Legal Department

NANCY B. WHITE
General Counsel - Florida

BellSouth Telecommunications, Inc.
150 South Monroe Street
Room 400
Tallahassee, Florida 32301
(305) 347-5558

March 14, 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. 000731-TP (AT&T Arbitration)

Dear Ms. Bayó:

Enclosed please find the original and fifteen copies of Post-Hearing Brief of BellSouth Telecommunications, Inc., which we ask that you file in the above referenced 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,

Nancy B. White (KP)

Nancy B. White

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

CERTIFICATE OF SERVICE
Docket No. 000731-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail (*) and Hand Delivery or Federal Express this 14th day of March, 2001 to the following:

Lee Fordham
Staff Counsel
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Marsha Rule (*)
Karen Jusevitch (*)
AT&T Communications of the Southern States, Inc.
101 North Monroe Street
Suite 700
Tallahassee, FL 32301
Tel. No. (850) 425-6365
Fax. No. (850) 425-6361
mrule@att.com
kjusevit@att.com

Roxanne Douglas (*)
AT&T Communications of the Southern States, Inc.
1200 Peachtree Street, N.W.
Suite 8100
Atlanta, GA 30309
Tel. No. (404) 810-8670
Fax. No. (404)
rxdouglas@att.com

Nancy B. White (NBW)
Nancy B. White

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition by AT&T Communications of the Southern States, Inc. for arbitration of certain terms and conditions of a proposed agreement with BellSouth Telecommunications, Inc. pursuant to 47 U.S.C. Section 252.	)	Docket No. 000731-TP Filed: March 14, 2001

POST-HEARING BRIEF OF BELLSOUTH TELECOMMUNICATIONS, INC.

BellSouth Telecommunications, Inc. ("BellSouth") submits this post-hearing brief in support of its positions on the issues submitted to the Commission for arbitration in accordance with the Section 252 of the Telecommunications Act of 1996, 47 U.S.C. § 252.

I. STATUTORY OVERVIEW

The 1996 Act provides that parties negotiating an interconnection agreement have the duty to negotiate in good faith. 47 U.S.C. §251(c)(1). After negotiations have continued for a specified period, the 1996 Act allows either party to petition a state commission for arbitration of unresolved issues. 47 U.S.C. §252(b)(2). The petition must identify the issues resulting from the negotiations that are resolved, as well as those that are unresolved. 47 U.S.C. §§252(b)(2)(A) and 252(b)(4). The petitioning party must submit along with its petition "all relevant documentation concerning: (1) the unresolved issues; (2) the position of each of the parties with respect to those issues; and (3) any other issues discussed and resolved by the parties." 47 U.S.C. §252(b)(2). A non-petitioning party to a negotiation under this section may respond to the other party's petition and provide such additional information as it wishes within 25 days after the state commission receives the petition. 47 U.S.C. §252(b)(3). The 1996 Act limits a state commission's consideration of any petition (and any response thereto) to the unresolved issues set forth in the petition and in the response. 47 U.S.C. §252(b)(4).

Through the arbitration process, the Commission must now resolve the remaining disputed issues in a manner that ensures the requirements of Sections 251 and 252 of the 1996 Act are met. The obligations contained in those sections of the 1996 Act are the obligations that form the basis for negotiation, and if negotiations are unsuccessful, they then form the basis for arbitration. Once the

Commission provides guidance on the unresolved issues, the parties will incorporate those resolutions into a final agreement that will then be submitted to the Commission for its final approval. 47 U.S.C. §252(a).

II. ISSUES AND POSITIONS

ISSUE 4: **What does "currently combines" mean as that phrase is used in 57 C.F.R. §51.315(b)?**

BellSouth's Position:*** Currently combines" refers to Unbundled Network Elements (UNEs) that are in fact physically combined to serve a specific location or customer. BellSouth is not obligated to combine, at AT&T's request, UNEs that are not already physically combined just because the same type of UNEs are ordinarily combined in BellSouth's network.***

ISSUE 5: **Should BellSouth be permitted to charge AT&T a "glue charge" when BellSouth combines network elements?**

BellSouth's Position:***BellSouth has no legal obligation to combine UNEs. Although it is not obligated to do so, BellSouth will combine UNEs if paid a fair market price for this service. The difference between market price and the cost of the individual elements has been referred to as a "glue" charge.***

DISCUSSION

Issue 4 is one of the more remarkable issues that AT&T has raised, if for no other reason than the ingenuity with which AT&T has attempted to twist the Code of Federal Regulations (CFR). It is absolutely clear that BellSouth has no obligation to combine any UNEs for AT&T that are not currently in fact combined to serve a particular location or customer.

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." 47 U.S.C. §251(c)(3). 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 neither currently nor ordinarily combined in the incumbent LEC's network. The FCC's interpretation was codified in FCC Rules 51.315(c). See 47 C.F.R. §51.315 et. seq.

CFR § 51.315(c), however, was vacated by the 8th Circuit Court of Appeals in Iowa Utils. Bd. v. FCC, 120 F.3rd 753 (8th Cir. 1997) rev'd in part, 525. U.S. 366 (1999), on remand, 219 F.3d 744, (8th Circ.

2000), cert. granted, 121 S.Ct. 878 (2001). The reversal of this rule was not a part of the initial appeal to the United States Supreme Court and that part of the 8th Circuit's decision was not reviewed, vacated or reversed. Moreover, even though the 8th Circuit's decision on 47 CFR § 51.315(c) was not appealed to the Supreme Court, the 8th Circuit, as part of its remand order, still reconsidered its ruling vacating this particular subsection, and confirmed its earlier ruling. Iowa Utilities Bd. v. FCC, 219 F.3d 744, 759 (8th Cir. 2000). Specifically, the 8th Circuit Court of Appeals held:

> Rule 51.315(b) prohibits the ILECs from separating previously combined network elements before leasing the elements to competitors. The Supreme Court held that 51.315(b) is rational because "[section] 251(c)(3) of the Act is ambiguous on whether leased network elements may or must be separated." AT&T Corp, 525 U.S. at 395. Therefore, under the second prong of Chevron, the Supreme Court concluded 51.315(b) was a reasonable interpretation of an ambiguous statute.
>
> Unlike 51.315(b), subsections (c)-(f) pertain to the combination of network elements. Section 251(c)(3) specifically addresses the combination of network elements. It states, in part, "An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service." Here, Congress has directly spoken on the issue of who shall combine previously uncombined network elements. It is the requesting carriers who shall "combine such elements." It is not the duty of the ILEC to "perform the functions necessary to combine unbundled network elements in any manner" as required by the FCC's rule. See 47 C.F.R. §51.315(c).

219 F.3d at 759.

It is hard to imagine how the Court could have been much clearer on this point. Even the FCC understood what it had been told by the 8th Circuit in its first order addressing these rules. In the FCC's Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238, released November 5, 1999 ("UNE Remand Order"), the FCC confirmed that ILECs presently have no obligation to combine network elements for ALECs when those elements are not currently combined in BellSouth's network. As the FCC made clear, Rule 51.315(b) applies to elements that are "in fact" combined, stating that "[t]o the extent an unbundled loop is in fact connected to unbundled dedicated transport, the statute and our rule 51.315(b) require the incumbent to provide such elements to requesting carriers in combined form." FCC 99-238 at ¶ 480. The FCC declined to adopt a definition of "currently combines," as AT&T proposes in this case, that would include all elements "ordinarily combined" in the incumbent's network.

Id. (declining to "interpret rule 51.315(b) as requiring incumbents to combine unbundled network elements that are 'ordinarily combined'. . ."). No other conclusion could reasonably be reached.

This Commission has itself already faced this issue in several dockets. In the Intermedia/BellSouth Arbitration (Docket No. 991854-TP; Order No. PSC 00-1519-FOF-TP), Intermedia's position was the same as AT&T presents here. The Commission rejected Intermedia'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 pp. 22-23. While the Commission's Order noted that the 8th Circuit had not yet ruled, the passage of time since the Commission's prior ruling has provided nothing that should lead the Commission to a contrary result now.

AT&T's position with regard to this issue is that, irrespective of the clear language of the rules, the court decisions regarding the rules, and the FCC's own view of its rules, this Commission should order BellSouth to combine UNEs for AT&T, if the particular type of UNEs in question are combined anywhere in BellSouth's network. AT&T's logic is that this ought to be done either through some interpretation of Rule 51.315(b) or the Commission should just do it "under their own authority." (Tr., p 248) AT&T claims that there was a poor choice of wording in the two subsections in question (Tr., p. 244) and asserts that the Commission just has to find a way to make this happen. (Id. at 252)

As for interpreting 51.315(b) the way AT&T suggests, the Commission would have to interpret a rule that clearly only addresses the separation of already combined UNEs in a manner that would simply turn the rule on its head. The rule clearly provides that ILECs cannot separate already combined UNEs. According to AT&T, however, what the rule really means is that ILECs have to put UNEs together for ALECs. This interpretation of the rule is pure nonsense.

AT&T's other plea, that the Commission just order this on its own authority, is equally interesting. This is an arbitration that is being conducted under the 1996 Act. Section 252(c) establishes the standards for arbitration. These standards provide, in relevant part, that any resolution of an arbitrated issue meet the requirements of Section 251, including the regulations prescribed by the FCC.

Here, AT&T wants the Commission to ignore the language of the 1996 Act and to specifically contradict the interpretation that the FCC has placed on its own rules. The Commission should decline to do so.

With regard to Issue 5, BellSouth's position is very straightforward. It has no obligation to combine UNEs at the whim or request of AT&T. Nevertheless, BellSouth is willing to do this combining for AT&T, provided that AT&T pays a fair market price for the service. The difference between this fair market price and the TELRIC-based prices of the UNEs is often referred to a the "glue charge." (Tr., p. 819) No prices have been proposed by BellSouth for this service in this proceeding because AT&T refuses to concede that such charges are appropriate. Nevertheless, BellSouth remains ready to provide this service at a fair market price to AT&T should AT&T ask for such service.

AT&T's position with regard to Issue 4 is contrary to the law and good sense. BellSouth's position should be adopted on this issue. Once Issue 4 is decided in BellSouth's favor, Issue 5 is easily resolved. Since BellSouth has no obligation to combine UNEs for AT&T, then the only appropriate price that can be charged, should BellSouth decide to provide such a service, is the fair market price for such service. At any lesser price, BellSouth will not perform the service.

ISSUE 6: Under what rates, terms, and conditions may AT&T purchase network elements or combinations to replace services currently purchased from BellSouth tariffs? (UNEs, Attachment 2, Section 2.11)

BellSouth's Position:***BellSouth will convert services purchased by AT&T on a tariffed month-to-month basis to UNEs for a record change charge. For tariffed services provided under term or volume contracts, BellSouth will convert the services to UNEs for the record change charge plus any termination charges required by the contract.***

DISCUSSION

This issue involves the situation where AT&T has purchased tariffed special access services from BellSouth and is using those services to provide both local and long distance service. (Tr., pp. 162-163) Special access services are available on a month-to-month basis, but they can also be purchased under what can be called volume and term contracts. The obvious advantage of purchasing service under such a contract is that AT&T obtains a lower unit price for the special access services it purchases when it purchases them in "bulk." (See Tr., p.162) Now AT&T wishes to convert a portion of the special access

services that it purchased to UNEs. (Tr., p.164) AT&T is correctly concerned, however, that by converting some of its services to UNEs, that BellSouth's monthly billings to AT&T for special access services will fall below the threshold established in the contract between AT&T and BellSouth, and that AT&T will therefore incur termination charges for a portion of the special access services that AT&T purchased. (Tr., pp. 164-165).

Having made the choice to enter a volume and term commitment and having received the benefit of paying a reduced rate for the service, AT&T now desires to terminate the contract prior to meeting its volume and term commitments and asks this Commission to absolve it of having to pay any termination charges. Indeed, AT&T's witness Follensbee unabashedly agreed that what he was asking the Commission to do was to "excuse" AT&T from its contractual obligation to pay the termination charges in question. (Tr., pp. 164-165).

In accordance with its obligations under the 1996 Act as interpreted by the FCC, BellSouth agrees to convert pre-existing tariffed services to UNE combinations at cost-based rates at AT&T's request. Neither the 1996 Act nor any FCC order, however, requires BellSouth to relinquish its contractual right to receive the benefit of its bargain with AT&T when AT&T, for whatever reason, prematurely terminates its volume and term agreement with BellSouth.

In fact, the FCC has found exactly the opposite to be true. In its UNE Remand Order, the FCC specifically said:

> We note, however, that any substitution of unbundled network elements for special access would require the requesting carrier to pay any appropriate termination penalties required under volume or term contracts.

FCC 99-238 at n. 985.

Notwithstanding this clear statement of the law, AT&T makes two claims as to why it should not be required to pay termination charges. First, AT&T claims that it is not actually canceling service from BellSouth, but rather is merely converting an existing tariffed service to network elements. (Tr., pp. 28-29) The difficulty with this argument, of course, is that whether AT&T still uses the facilities to provide services is irrelevant. The agreement was that BellSouth would bill and AT&T would pay for these

services at a certain level, and AT&T's conversion of some of these services to UNEs might drop the monthly billings below the level that would trigger the termination charges. The fact that AT&T may still be using the same facilities at a cheaper rate does not excuse AT&T from performing under its contract.

Second, AT&T claims that it purchased these services under contract because BellSouth was unwilling to provide combinations of network elements in lieu of these special access services. (Tr., p. 28). That fact, however, did not compel AT&T to enter into a term contract in which it sought price concessions in return for agreeing to certain termination liabilities if it did not meet its contractual obligations. This is akin to saying that AT&T had its "fingers crossed" when it entered into the contract, knowing that if it could get these facilities cheaper, it would attempt to do so without fulfilling its contractual obligations. That is simply not right. AT&T could have purchased these services on a month-to-month basis. AT&T could have paid BellSouth a market-based rate to put the UNEs together for AT&T. AT&T could have put the UNEs together itself. Any of those options would have been perfectly acceptable. Instead, AT&T entered into a long-term contract evidently knowing that it intended to try to get out of or otherwise avoid paying for its obligations under the contract, if it could find a way to do so. The Commission should not sanction such conduct.

As previously stated, no federal or state statute, regulation or order permits AT&T to avoid paying termination liability charges that are otherwise owed under a volume and term contractual commitment with BellSouth. Indeed, to the contrary, the FCC has ruled that AT&T has to pay any termination liabilities that come due as a result of such conversions. The Commission should adopt BellSouth's position on this issue.

ISSUE 7: How should AT&T and BellSouth interconnect their networks in order to originate and complete calls to end-users? (Local Interconnection, Attachment 3)

BellSouth's Position: ***When a call originates and terminates in the same local calling area but due to AT&T's network design, AT&T requires that BellSouth transport the call from the local calling area to an AT&T interconnection point located in another local calling area, AT&T should compensate BellSouth for BellSouth's additional transport costs.***

DISCUSSION

This issue requires a determination of whether AT&T or BellSouth is going to be financially responsible for certain facilities needed to carry local traffic from a BellSouth local calling area to a distant Point of Interconnection established by AT&T. The calls that utilize the facilities in question are calls that originate in one BellSouth local calling area and are intended to be completed in that same local calling area, but must be routed out of that local calling area because of AT&T's network design.

This issue can be most graphically illustrated by reference to Hearing Exhibit 7, which describes a hypothetical LATA containing 20 local calling areas The exhibit reflects a single AT&T switch in the LATA, located in local calling area 20. The exhibit also shows a BellSouth tandem switch, a BellSouth end office switch, a BellSouth end user and an AT&T end user located in local calling area 20.

AT&T agreed that for calls that originated and terminated in Local Calling Area (LCA) 20, the parties have no dispute implicated by Issue 7. (Tr., pp. 139) That is, when a BellSouth end user in LCA 20 calls an AT&T end user in LCA 20, BellSouth will carry the call to the Point of Interconnection (POI) marked on Exhibit 7, at no charge to AT&T, and BellSouth will pay AT&T reciprocal compensation for transporting and terminating the call to AT&T's end user. (Tr., pp. 137-138)

Exhibit 7 also shows a BellSouth end user and an AT&T end user located in LCA 1. However, while BellSouth has an end office switch in LCA 1, AT&T does not, choosing instead to serve its end user located in LCA 1 from AT&T's switch located in LCA 20. (Tr., p. 140) AT&T has decided to serve its end user in LCA 1 this way because it is cheaper to provide transport throughout a LATA than to provide multiple switches in the LATA. Although that may not hold true as AT&T's customer base evolves, it is the theory that underlies AT&T's current approach to the local telephone market.

On another note, this issue also does not involve calls that flow from AT&T's end user in LCA 20 to BellSouth's end user in LCA 1. In this example, which is illustrative of AT&T's local network deployment, AT&T has chosen to have a single switch in the LATA and has chosen to incur the cost of providing dial tone to its end users in LCA 1 from its switch located in LCA 20. Similarly, AT&T has

chosen to pay BellSouth to transport the AT&T-originated call from AT&T's POI in LCA 20 to BellSouth's end user in LCA 1. (Tr., p. 141)

The sole dispute implicated by Issue 7 involves calls flowing the other way. That is, from BellSouth's end user in LCA 1 to AT&T's end user in LCA 1. BellSouth did not ask AT&T to only put a single switch in an area that can be hundreds of miles from the originating point of the call. AT&T made that choice, and now wants BellSouth to pay for the costs caused by AT&T's network design.

There is no question that additional costs are incurred when a call that originates and terminates in LCA 1 is hauled to LCA 20 for completion. (Tr., pp. 150-151) The issue is who will be financially responsible for carrying this call from LCA 1 to LCA 20. BellSouth's position is that AT&T's network design causes this cost and thus AT&T should pay for the cost.

AT&T contends that adopting BellSouth's proposal would force AT&T to build facilities to every BellSouth local calling area. (Tr., p. 75) That is absolutely inaccurate. BellSouth acknowledges that AT&T 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 AT&T's choice. AT&T 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 AT&T's Point of Interconnection is found. When AT&T leases facilities from BellSouth, the leased facilities are not a part of AT&T's network, and the Point of Interconnection is found at the point where AT&T's owned facilities end and the leased facilities begin. Nothing in BellSouth's proposed solution to this issue would require AT&T 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 that AT&T chooses to serve.

AT&T admits that BellSouth incurs a cost for transporting local traffic outside of the local calling area in which it originates (Tr., pp. 150-151), a cost that AT&T contends BellSouth must recover from either its shareholders or its end users, rather than from AT&T, the cost causer. If BellSouth is required to carry local traffic outside of the local calling area to some distant Point of Interconnection established by AT&T, then AT&T should compensate BellSouth for its efforts. Otherwise, BellSouth has no source

of revenue to recover the cost of transporting local traffic outside of the local calling area. Although AT&T may have the flexibility to establish rate structures to ensure that it recovers these costs, BellSouth has no such luxury due to its established tariffed rates. Neither BellSouth's basic local exchange rates nor any inter-carrier compensation mechanism would compensate BellSouth for these costs.

Thus, when viewing the equities of the situation, it is clear that BellSouth's position that AT&T should be financially responsible for the costs that it has caused is the appropriate position. If AT&T prevails on this issue, then AT&T will have succeeded in requiring BellSouth to subsidize AT&T's entry into the local exchange market in Florida. AT&T has caused these facilities to be needed and this cost to be incurred and should therefore pay for the facilities.

It would be convenient to point to a statute or to an FCC order or rule that neatly resolves this issue, but no such statute, order or rule exists. Both parties agree that, as a matter of law, AT&T is entitled to interconnect where it wants and to deliver its originated traffic to BellSouth at that point. MCI, in a proceeding at the FCC, however, asked the FCC to declare that both the incumbent local exchange company and the competitive local exchange company had to declare a single point of interconnection on each other's network where its originating traffic would be delivered. See In re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, FCC 96-325, CC Docket No. 96-98, August 8, 1996 (First Report and Order) at ¶ 214. The FCC refused, leaving it to negotiation and arbitration to resolve the issue. Therefore, this Commission is essentially left to resolve this matter based on the evidence presented and the Commission's own sense of equity and fair play.

In its First Report and Order, the FCC further stated that the ALEC must bear the additional costs caused by an ALEC's chosen form of interconnection. Paragraph 199 of the Order states that "a requesting carrier that wishes a 'technically feasible' but expensive interconnection would, pursuant to section 252(d)(1), *be required to bear the cost of that interconnection, including a reasonable profit.*" FCC 96-325 at ¶199. Further, at paragraph 209, the FCC states:

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

> interconnection, competitors have an incentive to make economically efficient decisions about where to interconnect.

(emphasis added.) Thus, the FCC expects AT&T to pay the additional costs that it causes BellSouth to incur in interconnecting their respective networks.

This interconnection issue has been addressed in a similar fashion by at least two federal courts exercising appellate review over state commission arbitration decisions: US West v. AT&T Communications, 31 F. Supp. 2d 839 (D. Or. 1998), rev'd in part, vacated in part sub. nom., 224 F.3rd 1049 (9th Cir. 2000); and US West v. Jennings, 46 F. Supp. 2d 1004 (D. Az. 1999). In US West v. AT&T, the federal court stated that "[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." US West v. AT&T, 31 F. Supp. 2d at 852 (emphasis in original). Although the court rejected US West's claim that a CLEC is required to establish a point of interconnection in each local exchange in which it intends to provide service, the court did rule that "the mechanics of a particular interconnection arrangement are best determined by each state's PUC, ... subject of course to the standards established by the Act and any FCC regulations (where appropriate)." Id.

Similarly, the federal court in *US West v. Jennings* found that "whether to require more than one point of interconnection is best determined by each state's public utilities commission, ... subject of course to the standards established by the Act and any applicable FCC regulations." 46 F. Supp. 2d at 1021. The court further reasoned:

> 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 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. As an alternative, the [Arizona Commission] may require a CLEC to compensate US West 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.

The above quoted FCC and federal court decisions provide the following guidance to this Commission for resolving Issue 7: (1) the 1996 Act does not define the minimum number of interconnection points that an ALEC must establish in a given LATA; (2) the decision regarding how many points of interconnection an ALEC must establish is best determined by the state commission; (3) in determining how many points of interconnection an ALEC must establish, a state commission may consider "relevant factors, including whether an ALEC is purposefully structuring its point(s) of interconnection to maximize the cost to the ILEC or to otherwise gain an unfair competitive advantage"; and (4) as an alternative to requiring an ALEC to establish additional interconnection points, a state commission may require an ALEC to compensate the incumbent for costs resulting from an inefficient interconnection.

Both the South Carolina Public Service Commission ("SCPSC") and the North Carolina Utilities Commission ("NCUC") recently issued orders requiring AT&T to bear the cost incurred by BellSouth to carry BellSouth's originating local traffic outside the local calling area to AT&T's distant point of interconnection. On January 30, 2001, the SCPSC issued Order No. 2001-079 in Docket No. 2000-527-C, IN RE: Petition of AT&T Communications of the Southern States, Inc. for Arbitration of Certain Terms and Conditions of a Proposed Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. Section 252. In response to this issue, at page 28, the SCPSC ruled:

> In resolving this issue, the Commission concludes that while AT&T can have a single POI in a LATA if it chooses, AT&T shall remain responsible to pay for the facilities necessary to carry calls from distant calling areas to that single POI. That is the fair and equitable result.

On March 9, 2001, the NCUC issued its Recommended Arbitration Order in Docket No. P-140, Sub 73 and Docket No. P-646, Sub 7, In the Matter of Arbitration of Interconnection Agreement Between AT&T Communications of the Southern States, Inc., and TCG of the Carolinas, Inc., and BellSouth

Telecommunications, Inc., Pursuant to the Telecommunications Act of 1996. In response to this issue, at page 15, the NCUC ruled:

> If AT&T interconnects at points within the LATA but outside of BellSouth's local calling area from which traffic originates, AT&T should be required to compensate BellSouth for, or otherwise be responsible for, transport beyond the local calling area.

Attempting to justify its position regarding this issue, AT&T relies heavily upon 47 C.F.R. § 51.703(b) which provides: "A LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network." 47 C.F.R. §51.703(b); (Tr., pp. 149-150) Mr. Follensbee further states that the FCC has issued a decision that confirms AT&T's interpretation of the federal regulations, citing In Re: TSR Wireless, LLC, et al. v. U.S. West, file Nos. E-98-13, et. al., FCC 00-194 (June 21, 2000). (Tr., p. 73)

In the TSR Wireless case, the FCC considered a complaint brought by several paging companies against U.S. West for improperly charging paging carriers for delivery of LEC-originated traffic. In resolving this dispute, the FCC interpreted the provisions of the 1996 Act and the FCC rules promulgated thereunder. Specifically, 47 C.F.R. 51.701(b) defines "local telecommunications traffic" for purposes of wireless and wire line providers as follows:

> (b) Local telecommunications traffic. For purposes of this subpart, local telecommunications traffic means:
>
> (1) Telecommunications traffic between a LEC and a telecommunications carrier other than a CMRS provider that originates and terminates within a local service area established by the state commission; or
>
> (2) 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 ....

47 C.F.R. 51.701(b). Thus, 47 C.F.R. §51.701(b)(1) defines "local telecommunications traffic" for purposes of wire line traffic, while subsection (2) defines "local telecommunications traffic" for purposes of CMRS providers. CMRS is the acronym for Commercial Mobile Radio Service, and CMRS carriers include providers of one-way paging and other wireless services. See TSR Wireless at ¶2. A "Major

Trading Area" (MTA") represents the local calling area for CMRS providers and is analogous to the basic local calling area of wireline service providers, such as BellSouth. (Tr., p. 148)

On cross examination regarding the TSR Wireless decision, Mr. Follensbee agreed that the FCC did not direct local exchange carriers, such as BellSouth, to deliver traffic at no charge outside of the MTA. (Tr., p. 149) Further, Mr. Follensbee agreed that what the TSR Wireless decision stands for is that a local exchange carrier has an obligation to deliver calls at no charge within the MTA. Id. Indeed, Paragraph 31 of the TSR Wireless decision provides: "Section 51.701(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*, with the exception of RBOCs, which are generally prohibited from delivering traffic across LATA boundaries." FCC 00-194 at ¶31 (emphasis added).

Finally, there is the issue of the recent FCC order related to SBC's request for interLATA relief under Section 271 of the 1996 Act. As AT&T clearly admitted, the issue of whether an ILEC could charge an ALEC for delivering local traffic to a distant point outside the local calling area in which the call originated was squarely before the FCC. (Tr., p. 146) The FCC, therefore, could have resolved this entire issue with a single sentence, requiring ILECs to deliver all local calls originating anywhere in a LATA to an ALEC single point of interconnection in that LATA at no charge. However, that sentence does not appear in the SBC Kansas/Oklahoma order, and AT&T instead was reduced to once again "interpreting" the FCC's order on this point. (See Tr., p. 147) The simple point is that if the FCC shared AT&T's view on this point, the FCC has had more than ample opportunity to state that plainly and clearly. It has not done so because presumably, even the FCC perceives the unfairness of requiring BellSouth or any ILEC to haul a local call hundreds of miles across a LATA simply because AT&T finds it cheaper to have a single switch in the LATA and to use long loops to serve its customers. Indeed, if AT&T can get BellSouth to pay for half of its transport, it will probably always be cheaper for AT&T to design its network in that fashion.

The only reasonable conclusion that can be reached is that BellSouth's obligation to deliver traffic to AT&T's Point of Interconnection at no additional charge has to be limited to calls that not only

originate and terminate within the same local service area, but that do not leave that local service area in the first instance. Clearly that is the proposition that TSR Wireless stands for. In resolving Issue 7, the Commission should conclude that while AT&T can have a single Point of Interconnection (or more) in a LATA if it chooses, AT&T remains financially responsible for the facilities necessary to carry calls from distant local calling areas to AT&T's Point of Interconnection. That is the only fair and equitable result.

ISSUE 8: What terms and conditions, and what separate rates if any, should apply for AT&T to gain access to and use BellSouth facilities to serve multi-unit installations? (UNEs, Attachment 2, Section 5.2.5)

BellSouth's Position: ***Access to Multi-Dwelling Units (MDUs) should be obtained through a separate access terminal that would be available to all ALECs on a fair and equitable basis. Such an arrangement also will allow the ALECs to have complete access to these buildings without jeopardizing existing service to BellSouth's customers.***

DISCUSSION

Issue 8 involves AT&T's attempt to relitigate an issue that has previously been litigated between BellSouth and MediaOne, a company now owned by AT&T. Currently, BellSouth serves many customers that are located in multi-tenant units. These "units" can generally be described as high-rise buildings or as multiple buildings on a campus or garden-type apartments. (Tr., p. 1030) The dispute between AT&T and BellSouth is how AT&T will get access to these buildings and what AT&T buys from BellSouth when AT&T does get access. (See Tr., pp. 1035-1036)

The first question that has to be addressed is the question of how AT&T will gain access to multi-tenant buildings. Currently, where it provides service to customers in such buildings, BellSouth brings its loop distribution facilities to a terminal located either at the garden-style apartment building or in the basement of a high-rise building. (See generally, Tr., pp. 1030-1035) At that terminal, BellSouth cross-connects the facilities that it has run to the building with either network terminating wire (NTW), in the case of garden-type apartments, or intra-building network cable (INC), which is sometimes referred to as "riser cable," in the case of high-rise buildings. The INC in turn cross-connects with the NTW on each floor of the high- rise building. Id. The NTW then runs to the Network Interface Device (NID) located on each tenant's premises. Id.

AT&T suggests that it might want to serve customers in these multi-tenant buildings by using its own outside plant facilities to get to the buildings, then by using BellSouth's sub-loop elements, NTW or INC, within the building. BellSouth, of course, has no objection to providing AT&T with access to NTW or INC in such circumstances. The dispute is how such access will be accomplished. BellSouth's position is that it is appropriate to create an "access" terminal where AT&T can cross-connect its own facilities with the NTW or INC owned by BellSouth and used to serve the particular customers AT&T wants to serve. (Tr., pp. 1036-1037) Indeed, the Commission adopted this position in Docket No. 990149-TP, with regard to MediaOne's access to tenants in multi-tenant buildings. Id.

AT&T wants this Commission to revisit that decision. However, this Commission's decision to require a separate access terminal for multi-tenant buildings was clearly correct. As BellSouth witness Milner points out, allowing AT&T to have access to BellSouth's terminal necessarily means that every ALEC would have similar access. (Tr., p. 1040) BellSouth's ability to accurately maintain its records would be seriously impacted, all customers would be at the mercy of every ALEC's service technicians and BellSouth would be completely dependent upon the ALECs to tell BellSouth which of its facilities the ALEC was using. Id.

This Commission's decision in the MediaOne case is still applicable here. In its Order No. PSC-99-2009-FOF-TP at page 17, the Commission held:

> The record does not contain evidence of any case which would support a proposal where one party is seeking to use its own personnel to, in effect, modify the configuration of another party's network without the owning party being present. We find that MediaOne's proposal to physically separate BellSouth's NTW cross-connect facilities is an unrealistic approach for meeting its objectives. Therefore, BellSouth is perfectly within its rights to not allow MediaOne technicians to modify BellSouth's network.

Indeed, the facts remain compelling today, perhaps even more so for high-rise buildings than for garden-style apartments. For instance, in garden-style apartments, the facilities serving each customer have paper tags that allow the service technician to at least have a chance of determining which facility serves which customer. (See Tr., p. 1042) With regard to high-rise buildings, the records of which facilities are serving which customers are mechanized and are not available at the access terminal. That is, an ALEC's service technician working in a high-rise building will have no way of knowing which

facilities are in use and which facilities are available. The bottom line is that allowing direct access to BellSouth's terminal in high-rise buildings will most likely result in service degradation and chaotic service provisioning by all carriers. (Tr., pp. 1042-1043)

What BellSouth proposes, therefore, is that the Commission continue its previously articulated requirement that access be gained in multi-tenant buildings via a separate access terminal. The reasons for requiring such access originally were sound, and remain so. When an ALEC notifies BellSouth that it will require access to the NTW or riser cable in a multi-tenant building, BellSouth will route those sub-loop facilities through the access terminal, where the ALEC's service technicians can access the sub-loop facilities and thereby provide service to the ALEC's customers.

While AT&T continues to make the same old argument that requiring a separate access terminal would impede competition, it is difficult to understand the basis for such a claim. BellSouth has stated that, with regard to garden-style apartments, it will pre-wire the new access terminal. (Tr., p. 1034) For high-rise buildings, BellSouth will pre-wire as many loops as AT&T orders. (Tr., pp. 1110-1111) Moreover, while AT&T now claims such form of access will impede AT&T's ability to compete, MediaOne, which is now owned by AT&T, suggested it had alternatives if it deemed BellSouth's approach too costly. (Tr., pp. 1045-1046) In this proceeding, AT&T has provided nothing new that warrants revisiting this Commission's prior decisions on this point.

The second sub-issue related to multi-tenant buildings involves the question of exactly what facilities AT&T will obtain when it purchases access to BellSouth's sub-loop facilities in a multi-tenant building. Again, as clearly described in BellSouth witness Milner's testimony cited above, two separate sub-parts of BellSouth's loops can be involved. First, for garden-style apartments, there is NTW that runs from the access terminal to the tenant's Network Interface Device (NID). For high-rise buildings, there is INC that runs from the access terminal to each floor of the high-rise, where the INC is cross-connected with the NTW that fans out on the floor to each tenant's premises. AT&T can buy access to the NTW at the garden-style apartment terminal or it can buy access to the NTW at the cross-connection facility on each floor of a high-rise building. Alternatively, AT&T can buy access to the INC in the high-rise

The specific dispute that this Commission must address involves the question of whether the four lines identified in the rule have to all be located at the same premises or whether it is sufficient that the customer has four or more lines located anywhere in that geographic area. AT&T's position is that the lines all have to be located at the same premises. BellSouth's position is that, with the availability of EELs, the actual geographic location of the customer's lines, as long as they are all within the MSA, is obviously irrelevant.

In order to take advantage of this exemption, BellSouth has to provide EELs at any technically feasible location in the relevant geographic area. (Tr., p. 843) Regardless of where the customer's individual lines are located, AT&T can use the EELs to connect the customers to AT&T's (or to another carrier's) switch. Id. AT&T's counter-argument was to use a hypothetical situation where a customer might have 20 different locations with two lines each. (Tr., pp. 78-79) Based on its example, AT&T concludes that the aggregation of the lines at the 20 different locations in order to qualify for the switching exemption could not be what the FCC intended and should be precluded. That conclusion is clearly not accurate. The FCC rule is perfectly clear on its face and there is no language surrounding that rule that suggests a different result. AT&T can use EELs to connect those 20 locations to its own switch or, if it chooses to do so, to another carrier's switch. The simple point is this: The FCC determined that a customer with 4 or more lines was not a "mass market" customer and that alternatives exist to serve such customers. While AT&T might disagree with the FCC, there simply is not any room for AT&T's interpretation under the rules promulgated by the FCC and the FCC's accompanying orders.

BellSouth's position on this issue is clearly the correct interpretation of the FCC's rules using the logic upon which the FCC created the rule in the first instance. Where the end user is located in Density Zone 1 in a top 50 MSA and BellSouth is willing to provide AT&T with EELs, all of the customer's lines within the MSA should be aggregated in order to determine whether BellSouth is exempted from providing unbundled switching to serve that particular end user.

ISSUE 12: **Should AT&T be permitted to charge tandem rate elements when its switch serves a geographic area comparable to that served by BellSouth's tandem switch? (Local Interconnection, Attachment 3, Section 1.3)**

BellSouth's Position:***To receive reciprocal compensation at the "tandem interconnection rate" rather than the "end office switching rate," AT&T must demonstrate that (1) its switch serves a geographic area comparable to the area served by BellSouth's tandem switch and (2) its switch performs functions similar to those performed by BellSouth's tandem switch.***

DISCUSSION

This issue is driven in large part by the network design AT&T has chosen to utilize, as described in the discussion of Issue 7 above. BellSouth's local network generally consists of local tandems, end office switches and interoffice transport. However, AT&T's local network generally consists of a few switches and long loops connecting the switch to AT&T's subscribers. (See Tr., pp. 117-118) When BellSouth routes a call from an ALEC through one of its tandems, BellSouth completes the call by first switching the call at the tandem, transporting the call to the appropriate local end office via interoffice transport and finally switching the call to the intended recipient of the call. (Tr. , p.151) BellSouth then charges the originating ALEC reciprocal compensation based on the appropriate tandem switching rate, transport rate and local switching rate, since all of these parts of BellSouth's network were used in transporting and terminating the call. Id.

On the other hand, when BellSouth hands off one of its calls to AT&T, AT&T carries the call back to its end office switch, where the call is switched once and then placed on the appropriate loop to reach the intended recipient of the call. That is, because of AT&T's network design, the call is only switched once and there are no interoffice transport facilities involved. (Tr., p. 152)

Nevertheless, and in spite of the fact that only one switch is involved, AT&T wants BellSouth to pay reciprocal compensation to AT&T for calls placed from BellSouth's local subscribers to AT&T's local subscribers at a rate equal to the total of the tandem switching rate and the end office switching rate (the tandem interconnection rate) for every such call AT&T handles. Id. BellSouth objects, for obvious reasons.

AT&T's position is based on its reading of the language of a portion of 47 C.F.R. §51.711(a)(3). (Tr. p. 157) This rule provides: "Where the switch of a carrier other than an incumbent LEC serves a

geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate." 47 C.F.R. §51.711(a)(3).

BellSouth's position is that the determination of whether AT&T is entitled to the tandem interconnection rate is a factual one determined by a two-pronged test. (Tr., p. 846) The first prong is as AT&T states, involves the geographic coverage of the switch. The second prong, however, requires an examination of whether the switch actually performs tandem switching functions with regard to local traffic. BellSouth's position that the switch must function as a tandem switch is based both on the FCC's First Report and Order, which addressed this matter, and an earlier section of the same rule that AT&T relies on to support its position. It should be noted that Rule 51.711(a)(1) provides:

> For purposes of this subpart, symmetrical rates are rates that a carrier other than an incumbent LEC assesses upon an incumbent LEC for transport and termination of local telecommunications traffic equal to those that the incumbent LEC assesses upon the other carrier for the same services.

47 C.F.R. §51.711(a)(1) (emphasis added).

Further, in its First Report and Order, at Paragraph 1090 where it discussed this subject, the FCC directed state commissions to "consider whether new technologies (e.g., fiber ring or wireless network) performed functions similar to those performed by an incumbent LEC's tandem switch and thus whether some or all calls terminating on the new entrant's network should be priced the same as the sum of transport and termination via the incumbent LEC's tandem switch." (Tr., pp. 847-848); FCC 96-325 at ¶1090 (emphasis added). That is, the FCC included, in addition to the issue of geographic coverage, a requirement that the switch in question perform functions similar to that of a tandem switch in order to entitle the ALEC to reimbursement at a rate that normally would involve two or more switches, not one.

Therefore, in order to resolve this issue, the Commission must first determine which test should apply, and then review the facts presented to see if either test is met. BellSouth asserts that the two-pronged test must apply, but that in either event, AT&T has not demonstrated that it meets either the geographic coverage test or the functionality test.

AT&T's argument that the test is only a single-pronged one rests solely on the fact that the FCC's rule touching on this issue, 47 C.F.R. §51.711(a)(3), only mentioned the matter of similar geographic coverage. If the rule of statutory construction that AT&T wishes this Commission to adopt is that only the literal language of an FCC rule applies, AT&T might have a point. BellSouth, however, doubts that AT&T really expects this Commission to adopt such a position, and it is clear that the courts that have addressed this issue have not taken such a position.

Specifically, in MCI Telecommunications Corp. v. Illinois Bell Telephone, 1999 U.S. Dist. LEXIS 11418 at ¶19 (N.D. Ill, June 22, 1999), the district court, in addressing this very issue, noted:

> In deciding whether MCI was entitled to the tandem interconnection rate, the ICC applied a test promulgated by the FCC to determine whether MCI's single switch in Bensonville, Illinois, performed functions similar to, and served a geographical area comparable with, an Ameritech tandem switch.

In the accompanying footnote, the court stated:

> MCI contends the Supreme Court's decision in IUB affects resolution of the tandem interconnection rate dispute. It does not. IUB upheld the FCC's pricing regulations, including the 'functionality/geography' test. (citation omitted) MCI admits that the ICC used this test....Nevertheless, in its supplemental brief, MCI recharacterizes its attack on the ICC decision, contending the ICC applied the wrong test...But there is no real dispute that the ICC applied the functionality/geography test; the dispute centers around whether the ICC reached the proper conclusion under that test.

Similarly, the Ninth Circuit Court of Appeals viewed the rule in the same way in U.S. West Communications v. MFS Intelenet, Inc., 193 F.3d 1112, 1124 (9th Cir. 1999), cert. denied, 120 S.Ct. 2741 (2000), finding that:

> The Commission properly considered whether MFS's switch performs similar functions and serves a geographic area comparable to US West's tandem switch.

Clearly BellSouth's view of the applicable test is the correct one. It would simply make no sense to compensate AT&T for functions that AT&T's switches do not perform; yet that is exactly what AT&T would have this Commission do.

Turning to the application of the two-pronged test, the first question is whether AT&T's single switch performs functions similar to BellSouth's tandem switches. It is clear that it does not. The FCC's rule defines "local tandem switching capability" as including (1) "trunk connect facilities"; (2) the basic

switch trunk function of connecting trunks to trunks; and (3) the functions that are centralized in tandem switches, including but not limited to call recording, routing of calls to operator services and signaling conversion features. 47 C.F.R. §51.319(c)(3). As BellSouth witness Ruscilli testified, this means that AT&T's switches must connect trunks terminated in one end office switch to trunks terminated in another end office switch. (Tr., p. 851) Since AT&T's switches in Florida do not connect in such a manner, they cannot be found to perform tandem switch functions.

It is equally clear that, based on the second prong of the test which requires comparable geographic coverage, AT&T should not be entitled to the tandem interconnection rate for every call it handles. AT&T's claim here is fairly simple: Since it can use long loops to reach every corner of Florida if it chooses to do so, it obviously has comparable geographic coverage to that of BellSouth's tandem switches. (Tr., pp. 117-118)

BellSouth's position, logically, is that in order to qualify for the tandem interconnection rate, AT&T's switches must actually be serving the same comparable geographic area as do BellSouth's tandem switches. (Tr., pp. 896-897) It is not sufficient that the switch simply be capable of serving customers in that geographic area through the use of long loops, should AT&T choose to serve such customers. Id. Yet that is exactly what AT&T's claim rests upon.

The adoption of AT&T's position regarding its universal entitlement to the tandem interconnection rate, without regard to the facts, would lead to nonsensical results. For instance, AT&T agreed that one of its switches could be connected directly to a BellSouth end office. (Tr., pp. 153-154) In such circumstances, a call that originated from an AT&T end user in a local service area and terminated to a BellSouth end user served by that end office would result in AT&T paying reciprocal compensation to BellSouth at only the end office switching rate. On the other hand, if that same BellSouth end user placed a call to that same AT&T end user, AT&T would claim that it was entitled to reciprocal compensation at the tandem interconnection rate (again, the sum of the end office switching rate and the tandem switching rate). (Tr., p. 155) The exact same end users are involved in both calls, the same switches are used in both calls, yet using AT&T's theory results in one call generating reciprocal

compensation at the end office switching rate, while the other generates reciprocal compensation at the higher tandem interconnection rate. A theory such as AT&T's, that leads to such a conclusion, simply cannot be right.

Of course, the Commission has addressed this issue on several prior occasions. Most recently, in its August 22, 2000 Order No. PSC-00-1519-FOF-TP in Docket No. 991854-TP (Intermedia/BellSouth Arbitration), this Commission determined that Intermedia failed to satisfy its burden of proof on either criteria. No. PSC-00-1519-FOF-TP at 14. The Commission specifically rejected Intermedia's claim that the larger capacity of its switch and its newer network architecture negated the need for a separate tandem switch. Id. Further, the Commission found that, although the maps submitted by Intermedia indicated that Intermedia had established local calling areas that are comparable to BellSouth's, the Commission was unable to determine if Intermedia's switch actually served those areas. As a result, the Commission declined to find that Intermedia proved that it provided the necessary geographic coverage. Id. at 13-14.

Earlier, in its January 14, 2000 Order No. PSC-00-0128-FOF-TP in Docket No. 990691-TP (ICG/BellSouth Arbitration), the Commission determined that BellSouth is not required to compensate ICG for the tandem switching element, finding that "the evidence of record does not provide an adequate basis to determine that ICG's network will fulfill this geographic criterion." No. PSC-00-0128-FOF-TP at 10.

Similarly, in Order No. PSC-97-0294-FOF-TP, Docket 961230-TP, dated March 14, 1997, the Commission concluded at page 11:

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

Finally, this Commission's Order No. PSC-96-1532-FOF-TP, Docket No. 960838-TP, dated December 16, 1996, states at page 6:

> The evidence in the record does not support MFS' position that its switch provides the transport element; and the Act does not contemplate that the compensation for transporting

> and terminating local traffic should be symmetrical when one party does not actually use the network facility for which it seeks compensation. Accordingly, we hold that MFS should not charge Sprint for transport because MFS does not actually perform this function.

BellSouth does not suggest that the Commission should find that AT&T does not qualify for the tandem interconnection rate simply because other ALECs' similar requests have been rejected by the Commission. Rather, the decision to grant an ALEC's request for the tandem interconnection rate must be based on the specifics of that carrier's network because the decision of whether the tandem interconnection rate applies is dependent upon how a particular carrier's network handles each individual local call. BellSouth does not dispute AT&T's right to compensation at the tandem interconnection rate where the facts support such a conclusion. However, in this proceeding, AT&T is seeking a decision that allows it to be compensated for the cost of equipment it does not own and for functionality it does not provide. Absent real evidence that AT&T's switches actually serve a geographic area comparable to BellSouth's tandems, and absent evidence that AT&T's switches actually perform tandem switching functions for local traffic, BellSouth requests that this Commission determine that AT&T is only entitled, where it provides local switching, to the end office switching rate.

ISSUE 19: When AT&T and BellSouth have adjoining facilities in a building outside BellSouth's central office, should AT&T be able to purchase cross connect facilities to connect to BellSouth or other ALEC networks without having to collocate in BellSouth's portion of the building? (Collocation, Attachment 4, Section 1.6)

BellSouth's Position: ***AT&T should not be allowed to purchase cross connect facilities in such circumstances. AT&T simply wishes to take advantage of its former corporate ownership of BellSouth. Resolving this issue in AT&T's favor would result in BellSouth providing AT&T with more favorable treatment than other new entrants.***

DISCUSSION

This issue arises solely because of AT&T's former ownership of BellSouth's predecessors. There are several buildings in Florida where AT&T and BellSouth have a "condominium" arrangement. That is, one company owns the building, and the other company has facilities in the building, generally on a separate floor. (Tr., pp. 642, 1074-1075) In such circumstances, AT&T essentially wants to be able to

"punch" a hole in a common wall, and to run its facilities into BellSouth's space, without collocating in that space. Stated another way, AT&T wants to expand the definition of "premises" beyond that required by the FCC and beyond that which is fair. Id.

The essence of this issue is that it would simply be unfair to allow AT&T to have an advantage over other ALECs simply because of its former ownership of BellSouth. Other ALECs would have to lease space to collocate in the buildings in question. (Tr., p. 644) Allowing AT&T to do what it requests here would allow AT&T to avoid incurring collocation costs, and would give AT&T a competitive advantage over all other ALECs in Florida. No reason was advanced by AT&T to demonstrate why it should have this advantage, other than a claim that doing so might free up otherwise scarce collocation space in the affected central office. (Tr., p. 644). Interestingly, in spite of its alleged concern regarding conserving precious collocation space, in response to a question from Commissioner Palecki, AT&T stated that it would refuse to allow other ALECs to collocate in AT&T's space in such condominium situations. (Tr., p. 662) AT&T is simply trying to gain an advantage over other ALECs, and its position should be rejected.

ISSUE 20: Is conducting a statewide investigation of criminal history records for each AT&T employee or agent being considered to work on a BellSouth premises a security measure that BellSouth may impose on AT&T? (Collocation, Attachment 4, Section 11.1, 11.2, 11.4, 11.5)

BellSouth's Position: ***BellSouth performs criminal background checks on its employees prior to hiring and, as such, can require AT&T to do the same in order for AT&T's employees to have unescorted access to BellSouth's central offices and other premises that house the public switched network.***

DISCUSSION

This issue has actually turned out to be quite a strange one. For months, BellSouth thought that the dispute revolved around BellSouth's insistence that AT&T do a criminal background check on its employees that wanted to enter BellSouth's premises and AT&T's refusal to conduct such an investigation. However, for the first time (in its testimony from the stand in Florida and in Late Filed Exhibit 22), AT&T has revealed what the real issue is in this proceeding: AT&T does not want to be dictated to by BellSouth.

It is undisputed that BellSouth conducts criminal background checks on its own employees and requires its vendors to do the same. (Tr., p. 1079) Even though it has had such a requirement for years, to settle this issue with AT&T, BellSouth agreed that the requirement would only apply to AT&T employees hired after January 1, 1995. (Tr., p. 1080) In essence, BellSouth was willing to assume that if an AT&T employee had been on AT&T's payroll since January 1, 1995, without incident, then this fact would address BellSouth's security concerns, notwithstanding that BellSouth requires more of its own employees and vendors.

AT&T had flatly refused to agree to any such check. Indeed, until AT&T's witness Mills stated from the stand in Florida that AT&T was in fact doing criminal background checks (Tr., p. 651), BellSouth had no knowledge of such background checks. When, in response to a request by Commissioner Palecki, AT&T provided its Late Filed Exhibit 22, which tersely stated that AT&T did background checks for five years, the real issue became clear. Evidently, AT&T does now do five-year criminal background checks on its employees, which would satisfy BellSouth's request, except that AT&T has only been doing these checks for the past two years. As a result, the real issue here is how to address the gap between BellSouth's proposal that employees hired by AT&T since January 1, 1995 be given a criminal background check, and AT&T's practice, which only started two years ago.

One matter is now perfectly clear. Both AT&T and BellSouth evidently now agree that the criminal background check is important, since they both do it. That can no longer be an issue. The question is whether AT&T should be allowed to do less than what BellSouth requires of itself and its vendors. In this regard, AT&T offered absolutely no justification for its position, other than that it did not want to be dictated to by BellSouth (Tr., p. 651)

AT&T's position seems to be that money can fix any problems that its employees may cause. That seems a bit cavalier when a simple criminal background check could prevent or at least eliminate some of the opportunities for such damage to occur in the first place, but that is belied by the fact that AT&T is now doing these criminal background checks itself. AT&T simply offered no viable reason why such checks should not be required. Indeed, should AT&T ever actually choose to enter into the

business of providing local residential service, it is difficult to understand how it could allow its employees into subscribers' homes without such a check. Such a check should be required before they are allowed into BellSouth's premises as well.

ISSUE 23: Has BellSouth provided sufficient customized routing in accordance with State and Federal law to allow it to avoid providing Operator Services/Directory Assistance ("OS/DA") as a UNE?

BellSouth's Position: ***BellSouth has available both a Line Class Code (LCC) solution and an Advanced Intelligent Network (AIN) solution for customized routing. These two methods provide sufficient opportunities for customized routing to allow BellSouth to avoid providing Operator Services/Directory Assistance as unbundled network elements.***

DISCUSSION

The FCC has determined that where an ILEC has provided ALECs with customized routing or a compatible signaling protocol, the ILEC is not required to provide unbundled access to operator services and directory assistance. (Tr., pp. 1084-1085) Customized routing, as it is used here, means that the ALEC's customers served by a BellSouth switch can reach the ALEC's choice of operator service or directory assistance service platforms instead of BellSouth's operator service or directory assistance service platforms. Id.

BellSouth currently provides two means of customized routing, the Line Class Code (LCC) method and the Advanced Intelligent Network (AIN) solution. The LCC method makes use of translations and routing capabilities in the end office switch while the AIN solution makes use of BellSouth's AIN platform. (Tr., p. 1086) Despite AT&T's assertions to the contrary, both methods are available today and both have been tested and proven workable. (Tr., pp. 1087-1088).

AT&T's chief complaints about the AIN solution to customized routing seems to involve its allegations that the AIN solution creates post-dialing delays of up to 1 to 2 seconds (Tr., pp. 1088-1089) and that the solution is inefficient because it takes switch-based functions and performs them in on-line databases. Id. While it ought to be open to question as to whether a one-second or even a two-second delay would be ascertainable by a caller, all switching systems take some time to translate the dialed digits, select an appropriate trunk group and the like and all of these functions contribute to post-dialing

delay. Id. If a delay of one-second, or even two-seconds is unacceptable to AT&T, it of course can simply elect to use the LCC method, which is also available and accomplishes the same result. Id.

AT&T may not be happy about the situation, but it acknowledged that BellSouth has testified that these customized routing options are available (Tr., p. 491) and that the last time that AT&T tried to use customized routing via AIN was in 1997. Id. AT&T also stated that it was not interested in the AIN solution at this time. (Tr., p. 492) In this regard, AT&T is in much the same position as MCI, who also complained about customized routing. While the order is not yet out, BellSouth understands that the Commission, in resolving MCI's complaint, basically found that while the ALEC may not like the way the proffered customized routing worked, it was available and that BellSouth was therefore not obligated to offer access to Operator Services or Directory Assistance as UNEs in Florida. That same result ought to follow here.

ISSUE 25: What procedure should be established for AT&T to obtain loop-port combinations (UNE-P) using both Infrastructure and Customer Specific Provisioning? (Attachment 7, Sections 3.20 – 3.24)

BellSouth's Position: ***AT&T can make a one-time designation to automatically route calls to the same OS/DA platform. AT&T can order routings different from the default if AT&T sends the proper LCCs with its orders. BellSouth is not required to and cannot provide electronic ordering for multiple ordering options for OS/DA traffic.***

DISCUSSION

This issue actually consists of two separate issues that need to be addressed individually. One issue, known as the "footprint" issue, has to do with programming BellSouth's offices to recognize AT&T's choices for Operator Services/Directory Assistance (OS/DA) routings. The other issue involves how the various OS/DA options may be ordered once AT&T's routing choices are programmed into BellSouth's switches. (Tr., pp. 497, 500).

The parties expect to resolve the "footprint" portion of this issue. Essentially this entire issue involves the various options that AT&T can have to route OS/DA traffic. Generally, there is the current default routing, which takes the calls to a BellSouth branded operator platform. The second option is to carry the calls to a BellSouth unbranded platform. The third option is to carry the calls to a BellSouth

platform, but with AT&T's branding. The fourth and final option is to carry the call to an AT&T or third party platform. (Tr., pp. 488-489) BellSouth is perfectly willing to make any of these options available to AT&T; however, each option has to be pre-programmed into the appropriate central offices. AT&T understands that it has to tell BellSouth which offices to pre-program, and AT&T understands that BellSouth will do the programming, provided AT&T pays for the programming, which AT&T is willing to do. (See Tr., pp. 497-498) Indeed, the sole dispute with the "footprint" portion of this issue is the determination of the documentation that is necessary to describe what AT&T has to tell BellSouth in order for BellSouth to know which offices to pre-program and how to pre-program those offices. (See Tr., p. 498) Clearly something as mundane as this should be able to be resolved between the parties, and AT&T has reported that the parties are making progress on that. (Tr., pp. 499-500). BellSouth agrees and expects to be able to report to the Commission before this matter is presented for decision that it has, in fact, been resolved. Indeed, failing that, it is not at all clear what the Commission could do since only the parties know what would be required to accomplish this programming and no evidence has been presented as to any dispute that the Commission might resolve.

The second part of the issue is not as likely to be resolved by the parties. Essentially, the second part of the issue involves what happens after AT&T has identified the offices in which it wants to offer OS/DA alternatives, and after BellSouth has pre-programmed those offices. Once that work has occurred, a properly submitted order, with the requisite information on it, should result in an individual subscriber's calls being routed to the platform selected for it by AT&T. AT&T wants the ability to simply select, by putting a number or a letter on its orders, the option it wants for that customer.

The problem is that there is no industry standard governing how this would be accomplished (Tr., p. 1277) Essentially, each alternative OS/DA routing in each individual central office will require the use of specific LCCs that tell BellSouth's computers how to route the call for the specific end user. (Tr., p. 493) These LCCs are basically instructions that tell the computers how, and to what trunks, the subscriber's traffic is to be routed. Id.

On one level, this is not a problem. The FCC has clearly told BellSouth what it is required to do. In paragraph 224 of its Louisiana II order the FCC said:

> We agree with BellSouth, that a competitive LEC must tell BellSouth how to route its customers' calls. If a competitive LEC wants all of its customer calls routed in the same way, it should be able to inform BellSouth, and BellSouth should be able to build the corresponding routing instructions into its systems just as BellSouth has done for itself. If, however, a competitive LEC has more that one set of routing instructions for its customers, it seems reasonable and necessary for BellSouth to require the competitive LEC to include in its order an indicator that will inform BellSouth which selective routing pattern to use.

In the matter of BellSouth Corporation, BellSouth Telecommunications Inc., and BellSouth Long Distance, Inc. for Provision of InterLATA Service in Louisiana, FCC 98-271, Docket No. 98-121, October 3, 1998 at ¶224. (emphasis added)BellSouth has no problem with the FCC's position, provided a single routing instruction is given as the default. Indeed, this entire issue is about parity. (Tr., pp. 501) BellSouth has a single default for all of its OS/DA traffic region wide. Its customers' OS/DA calls default to a BellSouth-branded platform. It is appropriate for BellSouth to provide a similar "default" routing for AT&T and BellSouth is willing to do so. If AT&T will designate a single "default" option, BellSouth will pre-program its computers so that AT&T need do nothing else other than submit the customer's order. (See Tr., p. 1142)

The difficulty is that AT&T does not want parity with BellSouth, it wants something more. It wants to be able to vary its choices from central office to central office. BellSouth does not have a problem with AT&T doing so, but BellSouth's computers will not handle such options automatically. Again, AT&T can select the single option and BellSouth will handle the calls without anything further. If AT&T, however, wants to vary the routing for a specific customer, AT&T can provide to BellSouth, on the order form, the correct LCCs for the routing selected, and BellSouth can provide that routing. (Tr., p. 1143) AT&T complains that its service representatives will have to look up the proper LCCs in such instances, but again, BellSouth is ready to provide the "default" option if AT&T elects to have one. If AT&T does not want such a default, someone is going to have to look up the proper LCCs, and since it is AT&T's choice to use options other than a default, it is appropriate that AT&T provide the LCCs.

BellSouth has offered parity to AT&T with regard to this issue. AT&T does not want parity, it

wants something different. BellSouth has no objection to AT&T having something different, but AT&T is going to have to bear the burden of facilitating those options, absent some national industry standard that BellSouth can use to accomplish the desired result.

ISSUE 27: Should the Commission or a third party commercial arbitrator resolve disputes under the Interconnection Agreement?

BellSouth's Position:***BellSouth cannot be required to use commercial arbitrators. The Commission must resolve disputes brought before it and cannot unilaterally delegate that responsibility. Furthermore, BellSouth's experience with commercial arbitration in the resolution of disputes under the 1996 Act has been expensive and unduly lengthy in nature. ***

DISCUSSION

Issue 27 addresses the question of who will resolve disputes that arise under the final interconnection agreement that AT&T and BellSouth reach as a result of this arbitration. In the previous interconnection agreement between AT&T and BellSouth, there was a provision for a third party arbitrator to address and resolve disputes under the agreement. AT&T wants to incorporate that provision in the new agreement; BellSouth does not.

A threshold issue that the Commission must address that should dispose of this matter involves the Commission's authority to require BellSouth to go to a third party to resolve a dispute that falls squarely within the providence of the Commission. There is nothing in the law that allows the Commission to require BellSouth or any party to submit to a binding third party arbitration rather than having the Commission itself address a dispute.

BellSouth has had actual experience with third party arbitrations in its region and, as BellSouth witness Ruscilli testified, the third party arbitrations have neither been quick, nor have they been inexpensive. (Tr., pp. 861-862) BellSouth has also been faced with arbitrators that are not familiar with telecommunications. Id.

Moreover, while AT&T professes to want third party arbitrations to resolve disputes involving the interconnection agreement, their actions in the region have proven otherwise. In previous AT&T agreements that included a third party arbitration clause, AT&T filed, in at least two states, complaints

with state commissions wherein it sought interpretation of the existing interconnection agreement rather than seeking a third party arbitration. Clearly, third party arbitrations, when the evidence is examined objectively, are not a satisfactory way to resolve disputes over interconnection agreements. (Tr., p. 862)

The evidence on this issue is that third party arbitrations are neither inexpensive nor quick and they can involve policy matters that are best left to state commissions. As a consequence, the Commission should adopt BellSouth's position and not require third party arbitrations to settle disputes should the parties' interconnection agreement require interpretation in the future. BellSouth would note that it does not object to a provision that would allow the parties to agree to go to a third party arbitration should both parties agree to do so. It simply objects to being forced to go to a third party arbitration at AT&T's whim.

ISSUE 30: Should the Change Control Process be sufficiently comprehensive to ensure that there are processes to handle, at a minimum the following situations: (OSS, Attachment 7, Exhibit A)

a) introduction of new electronic interfaces?
b) retirement of existing interfaces?
c) exceptions to the process?
d) documentation, including training?
e) defect correction?
f) emergency changes (defect correction)?
g) an eight step cycle, repeated monthly?
h) a firm schedule for notifications associated with changes initiated by BellSouth?
i) a process for dispute resolution, including referral to state utility commissions or courts?
j) a process for the escalation of changes in process?

BellSouth's Position:***The change control process, used to manage changes to interfaces ALECs use to access BellSouth's OSS, is regional in nature and should not be altered. There is a documented process for dealing with the sub-issues AT&T has raised. That process should be allowed to operate unhindered by individual arbitrations. ***

DISCUSSION

This issue, as set forth in the issues matrix, is considerably more complex than the statement above. There is an existing document that embodies the change control process ("CCP"). The document is constantly undergoing revision, which is illustrated by the fact that at the time AT&T filed its direct testimony in North Carolina last summer, the then-current version of the document was Version 1.4. The version at the time AT&T filed its rebuttal testimony in this docket was version 2.0. The version that is

currently being used is Version 2.1. (See Tr., p. 509) (Exhibit 29) With that in mind, BellSouth will make some general remarks about the CCP itself and then address the specific issues that AT&T has raised in its Petition.

Presently, ALECs in Florida and elsewhere in BellSouth's region are dependent upon the ILEC's operational support systems (OSS) in order to make their businesses work. (See Tr., p. 1279) These systems are evolving and changing, and therefore some process is necessary to communicate changes in these systems to ALECs. See id.

BellSouth developed processes for keeping ALECs informed and involved in changes to BellSouth's systems. The first process was the Electronic Interface Change Control Process. (Tr., pp. 1283-1284) Subsequently, after receiving input and information from the ALECs, BellSouth introduced a second change control process, the Interim Change Control Process (ICCP). (Tr., pp. 1285-1288) This process was an evolving one. These evolving versions resulted from meetings and conferences involving BellSouth and the ALECs that were interested in participating. Id. Since BellSouth's OSSs are regional in nature, the CCP is regional as well, and so ALECs from across BellSouth's region are involved in the development of this process. (Tr. pp. 1281, 1282).

AT&T was a participant in those proceedings, but was evidently unhappy with the resolution of some of its specific issues with the CCP. Consequently, it raised a number of individual issues in this arbitration regarding the CCP, ranging from the inclusion in the CCP of a dispute resolution process to the scope of the exclusions from the process.

As a preliminary matter, BellSouth requests that the Commission not compel the resolution of any of AT&T's specific complaints in this proceeding. (See e.g., Tr., pp. 1280-1281) Instead, BellSouth requests that if the Commission wants to address the matter of the CCP at all, that it simply provide guidance as opposed to direction for the disputes that BellSouth and AT&T have.

The basis for this request should be compelling. Again, the OSSs that the ALECs interface with are regional in nature. The CCP to address those interfaces has to be regional as well. If BellSouth or any other local exchange company was forced to deal with nine different change control processes for the

same interfaces and same OSS, it would quickly become unworkable and destroy the regional, collaborative nature of the CCP. (See Tr., p. 1282) For instance, one of the issues is the time in which certain steps should be taken to determine whether a defect exists in a particular interface. If BellSouth were given nine different times within which it had to respond, the difficulty in complying would be obvious.

Moreover, not only is the change control process regional in the sense that it applies to interfaces that are regional, it also applies to a number of ALECs other than AT&T. (Tr., pp. 509-510) However, AT&T is the only ALEC that is a party to the present arbitration. It is patently unfair to allow AT&T to dispute and arbitrate the terms of the CCP that, when implemented, will affect the more than eighty other ALECs that are participating in the CCP but are not parties to this arbitration. AT&T was forced to admit that not all of the ALECs agree with AT&T in every instance. (Tr., p. 510) Simple fairness dictates that the process that affects all of these ALECs cannot be arbitrated in a case involving only one of those ALECs.

Finally, the CCP is an evolving process and if the Commission took the matter up, it would never be able to put it down. For instance, the pre-hearing order in this case lists 10 sub-parts, (a) through (j). Since the proceeding began, BellSouth and AT&T have settled sub-issues (b), (c), (d) and (f). However, by looking at Mr. Bradbury's testimony (Tr., p. 418), the Commission will see that AT&T has added five "other concerns" that were not raised originally. In addition, as mentioned previously, eight months ago, the parties were working on Version 1.4. (Tr., p. 513) At that time, in North Carolina, AT&T asked the North Carolina Utility Commission to adopt AT&T's version of Version 1.4. Id. Now AT&T's position is that this Commission ought to adopt AT&T's version of what ever the current version of the CCP is, when the Commission makes its decision (Tr., p. 514) even though that might be a Version 2.5 or 3.0, which does not even exist today. Id.

Consequently, BellSouth suggests that the only reasonable course is for the Commission to determine that the matter of the change control process is regional in nature and applicable to all ALECs who participate, which makes the process inappropriate for resolution in a two-party arbitration.

BellSouth is mindful of the United States District Court opinion that prevents the Commission from refusing to consider an issue, but that decision made it clear that after considering the claims of the parties, the Commission could, in its discretion, refuse to adopt AT&T's position. See MCI Telecommunications, Inc. v. BellSouth Telecommunications, Inc., 112 F.Supp. 2d 1286, 1297 (N.D. Fla. 00). That is what the Commission should do with regard to the CCP.

Failing that, BellSouth requests that the Commission only provide guidance to the parties as to how it thinks the various disputes should be settled, as opposed to binding direction, again based on the fact that the process is regional and there are a number of other ALECs operating throughout BellSouth's region that will be affected by the Commission's decision.

With this said, BellSouth will now address the individual sub-issues raised by AT&T in its arbitration petition. During the discussion of these sub-issues, reference will be made to Hearing Exhibit 24 (and specifically RMP-22), which is a copy of Version 2.0 of the CCP, marked up by AT&T and containing BellSouth's response to the markup. Version 2.0 was the most current version at the time testimony was filed in this proceeding This exhibit reflects the best way to see the disagreement between AT&T and BellSouth. Except for those pages that are clearly marked as "draft" (principally pages 41 through 49), the language that is stricken (meaning it has been removed) or underlined (meaning that it has been added) represents AT&T's changes to the base document. Anything that is not stricken or underlined has been agreed to by BellSouth. Language that has been added or stricken highlights the specific disputes between AT&T and BellSouth.

(a) Introduction of New Interfaces

As a preliminary matter, the CCP clearly addresses the introduction of new interfaces. (Hearing Exhibit 24, RMP-22, page 55) There is no disagreement between the ALECs as a group and BellSouth that this is a proper matter for inclusion in the CCP. Indeed, BellSouth's position in North Carolina regarding this matter was that, if BellSouth's original language could remain in the section, BellSouth had no difficulty including AT&T's language. However, recall that in North Carolina, AT&T asked the Commission to adopt Version 1.4 of the CCP. Now, in Version 2.0, AT&T continues to add new

language, including specific reference to time-frames within which BellSouth is to act, which neither BellSouth nor all of the other ALECs have agreed upon. Since AT&T cannot come to a conclusion as to what language it really wants, how can this Commission be expected to interject itself into the process and make a reasoned decision?

In any event, it is clear that the CCP that BellSouth has proposed does include a process for the orderly introduction of new interfaces. (Tr., pp. 1306-1307) The issue is that AT&T wants to change the process that the CCP uses to introduce these new interfaces, but provides no basis for adopting its specific language.

(e) A firm schedule for notifications associated with changes initiated by BellSouth

AT&T and BellSouth have a disagreement about how far in advance documentation has to be released. (RMP-22, p. 21) A casual review of RMP-22 demonstrates that there are a host of different dates, lead times and release windows discussed in the document. AT&T, essentially, always wants more time.

Requiring additional advance notice for these types of releases presents several problems. First, as most people would acknowledge, changes in the computer and software industry do not occur at an even and measured pace. AT&T's solution would result in software changes being held for periods of time when the software could be out and being used, just so AT&T could have its lengthy notice. That simply penalizes other ALECs who are more adept, and quicker at implementing changes. Moreover, BellSouth maintains one prior version of the software that is being changed, so that even if AT&T isn't ready to move forward, it can continue to use the prior version while other ALECs who are more adaptable can take advantage of improvements and additions to these interfaces.

BellSouth has made a number of changes in the time intervals for software releases as the CCP has evolved. (Tr., pp. 1369-1370) Again, this simply demonstrates that this entire process needs to be left with the ALECs and BellSouth. Should those parties be unable to reach a consensus, then there is a process for escalating any disputes.

(f) Defect Correction

(h) An eight step cycle, repeated monthly

These two sub-issues have evolved as well. Specifically, these sub-issues address the time that BellSouth is allowed to make defect corrections and to process changes. What remains is not substantive. The difficulty with AT&T's position regarding the cycle times is that AT&T presented no evidence upon which this Commission could make a meaningful change in the times allowed for certain steps to be taken to correct a defect or to process a change.

For instance, BellSouth witness Pate addressed two of the time intervals contained in the CCP and explained why the periods proposed by BellSouth in the CCP are appropriate. (Tr., pp. 1368-1369) AT&T has responded with nothing concrete to allow this Commission to conclude that BellSouth's intervals were inappropriate.

Moreover, the time frames provided in the CCP do not represent the required time that will be taken in every instance, but rather represent the "outside" parameters. As BellSouth witness Pate stated in response to a Staff question: "This says implemented within 4 to 25 business days. So 25, we are projecting that is the outset (sic) case, and we are definitely going to be doing our best effort to get this fixed as quickly as possible." (Tr., p. 1449) The point is that BellSouth is committed to responding as quickly as possible, but the response obviously depends on the nature of the problem, its impact on the ALECs and BellSouth and what the "fix" to the problem actually requires. For instance, suppose there was a problem that was technically a "defect" but it didn't actually harm any ALEC, and there were two other problems that were defects that did prevent an ALEC from accessing BellSouth's systems. Clearly reasonableness dictates that the more serious problems should be addressed first, or prioritized, which the time frames proposed by BellSouth allows. Using arbitrary, unsubstantiated time frames advocated by AT&T will simply add chaos to the process.

(i) A process for the escalation of changes in process

(j) A process for dispute resolution, including referral to state utility commissions or courts.

These issues are sub-issues that demonstrate the futility of having this Commission involve itself in this process. The current version of the CCP, and indeed all versions, provides an escalation process and a process for dispute resolution. Again, referring to Exhibit RMP-22, beginning at page 57, there is a detailed escalation process that continues through page 61. The only evident dispute, once again, is the time that is allowed for the process to occur. For some steps, where BellSouth has allowed three days, AT&T wants one day. In another area, AT&T wants to impose shorter time periods than BellSouth is willing to agree to for responses to issues that BellSouth "executives" are obligated to make. (Exhibit RMP-22, page 61) The point is that there is an escalation process. AT&T, however, is simply not satisfied with the time intervals allowed for the process. AT&T offered no empirical evidence that its time frames were appropriate or even that BellSouth's were too long based on any practical experience. Again, BellSouth's commitment is to act as quickly as possible, which is eminently reasonable in the absence of any evidence that BellSouth intends to act to the contrary.

The dispute resolution process presents an even starker illustration of this problem. AT&T wanted a dispute resolution process. BellSouth put one in the process as long ago as Version 1.4. So what is the current dispute that AT&T wants this Commission to resolve? Basically it is this: The current version of the CCP allows the parties to seek mediation as a part of the dispute resolution process. BellSouth agrees with that. (See Exhibit 28) Further, BellSouth agrees it is appropriate to notify all ALECs of the mediation so that all ALECs have an opportunity to participate in the resolution of the CCP issue. Where the disagreement remains is in the effect of the mediation. BellSouth believes that if all ALECs are notified of the pending mediation and are provided the opportunity to participate, then a resolution gained through mediation should be binding on all ALECs. Indeed, this situation is comparable to a generic proceeding where all parties have the opportunity to participate, and the final ruling applies to all parties whether or not they participated. AT&T and assumably the other ALECs contend that the resolution of the mediation should only be binding on the ALECs that participate in the mediation. BellSouth contends that if the resolution of the mediation is not binding on all ALECs, then there is no point in providing notice of the pending mediation.

This is not something that this Commission should try to resolve. There is a process for escalating disagreements between AT&T and BellSouth. There are provisions for taking a real dispute to a state commission. If the ALECs really believe that the dispute resolution process should be written as they want, so that a mediation that resolves an issue will not be binding on them, then let them, as a group, take that to a state commission. For all this Commission knows, this is only AT&T's position. This just illustrates once again that this entire process should not be handled in an arbitration between only two participants in the CCP.

This entire issue regarding the CCP should be resolved by concluding that the process itself provides answers to all of AT&T's issues. AT&T should be left to pursue its requested changes in the CCP to the CCP itself. If this Commission embarks on a course of resolving disputes such as these, it embarks on a journey that will never end.

ISSUE 31: What should be the resolution of the following OSS issues currently pending in the change control process but not yet provided? (OSS, Attachment 7, Exhibit A)

a) parsed customer service records for pre-ordering?
b) ability to submit orders electronically for all services and elements?
c) electronic processing after electronic ordering, without subsequent manual processing by BellSouth personnel?

BellSouth's Position:***(a) BellSouth currently provides the ALECs a stream of data via TAG that is sufficient to allow the parsing of information by the ALECs. This data is provided to the ALECs in the same way the data is provided to BellSouth's retail units.***

(b) ALECs' access BellSouth's UNEs either electronically or manually. AT&T wants to submit every order electronically, without regard to the cost or effort involved. This is not required in order to provide nondiscriminatory access to UNEs.

(c) Some electronically submitted orders fall out for manual handling for a number of reasons. The FCC, in its orders allowing Bell Atlantic and SBC into the interLATA market, specifically recognized that some orders would fall out for manual handling and concluded that this did not constitute discriminatory treatment.

DISCUSSION

(a) Parsing Customer Service Records.

Basically, placing an order for a customer involves three steps. First, there is the pre-ordering phase, then the ordering phase and finally the provisioning phase. In the pre-ordering phase, AT&T

checks to see what services are available in the area in which the potential customer is seeking service. If the potential customer is currently a BellSouth end-user customer, AT&T obtains information about the customer from BellSouth. The information about the customer comes from BellSouth's existing customer service records, which are transmitted electronically to AT&T in the same format that the records are used by BellSouth's retail operations. (Tr., pp. 1320-1326) The information that is sent, while in a data stream, includes unique section identifiers and delimiters that allows BellSouth's retail operations to populate the necessary fields when a customer is attempting to order new service. Id.

AT&T's position, and its change request, is premised upon AT&T's claim that the data stream is not "parsed" or broken down in the way that AT&T wants it. That is, the section identifiers and delimiters that are present in the data stream do not provide the breakdown that AT&T desires. AT&T concedes that it could do this parsing itself (Tr., pp. 520-521) but would obviously rather have BellSouth do the programming. AT&T also admits that there is a team of experts working on this issue and that AT&T has a representative on the team. (Tr., pp. 517-518)

By presenting this issue to the Commission, AT&T is simply trying to "jump the line" to obtain something that it wants earlier than it would otherwise obtain. Moreover, it is asking for better treatment because it wants more detailed data than BellSouth provides to its own retail units. AT&T should not be allowed to "jump the line" in this fashion, and its request for parsed customer service records should be allowed to proceed through the change control process in the orderly way other such requests are processed.

(b) The Ability to Submit Orders Electronically for all services and elements.

This sub-issue does not involve a change request that has been submitted to BellSouth but rather relates to a larger philosophical difference that exists between AT&T and BellSouth. In order to place this sub-issue in context, some discussion of the ordering process is required.

As previously mentioned, when a new customer calls AT&T and asks for service, AT&T first uses a pre-ordering interface, such as the Telecommunications Access Gateway (TAG), to determine what is available where the customer wants service and to look at the customer's service record. Generally, the

customer will dial a specific number and get an AT&T service representative. That representative sits at a computer terminal, as does the BellSouth customer service representative. AT&T has developed front-end software that allows its customer service representative to interact with the potential new customer. The AT&T front-end system, for pre-ordering and ordering, is integrated with BellSouth's pre-ordering and ordering interfaces that allow the AT&T service representative to obtain the necessary pre-ordering information and, when the order is ready to place, to send the order (technically the request for a service order) to BellSouth. This process flow is set forth on AT&T witness Bradbury's Exhibit JMB-18 and 19 (Hearing Exhibit 12).

This sub-issue involves the fact that not every order that an AT&T customer service representative takes can be electronically transmitted to BellSouth. Instead, for some orders, the AT&T service representative has to take the order from its potential customer, print the order out, and then manually transmit the order to BellSouth, usually by facsimile. (Tr., p. 525) When the printed order is received in the BellSouth Local Carrier Service Center (LCSC), a BellSouth worker in that center enters the order into one of BellSouth's systems, either DOE (Direct Order Entry) or SONGS (Service Order Negotiation System), depending on where the new AT&T customer is located in the BellSouth service area. Id. Currently, more than 88% of orders are taken electronically. (Tr., p. 524) What AT&T is asking the Commission to do in this sub-issue is to order BellSouth to accept every order electronically, if AT&T chooses to submit the order electronically. (See Tr., p. 516)

There are several problems with AT&T's position. First, the orders that are involved here are generally complex orders. (See Tr., p. 524) The specific computer programming and cost that would be necessary to accept such orders electronically is unknown. Second, and despite AT&T's assertions to the contrary, BellSouth's similar complex orders are first handled by BellSouth's account teams, which then send these orders to the appropriate BellSouth service representatives for entry into the appropriate service order negotiation system. (See Tr., pp. 524-527) Thus, BellSouth handles these complex orders manually, and the orders are handled by BellSouth at least twice, just as AT&T's orders are handled.

Thus, there is no discrimination in the way BellSouth's retail customer service units are treated as compared to the way that AT&T's complex orders are handled.

In spite of AT&T's assertions, it is clear that what it is seeking is simply not required of BellSouth. Both Bell Atlantic and SBC have now obtained approval from the FCC for the provision of interLATA telephone service. In both those proceedings, access to the incumbents' OSS was at issue, and it is clear that the fact that some orders from competing local carriers had to be handled manually did not mean that the new entrants did not have parity. For instance, in the Bell Atlantic decision the FCC acknowledged that some complex orders would be submitted manually. See Application by Bell Atlantic New York for Authorization Under Section 271 To Provide In-Region, InterLATA Service, CC Docket No. 99-295, Memorandum Opinion and Order, 15 FCC 3953, released Dec. 22, 1999 ("Bell Atlantic Order") at ¶ 92, n. 230.

Clearly there is no requirement that all orders that AT&T wants to submit have to be accepted electronically by BellSouth. BellSouth does not treat its own orders that way, and cannot be required, in fairness, to expend the resources to do so on AT&T's behalf.

(c) Electronic processing after electronic ordering, without subsequent manual processing by BellSouth Personnel.

The prior sub-issue dealt with the question of whether some complex orders could be required to be submitted manually, rather than electronically. That is, it addressed the question of whether AT&T would be required, for some types of orders, to submit the orders to BellSouth for entry into its OSS by facsimile, by hand or through some other process that delivered a piece of paper to BellSouth containing AT&T's orders. The vast majority of the orders AT&T wants to place, however, can be submitted electronically. Again returning to AT&T witness Bradbury's Exhibits JMB-18 and 19 (Hearing Exhibit 12), for most orders, the AT&T service representative takes the order and enters it into AT&T's front-end computer system. When the order is ready to be placed, the service representative hits a key, and the order electronically flows, using the EDI interface, into BellSouth's OSS. Id.

A large number of these orders simply flow into another computer, where the request for service is reviewed using computer software and then passed to another program and where the request is converted into service order format, which the provisioning systems can accept for processing. From that point in the process flow, when a service order is generated, AT&T's service orders are treated just like BellSouth's service orders created by BellSouth's retail operations.

This sub-issue revolves around the fact that there are certain requests for service that, instead of "flowing through" to the creation of a service order, "drop out" for manual handling by BellSouth personnel. AT&T wants this Commission to order BellSouth to make all of AT&T's orders "flow through" electronically, without any subsequent human intervention, until the service order is in the provisioning process. This request is simply unreasonable.

This issue has been discussed extensively at the FCC. As AT&T witness Bradbury acknowledged, the FCC has not required complete "flow through" as a matter of parity. (Tr., pp. 532-533) In its Bell Atlantic Order, the FCC clearly recognized that while some orders "flow through," others are not designed to flow through. See e.g., Bell Atlantic Order at ¶ 160, n. 488. Similarly, in the recent FCC order involving SBC's application for interLATA relief in Texas, the FCC acknowledged that SBC's systems were not designed to allow all service order requests to "flow through." See e.g Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance To Provide In-Region, InterLATA Services in Texas, CC Docket No. 00-65, Memorandum Opinion and Order, FCC-00-238, released June 30, 2000 ("SBC Order"), at ¶ 180, n. 490.

Consequently, it is evident that AT&T's request in this regard should not be granted. BellSouth is using its best efforts to insure that as many orders as possible flow through. It is in BellSouth's best interest that this happen, because the more orders that flow through, the fewer people BellSouth has to devote to handling these types of orders. However, at some point the economics of programming make it inappropriate to expect that every order will flow through. The FCC has recognized this and AT&T's position on this sub-issue should not be adopted.

ISSUE 32: **Should BellSouth provide AT&T with the ability to access, via EBI/ECTA, the full functionality available to BellSouth from TAFI and WFA? (OSS, Attachment 7)**

BellSouth's Position: ***BellSouth has provided AT&T with complete and nondiscriminatory access to TAFI and to ECTA, two maintenance and repair systems. BellSouth has provided AT&T with the exact same access to these systems that BellSouth has, and that is all that is required to provide parity to AT&T.***

DISCUSSION

Issue 32 deals with repair and maintenance interfaces that are available to ALECs so that when they do get customers, they are able to address their customers' service needs. In this regard, BellSouth has made available to AT&T the exact interface to which BellSouth's retail operations have access, but AT&T wants more.

When a BellSouth subscriber calls BellSouth with a service or maintenance problem, the BellSouth representative uses a system called Trouble Analysis and Facilitation Interface (TAFI) to deal with the problem. TAFI is a human-to-machine interface (Tr., p. 1338) that allows the representative to take the information from the customer and to do certain tests with the customer on the line. BellSouth has made the TAFI interface available to AT&T on a non-discriminatory basis. Id. That is, AT&T has the exact same access to TAFI that BellSouth's retail units have to TAFI.

The issue here revolves around the fact that TAFI cannot be integrated with AT&T's front-end computer systems. (Tr., pp. 1337-1339) There is another system, Electronic Communications Trouble Administration (ECTA), that is a machine-to-machine interface that could be integrated into AT&T's systems. Id. However, ECTA does not provide certain "on-line" functions that are available with TAFI. (Tr., pp. 1342-1343)

AT&T's proposed solution is to either have BellSouth reprogram ECTA to have all of the functionality of TAFI or for BellSouth to create an entirely new interface that has those functions. (Tr., p. 1337) BellSouth's view, on the other hand, is that it makes available to AT&T the exact same functionality that its retail units have and nothing further is required in order for AT&T to have parity with BellSouth.

Once again, this is an issue that the FCC has already addressed and resolved in a manner consistent with BellSouth's positions. AT&T concedes that the FCC has not found that the lack of

integration constitutes discriminatory access to the maintenance and repair systems. (Tr., p.542) Indeed, in the recent Bell Atlantic proceeding, the FCC stated that it specifically disagreed "with AT&T's assertion that Bell Atlantic must demonstrate that it provides an integrateble, application-to-application interface for maintenance and repair." Bell Atlantic Order at ¶ 215. The FCC specifically concluded that Bell Atlantic satisfied its obligations by "demonstrating that it offers competitors substantially the same means of accessing maintenance and repair functions as Bell Atlantic's retail operations." Id. In this case, as BellSouth witness Pate clearly stated, AT&T has exactly the same access that BellSouth's retail operations has to maintenance and repair. (Tr., p. 1338) Nothing further is required.

Interestingly, AT&T concedes that if BellSouth can demonstrate that it has given AT&T equivalent access, the particular system provided (in this case, TAFI) does not have to be integratable. (Tr., p. 542) AT&T further concedes that, with the exception of the integration component, BellSouth has provided AT&T with equivalent access to BellSouth's maintenance and repair systems. (Tr., pp. 539-540) One would logically conclude that BellSouth, by AT&T's own admission, has done what is required of it and the Commission should conclude that as well.

ISSUE 33: Should AT&T be allowed to share the spectrum on a local loop for voice and data when AT&T purchases a loop/port combination and if so, under what rates, terms, and conditions? (UNE's, Attachment 2, Section 3.10)

BellSouth's Position:***When AT&T purchases the loop/port combination, BellSouth is no longer the voice provider. BellSouth is not required to provide the equipment necessary to share the spectrum on the loop when AT&T partners with another carrier to provide both voice and data to the end user.***

DISCUSSION

This issue is, at best, confusing. The essential premise is that AT&T begins with a loop/port combination, which it is entitled to buy from BellSouth. The issue arises when AT&T wants to share the spectrum on the loop, which it is perfectly free to do. However, in order for AT&T to use the loop and port to provide spectrum sharing, the loop and port have to be broken apart, and a splitter must be inserted between the loop and the port. Clearly when the loop and port are broken apart so that the splitter can be inserted, AT&T then has a loop and a port, but not a loop/port combination.

When AT&T (or any other ALEC) provides the customer's voice service, BellSouth is not required to provide the splitter. When BellSouth is the voice provider, either BellSouth or the data CLEC will provide the splitter; however, there is no requirement that BellSouth provide the splitter in that situation. Indeed, the FCC has confirmed that no requirement exists that the ILEC own the splitter. For example, the FCC has found that "incumbent LECs may maintain control over the loop and splitter equipment and functions. In fact, both the incumbents and the competitive LECs agree that subject to certain obligations, the incumbent LEC may maintain control over the loop and the splitter functionality, if desired." See In re: Deployment of Wireline Services Offering Advanced Telecommunications Capability, Third Report and Order, CC Docket No. 98-147, Dec. 9, 1999 ("Advanced Services Order") at ¶ 76 (emphasis added).

Indeed, the FCC made clear in its January 19, 2001 Order[22] that it is the ALEC, not the ILEC, that is required to provide the splitter when the ILEC is no longer the voice provider.

> [i]ncumbent LECs have an obligation to permit competing carriers to engage in line splitting using the UNE-platform where the competing carrier purchases the entire loop and provides its own splitter. For instance, if a competing carrier is providing voice service using the UNE-platform, it can order an unbundled xDSL-capable loop terminated to a collocated splitter and DSLAM equipment and unbundled switching combined with shared transport, to replace its existing UNE-platform arrangement with a configuration that allows provisioning of both data and voice services.

FCC 01-26 at ¶19 (emphasis added).

AT&T seeks a way to make BellSouth own the splitter and provide the splitter to AT&T on an unbundled basis. The FCC, however, has already found that it "did not identify any circumstances in which the splitter would be treated as part of the loop, as distinguished from being part of the packet switching element." SBC Order, FCC 00-238 at ¶327; (Tr., p. 905) Of course, in its UNE Remand Order, the FCC declined to require that packet switching be provided on an unbundled basis. Thus, it is clear that the FCC does not consider the splitter to be part of the "functionalities and capabilities" of the loop.

[2] In the matter of Deployment of Wireline Services Offering Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order on Reconsideration in CC Docket No. 98-147, Fourth Report and Order on Reconsideration in CC Docket No. 96-98, FCC 01-26, Docket No. 98-147, January 19, 2001. Third Further Notice of Proposed Rulemaking in CC Docket No. 98-147, Sixth Further Notice of Proposed Rulemaking in CC Docket No. 96-98.

The FCC has also clearly stated that ILECs are not required to provide line sharing to a requesting carrier when the ALEC purchases a combination of network elements known as the UNE platform. FCC 99-355 at ¶72; (Tr., p. 902). Even AT&T concedes the FCC has said that BellSouth is not obligated to provide a splitter in either the line sharing or the line splitting situations. (See Tr., p. 716)

Clearly AT&T would like BellSouth to be responsible for yet another piece of network equipment that AT&T could avoid purchasing and being responsible for. However, the FCC can not be any clearer that BellSouth is not obligated to do what AT&T wants with regard to this issue.

ISSUE 34: What are the appropriate rates and charges for unbundled network elements and combinations of network elements? (The parties anticipate that the rates and charges will be resolved in the generic UNE Cost docket, Docket No. 990649-TP.)

BellSouth's Position***Except for line sharing rates, the parties have agreed to defer this issue pending the outcome of FPSC Docket No. 990649-TP. The appropriate line sharing rates are those proposed by BellSouth.***

DISCUSSION

BellSouth and AT&T have agreed that, with the exception of "line sharing" rates, the issue of rates that was originally raised in this arbitration is properly considered in FPSC Docket No. 990649-TP. Issue 33 dealt with "spectrum sharing" where two ALECs are providing the voice and the data transmissions ("line splitting") and BellSouth is not involved. As stated above in the discussion of Issue 33, while AT&T is free to engage in line splitting, BellSouth is not required to be a participant. AT&T may, however, choose to engage in "line sharing" with BellSouth; therefore, this Commission needs to determine the rates that should apply.

BellSouth witness Caldwell filed testimony and a cost study to support rates for line sharing. Ms. Caldwell testified that the cost development submitted followed the same cost methodology used in Docket No. 990649-TP. (Tr., p. 1240) Ms. Caldwell agreed that if this Commission made changes to the methodology in that docket, those changes should be reflected in the line sharing rates provided in this docket. Id. AT&T did not challenge BellSouth's cost study and there is no contrary evidence regarding the appropriate rates for line sharing. As a result, the Commission should approve the rates submitted by BellSouth for line sharing.

CONCLUSION

There are a number of issues presented in this arbitration. Some of the issues are complex and some are fairly simple. BellSouth has attempted to negotiate with AT&T in good faith, and believes that its positions, detailed above, are reasonable and should be adopted by the Commission.

Respectfully submitted this 14th day of March, 2001.

BELLSOUTH TELECOMMUNICATIONS, INC.

Nancy B. White (LA)

NANCY B. WHITE
JAMES MEZA
c/o Nancy H. Sims
150 South Monroe Street
Suite 400
Tallahassee, FL 32301
(305) 347-5558

R. Douglas Lackey (LA)

R. DOUGLAS LACKEY
Suite 4300
675 W. Peachtree Street, N.E.
Atlanta, GA 30375
(404) 335-0747

State of Florida

Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: March 13, 2001
TO: Division of Records and Reporting (Bayó)
FROM: Division of Competitive Services (D'Haeseleer)
Division of Legal Services (Davis) for NSP
RE: Docket No. 010120-TP - Request for extension of time to meet collocation provisioning intervals at Altamonte Springs Central Office by Sprint-Florida Incorporated.

By the attached letter dated February 2, 2001, Sprint-Florida Incorporated withdraws its Request for Extension of Time to Meet Collocation Provisioning Intervals at the Altamonte Springs Central Office. No Commission action has been taken in the above docket.

Therefore, pursuant to Section 2.07.C.5, Administrative Procedures Manual, staff requests that Docket No. 010054-TP be closed administratively.

Thank you for your attention to this matter.

WDK/anc
Attachment
cc: Division of Competitive Services (Fulwood)

OK
SDM
3/14/01