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March 16, 2001

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

Re: Docket No. 000731-TP

Dear Mrs. Bayo:

Enclosed for filing in the above-referenced docket are an original and fifteen (15) copies of the corrected Post-Hearing Statement of Issues and Positions and Post-Hearing Brief of AT&T Communications of the Southern States, Inc. We are providing this brief to correct typographical errors and insert a footnote which was inadvertently omitted from the first filing.

Copies of the foregoing are being served on all parties of record in accordance with the attached Certificate of Service.

Thank you for your assistance with this matter.

Sincerely,

Marsha Rule

MER:kfj
Enclosures

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CERTIFICATE OF SERVICE
DOCKET NO. 000731-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished
via U.S. Mail to the following parties of record on this 16th day of March, 2001:

Nancy B. White
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ATTORNEY

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: 3/14/01

**POST-HEARING STATEMENT OF ISSUES AND POSITIONS
AND POST-HEARING BRIEF OF
AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC.**

AT&T Communications of the Southern States, Inc. ("AT&T") submits this post hearing brief to the Florida Public Service Commission ("Commission") in the above captioned proceeding pursuant to Order No. PSC-01-0324-PHO-TP and Rule 28-106.215, Florida Administrative Code.

Five years after the Telecommunications Act of 1996 ("Telecommunications Act") was passed, most Florida consumers still have no choice of local telephone service providers. The testimony presented to the Commission in this docket reveals a major reason for the lackluster state of local competition: in every case, on every issue, BellSouth throws obstacles in the path of competitors and will open its market only to the extent it is forced to do so by the Commission, the FCC or the courts. This Commission has authority under Chapter 364, Florida Statutes as well as under the Telecommunications Act to break this stalemate by imposing terms and conditions upon BellSouth that will offer AT&T - and other ALECs that opt in to the resulting interconnection agreement - a truly meaningful opportunity to compete against BellSouth, and facilitate competition rather than hinder it.

ISSUE BY ISSUE ANALYSIS

ISSUE 4: What does "currently combines" mean as that phrase is used in 47 C.F.R. §51.315(b)? (UNEs Attachment 2, Section 2.7.1)

****"Currently combines" means any combination that BellSouth ordinarily combines within its network in the manner it is typically combined. A restrictive reading of the term will prevent AT&T from being able to serve new customers or customers who want to change features when migrating their existing service from BellSouth to AT&T.****

The FCC has determined that “currently combines”, as the term is used in Rule 315(b), means “ordinarily combined within their [incumbent local exchange carrier] network, in the manner in which they are typically combined”¹. Although the FCC declined to reaffirm that decision in the *UNE Remand Order*² in light of the pending decision in *Iowa Utilities Board v. Federal Communications Commission*,³ that declaration by the FCC is the *only* interpretation of the meaning of Rule 315(b).

The view that “currently combines” means ordinarily combined in BellSouth’s network was also adopted by the Georgia Public Service Commission on February 1, 2000, when it determined that BellSouth must provide competitive local exchange carriers (CLECs) with combinations of network elements at cost based rates:⁴

Rule 315(b), by its own terms, applies to elements that the incumbent “currently combines”, not merely elements which are “currently combined”. . . . *The Commission finds that “currently combines” means ordinarily combined within the BellSouth network, in the manner in which they are typically combined.* Thus, CLECs can order combinations of typically combined elements, even if the particular elements being ordered are not physically connected at the time the order is placed.⁵

This is the only logical interpretation of Rule 315(b).⁶

Moreover, the Commission need not rely of Rule 315(b) in requiring BellSouth to provide combinations that it ordinarily combines in its network. The Commission retains its own authority to require BellSouth to provide combinations of network elements. The United States Court of

¹ *Local Competition First Report and Order*, ¶296 *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, CC Docket No. 96-98, FCC No. 96-325, Rel. August 8, 1996.

² *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order, Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-98, FCC No. 99-238, Rel. November 5, 1999, hereinafter referred as “UNE Remand Order.”

³ 219 F.3d 744, 8th Cir., 2000.

⁴ *UNE Combinations Order, In re: Generic Proceeding to Establish Long-Term Pricing Policies for Unbundled Network Elements*, Docket No. 10692-U; Georgia Public Service Commission Order, February 1, 2000, p. 11.

⁵ The Order further stated that the Commission would reevaluate its decision if the Eighth Circuit determined that ILECs have no obligation to combine elements. Order, p. 11. However, there is no indication that the Georgia Commission will commence a proceeding on the issue.

⁶ Rule 315(c), which has been vacated by the Eighth Circuit, addresses an ILEC’s obligation to combine elements that are not ordinarily combined in the network. AT&T, in this arbitration, is not seeking to have this Commission determine the validity of that decision.

Appeals for the Ninth Circuit upheld an interconnection agreement requiring US WEST to provide combinations of network elements, despite the fact that the Eighth Circuit had struck down the FCC's rules upon which the state commission had relied in imposing the requirements.⁷ In so holding, the Court observed:

The Eighth Circuit's decision to vacate the FCC regulation certainly still stands, and is immune under the Hobbs Act from collateral attack. *See* 28 U.S.C. § 2342; U S WEST Communications v. MFS Intelenet, 193 F.3d 1112, 1120 (9th Cir. 1999). All this means for the purposes of the present appeal is that the Act does not currently mandate a provision requiring combination. Our task is to determine whether such a provision "meets the requirements" of the Act, *i.e.*, to decide whether a provision requiring combination violates the Act.

Id. Finding the Eighth Circuit's interpretation of the Act unpersuasive, the Ninth Circuit ruled that the state commission could mandate combinations under the Act. *Id.*

Thus, this Commission retains authority to determine that BellSouth should provide AT&T with combinations of network elements that it ordinarily combines within its own network. Either through its own authority or by deference to the FCC's prior interpretation of Rule 315(b), the Commission should require BellSouth to provide combinations of network elements at cost based rates to AT&T that BellSouth ordinarily and typically combines to provide service to its own customers. Unless the Commission makes this determination, AT&T and other carriers will not be able to economically serve new customers or customers who wish to add additional lines or features. (Tr. 243, 936)

BellSouth's position, which is not based any valid legal authority, is anti-competitive and is designed solely to prevent ALECs from using UNE-P to compete for customers. BellSouth's position must be rejected if the Commission wants mass market competition to develop in Florida. According to BellSouth, its obligation to provide UNE combinations at cost based rates applies only to those combinations that are 'in fact combined and providing service to particular customer.'" (Tr. 929) Under BellSouth's restrictive interpretation of its obligations, AT&T would not be able to use

⁷MCI Telecommunications Corp. v. U S WEST Communications, 204 F.3d 1262, 1268 (9th Cir. 2000).

UNE-P to serve customers who move into new subdivisions, even if the facilities for telephone service have already been connected, because service has not been previously provided to that particular customer at that particular location. (Tr. 933, 944) BellSouth's contorted view of its obligations prevents AT&T from using UNE-P to serve nearly 20% of BellSouth's customer base. (Tr. 944) BellSouth's policy is discriminatory and allows it to continue to remain a monopoly. BellSouth should not be allowed to determine when UNE-P is available by creating artificial restrictions that effectively prevent AT&T from providing service to an entire group of customers.

There is no legal support for BellSouth's position that a UNE combination must be providing service to a particular customer before AT&T is entitled to the combination at cost based rates. (Tr. 930-933) In fact, BellSouth admits that its position has *not* been adopted by any Commission (Tr. 963), and it has been rejected by at least the Georgia and Tennessee commissions. BellSouth's refusal to provide combinations that it "currently combines", means that AT&T and BellSouth have to spend more time, more money and more resources to obtain what BellSouth currently provides to its own customers. (Tr. 238) This additional work, time and cost to both BellSouth and AT&T can be eliminated by simply requiring BellSouth to provide combinations that it routinely and ordinarily combines for its customers. ALECs cannot compete against BellSouth if they are forced to serve a customer at a greater cost or less efficiently than BellSouth. (Tr. 217)

A determination that BellSouth must provide all combinations to ALECs, will not foreclose facilities based competition or prevent BellSouth from investing in new capabilities as BellSouth has threatened. (Tr. 817) There is nothing in the Act or any court decision that says facilities-based competition is favored over any other form of competition. In fact, as Commissioner Palecki recognized, the costs to an ALEC to provide facilities can often be prohibitive and decrease rather than increase competition. (Tr. 935) But when UNE-P is available, as demonstrated in other markets such as New York and Texas, competition increases significantly. (Tr. 213) Since UNE-P has been available in Georgia, 70% of the ordering for UNEs has been for UNE-P. (Tr. 255) Furthermore, when other ILECs make the decision to provide local service on a broad scale in some

place other than their own region, their strategy is based upon using UNE-P. (Tr. 214) Once UNE-P is available on an unrestricted basis, ALECs can rapidly transition to facilities-based competition as their customer base grows and justifies the investment in facilities. On the other hand, if UNE-P is restricted as BellSouth proposes, mass market competition of any kind will be thwarted. (Tr. 222)

This Commission should make the decision that favors competition and gives consumers a choice. BellSouth must be ordered to provide combinations of network elements that it routinely and ordinarily combines for its own customers. Any other decision sanctions the discriminatory practices of BellSouth and allows BellSouth to remain a monopoly provider of telecommunication services in Florida.

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

**** No. BellSouth has a legal obligation to provide AT&T with combinations of unbundled network elements that it currently combines at cost based rates. The glue charge is an attempt by BellSouth to obtain an additional profit which is already provided for in the cost based rates.****

A “glue charge” is nothing more than an attempt by BellSouth to obtain an additional profit over and above the reasonable profit it recovers in the cost based rates for network element combinations. BellSouth refers to the glue charge as the difference between “market-based and cost based prices.” (Tr. 819) Actually, the “glue charge” represents BellSouth’s belief that AT&T should be forced to incur additional costs over and above the costs BellSouth incurs to provide the combinations of network elements. (Tr. 233) When BellSouth made a similar argument to the Georgia Public Service Commission, it was summarily rejected.

Nothing in the Act permits BellSouth to recover anything other than cost based rates for network element combinations. Section 252(d)(1) specifically requires that just and reasonable rates for interconnection of facilities and equipment be based upon *cost*. Thus, any attempt by BellSouth to recover a glue charge is prohibited.

BellSouth’s position that it is entitled to a “glue charge” is premised on the belief that it does not have an obligation to combine UNEs. (Tr. 217) However, BellSouth *does* have an obligation to

provide AT&T with combinations of network elements that BellSouth routinely and ordinarily combines for its own customers. The cost to provide these combinations, including a reasonable profit, is already included in the rates AT&T pays BellSouth for those combinations. This Commission should determine that BellSouth, when providing network element combinations, recovers all its costs through the cost based rates established for the particular network elements and should not be permitted to charge an additional “glue charge.”

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)

****AT&T should be allowed to convert special access services to combinations of unbundled network elements without payment of a penalty or termination liability charge. The only cost incurred by BellSouth for this conversion is changing billing systems to process the conversion request without any service outage or physical labor.****

BellSouth admits that conversion of special access to UNE combinations is accomplished without any physical work or cost. (Tr. 987, 988) But, in yet another attempt to force ALECs to pay fees over and above cost-based rates, BellSouth wants AT&T to pay “termination liability fees” when converting special access services to unbundled network elements (“UNEs”). (Tr. 988) BellSouth believes these penalties are proper because AT&T is “canceling” a term and volume contract. (Tr. 989) However, AT&T is not ‘terminating’ the service. Rather, AT&T is merely seeking to have the current service converted to a different rate structure. (Tr. 27-28) The loop/transport combination would continue to serve the same purpose, have the same features, the same functions and serve the exact same customer. (Tr. 29) Furthermore, AT&T has never told BellSouth that it would not abide by either the term or volume commitment that was made under the special access contract. (Tr. 989)

Moreover, the only reason AT&T purchased special access rather than UNE combinations is that BellSouth **required** AT&T to purchase special access. Until February 2000, when the Georgia Public Service Commission ordered BellSouth to provide AT&T and other ALECs with UNE

combinations, BellSouth **refused** to do so. (Tr. 994) BellSouth thus would penalize AT&T (and reward BellSouth) for BellSouth's refusal to provide UNE combinations as required by the law. (Tr. 55)⁸

Furthermore, such a provision would, in effect, nullify the FCC's Supplemental Order to its Third Report and Order.⁹ In that Order, the FCC allowed for conversions as long as the requesting carrier was providing a "significant amount of local exchange service".¹⁰

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)

****Each party should be financially responsible for all of the costs incurred when its customers make calls that terminate on the network of the other party. The Commission should deny BellSouth's proposal to shift the cost of the facilities used to originate BellSouth's own traffic to AT&T.****

When BellSouth customers call AT&T customers in Florida, those calls first travel over BellSouth's network, are directed to AT&T's network, and then travel over AT&T's network, before they are finally connected to AT&T's customers. In order to get those calls from BellSouth's customers to AT&T's customers, AT&T and BellSouth agree on the manner in which AT&T and BellSouth physically interconnect their networks. The only remaining area of disagreement is

⁸ The Georgia Public Service Commission and South Carolina Public Service Commission have both recently agreed with AT&T. *In re: AT&T's Petition for Arbitration for Arbitration of Rates, Terms and Conditions with BellSouth Communications*, Georgia Public Service Commission Docket No. 11853-U; *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*, South Carolina Public Service Commission Docket No. 2000-527-C; Order No. 20001-079, January 30, 2001).

⁹ (*In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Supplemental Order*, FCC Docket No. 99-370, CC Docket No. 96-98, November 24, 1999).

¹⁰ Although this same Order, in a footnote, speaks to the payment of termination liability charges, it must be read in conjunction with the sentence to which the footnote is attached, which says:

As an initial matter, under existing law, a requesting carrier is entitled to obtain existing combinations of loop and transport between the end user and the incumbent LEC's serving wire center on an unrestricted basis at unbundled network element prices.

Thus, it is clear that the footnote requiring payment of termination liability fees was intended to apply in circumstances where the ALEC had a clear choice between special access and UNE combinations, chose special access, and later desired to convert to UNEs. The FCC began the relevant paragraph by stating what the law was, as it currently existed. That was not the case in Florida, because BellSouth never allowed AT&T to have such a choice.

whether BellSouth should bear financial responsibility for getting all calls from its customers to AT&T's customers. (Tr. 89, 965)

Rather than bear financial responsibility for its own calls, BellSouth would have the Commission declare that, in certain circumstances, BellSouth is not responsible for all of the costs of getting calls from its customers to AT&T's customers. (Tr. 125-26) Thus this issue requires the Commission to determine whether BellSouth is financially responsible for all of the costs of getting calls from its customers in a basic local calling area to AT&T's customers in that same basic local calling area, when the point of interconnection is outside that basic local calling area; or whether BellSouth is only responsible for getting those calls as far as some arbitrary point in BellSouth's basic local calling areas, at which point AT&T would bear the remaining financial responsibility for getting BellSouth's own traffic to the point of interconnection in the LATA. (Tr. 145, 146; Tr. 967, 974-75).

As a Matter of Law, the Commission Should Reject BellSouth's Proposal

Basic fairness – as well as the law -- requires that BellSouth should be responsible for all the cost of its own traffic, whether that traffic is from one BellSouth customer to another or from a BellSouth customer to an AT&T customer. (Tr. 825) The Act and FCC regulations independently require each carrier to bear responsibility for the cost of transporting its own originating traffic. The FCC's regulations clearly and specifically provide that BellSouth may not charge AT&T for any of the costs of transporting BellSouth's originating traffic. In addition, the Act and FCC regulations unequivocally provide that, as an ALEC, AT&T has the legal right to determine where it will interconnect with BellSouth, both for purposes of where AT&T will terminate its originating traffic and for purposes of where BellSouth must deliver its originating traffic to AT&T. This statutory right is meaningful, however, *only if* the allocation of financial responsibility for transporting traffic corresponds to the interconnection points chosen by AT&T.

BellSouth is prohibited from charging AT&T for calls that originate on BellSouth's network

Congress and the FCC have both established that the financial consequences of interconnection must be mutual and reciprocal. *See* 47 U.S.C. § 252(d)(2)(A). Under the Act, the originating carrier continues to collect and keep local revenues, and, where an ALEC is used to terminate the call (because the terminating customer obtains service from a competing local provider), the Act establishes reciprocal compensation to compensate the terminating carrier for its costs of transport and termination. Consistent with the Act, 47 C.F.R. § 51.703(b) provides that “[a] LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC’s network.” This provision, in no uncertain terms, flatly prohibits BellSouth from charging AT&T for calls from BellSouth’s customers to AT&T’s customers, and should resolve this dispute in its entirety.¹¹ Any other result would be illegal under the FCC’s regulations. (Tr. 198-99).¹²

The FCC has addressed the applicability of its rules in an adjudicatory proceeding. In *TSR Wireless, LLC, et. al., v. U.S. West*, several paging carriers alleged that US West and other ILECs had improperly imposed charges for facilities used to deliver LEC-originated traffic.¹³ The paging carriers based their complaint on 47 C.F.R. § 51.703(b) and sought an order from the FCC prohibiting the ILECs from charging for dedicated and shared transmission facilities used to deliver

¹¹ There is no question that the calls at issue originate on BellSouth’s network. (Tr. 199) Indeed, BellSouth is quite clear that the *only* calls in dispute are calls from BellSouth customers to AT&T customers. (Ruscilli, Tr. 975-76). BellSouth also agrees that the calls in question are local telecommunications traffic. 47 C.F.R. § 51.701(b)(1) defines local telecommunications traffic as traffic that originates and terminates in a local service area approved by the Commission. The traffic at issue in this case originates and terminates in the same BellSouth basic local calling areas. (Tr. 197-98; 970). Those basic local calling areas are local service areas approved by the Commission, as set forth in BellSouth’s tariffs

¹² Similarly, 47 C.F.R. § 51.709(b) provides: “The rate of a carrier providing transmission facilities dedicated to the transmission of traffic between two carriers’ networks shall recover only the costs of the proportion of that trunk capacity used by an interconnecting carrier to send traffic that will terminate on the providing carrier’s network.” Paragraph 1062 of the *Local Competition Order* elaborates that each party must bear its own cost to transport its traffic to the other party and prohibits shifting those costs to the other party. “The inter-connecting carrier, however, should not be required to pay the providing carrier for one-way trunks in the opposite direction, which the providing carrier owns and uses to send its own traffic to the inter-connecting carrier.” Local Competition Order ¶ 1062.

¹³ File Nos. E-98-13, et. al., FCC 00-194 (June 21, 2000) (appeal filed *sub nom*, *Qwest Corp. v. FCC*, Docket No. 00-1376 (D.C. Cir. Aug. 17, 2000)).

LEC-originated traffic. The FCC agreed with the paging carriers. In its Order, the FCC determined that “any LEC efforts to continue charging [the paging carriers] or other carriers for delivery of such [LEC-originated] traffic would be unjust and unreasonable.” *Id.* ¶ 29. The FCC concluded that FCC “rules prohibit [the ILECs] from charging for facilities used to deliver LEC-originated traffic [to the paging carriers.]” *Id.* at ¶ 25.14

The FCC also recently addressed this issue in its order in *Memorandum and Order*, FCC 01-29, Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-region, interLATA Services in Kansas and Oklahoma, CC Docket No. 00-217 (January 22, 2001)(“SBC Kansas & Oklahoma Order”). The issue before the FCC in its *SBC Kansas and Oklahoma Order* was the same issue in this proceeding, and SBC took the same position before the FCC that BellSouth has presented in this proceeding. (Tr. 194-95). Although the issue was one of future compliance, the FCC nonetheless cautioned SWBT “from taking what appears to be an expansive and out of context interpretation of findings we made in our *SWBT Texas Order* concerning its obligation to deliver traffic to a competitive LEC’s point of interconnection.” *SBC Kansas and Oklahoma Order* ¶ 235; (Tr. 195-96). In particular, the FCC confirmed that its decision allowing an ALEC to designate a single point of interconnection did not in any way “change an incumbent LEC’s reciprocal compensation obligations under our current rules.” *Id.*¹⁵ Thus, although the manner in which the issue presented itself did not cause the FCC to issue a declaratory

14 In the *TSR* case, the calls in question originated, terminated, and did not travel outside the MTA, which is essentially a wireless local calling area. (Tr. 148). That fact, however, does not alter the applicability of the decision to this case. The calls in question in this proceeding originate and terminate in the same BellSouth basic local calling area, and never travel outside the LATA. The LATA is a local service area approved by the Commission as set forth in BellSouth’s tariffs, similar to a wireless MTA. (Tr. 196-97, 199-200; 973-74).

15 The FCC specifically referenced the very same rules addressed above (47 C.F.R. §§ 51.703(b) and 51.709(b)), which “preclude an incumbent LEC from charging carriers for local traffic that originates on the incumbent LEC’s network.” *SBC Kansas and Oklahoma Order*; (Tr. 195-97). The FCC also specifically referenced its *TSR Wireless* decision. *SBC Kansas and Oklahoma Order*. at n. 698; (Tr. 195-96).

ruling, the *SBC Kansas & Oklahoma Order* provides additional FCC guidance that the Commission must reject the BellSouth proposal on this issue. (Tr. 146-47).¹⁶

The Act and FCC regulations specifically prohibit shifting the costs of transport for originating traffic. BellSouth's interconnection proposal would violate this requirement by shifting to AT&T a substantial portion of the costs of transporting BellSouth's own traffic. AT&T's proposal, in contrast, provides a reciprocal approach under which each party bears comparable costs.¹⁷ The Commission should follow the lead of several other commissions on this issue and adopt the reciprocal interconnection proposal sponsored by AT&T as required under FCC regulations.

AT&T Is Entitled to Choose One Interconnection Point Per LATA as a Matter of Law.

The configurations of AT&T's and BellSouth's networks lie at the heart of this issue. If AT&T had replicated BellSouth's network in Florida, there would be no dispute: AT&T and

¹⁶ The Indiana commission reached a similar conclusion when it determined the allocation of financial responsibility for facilities necessary to deliver originating traffic to the interconnection point. Decision, *Petition for Arbitration of a Interconnection Rates, Terms and Conditions and Related Arrangements with Indiana Bell Telephone Company, Inc., d/b/a Ameritech Indiana Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Cause. No. 40571-INT-03, p. 27-28 (IURC Nov. 20, 2000) (hereinafter "*Indiana Order*"). The Indiana commission adopted AT&T's position and required that each party be financially responsible for ensuring that sufficient facilities are in place to deliver traffic originating on its network to the top of the other party's network, and for bearing the cost of providing those facilities. *Id.* at 28. Justifying its decision on fairness grounds, the commission found that "it is not equitable for one party to provide all of the facilities (or a disproportionate amount of such facilities) for both parties' traffic." *Id.* The commission held: "The fundamental concept of AT&T's model for equitable interconnection is that the originating carrier bears the financial responsibility for the origination and termination of its traffic. Ameritech Indiana's interconnection proposal is not reciprocal and would shift a portion of its interconnection costs to AT&T." *Id.* Commissions in Michigan and Wisconsin also reached similar results. See Arbitration Award, *Petition for Arbitration to Establish an Interconnection Agreement Between Two AT&T subsidiaries, AT&T Comm'ns of Wisconsin, Inc. and TCG Milwaukee and Wisconsin Bell, Inc., (d/b/a Ameritech Wisconsin)*, at 37, O5-MA-120 (Oct. 12, 2000); Michigan Public Service Commission Order at 9, *AT&T Comm'ns of Michigan Inc. and TCG Detroit's Petition for Arbitration*, Case No. U-12465 (November 20, 2000) (rejecting without discussion Ameritech Michigan's arguments and adopting AT&T's proposal for equitable sharing of costs for interconnection facilities).

¹⁷ BellSouth argues that it should not be required to bear any financial consequences of AT&T's network structure. BellSouth's cost, however, is only a factor where BellSouth can establish that the competing carrier "purposely structur[ed] its point(s) of interconnection to maximize the cost to the ILEC or to otherwise gain an unfair competitive advantage." *U. S. West Comm'ns, Inc. v. Jennings*, 46 F. Supp. 2d 1004, 1021 (D. Ariz. 1999)(interpreting Local Competition Order ¶ 199). BellSouth has made no such showing. Moreover, Paragraph 199 of the Local Competition Order refers to the physical costs of interconnection under § 252(d)(1) of the Act, not the charges for transport and termination of traffic under § 252(d)(2) of the Act.

BellSouth would have the same number of switches and could interconnect at each switch location. AT&T, however, is not required to replicate BellSouth's network in Florida; nor would Florida customers best be served if AT&T and every other ALEC were required to replicate BellSouth's network.

The dispute on this issue arises from the fact that BellSouth's network and AT&T's network are configured differently, yet still must interconnect to serve a similar geographic base of customers. Because of those differences, if AT&T designates a single point of interconnection in a LATA, a call from a BellSouth customer in a BellSouth basic local calling area to an AT&T customer in that same basic local calling area may have to travel outside the basic local calling area to the point of interconnection before it reaches AT&T's switch and ultimately AT&T's customer.¹⁸ That possibility, however, should not in any way undermine AT&T's legal right to designate a single point of interconnection in a LATA.

In effect, however, that is precisely what BellSouth's proposal does. BellSouth contends that in certain circumstances it is not responsible for all of the costs associated with transporting its traffic beyond an arbitrary and unspecified point in each of its basic local calling areas. In particular, for calls from customers in a BellSouth basic local calling area to AT&T customers in that same basic local calling area which must travel outside the basic local calling area to get to the point of interconnection, BellSouth would have the Commission declare that BellSouth bears no financial responsibility for the cost of getting those calls from some unspecified and arbitrary point in the basic local calling areas to the point of interconnection. According to BellSouth, in those circumstances, AT&T would be responsible for the costs of the facilities needed to transport *BellSouth's own traffic* from the BellSouth basic local calling area to the point of interconnection.

Under BellSouth's proposal, the ability of AT&T to interconnect at a single point in a LATA would be meaningless, because BellSouth would require AT&T to pay the difference between the

¹⁸ BellSouth does not dispute that AT&T has the right to interconnect with BellSouth's network at a single point within each LATA. (Tr. 824)

cost of that single point of interconnection and the cost of multiple points of interconnection in each BellSouth basic local calling area. Accordingly, notwithstanding BellSouth's stated acceptance of a single point of interconnection in each LATA, BellSouth's proposal has the practical, and certainly the economic effect of requiring AT&T to have a physical point of interconnection in every basic local calling area in Florida. 19

The FCC has found the right of a competing carrier to choose the point of interconnection, and conversely the unlawfulness of any attempts by incumbents to dictate points of interconnection, sufficiently clear and compelling to intervene in court reviews of interconnection disputes.²⁰ In an

19 As explained above, Section 251(c)(2) of the Act imposes upon the ILEC the duty to provide interconnection at any technically feasible point in the ILEC's network. 47 U.S.C. § 251(c)(2); (Tr. 825, 964). In its *Local Competition Order*, the FCC elaborated that section 251(c)(2) "allows *competing carriers* to choose the most efficient points at which to exchange traffic with incumbent LECs, thereby lowering the competing carriers' costs of, among other things, transport and termination of traffic." (emphasis added); (Tr. 964). *Local Competition Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd. 15499, ¶ 172 (hereinafter "*Local Competition Order*") The FCC has consistently applied this statute to prevent incumbent LECs from increasing costs by requiring multiple points of interconnection. In its order approving SWBT's application for interLATA authority in Texas, the FCC made clear that this provision gives competing local providers the option to interconnect at as few as one technically feasible point within each LATA. (Tr. 964-65)¹⁹ As the FCC explained: "New entrants may select the most efficient points at which to exchange traffic with incumbent LECs, thereby lowering the competing carriers' cost of, among other things, transport and termination." *Id.* As a result of this decision, AT&T is not required to bear the financial cost of any SWBT originated calls in Texas. That financial responsibility rests solely with SWBT.

20 Many federal district courts also have rejected as inconsistent with Section 251(c)(2) incumbents' efforts to require competing carriers to establish points of interconnection in each local calling area. See, e.g., *US West Communications, Inc., v. Minnesota Public Utilities Commission, et al.*, No. 97-913 ADMAJB, slip op. at 33-34 (D. Minn. 1999) (rejecting U S West's argument that section 251(c)(2) requires at least one point of interconnection in each local calling exchange served by US West. A district court in Colorado recently reversed a state commission's order that an ALEC must establish an interconnection point in every local calling area. *U.S. West Communications, Inc. v. Hix, et al.*, No. C97-D-152, (D. Colo., June 23, 2000). The Colorado court held that under the Act and the FCC regulations, "it is the ALEC's choice, subject to technical feasibility, to determine the most efficient number of interconnection points, and the location of those points." *Id.* at 3.

Similarly, in Washington, the district court affirmed the state commission's determination that AT&T may establish a single interconnection point within each LATA and rejected the ILEC's contention that an ALEC must have an interconnection point in every local calling area in which it offers service. *US West Communications v. AT&T Communications of the Pacific Northwest, Inc., et al*, No. C97-1320R, 1998 U.S. Dist. LEXIS 22361 at *26 (W.D. Wa. July 21, 1998). The Washington court based its decision on purely statutory grounds, finding appropriate the commission's refusal to "consider the cost of a single interconnection point per LATA because '[a] determination of technical feasibility does not include consideration of economic, accounting, [or] billing . . . concerns.'" *Id.* at *27 (citing 47 C.F.R. 51.5 (App. Tab 11)). *Accord US West Communications, Inc. v. MFS Intelenet, Inc.*, No. C97-222WD, 1998 WL 350588, at 3 (W.D. Wa. 1998), *aff'd U. S. West Communications v. MFS Intelenet, Inc.*, 193 F.3d 1112, 1124 (9th Cir. 1999) ("The agency correctly applied the Act when it limited its review to the technical feasibility of the LATA connection approved in the agreement.").

interconnection dispute in Oregon, the FCC intervened as *amicus curiae* and urged the court to reject US West's argument that the Act requires a competing carrier to "interconnect in the same local exchange in which it intends to provide local service."²¹ The FCC stated:

Nothing in the 1996 Act or binding FCC regulations requires a new entrant to interconnect at multiple locations within a single LATA. Indeed, such a requirement could be so costly to new entrants that it would thwart the Act's fundamental goal of opening local markets to competition.

Id. at 20.

Although BellSouth on the one hand accepts AT&T's legal right to designate a single interconnection point per LATA, the compensation elements of BellSouth's proposal essentially eliminate that right. BellSouth has proposed forcing AT&T to be financially responsible for picking up BellSouth traffic at some arbitrary and unspecified point in each BellSouth basic local calling area and transporting that traffic to the point of interconnection in the LATA. BellSouth's proposal

Moreover, nearly all state commissions that have considered this issue in an AT&T arbitration to date have rejected the ILEC's position and have ruled in AT&T's favor on this issue. The Indiana commission recently adopted AT&T's network architecture proposal, permitting interconnection at the top of the respective networks – for AT&T, at its switch in the LATA, and for Ameritech, at its tandems and certain end offices with trunks. *Indiana Order* at 19. The Indiana commission acknowledged that if Ameritech's proposal (which is nearly identical to BellSouth's proposal) were adopted, "AT&T would be required to build its network to mirror Ameritech Indiana's – in effect – replacing Ameritech Indiana's network with a redundant AT&T network." *Id.* at 21. Commissions in California, Texas, Kansas, and Michigan have reached similar results. *See* Opinion, *Application of AT&T Communications of California, Inc. (U 5002 C), et al., for Arbitration of an Interconnection Agreement with Pacific Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996*, No. 00-01-022, p. 13 (CA PUC Aug. 3, 2000); Revised Arbitration Award, *Petition of Southwestern Bell Telephone Company for Arbitration with AT&T Communications of Texas, L.P., TCG Dallas and Teleport Communications, Inc. Pursuant to Section 251(B)(1) of the Federal Communications Act of 1996*, Docket No. 22315. (Texas PUC Sept. 27, 2000); (Order Addressing and Affirming Arbitrator's Decision, *In the Matter of the Petition of TCG Kansas City, Inc. for Compulsory Arbitration of Unresolved Issues with Southwestern Bell Telephone Company Pursuant to Section 252 of the Telecommunications Act of 1996*, p. 9 (Aug. 7, 2000); Decision of Arbitration Panel, *AT&T Comm 'ns of Michigan Inc. and TCG Detroit's Petition for Arbitration*, Case No. U-12465 (Oct. 18, 2000) (App. Tab 19). (The Michigan Public Service Commission affirmed this portion of the Arbitration Panel's Decision by Order dated November 20, 2000)

²¹ Memorandum of the Federal Communications Commission as Amicus Curiae, at 20-21, *US West Communications Inc., v. AT&T Communications of the Pacific Northwest, Inc., et al.* (No. CV 97-1575-JE) (D. Or. 1998).

would effectively eliminate AT&T's right to designate a single point of interconnection, because it would force AT&T to pay BellSouth *as if* AT&T were required to establish multiple points of interconnection in all of BellSouth's basic local calling areas. It would be plainly contrary to the objectives set forth by the FCC to allow an ALEC to interconnect at a single point, but then require that ALEC to pay the incumbent carrier for transport facilities as if the ALEC were required to interconnect at multiple points.

Basic Fairness and Sound Public Policy Compel Rejection of BellSouth's Proposal

AT&T has proposed equivalent interconnection points which would require each party to bear financial responsibility for delivering its originating traffic to a comparable entry point into the other's network. (Tr. 113, 61). The AT&T proposal is, in the words of the Indiana commission, "consistent with federal law and good telecommunications policy." *Indiana Order* at 20. Under AT&T's proposal, neither party is required to transport traffic within the other's network, and each party retains control of its own network. Under AT&T's proposal, there is no cost-shifting and no requirement to bear the cost of the embedded network. Only the AT&T proposal is neutral to the design of each party's network. (Tr. 76) Such a result promotes the kind of pro-competitive progress contemplated by the FCC and the Act.

Far from comparable or fair obligations, BellSouth proposes points of interconnection that are skewed to BellSouth's benefit for both originating and terminating traffic. Such inequitable favorable treatment of the incumbent confounds the pro-competitive purposes of the Act. BellSouth's proposal represents a major shift in financial burdens. Until now, BellSouth has agreed to pay to transport calls from its customers to AT&T's customers. (Tr. 976) BellSouth's proposal would thus do nothing more than shift responsibility for the costs of transporting BellSouth's calls from BellSouth to AT&T. 22 (Tr. 123, 126-27; Tr. 976-77) AT&T's proposal maintains the status quo. (Tr. 123).

22 BellSouth's proposal is neither reciprocal nor fair. (Tr. 98) If BellSouth's proposal is adopted, AT&T would be responsible for all of the costs of getting all of its calls from its customers to BellSouth's customers. (Tr. 58, 967) BellSouth would require AT&T to bear the cost of transporting BellSouth's traffic from each basic local calling area

If AT&T is forced to take financial responsibility for transporting BellSouth's own traffic within BellSouth's network, AT&T will be forced either to build or lease network facilities it would not otherwise need to provide service in Florida. AT&T and Florida customers would thus be unable to benefit from the efficiencies of modern network technology and design. (Tr. 89, 96-98; Tr. 65-66, 127-28) Perpetuating reliance upon BellSouth's embedded network architecture confounds the purpose of the Act to enhance competition and to promote increased efficiency through technological advancement. (Tr. 128) Moreover, resolution of Issue 7 will impact not only AT&T, but all ALECs and, therefore, the future of competition in Florida. (Tr. 113, 977)

AT&T proposes an approach that is equitable for both parties – an *equivalent* interconnection approach. Under AT&T's proposal, each party is reciprocally responsible for delivering its originating traffic to an equivalent entry point on the other party's network. Since AT&T's and BellSouth's networks cover comparable geographic areas in Florida, this proposal results in each party having comparable financial obligations to originate and terminate traffic. As numerous courts and commissions have agreed, AT&T's interconnection proposal is consistent with the law, and it advances the pro-competitive policies of the Act. Accordingly, the Commission should reject BellSouth's proposal on Issue 7, and should adopt AT&T's proposal.

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)

****In multi-unit situations, there should be a single point of interconnection that is fully accessible by AT&T technicians thereby permitting AT&T to have direct access to the end user customer. The insertion of an additional, intermediate terminal is unnecessary and only inflates the costs.****

In the *UNE Remand Order*, the FCC adopted rules requiring incumbents to "provide nondiscriminatory access, in accordance with § 51.311 and section 251(c)(3) of the Act, to the local

within the BellSouth network to AT&T's interconnection point. (Tr. 967-69) Thus, under BellSouth's proposals, AT&T must come to each of BellSouth's basic local calling areas to get BellSouth's traffic, *and* AT&T bears financial responsibility for transporting its own traffic all the way to BellSouth's tandem switches. The resulting arrangement would perpetuate and compound inefficiencies, because BellSouth would have no incentive to improve or update its network. (Tr. 75-76)

loop and subloop, including inside wiring owned by the incumbent LEC, on an unbundled basis to any requesting telecommunications carrier for the provision of a telecommunications service.” 47 C.F.R. § 319(a).²³ Specifically, the FCC adopted the proposal submitted by OpTel for a “single point of interconnection.” *UNE Remand Order* ¶ 226. In the event carriers are unable to negotiate a reconfigured single point of interconnection, the FCC required “the incumbent to construct a single point of interconnection that will be fully accessible and suitable for use by multiple carriers.” *UNE Remand Order* ¶ 226; *see also* 47 C.F.R. § 51.319(a)(2)(E).²⁴

The Commission should reject the BellSouth intermediary access terminal proposal as inconsistent with FCC rules and regulations and detrimental to the public interest. Principally, requiring AT&T and other ALECs to access subloop elements by means of an intermediary access terminal is discriminatory, and thus violates 47 C.F.R. § 319(a). Contrary to BellSouth’s testimony, only in rare cases would BellSouth ever have to gain access to any tenants in a campus or high rise property by means of any intermediary access terminals. Rather, BellSouth will continue to gain access to its apartment and office customers through its garden terminals and access panels. (Milner Exhibit, 1) Under the BellSouth proposal, *only* the ALEC would use the access terminal. (Tr. 1159) This is an admission by BellSouth that it will not provide AT&T access to subloops in substantially the same manner that BellSouth provides such access to itself. By definition, the BellSouth proposal is discriminatory.

BellSouth’s requirement of an intermediary access terminal also violates the FCC requirement of a *single* point of interconnection for access to subloop facilities. Surely, when the

23 The FCC defines subloops as “portions of the loop that can be accessed at terminals in the incumbent’s outside plant.” *UNE Remand Order* ¶ 206. An “access terminal” is “a point on the loop where technicians can access the wire or fiber within the cable without removing a splice case to reach the wire or fiber within. These would include a technically feasible point near the customer premises, such as the pole or pedestal, the NID, or the minimum point of entry to the customer premises.” *UNE Remand Order* ¶ 206.

24 Although this Commission decided in the MediaOne/BellSouth arbitration that an intermediary device should be used for access to network terminating wire (“NTW”)(*In re: Petition by MediaOne Florida Telecommunications, Inc. for arbitration of an interconnection agreement with BellSouth Telecommunications, Inc. pursuant to Section 252(b) of the Telecommunications Act of 1996, Docket No. 990149-TP*), at decision was rendered prior to the *UNE Remand Order* which required required a single point of interconnection for all carriers. Even BellSouth admits that at the time of the *MediaOne* order there was no requirement for subloop unbundling. (Tr. 1157)

FCC imposed on BellSouth the obligation to provide “a single point of interconnection at multi-unit premises that is suitable for use by multiple carriers,” 47 C.F.R. § 51.319(a)(2)(E), the FCC did not intend to suggest that BellSouth should construct a single point of interconnection for all carriers *but* BellSouth. That would be inconsistent with the entire philosophy underlying the concept of non-discriminatory access in general and a single point of access in particular.

Similarly, the BellSouth requirement of an intermediary access terminal violates the prohibition against an “intermediate interconnection arrangement in lieu of a direct connection to [BellSouth’s] network if technically feasible,” as set forth in the FCC’s collocation rules. *Deployment of Wireline Service Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, First Report and Order and Further Notice of Proposed Rulemaking, FCC 99-48, et al. (March 31, 1999) ¶ 42.²⁵ Just as BellSouth may not require an intermediate interconnection arrangement in order to interconnect through collocation in its central offices, BellSouth may not require any such intermediate interconnection arrangements in its subloop terminals.

In addition to violating several FCC rules, the access BellSouth intends to provide AT&T though the intermediary device is substantially inferior to the access BellSouth enjoys and will continue to enjoy under its proposal. BellSouth’s proposal increases the risk of an accident, simply because of the magnitude of connections (each and every available pair) which must be made. Moreover, BellSouth ensures that customers in a high rise property will be out of service longer than if BellSouth allowed direct access.²⁶

²⁵ The FCC has made clear that this and all its collocation rules apply not only to central offices, but also to all technical technically feasible points in the BellSouth network, including subloop terminals. *UNE Remand Order* ¶ 221.

²⁶ At the hearing, Mr. Milner “changed” his position to indicate that BellSouth would prewire pairs that a customer is currently receiving service over unless the customer wants to retain BellSouth as their provider. (Tr. 1184) However, unless an ALEC specifically knows that a customer is willing to change providers, BellSouth will not prewire any pairs until the ALEC places an order for service. Moreover, BellSouth failed to mention that this prewiring would require AT&T to pay for the intermediary access terminal and INC in advance of having a single customer in a building. In addition, even if BellSouth pre-wires “available” pairs, this means that AT&T will not have access to the pairs BellSouth currently uses to provide service to the tenant. And, even if they are available, those spares are not the pairs the customer currently uses. Accordingly, AT&T will have to re-wire each and every jack providing service to the tenant before the tenant will be able to receive service over those spare pairs, thus causing delay before a customer can begin receiving service. (Tr. 770)

Service problems would arise even if BellSouth allowed AT&T to disconnect the pairs currently providing service to the customers in a high rise property. In those cases, BellSouth would have to dispatch a technician for every AT&T order, for every customer in that property, including each and every time a customer orders additional lines. The BellSouth and AT&T technicians would have to coordinate their schedules before they could even begin this process (Exhibit 5, Milner Deposition, pp. 74-75). They then would have to coordinate their efforts in establishing the connections on each side of the intermediary access terminals, in essence requiring a “subloop hot cut” process in the wiring closets of the basements of every high rise property AT&T serves (Exhibit 5, Milner Deposition, pp. 74-75). It requires very little foresight to see how difficult such coordination will be and how many customer service outages will be precipitated by this unwieldy process.

The BellSouth proposal also imposes substantial delay simply to install the intermediary access terminal. BellSouth will not install an intermediary access terminal unless and until an ALEC requests the device. (Tr. 1185) The process that BellSouth would require AT&T to follow just to order and install an intermediary access terminal for NTW has at least 15 steps and requires a form that is more than 11 pages long. (Tr. 1186-1187) The 11 page document and 15 step process is what each ALEC must follow to order a single intermediary access terminal, before the ALEC may even begin to order a single NTW pair from BellSouth. (Tr. 1186-1187) This cumbersome, complicated process has no time limit as to how long it will take and BellSouth has no requirement to install the intermediary device within a specified period of time. (Tr. 1188) Multiply this process by every garden terminal on every MDU property in Florida, and it becomes clear that BellSouth’s proposal to require intermediary access terminals will be a major impediment to the development of facilities-based competition for MDU customers in Florida.

BellSouth has not met its burden of proving that network security concerns should allow it to escape its obligation to allow direct access to its subloop terminals. BellSouth admits that network security is the only technical feasibility argument it has against direct access (Tr. 1161). To succeed

on such a claim of network security, BellSouth must demonstrate “specific, significant, and demonstrable network reliability concerns associated with providing interconnection or access at a particular point.” *First Report and Order*, ¶ 198. BellSouth, in this proceeding, has been unable to establish that direct access to their network compromises security. Instead, BellSouth provided this Commission with assertions of intentional acts by ALECs, other than AT&T, who appropriated BellSouth’s equipment. (Tr. 1180-1181) Yet, requiring an intermediary access terminal will not prevent any ALEC from intentionally damaging BellSouth’s network. In fact, the intermediary access terminal does nothing to protect network security.

According to BellSouth’s proposal, the equipment in the intermediary device is the same equipment that is located in BellSouth garden terminal. (Tr. 1169) BellSouth will prewire each and every pair in its terminal to the intermediary access terminal. (Tr. 1148) Thus, an ALEC has the **same access** to BellSouth’s network through the intermediary device that it would have through direct access, only through a more cumbersome and costly process. As Commissioner Palecki stated, this Commission should not sanction the unnecessary duplication of facilities, such as an access terminal, unless there is a clear need for such a device. (Tr. 1163) Clearly, BellSouth has not established such a need. 27

With respect to the second security concern (inventory control), BellSouth admits that the problem can be rectified. (Tr. 1189) In Georgia, the parties agreed that MediaOne would notify BellSouth how many and which NTW pairs MediaOne was using. (Tr. 1990) Contrary to any assertions by BellSouth, AT&T does not propose to simply walk into the basement of a high rise and

27 BellSouth indicates that the access terminal is needed to “keep AT&T technicians from doing work in Bellsouth’s terminal and it keeps BellSouth’s technicians from doing work in AT&T’s terminal. So we think that is a lot safer way to do things”. (Tr. 1172) However, because BellSouth prewires all NTW pairs to the access terminal in the garden style apartments and prewires any number of pairs in high-rise apartments, there is no distinction between what is in BellSouth’s terminal and what is in the access terminal. There is no greater protection for BellSouth’s network, no more protection against accidentally taking a customer out of service and no more protection against disrupting BellSouth’s loop facilities. In essence, the access terminal is a fiction BellSouth has created to increase the costs for ALECs to serve customers, delay ALECs ability to serve customers and allow BellSouth to retain 40% of the Florida telecommunications market.

begin appropriating INC pairs, as BellSouth seems to suggest. BellSouth technicians clearly have some automated process to gain access to information about INC pairs in a building and to update information in BellSouth databases. There is no reason AT&T technicians cannot use that same information, simply by calling BellSouth.²⁸

Finally, the Commission should also look to other jurisdictions to determine the industry standard for access to MDUs. Contrary to BellSouth's testimony at the hearing, ILECs such as SBC, Verizon, Quest and Sprint all provide **direct** access to their terminals. (Tr. 771) The ability of other carriers to provide direct access to their terminals creates a rebuttable presumption that it is technically feasible for BellSouth to provide the same direct access. *UNE Remand Order* ¶227. BellSouth has not presented any evidence that conditions in Florida are any different than conditions in New York or Texas such that AT&T's proposal for direct access should be rejected.

ISSUE 11: Should BellSouth be allowed to aggregate lines provided to multiple locations of a single customer to restrict AT&T's ability to purchase local circuit switching at UNE rates to serve any of the lines of that customer? (UNEs, Attachment 2, Section 6.3.1.3 and 6.3.1.4)

****BellSouth should be precluded from aggregating multiple locations to determine whether or not it is required to provide UNE switching. Aggregating locations would undermine the FCC policy of encouraging competition and would only serve to raise AT&T's entry costs and limit the scope and quality of service costs.****

The FCC provided a limited exception to the ILECs obligation to provide unbundled local switching: if the ILEC provides non-discriminatory cost-based access to combinations of loops and transport elements, which are known as Enhanced Extended Links ("EELS"), ILECs are not required to provide unbundled switching for end users with four or more lines within density zone 1 in the top 50 MSAs. *UNE Remand Order* ¶253. An analysis of the FCC's decision reveals that the exception was based upon competition developing in certain markets, "particularly for large business

²⁸ Moreover, even with direct access to the BellSouth subloop terminals, AT&T must still order INC and NTW pairs from BellSouth, just as AT&T orders loops from BellSouth today. And just as that ordering process includes in it procedures to ensure accurate inventory control, there is no reason a similar process could not be developed to address the same concern for direct access to subloops. Of course, no process has yet been developed, because BellSouth will not even consider the prospect of direct access. BellSouth, however, should not be permitted to use this Catch-22 to prevent direct access to its subloop terminals.

customers or other users with substantial telecommunications needs”. *UNE Remand Order*, ¶255. However, for the residential and small business consumers, the FCC determined that: “Where unbundled switching has been made available, requesting carriers have gained market share in the residential and *small business markets*” *UNE Remand Order*, ¶273

The economies of scale that are gained by self-deploying switches to serve large business customers or using EELs with a high capacity loop to serve large volume businesses are not applicable when it comes to the consumer mass market or small businesses. *UNE Remand Order*, ¶258-298. The FCC concluded that any business that has three or fewer lines is likely to share more in common with the consumer mass market rather than medium to large businesses. *UNE Remand Order*, ¶293. Therefore, unbundled local switching should be available to serve these customers. Based upon the FCC’s analysis, this Commission should not allow BellSouth to aggregate customer locations to escape its obligation to provide unbundled local switching. The intent of the FCC should guide the Commission’s decision on this issue.

Any customer who has three or fewer lines will more likely be a small business. For such a customer, it is not economically feasible for AT&T to use EELs to provide service to each location (Tr. 171, 174-175). As AT&T’s witness, Greg Follensbee, indicated at the hearing, if a customer has five different locations with one line at each location, it becomes cost prohibitive to serve that customer. In essence, AT&T would have to purchase a loop with transport from five different end offices to serve the customer from AT&T’s switch. (Tr. 171) A small business customer is similarly situated to a residential customer who has three lines in their home – one for telephone service, one for a fax machine and one for a computer. Logically, BellSouth would not suggest or expect AT&T to use EELs to serve that residential customer. Thus, it should not be expected that AT&T can economically use a DS-0 or DS-1 to serve the business customer. (Tr. 171) Therefore, BellSouth’s “alternative” to unbundled local switching is not a realistic option for AT&T or any other ALEC.

The only other alternatives are for AT&T to install its own switch, resell BellSouth’s service or obtain switching from BellSouth or another carrier at a “contract rate.” (Tr. 168) The same

rationale that prevents the use of EELs also applies to AT&T deploying a switch: the cost is not justified based upon the revenue from a small business customer. Nor is it realistic to expect that AT&T could obtain switching from a carrier other than BellSouth. The FCC found that “the record does not support a finding that requesting carriers, as a general matter, can obtain switching from carriers other than the incumbent LEC. *UNE Remand Order*, ¶253. The last alternatives, obtaining switching at a contract rate from BellSouth or reselling BellSouth’s service, defeats the FCC’s purpose of requiring ILECs to provide local switching as an unbundled network element: denying access would substantially impair the ability of many competing carriers to provide switched telecommunications services by raising entry costs, delaying broad based entry and limiting the scope and quality of new entrant’s service costs. *UNE Remand Order*, ¶241, 253.

If this Commission adopts BellSouth’s position, it would undermine the FCC’s policy of allowing CLEC’s to compete for customers on a wide spread basis. Under the “totality of circumstances,” AT&T would be “substantially impaired” due to the lack of “alternative sources” of unbundling local switching from providers other than BellSouth to serve a customer who has three or fewer lines at different locations.

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)

**** AT&T must show only that its switches serve geographic areas comparable to those served by BellSouth in order to charge tandem rates. All AT&T’s Florida switches serve areas comparable to those served by BellSouth’s tandem switches. Accordingly, AT&T is entitled to charge BellSouth the tandem rates.****

FCC regulations entitle AT&T to charge the tandem reciprocal compensation rate for its switches that cover the same geographic area that BellSouth’s tandem switches cover. 47 CFR 51.711(a)(3). Contrary to FCC regulations, BellSouth takes the position that AT&T’s switches must meet *both* a geographic test and an additional functionality test before AT&T is entitled to charge tandem interconnection rates for the use of its switches. (Tr. 910) Consistent with FCC regulations,

AT&T has documented in this proceeding that its switches cover the same geographic area as BellSouth's tandem switches. (Tr. 129) Further, even if a functionality test must be met, AT&T has demonstrated that its switches perform many of the same functions as BellSouth's tandem switches. (Tr. 132) Therefore, even assuming for the sake of argument that BellSouth's position is correct, AT&T is entitled to charge tandem rates.

The Geographic Test Set Forth In FCC Rule 51.711 Is The Only Test That Must Be Met Before AT&T Is Entitled To Charge The Tandem Switch Rate For Its Switches

FCC regulations require only a geographic test to determine whether an ALEC, such as AT&T, should be entitled to charge the tandem switch rate for its switches. (47 C.F.R. 51.711(a)(3)). The FCC's guidance on this issue is contained in its First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 96-325 (rel. August 8, 1996). (hereinafter "First Report and Order") Nowhere in that order is there any discussion of an additional functionality test. The only test AT&T or any other carrier must satisfy in order to charge tandem rates is the geographic test set forth in Rule 51.711.

AT&T's position is supported by the recent ruling of the Indiana Utility Regulatory Commission ("Indiana Commission") finding that AT&T was entitled to charge tandem rates based on satisfying the geographic comparability test alone.²⁹ The Indiana Commission found that FCC Rule 51.711(a)(3), combined with the FCC's First Report and Order ¶ 1090, requires only a geographic test. In its Order, the Indiana Commission stated, "[t]he FCC rules ignore tandem functionality as a factor for purposes of determining whether a CLEC meets the requirements under 47 C.F.R. 51.711(a)(3)." (Indiana Order p. 36.) The Indiana Commission concluded, "it is not necessary for AT&T to demonstrate that its switches provide such tandem functionality in order to satisfy the requirements of the FCC rule." (Indiana Order p. 37.)

²⁹ *AT&T Communications of Indiana, Inc. and TCG Indianapolis' Petition for Arbitration of Interconnection Rates, terms and Conditions and related Arrangements with Indiana Bell Telephone Company, Inc. d/b/a Ameritech Indiana Pursuant to Section 252(b) of the Telecommunications Act of 1996*; Cause No. 40571-INT-03 (November 20, 2000). ("Indiana Order.")

A recent federal court decision also supports AT&T's position that it must only satisfy the geographic test set forth in Rule 51.711 in order to charge tandem rates. In *US WEST Communications, Inc. v. Minn. PUC*, 55 F. Supp. 2d 968 (D. Minn. 1999), the court affirmed the state commission's finding that AT&T Wireless met a geographic comparability and similar functionality test. The district court stated, "[t]he evidence also indicates that the [ALEC switch] covers a geographic area comparable to that covered by a tandem switch. Pursuant to FCC rules, *this alone provides sufficient grounds* for a finding that the appropriate rate . . . is the tandem switch rate." *Id.* at 979. (Emphasis added).

Several state public service commissions in the BellSouth region have also held that the only test that is used to determine a carrier's entitlement to charge tandem rates is the geographic comparability test. In its DeltaCom/BellSouth arbitration Order, the North Carolina Utilities Commission ("NCUC") held that the geographic comparability test is the only test used to determine a carrier's entitlement to tandem rates.³⁰ In its Order, the NCUC stated, "we believe that the language in the FCC's Order treats geographic coverage as a proxy for equivalent functionality, and that the concept of equivalent functionality is included within the requirement that the equipment utilized by both parties covers the same basic geographic area."³¹ Thus, according to the NCUC's analysis, if a carrier shows that its switch covers the *same geographic area* as BellSouth's tandem switch, it has proven that its switch is the practical equivalent of a tandem switch.³²

AT&T's switches cover the same geographic area as BellSouth's tandem switches, entitling AT&T to the tandem rate. As consistently stated throughout Mr. Follensbee's testimony, AT&T's switches have the capability of serving virtually any qualifying local exchange customer in Florida. (Tr. 118) The fact that AT&T does not serve as many customers as BellSouth, or serve customers in

30 Recommended Arbitration Order, *In the Matter of Petition by ITC DeltaCom Communications, Inc. For Arbitration of Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket No. P-500, Sub 10 (April 20, 2000), ("NCUC Order")

31 NCUC Order, at p. 25

32 See also Order, *In The Matter Of: A Petition By ICG Telecom Group, Inc. For Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant To Sections 252(b) of the Telecommunications Act of 1996*. Case No. 99-218 (March 2, 2000) ("KPSC Order")

every location in Florida, is irrelevant to the determination of whether AT&T is entitled to charge the tandem rate. As BellSouth's witness acknowledged in the hearing, BellSouth has not challenged AT&T's test for determination of geographic comparability. (Tr. 986-987) Under FCC Rule 51.711, AT&T is entitled to charge the tandem rate.

Even If AT&T's Switches Must Satisfy A Functionality Requirement In Addition To The Geographic Comparability Test, AT&T Is Entitled To Charge Tandem Rates

Even if a functionality requirement must be met, AT&T's switches perform tandem switch functions similar to BellSouth's switches and therefore qualify for the tandem rate. (Tr. 82, 120-121) The primary function of a tandem switch is to aggregate traffic between customers calling outside of their immediate exchange. (Tr. 120, fn 16) In addition to other tandem functions, AT&T's switches perform a substantial amount of traffic aggregation. (Tr. 120-121) Indeed, AT&T's switch, rather than BellSouth's switch, performs the traffic aggregation for the preponderance of traffic from or to AT&T local exchange customers.³³

The Georgia Public Service Commission ("Georgia Commission") recently held that AT&T's switches serve a geographic area that is comparable to any single BellSouth switch. The Georgia Commission additionally found that AT&T's switches are functionally equivalent to BellSouth's tandem switches. Consequently, the Georgia Commission ordered that BellSouth must pay AT&T the tandem rate for the use of its switches.³⁴ Thus, even accepting for the sake of argument BellSouth's position that a functionality test must be met in addition to the geographic

³³ Presently, AT&T's switches route interLATA traffic directly to the applicable interexchange carrier. (Tr. 120) Additionally, for traffic between AT&T customers, direct trunking has been established to permit completion of calls across the LATA or across the state solely on AT&T's network. (Tr. 120) Moreover, for traffic between AT&T and BellSouth customers, AT&T has established direct trunking to each BellSouth tandem to avoid transiting multiple AT&T or BellSouth switches. (Tr. 120-121) These are essentially the same functions performed by BellSouth's tandem switches. (Tr. 121)

³⁴ The Georgia Public Service Commission adopted the Staff's Recommendation on this issue in open session on March 6, 2001. The Georgia Commission has not yet issued a written Order. *See also* Recommended Arbitration Order, *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*, North Carolina Utilities Commission, Docket No. P-140, Sub 73, Docket No. P-646, Sub 7 (March 9, 2001).

comparability test, AT&T's switches satisfy that functionality test, and AT&T is entitled to receive the tandem 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)

****AT&T should be allowed to directly connect to BellSouth's network when the parties have condominium arrangements in Florida. This would conserve valuable collocation space as well as reduce the costs and the delays associated with collocation that would prevent AT&T from serving local customers.****

AT&T should be permitted to purchase cross-connect facilities to connect to BellSouth or other ALEC networks in AT&T's and BellSouth's limited number of adjoining facilities arrangements ("Condominium Arrangements") in Florida.

A condominium arrangement is a central office building that is owned and shared by both BellSouth and AT&T as a result of requirements imposed upon AT&T with respect to central offices at divestiture. (Tr. 609) The condominium arrangement, which was granted at divestiture, is lawful and grants each party certain rights to go onto the property of the other. The agreement between the parties allows AT&T and BellSouth to share cable racks, driveways, walkways and facilities in addition to allowing each party to go into the cable vaults and shafts of the other party because the parties have equipment in the same building. (Tr. 609; Tr. 644-646). Direct connection with BellSouth's network only requires this Commission to recognize the lawful agreement between the parties, which predates but is not prohibited by the Telecommunications Act of 1996. AT&T is proposing that BellSouth allow AT&T to interconnect directly from its space in such a condominium buildings to the BellSouth network without the necessity of wasting collocation space that is needed by other ALECs.

Both the Act and FCC regulations impose on BellSouth the obligation to provide collocation as a means of access to unbundled network elements ("UNEs") and interconnection. However, neither the Act nor the FCC regulations *require* ALECs to purchase collocation as the sole means of

access to UNEs or interconnection. Even if Section 251(c)(6) of the Act can be read to require physical collocation “at the premises of the local exchange carrier,”³⁵ the condominium arrangement, which is “at the premises of the local exchange carrier”, allows AT&T to interconnect with BellSouth’s network without contributing to the exhaustion of collocation space of the building.

As this Commission is aware, collocation space in Florida is scarce. Yet, BellSouth continues to insist upon arrangements which require AT&T to engage in some form of collocation rather than allowing a direct connection from one floor of the building to another, as AT&T has requested. (Tr. 1195). A more efficient method can be configured through a direct connection between floors. BellSouth does not dispute that this arrangement would be efficient and save scarce resources. (Tr. 1196). And BellSouth has made no argument that direct connection is not technically feasible.

BellSouth argues only that this arrangement is “unfair” and “discriminatory” to other carriers who do not share buildings with BellSouth. (Tr. 1197) Discrimination is when BellSouth refuses to provide a type of access to one ALEC that is available to all ALECs. In this instance, direct connection is not discriminatory because AT&T is the only carrier who went through divestiture and has a condominium arrangement with BellSouth. (Tr. 642-643) Presumably, if direct connection in condominium arrangements was discriminatory and unlawful, BellSouth would be able to cite to some FCC ruling, some part of the Telecommunications Act or a court citation that supports their position. BellSouth cannot do so. (Tr. 1996)

AT&T’s proposal also is consistent with FCC rules. The FCC addressed this form of direct interconnection in its *Expanded Interconnection with Local Telephone Company Facilities*.³⁶ The FCC specifically considered whether AT&T should be required to go to the manhole for entry to the BellSouth central office in circumstances where condominium arrangements existed. The FCC concluded that “[w]e will not require that entities already located in the same building as a LEC

³⁵ 47 U.S.C. § 251(c)(6) (emphasis added).

³⁶ CC Docket 91-141, 7 FCC Rcd. 7369 (1992) (the “*Expanded Interconnection Order*”).

central office actually route fiber optic facilities out of the building and back in through the same route used by other interconnectors, however, since that would use potentially scarce riser and cable vault space." *Expanded Interconnection Order*, at ¶¶ 65-66. More recently, The FCC's *Advanced Services Order* encouraged direct interconnection arrangements which reduce costs and delays associated with competitors collocating in their central offices. In particular, the FCC held that:

Incumbent LECs may not require competitors to use an intermediate interconnection arrangement in lieu of direct connection to the incumbent's network if technically feasible, because such intermediate points of interconnection simply increase collocation costs without a concomitant benefit to incumbents.³⁷

Because it is technically feasible in a condominium arrangement for AT&T to have "direct interconnection" with BellSouth's network, this Commission should adhere to the FCC's *Advanced Services Order* and permit such access. Direct connection in a condominium arrangement allows for the same result and the same functionality as a collocation arrangement with less time and resources expended on ordering and designing collocation.

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 may impose only "reasonable" security measures to ensure network reliability. BellSouth has not established that a statewide criminal history records check is reasonable or necessary. ****

AT&T should be subject only to reasonable security requirements as provided by the FCC for unescorted access to BellSouth's central offices and other premises. It is important to understand that AT&T has already agreed to security measures for access to its collocation space. The dispute on this issue concerns additional measures BellSouth would impose upon AT&T for such access. BellSouth is asking this Commission to require AT&T employees to undergo burdensome and unnecessary security background checks before accessing BellSouth's network on BellSouth's

³⁷ Id at ¶ 42.

premises. Such a requirement is inconsistent with the applicable FCC rules, is unreasonable, unnecessary and does not ensure network security.

This Commission should allow BellSouth to impose only reasonable security arrangements as provided for in the FCC's *Advanced Services Order*.³⁸ BellSouth has already implemented some of the measures recommended by the FCC in its *Advanced Services Order*, FCC 99-48 Para. 48, such as cameras, special card readers, special photo identification badges, and special electronic keys that keep a record of who enters the building, at what time and when they leave. (Tr. 1197-1198) Thus, AT&T employees do not have "unfettered access to BellSouth's premises" as claimed by BellSouth.³⁹ (Tr. 1129) These additional measures will not increase the level of security that already exists. The current proposal violates the FCC's rules by requiring AT&T to comply with security arrangements that increase AT&T's security costs without providing a "concomitant benefit of providing necessary protection" of BellSouth's equipment (Tr. 637). They also violate the spirit of the FCC's collocation rules, which are intended to reduce the cost and delay associated with the provisions of collocation.⁴⁰ BellSouth cannot point to *any* incident where AT&T, having access to BellSouth facilities, has intentionally damaged its network. (Tr. 598). There was a discussion at the hearing regarding forms AT&T has signed to access collocation space (Tr. 654-658), presumably AT&T *had no choice* but to sign the forms to get access to their collocation space. (Tr. 656)

BellSouth has not established that a criminal background check is superior to any of the other reasonable measures which can prevent network damage. BellSouth has produced no evidence in the record that its proposed measures provide additional security for its network.

³⁸ *First Report and Order and Further Notice of Proposed Rulemaking, In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, 14 FCC Rcd 4761 (rel. March 31, 1999) ("*Advanced Services Order*").

³⁹ AT&T is willing to indemnify BellSouth, on a reciprocal basis, for any loss or damage to its premises that is caused by AT&T employees or agents (Tr. 637).

⁴⁰ See generally *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability*; FCC 99-48, CC Docket No. 98-147 (March 18, 1999).

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?

****No.** In order to avoid providing OS/DA as a UNE, at UNE prices, BellSouth must provide customized routing so ALECs can route traffic to *alternate* OS/DA providers. BellSouth has not yet done so, and the Commission therefore should not relieve BellSouth of its obligation to provide OS/DA services as a UNE at UNE prices.**

In its Local Competition Order, the FCC required that “[a]n incumbent LEC must provide customized routing as part of the local switching element, unless it can prove to the state commission that customized routing in a particular switch is not technically feasible.” (Local Competition Order at 15709.) Later, in its UNE Remand Order, the FCC determined that incumbent LECs remain obligated under the non-discrimination provisions of 47 U.S.C. § 251(c)(3) to comply with reasonable requests from ALECs who purchase OS/DA to rebrand or unbrand those services, and to provide directory assistance listing updates in daily electronic batch files. However, the FCC determined that incumbent LECs are not required to unbundle their OS/DA pursuant to 47 U.S.C. § 251(c)(3), *if* the incumbent LEC provides customized routing to ALECs to allow them to route traffic to *alternate* OS/DA providers. Thus, the FCC now requires BellSouth to provide customized routing as a pre-condition to allowing BellSouth not to offer OS/DA as a UNE.

BellSouth has proposed two possible ways of providing customized routing: Advanced Intelligent Network (AIN) and Line Class Codes (LCCs).⁴¹ Although Messrs. Pate and Milner assert that BellSouth meets this requirement, BellSouth has not actually provided customized routing to any competitor: Mr. Milner admitted there are no commercial customized routing arrangements in existence anywhere within its nine state region. (Tr. 1202; Ex. 5 (Milner deposition pg. 41)) Nor has BellSouth offered any evidence to back up Mr. Milner’s assertion that competitors may order customized routing via either AIN or LCCs. Neither Mr. Milner nor Mr. Pate provided the Commission with any business rules, provisioning intervals, stated prices, or any terms and

⁴¹ BellSouth also plans to provide routing to its own OS/DA platform through Originating Line Number Screening (OLNS), but because OLNS will route calls only to the BellSouth platform, it does not provide customized routing and therefore is irrelevant to this issue. (Tr. 329, 1227)

conditions whatsoever available to a competitor who wishes to obtain customized routing by either the AIN or LCC methods. The reason they aren't a part of the record in this case is simple: they don't exist. (Tr. 327, 492,493) The only documentation that AT&T has been able to locate regarding the process to obtain customized routing via LCCs is a statement found in the September 27, 2000 Monthly Status/Prioritization Meeting Minutes to the effect that CLECs who want the functionality should work with their BellSouth account team.⁴² (Ex. 13 (JMB-R8); Ex. 5 (Pate deposition, pg. 19)) This statement simply does not prove that competitors actually have a commercially viable means to route their OS/DA calls to other providers.

The FCC contemplated that a BOC would have to do much more than tell competitive providers to contact an account team in order to "provide" a checklist item.⁴³ Similarly, this Commission should require more before it agrees that BellSouth has "provided" customized routing to its competitors. Until BellSouth establishes specific, verifiable terms and conditions for ordering and provisioning customized routing, including business rules, the Commission should reject BellSouth's attempt to avoid its obligation to provide OS/DA as a UNE, at UNE prices.⁴⁴

42 Please note that this notation predates BellSouth's decision to remove electronic OS/DA ordering from Release 8.0 so the continued viability of this statement is subject to question.

43 The FCC previously has discussed what it means for a Bell Operating Company (BOC) to "provide" a checklist item. That discussion is instructive when considering whether BellSouth is "providing" customized routing. In its Ameritech-Michigan 271 order, the FCC concluded that a BOC provides an item if it "actually furnishes" the item, but if no competitor is actually using the item, the BOC will be considered to provide the item if it "makes the checklist item available as both a legal and a practical matter." Ameritech-Michigan 271 order, pg. 110. The FCC further noted that "the mere fact that a BOC has 'offered' to provide checklist items will not suffice" to establish compliance, and explained that instead, the "BOC must have a concrete and specific legal obligation to furnish the item upon request pursuant to state-approved interconnection agreements that set forth prices and other terms and conditions for each checklist item." *Id.*

44 While the Commission could determine this issue based solely on BellSouth's failure to meet its burden of proof because it provided no evidence of specific, verifiable terms and conditions for ordering and provisioning customized routing, it is not necessary to do so. AT&T has provided ample evidence that BellSouth has not yet provided customized routing on a commercially available basis. AT&T has been requesting OS/DA routing via LCCs since 1998, yet there is still no process by which AT&T can order customized routing. *See* FCC BellSouth Second Louisiana 271 Order, para. 223. Although it does not believe that it was required to do so, in February, 2000, AT&T filed a Change Request through the OSS Change Control Process, asking BellSouth to provide electronic ordering functionality for customized routing. (Tr. 320; Ex. 5 (Exhibit 1 to Milner deposition)) In response, BellSouth planned to make electronic OS/DA ordering available on an industry-wide basis in Release 8.0 of its ordering software, (Tr. 321) but in October, BellSouth made a unilateral last-minute decision to remove the electronic ordering capability from Release 8.0. (Tr. 331, 411; Ex. 12 (JMB-4, 5, 6, 7)) When AT&T brought this action to the attention of the Georgia Public Service Commission during an arbitration hearing, Mr. Milner

BellSouth has the burden of proving that it can provide customized OS/DA routing, but all it has offered in the way of proof is Mr. Milner's assertions.⁴⁵ (Tr. 1130, 1131) AT&T, on the other hand, has shown that it has made efforts to get customized routing via LCC for several years, that BellSouth has repeatedly reneged on its promise to provide the means for AT&T to order such routing electronically, and that there is no identifiable process for ordering or provisioning customized routing, nor are there any specific business rules, terms and conditions to instruct ALECs how to order customized routing or what they must do to prepare their interfaces.

The Commission should deny BellSouth's attempt to charge "market" rates for its OS/DA services until such time as BellSouth proves that it has provided ALECs with a workable process for routing their OS/DA calls to other providers.

ISSUE 24: Should BellSouth be required to electronically process and provision customer-specific orders for OS/DA if AT&T orders an unbranded or AT&T branded platform? (Attachment 7, Sections 3.20-3.24) – PARTIES HAVE AGREED THAT THIS ISSUE HAS BEEN SUBSUMED AND INCORPORATED INTO ISSUE #25 (As a result, Issue #24 will not longer exist as a stand-alone issue.)

testified that the electronic ordering capability had been reinstated. (Ex. 12 (JMB-6)) Mr. Milner continues to make this assertion in this docket. Mr. Bradbury's testimony and exhibits show that this statement simply is not true. (Tr. 323, 324, 411; Ex. 12 (JMB-4, 5, 6, 7)) AT&T's original Change Request should have resulted in an electronic process by which any ALEC could electronically order OS/DA routing via LCCs in connection with any customer's order in any BellSouth central office. For reasons unknown to AT&T or the ALEC community, BellSouth decided not to implement this capability. Instead, in an attempt to rescue Mr. Milner's Georgia testimony, BellSouth contacted AT&T after the Georgia hearing to discuss an extremely limited OS/DA ordering capability for a limited AT&T UNE-P test, in one central office, using only one interface (EDI), to provide only "unbranded" BellSouth OS/DA, could not be used with live customers (even by AT&T), and would not support all possible order types. As noted in Mr. Bradbury's rebuttal testimony, however, BellSouth failed in this attempt, and actually provided line class codes for one office (the 5ESS in which AT&T is conducting its test) but developed the new software, screening, and lookup tables for another office (a DMS in the same wire center available to but not being used by AT&T). (Tr. 412; Ex. 13 (JMB-R2)). (Tr. 324) Msrs. Pate and Milner rely upon this test capability as support for their assertion that BellSouth need not provide OS/DA as a UNE, at UNE prices. This clearly is nothing more than an attempt by BellSouth to put a good face on a bad situation.

⁴⁵ The Commission should be wary of BellSouth's unproven assertions that various functionalities are actually available to ALECs. Just as Mr. Milner's Georgia testimony that BellSouth had reinstated OS/DA ordering capability proved to be untrue, his testimony regarding OLNS availability ALECs also has proven to be untrue. During the hearing, Mr. Milner testified that OLNS would be implemented in Florida on March 23, 2001 (Tr. 1228). On March 7, however, BellSouth for the first time announced during a regularly scheduled Florida Third Party Test call that OLNS would not be available in Florida before the third quarter of 2001. See AT&T's Motion to Supplement Record for further details.

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)

**** Within six months of the Commission's order, BellSouth should provide AT&T with the ability to place individual customer orders electronically, utilizing a single region-wide indicator for each routing option. The orders should flow through, and AT&T should not be required to identify specific line class codes.****

AT&T has asked for a specific two-part procedure for ordering Operator Services/Directory Assistance ("OS/DA") in conjunction with loop-port combinations (the Unbundled Network Element Platform or UNE-P). First, AT&T would place an Infrastructure Provisioning Order (or "footprint order") that would identify a specific geographic area (such as end office, rate center, LATA or state) as well as the network elements that AT&T would require in order to offer service throughout that area. Among other things, the footprint order would include AT&T's selection of OS/DA routing for loop-port and resale service customers calls to either (1) BellSouth's OS/DA systems on a branded or unbranded basis, or to (2) another system of AT&T's choosing. Thereafter, AT&T would place Customer-Specific Provisioning Orders, which would identify the particular features required by a specific new customer. These customer-specific orders should receive electronic processing without subsequent manual handling by BellSouth personnel.

There are two areas of disagreement related to this process. First, despite repeated requests by AT&T, BellSouth has failed to provide detailed technical information on the process BellSouth would require in order to implement each of the three OS/DA routing strategies that AT&T may use.⁴⁶ (Tr. 322, 492) Without this information, AT&T cannot develop the internal systems and processes it will need to submit orders to BellSouth.

Next, BellSouth wishes to force AT&T into one of two unacceptable alternatives: either AT&T must agree to route all of its Florida OS/DA calls to one option, or it must accept a costly and

⁴⁶ In the past, BellSouth has stated its willingness to provide the information to AT&T, but has not produced detailed technical methods and procedures sufficient to inform AT&T of requirements for ordering customized routing. BellSouth's most recent proposal, for example, failed to commit to provisioning intervals. (Ex. 5 (Milner deposition at pg. 36))

complex ordering process. Neither alternative is acceptable to AT&T from a competitive point of view, and neither alternative complies with FCC orders.

The FCC has determined that incumbent LECs, including BellSouth, must provide customized routing as part of the switching function, unless they can prove that customized routing in a particular switch is not technically feasible. FCC Local Competition First Report and Order, 11 FCC Rcd at 15709. BellSouth hasn't claimed that customized routing isn't feasible in its switches; instead, BellSouth argues that it is only obligated to provide one OS/DA routing per competitor.⁴⁷ That is, BellSouth will agree to assign and look up specific Line Class Codes to accomplish one customized OS/DA routing option, but will not agree to assign and look up the Line Class Codes for a second routing option. Mr. Milner attempted to convince the Commission its position was based on the need for information from AT&T (Tr. 1215), but upon further cross examination, it became clear that BellSouth's real reason for refusing to assign and look up the Line Class Codes for a second routing option was not the need for information. As Mr. Milner admitted: "We don't think we have got an obligation to." (Tr. 1219)

Thus, BellSouth insists that if AT&T wants more than one OS/DA routing – which could, of course, be used to gain a competitive edge by tailoring plans to specific customer segments – then AT&T must somehow ascertain (and presumably assign) the specific Line Class Codes necessary to accomplish the second routing within a given BellSouth central office.

The process BellSouth would use to provide a second customized OS/DA routing option to AT&T via Line Class Codes is exactly the same process that it would use for providing the first option via Line Class Codes. In fact, it is exactly the same process that BellSouth routinely uses to route any ALEC customer's call via Line Class Codes.⁴⁸ (Tr. 560-561, 1208-1210) BellSouth has

⁴⁷ During its cross examination of Mr. Bradbury, BellSouth's attorney attempted to develop the argument that AT&T was not entitled to more than one customized OS/DA routing option because BellSouth had only one routing for its own OS/DA calls. Mr. Bradbury, however, pointed out that BellSouth chose to route all of its calls to a BellSouth platform, and that BellSouth could instead have chosen to route its customers' calls to other providers simply by installing the appropriate line class code. (Tr. 503)

⁴⁸ BellSouth has 240 central offices in Florida, each with up to thousands of Line Class Codes that are not uniform among central offices. (Tr. 1210 – 1212) Thus, the actual code for ordering a service may vary among central

provided no technical or basis for its refusal to perform this exact same function to allow AT&T to provide a competitive edge to its customers, and a review of the applicable FCC order reveals no legal basis for its refusal.

The FCC has not limited BellSouth's obligation to provide OS/DA routing on a "one per ALEC" basis. In fact, the FCC anticipated that ALECs may have more than one OS/DA routing option, and instructed BellSouth to simplify its ordering processes accordingly:

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 customers' 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 its own customers. (Footnote 705) If, however, a competitive LEC has more than 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. (Footnote 706) BellSouth should not require the competitive LEC to provide the actual line class codes, which may differ from switch to switch, if BellSouth is capable of accepting a single code region-wide. (FCC Second Louisiana Order at ¶ 224, emphasis added.)⁴⁹

offices, even though they provide the same instructions to the switch. (Tr. 430) BellSouth maintains a database of Line Class Codes, known as the Line Class Code Assignment Module ("LCCAM") in order to track such codes. LCCAM determines, from the information on a retail service request and the identification of the central office that will be used to serve the customer's line, the proper LCC to put on a service order. (Tr. 308, 1213) BellSouth must assign and look up a Line Class Code for a number of different functions other than OS/DA routing, such as 900 blocking, choice of intraLATA toll provider, international blocking, and hunting. (Tr. 493-494, 1209)

⁴⁹ The footnotes are equally instructive: Footnote 705 discusses the possibility that AT&T might want all its customers' calls routed in a single fashion:

For example, if AT&T wants all of its customers' calls routed to AT&T's operator services and directory assistance, AT&T should be able to tell this to BellSouth once, by letter for instance, and BellSouth should be able to route the calls without requiring AT&T to indicate this information on every order.

Footnote 706, on the other hand, discusses the possibility that AT&T may desire more than one OS/DA routing option:

For example, if AT&T wants some of its operator services and directory assistance calls routed to its operator services and directory assistance platform, but it wants other operator service and directory assistance calls directed to BellSouth's platform, BellSouth does not know whether to route AT&T's customers' calls to AT&T's platform or its own unless AT&T tells BellSouth which option it is choosing.

The FCC's order is perfectly clear: AT&T is free to select more than one OS/DA routing option, and BellSouth may not require AT&T to provide actual line class codes in order to obtain any OS/DA routing option if BellSouth is capable of accepting a single code, or indicator, on a region-wide basis. And the testimony is unequivocal that BellSouth is, indeed, quite capable of accepting a single region-wide code, or indicator, for each of the OS/DA routings that may be requested by AT&T.⁵⁰ (Tr. 317, 504-505, 1217; Ex. 5 (Milner deposition pg. 25))

The process requested by AT&T is reasonable, feasible, in accord with the FCC's orders, and well within the Commission's authority to order. BellSouth's proposed process, on the other hand, is unwieldy, expensive and does not comply with the FCC's prior order on this very dispute. Accordingly, AT&T asks the Commission to order BellSouth to provide customized OS/DA routing on the terms and conditions proposed by AT&T.

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? (Resolved)**
- (c) exceptions to the process? (Resolved)**
- (d) documentation, including training? (Resolved)**
- (e) defect correction?**
- (f) emergency changes (defect correction)? (Resolved)**
- (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?**

*** The current Change Control Process is inadequate for handling these situations, while AT&T's proposed language appropriately addresses them. The Commission should correct deficiencies in the current CCP by adopting the ALEC-approved version of the CCP in the context of whatever is the most current version of the Change Control document.**

⁵⁰ BellSouth has never even attempted to demonstrate that does not have this capability.

Issues Relating to Change Control and OSS Functionality are Appropriate for Arbitration

BellSouth asks this Commission not to resolve the open issues of OSS functionality and of Change Control matters. This Commission should resolve these issues for two main reasons: (1) BellSouth retains absolute veto power over any request proposed by an ALEC, and (2) Section 251(a)(1)(c) of the Telecommunications Act of 1996 requires telecommunications companies to negotiate ...”the particular terms and conditions of agreements to fulfill the duties” imposed by Section 251 of the Act. Moreover, Section 252(b)(1), 252(c) requires state Commissions to arbitrate, also without exception all “open” or “unresolved” issues remaining after negotiation. Thus, OSS and Change Control are precisely the sort of issue that Commissions should arbitrate, because the parties stand very little chance of reaching agreement when BellSouth can veto the wishes of its competitors.

For the reasons explained above, the Commission should not refer these matters to the Change Control Process but should reject BellSouth’s unlawful request to avoid arbitrating this issue.

The Change Control Process Should be More Comprehensive

This issue is vitally important to AT&T’s ability to compete against BellSouth in the local telecommunications market. Lack of a specified process clearly disadvantages AT&T and other ALECs, while putting BellSouth firmly in the driver’s seat.

The process modifications requested by AT&T are both necessary to AT&T’s business and appropriate for arbitration. According to BellSouth’s witness, Mr. Pate, however, BellSouth would rather negotiate these issues through the Change Control Process than arbitrate them. (Tr. 1280) The reason for BellSouth’s preference is clear: BellSouth retains veto power over any change requested by CLECs through the Change Control Process, and thus need never change the document or process unless it suits BellSouth. (Tr. 343, 423-446) This lack of true collaboration is precisely the reason AT&T has presented these issues for Commission resolution. BellSouth’s disregard of

the Change Control Process (and the need for the Commission to address this issue) can be illustrated by two examples:

Electronic OS/DA Ordering Capability

After over two years of having its requests for electronic flow through OS/DA ordering ignored, AT&T placed a formal change request with BellSouth for the capability in February 2000. BellSouth accepted the request, committed resources to the project and announced to the ALEC community that the capability for electronic ordering of one custom routing option (to BellSouth's platform unbranded) would be provided in Software Release 8 on November 18, 2000. BellSouth repeatedly reaffirmed this schedule in industry meetings up to and including a meeting on September 29, 2000. (Tr. 320, 321) However, as explained in detail in Footnote 3, above, BellSouth made the unilateral decision to remove this change from the Release. Neither BellSouth's decision to drop the functionality nor its subsequent decision to introduce a severely limited substitute was made or communicated in accordance with the Change Control Process.

Veto of ALEC-Approved Changes to Process

In accordance with the Change Control Process, AT&T filed a Change Request on September 9, 2000, requesting amendments to the process itself. Other ALECs concurred with the request on October 27, 2000 (Ex. 12 (JMB-10)), and after a four-month series of meetings, BellSouth agreed to allow a ballot on the requested changes – so long as BellSouth could veto any result with which it did not agree.⁵¹ (Tr. 1441, 1442, Ex. 30) The ballot that ultimately was distributed included 34 issues, seven of which were the subject of disagreement between BellSouth and the ALECs. (Ex. 28) Despite the fact that no ALEC voted in favor of BellSouth's position on these seven issues, BellSouth vetoed the ALECs' vote and included its own language in the next version of the Change Control document. (Tr. 1440, Ex. 29)

⁵¹ Although Exhibit 30 indicates that there were no objections to this process, AT&T did object in an email received by Mr. Pate, among others. (Tr. 1443, 1444)

The Commission need not rely solely on these two examples of BellSouth's disregard of the Change Control Process to determine that the Change Control Process is not truly collaborative. Mr. Bradbury's testimony includes many more examples that directly and adversely impact AT&T and other ALECs, such as BellSouth's improper August, 2000 release of Issue 9G of its Business Rules for Local Ordering⁵², unilateral changes to Releases 9 and 10 of its ordering software in November, 2000,⁵³ preferential treatment of BellSouth-initiated change requests⁵⁴, unilateral decision to implement a new process for discussing changes to the CCP requested by AT&T⁵⁵, prolonged failure to implement highly-prioritized Change Requests⁵⁶, and ALECs' inability to discuss Change Requests with the BellSouth personnel who decide whether to implement them.⁵⁷

52 Because BellSouth circumvented the CCP, CLECs were unable to make the required coding and process changes by the proposed October 2, 2000, implementation date. BellSouth nevertheless refused to withdraw these unapproved changes and implemented the software changes on October 2, 2000. In addition to rejecting the previously valid ALEC orders impacted by these unilaterally imposed changes, BellSouth's software release also contained coding errors that caused the rejection of other types of ALEC orders. (Tr. 421)

53 At the November 13, 2000, Release 9 User Requirements Meeting, BellSouth announced that three features based on ALEC change requests and previously scheduled for Release 9 would not be included in the scope of the release, that it was probable that not all of them would even be in Release 10, and that Release 11 was yet to be scheduled. Further, BellSouth revealed that its implementation of UNE to UNE migrations (per its self-initiated CR-0030) would include only the capability to migrate from UNE-P to a UNE loop without number portability, the least likely scenario, and that if any other capability was desired, a new change request would have to be submitted. The resulting release included no ALEC initiated change request implementations, and the UNE to UNE capability that was provided has little practical value to ALECs. (Tr. 421, 422; Ex. 13 (JMB-R-6))

54 BellSouth submitted four "Type 4" (BellSouth initiated) change requests on November 13th. BellSouth targeted these changes for implementation in November 2000, in violation of the Change Control Process. None of the requests were scheduled for or subject to a prioritization review, as is required for all non-defect change requests. Various CCP log entries reflect that change requests 216, 218, and 219 were implemented as of December 20, 2000. Only fixes for defects are entitled to this "fast track" treatment, yet BellSouth treated its own change requests in this preferential fashion. (Tr. 423; Ex. 13 (JMB-R7))

55 AT&T requested consideration of specific changes to the Change Control Process, in accordance with procedures specified by the Process. According to the CCP, this request should have been discussed during Monthly Status Meetings. BellSouth refused to do so, however, and instead established a separate series of CCP Process Improvement meetings (Tr. 339, 423-424; (JMB-R9, 10, 11))

56 AT&T and other ALECs first requested BellSouth to provide parsed CSRs in September, 1998, as part of its requirements for the OSS99 upgrade. BellSouth refused to include parsed CSRs in the upgrade, and thus AT&T had to resubmit its request through change control in September, 1999. This was one of eleven pending change requests prioritized by the ALECs, and it received the number one ranking by the group for the TAG interface. Despite ALEC agreement on the high priority of this request, it has been languishing ever since. A review of the September 28, 1999 meeting minutes, provided in Mr. Pate's Exhibit 24 (RMP-13)), shows that this change request was targeted for implementation in April, 2000. Others were requested in similar time frames, and still others were to be completed as soon as possible ("ASAP"). However, to date, BellSouth has only implemented four of the eleven change requests prioritized in September 1999, although it has implemented a total of 76 other change requests of varying types since that meeting. BellSouth made the unilateral decision to downgrade this important request, and

The changes to the Change Control Process requested by AT&T and in which the ALEC community concurred are shown as Ex. 12 (JMB-10). BellSouth's response of December 5, 2000 is shown as Ex. 13 (JMBR-12). (Please note that the ALEC changes and BellSouth's responses are color-coded in Ex. 13 (JMB-R12), with both sets of comments appearing in the same document. One must have an original color-coded document in order to follow the various changes and responses; it is virtually impossible to do so from a black and white copy.) As Mr. Bradbury explained during the hearing, AT&T asks the Commission to order BellSouth to adopt the changes suggested by the ALEC community in Ex. 12 (JMB-10), but to do so in the context of whatever is the then-most-current version of the Change Control document (Tr. 441, 514).⁵⁸ Highlights of AT&T's specific requests are discussed below.

C. Highlights of Requested Changes to the CCP

The CCP should Provide Comprehensive Coverage of the Interface Lifecycle, including its Supporting Documentation.

AT&T agrees with and accepts most provisions of the CCP version currently proposed by BellSouth, but believes that it is not sufficiently comprehensive. If a particular process is not specified in the formal change control document, BellSouth may proceed however it wishes, to the ALECs' detriment. Therefore, AT&T asks the Commission to order BellSouth to adopt AT&T's

announced its decision to the ALECs. Thus, the March 29, 2000 change control meeting minutes (Pate Exhibit RMP-14) shows that the status of AT&T's request was downgraded from "Targeted for release 4/20/2000" to "Subteam being formed to perform planning and analysis during 2000." As noted above, ALECs votes parsed CSRs as their number one priority for TAG interface changes during the September 18, 1999 meeting, and they have never re-prioritized this issue. During the September 18, 2000, Release Package Meeting, BellSouth again downgraded and delayed the implementation of this change, and now stated that "Parsed CSR could possibly be implemented with Release 10.0 in May 2001." (Ex. 13 (JMB-R20)) Even more recently, on December 5, 2000, BellSouth published its proposed schedule to the sub-team mentioned above, showing a planned implementation date of December 31, 2001, for parsed CSRs. (Ex. 13 (JMB-R21)) Therefore, due to BellSouth's unilateral control of this process, a request that has been pending for two years now has a scheduled implementation date over three years from the ALEC's original request.

57 Tr. 1446-1448 ; Ex. 5 (Pate deposition pgs. 74-77).

58 To clarify, AT&T has not asked this Commission to order BellSouth to adopt any particular version of the CCP document. Rather AT&T asks that its requested language be included in whatever version of the CCP document is current at the time of the Commission's order. Thus, the parties may continue to negotiate other provisions not directly at issue herein.

requested revisions to the CCP, which will result in a comprehensive CCP that provides “cradle to grave” coverage of the life cycle of an interface or process, and its supporting documentation (such as specifications, business rules, methods and procedures). AT&T also requests a process by which the Change Control Process can be changed. (Ex. 12 (JMB-10 at p. 56))

Lack of a comprehensive process has caused direct harm to AT&T’s customers. As explained in Mr. Bradbury’s rebuttal testimony, BellSouth’s development of its Local Number Portability Gateway and the processes supporting local number portability outside of the Change Control Process caused a problem with Dillard’s Department Stores Caller ID service that still has not been completely resolved, and also caused telephone numbers assigned to AT&T’s customers to be reassigned to new BellSouth customers. Both of these problems could have been avoided had BellSouth’s development process been more transparent to ALECs. (Tr. 430-435)

The Test Support Process Should be Subject to the CCP

BellSouth currently employs a test support process, but there is no organized method for negotiating changes to this process. AT&T has proposed language that would allow parties to manage such change requests through the CCP if BellSouth’s test support process fails to meet CLEC needs (Ex. 12 (JMB-10 at p.57))

CLEC-Impacting Defects (Type 6 Changes) Should be Categorized by Impact Level, with Specific Cycle Times Assigned to each Impact Level.⁵⁹

The CCP recognizes six types of change requests, which it identifies as Types 1 – 6 (Ex. 12 (JMB-10 pgs. 13, 14)) BellSouth’s existing and proposed process (found largely in Section 5 of Version 2) remains focused on notification and contains excessively long intervals for correction. (Tr. 350) The “Draft Expedited Feature Process” proposed by BellSouth is applicable neither to defect correction nor emergency changes.

AT&T asks this Commission to adopt a methodology that would rank Type 6 Change Requests (which involve ALEC-impacting defects) according to impact, such that problems with the

⁵⁹ Impact levels may also be referred to or designated as “severity” levels.

most severe impact on ALECs receive the fastest attention. AT&T's proposed language is found on pages 37-43 of Ex. 12 (JMB-10). The parties have resolved the definition of defects to include impact ranking, however the intervals to be associated with each impact level remain in dispute.

Designated impact levels with target response times not only allow affected ALECs to prepare contingency plans, but also aid BellSouth in deploying its resources. For Low Impact problems (interface works normally but process clarification is necessary), AT&T has agreed to the cycle times proposed by BellSouth. Thus, the only cycle times in dispute are for High Impact problems (the interface is totally unusable and there are no feasible workarounds) and Medium Impact problems (the interface is affected but workarounds are available). In those instances, AT&T has proposed a very reasonable total cycle time of three business days to the implementation of a work around. (Ex. 12 (JMB-10, pp. 37-41) The Commission should reject as excessive BellSouth's suggestion that the CCP include a 4-to-25-business-day range, with BellSouth committing to provide its best effort to minimize the interval. The three business day interval proposed by AT&T is already generous to BellSouth: if the problem occurred on a Thursday or Friday, AT&T's proposal actually would mean that ALECs would be unable to use the interface properly (or at all, in the case of a High Impact problem) for a total of five days. This time period could extend even longer if the week included a holiday.

CLECs Should be Provided with Draft Requirements for Software Releases and Systems Modifications at least 90 days in Advance of the Implementation Date, and Final Specifications at least 30 days in Advance

Whenever BellSouth makes changes to its OSS interfaces, ALECs need draft specifications in order to start developing their own software coding (Tr. 332) They cannot begin this process without appropriate documentation from BellSouth. These specifications must be in existence, or BellSouth would not be able to prepare its software release or modification. AT&T merely asks that this documentation, the importance of which is recognized by the FCC⁶⁰ and acknowledged by

⁶⁰ In its recent order addressing Southwestern Bell's (SWBT's) long distance application, it noted with approval that SWBT had committed to distribute draft specifications or business rules, review competitors' comments on the documentation, and distribute final documentation based on the consensus of the parties. (*Texas 271 Order* at 111).

BellSouth, be provided to ALECs 90 days in advance of the software release. (Ex. 12 (JMB-10, p. 24))

BellSouth Should Not be Allowed to Reject a Change Control Request without Discussion.

In a truly collaborative process, each and every ALEC change request would be presented to the change control body as a whole, not just those requests that BellSouth allows to be considered by the group. BellSouth has cited no reason whatsoever for foreclosing discussion on such requests, particularly when such discussion could be via conference call or during monthly status meetings. At the very least, discussion would allow interested parties to develop options to resolve the issue.

As currently configured, BellSouth's Change Control Process fails to meet the needs of AT&T and other ALECs and fails to comply with the FCC's guidelines. (Tr. 355, 356) AT&T asks the Commission to order BellSouth to adopt all of the language suggested by AT&T and the ALEC community, as shown in "redline" format in Exhibit 12 (JMB-10), and to do so within the context of the CCP version most current at the time of the Commission's Order. As Mr. Bradbury testified, all ALECs that participate in the Change Control Process were invited to review the language proposed by AT&T herein, and all who participated in the review have concurred in the changes. (Tr. 425, 425, 510, 511)

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?**
- a) parsed customer service records for pre-ordering?

****The Customer Service Record information provided by BellSouth does not allow AT&T reliably to automatically populate its service orders. BellSouth parses CSRs for its customer service representatives and therefore should do so for AT&T.****

- 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 should provide electronic interfaces that require no more manual or human intervention than that is involved when BellSouth performs a similar function for itself. BellSouth can submit electronic orders for all services and elements, which are processed electronically, without subsequent manual handling and should provide this same functionality to AT&T.****

BellSouth Should Provide AT&T with Parsed Customer Service Records

AT&T needs parsed customer service records (“CSRs”) in order to fully integrate its pre-ordering and ordering systems with BellSouth’s, thereby obtaining the functionality now available to BellSouth.⁶¹ (Tr. 361, 480) Because BellSouth’s internal systems parse the sections and fields of the CSR as needed to meet software program requirements, BellSouth’s service representatives need not re-enter or reformat CSR information when processing orders.⁶² BellSouth’s failure to provide parsed CSRs forces AT&T’s representatives to identify and transfer this information manually from pre-ordering responses into its ordering system, which is more expensive, less efficient, and more prone to error. (Tr. 361, 362, 443, 444; Ex. 13 (JMB-R22)) Although it may seem like a small issue for an AT&T customer service representative to type a customer’s name rather than automatically populate data fields, the discriminatory effect of BellSouth’s failure to provide parsed CSRs becomes apparent when the additional burden is multiplied by the number of other fields that require manual transfer and by thousands of customer transactions each day.⁶³

Mr. Pate attempts to direct the Commission’s attention away from the parsed information available to BellSouth service representatives by discussing the information “retained” by BellSouth. (Tr. 1321) This is irrelevant. As shown in Mr. Bradbury’s Ex. 13 (JMB-R22), the form that AT&T

⁶¹ As noted by Mr. Bradbury, parsing rules for CSRs have been included in industry standards since the publication of the LSOG3/TCIF9 guidelines in July, 1998. (Tr. 361)

⁶² BellSouth has argued that it provides unparsed CSRs to its retail systems, so it may provide unparsed CSRs to AT&T. The Commission should not be misled by this argument. BellSouth’s retail systems parse the CSR for BellSouth’s service representatives and AT&T therefore is entitled to this same functionality. (Tr. 520-522). As Mr. Bradbury pointed out upon cross-examination: “There is no difference between BellSouth’s retail systems and BellSouth’s wholesale systems in terms of what AT&T is entitled to under the Act. BellSouth retail is not a separate entity from BellSouth’s wholesale. Whatever BellSouth provides to itself, in this case in its retail operation, it is obligated to provide to us.” (Tr. 520)

⁶³ Mr. Bradbury testified that approximately 4% of lines will need repair treatment monthly, with customer contacts to service existing lines expected on 6% of lines each month. According to Mr. Bradbury, within 30 months of a successful consumer market entry, an ALEC can expect one third of its total customer contacts to be for repair and maintenance. AT&T’s repair call volume 30 months after a successful market entry across the BellSouth states easily could approach 60,000 calls per month. (Tr. 386)

service representatives must complete requires customer names to be entered in at least two parts, or fields. BellSouth provides this information to its service representatives in a parsed format so that such fields can be populated automatically. AT&T asks this Commission to order BellSouth to provide the equivalent functionality to AT&T.

BellSouth Should Provide AT&T with Electronic Ordering and Processing without Manual Intervention by BellSouth personnel.

In 1997, this Commission made its own independent investigation into the OSS BellSouth was offering to the ALEC community and found them lacking. In its order this Commission established the criteria BellSouth would have to meet in order to demonstrate that its OSS were providing nondiscriminatory access, and determined that BellSouth must provide electronic interfaces that require no more human or manual intervention for ALECs than for BellSouth:

Upon consideration, we believe that BellSouth is required to demonstrate to this Commission and to the FCC, that its interfaces provide nondiscriminatory access to OSS functions. Although AT&T witness Bradbury stated that there are five characteristics of a non-discriminatory interface, we find it appropriate to recognize four of those characteristics. We find that each interface must exhibit the following characteristics to be in compliance with the nondiscriminatory standards of the Act. They are: 1) the interface must be electronic. The interface must require no more human or manual intervention than is necessarily involved for BellSouth to perform a similar transaction itself; 2) the interface must provide the capabilities necessary to perform functions with the same level of quality, efficiency, and effectiveness as BellSouth provides to itself; 3) the interface must have adequate documentation to allow an ALEC to develop and deploy systems and processes, and to provide adequate training to its employees; and, 4) the interface must be able to meet the ordering demand of all ALECs, with response times equal to that which BellSouth provides itself.

Order No. PSC-97-1459-FOF-TL, pgs. 97, 174, emphasis added.

The Commission has never receded from the criteria set forth in its order, yet BellSouth refuses to provide fully electronic capabilities to ALECs, even though it enjoys the benefits of electronically ordering and every service and product, and each of its orders is processed electronically. (Tr. 363, 451-453, 455, 456)

Mr. Bradbury's testimony provides detailed support for AT&T's request for equivalent

functionality, but AT&T's position can be explained very simply by reference to Mr. Pate's Ex. 24 (RMP-18). That exhibit illustrates BellSouth's retail ordering process for MultiServ, a complex business service. Although the exhibit depicts a number of manual pre-ordering processes, the ultimate ordering process itself is electronic: the BellSouth service representative sits at a terminal and types the order into ROS (BellSouth's ordering system), which edits and formats the service representative's inputs into an electronic message. That message flows through to BellSouth's Service Order Control System (SOCS), where it is subjected to final editing and if accepted becomes a valid order. Mr. Pate admitted that BellSouth service representatives can order each and every retail service offered by BellSouth in exactly this fashion. (Tr. 1421-1424) As shown on Exhibit RMP-17, AT&T service representatives cannot do so – because BellSouth has not provided AT&T with equivalent functionality.

AT&T seeks nothing more – and nothing less – than the equivalent ability to electronically order all services and elements, as can BellSouth representatives, and to have those orders flow through to SOCs, as do orders placed by BellSouth representatives.

BellSouth argues that it already provides “competitively neutral processes” to AT&T, but it does not. Not only is the electronic ordering and processing available to BellSouth cheaper, faster, and less prone to error than the manual and partially automated ordering and processing available to ALECs for most services, but it also offers BellSouth another, significant advantage:

By the single act of entering order information into an electronic front-end system, BellSouth service representatives create an order and populate a number of different data bases – and do so in a manner that is cheaper, faster, and less prone to error than the method that BellSouth provides for ALEC use (Tr. 446, 447, 565, 1420). Further, that order will flow through to BellSouth's service order control system, without the need for expensive and time-consuming manual handling. These procedures give BellSouth a genuine advantage in the marketplace, and simply cannot be considered “competitively neutral”.

In contrast, when BellSouth enters an ALEC order into its front-end system on behalf of the

ALEC, the ALEC has no electronic record with which to populate its own provisioning databases, billing systems, or customer service information records. The only way in which these ALEC systems can be synchronized with the information about the ALEC's customer that exists in BellSouth's systems is to perform an additional separate manual input. (446, 447)

BellSouth already offers this electronic ordering and flowthrough functionality to ALECs for some services, most notably for business and residential POTS resale (Tr. 1421). In order to meet the requirements of the Act, however, BellSouth must provide this functionality for ordering and processing all services and elements – because BellSouth electronically orders and processes all services for its retail customers.⁶⁴

This Commission has the unique opportunity to create a pro-competitive environment by ordering BellSouth to provide AT&T with electronic ordering and processing capability. Competition cannot flourish until Florida customers have a choice of providers, all of which can order services just as quickly and easily as BellSouth can today.

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)

****None of BellSouth's repair and maintenance interfaces currently provide competitors with OSS functionalities equivalent to BellSouth's own capabilities. The Commission should order BellSouth to provide equivalent access to AT&T by making available the ability to access, via EBI/ECTA, the full functionality available to BellSouth from TAFI and WFA.****

64 Mr. Pate argues that “non-discriminatory access does not require that all LSRs be submitted electronically. Many of BellSouth's retail services, primarily complex services, involve substantial manual handling by BellSouth account teams for BellSouth's own retail customers.” (Tr. 329) This argument is mere sleight-of-hand, designed to direct the Commission's attention away from the issue. Mr. Pate's own Exhibit RMP-18 very clearly shows that the “manual handling” to which he refers consists of pre-ordering processes, while he admitted that BellSouth service representatives order all services electronically. Mr. Pate also addressed electronic processing of orders, stating that “BellSouth is providing non-discriminatory access for ALECs to its OSS functions. Non-discriminatory access does not require that all LSRs be submitted electronically and flow through BellSouth's systems without manual intervention.” (Tr. 333) Mr. Pate wrong on the first count, and therefore his conclusion is incorrect. Non-discriminatory access does, indeed, require BellSouth to provide ALECs with the ability to submit their orders electronically and flow through BellSouth's systems, simply because all of BellSouth's orders are treated in this fashion. BellSouth has identified no rule, order, or provision of the Act that suggests anything less.

BellSouth provides ALECs with two options for electronic trouble reporting, neither of which provides non-discriminatory access. For many (but not all) services associated with a telephone number, BellSouth offers access to its proprietary Trouble Analysis Facilitation Interface (“TAFI”). For both telephone number associated exchange services and individually designed services, BellSouth provides electronic trouble reporting through an electronic communications gateway which BellSouth calls the Electronic Communication Trouble Administration (“ECTA”) gateway.⁶⁵ (Tr. 382)

TAFI has more extensive functionality than ECTA for services associated with a telephone number, but TAFI is a human-to-machine interface. (Tr. 342, 383) Consequently, when an ALEC submits a trouble report via TAFI, that order must be manually entered into the ALEC's own internal OSS. *FCC Louisiana II Order* ¶152 (Tr. 551) ECTA, on the other hand, is a machine-to-machine interface and can be integrated with an ALEC's own OSS, but does not have the functionality of TAFI. Thus, there is no combination of choices that allows ALECs to obtain nondiscriminatory access to BellSouth's OSS for maintenance and repair functions (Tr. 383) This places ALECs at a competitive disadvantage.

If ALECs elect to use the extensive functionality available through TAFI for many telephone number-associated services, they have no functionality for other services, and must engage in costly and error-prone double entry. If they elect to integrate ECTA into their ALEC systems, they obtain only a limited set of functionality for any type of service. Using both interfaces is likewise unsatisfactory because it simply brings the ALEC the disadvantages of both with no gain in effectiveness or efficiency and at a higher cost of operations (Tr. 383)

The FCC has found that neither of these two choices provides competitors with OSS functionalities equivalent to BellSouth's own capabilities. *FCC Louisiana II Order* ¶ 148. The FCC concluded that TAFI does not provide nondiscriminatory access because it cannot be used for all

⁶⁵ This interface also is referred to as the Electronic Bonding Interface (“EBI”), particularly in AT&T internal communications. EBI is a term that has been used for a maintenance interface that exists between the two companies used in the access world today. (Tr. 382)

types of orders and is a “human to machine interface,” meaning that new entrants cannot integrate it with their own back office systems. *FCC Louisiana II Order* ¶¶ 149-52. The FCC likewise concluded that ECTA, as provided by BellSouth, does not provide parity to competitors because, as BellSouth itself pointed out, the legacy system TAFI is superior in functionality. *FCC Louisiana II Order* ¶ 157.

Neither TAFI nor ECTA have changed since the FCC issued its Second Louisiana Order.⁶⁶ (Tr. 393, 486) BellSouth made no showing at any point in this proceeding that it has undertaken even the slightest effort to provide equivalent maintenance and repair functionality in response to the FCC’s findings or to make improvements to its systems that might provide this Commission with an opportunity to reach a conclusion different from that reached by the FCC.⁶⁷

A full-function, machine-to-machine interface is essential in a competitive market. If ALECs hope to compete with BellSouth, they must provide equal or better customer service as well as lower prices, and must be able efficiently to access all of an individual customer’s data on every call in order to address that customer’s needs, whether that data was entered in the ALEC’s system or the ILEC’s. For example, if an ALEC wants to issue credits to a customer who had experienced recurring repairs, it would need access to ALEC billing data and ILEC maintenance histories. ALECs must be able to add or change services and adjust calling plans for customers, and require access to customer service record information to keep contact information up-to-date (Tr. 385, 386).

⁶⁶ The December 23, 1998, meeting which gave rise to the materials in Ex. 12 (JMB-24) was requested by the FCC Staff after the publication of the Second Louisiana Order to increase its understanding of the need for integrateable machine-to-machine interfaces for repair and maintenance. During the course of this meeting, BellSouth’s representative, Mr. William N. Stacy, stated that BellSouth could provide initial functionality in 13 months and complete functionality in 18 months. Over two years after this meeting, however, BellSouth still offers no TAFI functionality via the ECTA interface. (Tr. 388)

⁶⁷ The FCC noted in its Second Louisiana Order (and reiterated in its reviews of Bell Atlantic’s New York 271 application and Southwestern Bell’s Texas 271 application) that an integrated interface was not, per se, required if the BOC demonstrates that it provides equivalent access in another manner. BellSouth does not provide equivalent access in another manner, and has not attempted to make such a demonstration in this docket. *FCC Louisiana II Order* ¶152; *FCC Bell Atlantic Order* ¶215; *FCC Texas Order* ¶203, FN 565.

Additionally, maintenance and repair volumes will increase quickly with a successful market entry.⁶⁸ Without a full function machine-to-machine interface, an ALEC must engage in dual entry for each repair contact, entering the contact into BellSouth's system as well as its own. Moreover, in order for the ALEC to provide efficient customer service, this dual entry must occur while the customer is on the line with the service representative. Because dual entry is more time consuming and results in more mistakes, ALECs will require more service representatives in order to provide the same level of service that BellSouth can provide, putting ALECs at a serious competitive disadvantage. (Tr. 386)

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 must facilitate line splitting when AT&T purchases the entire loop as part of a loop/port combination. This requires BellSouth to provide the splitter and immediately modify its OSS to support line splitting.****

Line Splitting is when a competitive local exchange carrier ("CLEC") provides a customer with both voice and data over a single phone line. (Tr. 677) There is no question that BellSouth has a current obligation to permit line splitting. (Tr. 914). The FCC, in the recent *Line Sharing Reconsideration Order* which reaffirmed the ILEC's obligation to permit line splitting as established in the *Texas 271 Order*⁶⁹ stated:

"We find that incumbent LECs have a current obligation to provide competing carriers with the ability to engage in line splitting arrangements...*incumbent LECs must allow competing carriers to offer both voice and data service over a single unbundled loop.*

Line Sharing Reconsideration Order, ¶18 (emphasis added).

⁶⁸ Mr. Bradbury testified that approximately 4% of lines will need repair treatment monthly, with customer contacts to service existing lines expected on 6% of lines each month. According to Mr. Bradbury, within 30 months of a successful consumer market entry, a CLEC can expect one third of its total customer contacts to be for repair and maintenance. AT&T's repair call volume 30 months after a successful market entry across the BellSouth states easily could approach 60,000 calls per month (Tr. 386)

⁶⁹ In the Matter of Application by SBC Communications Inc., Southwestern Bell Telephone Company, And Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region InterLATA Services in Texas, Memorandum Opinion and Order, CC Docket No. 00-65, FCC 00-238, Rel. June 30, 2000.

Right now, if a Florida consumer wants to receive voice and data service on the same line, they have no other practical option than to obtain their voice service from BellSouth. (Tr. 693) To effectively compete with BellSouth for both voice and data services, UNE-P ALECs must be able to offer Florida consumers data services in conjunction with voice services in a line splitting arrangement. Anything less provides BellSouth with an unfair competitive advantage that shuts ALECs out of the marketplace in Florida. In that regard, AT&T respectfully requests that this Commission issue an order that further addresses the following key issues closely associated with providing line splitting: 1) BellSouth should be required to provide ALECs engaged in line splitting with UNE-P the option of a BellSouth-provided splitter, just as it does today for carriers using a line sharing arrangement; 2) BellSouth should be required to deploy splitters a line at a time; 3) BellSouth should be required to provide non-discriminatory access to operational support systems (“OSS”) that provide support for line splitting with UNE-P; 4) BellSouth should be required to provision collocation for line splitting without unnecessary delay; 5) BellSouth should continue to provide support for UNE-P when it is used for line splitting; 6) BellSouth should provide line splitting at TELRIC based rates; 7) BellSouth should be required to continue to provide data services to a customer that elects to receive its voice service from a CLEC; and 8) BellSouth should allow AT&T to use authorized vendors/advanced service providers to place orders with BellSouth on behalf of AT&T.

BellSouth does not have a legal obligation to provide the splitter when it engages in line sharing with another ALEC, but is nonetheless willing to do so. (Tr. 920) But when an ALEC wants to provide line splitting with UNE-P so that a customer can have voice and data services over the same line, BellSouth uses its “lack of legal obligation” to refuse to provide ALECs with the splitter. (Tr. 921-922). BellSouth’s anti-competitive, discriminatory “policy” ignores its legal obligation under the Telecommunications Act and this Commission’s authority to ensure that consumers who seek data services from a competitor have a real choice in the marketplace.

An ALEC is an ALEC regardless of whether it is providing voice or data services and there is no difference in how a data ALEC or voice ALEC is regulated under the Florida law. Yet, by providing the splitter to one group of ALECs and not another, BellSouth is discriminating in how and on what terms it provides access to network elements. This is in direct violation of Section 251(c)(3) of the Act and should not be condoned by this Commission.

Section 251(c)(3) of the Telecommunications Act of 1996 (“the Act”) requires BellSouth, in part, to: “provide, to any requesting telecommunication carriers, for the provision of a telecommunications service, **nondiscriminatory access** to network elements...on rates, terms and conditions that are just, reasonable, and nondiscriminatory...” (emphasis added). An unbundled loop, including a loop used in combination with switching, to provide DSL and other data services is a network element. *First Report and Order* 70, ¶¶380, 382; *UNE Remand Order*, ¶¶166-167. Nondiscriminatory access to network elements includes all of the features, functions and capabilities that are provided by that element. 47 U.S.C. §153(29); *FCC Rule* 51.5. The HFPL is a loop capability. *Line Sharing Order*, ¶17. As an option, BellSouth should be required to provide the splitter so that AT&T can access the HFPL capability when the loop is part of a UNE-P configuration. This is no different than BellSouth providing the splitter for line sharing so that an ALEC can access the HFPL when BellSouth is the voice provider.

According to the FCC’s *UNE Remand Order*, the unbundled loop includes the “attached electronics” necessary to access all features, functions and capabilities of the loop.⁷¹ Not only is the splitter essential for ALECs to gain access to all of the features, functions and capabilities of the loop, but also it is nothing more than a passive electronic filter that is attached to the loop to separate the voice portion of the line from the HFPL. (Tr. 687) Consistent with the Act, AT&T is seeking is to have attached electronics added to the loop to access its full functionality. Even BellSouth admits

⁷⁰ In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order, CC Docket No. 96-98, FCC No. 96-325, Rel. August 8, 1996.

⁷¹ *UNE Remand Order*, ¶175.

that there is no technical reason why BellSouth cannot add a splitter, which is also a filter, to the loop for ALECs using UNE-P to engage in line splitting. (Tr. 922)

BellSouth admits that there is not currently any FCC rule, act or court ruling which says it is unlawful for this Commission to require BellSouth to provide the splitter as an option for line splitting. (Tr. 922) In fact, this Commission has the authority under Section 261(c) of the Act to require BellSouth to provide the splitter as an option for line splitting with UNE-P. This section provides, in part:

“Nothing in this part precludes a State from imposing requirements on a telecommunications carrier for intrastate services that are necessary to further competition in the provision of telephone exchange service... as long as the State’s requirements are not inconsistent with this part or the Commission’s regulations to implement this part”. (emphasis added)

Numerous other state commissions, including those in Texas, Indiana, Oklahoma and Wisconsin, have determined that ILECs must provide for line splitting with ILEC owned splitters.⁷² In sum, federal law allows this Commission to require BellSouth to provide the splitter with line splitting as an option using UNE-P. Such a decision would stimulate competition in the advanced services market by allowing ALECs to quickly respond to consumer demand just as BellSouth can do today.

BellSouth’s opposition to providing the splitter in a line splitting arrangement is also based on BellSouth being “out of the loop” and no longer having a relationship with the customer. (Tr. 923) However, BellSouth still has a relationship with the ALEC who is using UNE-P to provide the voice portion of the customer’s service. (Tr. 926) BellSouth insures the integrity of the voice path,

⁷² Petition of Southwestern Bell Telephone Company for Arbitration with AT&T Communications of Texas, L.P., TCG Dallas, and Teleport Communications, Inc. Pursuant to Section 252(B)(1) of the Federal Communications Act of 1996, Docket No. 22315, Texas Public Utilities Commission Order; AT&T Communications Of Indiana, Inc., TCG Indianapolis Petition for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements with Indiana Bell Telephone Company, Incorporated d/b/a Ameritech Indiana pursuant to Section 252(b) of the Telecommunications Act of 1996, Cause No. 40571-INT-03, Indiana Utility Regulatory Commission Order; Application of the Attorney General of the State of Oklahoma, AT&T Communications of the Southwest, Inc., Brooks Fiber Communications of Tulsa, Inc., Cox Oklahoma Telecom, Inc., MCI Telecommunications Corporation, and Sprint Communications, L.P., to Explore Southwestern Bell Telephone Company’s Compliance with Section 271 (c) of the Telecommunications Act, Case No. PUD 970000560, Corporation Commission Order; Petition for Arbitration to Establish an Interconnection Agreement Between Two AT&T Subsidiaries, AT&T Communications of Wisconsin, Inc. and TCG Milwaukee, and Wisconsin Bell, Inc. (d/b/a Ameritech Wisconsin), Docket 05-MA-120, Public Service Commission of Wisconsin Arbitration Award, October 12, 2000.

which includes the loop, switch and transport and does mechanized loop testing if problems arise. (Tr. 698)

If the ALEC is required to provide the splitter for line splitting, there would be a disruption of the customer's voice service to add the data provider through a collocation arrangement. (Tr. 694) The FCC has indicated that: "because no central office wiring changes are necessary in a conversion from line sharing to line splitting, *we expect incumbent LECs to work with competing carriers to ...avoid voice and data service disruption* and make use of the existing xDSL-capable loop." *Line Sharing Reconsideration Order*, ¶22. The only way this can be accomplished is if BellSouth provides the splitter because no rewiring is required. (Tr. 715) If a customer migrates from line sharing to line splitting, under any other scenario, the customer will experience a service disruption. (Tr. 715) Furthermore, BellSouth is already deploying splitters in central offices in Florida. (Tr. 921) To require the ALEC using UNE-P to provide the splitter as the only option for line splitting would duplicate BellSouth's efforts, unnecessarily increase a competitor's costs to provide advanced services and prevent implementation of the directives of the FCC's *Line Sharing Reconsideration Order*.

Assuming this Commission orders BellSouth to provide the splitter as an option for line splitting, BellSouth should be required to offer such splitters on a "line at a time" basis. Commissions in Illinois and Michigan have already ordered splitters to be deployed on a line at a time basis. (Tr. 686) Such an arrangement would prevent the ALEC from having to expend resources for capabilities it may not use. Otherwise, the ALEC is forced to incur additional costs it cannot recover unless and until it acquires additional customers.

One of the crucial issues involved with line splitting is BellSouth's obligation to provide non-discriminatory access to BellSouth's OSS. The FCC recently stated:

"More generally, incumbent LECs are required to make all necessary network modifications to facilitate line splitting, including providing nondiscriminatory

access to OSS necessary for pre-ordering, ordering, provisioning and maintenance and repair, and billing for loops used in line splitting arrangements.”⁷³

Moreover, the FCC indicated: “.... that *because line splitting is an existing legal obligation*, incumbent LECs must allow competitors to order line splitting immediately, whether or not a fully electronic interface is in place.” *Line Sharing Reconsideration Order*, footnote 36. Even though BellSouth has known for over 6 months that it was required to provide line splitting,⁷⁴ there is no indication in the record that BellSouth has taken any steps to develop the OSS to do so. Modifications to BellSouth’s OSS, that currently allow for line sharing, to accommodate line splitting should not be a major undertaking. BellSouth should be required to make all necessary modifications that provide mechanized OSS for line splitting using UNE-P, including preordering and ordering operational. (Tr. 701) Nondiscriminatory access to fully functional OSS should be ordered to be completed within at least 60 days of the date of the Commission Order. In addition, the Order should expressly state that BellSouth must comply with FCC requirements and provide the following: 1) A single order process to add data service to UNE-P voice customers; 2) Allow CLECs to use the existing xDSL capable loop that is part of the UNE-P configuration; 3) Ensure that loops for line splitting can be ordered as a non-designed service; 4) Use the same number of cross connections for line splitting that are used for line sharing; and 5) Use the same length of tie pairs for line splitting that are used for line sharing.

Line Sharing Reconsideration Order, ¶21

If an ALEC provides line splitting by purchasing the entire loop and providing its own splitter, collocation is required. (Tr. 916-917) Collocation can involve a multi-step, lengthy process requiring a collocation agreement to lease or sublease space. In addition, there is the issue of the time needed to build out additional floor space or comply with the power requirements, assuming there is space available in the central office. (See SET Exhibit 3). Any delay in obtaining collocation will inure to BellSouth’s benefit by allowing it to have first-mover advantage in the

⁷³ *Line Sharing Reconsideration Order*, ¶30 (emphasis added).

⁷⁴ June 30, 200 was the date the Texas 271 Order was released and required ILECs to provide CLECs with the ability to engage in line sharing using UNE-P, ¶325.

advanced services market and foreclose meaningful residential voice competition for customers who want data services. Delay hinders competition. Line splitting will not be attractive to customers if they have to wait weeks to get xDSL service from a competitor when they can obtain it from BellSouth in four (4) days. Accordingly, this Commission must ensure that if ALECs rely upon collocation as an option to facilitate line splitting, that the intervals for augmentation of collocation space are no greater than those required for line sharing.

BellSouth must be required to support UNE-P when it is part of a line splitting configuration. In its ex-parte to the FCC, BellSouth indicated: “if a splitter is on a loop or is to be attached to a loop, a loop and port will lose its status as a UNE-P.” (Exhibit 14, SET-3) It is unclear exactly what BellSouth means by this statement. However, the FCC has recognized that CLECs have the right to engage in line splitting using UNE-P. *Line Sharing Reconsideration Order*, ¶19. Therefore, this Commission should prevent BellSouth from attempting to circumvent the FCC’s Order and require the same support for the voice portion of a UNE-P line splitting configuration that is provided when UNE-P is used only for voice services. (Tr. 704-705) UNE-P is UNE-P and does not change based upon the services it provides.

BellSouth should not be allowed to charge a separate rate for UNE-P when ALECs engage in line splitting and must establish cost based rates for elements needed to engage in line splitting. (Tr. 707) When this Commission establishes separate rates for loop/port combinations, those would be the rates ALECs should pay when using loop/port combinations for line splitting. As the FCC recognized, CLECs would be using the same loop that was a part of UNE-P to provide xDSL service. *Line Sharing Reconsideration Order*, ¶19. Other than attempting to increase an ALEC’s costs, BellSouth has not provided any justification why the loop/port combination rates should not apply. Most of the rates established for line sharing will apply to line splitting. In that regard, this Commission should issue an order granting the parties the right to an additional hearing if BellSouth later determines that there are added costs for line splitting as compared to line sharing that have not been presented in this docket.

AT&T should also have the ability to designate one or more ALEC contractors as authorized Advanced Service Providers who has been authorized to make changes to the HFPL of a UNE-P loop that AT&T has been provided. (Tr. 705) Basically, this ALEC would be a partner with AT&T in providing line splitting to a customer. BellSouth, in it's Ex parte to the FCC, indicated that it would want one single customer of record for line splitting. (Exhibit 13, SET-3) However, AT&T would ensure that procedures were in place that allowed only authorized agents to act on behalf of AT&T. (Tr. 705) Furthermore, the Interconnection Agreement between the parties adequately protects BellSouth and any Advanced Services provider would also have to follow the additional requirements governing ALECs as provided for by this Commission. (Tr. 706)

Respectfully submitted,

A handwritten signature in black ink, reading "Marsha Rule" in a cursive style, with a horizontal line drawn through the signature.

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