

Sprint has also raised the issue of the EEL in this proceeding. As with UNE combinations, this issue revolves around the question of whether BellSouth is obligated to

combine network elements for Sprint that are not, in fact, already combined in BellSouth's network. The FCC addressed the issue of the EEL in its *UNE Remand Order*, specifically declining to define the EEL as a separate network element and requiring the ILEC to provide the EEL only where the loop is, in fact, connected to the transport. (¶ 478) (TR, at 378) Therefore, to the extent Sprint seeks to have BellSouth provide the EEL in locations where the EEL is not, in fact, already combined, Sprint is asking BellSouth to combine network elements. For the reasons discussed above, BellSouth should not be required to provide the EEL where the EEL does not already exist.

The Commission, of course, should also take note that it has ruled on the EEL issue in two previous arbitrations. In the ICG/BellSouth Arbitration (Docket No. 990691-TP; Order No. PSC-00-0128-FOF-TP), the Commission denied ICG's request for EELs to be made available in its Interconnection Agreement with BellSouth. Likewise, in the Intermedia/BellSouth Arbitration Order, the Commission ruled that BellSouth is only required to provide EELs that are currently combined and existing in BellSouth's network. (TR, at 379-80) Sprint has not provided any evidence that should cause the Commission to alter its prior decisions on the UNE combinations and EELs issues.

Issue 7: **In situations where an ALEC's end-user customer is served via unbundled switching and is located in density zone 1 in one of the top fifty Metropolitan Statistical Areas ("MSAs") and who currently has three lines or less, adds additional lines, should BellSouth be able to charge market-based rates for all of the customer's lines?**

** Yes, when a specific customer has four or more lines, whether they were purchased all at once or gradually over time, BellSouth does not have to provide unbundled local switching as long as the other criteria for Rule 51.319(c)(2) are met. **

DISCUSSION

This issue involves the interpretation of FCC Rule 51.319(c)(2), which sets forth the conditions under which ILECs, such as BellSouth, are exempt from the requirement to provide unbundled local switching. Rule 51.319(c)(2) generally provides that ILECs shall not be required to provide unbundled local switching in certain geographic areas, provided that the ILEC provides non-discriminatory access to a combination of unbundled loops and transport (Enhanced Extended Links or EELs) throughout the relevant geographic area. The rule specifically provides that the ILEC does not have to provide unbundled switching for end users with four or more voice grade equivalents or lines in Density Zone 1 in a top 50 Metropolitan Statistical Area, provided the ILEC makes EELs available to requesting telecommunications carriers in that area.

The specific dispute that exists between BellSouth and Sprint is the interpretation of the "four or more voice grade equivalents or lines" portion of the Rule. (TR, at 324) Sprint contends that if an end-user begins service with less than four lines and ultimately increases the number of lines to four or more, then Sprint is still entitled to obtain the first three lines at TELRIC rates. (TR, at 325) Such an interpretation ignores the point of the FCC's rule. The FCC determined that the four line cut-off would be used to distinguish between the mass markets, where there was little competition, and the medium to large business market, where there is competition. (TR, at 327) While Sprint disagrees with the FCC's delineation, Sprint has expressed its disagreement in the form of a Motion for Reconsideration at the FCC. (*Id.*)

It is ludicrous for Sprint to suggest that because the end-user began with less than four lines and expanded to four or more lines, that the end-user should receive a classification different from other end-users that initially ordered four or more lines. Certainly the FCC Rule

does not contemplate such a distinction. Further, Sprint's arbitrary distinction could also result in an abuse of the ordering process. Specifically, a carrier and end-user could agree that the end-user would order three lines initially and then supplement that order to obtain the remaining lines. That way, the carrier would get the benefit of TELRIC pricing on the first three lines, while still fulfilling the end-user's order in a timely fashion. Sprint acknowledged the risk of "unscrupulous" carriers abusing the system in this manner. (TR, at 330-31)

As to the cost savings for the first three lines recognized under Sprint's proposal, Sprint does not anticipate passing the cost savings on to the end-user, but merely increasing its own profit margin. (TR, at 330) While Sprint may not agree with the FCC's distinction between the mass market and the large/medium business market, that is in fact the delineation made by the FCC. BellSouth's position on this issue is clearly the correct interpretation of the FCC's rules using the logic that the FCC used to create the rule in the first instance. Where the end user with four or more lines is located in Density Zone 1 in a top 50 MSA and BellSouth is willing to provide Sprint with EELs, BellSouth is not obligated to provide Sprint with unbundled switching for that customer.

Issue 8: **Should BellSouth be able to designate the network Point of Interconnection ("POI") for delivery of BellSouth's local traffic?**

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

*** The FCC determined that each originating carrier has the right to designate its POI on the ILEC's network. Thus, if Sprint wants BellSouth to bring BellSouth's originating traffic to a point designated by Sprint, then Sprint should pay for those additional facilities. ***

DISCUSSION

> It would be ironic if a law designed to promote a market-driven economy in local telephony service were instead interpreted to prohibit the consideration of cost when making decisions and thereby subsidize and reward inefficient behavior by market participants. *U.S. West Communications, Inc. v. Jennings*, 46 F.Supp.2d 1004, 1021 (D. Ariz. 1999).

The issues of POI and VPOI are interrelated; thus, BellSouth will address them together in this section of the Brief. This dispute concerns calls that originate in one BellSouth local calling area and are intended to be terminated in that same local calling area, but that have to be routed out of that local calling area because of Sprint's network design. BellSouth believes Sprint should be responsible for the costs BellSouth incurs in hauling these calls outside the local calling area in which they originate to a Point of Interconnection Sprint has designated in a distant local calling area. (Ruscilli Direct, at 35). Sprint, on the other hand, believes that BellSouth should be responsible for these costs. (TR, at 169-70)

To illustrate the nature of the issue, assume that a particular LATA is shaped like a rectangle and that within the LATA are the Jacksonville and Lake City local calling areas. The Lake City local calling area is on the left side of the LATA, and the Jacksonville local calling area is on the right side of the LATA. Assume further that Sprint establishes a single Point of Interconnection in the LATA, and that the single Point of Interconnection is located in the Jacksonville local calling area. (TR, at 132-33)

Consider what must happen in order for a BellSouth end-user in the Lake City local calling area to call a Sprint end-user who is also located in the Lake City local calling area. That call must be hauled outside of the Lake City local calling area to the Sprint Point of Interconnection in the Jacksonville local calling area. Sprint will then turn around and haul the

call all the way back to the Lake City local calling area (where it originated), and terminate it to its end user. (TR, at 135-36)

Sprint acknowledges that when a BellSouth end user in the Lake City local calling area tries to call a BellSouth end user in the Jacksonville local calling area, BellSouth will not deliver that call unless the end user placing the call pays toll charges. (TR, at 138) Sprint, however, is unwilling to compensate BellSouth for hauling the call described above from the Lake City local calling area to the Jacksonville local calling area. (TR, at 139-40) Instead, Sprint contends that BellSouth should bear the costs of hauling the call from the BellSouth end user in the Lake City local calling area all the way across the LATA to the Jacksonville local calling area, just so Sprint can turn around and haul the call right back to the same local calling area in which it originated. (*Id.*) The question this Commission must decide, therefore, is when Sprint deliberately, and for its own purposes, chooses to have a single Point of Interconnection in a LATA as discussed above, who should pay for the consequences of that decision.

A. Two federal courts have rejected the arguments Sprint presents in support of its position on Issue No. 1, and one of those courts has expressly stated that a state commission may require an ALEC to compensate an incumbent for costs resulting from an inefficient interconnection.

Sprint contends that it does not have to consider any economic impacts to BellSouth in determining where to locate Sprint's single Point of Interconnection in the LATA. (TR, at 152) Sprint's argument is similar to an argument the FCC raised before a federal court in Oregon. In *US West v. AT&T Communications,* 31 F.Supp.2d 839, 852 (D. Or. 1998), reversed in part, vacated in part *sub nom., US West v. AT&T*, 224 F.3d 1049 (9th Cir. 2000),[5] the Court

[5] US West appealed several aspects of the Oregon Public Utility Commission's decisions in arbitration proceedings between US West and AT&T, MCI, and Sprint to the federal district court. *Id.* at 843. The FCC participated in the proceeding before the district court as *amicus curiae. Id.* After the district court rendered the

acknowledged the FCC's argument that the Act only requires a CLEC to establish one Point of Interconnection. *Id.* At 852. The Court then expressly rejected the FCC's argument, stating that "[i]n the end, the FCC's interpretation of the statute collapses under the weight of its own contradictions." *Id.* at 852 (emphasis added). The Court explained that with regard to Section 251(c), the concept of "[t]echnical feasibility answers the question of whether a CLEC may interconnect at a given point, but it does not answer the question of how many points of interconnection a CLEC must have." *Id.* (emphasis in original). The Court, therefore, concluded that a state Commission may order a CLEC to establish more than one Point of Interconnection. *Id.*

Subsequently, the United States District Court for the District of Arizona also concluded that a state Commission may order a CLEC to establish more than one Point of Interconnection. *See US West v. Jennings*, 46 F.Supp.2d 1004, 1021 (D. Az. 1999). In that case, the Court reviewed the Arizona Commission's decisions on the Point of Interconnection issue in ten consolidated arbitration proceedings. The Arizona Commission acknowledged that in at least one of those ten proceedings, it had considered "only whether interconnection was physically possible at the requested location." *Id.* at 1021. The Arizona Commission "ignored other factors such as the cost to [the incumbent] of establishing only a single point of interconnection, because the [Commission] assumed it could not consider those factors." *Id.* The Court, however, ruled that

> In determining whether a CLEC should establish more than one point of interconnection in Arizona, the [Arizona Commission] may properly consider relevant factors, including whether a CLEC is purposely structuring its point(s) of

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decision discussed in this brief, some of the parties appealed that decision to the United States Court of Appeals for the Ninth Circuit. The district court's decision on the point of interconnection issue discussed in this brief, however, was not raised on appeal, thus it was not disturbed by the Ninth Circuit's decision.

> interconnection to maximize the cost to the ILEC or to otherwise gain an unfair competitive advantage. The purpose of the Act is to promote competition, not to favor one class of competitors at the expense of another.

Id.

Significantly, the Arizona court further ruled that, "[a]s an alternative, the [Arizona Commission] may require a CLEC to compensate [the incumbent] for costs resulting from an inefficient interconnection." *Id.* The Court concluded its discussion of this issue by noting that "[i]t would be ironic if a law designed to promote a market-driven economy in local telephone service were instead interpreted to prohibit the consideration of cost when making decisions and thereby subsidize and reward inefficient behavior by market participants." *Id.* at 1022.

Sprint acknowledges that if BellSouth has to transport a call to a Point of Interconnection located in a different local calling area, the costs would be higher than they would if BellSouth transported the call to a Point of Interconnection located within the local calling area in which it originated. (TR, at167) Sprint, however, is unwilling to compensate BellSouth for these additional costs it has caused BellSouth to incur. Instead, Sprint wants BellSouth, and BellSouth alone, to bear those costs and thereby subsidize Sprint's operations. As the federal court in Arizona ruled, the Act neither requires nor permits such a result.

B. Under the logic of the FCC's *TSR Wireless* Order, an incumbent only is required to deliver its originating traffic, without charge, to a Point of Interconnection that is located within the local calling area in which the traffic originated.

After these two federal court decisions were released, the FCC released an Order addressing the Point of Interconnection issue. *See* Memorandum Opinion and Order, *In the Matter Of TSR Wireless, LLC. v. US West*, File Nos. E-98-13, E-98-15, E-98-16, E-98-17, E-98-18 (June 21, 2000). In *TSR Wireless*, a CMRS provider took the position that an incumbent was required to deliver its originating traffic to the CMRS provider's Point of Interconnection

without charge. As the FCC noted, two FCC rules bear on this position. The first is 47 CFR §51.702(b), which provides that "a LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network." The second is 47 CFR §51.701(b)(2), which defines "local telecommunications traffic" to which reciprocal compensation obligations apply as "telecommunications traffic between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area . . . ."[6]

In the *TSR Wireless* Order, the FCC read these two rules together to determine the extent of an incumbent's obligation to deliver its originating traffic to a CMRS provider without charge. Specifically, the FCC ruled that:

> Section 51.703(b), when read in conjunction with Section 51.701(b)(2), requires LECs to deliver, without charge, traffic to CMRS providers anywhere within the MTA in which the call originated . . . .

TSR Wireless Order at ¶31 (emphasis added). An incumbent, therefore, is required to deliver its originating traffic, without charge, to a CMRS provider's Point of Interconnection located within the same MTA in which the traffic originates. Absolutely nothing in the *TSR Wireless* Order suggests that an incumbent is required to deliver its originating traffic, without charge, to a Point of Interconnection located in an MTA other than the MTA in which the traffic originated.

The logic of the *TSR Wireless* decision applies with equal force to traffic between two LECs. The definition of "local telecommunications traffic" for LEC-to-LEC calls is traffic "that originates and terminates within a local service area established by the state commission." *See*

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[6] As explained below, a Major Trading Area (MTA) is the CMRS equivalent of a local calling area in a wireline environment.

47 CFR §51.701(b)(1). Applying the logic of the FCC's decision in the TSR Order to the LEC-to-LEC traffic that is at issue in this arbitration, therefore, leads to the inescapable conclusion that BellSouth must deliver its originating traffic, without charge, to a Sprint Point of Interconnection that is located anywhere within the local calling area in which the traffic originated. BellSouth, however, is not required to deliver traffic that originates in one local calling area to a Point of Interconnection Sprint has designated in another local calling area without charge to Sprint.

C. Adopting BellSouth's proposal would not force Sprint to build facilities to every BellSouth local calling area, but instead it would require Sprint to be financially responsible for the facilities necessary to carry calls from distant local calling areas to a Point of Interconnection designated by Sprint.

Adopting BellSouth's proposal would not force Sprint to build facilities to every BellSouth local calling area. (TR, at 169) BellSouth acknowledges that Sprint can establish a physical Point of Interconnection with BellSouth at any technically feasible point, and if it chooses to have only a single such point in a LATA, that is Sprint's choice. (*Id.*) Sprint can, however, lease facilities from BellSouth or any other entity to collect traffic from local calling areas outside of the local calling area in which its Point of Interconnection is found. (*Id.*) Nothing in BellSouth's proposed solution to this issue would require Sprint to build another (or the first) foot of cable devoted to local service in Florida beyond that required to establish a single Point of Interconnection in the LATAs Sprint chooses to serve.

Finally, BellSouth is not challenging Sprint's ability to designate a single Point of Interconnection for its originating traffic in each LATA. (*Id.*) Nor is BellSouth challenging Sprint's ability to design its network as it sees fit. (*Id.*) BellSouth is, however, challenging Sprint's ability to avoid the costs that result from its own network design decisions by requiring

BellSouth and its customers to bear those costs. BellSouth, therefore, requests the Commission to conclude that while Sprint can have a single Point of Interconnection in a LATA if it chooses, it remains responsible to pay for the facilities necessary to carry calls originated by BellSouth customers in distant local calling areas to that single Point of Interconnection. That is the fair and equitable result.

Issue 9: **Should the parties' Agreement contain language providing Sprint with the ability to transport multi-jurisdictional traffic over a single trunk group, including an access trunk group?**

*** BellSouth believes that Sprint's request to establish reciprocal trunk groups in some central offices and place all originating and/or terminating traffic, local or non-local, over direct end office switched access Feature Group D trunks may be technically feasible. Sprint has agreed to pay all reasonable development and implementation costs. ***

DISCUSSION

BellSouth has made a preliminary determination that Sprint's request to establish reciprocal trunk groups in some central offices and place all originating and/or terminating traffic, local or non-local, over direct end office switched access Feature Group D trunks is technically feasible. Although BellSouth and Sprint are in the process of refining the details of Sprint's request, BellSouth has agreed to proceed with the development and implementation of Sprint's request based upon Sprint's commitment to pay BellSouth for any and all reasonable development and implementation costs. (TR, at 226-27) BellSouth requests that the Commission enter an Order consistent with the Parties agreement. The portion of this issue addressing 00-dialing has been resolved and needs no action by the Commission.

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

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

*** BellSouth is only obligated to provide two-way local interconnection trunks where traffic volumes are too low to justify one-way trunks. BellSouth supports the use of two-way trunks where it makes sense and the provisioning arrangements can be mutually agreed upon. ***

DISCUSSION

There is no dispute between BellSouth and Sprint on the first part of this issue. BellSouth agrees that it is obligated to provide two-way local interconnection trunks where traffic volumes are too low to justify one-way trunks. *First Report and Order,* ¶ 219. (Ruscilli Direct, at 76) The issue to be decided by the Commission is whether BellSouth is obligated to use two-way trunks in every instance where Sprint requests two-way trunking. BellSouth contends that the use of two-way trunking is best determined by the parties on a case-by-case basis. (*Id.*) Solely from an engineering perspective, two-way trunks should be used when the traffic patterns in both directions will result in a significant reduction of switch trunk ports over separate one-way trunks. (Ruscilli Rebuttal, at 31) If the use of two-way trunking does not result in a significant reduction of switch trunk ports, then BellSouth should have the option to use, or continue using, one-way trunks for BellSouth's own traffic. (*Id.*)

Two-way trunks may be more efficient than one-way trunks under certain circumstances. (TR, at 231) Accordingly, BellSouth offers two-way trunk interconnection in a variety of configurations to accommodate ALEC interconnection requests. However, Sprint's claim that two-way trunks are always more efficient and always require fewer trunk terminations than one-way trunks is inaccurate. For example, if the busy hour traffic patterns in both directions are relatively similar, then there will be few, if any, trunk termination savings obtained by using two-way trunks in lieu of one-way trunks. Similarly, if the traffic is predominately in one direction, there are little to no savings in two-way trunk terminations over one-way trunk terminations. (*Id.*)

Sprint, however, contends that BellSouth should be required to interconnect via two-way trunks whenever Sprint requests irrespective of the circumstances. (TR, at 236-37) The net effect is that Sprint

would be in sole control of when and if BellSouth is able to use one-way trunking or two-way trunking to interconnect with Sprint's network. Sprint witness Oliver admitted as much when she readily acknowledged that Sprint can have one-way trunks if it wants, or it can have two-way trunks if it wants; however, under Sprint's proposal, BellSouth would have no such flexibility in establishing such interconnection trunking arrangements. (TR, at 239) Further, Ms. Oliver could not provide any examples of network or cost efficiencies gained by requiring BellSouth to use two-way trunks in every instance, only that Sprint should be allowed to control the manner of interconnection in every instance. (TR, at 241-42)

BellSouth will provide two-way trunks for Sprint's use. Further, BellSouth has repeatedly informed Sprint that BellSouth is willing to use two-way trunks for BellSouth traffic when it makes economic sense to do so. However, when there are no real efficiencies to be gained in using two-way trunks, BellSouth is entitled to use one-way trunking for its own traffic just as Sprint is entitled to use one-way trunking for its own traffic and should not be required to provide inefficient trunk arrangements simply because Sprint demands it. Accordingly, Sprint's language should be rejected.

Issue 32: Upon denial of a Sprint request for physical collocation, what justification, if any, should BellSouth be required to provide to Sprint for space that BellSouth has reserved for itself or its affiliates at the requested premises?

*** Upon denial of a Sprint request for physical collocation, BellSouth shall provide to Sprint and the Commission justification for the reserved space consistent with the Orders of the Commission and FCC Rule 51.323(f)(5). ***

DISCUSSION

Both the FCC and the Commission have established rules governing the information that BellSouth, in the event of a space denial based on an exhaust situation, must provide to the Commission and to the carrier that has been denied access to the collocation premises. The Commission and FCC rules address the specific issue raised by Sprint, which is the justification

BellSouth is required to provide for space that is reserved for BellSouth's future use. In its *Advanced Services Order on Reconsideration*[7], the FCC addressed the information to be provided by the ILEC to the state commission in an exhaust situation:

> To ensure that each state commission has sufficient information to evaluate space exhaust claims, we require that each incumbent LEC provide the state commission with all information necessary for the state commission to evaluate the reasonableness of the incumbent LEC's and its affiliates' reservations of space for future growth. This information shall include any information the state commission may require to implement its specific space reservation policies, including which space, if any, the incumbent LEC or any of its affiliates have reserved for future use. The incumbent LEC shall also provide the state commission with a detailed description of the specific future uses for which the space has been reserved.

Advanced Services Order on Reconsideration, ¶ 61. For the most part, the FCC has left to the individual state commissions the authority to implement specific space reservation policies. Consistent with this authority, the Commission implemented specific procedures to be followed when requesting a waiver of the Commission's collocation requirements. Among the many categories of information required to be provided by the ILEC are "Floor Plans, including measurements of the ILEC's premises showing: ... Space that does not currently house ILEC equipment or administrative offices but is reserved by the ILEC for future use, including the intended purpose of each area and the forecasted year of use." *PAA Order*, p. 12 The Commission already obtains and evaluates information necessary to determine the reasonableness of an ILEC's reserved space in an exhausted central office. Further, the Commission has been successfully utilizing this procedure since 1999.

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[7] Order on Reconsideration and Second Further Notice of Proposed Rulemaking in CC Docket No. 98-147 and Fifth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 98-147 and CC Docket No. 96-98, Released August 10, 2000 ("*Advanced Services Order on Reconsideration*").

The Commission should also note that Sprint raised this exact issue in the Generic Collocation proceeding. In its discussion of Sprint's position on Issue 10 (Parameters for Reserving Space for Future Use) and Issue 18 (Provision of Information Regarding Limited Space Availability) in that proceeding, the Commission cited the testimony of Sprint witnesses Michael Hunsucker and Melissa Closz:

> Witness Hunsucker further states that an ILEC should be required to provide justification to the requesting party when denying collocation due to lack of space. This justification would come from the ILEC demand and facility charts, which should include three to five years' historical data and forecasted growth. *Collocation Order*, p. 53.
>
> ...
>
> Witness Closz further argues that in a case of insufficient or partial collocation space, the ALEC is entitled to a tour of the ILEC's premises, and asserts that prior to such a tour, the ILEC should be required to provide the ALEC with detailed engineering floor plans of the premises, showing detailed information that will enable the ALEC to review and make its determination of the available collocation space. *Collocation Order*, p. 90.

In reaching its final decision, the Commission obviously considered, but did not adopt Sprint's recommendation.

As the Commission is well aware, a number of parties in the Generic Collocation proceeding, including Sprint, asked for reconsideration on a number of the Commission's decisions in the *Collocation Order*. While Sprint did seek reconsideration on a number of issues, Sprint did not seek reconsideration of the Commission's decision on Issue 10 of the Generic Collocation proceeding. In fact, Sprint actually opposed BellSouth's request for reconsideration on that Issue, saying "[w]ith regard to reservation of space, Sprint argues that neither GTEFL nor BellSouth identify any facts we overlooked or any mistake of law in our decision.... Therefore, Sprint argues that reconsideration should be denied." *Collocation Order on Reconsideration*, p.19. As to Issue 18 of the Generic Collocation proceeding, Sprint only sought reconsideration

on that portion of the Commission's decision regarding central office tours in when the ILEC can only offer partial collocation space. Sprint is now attempting, improperly, to use this arbitration as a means to have the Commission reconsider its decision in the Generic Collocation proceeding. As noted by Sprint witness Closz, "I agree that what Sprint has requested is beyond what is in this PAA." TR, at 90. BellSouth submits that the Commission's procedure for evaluating collocation waiver petitions and the Commission's decision on space reservation do not need modification.

Another aspect of Sprint's position is that it is inherently discriminatory against BellSouth. In the *Collocation Order*, the Commission determined that "an ILEC or a requesting carrier must be allowed to reserve collocation space subject to the same terms and conditions." *Collocation Order*, pp. 54-55. As Sprint admitted on cross-examination, however, Sprint is not requesting the same information from other carriers that might have reserved space in an exhausted central office that Sprint is requesting from BellSouth. TR, at 123. It was also readily apparent that Sprint was advocating that the Commission only look at the reasonableness of BellSouth's space reservation, not the reasonableness of other carriers reserved space in the same central office. TR, at 121. Taking Sprint's position to its logical conclusion, Sprint would have the Commission take away BellSouth's reserved space without considering the reasonableness of similarly situated ALEC's reserved space as well, which is on its face discriminatory treatment of BellSouth.

CONCLUSION

The Commission should adopt BellSouth's positions on each of the issues in dispute. BellSouth's positions on these issues are reasonable and consistent with the 1996 Act, which cannot be said about the positions advocated by Sprint. With few exceptions, the issues that

Sprint has brought before this Commission have little or nothing to do with Sprint providing local service to Florida consumers. Rather, Sprint's issues serve mainly to enhance Sprint's long distance and wireless service offerings. For the foregoing reasons, BellSouth requests that the Commission rule in BellSouth's favor on each arbitration issue.

Respectfully submitted this 13h day of February 2001.

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