BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by AT&T Communications of the Southern States, Inc. d/b/a AT&T 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 ORDER NO. PSC-01-1402-FOF-TP ISSUED: June 28, 2001

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR., Chairman
BRAULIO L. BAEZ
MICHAEL A. PALECKI

APPEARANCES:

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On behalf of AT&T Communications of the Southern States, Inc.

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On behalf of BellSouth Telecommunications, Inc.

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On behalf of the Commission Staff

FINAL ORDER ON ARBITRATION

BY THE COMMISSION:

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I. BACKGROUND

On June 16, 2000, AT&T Communications of the Southern States, Inc. and TCG South Florida (collectively "AT&T") filed a Petition for Arbitration pursuant to 47 U.S.C. Section 252(b) of the Telecommunications Act of 1996, seeking arbitration of certain unresolved issues in the interconnection negotiations between AT&T and BellSouth Telecommunications Incorporated (BellSouth). The petition enumerated 34 issues. On July 11, 2000, BellSouth filed its response. An administrative hearing was held on February 14-15, 2001.

Prior to the administrative hearing, the parties were able to reach agreement on a number of issues. We note that although some additional issues were settled prior to hearing, and parties agreed to defer certain issues to other docketed proceedings, the parties brought 17 disputed matters to arbitration. Given the relatively straightforward nature of some of the issues in dispute, we are dismayed that settlement of more of these issues eluded the parties. We would note that a large-scale arbitration is a labor-intensive and time-consuming process for all involved. Recognizing the potential for constrained resources, we hope that negotiations in future proceedings prove more fruitful.

A number of the issues originally contained in the Petition have been withdrawn, settled, or, by agreement of the parties, deferred to appropriate generic proceedings. This Order addresses only the remaining issues.

On March 14, 2001, AT&T filed its Post Hearing Brief, but filed a replacement document on March 16, 2001, after discovering an omitted footnote. BellSouth's Post Hearing Brief was also filed on March 14, 2001.

II. LIST OF ACRONYMS

AC	Alternating Current
ADSL	Asymmetric Digital Subscriber Line
ADUF	Average Daily Usage File
AIN	Advanced Intelligent Network
ALEC	Alternative Local Exchange Carrier
ANI	Automatic Number Identification
API	Application Programming Interface
ASR	Access Service Request
AT&T	AT&T Communications of the Southern States, Inc. Inc.nccnnc
ATIS	Alliance for Telecommunications Industry Solutions
BCCM	BellSouth Change Control Manager
BFR	Bona Fide Request
BOC	Bell Operating Company
C.F.R.	Code of Federal Regulations
CABS	Carrier Access Billing System
CCA	Collocation Conversion Application
CCCM	CLP's Change Control Manager
CCP	Change Control Process
CDF	Conventional Distribution Frame
CEV	Controlled Environmental Vault
CFA	Connecting Facility Assignment
CLEC	Competitive Local Exchange Carrier
CLP	Competing Local Provider
CO	Central Office
CORBA	Common Object Request Broker Architecture
CSOTS	CLEC Service Order Tracking System
CSR	Customer Service Record
DA	Directory Assistance
DC	Direct Current

DOE	Direct Order Entry
DSL	Digital Subscriber Line
DSLAM	Digital Subscriber Line Access Multiplexer
EC-CPM	Exchange Carrier-Common Presentation Manager
ECIC	Electronic Communications Implementation Center
ECS	Electronic Communications Support Group
ECTA	Electronic Communications Trouble Administration
EDI	Electronic Data Interchange
EICCP	Electronic Interface Change Control Process
EMI	Exchange Message Interface
EODUF	Enhanced Optional Daily Usage File
ERS	Extended Reach Service
FCC	Federal Communications Commission
FGC	Feature Group C
FGD	Feature Group D
FID	Field Identifier
FUEL	FID USOC Editing Library
FX	Foreign Exchange
GUI	Graphical User Interface
HVAC	Heating Ventilation and Air Conditioning
ICS	Interconnections Services
ILEC	Incumbent Local Exchange Carrier
INP	Interim Number Portability
ISP	Internet Service Provider
IXC	Interexchange Carrier
LAN	Local Area Network
LCC	Line Class Code
LCCAM	Line Class Code Assignment Module
LCSC	Local Carrier Service Center
LEC	Local Exchange Carrier
LENS	Local Exchange Navigation System
LEO	Local Exchange Ordering System

LERG	Local Exchange Routing Guide
LESOG	Local Exchange Service Order Generator
LNP	Local Number Portability
LPIC	Local Presubscribed Interexchange Carrier
LSOG	Local Service Ordering Guidelines
LSR	Local Service Request
LTR	Local Transport Restructure
MOS	Modified Operator Signaling
NEBS	Network Equipment and Building Specifications
NEC	National Electric Code
NRC	Non-Recurring Charge
NXX	Central Office Code/Prefix
OBF	Ordering and Billing Forum
OCN	Operating Company Name
ODUF	Optional Daily Usage File
OLNS	Originating Line Number Screening
OS/DA	Operator Service/Directory Assistance
OS	Operator Services
OSS	Operational Support Systems
OTS	Operator Transfer Service
PF	Pending Facilities
PIC	Presubscribed Interexchange Carrier
PIU	Percent Interstate Usage
PLU	Percent Local Usage
POI	Point of Interconnection
PON	Purchase Order Number
POT	Point of Termination
POTS	Plain Old Telephone Service
PUC	Public Utilities Commission
RCF	Remote Call Forwarding
RNS	Regional Negotiation System

ROS	Regional Ordering System
SOCS	Service Order Communications Systems
SOER	Service Order Edit Routine
SOLAR	Service Order Language Analysis Routine
TAFI	Trouble Analysis and Facilitation Interface
TAG	Telecommunications Access Gateway
TCIF	Telecommunications Industry Forum
TOPS	Traffic Operator Position Systems
UNE	Unbundled Network Element
UNE-P	Unbundled Network Element-Platform
USOC	Universal Service Order Code
WFA	Work Force Administration

III. COMMISSION JURISDICTION

Pursuant to Section 252 (b) of the Act, an incumbent local exchange carrier or any other party to a negotiation under the Act after a prescribed period of time for voluntary negotiation, may petition a state commission to arbitrate any open issues. Pursuant to Section 252 (b)(4) of the Act, the state commission must limit its consideration of any petition and any response thereto, to the issues set forth in the petition and the response. Under Section 252(c) of the Act, the state commission shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions to implement the standards for arbitration set forth in Section 252 (c), of the Act. Pursuant to Section 252 (c) of the Act, a state commission in resolving any open issue and imposing conditions upon the parties to the agreement, shall ensure that the resolution and conditions meet the requirements of Section 251, including the regulations prescribed by the FCC; establish any rates for interconnection, services, or network elements according to Section 252 (d) of the Act; and provide a schedule for implementation of the terms and conditions by the parties to the agreement. In addition, we have the authority to construe the requirements of the Act, subject to controlling FCC Rules, FCC Orders and controlling judicial precedent.

Section 252(e) of the Act reserves the state's authority to impose additional conditions and terms in arbitration that are not inconsistent with the Act and its interpretation by the FCC and the courts. We find that under Section 252(e) of the Act, we could impose additional conditions and terms in exercising our independent state law authority under Chapter 364, Florida Statutes, so long as those requirements are not inconsistent with the Act, FCC rules and orders, and controlling judicial precedent.

Based on the foregoing, we have jurisdiction pursuant to Section 252 of the Act to arbitrate interconnection agreements. Section 252 states that a State Commission shall resolve each issue set forth in the petition and response, if any, by imposing the appropriate conditions as required. Further, we find that Section 252(e) of the Act reserves the state's authority to impose additional conditions and terms in an arbitration not inconsistent with the Act and its interpretation by the FCC and the courts.

IV. PENDING MOTIONS

On March 14, 2001, AT&T filed its Motion to Supplement Hearing Record. In that Motion, AT&T stated that in the hearing on this matter, BellSouth witness Keith Milner testified that Originating Line Number Screening (OLNS) would be available in Florida on March 23, 2001. Thereafter, on March 7, 2001, during a regularly scheduled Florida Third Party OSS Test conference call, it was announced that OLNS would not be available in Florida until some time in the third quarter of 2001. AT&T asserts that this information had apparently been communicated by BellSouth to KPMG Consulting, the third party supervising the test, at some point before the conference call. A copy of the minutes of that conference call is attached to the motion, identified as Hearing Exhibit 31. Accordingly, in order to ensure that the hearing record is complete and accurate regarding the availability of OLNS, AT&T requests to supplement the hearing record by admitting this exhibit. There were no responsive pleadings filed by other parties.

We concur with AT&T that the hearing record should be as complete and accurate as possible. The answer by BellSouth witness Keith Milner regarding OLNS availability was, apparently, not

accurate and would lead to an inaccurate record in this matter. Therefore, AT&T's Motion to Supplement Hearing Record is hereby granted.

On March 26, 2001, AT&T filed its Motion to Clarify Position and Supplement Post-Hearing Brief. In that Motion, it requests that we allow AT&T to supplement the hearing record in this Docket and clarify its position with regard to Issue No. 34. As grounds therefore, AT&T asserts that a position statement for Issue No. 34 was inadvertently omitted from its brief. AT&T's position, as stated in the Prehearing Order in this Docket, is as follows:

> Issue No. 34: What are the appropriate rates and charges for unbundled network elements and combinations of network elements?
>
> AT&T's Position: Except for line sharing rates, this issue has been deferred pending the outcome of Docket No. 990649-TP.

The following is the requested clarification:

> To clarify, AT&T does not object to the rates proposed by BellSouth for line sharing, and argues its position on the policy of line sharing and line splitting in connection with Issue No. 33. Because AT&T does not object to the rates proposed by BellSouth, it has presented no evidence in this Docket with regard to Issue No. 34, and did not brief the Issue.

There was no response filed by other parties.

We believe that the language AT&T proposes in its clarification only restates the obvious and that no prejudice occurs by allowing AT&T's brief to be supplemented with this clarification. Therefore, AT&T's Motion to Clarify Position and Supplement Post-Hearing Brief is hereby granted.

V. ISSUES ADDRESSED

A. DEFINITION OF PHRASE "CURRENTLY COMBINES"

The issue before us is to determine what the phrase "currently combines" means as it is used in 47 C.F.R. §51.315(b). Specifically, we must determine whether the definition of "currently combines" pursuant to FCC Rule 51.315(b) should be limited to those combinations that currently exist within BellSouth's network to serve a particular customer at a particular location or, more expansively, whether the definition of "currently combines" should be construed to include all of the UNE combinations that BellSouth customarily combines to provide service to its customers. In establishing the appropriate definition of "currently combines," we will ultimately determine the circumstances under which AT&T may obtain combinations of unbundled network elements (UNEs) from BellSouth at cost-based rates. FCC Rule 51.315(b) states:

> Except upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines.

ARGUMENTS

BellSouth witness Ruscilli states that BellSouth will provide combinations to AT&T at cost-based rates if the elements are, in fact, combined and providing service to a particular customer at a particular location. He contends that it is neither sound public policy nor an obligation of BellSouth to combine UNEs. Witness Ruscilli argues that in the FCC's Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238, released November 5, 1999 ("UNE Remand Order"), the FCC confirmed that ILECs presently have no obligation to combine network elements for ALECs when those elements are not currently combined in the ILEC's network. He further argues that FCC Rules 51.315(c)-(f), that purported to require incumbent LECs to combine unbundled network elements, were vacated by the Eighth Circuit, and those rules were neither appealed nor reinstated by the Supreme Court. In addition, he continues that on July 18, 2000, the Eighth Circuit reaffirmed its ruling that FCC Rules 51.315(c)-(f) are vacated.

AT&T witness Gillan contends that performing routine cross-connections for competitors is an important dimension of BellSouth's obligation to provide network elements in a nondiscriminatory manner. He explains that BellSouth routinely combines network elements for itself and has configured its network and central offices to efficiently cross-connect facilities into standard arrangements. Witness Gillan continues that while access to individual network elements is important to several business strategies, access to logical combinations of network elements in a simple and cost-effective way is what is needed for broad local competition to develop for residential consumers and small businesses. He asserts that where network elements have been made available, most particularly, the network element combination known as the UNE-Platform (a loop and port combination) (UNE-P), competition has developed far more rapidly than in its absence. Witness Gillan further asserts that the importance of UNE-P to local competition is not only understood by new entrants, but ILECs as well. He states that when incumbents confront the same conditions as entrants (i.e., how to offer competitive local exchange service on a broad scale), they also rely on UNE-P as the only practical means of offering mass-market services. He states:

> For instance, SBC revealed during the review of its merger with Ameritech that its out-of-region entry strategy was premised on the use of network element combinations to serve the residential and small business market. Further, in Pennsylvania, Bell Atlantic was ordered to file a plan to separate its operation into wholesale and retail affiliates. As part of that filing, Bell Atlantic (now Verizon) proposed to use UNE-P as its principal entry strategy.

Accordingly, witness Gillan concludes that in order to effect broad local competition in Florida and be practically useful, UNE-P and other combinations must be combined to offer service.

In opposition to witness Gillan's rationale, witness Ruscilli asserts:

> . . .the accuracy of Mr. Gillan's contention that access to UNE combinations is necessary for widespread competition depends on which segments of the market are

> examined. Obviously, facilities-based ALECs have focused their efforts on the more lucrative business markets and all but ignored the residential market. The hallmark reform of the Act was to remove the statutory barriers and creating a three-pronged means for competition to develop - build facilities, resale, and UNEs. ALECs have varied in their desire to use each of these means, so measuring competition based solely on UNEs (including combinations) is misguided.

Alternatively, witness Ruscilli reasons that high levels of UNE-P subscription may be attributed to the imminence of interLATA relief, not the availability of UNE-P. He states that requiring BellSouth to combine UNEs for AT&T would unnecessarily reduce the overall degree of competition in the market, provide an unwarranted subsidy to ALECs, remove incentive for BellSouth to invest in its network, and discourage ALECs from building their own facilities.

First, witness Ruscilli asserts that Congress established several means to introduce competition, including resale, unbundling and facilities constructed by new entrants. He reasons that expanding BellSouth's obligations beyond the Act's requirements would upset the balance of these entry methods intended by the Act. Second, witness Ruscilli states that requiring BellSouth to combine UNEs at cost-based prices, particularly at Total Elemental Long Run Incremental Cost (TELRIC)-based prices, reduces BellSouth's incentive to invest in new capabilities. He believes that TELRIC-based prices do not cover the actual cost of the elements nor do they represent a fair price in the market place. Third, he reiterates that requiring BellSouth to combine elements where such combinations do not, in fact, exist is inconsistent with the Act's basic purpose, which is to introduce competition into the local market - not subsidize competitors where ALECs have reasonable alternatives to BellSouth combining UNEs. He offers that ALECs can combine UNEs themselves in collocation spaces (which he testifies is just a few cents a month per combination), use the assembly room option, use the assembly point option, or build their own facilities. In addition, witness Ruscilli states that there are over six million lines in service provided by BellSouth in Florida today, each of which are made up of existing combined facilities that AT&T can, in fact, purchase from BellSouth at cost-based rates. He concludes that AT&T can still compete

vigorously without having BellSouth combine UNEs at cost-based prices.

In response to witness Ruscilli's comment that ALECs can combine UNEs themselves, AT&T witness Gillan concurs that it is possible to "piece together" serving arrangements using individual UNEs; however, he states that the past five years of experience demonstrates that these "hand crafted" arrangements are primarily useful to serve larger business customers desiring more specialized services. He states that the most efficient solution to expand local competition to the typical consumer (i.e., residential customers and small businesses) is for BellSouth to combine these elements, using the systems and processes that it has already established to efficiently and routinely combine these same facilities, and then provide the entrant with the requested combination. He adds that elements combined in this fashion would also be available for migration to other competitors, thereby enabling the customer to easily change carriers in the future as well.

BellSouth witness Ruscilli concurs that the most efficient solution for an ALEC is for BellSouth to combine elements and then provide them to the entrant, since the ALEC would get the benefit of BellSouth having done the ALEC's work, and having incurred all of the cost with no compensation from the ALEC for performing this work.

AT&T witness Gillan counters that by not combining these elements for entrants, BellSouth is actually doing more work to avoid doing a little work. He argues that BellSouth's proposal for entrants to combine elements in a collocation space, or use assembly "rooms" or "points" specially constructed for this purpose, would result not only in more work, but also increased costs, for both itself and new entrants, and points of potential failure. He explains:

> What they are offering to do and what makes this whole thing in my mind so absurd, is that rather than just connect those two wires, they will connect the loop wire to another wire and run it over there to the other side of the central office, and then they will connect the loop wire to something and then run it over there, and

> then have those connected to a frame, and then AT&T can come in and connect those two things way over there.

Witness Gillan states that BellSouth would be doing "more combining" by cross-connecting the requested elements to the facilities necessary to extend the elements to the ALEC.

BellSouth maintains in its brief that the plain wording of the 1996 Act leaves no doubt that the ALECs are required to combine the network elements. Under cross-examination, witness Ruscilli agrees that in order for BellSouth to provide combinations of UNEs, at cost-based rates, to ALECs three requirements must be met: 1) the facilities have to be in place and connected all the way to the customer's premises, 2) service must be flowing through those facilities, and 3) the combination is only available as a switch as is.

Witness Gillan disputes BellSouth's "providing service" restriction on the use of combinations of elements and argues that such a requirement cannot be reconciled with FCC Rule 51.309(a) which prohibits restricting network elements. FCC Rule 51.309(a) provides:

> An incumbent LEC shall not impose limitations, restrictions or requirements on requests for, or the use of unbundled network elements that would impair the ability of a requesting telecommunications carrier to offer a telecommunications service in the manner the requesting telecommunications carrier intends.

Witness Gillan states that a combination of elements is just that, a combination of elements, and there is no basis for BellSouth to impose restrictions on the use of such elements merely because they are provisioned in a combined form. He adds that when an entrant orders a DS-1 loop to a customer premises, there is no requirement that the customer already be served over such a facility.

BellSouth witness Ruscilli responds that if the elements are not, in fact, combined, then there is no service; hence, BellSouth will not provide the elements as a combination. He states that the single exception to BellSouth's position that it will only provide combinations if the elements are, in fact, combined and providing

service is where there is warm dial tone (i.e., Quickserve). He testifies:

> . . .we also have some situations in BellSouth's territory where we serve customers by a process called Quickserve, and if you think about an apartment complex where you will probably have a high turnover of tenants in that complex, you might have a situation where the line is there but nobody is actually ordering service. And if you pick it up you can dial zero, I think, and get an operator, we'll provide UNE combos under that situation. So the service is not exactly flowing over that line, but it is already combined.

With regard to BellSouth's switch-as-is requirement, AT&T opposes having to incur two separate ordering charges (one for ordering UNE-P to provide POTS service and a second to buy any vertical features) for a customer that it wins from BellSouth that was only receiving POTS from BellSouth, but now wants to add a vertical feature to the existing POTS when vertical features are already a part of and a functionality of the switch. AT&T argues that the switch-as-is requirement increases the potential for ordering problems which may cause delay in getting service to the customer.

BellSouth witness Ruscilli responds that:

> . . .switch as is never said, or it was never intended that if you had a customer with basic local service that when we switched it to an ALEC we flip every switch on in the office and let you pick out what you want.

He justifies that there are very favorable rates for ordering vertical features and explains that AT&T would be doing additional marketing and receiving additional revenue from the customer for that service at that time, which would offset the second ordering charge.

AT&T argues in its brief that BellSouth's position not only prevents AT&T from using UNE-P to provide service to new customers at new locations where there is no service and customers who want additional lines, but it also restricts AT&T's ability to provide

additional services (vertical features) from what the customer is getting from BellSouth today. AT&T witness Gillan contends:

> Mass-market competition depends on efficient provisioning systems structured to minimize cost and accommodate volume. This same basic conclusion applies with equal force to new combinations as it does to existing arrangements. Consumers are unlikely to accept entrants that can serve an existing line, but cannot provision additional lines or serve the customer at a new location.

Consumers will not benefit from policies that make local competition more complex, cumbersome and more expensive.

Regarding AT&T's criticism of BellSouth's policy for the provision of combinations for new service, BellSouth witness Ruscilli retorts:

> When you are providing new service, when anybody is providing new service to a customer they are going to incur the cost of assembling that service and marketing that service and putting it together, whether it's BellSouth or an ALEC. . .somebody had to combine that loop and port, somebody had to do those translations. If you are suggesting that the fact that BellSouth wants to be reimbursed for doing that is a restriction to our ability to market, then I would say no, because that work has to be done. What is going on here, I think, is a debate about whether or not you should pay for that work or we should give it to you free.

Witness Ruscilli maintains that BellSouth is under no obligation to physically combine elements that are not currently combined for AT&T at cost-based rates. He argues that in the UNE Remand Order, the FCC declined to adopt a definition of "currently combines" that would include all elements "ordinarily combined" in the incumbent's network, which AT&T is requesting. He further argues that the FCC made clear that Rule 51.315(b) applies to elements that are "in fact" combined, stating that "[t]o the extent an unbundled loop is in fact connected to unbundled dedicated transport, the statute and our rule 51.315(b) require the incumbent to provide such elements to requesting carriers in combined form." (emphasis in original)

DECISION

As stated previously, this issue addresses the appropriate definition of the phrase "currently combines" as it is used in FCC Rule 51.315(b). Where BellSouth adopts a limited definition of "currently combines," AT&T takes a more expansive approach to include elements that BellSouth "typically" or "ordinarily" combines. The practical effect of the prevailing definition is to determine whether new combinations that BellSouth ordinarily combines should be treated differently than existing combinations. Stated another way, this issue addresses whether BellSouth should be required to combine UNEs for AT&T at cost-based rates when the elements are not already combined in BellSouth's network.

In August 1996, the FCC issued its First Report and Order (96-325) in CC Docket No. 96-98 in which it addressed the provisioning of UNE combinations and promulgated rules in Section 51.315. The following are the original rules.

> **51.315 Combinations of unbundled network elements.**
> (a) An incumbent LEC shall provide unbundled network elements in a manner that allows requesting telecommunications carriers to combine such network elements in order to provide a telecommunications service.
>
> (b) Except upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines.
>
> (c) Upon request, an incumbent LEC shall perform the functions necessary to combine unbundled network elements in any manner, even if those elements are not ordinarily combined in the incumbent LEC's network, providing that such combination is:
>
> > (1) Technically feasible; and
> > (2) Would not impair the ability of other carriers to obtain access to unbundled network elements or to interconnect with the incumbent LEC's network.

> (d) Upon request, an incumbent LEC shall perform the functions necessary to combine unbundled network elements with elements possessed by the requesting telecommunications carrier in any technically feasible manner.
>
> (e) An incumbent LEC that denies a request to combine elements pursuant to paragraph (c)(1) or paragraph (d) of this section must prove to the state commission that the requested combination is not technically feasible.
>
> (f) An incumbent LEC that denies a request to combine elements pursuant to paragraph (c)(2) of this section must prove to the state commission that the requested combination would impair the ability of other carriers to obtain access to unbundled network elements or to interconnect with the incumbent LEC's network.

Subsequently, on appeal, the Eighth Circuit Court vacated 51.315(b)-(f) on the grounds that the rules were inconsistent with Section 251(c)(3) of the Telecommunications Act of 1996. Regarding 51.315(c)-(f), the Eighth Circuit Court stated:

> While the Act requires incumbent LECs to provide elements in a manner that enables the competing carrier to combine them, unlike the Commission, we do not believe that this language can be read to levy a duty on the incumbent LECs to do the actual combining of elements. Iowa Utils. Bd. v. FCC, 120 F.3d 753, 813 (8th Cir. 1997)

Regarding 51.315(b), the Eight Circuit further stated:

> Accordingly, the Commission's rule, 47 C.F.R. §51.315(b), which prohibits an incumbent LEC from separating network elements that it may currently combine, is contrary to §251(c)(3) because the rule would permit the new entrant access to the incumbent LEC's network on a bundled rather than unbundled basis. Iowa Utils. Bd. v. FCC, 120 F.3d 753, 813 (8th Cir. 1997)

On January 25, 1999, in AT&T Corp. v. Iowa Utils. Bd., 525 U.S. 366 (1999), the United States Supreme Court reversed the Eighth

Circuit's opinion on 51.315(b), stating that 51.315(b) is a reasonable interpretation of Section 251(c)(3) of the Act, which establishes the duty to provide access to network elements on nondiscriminatory rates, terms, and conditions and in a manner that allows requesting carriers to combine such elements. The Supreme Court stated:

> As the Commission explains, it is aimed at preventing incumbent LECs from "disconnecting previously connected elements, over the objection of the requesting carrier, not for any productive reason, but just to impose wasteful reconnection costs on new entrants." It is true that Rule 315(b) could allow entrants access to an entire preassembled network. In the absence of Rule 315(b), however, incumbents could impose wasteful costs on even those carriers who requested less than the whole network. It is well within the bounds of the reasonable for the Commission to opt in favor of ensuring against anticompetitive practice. AT&T Corp. at 395

In its November 5, 1999 Third Report and Order and Fourth Further Notice of Proposed Rulemaking (FCC 99-238 - UNE Remand Order), the FCC declined to comment on what is specifically meant by its Rule 51.315(b). In paragraphs 479 and 480 of the UNE Remand Order, the FCC stated:

> A number of commenters argue that we should reaffirm the Commission's decision in the *Local Competition First Report and Order*. In that order the Commission concluded that the proper reading of "currently combines" in rule 51.315(b) means "ordinarily combined within their network, in a manner which they are typically combined." Incumbent LECs, on the other hand, argue that rule 51.315(b) only applies to unbundled network elements that are currently combined and not to elements that are "normally" combined. Again, because this matter is currently pending before the Eight Circuit, we decline to address these arguments at this time. FCC 99-238, ¶479

The FCC further stated:

> To the extent an unbundled loop is in fact connected to unbundled dedicated transport, the statute and our rule 51.315(b) require the incumbent to provide such elements to requesting carriers in combined form. Thus although in this Order, we neither define the EEL as a separate unbundled network element nor interpret rule 51.315(b) as requiring incumbents to combine unbundled network elements that are "ordinarily combined," we note that in specific circumstances, the incumbent is presently obligated to provide access to the EEL. In particular, the incumbent LECs may not separate loop and transport elements that are currently combined and purchased through the special access tariffs. Moreover, requesting carriers are entitled to obtain such existing loop-transport combinations at unbundled network element prices.

FCC 99-238, ¶480

Finally, in its July 18, 2000 ruling, the Eight Circuit Court reaffirmed its decision to vacate FCC Rules 47 C.F.R. §51.315(c)-(f). The Eighth Circuit Court stated:

> Unlike 51.315(b), subsections (c)-(f) pertain to the combination of network elements. Section 251(c)(3) specifically addresses the combination of network elements. It states, in part, "An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting telecommunication carriers to combine such elements in order to provide such telecommunication service." Here, Congress has directly spoken on the issue of who shall combine previously uncombined network elements. It is the requesting carriers who shall "combine such elements." It is not the duty of the ILECs to "perform the functions necessary to combine unbundled network elements in any manner" as required by the FCC's rule.

Iowa Utils. Bd. v. Federal Communications Commission, 219 F.3d 744, 759 (8th Cir. 2000)

Upon consideration, we believe that the Eighth Circuit Court has made clear the meaning of FCC Rule 51.315(b) in its July 18, 2000 ruling despite the fact that it did not specifically define "currently combines." By vacating Rules 51.315(c)-(f), which required ILECs to perform the functions necessary to combine UNEs in any technically feasible manner, the Eighth Circuit Court relieved BellSouth of the duty to combine UNEs at TELRIC rates for requesting carriers. That is, Rule 51.315(b) only obligates BellSouth to make available at TELRIC rates those combinations that are in fact already combined and physically connected at the time a requesting carrier places an order. In fact, in the above referenced quote, the Court specifically noted that Rule 51.315(b) does not pertain to combinations of UNEs and emphasized that ILECs are not duty bound to combine UNEs "in any manner." Id.

We note that although the FCC, in Order FCC 96-325, originally concluded that the proper reading of "currently combines" in rule 51.315(b) means "ordinarily combined within their network, in a manner which they are typically combined," (¶296) the FCC deferred affirmation of its prior definition, opting to wait for the Eighth Circuit Court's July 18, 2000 ruling. (FCC 99-238, ¶479) We further note that, in its ruling to reinstate Rule 51.315(b), the Supreme Court provided no guidance on how "currently combines" should be interpreted, thus leaving the decision in the hands of the Eighth Circuit Court. Accordingly, we believe that adoption of a more expansive definition of "currently combines," as AT&T requests, would be inconsistent with the Eighth Circuit Court's July 18, 2000 decision.

While BellSouth's testimony focuses on the legal requirement imposed by FCC Rule 51.315(b) (that is, whether BellSouth is legally required to perform the functions necessary to combine UNEs that are typically combined in its network for AT&T), AT&T's testimony looks past this debate. Instead AT&T witness Gillan focuses on why this Commission should require BellSouth to do so in the state of Florida.

> To begin, it would seem that the central legal issue concerns the limits of the Commission's discretion - that is, may this Commission evaluate BellSouth's obligation on its merits, or must the Commission sanction BellSouth's proposal, without regard for the consequences

> to Florida consumers. . .I believe the Commission has the authority to judge the issue on the merits. (emphasis in original)

We do not believe our obligations under the law can accommodate the urging of AT&T in this regard. While we may impose additional requirements consistent with federal law, we should not impose requirements that conflict with federal law. Though we recognize that a higher level of efficiency may result from BellSouth combining UNEs, it is clearly not consistent with prevailing law to order such combining, absent agreement between the parties. However, we note that there are other ways in which AT&T can obtain UNE combinations. Specifically, AT&T can obtain UNEs via resale and conversion, combine the UNEs itself in collocation spaces, use the assembly point option, build its own facilities, or convert special access services to combinations in accordance with the FCC Supplemental Order Clarification in Docket 96-98 (FCC 00-183), which allows IXCs to convert special access services to combinations of unbundled loops and transport network elements if, and only if, they are providing a significant amount of local exchange service to a particular customer. In addition, the record shows that BellSouth has over six million lines in Florida that are in fact combined and providing service that AT&T can obtain at cost-based rates.

With regard to BellSouth's requirement that service (at minimum, warm dial tone) must be flowing through an existing combination before BellSouth will provide that combination at TELRIC rates, we agree with this policy. We point out that in order for service to be flowing through a combination, the facilities must be in fact connected from the BellSouth switch to the customer's premises. Accordingly, we agree with BellSouth's position that (when the elements are in fact physically connected in a combined state) it will provide the loop to AT&T at TELRIC rates if AT&T intends to connect that loop to its own switch, but not if AT&T desires for BellSouth to connect a loop to BellSouth's switch. In the former scenario, there is no work or "combining" that needs to be done on the part of BellSouth; however, in the latter scenario, BellSouth would have to connect the loop to BellSouth's switch without compensation. The distinction that needs to be made is that BellSouth will provide combinations, at TELRIC rates, where BellSouth does not have to perform any physical

work to effect the combination. We believe that this "providing service" requirement can be reconciled with FCC Rule 51.309(a) in that such a requirement would not impair the ability of AT&T to offer the service in the manner it intends. As stated previously, there are other means for AT&T to accomplish a loop/port combination (in order to "offer the service it intends") without BellSouth having to do any "combining."

Based on the foregoing, we find that it is not the duty of BellSouth to "perform the functions necessary to combine unbundled network elements in any manner." Rule 51.315(b) only requires BellSouth to make available at TELRIC rates those combinations requested by an ALEC that are, in fact, already combined and physically connected in its network at the time a requesting carrier places an order. Accordingly, we conclude that the phrase "currently combines" pursuant to FCC Rule 51.315(b) is limited to combinations of unbundled network elements that are, in fact, already combined and physically connected in BellSouth's network to serve a specific customer or location at the time a requesting carrier places an order. In other words, there is no physical work that BellSouth must complete in order to effect the combination that the requesting telecommunications carrier requests.

B. "GLUE CHARGE" FOR COMBINING UNEs

This issue addresses whether BellSouth should be permitted to charge AT&T a "glue charge" for physically combining elements that are not "currently combined" and existing within BellSouth's network, but that AT&T requests as a combination.

ARGUMENTS

While BellSouth contends that where it agrees to physically combine UNEs for an ALEC, the prices for such combinations should be market-based, AT&T contends that the Commission should order BellSouth to combine UNEs at cost-based rates. We note that this issue is directly related to issue of currently combined UNEs discussed above. Notwithstanding that, the scope of this issue only requires that we determine whether BellSouth should be compensated for the work it does to physically combine UNEs that a requesting carrier requests.

BellSouth witness Ruscilli argues that, with one exception, BellSouth is not obligated to combine UNEs. Therefore, he asserts that the prices for this function are not subject to the cost-based pricing requirements of the Act. Consequently, he states that BellSouth should be permitted to include a "glue charge" in its prices for combining UNEs. Witness Ruscilli explains the single exception:

> There is one exception to BellSouth's general position of requiring market-based prices to combine UNEs. BellSouth has elected to be exempted from providing access to unbundled local switching to serve customers with four or more lines in Density Zone 1 of the Miami, Orlando and Ft. Lauderdale MSAs. To avail itself of this exemption, the FCC requires BellSouth to combine loop and transport UNEs (also known as the "Enhanced Extended Link" or "EEL") in the geographic area where the exemption applies. The FCC also requires that such combinations be provided at cost-based rates. BellSouth will physically combine loop and transport UNEs at FCC mandated cost-based prices as required in the FCC's UNE Remand Order in order to have the exemption from providing local circuit switching.

He reiterates that beyond this limited exception dictated by the FCC, BellSouth is under no obligation to physically combine network elements, where such elements are not in fact combined. Nevertheless, he states that BellSouth is willing to negotiate rates for combining UNEs; however, such negotiations would be outside of a Section 251 arbitration, and the rates for this service would not be subject to the pricing standards in Section 252 of the Act.

AT&T witness Gillan alleges that BellSouth's proposal is nothing more than a request to inflate rivals' costs so that it may inflate its rival's prices, thereby assuring that its own monopoly prices are protected from competition. He states that the term "glue charge" is synonymous with "market rate" and contends that if a functioning "market" existed, there would be no need for UNEs. He states:

> The requested facilities are deemed to be "unbundled network elements" precisely because entrants would be impaired - and, therefore, competition would be harmed - if they were not available at cost-based rates. Furthermore, the entrant is already compensating BellSouth for the elements it purchases - BellSouth's glue charge is no different than a demand for above-cost rates.

BellSouth witness Ruscilli states that certain ALECs have already requested that BellSouth provide the service of combining elements on the ALECs' behalf. He explains:

> These ALECs have entered into amendments to their interconnection agreements with BellSouth. The rates these ALECs pay for new combinations are market-based and appropriately compensate BellSouth for the service it is providing.

AT&T witness Gillan maintains that BellSouth should only be permitted to charge a cost-based rate for combining network elements. He argues that a decision otherwise would simply inflate the retail prices paid by consumers. He reasons that BellSouth's ability to charge for combining elements would distort competition in that it would be less costly for a second ALEC to serve the customer than the ALEC that won the customer's business in the first instance since once elements are combined, it would be unlawful to separate the elements and they would have to be made available to other competitors without disruption.

DECISION

Consistent with our finding in Section V of this Order, we believe that BellSouth is only obligated to provide combinations, at cost-based rates, that are in fact physically connected and existing within BellSouth's network at the time an ALEC requests it. In order for an ALEC to obtain combinations from BellSouth at cost-based rates, no work must need to be done by BellSouth in order to effect the specific combination the ALEC is requesting. Where combinations are not "currently combined" and BellSouth will have to do some physical work in order to effect the combination, the record shows that it is not unreasonable for BellSouth to be

compensated for the work it does to combine the elements. Accordingly, with the exception of the geographic areas where BellSouth has requested exemption from providing unbundled local switching to customers with four or more lines, we believe it is only fair that BellSouth be compensated for the work it does to combine unbundled network elements that are not "currently combined" for requesting carriers.

Based on the foregoing, we find that BellSouth should be compensated for the work it does to physically combine unbundled network elements that an ALEC requests when those elements are not "currently combined" within BellSouth's network.

C. TERMINATION LIABILITY WHEN TARIFFED SERVICES REPLACED BY UNEs

The scope of this issue has narrowed considerably since the inception of this arbitration proceeding. The specific dispute remaining concerns the application of cancellation charges by BellSouth for AT&T's conversion from special access to network elements. The witnesses use the phrases "cancellation charges" and "termination liability" interchangeably to refer to any financial obligation to BellSouth, for actions described in this issue.

ARGUMENTS

BellSouth believes that AT&T is asking us to absolve AT&T of its obligation to pay termination liability charges otherwise owed under volume and term contractual commitments. More specifically, BellSouth witness Ruscilli states this issue concerns:

> Conversion of tariff services to UNEs. This issue addresses the application of termination liabilities when tariffed services are converted to UNEs. BellSouth does not dispute its obligation to convert tariff service to UNEs when requested to do so by an ALEC such as AT&T. However, if AT&T is currently under a contractual arrangement with BellSouth then the terms of the retail agreement or contract must be satisfied.

The witness believes that a customer generally pays lower rates under a contract than a similarly situated customer not under contract. He explains:

> And the simple reason for that is that a month-to-month customer could cancel at any given month and walk away, whereas a customer that has committed to some sort of term or volume is guaranteeing BellSouth a revenue stream for a period of time, or a certain amount of revenue. And so we give them a more favorable rate.

Witness Ruscilli believes that the purpose of a termination liability provision is to ensure that the service provider [BellSouth] receives a fair price for the service in the event the customer terminates the contract early. He states that "[w]hen BellSouth has a relationship with a user of its services, and that relationship has certain conditions that have to be met if the relationship changes, then those conditions - in this case, termination charges - must be met." He concludes by stating "[t]herefore, if a contract is terminated early, it is appropriate for BellSouth to receive payment of the early termination charges."

Witness Ruscilli concedes, however, that in the conversion from special access to network elements, the service itself is not being terminated, but the retail relationship is being terminated. He elaborates:

> If AT&T is currently purchasing tariffed services from BellSouth at month-to-month rates, then BellSouth will simply effect the conversion to UNE rates. However, if AT&T is currently purchasing tariffed services under contract at lower rates based on a volume and term commitment, then BellSouth will apply any applicable termination liabilities when the service is converted to UNEs. This has to be the case because, otherwise, a customer who purchases the service on a month-to-month basis will be the victim of discrimination. A customer who purchases service on a month-to-month basis in lieu of purchasing the same service on a contract basis presumably does so because that customer does not want to make a volume and term commitment or be exposed to a termination liability.

The witness sums up his support for BellSouth's position by asking the Commission "to find that termination liabilities resulting from contractual obligations are appropriate and applicable when a tariff[ed] service is converted to UNEs." Otherwise, he believes that AT&T will get to keep the benefit of lower rates and break contractual commitments without bearing the agreed-upon consequences.

AT&T believes that it should be allowed to convert special access services to combinations of unbundled network elements without payment of a penalty or termination liability charge. AT&T witness Follensbee likens BellSouth's application of these charges to being a "penalty" imposed when converting special access services to network elements. He believes that without relief in this regard, "BellSouth ultimately ends up with what it wanted all along - ALECs would not be able to use network elements to serve customers who are currently served through special access service." Witness Follensbee asks "that this Commission order that no cancellation charges will be applied when AT&T requests to convert services purchased out of BellSouth's tariffs to network elements, including combinations of network elements."

Witness Follensbee characterizes the relationship between AT&T and BellSouth as being a "wholesale" one, and believes that it is not appropriate to apply termination liabilities in this type of relationship. He clarifies:

> Mr. Ruscilli's testimony addresses retail end users, while AT&T is a wholesale purchaser. The issue upon which AT&T and BellSouth disagree pertains only to AT&T as the purchaser of special access from BellSouth, not any end users who have purchased services directly from BellSouth and who want to now take local service from AT&T.. . . In cases where AT&T is the wholesale purchaser of special access, it is not appropriate for BellSouth to apply early termination charges to AT&T.

The witness offers support for AT&T's position through two primary arguments:

> First, AT&T is not an "end user" of the tariffed services . . . AT&T purchases wholesale services from BellSouth,

> not retail end user services. In these circumstances, there should be no termination liability assessed when AT&T seeks to convert tariffed services to unbundled network elements.
>
> Second, and more importantly, AT&T purchased these tariffed services because BellSouth was unwilling to provide combinations of network elements in lieu of special access as required by FCC rules. Rather than wait for the dust to settle on this issue, AT&T utilized the only option it had available. Furthermore, the FCC did not state or even imply that ILECs were free to impose a penalty upon ALECs for such conversions. What BellSouth seeks to do contravenes the clear intent of the FCC's Supplemental Order Clarification, FCC Order 00-183 . . .

In its brief, AT&T states that FCC Order 00-183 allowed for conversions of special access to network elements as long as the requesting carrier was providing a "significant amount of local exchange service," and further, asserts that provisions for the payment of termination liabilities would nullify this Order.

The witness states that if ALECs are required to pay these termination charges, the impact will have a "chilling effect" on competition, since ALECs will not be able to serve customers who are currently served through special access service. If required to pay BellSouth's termination charges, "ALECs would not be able to pass on these additional and unwarranted costs to their customers," states witness Follensbee.

The witness concludes his argument by discussing the difference between a "cancellation" and a "conversion." He states that AT&T is not canceling service from BellSouth and that there will be no perceptible difference in the service quality between special access and UNEs for the end user. He also believes that there will be no difference in the physical plant, to provide these services. Witness Follensbee states that the only costs for BellSouth associated with a conversion are administrative in nature, to correct billing records. AT&T believes BellSouth's imposition of these charges is an attempt to force ALECs to pay fees over and above cost-based rates when AT&T is converting

special access to network facilities. Therefore, as a result, witness Follensbee requests that the Commission order that no cancellation charges be applied when AT&T requests to convert services purchased out of BellSouth's tariffs to network elements, including combinations of network elements.

DECISION

As noted earlier, the scope of this issue has narrowed considerably since the inception of this arbitration proceeding. We note that BellSouth witness Ruscilli proposed rates for consideration in this issue in his direct testimony filed on November 16, 2000, but by the December 22, 2000 Joint Stipulation, BellSouth agreed to strike that portion of the witness's testimony. AT&T witness Follensbee offered a brief mention that rates were under consideration in another proceeding. Neither witness offered any further discussion of this topic, and as such, we have no record information to consider. Therefore, we do not address rates, but do address the terms and conditions of the parties' primary concern. The specific dispute remaining addresses the application of cancellation charges by BellSouth for AT&T's conversion of special access to network elements.

We, like witness Ruscilli, believe this issue addresses the application of termination liabilities when tariffed services are converted to UNEs. We believe that any such pre-existing contractual obligation established by the parties, including termination liabilities for AT&T, must be adhered to and satisfied. As witness Ruscilli states:

> When BellSouth has a relationship with a user of its services, and that relationship has certain conditions that have to be met if the relationship changes, then those conditions - in this case, termination charges - must be met.

We agree, even though witness Ruscilli concedes that, in the conversion of special access to network elements, the service itself is not being terminated, but the retail relationship is what is being terminated. We find that the terms or conditions of the contractual obligation between the two parties should govern. BellSouth should be capable of determining if a request from the

other party to a contract will impact a preexisting relationship. Since BellSouth is the party that would be asked to do the conversion, we believe that they should have the discretion to apply the appropriate charges.

We also believe that because of the contractual relationship, AT&T in all likelihood is receiving services from BellSouth at a more favorable rate than if no contractual relationship had existed. Witness Ruscilli offers evidence of this in his testimony. In simple terms, a contract "locks in" a particular arrangement. For either party, the contract specifies a particular set of parameters to which they agree. For BellSouth, the presence of a contractual arrangement may ensure a guaranteed revenue stream for a period of time. For AT&T in this case, a contract may provide them with a requested service arrangement for the specified contract period, at a more favorable rate. In either case, the parties have a degree of assurance which is not the case if services between the parties are rendered without a contract. BellSouth witness Ruscilli explains:

> And the simple reason for that is that a month-to-month customer could cancel at any given month and walk away, whereas a customer that has committed to some sort of term or volume is guaranteeing BellSouth a revenue stream for a period of time, or a certain amount of revenue. And so we give them a more favorable rate.

Again, we agree with BellSouth's witness Ruscilli. If this framework was not the case, witness Ruscilli states that the purchaser of non-contracted services would be the victim of discrimination, and staff agrees. As such, the termination liabilities attached to any contractual arrangement would be rendered moot. We agree with witness Ruscilli's assertion that:

> A customer who purchases service on a month-to-month basis in lieu of purchasing the same service on a contract basis presumably does so because that customer does not want to make a volume and term commitment or be exposed to a termination liability.

We are not persuaded by AT&T's argument that it should be allowed to convert special access services to combinations of

unbundled network elements without payment of a penalty or termination liability charge. The contractual agreements between the two companies should not be waived, or ignored. While AT&T witness Follensbee views BellSouth's application of termination charges as a "penalty" imposed when converting special access services to network elements, we believe that BellSouth is duly entitled to "penalize" AT&T or any party if their respective contract arrangements are breached.

We also disagree with witness Follensbee's assertion that "BellSouth ultimately gets what it wanted all along - ALECs would not be able to use network elements to serve customers who are currently served through special access service." This statement is not directly relevant to this issue, since AT&T is not being precluded from serving customers using network elements. We also discount witness Follensbee's concern about the "chilling effect" on competition, since ALECs are not being precluded from serving customers who are currently served through special access service. Once again, the issue does not involve BellSouth precluding access to UNEs; the issue involves BellSouth's application of "cancellation charges," and the provisions of their contract should govern.

AT&T raises a concern in its Brief that the provision for contractual termination liabilities, if upheld, would nullify the portions of FCC Order 00-183. We note that ¶22 of FCC Order 00-183 addresses the parameters for defining what a "significant amount of local exchange service" is. We, however, do not agree with AT&T's characterization of this. Specifically, the FCC's intent was to allow the conversions, but the FCC contemplated the contractual implications of the stated conversions. Therefore, we do not believe that the FCC Order excuses AT&T or any ALEC from its contractual obligations to BellSouth when converting special access to network elements. AT&T could have opted for a month-to-month arrangement (rate), but opted instead for a contractual rate, and should be bound by the provisions thereof.

Upon consideration of the record, we find that AT&T should be required to satisfy any and all contractual obligations with BellSouth, including termination liability considerations, prior to purchasing network elements or combinations to replace services currently purchased from BellSouth tariffs.

D. POINT OF INTERCONNECTION

The question as framed appears to contemplate issues of network engineering involving the physical interconnection of two networks. However, the evidence and testimony presented by the parties focuses on a dispute over compensation for specific costs incurred as a result of network interconnection. Simply put, the parties are not arguing "how" their networks should be connected in a technical sense, but who should be paid and under what circumstances, as a result of their interconnecting.

ARGUMENTS

AT&T witness Follensbee summarizes the AT&T's position accordingly:

> AT&T's position is that the responsibility for originating, transporting, and terminating traffic should be mutual and that each party should be financially responsible for transporting its own originating traffic to a comparable point on the terminating party's network (i.e. the other party's switch serving the terminating customer). AT&T, and all ALECs, should be permitted to choose the most efficient interconnection point, as the law allows. ALECs should not have to design their networks less efficiently and their customers should not shoulder the burden of higher costs simply because BellSouth refuses to transport its own originating traffic as it is required to.

AT&T intends to establish a minimum of two POIs per LATA in which AT&T offers service, "unless there is a *de minimus* volume of traffic," in which case the ALEC would utilize only one POI. This plan, witness Follensbee contends, is consistent with the FCC's order in its Texas 271 proceeding, CC Docket No. 00-65 *at* ¶78, which reads in part, "section 251, and our implementing rules, require an incumbent LEC to allow a competitive LEC to interconnect at any technically feasible point. This means that a competitive LEC has the option to interconnect at only one technically feasible point per LATA."

BellSouth witness Ruscilli does not believe the use of one, or even two, POIs per LATA is feasible:

> BellSouth has a local network in each of the local calling areas it serves in Florida. BellSouth may have 10, 20 or even more such local networks in a given LATA. Nevertheless, AT&T wants to physically interconnect its network with BellSouth's 'network' in each LATA at a single point or perhaps two points. This approach simply ignores that there is not one BellSouth 'network' but a host of networks that are generally all interconnected.

While acknowledging AT&T's right to designate any technically feasible point within a LATA at which to interconnect, witness Ruscilli maintains BellSouth cannot be expected to accept the financial burden of AT&T's design decisions. The financial burden will result, witness Ruscilli testifies, because, "AT&T, to contrast its position with BellSouth's, expects BellSouth to collect local traffic bound for AT&T's end users in each of BellSouth's numerous local calling areas in the LATA, and AT&T expects BellSouth to be financially responsible for delivering, to a single point (or, at most two points) in each LATA, local calls that are destined for AT&T's local customers within the same local calling area where the call originated."

The solution BellSouth witness Ruscilli proposes is for AT&T to lease facilities from BellSouth or any other provider to "bridge the gap" between each of BellSouth's local calling areas and AT&T's single POI per LATA, because, the witness contends, "BellSouth is not obligated to haul AT&T's local traffic to a distant point dictated by AT&T."

AT&T witness Follensbee regards the BellSouth proposal as an effort to shift the transport costs the incumbent is obligated to bear under the Act to AT&T, which would cause AT&T to lose the benefits of its more efficient network architecture. Witness Follensbee continues, "the higher costs AT&T would be forced to bear under BellSouth's proposal would make those Florida markets that would have been marginally profitable under AT&T's interconnection proposal, uneconomical to serve. Simply put, BellSouth's interconnection proposal is harmful to competition in Florida."

BellSouth witness Ruscilli asserts his position is supported by a July 2000 ruling by the Eighth Circuit Court's decision in *Iowa Utils. Bd. V. FCC, 8th Cir., July 18, 2000*, which found in part:

> The Act requires an ILEC to (1) permit requesting new entrants (competitors) in the ILEC's local market to interconnect with the ILEC's existing local network and, thereby, use the network to compete in providing local telephone service (interconnection)...

Witness Ruscilli emphasizes the court's use of the phrase "existing local network" as the level at which interconnection must occur. Witness Ruscilli concludes, "the fact that AT&T is entitled to physically connect with BellSouth at a single point in the LATA cannot overcome the fact that the single Point of Interconnection cannot, by itself, constitute interconnection with every single local calling area in a LATA."

AT&T witness Follensbee contests the assertion that local calling areas, established for the purpose of setting rates for BellSouth customers, should be the basis for compensatory schemes involving competitive carriers. Witness Follensbee raises several issues on this point. Local calling areas, witness Follensbee believes, "bear no relationship to the capacity of switches and other facilities deployed by ALECs or BellSouth." Further, the witnesses maintains, "there is no such thing anymore as 'a' local calling area. For some time BellSouth has offered EAS [Extended Area Service] plans and now even offers LATA-wide local calling areas. These various calling plan options dispel any suggestion that there is any real significance to the geographic scope of any given local calling area." Finally, witness Follensbee testifies, forcing AT&T to interconnect in each of BellSouth's local calling areas effectively compels AT&T to replicate BellSouth's network architecture and ignore local calling areas competitors may designate for their customers.

BellSouth witness Ruscilli argues local calling areas cannot be left out of any compensatory equation:

> . . .the local exchange rates that BellSouth's local subscribers pay are not intended to cover the cost of

> hauling local calls beyond BellSouth's local calling area. Nevertheless, that is exactly what AT&T wants to force BellSouth (and other local service providers) to do. Evidently, AT&T refuses to pick up the traffic at the Point of Interconnection in each of BellSouth's local calling areas in, for example, the Jacksonville LATA. At the same time, AT&T has refused to compensate BellSouth for the additional cost of transporting these calls from the various BellSouth local calling areas to a distant location selected by AT&T solely for AT&T's own convenience. It is the additional cost of transporting local traffic from BellSouth's designated Point of Interconnection to a distant location as desired by AT&T about which the parties disagree.

The arrangement witness Ruscilli advocates is rooted in his testimony that a substantive distinction can be made between a POI and an interconnection point. The POI, witness Ruscilli testifies, is the point at which two telecommunications companies physically interconnect, consistent with the FCC's finding at ¶176 of Order 96-325, which reads in part, "we conclude the term 'interconnection' under Section 251(c)(2) refers only to the physical linking of two networks for the mutual exchange of traffic." Witness Ruscilli goes on to state:

> But on the other hand, the term 'interconnection point' is used by AT&T and BellSouth to define the place where financial responsibility for a call changes from one carrier to another. The 'Point of Interconnection' and the 'interconnection point' can be at the exact same physical point, or they can be at different points.

It is the distinction between a Point of Interconnection and an interconnection point that leads to the solution to this dispute proposed by witness Ruscilli, which he outlines in his testimony:

> . . .BellSouth proposes to aggregate all of its end user customers' originating local traffic to a single location in a local calling area where such traffic will be delivered to AT&T. For example, in the case of Lake City, BellSouth would transport the local traffic originated by BellSouth customers in the Lake City local

> calling area to a single location in that calling area. Although this single location, where BellSouth aggregates its customers' local traffic, is not a Point of Interconnection as defined by the FCC. BellSouth, therefore, BellSouth (sic) uses the term 'point of interconnection' to describe that central location. AT&T can then pick up all the local traffic that BellSouth's customers originate in the Lake City local calling area at a single location rather than having to pick up that traffic at each individual end office.

AT&T would have the option, according to witness Ruscilli, of picking up BellSouth's originated traffic either at each end office or at BellSouth's designated "point of interconnection."

AT&T witness Follensbee asserts that BellSouth's insistence on having competitors interconnect with incumbents at the local calling area level creates asymmetrical reciprocal compensation obligations. Asymmetrical reciprocal compensation obligations, witness Follensbee testifies, are contrary to Section 252(d)(2)(a) of the Act, part of which reads, ". . .a state commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless. . .such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities on [sic] the other carrier." Witness Follensbee testifies that prior to passage of the Act, the originating carrier was responsible for originating, transporting and terminating a call, assuming the call did not leave the originating carrier's network. While the Act changed the termination aspect of this compensation dynamic when a competitive local exchange carrier is involved, witness Follensbee contends, "...the Act did not alter the long-standing economic model under which the originating carrier collects the local exchange revenue and is responsible for the costs of originating, transporting and terminating its traffic." If BellSouth is allowed to impose an obligation on AT&T to interconnect at each local calling area, witness Follensbee believes that AT&T will be assuming costs that are legitimately BellSouth's, resulting in a non-symmetrical reciprocal compensation arrangement that cannot meet the "just and reasonable" test under Section 252(d)(2)(A) of the Act.

Witness Follensbee argues that the proposal articulated by BellSouth witness Ruscilli is not grounded in federal regulations, and, in fact, is contrary to 47 C.F.R. 51.305(a)(2) -- which obligates BellSouth to allow interconnection by an ALEC at any technically feasible point -- and to FCC Order 96-325 at ¶172, which reads:

> The interconnection obligation of section 251(c)(2), discussed in this section, 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 by witness.)

Witness Follensbee maintains FCC Order 96-325 also delineates between the interconnection obligations of competitors versus the interconnection obligations of incumbents at ¶220, which states:

> Section 251(c)(2) does not impose on non-incumbent LECs the duty to provide interconnection. The obligations of LECs that are not incumbent LECs are generally governed by sections 251(a) and (b), not section 251(c). Also, the statute itself imposes different obligations on incumbent LECs and other LECs (i.e., section 251(b) imposes obligations on all LECs while section 251(c) obligations are imposed only on incumbent LECs).

The obligation to provide interconnection rests with the incumbent LEC, witness Follensbee testifies, not with competitors, and "BellSouth may not assume some authority that is not provided in the Act." From a position he argues is grounded in the Act and FCC Order 96-325, witness Follensbee cites a series of FCC legal positions and federal rules that he asserts support his position.

In a brief filed in the state of Oregon (Memorandum of the FCC as Amicus Curiae at 20-21, *US West Communications Inc. V. AT&T Communications of the Pacific Northwest, Inc,* {D.Or.1998}{No. CV 97-1575-JE}) the FCC wrote:

> Nothing in the 1996 Act or binding FCC regulations require 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. (Emphasis by the witness)

In its order approving SBC's 271 application, the FCC used the following language at ¶78: "Section 251, and our implementing rules, require an incumbent LEC to allow a competitive LEC to interconnect at any technically feasible point. This means that a competitive LEC has the option to interconnect at only one technically feasible point in each LATA."

Witness Follensbee points to federal rules which he contends support AT&T's position. Specifically, he cites FCC rule 51.703(b), which reads, "a LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network." Witness Follensbee also believes FCC rule 51.709(b) has application in this dispute. That rule reads: "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."

Finally, witness Follensbee cites the FCC ruling in the TSR Wireless case, *In re TSR Wireless LLC, et. al., v. U.S. West*, file Nos. E-98-13, et. al., FCC 00-194, June 21, 2000. In that case, witness Follensbee asserts, the FCC prohibited incumbent carriers from charging for the delivery of LEC-originated traffic or for the facilities used to deliver that traffic to a co-carrier's network.

According to witness Follensbee, the weight of the FCC's decisions, orders and rules combine to prohibit the multiple POI arrangement BellSouth witness Ruscilli advances in his testimony:

> BellSouth should be allowed to designate one Point of Interconnection in each of its local calling areas where AT&T must pick up BellSouth's originated local traffic destined for AT&T's local customers. BellSouth, not AT&T, is entitled to designate the pickup point for such traffic and that point can be on BellSouth's network. BellSouth is willing to accommodate AT&T's proposed

> network design that does not have a Point of Interconnection in each BellSouth local calling area. However, AT&T would have to compensate BellSouth for transporting BellSouth's originating traffic to an AT&T designated Point of Interconnection outside the basic local calling area (but inside the LATA) in which the local call originates.

Under cross-examination, BellSouth witness Ruscilli acknowledged there are circumstances in which BellSouth's local calling area can be construed to include an entire LATA. An example of this, witness Ruscilli testified, would occur if a customer subscribes to Area Plus Service. Area Plus Service is tariffed as a basic local service, and allows a customer to complete flat-rated toll calls within a LATA for a monthly fee above the basic local calling rate, witness Ruscilli testified.

In its brief, BellSouth cites two cases and decisions by the public utility commissions of North Carolina and South Carolina to argue that it is entitled to compensation when a competitive carrier chooses to interconnect at one technically feasible point within a LATA. Specifically, BellSouth's brief cites US West v. AT&T Communications, *31 F. Supp. 2d 839(D.Or. 1998), rev'd in part, vacated in part sub. nom., 224 F. 3rd 1049 (9th Cir. 2000)*, which found "technical feasibility answers the question of *whether* a CLEC may interconnect at a given point, but it does not answer the question of *how many* points of interconnection a ALEC must have." In addition, BellSouth cites *US West v. Jennings, 46 F. Supp. 2d 1004 (D. Az. 1999)*, a decision which found in part, "the purpose of the Act is to promote competition, not favor one class of competitors at the expense of another. As an alternative, the [Arizona Commission] may require an ALEC to compensate US West for costs resulting from an inefficient interconnection."

BellSouth cites an order by the South Carolina Public Service Commission in an arbitration between AT&T and BellSouth Order No. 2000-527-C, January 30, 2001, from which it quotes the following paragraph:

> In resolving this issue, the Commission concludes that while AT&T can have a single POI in a LATA if it chooses, AT&T shall remain responsible to pay for the facilities

> necessary to carry calls from distant calling areas to a single POI. That is a fair and equitable result.

In a more recent decision, the North Carolina Utilities Commission ruled in an arbitration case involving AT&T and BellSouth, Recommended Arbitration Order in Docket No. P-140, Sub 73, and Docket No. P-646, Sub 7, March 9, 2001, that:

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

In its brief, BellSouth also contests the use of the TSR Wireless order by AT&T witness Follensbee as evidence that an incumbent may not charge for delivering incumbent-originated traffic to the network of a co-carrier. The substantive issue in the TSR Wireless order, BellSouth argues in its brief, is that an incumbent is only required to deliver its traffic to a wireless carrier without charge within the wireless carrier's MTA (major trading area), which the parties agree is the equivalent of a local calling area for a wireline carrier.

Finally, BellSouth's brief refers to the FCC's order granting interLATA relief to SBC in Kansas and Oklahoma, *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 InterLATA Services in Kansas and Oklahoma*, Order No. FCC 01-29. Referencing BellSouth's cross examination of AT&T witness Follensbee, BellSouth in its brief asserts the FCC had the issue of whether an incumbent is obligated to deliver its originated traffic to a distant local calling area without charge and did not address the matter. BellSouth argues in its brief the FCC's failure to address the compensation issue in its Kansas-Oklahoma 271 order is indication, "even the FCC perceives the unfairness of requiring BellSouth or any ILEC to haul a call hundreds of miles across a LATA simply because AT&T finds it cheaper to have a single switch in the LATA and to use long loops to serve its customers."

In its brief, AT&T disputes BellSouth's interpretation of the Kansas-Oklahoma 271 order, referring to ¶235, which reads:

> Finally, we caution 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. In our *SWBT Texas Order*, we cited SWBT's interconnection agreement with MCI-WorldCom to support the proposition that SWBT provided carriers the option of a single point of interconnection. We did not, however, consider the issue of how that choice of interconnection would affect inter-carrier compensation arrangements. Nor did our decision to allow a single point of interconnection change an incumbent LEC's reciprocal compensation obligations under our current rules. For example, these rules preclude an incumbent LEC from charging carriers for local traffic that originates on the incumbent LEC's network. These rules also require that an incumbent LEC compensate the other carrier for transport and termination of local traffic that originates on the network facilities of such other carrier.

AT&T reasons from this paragraph that "although the manner in which the issue presented itself did not cause the FCC to issue a declaratory ruling, the *SBC Kansas & Oklahoma Order* provides additional FCC guidance that the Commission must reject the BellSouth proposal on this issue."

DECISION

We note from the outset that compensation issues stemming from the uncontested right of an ALEC to establish a single point of interconnection per LATA for the mutual exchange of traffic raises some unsettling issues; Unsettling because to this point, no definitive ruling from the FCC or any court of competent jurisdiction has been issued to resolve the conflicting postures of the respective parties. The FCC apparently recognizes the differing interpretations of the applicable rules and decisions and the potential of these disputes to affect future compliance issues in Section 271 proceedings. In the *SBC Kansas and Oklahoma*

Order, the FCC encouraged the parties to seek a declaratory statement or more explicit rules on issues regarding "the interplay between a single point of interconnection and reciprocal compensation." To our knowledge, no petition has been filed seeking either a declaratory statement or rulemaking on the issue identified by the FCC.

The pending second phase of Docket No. 000075-TP will address the question of "how should a 'local calling area' be defined, for purposes of determining the applicability of reciprocal compensation?" The resolution of this question by us through the generic proceeding will provide a measure of stability for ILECs and ALECs in Florida.

It is uncontested that an ALEC has the right to establish a single POI per LATA for the mutual exchange of telecommunications traffic. BellSouth witness Ruscilli attempts to create a separate entity, which he labels an "interconnection point" that would be designated by BellSouth in each local calling area, separate and distinct from a POI. The difference, he asserts, is that a POI exists for the physical exchange of traffic and an interconnection point is a demarcation point from which compensation can be measured. Witness Follensbee notes the Act, FCC Order 96-325 and more recently, the *Texas 271 Order* provide an unbroken chain of decisions that give competitive LECs the unequivocal right to determine where their networks will interconnect with an incumbent's network. We find AT&T's case on this point persuasive. Had AT&T agreed to the concept of establishing interconnection points in each local calling area in which it plans to serve customers for the purpose of calculating transport costs to a distant POI, our conclusion would be different. However, AT&T witness Follensbee asserts AT&T intends to establish two POIs per LATA (except in cases where a de minimums volume of traffic justifies a single POI) and contends this will be sufficient to handle the volume of traffic AT&T anticipates.

We have difficulty assessing BellSouth witness Ruscilli's proposal for AT&T to provide or lease facilities in each local calling area in a LATA to provide transport of traffic from a BellSouth-designated point in a local calling area to the POI in that LATA. Given AT&T's assertion that it will have two POIs per LATA, we must consider the possibility these POIs will be in the

local calling areas in which AT&T intends to serve customers. Witness Ruscilli discounts this possibility, contending that each LATA served by BellSouth has several local calling areas and that having two POIs per LATA will not provide a presence in each local calling area. AT&T witness Follensbee cites a series of FCC decisions that establish AT&T can not be compelled to interconnect in each local calling area in a LATA, including: Interconnection points are designated by competitors, not by incumbents (FCC Order 96-325, ¶172); Interconnection obligations are imposed on incumbents, not on competitors (FCC Order 96-325, ¶220); Competitors have the right to designate single interconnection points per LATA (FCC Order 00-238, ¶78); and the designation of single interconnection points per LATA does not change an incumbent's reciprocal compensation obligations under current FCC rules (FCC Order 01-29, ¶235). The preponderance of the evidence cited favors AT&T on this point.

AT&T witness Follensbee cites 47 C.F.R. 51.703(b), which prohibits the assessment of charges on other carriers for local telecommunications traffic originating on the LEC's network, as a basis for his contention that each party assume responsibility for transporting its traffic to the designated POI(s) in a LATA. BellSouth witness Ruscilli addresses this rule in the context of the FCC's *SBC Kansas and Oklahoma Order*. Witness Ruscilli asserts the FCC had an opportunity to support AT&T's interpretation of FCC Rule 51.703(b) but the FCC offered no such affirmation. Witness Ruscilli appears to be arguing that the absence of confirmation by the FCC of AT&T's rule interpretation invalidates AT&T's position. We do not agree, and in the absence of a position to the contrary from BellSouth, concur with witness Follensbee's interpretation.

In its brief, BellSouth cites decisions by the North Carolina and South Carolina commissions that found BellSouth was entitled to compensation when it is required to transport traffic from a local calling area to a POI in a distant calling area within the same LATA. The parties concur there is a cost associated with transporting calls within a LATA, and we do not dispute this assertion. However, we can only conclude that both the South Carolina and North Carolina commissions had sufficient evidence before them relating to these costs to justify a finding pursuant to the terms of Section 252(d)(2)(A) and Section 252(d)(1) of the Act. Section 252(d)(2)(A) reads:

> (A) IN GENERAL.--For the purposes of compliance by an incumbent local exchange carrier with section 251(b)(5), a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless--
>
> (i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and
>
> (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.

We are concerned that we find nothing in the record of this proceeding that would lead to a determination that the terms and conditions proposed by BellSouth witness Ruscilli provide for the mutual and reciprocal recovery by each carrier of their respective costs. Also absent is evidence to support a reasonable approximation of the additional costs of terminating such calls in the manner BellSouth proposes.

Section 252(d)(1) requires state commissions considering rates resulting from interconnection of facilities, which BellSouth witness Ruscilli argues for, must be based on the cost of providing the interconnection and be non-discriminatory. Neither party to this proceeding has provided cost data to support their arguments in this proceeding.

It may be possible to construct an argument favoring the payment of compensation by competitive local exchange companies to ILECs for transporting traffic from a local calling area to a distant POI, particularly one rooted in 47 C.F.R. 51.701(b)(1). Such an arrangement would, at minimum, have to contemplate sections 252(d)(1) and 252(d)(2)(A) of the Act in addition to 47 C.F.R. 51.709(b), which requires the carrier providing transmission facilities dedicated to the transmission of traffic between two networks to recover only the costs of the proportion of the trunk capacity used by the interconnecting carrier to send traffic that will terminate on the providing carrier's network. BellSouth

witness Ruscilli's proposal is silent as to how the transport costs to be assessed to AT&T would be determined.

AT&T witness Follensbee makes a persuasive argument that the interconnection of the parties' networks in this proceeding must be consistent with the Act, the subsequent decisions of the FCC, and federal rules cited in his testimony. Therefore, we find that, for purposes of this arbitration, AT&T should be permitted to designate the interconnection point(s) in each LATA for the mutual exchange of traffic, with both parties assuming financial responsibility for bringing their traffic to the AT&T-designated interconnection point.

E. MULTI-UNIT INSTALLATIONS

This issue considers the terms and conditions associated with AT&T's provision of telephone service to customers in multi-unit installations. Throughout the context of this discussion, multi-unit installations are collectively referred to as "multi-tenant units," (MTUs) or "multi-dwelling units," (MDUs). Additionally, a distinction is made between the "garden-style apartments" and "high rise" layouts. The phrase "MTU" ordinarily refers to a business unit, and "MDU" to a residential structure, but for the purposes of this discussion, the phrases may apply to business or residential structures. This issue also contains a number of other acronyms, including "INC" (intra-building network cable), "NTW" (network terminating wire), and "NID" (network interface device).

ARGUMENTS

BellSouth witness Milner testified about the physical network that his company uses to serve MTUs. He describes NTW as another part of BellSouth's loop facilities, referred to as the sub-loop element loop distribution. In multi-story buildings, NTW is connected to the INC and fans out the cable pairs to individual customer suites or rooms on a given floor within the building. INC is also known as "riser cable." A network interface device (NID) establishes the demarcation point between BellSouth's network and the inside wire at the customer's facility.

In further describing INC and NTW, witness Milner states:

> NTW is a BellSouth sub-loop UNE offering which can be purchased alone or in conjunction with INC when the ALEC purchases unbundled INC. However, ALEC requests for INC as a stand-alone UNE (i.e., without NTW) would be considered by BellSouth via the Bona Fide Request (BFR) process.

He continues:

> INC and NTW are sub-elements of the loop . . . ALECs are entitled to obtain sub-loop elements on an unbundled basis, and BellSouth is entitled to be compensated for the parts of BellSouth's loop used by the ALEC, including INC and NTW. The loop, including all sub-elements, is on the network side of the demarcation point or NID.

The witness defines, compares, and contrasts INCs and NTWs while discussing their functionality in various settings. (Id.)

The witness believes that we have considered the MTU issue in a prior Commission docket, the MediaOne/BellSouth arbitration, Docket No. 990149-TP. The witness states that in that case, we denied MediaOne direct access to the NTW and required an "access" terminal be placed between BellSouth's and MediaOne's networks. The witness clarifies:

> BellSouth believes the use of access terminals as ordered by this Commission [in the MediaOne case] gives ALECs the requested access to unbundled sub-loop elements while still maintaining network reliability and security in the case of both garden apartments and high rise buildings. Such access should apply to all sub-loop elements, including access to INC.

As stated, BellSouth's proposed settlement of this issue involves the establishment and use of an "access" terminal for AT&T. The witness believes that the current argument by AT&T is an attempt to revisit the Commissions's "access" terminal decision. Additionally, he believes that there are four basic parts to this issue before the Commission. He testifies:

> First, AT&T wants this Commission to revisit an earlier decision that it made when it determined that BellSouth would be allowed to create the "access" terminal located between BellSouth's terminal and the ALEC's terminal.. . . Second, assuming AT&T convinces the Commission to revisit this issue in the first instance, AT&T then wants to argue that it should have direct access to certain sub-loop elements including NTW and INC without the use of the access terminal.. . . The third part of this issue involves a dispute over what sub-loop elements AT&T gets when it purchases unbundled NTW. The fourth sub-part [of this issue] deals with access to the so-called "first" NTW pair, an issue that BellSouth believes settled but which AT&T nonetheless raises.

BellSouth believes that the appropriate settlement of this issue is to require BellSouth to construct an "access" terminal for access to INC or NTW pairs requested by an ALEC. The "access" terminal serves the purpose of being a single point of interconnection for the networks of each company. The witness notes that BellSouth's proposal in this docket is consistent with the outcome rendered in the MediaOne arbitration case.

Through the use of the "access" terminal, BellSouth believes that AT&T can cross-connect its own facilities with the NTW or INC owned by BellSouth. Witness Milner offers schematic diagrams which depict the placement of the proposed "access" terminals. Witness Milner offers a distinction between what BellSouth will provide in each of the settings at issue:

> With regard to so-called garden apartments, BellSouth will prewire each and every cable pair from its terminal to the separate access terminal. This means that for garden apartments, each cable pair in the apartment will appear on BellSouth's garden terminal and it will appear on the separate access terminal. An ALEC wanting to serve a customer in the garden apartment would build its terminal at that location, and then wire its cable pair to the appropriate prewired location on the access terminal.

> The treatment in high rise buildings will be different. BellSouth will still build an access terminal . . . and the ALEC wanting to use those facilities will still have to build its own terminal for its cable pairs. However, rather than prewiring the access terminal, BellSouth proposes that when it receives an order from the ALEC, BellSouth will wire the access terminal it has created to provide access to those facilities requested.

Witness Milner believes that AT&T should not be entitled to have direct access to BellSouth's facilities, for two main reasons. First, the witness expresses concern over the possible consequences attributable to direct access, if permitted, and states, "[w]ith direct access it is possible for AT&T's or other ALECs' technicians to intentionally or unintentionally disrupt BellSouth's and other ALECs' end user services." He continues:

> That simply presents an unnecessary risk for all involved parties, end users, BellSouth, other ALECs, even AT&T itself, because such actions by some other ALEC could have the same disruptive effect on subloop elements that AT&T is utilizing.

Second, witness Milner believes that BellSouth would be unable to maintain accurate cable inventory records. He states:

> [W]ith direct access, BellSouth would be at AT&T and other ALECs' mercy to tell BellSouth how, when, where, and the amount of BellSouth's facilities that were being used.. . . [t]his lack of accurate inventory information would inevitably lead to failure of BellSouth's service provisioning, maintenance, and repair services, and would affect ALECs using BellSouth's loops and subloops.

The witness is acutely concerned about the prospects of " . . . allowing technicians from any and every ALEC in Florida to walk into an equipment room in a high rise building and start appropriating pairs and facilities for its own use, without consulting with anyone and without any obligation to keep appropriate records so that the next person in the room knows what belongs to whom."

He continues:

> Keeping accurate records of what pairs are spare, working, or defective is critical to ensuring high quality service, both in provisioning new or additional customer lines and in repairing existing customers' service.

Finally, with regard to AT&T's third sub-part, which concerns the access to the subloop elements, the witness states that, "BellSouth is not opposed to allowing AT&T use of these subloop elements . . ." Under cross examination, witness Milner also concedes that BellSouth is obligated by the FCC's UNE Remand Order to provide nondiscriminatory access to the NTW and INC subloop elements.

Regarding the "first NTW pair" matter, witness Milner believes that this issue is settled, but nonetheless rebuts some statements of AT&T's witness Lindemann. The rebuttal addresses witness Lindemann's concerns about AT&T's access to the "first pair" and also AT&T's concern that a dispatch is necessary for every conversion of service. Regarding the "first pair" concern, the witness states, "BellSouth will allow AT&T access to any NTW pair including the so-called 'first' NTW pair, unless the end user will continue to receive service from BellSouth over the first NTW pair."

Witness Milner states that BellSouth offers alternatives for AT&T to avoid a field dispatch, if desired. One such alternative is for AT&T to request BellSouth to install a new style NID, which would allow the joint use of service from both companies. Another alternative involves a BellSouth technician searching for the demarcation point, and BellSouth has offered to perform this function for AT&T.

In regard to the matter of the appropriate rates, BellSouth's proposed rates for AT&T are contained in the testimony of witness Ruscilli. The rates are for access to and use of BellSouth's facilities, primarily for NTW and INC, according to the witness.

In summary, witness Milner believes that on a practical level, its proposed settlement of this issue mitigates AT&T's concerns. "BellSouth's proposal keeps AT&T's technicians from doing work in

BellSouth's terminal, and it keeps BellSouth technicians from doing work in AT&T's terminals" states witness Milner. BellSouth also notes that its position in this matter is consistent with the Commission's prior decisions.

AT&T's witness Lindemann believes that his company's proposed settlement for this issue "will create parity among all local exchange carriers who serve MDU residents, without jeopardizing any customer's service." The witness believes that AT&T should have direct access to the distribution terminal and to the first pair available to each unit in an MDU. He states AT&T's position on this issue:

> For MDU situations, AT&T believes that there should be a single point of interconnection for ALECs and that this single point of interconnection should be fully accessible by AT&T technicians. This single point would permit AT&T to have direct access to the end user customer, thus enabling us to provision service quickly, easily, and on equal footing with BellSouth. Furthermore, AT&T should have access to the first network terminating wire (NTW) when a customer is acquired in an MDU environment.

Witness Lindemann regards BellSouth's proposed "access" terminal as "unnecessary, inefficient, costly, and [believes] it discriminates against the ALECs." The witness believes that with BellSouth's "access" terminal, "there is absolutely no value added . . . and it imposes delay in the provisioning of service . . .." Witness Lindemann states that the overall access to BellSouth's customers that reside in high rise buildings or in garden style apartments "should be through one point." Witness Lindemann believes that BellSouth's proposal is a hindrance to AT&T and its effort to market and serve MDUs:

> Under BellSouth's proposal, only BellSouth has access to existing cross-connect blocks on which the inside wire terminates. If BellSouth has its way, provisioning an inside wire pair for an ALEC will require BellSouth to send out a technician to connect tie cable pairs between the existing wire cross connect block and the new access terminal and also remove its original jumper between the

> inside wire cross connect block and the BellSouth distribution facilities cross connect block. . . .
>
> First, the ALEC must pay BellSouth every time BellSouth sends a technician to provision an inside wire pair for an ALEC . . ..Second, unless the ALEC chooses to pre-wire inside wire pairs to all units, it will need to coordinate visits by its own technicians and a BellSouth technician to ensure that BellSouth has completed its work before the AT&T technician arrives, or else the service will not work . . . Finally, BellSouth's proposal does not include a network interface device (NID). Therefore, unless BellSouth provides access to the "first" pair (the pair connected to line 1 of the inside wire within a given unit), the ALEC must undertake the task of locating the "first" jack within the residential or business unit - the point at which BellSouth's facilities enter the unit. . . . [T]his is a significant task, and it would add significantly to the ALECs' costs.

The witness believes that AT&T would be subjected to unequal treatment compared with BellSouth.

> When BellSouth provisions service for one of its own retail MDU customers, it has no need to call out an ALEC technician, even if it is disconnecting ALEC service. . . . yet, its [BellSouth's] proposal would always require the presence of a BellSouth technician, at ALEC expense, when the ALEC provisions service.

The witness concedes, however, that AT&T could reduce its overall charges due for provisioning inside wire cable pairs for AT&T if it ordered "available" pairs to each unit in a building. If it does so, the witness believes that AT&T would be obligated to pay BellSouth a monthly charge for each pair, whether it has a customer for that pair or not. Witness Lindemann states:

> Either way, the ALEC's costs would be driven up without receiving any benefit, and thus ALECs would be placed at a competitive disadvantage to BellSouth. Moreover, because a significant proportion of AT&T's customers purchase two lines, obtaining only one pair per MDU unit

> would still require AT&T to pay BellSouth for dispatching a technician in many instances to install the second pair . . . Alternatively, the ALEC can choose to order inside wire only as it acquires customers, but then it must pay BellSouth every time (after the first time) BellSouth dispatches a technician to connect tie cable pairs to the new access terminal and remove existing BellSouth jumpers between the original BellSouth cross-connects. Again, the ALEC's expenses are increased dramatically, and particularly so in comparison to BellSouth's expenses.

The witness further believes that AT&T is at a competitive disadvantage if they must undertake the task of locating the "first" jack in a MDU, since this is not an activity BellSouth would undertake for itself. Locating the "first" jack and rewiring the inside of the customers' unit is unnecessary, states the witness, "if the ALEC can use the first pair to serve an MDU customer."

Regarding the subject of rates, witness Lindemann testified on this topic only under cross examination. The witness states that he is "not so much concerned about the monthly rates for the rental of the cable pairs." The witness denies knowledge of whether or not AT&T had proposed rates in this proceeding.

In its Brief, AT&T states that 47 C.F.R. §51.319(a)(2)(E) and the FCC's UNE Remand Order at ¶226 merit consideration in this matter. In the event that carriers are unable to negotiate a reconfigured single point of interconnection, ¶226 of the UNE Remand Order requires "the incumbent to construct a single point of interconnection that will be fully accessible and suitable for use by multiple carriers." AT&T therefore urges us to reject the BellSouth proposal, because they believe BellSouth's proposed "access" terminal is inconsistent with FCC rules and regulations.

Although we acknowledge that this proceeding is an arbitration between two companies, we believe that the MTU issue will affect more carriers than just BellSouth and AT&T. The implications of our decision in this issue may impact other ALECs who wish to compete in this segment of the marketplace.

As witness Milner pointed out, the MTU issue was before us in Docket No. 990149-TP, an arbitration between MediaOne and BellSouth. By and large, witness Milner states that the arguments in the two cases are substantially similar. We agree and note that the MediaOne/BellSouth proceeding, Order No. PSC-99-2009-FOF-TP, which was issued October 14, 1999, sets forth the foundation for discussion in this current docket. BellSouth witness Milner believes that the decision we render in this case should replicate the decision in the MediaOne docket:

> BellSouth believes the use of access terminals as ordered by this Commission [in the MediaOne case] gives ALECs the requested access to unbundled sub-loop elements while still maintaining network reliability and security in the case of both garden apartments and high rise buildings. Such access should apply to all sub-loop elements, including access to INC.

BellSouth witness Milner contends that AT&T is attempting to reargue the "access" terminal decision that came out of the MediaOne arbitration. We agree in part, but observe that the "first pair" aspect of this case differs from the former case because of BellSouth's stated willingness to offer the "first pair" to AT&T if it is not in use, which was not the case in the MediaOne arbitration.

BellSouth witness Milner states that the desired outcome in this issue should be to provide AT&T and other ALECs the unbundled access to the INC while preserving network reliability and security. We believe that BellSouth's proposed "access" terminal will serve the purpose of being a single point of interconnection for the networks of each company, as contemplated in FCC 99-238, the UNE Remand Order. Witness Milner for BellSouth agrees in principle.

AT&T, on the other hand, believes that the single point of interconnection contemplated in that FCC docket should not be an "intermediate" device. AT&T's witness Lindemann believes that his company's proposed resolution for this issue "will create parity among all local exchange carriers who serve MDU residents, without jeopardizing any customer's service."

DECISION

We, however, reach a different conclusion, for the reasons set forth in the following paragraphs. As witness Milner states, the use of the "access" terminal will enable AT&T to cross-connect its own facilities with the NTW or INC owned by BellSouth, and staff agrees. Witness Milner also notes that BellSouth's proposal in this docket is consistent with the outcome rendered in the MediaOne arbitration case.

Witness Lindemann regards BellSouth's proposed "access" terminal as "unnecessary, inefficient, costly, and [believes] it discriminates against the ALECs." We, however, are persuaded that BellSouth's recommended "access" terminal provides a measure of accountability for ALECs that may not otherwise exist if direct connections were permitted. We acknowledge that BellSouth's proposed "access" terminal adds another layer of connections to a given circuit, but believe that the benefit of increased control would contribute to the overall network reliability for all concerned, AT&T included.

In reference to AT&T's desire to have direct access to BellSouth's facilities, witness Milner states concern over the possible consequences, if permitted. He cites that a potential exists for AT&T's or other ALEC's technicians to intentionally or unintentionally disrupt BellSouth's or other ALECs' end user services. We acknowledge, however, that in any cross-connect setting, the same potential exists for human error that could lead to an unintended disruption. Nonetheless, we believe that the presence of an "ALEC-access terminal" will reduce the potential risk for BellSouth and for AT&T, since each company will have the ability to more adequately monitor the activities of their respective terminals.

As stated above, witness Milner is concerned with the maintenance of accurate cable inventory records. Once again, we believe that an "ALEC-access terminal" would benefit each company from the standpoint of records maintenance. As stated above, BellSouth's proposed terminal would allow the companies' to track the activities at their respective terminals. Thus, we believe that witness Milner's concern that the prospects of "allowing technicians from any and every ALEC in Florida to walk into an

equipment room in a high rise building and start appropriating pairs and facilities for its own use, without consulting with anyone" is mitigated.

Witness Lindemann believes that use of an "access" terminal imposes delays in the overall provisioning of service. We acknowledge this concern, and address it by finding that BellSouth be required to adhere to a provisioning timeframe for "access" terminals. Although AT&T did not advocate a specific provisioning time frame, typically, BellSouth should be required to provision the "access" terminal to AT&T within five calendar days, or in a mutually agreed upon alternative timeframe. In the event undue provisioning delays are experienced, AT&T may petition us for a review of the problem.

Witness Lindemann also expresses his concern about the costs for field dispatches and coordination issues with BellSouth and AT&T's field technicians. He characterizes BellSouth's proposal for an "access" terminal as an impediment to AT&T and its ability to serve customers in the MDU market, and believes that AT&T is "placed at a competitive disadvantage to BellSouth." Although the ALEC incurs certain costs for provisioning the inside wire cable pairs, we believe that the "access" terminal and the costs associated with it do not present an impediment to AT&T. Because AT&T has the freedom to elect how to go about incurring those provisioning costs. Witness Lindemann concedes that AT&T could reduce its overall charges due for provisioning inside wire cable pairs if it ordered "available" pairs to each unit in a building. If AT&T elects to approach provisioning under a "pay-as-you-go" format, that is a business decision that it has made; BellSouth did not require provisioning in that manner. Therefore, even with an "access" terminal, AT&T has provisioning options to pursue, and an "access" terminal will not place AT&T "at a competitive disadvantage to BellSouth," as witness Lindemann alleges.

Regarding the "first NTW pair" matter, witness Milner believes that this issue is settled, but nonetheless rebuts some statements of AT&T's witness Lindemann. We are uncertain what aspect of this matter AT&T still regards as "unresolved," particularly since BellSouth's witness states that, "BellSouth will allow AT&T access to any NTW pair including the so-called 'first' NTW pair, unless the end user will continue to receive service from BellSouth over

the first NTW pair." Therefore, the new interconnection agreement between these two parties should reflect clearly that BellSouth will continue to allow access to the so-called "first NTW pair," subject to the exception noted above.

In its brief, AT&T ties 47 C.F.R.§51.319(a)(2)(E) and ¶226 of the UNE Remand Order to bolster its case. Rule 47 C.F.R.§51.319(a)(2) states:

> (a) Local Loop and subloop. An incumbent LEC shall provide nondiscriminatory access, in accordance with §51.311 and section 251(c)(3) of the Act, to the local 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.
>
> (2) Subloop. The subloop network element is defined as any portion of the loop that is technically feasible to access at terminals in the incumbent LEC's outside plant, including inside wire. An accessible terminal is any 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. Such points may include, but are not limited to, the pole or pedestal, the network interface device, the minimum point of entry, the single point of interconnection, the main distribution frame, the remote terminal, and the feeder/distribution interface. The requirements in this section relating to subloops and inside wire are not effective until May 17, 2000.

In part, ¶226 of the UNE Remand Order required "the incumbent to construct a single point of interconnection that will be fully accessible and suitable for use by multiple carriers."

We interpret AT&T's argument to imply that it wants direct access to a single point of interconnection (terminal) and that an "intermediate" terminal potentially violates FCC rules. While these passages merit consideration, the proposed "ALEC-access terminal" is not inconsistent with either. BellSouth's proposed

terminal will provide the access that is the subject of 47 C.F.R.§51.319(a)(2)(E) and also ¶226 of the UNE Remand Order.

Lastly, regarding the matter of the appropriate rates, we note that AT&T did not offer any proposed rates in this proceeding. BellSouth witness Ruscilli did offer proposed rates, which AT&T did not rebut or challenge in any manner. Based on the fact that AT&T did not propose any rates, nor did it testify in any substantial manner about its own or BellSouth's proposed rates, the new interconnection agreement shall include the rates identified in Attachment JAR-1 in Exhibit 17.

F. UNBUNDLED LOCAL SWITCHING

The specific issue before us is whether the aggregation of lines provided to multiple locations of a single customer is allowable in determining whether BellSouth must offer unbundled local switching as a UNE. Traditionally, alternative switching providers are likely to be located in the Density Zone 1 areas in Florida, which include the Miami, Orlando, and Ft. Lauderdale Metropolitan Statistical Areas (MSAs).

ARGUMENTS

BellSouth witness Ruscilli states that this issue concerns the application of FCC Rule 51.319(c)(2) regarding the exception for unbundling local circuit switching. The witness states:

> the specific dispute that this Commission must address involves the question of whether the four lines identified in the applicable FCC rule have to all be located at the same premises, or whether it is sufficient that the customer has four or more lines located anywhere in the . . . MSA. AT&T's position is that all the lines have to be located at the same premises. BellSouth's position is that the availability of Enhanced Extended Links (EELs) renders the actual geographic location of the customers lines, as long as the lines are within the same MSA, irrelevant.

Witness Ruscilli believes that BellSouth's willingness to offer EELs in those top 50 MSAs is significant in considering this issue.

In support of BellSouth's position, witness Ruscilli states that "[r]egardless of where the customer's individual lines are located, AT&T can use the EELs to connect the customers to AT&T's switch."

Witness Ruscilli testifies that this issue revolves around the interpretation of portions of FCC Rule 51.319. Specifically, Rule 51.319(c)(2) provides:

> Notwithstanding the incumbent LEC's general duty to unbundle local circuit switching, an incumbent LEC shall not be required to unbundle local circuit switching for requesting telecommunications carriers when the requesting telecommunications carrier serves end-users with four or more voice grade (DS0) equivalents or lines, provided that the incumbent LEC provides non-discriminatory access to combinations of unbundled loops and transport (also known as the "Enhanced Extended Link") throughout Density Zone 1, and the incumbent LEC's local circuit switches are located in:
>
> (i) The top 50 Metropolitan Statistical Areas as set forth in Appendix B of the Third Report and Order and Fourth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, and
>
> (ii) In Density Zone 1, as defined in §69.123 of this chapter on January 1, 1999.

The witness explains that the FCC used a four-line cut-off to distinguish between the mass market and the medium-to-large business market. In its brief, BellSouth states that the FCC determined that a customer with four or more lines was not a "mass market" customer and that alternatives exist to serve such customers. BellSouth witness Ruscilli contends that ¶294 from the UNE Remand Order demonstrates the FCC's logic, which states,

> We recognize that a rule that removes unbundling obligations based on line count will be marginally overinclusive or underinclusive given individual factual circumstances. We find, however, that in our expert judgement, a rule that distinguishes customers with four

> allow BellSouth to avail itself of the switching exemption.

AT&T witness Follensbee agrees that the interpretation of FCC Rule 51.319(c)(2) is key to this issue. He states that BellSouth's interpretation of the applicable FCC rule is "unreasonable," and that their proposal "impedes competition." Although the witness concedes that language in Rule 51.319(c)(2) contains the four-line limit, he states that AT&T is asking that

> [t]his Commission order that any local line limitation that applies to the use of local switching in the three specific MSAs in Florida apply to each physical location where AT&T orders local switching from BellSouth, and not to a specific customer with multiple locations on the same bill.

Witness Follensbee further states that AT&T does not agree with the four-line limit, and has requested the FCC clarify and amend its decision pertaining to local circuit switching. AT&T believes that an 8-line limit would be a more appropriate threshold, but allows that for the purposes of this arbitration, it will agree to the four-line limit in FCC Rule 51.319(c)(2).

With respect to aggregating lines within an MSA, witness Follensbee disputes BellSouth's view of FCC Rule 51.319(c)(2), stating that BellSouth's interpretation "just makes no sense." Given BellSouth's position of aggregating the lines and restricting the provision of unbundled switching, AT&T believes it would have the following three options for serving a given customer:

> Don't serve the customer because you just can't offer a competitive offering; make use of market-based rates if BellSouth is willing to give those to us. And, again, that is not something they would have to do, we would hope that they would; or you may make use of the extended enhanced link.

Regarding the FCC rule and the prospect of aggregating the line counts, the witness contends "[w]e are taking the position that we believe the FCC intended [it] to mean a physical location."

The witness states that under BellSouth's proposed language, line counts would be aggregated for a single customer that receives one bill, even if his actual service is provisioned to multiple locations across the MSA. He offers the following example to demonstrate:

> [s]uppose a customer that has a chain of stores in Orlando only has two lines at each store. Further, suppose that there are 20 such stores, but no two stores are served from the same BellSouth local switch. However, for the purposes of managing his . . . bill, the customer currently has billing for all 20 stores going to one location . . .. BellSouth's position is that since the total number of lines is more than 3 (actually in this case it would be 40), then AT&T would have to provide service to each of the 20 locations using something other than UNE-P.

Witness Follensbee concludes by suggesting that an example such as this is clearly "not what the FCC had in mind when it reached the decision that an ALEC could economically serve this customer using its own switch and either stand-alone loops or a loop/transport combination." Finally, he states:

> AT&T believes the FCC rule was intended to apply only when more than three lines were being served from the same local switch. BellSouth, on the other hand, wants to prohibit ALECs from using its local switch to serve any customer who purchases over three lines from BellSouth, no matter where those lines are actually provisioned.

Witness Follensbee concludes AT&T's argument by stating that BellSouth's restriction is anti-competitive and should be rejected.

DECISION

The crux of this issue can be reduced to discerning the FCC's intent in promulgating this rule. In general terms, the argument is whether the FCC intended for the rule to apply on a per-customer basis as BellSouth supports, or on a per-location basis as AT&T asserts. Although AT&T acknowledges that it has sought

clarification from the FCC, we are faced with evaluating the current status of the rule interpretation, just as the parties are.

We find merit in BellSouth witness Ruscilli's statements that the willingness to offer EELs in the top 50 MSAs is significant in considering this issue. We agree, as well, that BellSouth's position concerning the availability of EELs renders the actual geographic location of the customer's lines irrelevant, as long as the lines are within the same MSA. The question of whether or not the line counts should be aggregated is a natural extension of this matter as well. While FCC Rule 51.319(c)(2) is silent on answering this specific concern in a direct fashion, we believe that the FCC's intent was to have the rule apply on the "per-location-within the MSA" basis that AT&T supported. Absent a more definitive statement or clarification from the FCC, we believe that this is the preferred finding.

Though not explicitly stated, BellSouth may be willing to offer market-based rates for unbundled switching, based upon the following cross-examination segment with witness Follensbee:

> Q: And what that means is that if AT&T in those offices, assuming BellSouth meets the conditions, if AT&T wants unbundled switching, it either has to buy it from BellSouth at a market rate or it has got to buy it from one of the other competitors who have switches in that area, right?
>
> A: Or provide it itself, yes, sir.

Witness Follensbee's affirmative answer to this question indicates that he acknowledges that AT&T does, in fact, have the option of purchasing market-based switching, whether from BellSouth or from an alternative provider. While AT&T argues that unbundled local circuit switching should be at cost-based UNE rates, FCC Rule 51.319(c)(2) is sufficiently clear in that regard. BellSouth has more than met its obligations under the rule by making EELs and market-based rates available. Therefore, an additional concern of AT&T's may be addressed, since BellSouth indicates a willingness to offer market-based rates for unbundled switching.

AT&T's final concern of whether or not it can provide a competitive offering is not a factor that BellSouth can influence. However, BellSouth's decision to provision EELs in these MSAs in Florida and our presumption that BellSouth would also offer unbundled local switching at market-based rates mitigate witness Follensbee's assertion that BellSouth's proposal "impedes competition" or is "anti-competitive."

Therefore, we find that BellSouth will be allowed to aggregate lines provided to multiple locations of a single customer, within the same MSA, to restrict AT&T's ability to purchase local circuit switching at UNE rates to serve any of the lines of that customer.

G. TANDEM SWITCHING

The issue presented before us for resolution is whether AT&T should be permitted to charge BellSouth the end office and tandem switching rates for reciprocal compensation when AT&T's switch serves a geographic area comparable to that served by BellSouth's tandem switch. The Act establishes reciprocal compensation as the "mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier." More specifically, at issue is the application of symmetrical reciprocal compensation. In 47 C.F.R. 51.711 (Rule 51.711), the FCC established that reciprocal compensation rates shall be symmetrical, based upon the ILEC's costs. Rule 51.711(a)(1) states:

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

ARGUMENTS

The dispute between the parties revolves around the application of symmetrical compensation at the tandem rate, and the differing interpretations of Rule 51.711 in that regard. AT&T

witness Follensbee states that "[T]he FCC recognizes that there is parity between a competitive carrier's end office switch and an ILEC tandem switch." In support of his claim, witness Follensbee cites Rule 51.711(a)(3), which states:

> Where the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate.

Witness Follensbee requests that we order BellSouth to pay AT&T reciprocal compensation at BellSouth's tandem rate for the termination of local traffic at any of AT&T's switches. The record defines the "tandem rate" as consisting of both the end office switching rate and the tandem switching rate. He asserts that "AT&T is justified in its request because the geographic area covered by each switch is comparable to the area covered by BellSouth's tandem switches." As evidence of this, AT&T has presented maps depicting the coverage scope of AT&T's switches in comparison to the coverage areas of BellSouth's tandems.

BellSouth witness Ruscilli disagrees with AT&T's interpretation of Rule 51.711, contending that "AT&T wants this Commission to ignore Rule 51.711(a)(1), which established the functionality requirement and to concentrate solely on Rule 51.711(a)(3)." Witness Ruscilli argues that the FCC established two requirements that must be met before an ALEC is entitled to the tandem rate. He maintains that the FCC established a functionality requirement in 51.711(a)(1), when it stated that symmetrical rates are assessed by an ALEC upon the ILEC for "the same services." The FCC then established the geographic coverage requirement in 51.711(a)(3), as cited above.

To further illustrate his "two-prong" interpretation of Rule 51.711, witness Ruscilli cites the related discussion in the FCC's First Report and Order in CC Docket No. 96-98, released August 8, 1996 (FCC 96-325). FCC 96-325 states in ¶1090:

> We find that the "additional costs" incurred by a LEC when transporting and terminating a call that originated on a competing carrier's network are likely to vary

> depending on whether tandem switching is involved. We, therefore, conclude that states may establish transport and termination rates in the arbitration process that vary according to whether the traffic is routed through a tandem switch or directly to the end-office switch. In such event, states shall also consider whether new technologies (e.g., fiber ring or wireless networks) perform functions similar to those performed by an incumbent LEC's tandem switch and thus, whether some or all calls terminating on the new entrant's network should be priced the same as the sum of transport and termination via the incumbent LEC's tandem switch. Where the interconnecting carrier's switch serves a geographic area comparable to that served by the incumbent LEC's tandem switch, the appropriate proxy for the interconnecting carrier's additional costs is the LEC tandem interconnection rate.

Witness Ruscilli states that while establishing symmetrical compensation, the FCC recognized that an ALEC might not use the same network architecture as an ILEC. He contends that "[I]n order to insure that an ALEC would receive the equivalent of a tandem switching rate if it were warranted, the FCC directed state commissions to do two things." (emphasis in original) Witness Ruscilli contends that state commissions are first to consider whether new technologies perform functions similar to those performed by an ILEC's tandem switch, and second, to determine if the ALEC's switch serves a geographic area comparable to that served by the ILEC's tandem. He asserts that:

> the FCC posed two requirements that must be met before an ALEC would be entitled to compensation at both the end office and the tandem switching rate, as opposed to only the end office rate, for any particular local call. The tandem switch involved has to serve a comparable geographic area, and it has to perform the tandem switching function for the local call for which compensation is sought. (emphasis in original)

Witness Ruscilli states that various court decisions support BellSouth's contention that the FCC has established a two-part test to determine if an ALEC is entitled to the tandem rate. He cites

the decision in MCI Telecommunications Corp. v. Illinois Bell Telephone, 1999 U.S. Dist LEXIS 11418 (N.D. Ill. June 22, 1999), where the court stated:

> In deciding whether MCI was entitled to the tandem interconnection rate, the ICC applied a test promulgated by the FCC to determine whether MCI's single switch in Bensonville, Illinois, performed functions similar to, and served a geographical area comparable with, an Ameritech tandem switch.[9] (emphasis added by witness)
>
> [9]MCI contends the Supreme Court's decision in IUB affects resolution of the tandem interconnection rate dispute. It does not. IUB upheld the FCC's pricing regulations, including the 'functionality/geography' test. 119 S. Ct. at 733. MCI admits that the ICC used this test. (Pl. Br. at 24.) Nevertheless, in its supplemental brief, MCI recharacterizes its attack on the ICC decision, contending the ICC applied the wrong test. (Pl. Supp. Br. At 7-8.) But there is no real dispute that the ICC applied the functionality/geography test; the dispute centers around whether the ICC reached the proper conclusion under that test. (emphasis added by witness)

Witness Ruscilli states that the Ninth Circuit Court of Appeals, in U.S. West Communications v. MFS Intelenet, Inc. et. al, 193 F. 3d 1112, 1124, viewed the rule the same way, finding that "[t]he Commission properly considered whether MFS's switch performs similar functions and serves a geographic area comparable to US West's tandem switch." He also cites the United States District Court in Minnesota, in U.S. West Communications, Inc. v. Minnesota Public Utilities Commission, 55 F. Supp. 2d 968, 977 (D. Minn. 1999), where the court stated that "it is appropriate to look at both the function and geographic scope of the switch at issue." (emphasis added by witness)

Witness Ruscilli contends that BellSouth does not agree that AT&T's switches serve comparable geographic areas or perform similar functions to BellSouth's local tandem switches. He states that AT&T should only be compensated for functions it provides.

Describing the tandem switching function, witness Ruscilli cites Rule 51.319(c)(3), which states:

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

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

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

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

Witness Ruscilli argues that for AT&T's switches to comply with the FCC's definition of tandem switching, they must "connect trunks terminated in one end office switch to trunks terminated in another end office switch." In other words, they must perform an intermediate switching function. However, witness Ruscilli asserts, "AT&T's switch connects trunks to end user's lines, and does not connect trunks to trunks."

AT&T witness Follensbee argues that "AT&T's network provides similar - not exact, but similar tandem functions to BellSouth's local tandem switches." He states that AT&T's switches act as access tandems routing the preponderance of interLATA traffic directly to interexchange carriers. In addition, witness Follensbee explains that for intraLATA calls "AT&T has direct trunking to each BellSouth tandem in the LATA so that such traffic may be completed without transiting multiple AT&T switches or multiple BellSouth tandems. In other words, AT&T uses its switches in the same functional manner that BellSouth uses its tandem switches." He contends that while BellSouth employs two switches to perform the functions of tandem switching, AT&T's switches perform all of those functions within the same switch.

BellSouth witness Ruscilli disagrees. He argues that whether AT&T's switches perform an access tandem function is not relevant to the issue at hand. He contends that since reciprocal

compensation is due only for local traffic, to qualify for the tandem rate AT&T's switch must be performing the tandem switching function to transport local calls. Witness Ruscilli argues that AT&T's own description of completing calls without transiting multiple AT&T switches demonstrates that AT&T's switch is functioning only as an end office switch. He states that "as evidenced by Mr. Talbott's testimony, there is no intermediate switch on AT&T's network for local calls, so AT&T can't be incurring tandem switching costs." Witness Ruscilli explains:

> BellSouth proposes to bill AT&T for use of a tandem only when BellSouth incurs the cost of tandem switching on a particular local call. Further, BellSouth proposes to pay AT&T the tandem switching rate only when AT&T incurs the cost of tandem switching on a particular local call. To incur this cost, AT&T must provide the functionality of a tandem switch, as opposed to an end office switch, and AT&T must be serving a geographic area comparable to a BellSouth tandem. However, AT&T wants to charge BellSouth for tandem switching on every local call, regardless of whether AT&T incurs the cost.

AT&T witness Follensbee argues that the plain language of Rule 51.711(a)(3) contains no requirement that an ALEC's network actually has a tandem switch or performs an intermediate switching function in order to receive the tandem rate. He states that "any other conclusion would be illogical." Witness Follensbee argues that under Mr. Ruscilli's interpretation of Rule 51.711, the FCC intended to make it more difficult for an ALEC to qualify for the tandem rate than it is for an ILEC to qualify. He explains:

> Under Mr. Ruscilli's interpretation, BellSouth must merely provide tandem switching, but an ALEC must pass a two part test: first, it must actually provide the identical tandem switching functionality provided by the ILEC and the ALEC switch must also serve a geographic area comparable to the area served by the incumbent LEC's tandem switch. This is illogical as well as anticompetitive.

Witness Follensbee argues that the FCC did not intend to hold an ALEC to a higher standard in order to qualify for the tandem rate.

Referring to ¶1090 of FCC 96-325, he states that the FCC's own comments demonstrate their intent when they commented that "states shall also consider whether new technologies (e.g. fiber ring or wireless networks) perform functions similar to those performed by an incumbent LEC's tandem switch." (emphasis added by witness) Witness Follensbee argues that the FCC did not establish an additional test for ALECs, but an alternative by which an ALEC may qualify for a proxy of its additional costs. He asserts that actual local tandem functionality is not a requirement for an ALEC to receive the tandem rate.

Witness Follensbee states that "[I]t is important to note that AT&T's reliance on the FCC's proxy rule for compensating ALECs for reciprocal compensation is in lieu of making an individual cost showing [sic] that AT&T's costs are in fact higher than BellSouth's rate, and thus should be compensated at a higher rate than BellSouth." Referring to Rule 51.711 under cross examination, witness Follensbee explained:

> I mean, clearly that is what the FCC was trying to do in crafting Section A as opposed to what they did in Section B, was it gave the ALECs a choice. In the Section B part of the rule an ALEC could bring in its own forward-looking cost study to demonstrate what its costs were in which case you could end up with asymmetrical rates being charged. Or in lieu of that, it simply could adopt the rates established for the incumbent which in that case you will end up with symmetrical rates.
>
> And the whole idea of the second part was to avoid having an ALEC having to go to the expense of preparing cost studies of what its own network costs would be. And in lieu of that the symmetrical rates are supposed to be a proxy or an approximation to the best of the FCC's knowledge at the time they rendered that decision.

Witness Follensbee states that if this Commission concludes that the FCC rule is a proxy for AT&T's additional costs in terminating traffic originated by BellSouth, then we must disregard tandem functionality in determining if AT&T is entitled to the tandem rate. In that case, we would consider if AT&T's switch serves a comparable geographic area to that served by BellSouth's

tandem switch. As mentioned above, AT&T has presented maps depicting the scope of AT&T's and TCG's switches compared to the service area of BellSouth's tandem switches as evidence that its switches serve comparable geographic areas. Witness Follensbee contends that AT&T has the ability to connect virtually any qualifying local exchange customer in Florida to one of the switches portrayed in the maps through AT&T's dedicated access services. In addition, he states that TCG is able to connect virtually any customer in a LATA to the TCG switch serving that LATA through either TCG's own network, UNE loops, or dedicated facilities.

Responding to AT&T's maps, BellSouth witness Ruscilli argues that AT&T has failed to satisfy its burden of proof regarding geographic coverage. He states:

> Of course, it is a very simple matter to color in areas on a map and to claim that these areas are "covered" by switches. However, in order to establish that AT&T's switches actually serve a geographic area comparable to that served by the incumbent local exchange carrier's tandem switches, AT&T must show the particular geographic area it serves, not the geographic area that its switches can serve. (emphasis in original)

Witness Ruscilli contends that AT&T must provide information showing the location of its customers and how they are actually being served by its switches. He asserts that AT&T has offered no evidence that demonstrates that its switches actually serve areas comparable to BellSouth's tandem switches.

Witness Ruscilli argues that because AT&T's switches can serve comparable geographic areas, AT&T wants to be compensated at the tandem rate for every call, regardless of whether the tandem function is performed in terminating a call. (emphasis added by witness) He contends that BellSouth charges AT&T reciprocal compensation based upon the parts of BellSouth's network utilized in terminating a call: end office switching, transport, and tandem switching when employed. However, AT&T utilizes only one switch and provides no interoffice transport. In spite of this, witness Ruscilli argues, AT&T claims to be entitled to compensation at the tandem switching rate for every call.

In addition, witness Ruscilli contends that the tandem switching rate recovers the cost of performing those functions. If an ALEC is not performing those functions, it would simply be receiving a windfall at the tandem rate. He asserts that "[T]he end office rate for transport and termination fully compensates AT&T for the functions its end office switches perform." However, under cross examination regarding the possibility of AT&T charging the tandem rate for terminating calls that would not be routed through a BellSouth tandem if terminated by BellSouth, AT&T witness Follensbee explains:

> In some cases we are underrecovering our costs, in some cases we may be overrecovering our costs, but on balance we are hopeful we are recovering our costs. That, we believe, is what the FCC intended when they set up the rules and they used the language to describe it in their First Order and Report.
>
> . . .
>
> . . . the intent of what we are charging is to approximate the costs we incur rather than having to file our own cost study which very well may justify charging higher rates than the rates that we are using which are the rates established for you. That is an option AT&T has.

BellSouth witness Ruscilli cites several of our Orders in support of BellSouth's position on this issue. Regarding functionality, witness Ruscilli cites Order No. PSC-97-0294-FOF-TP, issued March 14, 1997, in which we stated at pages 10-11:

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

> entitled to compensation for transport and tandem switching unless it actually performs each function.

Similarly, witness Ruscilli cites Order No. PSC-96-1532-FOF-TP, issued December 16, 1996, in which we stated at page 4:

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

Regarding the matter of comparable geographic coverage, witness Ruscilli cites Order No. PSC-00-1519-FOF-TP, issued August 22, 2000, in Docket No. 991854-TP (BellSouth/Intermedia Arbitration), in which we found that Intermedia had failed to satisfy its burden of proof regarding functionality or geographic area. Specifically, we found that although the maps submitted by Intermedia indicate that Intermedia has established local calling areas comparable to BellSouth's, the Commission was unable to determine if Intermedia's switch actually serves those areas. Witness Ruscilli also cites Order No. PSC-00-0128-FOF-TP, issued January 14, 2000, in Docket No. 990691-TP (BellSouth/ICG Arbitration), in which we found that the evidence in the record was insufficient to determine if ICG's network would fulfill the geographic criterion.

Witness Ruscilli states that he does not suggest the Commission base its decision in this arbitration upon previous decisions in previous arbitrations. He states that any decision in this proceeding should be based upon how AT&T's network handles a given call. In addition, witness Ruscilli does not dispute AT&T's right to compensation at the tandem rate when the facts support it. He explains:

> However, in this proceeding, AT&T is seeking a decision that allows it to be compensated for the cost of equipment it does not own and for functionality it does

> not provide. Absent real evidence that AT&T's switches actually serve a geographic area comparable to BellSouth's tandems, and absent evidence that AT&T's switches actually perform tandem switching functions for local traffic, BellSouth requests that this Commission determine that AT&T is only entitled, where it provides local switching, to the end office switching rate.

AT&T witness Follensbee contends that AT&T has not only met the geographic requirements of Rule 51.711, but has also met BellSouth's proposed higher standard by virtue of its investment in plant and deployment of network architecture comprised of components comparable to BellSouth's. As a result, the witness argues that we should conclude that AT&T is entitled to the tandem rate when terminating traffic originated by BellSouth.

DECISION

Approaching the issue of symmetrical reciprocal compensation, we recognize that there is an inherent problem in taking a rate structure designed for one network architecture, and applying it to a different network architecture. Nevertheless, we are left with the task of determining the appropriate application of the FCC's rules in this regard. Specifically, we must examine and apply Rule 51.711 to the issue at hand. Of course, the parties to this proceeding have widely varying interpretations of this particular rule. AT&T contends that Rule 51.711(a)(3) provides clear instruction, stating that comparable geographic coverage is the only consideration in establishing symmetrical reciprocal compensation at the tandem rate. On the other hand, BellSouth argues that Rule 51.711(a)(1) establishes the first of a two-pronged approach in establishing rates. The first prong is similar functionality, or providing the "same services," and the second is geographic coverage, as outlined in Rule 51.711(a)(3).

On its face, we find no clear guidance as to the appropriate interpretation of Rule 51.711. As a result, it is appropriate to examine the related discussion in ¶¶1085-1093 of FCC 96-325. Within this discussion the FCC provides several reasons for establishing symmetrical compensation rates based upon the ILEC's forward-looking costs, including: larger LECs are in a better position to conduct economic cost studies (¶1085); it gives

incentive to competing carriers to reduce costs since their rates are not based upon their costs (¶1086); they reduce an ILEC's ability to use its bargaining strength(¶1087); they are administratively easier than asymmetric rates (¶1088); and they avoid the need for small businesses to conduct cost studies (¶1088). That being the case, the FCC determined that states shall establish presumptive symmetrical rates based on the ILEC's costs for transport and termination of traffic (¶1089). The only exception provided by the FCC in establishing symmetrical rates is when an ALEC believes its costs will be higher than that of the ILEC. In such case, the ALEC shall provide cost studies showing that the cost of efficiently configured and operated systems are not symmetrical and justify a different compensation rate (¶1089 and ¶1091; Rule 51.711(b)).

The FCC's discussion that directly relates to the rules in dispute is contained within ¶1090. As cited above, in this paragraph the FCC approached the issue of applying symmetrical rates to different network architectures, to a limited extent. The FCC noted that "additional costs" incurred by the ILEC may vary depending upon whether traffic is terminated through a tandem switch. In that case, states may establish rates that vary depending upon whether a tandem switch is utilized. At this point in the discussion the FCC addresses the application of symmetrical rates for tandem switching to ALEC networks. Its actions indicate the FCC recognized that new entrants would not necessarily utilize tandem switches in their networks. So, in an effort to maintain symmetrical rates, they set out to establish conditions under which an ALEC would be entitled to charge this higher rate based on similar functionality or, possibly, geographic coverage.

First, the FCC instructed states to consider whether new technologies, such as fiber ring or wireless networks, perform functions similar to those performed by an ILEC tandem switch. (¶1090) In such a case, states may consider whether some or all calls terminated on the new entrant's network should be priced the same as traffic terminated via an ILEC tandem switch. This is a logical approach to applying symmetrical rates at the tandem level to a network that would not necessarily utilize a separate tandem switch.

Second, the FCC states that "[w]here the interconnecting carrier's switch serves a geographic area comparable to that served by the incumbent LEC's tandem switch, the appropriate proxy for the interconnecting carrier's additional costs is the LEC tandem interconnection rate." At first glance, this criterion established by the FCC appears somewhat obscure, without supporting discussion. However, ¶1085, which contains the only other mention of this phrase, gives some clarification as to why "geographic area" may entitle an ALEC to the tandem rate. In this latter paragraph the FCC states that "[b]oth the incumbent LEC and the interconnecting carriers usually will be providing service in the same geographic area, so the forward-looking economic costs should be similar in most cases." Id. In that same paragraph, the FCC states that "using the incumbent LEC's forward-looking costs for transport and termination of traffic as a proxy for the costs incurred by interconnecting carriers satisfies the requirement of section 252(d)(2) that costs be determined 'on the basis of a reasonable approximation of the additional costs of terminating such calls.'" Id. The FCC may have created this "geographic area" criterion under the assumption that two carriers serving the same area would incur similar costs overall. Therefore, the ILEC's tandem switching costs might be a reasonable approximation of the ALEC's additional costs when its switch serves a comparable geographic area, especially when the single switch network of a new entrant could conceivably serve a geographic area considerably larger than an ILEC end office.

As discussed in the above analysis, there appear to be two criteria presented by the FCC in ¶1090, by which a state commission may establish symmetrical rates at the ILEC tandem level. There seems to be no dispute among the parties regarding this. However, the parties disagree vehemently on how these two criteria are to be applied. BellSouth maintains that the Commission must consider both criteria in determining if AT&T is entitled to the tandem rate. In other words, AT&T's switch must perform a similar function and serve a comparable geographic area. BellSouth witness Ruscilli, referring to Rule 51.711, contends that Section (a)(1) establishes the functionality requirement by stating that symmetrical rates are assessed for providing the same services. He holds that Section (a)(3) then establishes the geographic coverage requirement.

Witness Ruscilli presents a compelling argument, especially in citing past decisions in which we found that companies could not receive compensation for network functions they did not perform. However, these past decisions were based upon the record in those proceedings, and are not dispositive of this issue in this proceeding. As witness Ruscilli concedes, "BellSouth does not suggest that the Commission should find that AT&T does not qualify for the tandem rate simply because other ALECs' similar requests have been rejected by the Commission."

Witness Ruscilli also cites several court decisions in support of his two-prong functionality/geography test. While this too is compelling evidence, these court decisions do not provide unequivocal support for BellSouth's position that an ALEC must meet both conditions to obtain the tandem rate. In MCI Telecommunications Corp. v. Illinois Bell Telephone, 1999 U.S. Dist LEXIS 11418 (N.D. Ill. June 22, 1999), the District Court found that "[t]he ICC did not make express findings regarding the comparable functions of MCI's switch and Ameritech's switches or the comparative geographical areas served by the various switches. However, the ICC did discuss the evidence offered by each party on these issues, and concluded from the 'totality of the evidence' that MCI had failed to establish it was entitled to the tandem interconnection rate." In this decision, the court did not state that an ALEC must meet both conditions, but merely decided that the ICC's decision "was not arbitrary and capricious." In U.S. West Communications, Inc. v. Minnesota Public Utilities Commission, 55F. Supp. 2d 968, 977 (D. Minn. 1999), the United States District Court did say that it was appropriate to look at both the function and geographic scope of the switch at issue, but it did not say that an ALEC must meet both standards. On the contrary, the court stated that "[t]he evidence also indicates that the MSC covers a geographic area comparable to that covered by a tandem switch. Pursuant to the FCC rules, this alone provides sufficient grounds for a finding that the appropriate rate for MSC is the tandem switch rate."

Finally, regarding the Ninth Circuit Court of Appeals decision in U.S. West Communications v. MFS Intelenet, Inc. et. al, 193 F. 3d 1112, 1124, this court also did not state that both conditions must be met. The court found that the commission decision was not arbitrary or capricious when considering if the MFS switch performs

similar functions and serves a geographic area comparable to U.S. West's tandem switch. At best, the above mentioned decisions state that it is appropriate to examine both criteria, but not necessarily that both must be met.

The most persuasive argument presented in the record actually addresses the FCC's intent in formulating the rules in question. AT&T witness Follensbee states:

> . . . [T]o reach Mr. Ruscilli's interpretation of Rule 51.711(a)(3), the FCC actually intended to make it more difficult for an ALEC to qualify for the tandem interconnection rate than an ILEC. Under Mr. Ruscilli's interpretation, BellSouth must merely provide tandem switching, but an ALEC must pass a two part test: first, it must actually provide the identical tandem switching functionality provided by the ILEC and the ALEC switch must also serve a geographic area comparable to the area served by the incumbent LEC's tandem switch. This is illogical as well as anticompetitive.

Examining Rule 51.711, and the related discussion in FCC 96-325, we find it hard to believe that the FCC would intend to require a higher standard for new entrants to receive the tandem rate. As stated by the FCC:

> Symmetrical compensation rates are also administratively easier to derive and manage than asymmetrical rates based on the costs of each of the respective carriers. In addition, we believe that using the incumbent LEC's cost studies to establish the presumptive symmetrical rates will establish reasonable opportunities for local competition, including opportunities for small telecommunications companies entering the local exchange market.

The intent of the FCC in formulating these rules was to encourage competition by making it easier for new entrants to enter the market and do business. Therefore, placing a higher standard for ALECs to receive the tandem rate would not necessarily track with the FCC's objective in framing these rules.

BellSouth witness Ruscilli raises a compelling point when he states that the tandem rate recovers the cost of tandem switching, and if an ALEC is not performing that function it would be receiving a windfall. However, AT&T witness Follensbee states that "[i]n some cases we are underrecovering our costs, in some cases we may be overrecovering our costs, but on the balance we are hopeful we are recovering our costs." We believe this outcome may be reasonable in an environment where symmetrical rates based upon the ILEC's costs are applied to an ALEC. As stated by the FCC, "using the incumbent LEC's forward-looking costs for transport and termination of traffic as a proxy for the costs incurred by interconnecting carriers satisfies the requirement of section 252(d)(2) that costs be determined 'on the basis of a reasonable approximation of the additional costs of terminating such calls.'" (emphasis added)

Although the evidence in the record may indicate that from a policy perspective we should examine both functionality and geographic coverage to determine if an ALEC satisfies one or both of the criteria, the practical question of whether AT&T does in fact meet one or both criteria is left to be evaluated. While AT&T does not base its claim of being entitled to the tandem rate upon functionality, it does contend that "each AT&T and TCG switch performs certain tandem functions for the respective AT&T entity." However, we agree with BellSouth witness Ruscilli that a tandem switch connects trunks to trunks, as an intermediate switch between two end office switches. The evidence in the record shows that AT&T's switches do not connect trunks to trunks, but instead connect trunks to end users' lines. As such, AT&T fails to meet the criterion of similar functionality.

With regards to serving a comparable geographic area, AT&T has presented maps depicting the coverage scope of AT&T's switches. To date no specific standard or test has been established by this Commission for determining if the geographic coverage criterion is met. AT&T proposes a test by which these maps would prove that their switches serve comparable geographic areas. On the surface, these maps appear to offer compelling evidence that AT&T's switches cover geographic areas comparable to those served by BellSouth's tandem switches. However, Rule 51.711(a)(3) states that where an ALEC's switch "serves" a comparable geographic area, the ILEC's

tandem rate is the appropriate rate to apply to the ALEC's switch. BellSouth witness Ruscilli states:

> in order to establish that AT&T's switches actually serve a geographic area comparable to that served by the incumbent local exchange carrier's tandem switches, AT&T must show the particular geographic area it serves, not the geographic area that its switches can serve. (emphasis in original)

In affirming geographic coverage as a determinant in establishing reciprocal compensation rates at the tandem level, presumably the FCC expected an ALEC to be incurring costs related to serving actual customers in that geographic area. While AT&T's maps show the geographic areas AT&T is willing to serve, they do not provide enough information to enable us to make a reasonable determination as to whether AT&T's switches do in fact serve customers in those areas.

Based upon the record in this proceeding, we find that AT&T is not entitled to the tandem rate for the purposes of reciprocal compensation. Although the evidence in the record may indicate that geographic coverage alone may determine eligibility for the tandem rate, AT&T has failed to show that it meets this criterion. Therefore, any policy decision regarding the functionality/geography test is better left to the Commission's generic docket on this issue.

H. "CONDOMINIUM ARRANGEMENT" AND COLLOCATION CROSS-CONNECTS

There are two matters under consideration in this issue. The primary matter involves provisioning of cross-connects to AT&T, in lieu of collocation, in the six central office buildings in Florida that the parties' jointly own. The secondary issue concerns AT&T's proposed provisioning of cross-connects to other ALECs in lieu of collocation.

ARGUMENTS

BellSouth witness Milner acknowledges that the "condominium arrangement" between BellSouth and AT&T exists in six facilities in

Florida, and that it was brought on by AT&T's divestiture of certain assets in 1984. The witness believes that the divestiture brought about documents (agreement clauses) which state that the two companies could no longer jointly own equipment, but that they could jointly use certain facilities, including buildings. The witness clarifies, however, that even though BellSouth and AT&T may jointly use a building and the two companies' respective parts of the building may adjoin each other, AT&T's part of the building is not a part of BellSouth's premises.

BellSouth witness Milner believes that AT&T should be required to collocate in the BellSouth central office, and not "have a form of interconnection that other ALECs cannot enjoy." He states that what AT&T seeks to do is to directly connect its network to BellSouth's network via cross connects. However, witness Milner firmly believes that AT&T should not be permitted to do this, and argues that all ALECs should have the same form of interconnection. In this arbitration issue, witness Milner believes AT&T is requesting a new form of interconnection which only it can use, since it is the only company which has this unique "condominium arrangement" situation with BellSouth. The witness states:

> AT&T simply wishes to take advantage of its former corporate ownership of BellSouth. BellSouth's agreement to AT&T's terms would cause BellSouth to provide AT&T with more favorable treatment than to other local service providers.

BellSouth bases its position on the principle of fairness to all ALECs. BellSouth believes that AT&T is seeking an advantage over other competitors, and further believes that it would be unfair to allow AT&T to have direct connections to its network, even though the two companies may actually share the same building in some situations. The witness states:

> . . . [In] all forms of interconnection that we provide, we must provide [them] in a nondiscriminatory fashion . . . Offering you one form that I cannot offer to another [ALEC] to me appears to be discriminatory.

Witness Milner believes that recent federal actions have impacted this issue:

> The recent decision by the United States Court of Appeals for the District of Columbia Circuit . . . addressed the issue of ILEC obligations to provide co-carrier cross connects and adjacent collocation and held that ILECs are required to provide collocation so long as that collocation was on the ILEC's premises . . . My understanding of the Circuit Court's decision in no way creates a requirement that BellSouth provide AT&T with cross-connects in lieu of other forms of interconnection between AT&T's network and BellSouth's network.

The witness believes that the requirement that BellSouth provide co-carrier cross-connects is limited to the situation where an ALEC is actually collocated within the BellSouth premises, and would not apply in the condominium circumstance.

In its brief, BellSouth offers that AT&T's proposal would seek to "punch a hole through a common wall" in order to run facilities into BellSouth's space. The witness believes that AT&T's proposal has the "effect of expanding the definition of premises beyond that which is required by the FCC regulations or that which is necessary." As a result, BellSouth believes that AT&T's position should be rejected. In contrast, BellSouth's position in this matter would require AT&T to have the same form of interconnection as other ALECs.

AT&T witness Mills believes that AT&T should be allowed to connect its facilities to BellSouth and other ALECs when they occupy the same building. The witness believes, in fact, that "the Commission would not really be allowing it, they would simply be supporting what is lawful that was granted through the modification of final judgement and the plan of the reorganization." Witness Mills states that the condominium arrangements allow AT&T and BellSouth to "traverse or share one another's space," including access to cable vaults, shafts, and cable racks. Witness Mills believes that AT&T should be "allowed by law to simply come through the cable shafts and interconnect . . ." with BellSouth, rather than buy collocation space and collocate as other ALECs would. The witness states:

> In the condo arrangement, AT&T does not want to purchase or need collocation space from BellSouth in order to

> interconnect with BellSouth's network. To do so would be inefficient and wasteful. To force AT&T to use scarce collocation space would also deprive other ALECs from the opportunity to collocate. Because this is a lawful arrangement, this becomes a win/win for all parties involved.

The witness believes that existing equipment housed in the condominium facilities should "be treated as collocated equipment in all respects, including the right to interconnect directly to other collocated carriers on BellSouth's premise." In its brief, AT&T states that:

> 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.

Witness Mills proposes a mid-span meet arrangement with BellSouth through a mutually agreed upon Point of Interface (POI) within a condominium building. Furthermore, witness Mills asserts:

> The floor space for the POI will be negotiated between AT&T and BellSouth . . . AT&T would pay all costs relating to any such mid-span meet arrangement and would also be responsible for the connection between AT&T's Wire Center and BellSouth's facilities.

The witness states that because AT&T's equipment would be located in AT&T's space rather than on BellSouth's premises, the demand for BellSouth's limited collocation space would be reduced.

The witness states that AT&T's position with regard to the condominium issue should be adopted, and the Commission should require BellSouth to cross-connect directly with AT&T for the following reasons: 1) direct connection is a cost-effective and efficient method of interconnection for BellSouth and AT&T in their joint-tenant facilities; 2) AT&T's offer to use its own space would

free up scarce collocation space in BellSouth's central offices; and 3) direct cross-connection allows for a shorter interconnection interval than traditional collocation and would bring about competition more quickly.

In reference to AT&T's request to cross-connect with other ALECs within BellSouth's collocation space, the AT&T witness states that the FCC encourages ALECs to partner with ILECs in order to reduce costs and delays associated with collocation; he states that the FCC's Advanced Services Order at ¶42 provides 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.

Additionally, the AT&T witness believes that this Commission has the authority to require BellSouth to allow AT&T to cross-connect to other ALECs facilities within their collocation space. Under cross-examination, however, witness Mills concedes that the Commission has heard testimony in other proceedings about cross-connects, and that he is familiar with the Commission's prior ruling on cross-connects. The witness, in fact, agrees with the Commission's finding upon reconsideration that ILECs were not required to allow collocators to cross-connect, although the practice was encouraged. The witness believes that cross-connecting in this manner will improve efficiency and help maximize the potential space available for collocation.

DECISION

As witness Milner states, the "condominium arrangement" for the six buildings in Florida came about through AT&T's divestiture of certain assets in 1984. Witness Milner states that at divestiture, the two companies could no longer jointly own equipment, but they could jointly use certain facilities, including buildings. The witness carefully points out, however, that even though BellSouth and AT&T may jointly use a building and the two companies' respective parts of the building may adjoin each other, AT&T's part of the building is not a part of BellSouth's premises.

BellSouth witness Milner believes that this issue hinges on the notion of fairness, and that AT&T is requesting a new form of interconnection which only it can use, since it is the only company which has the unique ownership position with BellSouth. Witness Milner believes that AT&T should not be allowed to connect its network to BellSouth's network directly, but should instead be required to collocate in the BellSouth central office.

Although we agree that the proposed direct cross-connection between AT&T and BellSouth's networks in the "condominium" buildings would be a new form of interconnection, we note that no other companies in Florida jointly use buildings as a result of AT&T's divestiture. Therefore, no other companies would be unfairly impacted, since additional collocation space would be available for local service providers other than AT&T, that might not otherwise be available. While we agree with witness Milner's premise that a direct connection arrangement that is only available to AT&T and not to any other ALECs may appear to be "more favorable," it would apply only to the six "condominium" buildings in Florida.

As BellSouth witness Milner states, the recent decision by the United States Court of Appeals for the District of Columbia circuit addressed the issue of ILEC obligations to provide co-carrier cross-connects. He believes that the Court held that ILECs are required to provide collocation and adjacent collocation, so long as the collocation was on the ILEC premises. We note the ruling also vacated the requirement that the ILEC must provide cross-connects between collocating carriers. See GTE Service Corporation v. Federal Communications Commission, 2000 U.S. App. LEXIS 4111. The Court decision addresses cross-connects between two or more collocating carriers, but notes that the cross-connects between AT&T and BellSouth only involve one collocating carrier, AT&T. Therefore, the Court decision should not impact the proposed AT&T/BellSouth cross-connects in a "condominium" arrangement, despite witness Milner's concern about the requirement of being "collocated within the BellSouth premises."

BellSouth witness Milner believes that AT&T's proposal has the "effect of expanding the definition of premises beyond that which is required by the FCC regulations or that which is necessary." We do not agree, for a couple of reasons. First, the parties do not

dispute that lawfully executed agreements specifically detail the usage clauses of the six "condominium" buildings, including each party's right to cable racks and support structures throughout the affected buildings. Secondly, the direct connection arrangement between BellSouth and AT&T will be permitted only in the limited context of the "condominium" structures, since no other structures are subject to the lawfully executed agreements. Although a direct connection arrangement between BellSouth and AT&T may appear to "expand the definition of premises beyond that which is required by the FCC regulations," the unique circumstance surrounding these lawfully executed agreements should mitigate those concerns, since the arrangement is only permissible in the very limited instance of the "condominium" buildings.

AT&T witness Mills believes that the Commission has the authority to require BellSouth to allow AT&T to cross-connect to other ALEC's facilities within BellSouth's collocation space. Witness Mills offers his support for cross-connects, and states that the FCC encourages ALECs to partner with ILECs in order to reduce costs and delays associated with collocation. He cites ¶42 of the FCC's Advanced Services Order:

> 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.

We, however, do not agree with the AT&T witness. The topic of cross-connects was a subject that was addressed in Docket No. 981834-TL, also known as the "Collocation Docket." In PSC-00-2190-PCO-TP, issued on November 17, 2000 in Docket No. 981834-TL, we found that ". . . ILECs are not required to allow collocators to cross-connect." Id. at p.17. However, in the condo arrangements at issue, AT&T would not be a "collocator" in the traditional sense; AT&T would be operating in its own space.

Therefore, upon consideration of the evidence, we find that AT&T will be able to purchase cross-connect facilities to connect to BellSouth without having to collocate in BellSouth's portion of the building, but only in the six "condominium arrangement"

buildings in Florida. In all other circumstances, AT&T will be required to establish collocation arrangements in order to connect to BellSouth or other ALEC networks.

I. STATEWIDE CRIMINAL INVESTIGATION

This issue seeks to address the question of what exactly constitutes "reasonable security arrangements" for purposes of granting AT&T's employees and agents unescorted access in BellSouth's COs and other premises where AT&T has collocation spaces.

ARGUMENTS

AT&T witness Mills testifies that BellSouth demands that AT&T's employees who will access its collocation spaces on BellSouth's premises be screened for criminal offenses and certified. He continues that BellSouth is asking that AT&T get prior permission before an employee with a previous conviction is granted access to BellSouth's premises. Witness Mills agrees that the FCC provides that ILECs "may impose reasonable security arrangements to protect their equipment and ensure network security and reliability," but he argues that BellSouth's requirements are excessive, unreasonable and discriminatory. He opines that BellSouth is essentially asking that all of AT&T field technicians undergo a complete criminal background check since any of these technicians could be called upon to work at AT&T's collocation space any time. Witness Mills explains that these requirements are unreasonable since AT&T will accord BellSouth's assets the same protection and security as its own. Further, he questions the effectiveness of these requirements and argues that these requirements only increase AT&T's collocation expenses without " . . . any concomitant increase in the security . . . ."

AT&T witness Mills testifies that AT&T's current hiring practices seek to protect its customers, employees, and vendors. He argues that there is no indication that a person convicted of any crime has a greater propensity to damage BellSouth's property as opposed to AT&T's property. Indeed, witness Mills argues that the proposed criminal background check does " . . . nothing to limit or restrict a worker from harming or damaging property.

Thus, it adds nothing to the current security arrangements." Witness Mills testifies that BellSouth has rejected AT&T's offer to conduct criminal background checks on its employees who have been with the company less than two years.

AT&T witness Mills notes that BellSouth's fear of possible destruction of its network can be alleviated through the use of "monitoring cameras, electronic security locks, special identification badges and other preventive means, ..." Witness Mills recounts that the FCC in its Advanced Services Order has determined that the above mentioned measures are reasonable security arrangements. Witness Mills states that some of these security measures have already been implemented, and continues that "AT&T is willing to provide indemnification for loss or damage that occurs to BellSouth's property at a BellSouth premise as a result of the activities of an AT&T employee or contractor." Indeed, witness Mills explains that BellSouth admitted in discovery that " . . . AT&T employees have had access to collocation space in BellSouth facilities in the past with no incident of intentional damage to BellSouth's network." Witness Mills concludes that BellSouth's security requirements are "completely unjustified."

BellSouth witness Milner testifies that BellSouth conducts a criminal background check on its employees before hiring them, and argues that AT&T should be required to do the same with its employees or agents who may enjoy unescorted access through BellSouth's central offices and other premises. Witness Milner argues that such security requirements are reasonable from a public safety and financial standpoint. He continues that this requirement is reasonable given the ". . ., number of new entrants and other telecommunications carriers who rely on the integrity and reliability of BellSouth's network." Witness Milner contends that AT&T's offer for indemnity for bodily injury and property damage is not sufficient compared to the potential risk. Witness Milner counters AT&T's proposal for indemnity by saying that " . . . indemnification is an after the fact solution," and explains that the criminal background checks offer consumers and other ALECs protection up-front.

Although BellSouth's criminal background checks go back seven years with its employees and five years with its vendors and agents, witness Milner testifies that BellSouth is asking AT&T to

conduct criminal background checks on its employees hired after January 1, 1995. Further, witness Milner suggests that AT&T should refrain from knowingly assigning an ex-BellSouth employee who had been dismissed because of a criminal offense to BellSouth's premises. He continues that AT&T should likewise refrain from assigning a contractor to any BellSouth premises if BellSouth has previously revoked his access to its premises due to a criminal offense.

BellSouth witness Milner testifies that the FCC's Order on Collocation raises serious concerns regarding network reliability and security, and argues that for BellSouth to provide reasonable security measures, collocators' employees and agents need to undergo the same or an equivalent level of security training that BellSouth's employees and contractors undergo for similar functions. Witness Milner continues that

> Each collocator must provide its employees and agents with picture identification, which must be worn and be visible in the collocation space or other areas in and around BellSouth's central offices.

Witness Milner further argues that the FCC allows ILECs to impose security measures that are as stringent as those the ILEC maintains at its premises for its employees. He argues that the proposed criminal background check is a reasonable way to prevent " . . . known criminals from even being in a place where they could cause harm or damage to BellSouth's or an ALEC's network."

In Paragraph 46 of FCC 99-48 in CC Docket No. 98-147, *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability* issued on March 31, 1999, the FCC found that

> . . . incumbent LECs should be permitted reasonable security arrangements to protect their equipment and ensure network security and reliability. We recognize that adequate security for both incumbent LECs and competitive LECs is important to encourage deployment of advanced services.

DECISION

The crux of this issue is what exactly constitutes "reasonable security arrangements" for purposes of granting AT&T's employees and agents unescorted access in BellSouth's COs and other premises where AT&T has collocation spaces. The parties disagree as to the reasonableness of BellSouth's proposed criminal background checks. Such disagreement is expected as the "reasonableness" of this proposal is dependent on the benefits that each party perceives it will derive from this proposal. For BellSouth, there is the additional sense of security in knowing that employees with criminal records are not on its premises with unfettered access to its network. However, for AT&T, BellSouth's additional sense of security comes with a price tag to AT&T that may not necessarily be commensurate with the increased collocation expense. Indeed, we are not convinced that BellSouth's proposed criminal background check adds much to the existing security arrangement. BellSouth has not shown that the existing security arrangement is inadequate, or why the proposed security scheme is needed; nor has BellSouth provided data to demonstrate the usefulness of the proposed criminal background check in mitigating harm and damage to its network from ALECs' employees and agents. We are not convinced that a five-year criminal background check on all AT&T employees that may work on BellSouth's premises is more effective in mitigating potential crime to BellSouth's networks compared to AT&T's proposed check on employees that have been with AT&T for less than two years. Based on the testimony, an argument can be made that BellSouth's proposed criminal background check is potentially a barrier to entry for competitive LECs, and thus could be construed as bad public policy with respect to the goals of the Telecommunications Act of 1996.

In ¶48 of FCC 99-48, the FCC determined that

> incumbent LECs may establish certain reasonable security measures that will assist in protecting their networks and equipment from harm. . . . We permit incumbent LECs to install, for example, security cameras or other monitoring systems, or to require competitive LEC personnel to use badges with computerized tracking systems. . . . We further permit incumbent LECs to require competitors' employees to undergo the same level

> of security training, or its equivalent, that the incumbent's own employees, or third party contractors providing similar functions, must undergo.

Looking at ¶48, it appears that the FCC in this ruling was of the impression that an ILEC's security arrangement that includes electronic monitoring systems and computerized badges is adequate and provides "reasonable security measures" that would protect the ILEC's "networks and equipment from harm." Thus, the FCC warned that "the incumbent LEC may not impose discriminatory security requirements that result in increased collocation costs without the concomitant benefit of providing necessary protection of the incumbent LEC's equipment," and found that "alternative security measures, like those outlined above, adequately protect incumbent LEC networks . . ." FCC 99-48, ¶ 47, 49.

Based on the foregoing arguments, BellSouth has not demonstrated that its proposed criminal background check will actually enhance its existing security arrangement beyond the psychological "sense of comfort" that any ALEC's employee that has access to BellSouth's networks and premises is free of any criminal offenses. The resulting increase in AT&T's expenses for collocation is potentially a barrier to entry. Further, the record shows that the use of electronic monitoring systems and computerized badges provide adequate and reasonable protection to BellSouth's networks. Thus, we hereby deny BellSouth's proposal as is, but require AT&T to conduct criminal background checks on AT&T's employees and agents, who have been with the company for less than two years, that may work on BellSouth's premises.

J. "OS/DA" AND CUSTOMIZED ROUTING

This issue addresses whether BellSouth has provided sufficient customized routing in accordance with State and Federal law to allow it to avoid providing OS/DA as a UNE.

ARGUMENTS

We are not aware of a state law which is directly relevant to this issue, nor has one been referenced by the parties, but we

believe the applicable FCC rule to be 47 C.F.R. §51.319(f), which states that:

> An incumbent LEC shall provide nondiscriminatory access in accordance with §51.311 and section 251(c)(3) of the Act to operator services and directory assistance on an unbundled basis to any requesting telecommunications carrier for the provision of telecommunications service only where the incumbent LEC does not provide the requesting telecommunications carrier with customized routing or a compatible signaling protocol.

The network arrangements addressed in this issue are generically called "selective routing" or "customized routing." BellSouth witness Milner explains:

> With customized routing, if you are an AT&T customer served from a BellSouth switch either on an unbundled basis or resale basis, and AT&T chooses for your calls to go to AT&T's platform, then customized routing is the mechanism that makes that happen.

BellSouth witness Milner believes that customized routing allows calls from the ALEC's customers who are served from a BellSouth switch to reach the ALEC's choice of an OS/DA platform, rather than BellSouth's choice. The witness states BellSouth's position on this matter:

> BellSouth has available both an Advanced Intelligent Network (AIN) solution for customized routing as well as the Line Class Code (LCC) solution that was advocated by AT&T during the last round of arbitrations. Thus, BellSouth has met its requirement to provide customized routing and as a result is not obligated to provide access to operator services and directory assistance at UNE rates.

The witness states that the LCC method makes use of translations and routing capabilities in the end office switch to perform its functions. Witness Milner states that the Line Class Codes are actually software "pointers" that tell the switch how to route an individual customer's calls. Line Class Codes provide a

lot of flexibility for the service provider states the witness, but he also concedes that AT&T could choose a single preferred routing for an entire customer class on a state-wide basis. Witness Milner believes that part of the dispute in this issue involves the actual mechanism for provisioning OS/DA to entire customer classes. He testifies:

> That's part of the dispute. The other part is that while BellSouth only has one as we say default routing plan, that is BellSouth customers go to BellSouth platforms, AT&T apparently wants more than one choice that is sort of situational. In certain situations they want its customers' calls to go to AT&T's platform; in other cases it wants those calls to go to BellSouth's platform but to be branded by BellSouth operators as AT&T.

The witness states that if AT&T wants more than one choice in a given central office, AT&T should tell BellSouth what line class codes to use. For its own purposes, BellSouth maintains a database for all of the Line Class Codes for each central office. This database is accessed every time BellSouth needs to identify or assign a Line Class Code, according to witness Milner. The witness states that BellSouth is willing to provide to AT&T as many LCCs as AT&T is willing to pay for.

Witness Milner offers testimony on a collaborative effort the parties implemented in a metro Atlanta central office, whereby BellSouth preprogrammed certain LCCs for AT&T, based on AT&T's specific instructions. His testimony implies that the initiative was successful. In conclusion, witness Milner states that the matter comes down to choice, and the Line Class Codes are the mechanism for AT&T to tell BellSouth what its choices are for a given end-user.

The other method BellSouth proposes is the AIN method. "With the AIN solution, a computer database is queried during call processing to determine the ALEC's preferred routing for a particular end user," states witness Milner. He adds:

> The AIN method of customized routing allows the use of the AIN "hub" concept, which yields several advantages as follows:

- Allows the use of appropriate AIN "triggers" for all call types rather than only a limited set of call types.

- Allows even those end office switches that are not AIN-capable to use the AIN customized routing solution.

- Optimizes the use of trunk groups by allowing the carriage of customized routing traffic over common trunk groups between the end office and the AIN hub.

The witness concedes, however, that one of the drawbacks to this method is that the database query takes time and adds a small incremental amount of post-dialing delay to the overall processing of the call. He estimates this time at about one second, but asserts that if AT&T has serious concerns over this delay, they can simply request the LCC method instead.

Witness Milner clearly states that both the LCC and the AIN methods have been tested, are available, and that AT&T simply should order whichever platform best fits its needs. For example:

> BellSouth's customized routing solutions can be provisioned promptly and can handle both branded and unbranded responses to end users' calls. AT&T need only place an order with BellSouth for customized routing and BellSouth will provide it.
>
> . . .
>
> Both the LCC method and the AIN method are available today. The LCC method is available to ALECs in addition to BellSouth's AIN version and both have been tested and proven workable. If AT&T wants to use the LCC method, it merely needs to order it . . . As with the LCC method, if AT&T wants to use the AIN method, it merely needs to order it.

Therefore, BellSouth believes that it has met the FCC's guideline in 47 C.F.R. §51.319(f) and provides sufficient opportunities for

customized routing to allow BellSouth to avoid providing OS/DA to AT&T as unbundled network elements.

AT&T witness Bradbury believes that BellSouth does not provide customized routing through a commercially viable, timely, repeatable process. He believes that the OS/DA issue is important to AT&T because these services are integral components of any significant local service offering. He elaborates:

> Any ALEC must ensure that its customers can obtain the local OS/DA services that they have come to expect from the incumbent. Similarly, ALECs must have access at cost-based rates to the incumbent LECs' emergency and directory assistance listings, including timely and efficient updates of those listings, in order to provide the quality of service local customers expect.

Regarding the federal decisions that impact this issue, witness Bradbury states:

> . . . 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), **provided that** the incumbent LEC provides customized routing to ALECs to allow them to route traffic to **alternative** OS/DA providers. (emphasis in original)

The witness also believes that the FCC clearly requires customized routing as a pre-condition to allowing BellSouth not to offer OS/DA as a UNE, per the UNE Remand Order. He concludes by stating, "and thus [BellSouth] is required to offer and charge OS/DA as a UNE, rather than at market based rates."

From a practical standpoint, witness Bradbury believes that any selective routing platform from BellSouth must meet the following criteria:

- Fully implementable and available in every end office where technically feasible;

- Capable of supporting the request of any ALEC;

- Implementable on a central office basis in a very short period of time;

- Fully tested, with clear demonstration that the implementation results equal what BellSouth provides itself, and finally;

- Capable of supporting both branded and unbranded messaging.

The AT&T witness believes that neither of BellSouth's offerings, the AIN or the LCC, provide the timely customized routing solution as required by the FCC. In regard to the AIN method, witness Bradbury states:

> The proposed AIN solution has been promised by BellSouth for several years. To date, BellSouth has not delivered on its promise. While AT&T did engage in a limited AIN test in 1997 with BellSouth, BellSouth has provided no information to indicate whether the proposed AIN solution it plans to implement later this year is the same or is different than that which was tested several years ago. In January 1998, BellSouth and AT&T jointly performed a technical test of an AIN solution . . . That trial identified call setup problems that increased post-dial delay to approximately one second for operator service calls and two seconds for directory assistance calls.

The witness claims that BellSouth has not demonstrated that the proposed AIN solution is equal to what BellSouth provides itself. In its brief, AT&T states that BellSouth cannot substantiate witness Milner's claim that competitors such as AT&T are able to simply "order" customized routing via AIN or LCC. Witness Bradbury states, "There is no publicly available documentation that tells an ALEC how to ask for AIN routing."

He further states that BellSouth did not make a public offering of the AIN arrangement until October of 2000, but concedes that based

upon the 1997 testing, AT&T is not currently interested in the AIN solution.

In regard to the LCC option, witness Bradbury agrees that line class codes are a viable method of customized routing. He states, however, that AT&T's reluctance to endorse the LCC method is rooted in BellSouth's offer to limit them to a single routing or a single option within its region, as indicated in the testimony. Under the proposed single-choice LCC arrangement, BellSouth would look up the correct line class codes if AT&T agrees to choose just one OS/DA destination for all of its calls. This contrasts with a full-choice LCC method for which AT&T would have to provide the LCC on its orders. Witness Bradbury states that this method is problematic because:

> . . . the line class codes identity is not consistent across the 240 [central] offices in the State of Florida . . . So now I have to build a table that tells me what BellSouth has assigned in each of those 240 central offices . . . They are forcing me, though, if I submit an order that says I want to do something with OS/DA to provide them with the actual line class code identity in that central office . . . BellSouth has a database that does that for every other order I submit.

The witness agrees that if "the right line class codes" are placed on an order, the result should be that a customized route is established.

With respect to being able to "order" customized routing using the LCC method, AT&T states that the only documentation that it has been able to locate with information on ordering is a single statement found in the September 27, 2000 Monthly Status/Prioritization Meeting Minutes which instructed a requesting competitor to "work with their BellSouth account team."

Witness Bradbury also briefly mentions a customized routing method that is available to AT&T, but does not meet the requirements of this issue, and that method is the Originating Line Number Screening (OLNS) method. The witness states that this method only routes OS/DA calls to BellSouth's platform. As BellSouth argues in its Brief, this issue contemplates selective

routing for ALECs to *alternate* OS/DA providers. (italics in original)

DECISION

We note that BellSouth's witness Milner and AT&T's witness Bradbury are in agreement on the intended function of "customized routing." Witness Milner states that customized routing allows calls from the ALEC's customers who are served from a BellSouth switch to reach the ALEC's choice for an OS/DA platform, rather than BellSouth's choice. We agree, but believe the more pressing matter in this issue involves whether or not BellSouth has made alternatives available to AT&T with respect to OS/DA, such that BellSouth can avoid providing OS/DA at UNE rates. According to witness Milner, BellSouth's AIN and LCC solutions should be sufficient to relieve BellSouth of the requirement to provide OS/DA as a UNE

On a superficial level, witness Milner's testimony could be interpreted to reflect that BellSouth only offers two choices for customized routing, either the AIN or the LCC method. However, there are variations within the named methods, particularly with respect to the LCC method. Witness Bradbury offers analysis on what we shall describe as a "single-choice" and a "full choice" alternative for custom routing using LCCs.

We also note that line class codes are an integral part of our discussion of what is referred to as the "OS/DA footprint issue." Witness Bradbury's testimony on the "OS/DA footprint issue" and the four options for its resolution are located elsewhere in this Order. The record, therefore, shows that it is inaccurate to think that BellSouth only offers two choices for customized routing.

We believe that AT&T is familiar with BellSouth's LCC routing options, based upon the collaborative effort of parties in a metro Atlanta central office. As witness Milner testifies, BellSouth preprogrammed certain LCCs for AT&T, and his testimony infers that the initiative was successful. Witness Milner believes that through the LCC method of customized routing, line class codes are the mechanism for AT&T to tell BellSouth what its choices are for a given end-user. The BellSouth witness states that if AT&T wants

more than one choice in a given central office, AT&T should tell BellSouth what line class codes to use.

With respect to BellSouth's AIN method, we note that AT&T's witness testified to this method's shortcomings, but also that AT&T is not currently interested in it. Witness Bradbury claims that BellSouth has not demonstrated that the proposed AIN solution is equal to what BellSouth provides itself. He further states that BellSouth did not make a public offering of the AIN arrangement until October of 2000. The witness also claims that ordering information is lacking. While acknowledging witness Bradbury's critique of the AIN method, we believe that this arbitration issue concerns whether BellSouth makes available custom routing options for OS/DA, and not whether AT&T chooses to implement a particular method (such as AIN) over another option.

As previously mentioned, the FCC Rule under scrutiny is 47 C.F.R. §51.319(f), which states that:

> An incumbent LEC shall provide nondiscriminatory access in accordance with §51.311 and section 251(c)(3) of the Act to operator services and directory assistance on an unbundled basis to any requesting telecommunications carrier for the provision of telecommunications service only where the incumbent LEC does not provide the requesting telecommunications carrier with customized routing or a compatible signaling protocol.

BellSouth believes that it has met the FCC's guideline in 47 C.F.R. §51.319(f). Witness Milner clearly states that both of the LCC and the AIN methods have been tested, are available, and that AT&T simply should order whatever platform best fits their needs. We agree that BellSouth's offering of at least two methods of customized routing for ALECs appears to meet the requirements of 47 C.F.R. §51.319(f).

AT&T believes that BellSouth has not met the FCC's guidelines, as captured by witness Bradbury interpretation of this rule:

> . . . 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), **provided that** the incumbent LEC provides customized routing to ALECs to allow them to route traffic to **alternative** OS/DA providers. (Emphasis in Original)

Witness Bradbury also believes that the FCC clearly requires customized routing as a pre-condition to allowing BellSouth not to offer OS/DA as a UNE, persuant to the UNE Remand Order. We agree.

However, we find that portions of ¶441 and the full text of ¶442 are significant to this issue:

> 441. We find that where incumbent LECs provide customized routing, lack of access to the incumbent's OS/DA service on an unbundled basis does not materially diminish a requesting carrier's ability to offer telecommunications service . . . The additional nondiscrimination requirements of section 251(b)(3), coupled with evidence of multiple alternative providers of OS/DA service in the marketplace, provide strong evidence that competitors are not impaired without access to the incumbent's OS/DA service as an unbundled network element.
>
> 442. Accordingly, incumbent LECs need not provide access to its OS/DA as an unbundled network element. All LECs, however, must continue to provide their competitors with nondiscriminatory access to their OS/DA, pursuant to section 251(b), as implemented by the Commission. We believe that this outcome best comports with the realities of a growing OS/DA marketplace, embraces a deregulatory approach where justified, and does not unduly confine the entry strategies of competitive carriers.

Although these paragraphs address a carrier's access to alternative OS/DA providers, as argued in AT&T's brief, they are significant to this issue because the incumbent must first make available

customized routing before an ALEC can pursue an arrangement with an alternative OS/DA provider. AT&T's argument in this proceeding, however, did not address whether it was impaired without access to the incumbent's OS/DA service as an unbundled network element. The evidence indicates that access to OS/DA providers was not an important consideration; the underlying assumption that we relied upon was that AT&T sought customized routing to avail itself of alternative providers of OS/DA service.

The record shows that BellSouth has met its obligation and offers varied choices of customized routing. Therefore, we find that, subject to the conditions set forth in Section XV of this Order, BellSouth provides sufficient customized routing in accordance Federal law to allow it to avoid providing OS/DA as a UNE.

K. "OS/DA" FOOTPRINT AND UNE-P

There are two parts to this issue: an infrastructure provisioning (footprint) part, and a customer-specific provisioning part. The parties agree that the "footprint" part requires BellSouth to "establish" the Line Class Codes that will control pertinent traffic routing, and to identify the associated trunk groups necessary to accomplish AT&T's requested customized routing.

ARGUMENT

BellSouth witness Milner opines that AT&T is asking for its own customized routing for its customers. Witness Milner believes that AT&T could route its customers' traffic either to its Operator Service or Directory Assistance (OS/DA) platform, or alternatively to an unbranded BellSouth OS/DA platform. AT&T witness Bradbury concurs with witness Milner and asserts that AT&T could also route its branded or unbranded traffic to a BellSouth platform or to another provider's OS/DA platform.

Infrastructure Provisioning (Footprint) Concerns

AT&T witness Bradbury testifies that with customized routing, when an AT&T customer dials "0" or "411," the call will be directed to the OS/DA platform chosen by AT&T. He contends that the call

could be routed according to one of four possible scenarios: BellSouth's OS/DA platform, branded as BellSouth's service; BellSouth's platform, branded as AT&T; BellSouth's platform, unbranded; or AT&T's or any other ALEC's platform. Witness Bradbury argues that AT&T is entitled to a choice of customized routing, and continues that AT&T can elect to have multiple routing plans. Witness Bradbury asserts that to implement AT&T's desired routing, the parties must first agree on a process for ordering the trunks and the necessary translations. Upon reaching an agreement on an ordering process, AT&T will inform BellSouth which routing option applies to a specific customer.

AT&T witness Bradbury testifies that this first part requires AT&T to give BellSouth a footprint (a network design request, or NDR) order. He states that the NDR order identifies the trunking and routing necessary to direct OS/DA calls to AT&T's selected platform(s) as prescribed by the footprint area. Witness Bradbury testifies that despite repeated requests, BellSouth has yet to provide detailed " . . ., technical information on the process BellSouth would require in order to implement . . . OS/DA routing for AT&T." Further, the AT&T witness opines that "BellSouth wishes to limit AT&T to only one customized OS/DA route, apparently for the entire nine-state-region." Witness Bradbury argues that BellSouth's position lacks support from either the 1996 Act or any FCC orders. He contends that BellSouth is required by the FCC to provide customized routing as part of the switching function, except in situations where BellSouth can show that it is technically infeasible in a given switch. Witness Bradbury disagrees with BellSouth's reading of paragraph 224 of the Louisiana II Order in which BellSouth " . . ., theorizes that this paragraph (¶224) implies that AT&T is limited to one 'default' OS/DA routing option." Witness Bradbury argues, to the contrary, that paragraph 224 reveals that the "FCC anticipated that ALECs may have more than one OS/DA routing option." Witness Bradbury asserts that BellSouth is capable of routing BellSouth's customers' OS/DA calls to different platforms, and concludes that AT&T is entitled to access " . . ., this ability and to direct its customers' calls in a way that is technically feasible."

BellSouth witness Milner believes that AT&T wants its decision(s) on customized routing to be based on particular situations, with a geographic area as large as " . . . end office,

by LATA, or by state, at AT&T's option . . . ." However, witness Milner argues that AT&T can designate a default routing plan as wide as the region, state, LATA, etc; levels. By "situational," BellSouth witness Milner explains that AT&T's traffic will be routed in a prescribed manner, in a particular situation. Witness Milner explains that AT&T may have some calls routed to its own platform, or to BellSouth's platform either as branded or unbranded. Witness Milner contends that the FCC, in the Louisiana II Order, intended for AT&T to have a default routing plan region-wide. Witness Milner asserts that AT&T has to inform BellSouth of its desired default routing plan, and admits that BellSouth will only provide multiple customized routing options if AT&T will provide the actual LCC on the customer's LSR. According to witness Milner, BellSouth will " . . . construct the required translations tables based on AT&T's selected default routing plan." He further explains that switch translations and trunk groups are established for the end offices in which AT&T requests customized routing based on the default routing plan. However, witness Milner conceded that other than the Georgia 1000 trial that is on-going with AT&T in Atlanta, BellSouth does not provide customized routing using LCC to any ALEC in its service region.

BellSouth witness Milner testifies that a necessary requirement for BellSouth to fulfill AT&T's order for customized routing is AT&T's instructions for its desired customized single routing. Witness Milner explains that when an ALEC provides BellSouth with its single routing plan, BellSouth will determine the appropriate Line Class Code to use in a given order. He asserts that this is consistent with the FCC's provisions in the Louisiana II Order. He explains that two factors utilized in determining line class code assignments are assigned class of service and the desired routing.

Customer-Specific Provisioning Concerns

AT&T witness Bradbury states that the parties disagree on the appropriate method by which AT&T will identify its preferred OS/DA routing for an individual end user. Witness Bradbury testifies that upon establishing a footprint area, the next phase of this issue requires AT&T to submit customer-specific routing. Witness Bradbury further testifies that when AT&T identifies only one routing option in a given footprint area, AT&T will provide

BellSouth with a default routing instruction that will apply to all LSRs within that footprint area. However, when AT&T identifies multiple OS/DA routing options in a given footprint area, AT&T will inform BellSouth which of the options will apply to a given customer within the given footprint area. He continues that AT&T will place indicators on each customer's LSR within this footprint area i.e., "'UB/BLS' for BellSouth unbranded, 'CB/BLS' for BellSouth branded as AT&T or 'C/AOSR' for another provider's platform". Witness Bradbury proposes that AT&T's indicator should be applicable region-wide, and argues that AT&T's proposal is consistent with the provisions of the FCC's Louisiana II Order.

AT&T witness Bradbury contends that "BellSouth is quite capable of accepting a single region-wide code, or indicator, for each of the three OS/DA routings that may be requested by AT&T . . ." Witness Bradbury opines that to implement a region-wide indicator, BellSouth will build translations tables for LCCs as it has already done for its own use. Further, he testifies that LCCs and routing instructions apply at the CO level and are housed in a CO's software data tables. Witness Bradbury agrees with BellSouth that the actual LCCs and data tables are not uniform across all Cos. However, he notes that recently, BellSouth and other RBOCs have established methods and procedures to allow for efficient management of LCCs. Witness Bradbury observes that BellSouth's Line Class Code Assignment Module (LCCAM) identifies the CO that will serve a given customer and goes on to determine the appropriate LCC to put on the service order based on information on the LSR.

AT&T witness Bradbury notes that the FCC did not require BellSouth to process OS/DA routing orders electronically; however, he argues that paragraph 225 of the Louisiana II Order requires BellSouth to process such orders in an efficient and nondiscriminatory manner.

BellSouth witness Milner testifies that the Louisiana II Order provides that:

> . . . if an ALEC has more that [*sic*] one set of routing instructions for all its customers, it would be appropriate for BellSouth to require the ALEC to include

> in the ALEC's order an indicator that would inform BellSouth which customized routing pattern to use.

Witness Milner argues that this provision calls for a region-wide application of the ALEC's default routing plan. However, he submits that "BellSouth is willing to allow a given state to serve as the default routing plan footprint."

Witness Milner agrees that for a statewide footprint, BellSouth will identify and assign the specific LCCs in each central office in order to accomplish the desired customized routing. He continues that

> AT&T would inform BellSouth of how it wanted its customers' calls handled in a given central office. And based on that information, BellSouth would select appropriate line class codes and would make the translations in the switch to make that happen.

Further, witness Milner notes that the same LCCs are not always used for the same function in all central offices. He attributes these variations to the fact that BellSouth uses different switch manufacturers, and therefore, different classes of services were deployed at different times and different central offices; the deployment was not on a region- or state-wide basis. Witness Milner testifies that LCCs route a customer's call to a specific trunk group or translation table based on the customer's class of service and the digits dialed. He further testifies that AT&T could request a certain number of LCCs from BellSouth, and could instruct BellSouth to handle the calls in multiple ways.

While BellSouth has 240 COs in Florida, BellSouth witness Milner admits that BellSouth has the LCCAM database that maintains all of BellSouth's LCCs. Witness Milner agrees that for purposes of AT&T's default customized routing, a BellSouth representative will identify the appropriate LCC for a specific routing request using the LCCAM database. However, witness Milner notes that BellSouth does not need to identify LCCs for its own use since it uses a single default routing region-wide.

BellSouth witness Milner was unsure whether BellSouth has provided AT&T with sufficient information to enable AT&T to prepare

its orders for customized routing; however, witness Milner asserts that only AT&T knows how it wants each of its customer's traffic routed. He continues that for BellSouth to route AT&T's customers to AT&T's selected platform, AT&T has to provide BellSouth with " . . . an indicator in its order for customized routing. . . ." In contrast, witness Milner testifies that where AT&T establishes a default routing plan, BellSouth will assign the appropriate LCC to individual customers orders -- just as is done in the Georgia 1000 trial. However, witness Milner argues that the Louisiana II Order provides that if an ALEC has

> . . . more than one plan then it is your burden to tell the incumbent what you want done with your calls. . . . So the single plan that you have built in Atlanta Peachtree Place central office we know what to do. If you want to do something on an exception basis, . . . you need to tell us.

Witness Milner contends that while the Louisiana II Order provides that AT&T could use an indicator to identify the preferred routing for a given customer, BellSouth believes that "the indicator must be a line class code in cases where you have chosen more than one routing plan."

DECISION

Witness Milner opines that the FCC requires BellSouth to " . . . determine the correct Line Class Codes to use in response to an LSR for a given end user when the ALEC has a single routing plan for all its customers." Witness Milner argues that AT&T may have as many different routing plans as it wishes, subject only to technical limitations of the switches. However, witness Milner concludes that he is unsure as to which party is responsible for determining the LCCs when a LSR is submitted.

At the crux of this issue is the question of over what geographic area should AT&T be allowed to define a default customized routing plan for its OS/DA traffic using a UNE-P platform. On the one hand, AT&T believes that it is entitled to 1) define a geographic footprint as it deems necessary to meet its business needs, and 2) employ as many optional routing plans as it deems necessary. On the other hand, while BellSouth believes that

AT&T is free to establish a geographic footprint as it sees fit, BellSouth also believes that AT&T's choice appears to be limited by the FCC in the Louisiana II Order to a region-wide footprint with a region-wide customized default routing plan. Where AT&T elects an exception to the single region-wide customized default routing plan, BellSouth believes that AT&T has to provide the LCC necessary to route that call.

We believe that AT&T can request multiple footprints and multiple OS/DA routing options within any given geographic area. Both of these options are available to AT&T as provided by the Louisiana Second Order in FCC 98-271, CC Docket No. 98-121, *Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana*, issued on October 13, 1998.

We also note that customized routing is pivotal for local competition. This notion is echoed by the FCC in the Louisiana II Order when it wrote that:

> Customized routing permits requesting carriers to designate the particular outgoing trunks that will carry certain classes of traffic originating from competitors' customers. Without customized routing, competing carriers will be [*sic*] not be able to select the routes its customers' calls will take to reach their destination nor will they be able to select the final destination. . . . FCC 98-271, ¶221.

We believe that BellSouth's reading of ¶224 of the Louisiana II Order to require an ALEC to provide a single routing plan region-wide is inaccurate. Paragraph 224 reads:

> 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. If, however, a competitive LEC has more than one set of routing

> from switch to switch, if BellSouth is capable of accepting a single code region-wide.

FCC 98-271, ¶224.

We do not agree with BellSouth's reading of LCC to be synonymous with an "indicator." Rather, that it is unreasonable to expect AT&T to discern all the appropriate LCCs, since the LCCs may differ from CO to CO. It is also impractical since BellSouth owns and operates the LCCAM database which can be used for assigning the LCCs to the LSRs. Thus, AT&T's reading of this provision to allow for some type of code or flag that is representative of a LCC that can be uniformly used region-wide, or at a minimum within the given footprint area, is reasonable. If the FCC had intended for ALECs to provide LCCs, the FCC would have used more specific terminology instead of the term "indicator."

BellSouth's representatives query the LCCAM to identify the appropriate LCC for a given CO when the need arises. Thus, if AT&T must include the LCCs with its customers' orders, BellSouth should be required to provide AT&T access to its LCCAM database. Such access will enable AT&T to query and identify the appropriate LCCs for any service class and for any given CO, just as BellSouth would do when the need arises. That access to the LCCAM can be accomplished through website posting of this database. Such access should be on a "read-only" basis and can be regulated through the use of an ALEC-specific password. BellSouth should be required to update/refresh this website posting once new LCCs are implemented.

The Louisiana II Order reads in part that "BellSouth must ensure that orders containing a code indicating the desired routing of calls are efficiently processed." This Order further provides that LSRs containing "indicators" to denote a preferred customized routing option should be efficiently processed. There is nothing in this order that provides that "efficiently processed" is synonymous to electronic processing of LSRs which contain indicators. However, the FCC did rule that manual intervention results in less efficient processing of ALECs orders. Thus, a case can be made that "efficiently processed" can be construed to mean electronic processing of these orders - consistent with the FCC's ruling.

Based on the foregoing arguments and the provisions of the Louisiana II Order, we find that AT&T is at liberty to select a geographic footprint area that it believes will meet its business needs. AT&T is also entitled to choose multiple customized routing options, and it may specify its chosen option on a customer's LSR using an indicator that is uniform regionally. Thus, we will require that BellSouth provide AT&T with a geographic footprint area at either the regional, state or LATA levels. We also find that AT&T is entitled to one or more customized routing options within a chosen geographic footprint. BellSouth shall either accept AT&T's LSRs with an indicator denoting a specific routing option when AT&T has more than one routing option in a given footprint area, or provide AT&T with access to its LCCAM through website posting to enable AT&T to identify the appropriate LCCs for a given class of service and CO. This website shall be updated as new LCCs are added to the database.

L. DISPUTE RESOLUTION

AT&T raised the issue of dispute resolution in its initial Petition for Arbitration. However, AT&T did not present any evidence on this issue at hearing or argue it in its brief. Therefore, in accordance with Prehearing Order No. PSC-01-0324-PHO-TP, we find that AT&T waives its position on this issue.

ARGUMENT

In his direct testimony, BellSouth witness Ruscilli stated that because BellSouth perceived third party arbitration as providing a speedy and inexpensive resolution of interconnection agreement disputes, an alternative dispute resolution provision was included in the original interconnection agreement with AT&T. However, BellSouth quickly realized that the perceived benefits of third party arbitration never materialized. Witness Ruscilli believes that this Commission and its staff are more capable of handling disputes between telecommunications carriers.

BellSouth argued in its brief that "[t]here is nothing in the law that allows the Commission to require BellSouth or any party to submit to a binding third party arbitration rather than having the Commission itself address a dispute."

DECISION

Based on the evidence presented, we find that third party arbitration is neither speedy nor inexpensive. Moreover, nothing in the law gives us explicit authority to require third party arbitration. Consequently, we find that this Commission shall resolve disputes under the Interconnection Agreement.

M. CHANGE CONTROL PROCESS

Portions of this issue were resolved between the parties. Therefore, we have only addressed the remaining portions: aspects of its change control process regarding defect correction, an eight step cycle, a notification schedule, dispute resolution, and an escalation process.

A Change Control Process is used by ALECs and ILECs for managing changes to systems, processes and supporting documentation for the software used by ALECs as they place orders and use Operating Support Systems (OSS) owned by BellSouth.

While significant improvements in collaboration between ALECs and BellSouth have occurred over the past year, ALECs believe that a more responsive, open and fully collaborative process is needed. Problems noted in the record include:

- ALEC lack of visibility into and direct interaction with processes which determine the fate of Change Requests.
- under-resourcing of interface development functions by BellSouth.
- potentially unreasonable response intervals and BellSouth resistance to an obligation to reasonably rapid correction of interface defects.
- a flawed system of establishing and meeting ALEC ranked priorities for Change Requests.
- the ability to not only weight, but also veto ALEC consensus, combined with unilateral authority written by

BellSouth within the CCP manual enabling it to insert text into the CCP manual.

ARGUMENTS

AT&T witness Bradbury argues that the process within the CCP for dealing with the issues that AT&T raises in this case is itself flawed, particularly as BellSouth retains a veto over ALEC industry consensus. While operating as an ILEC, BellSouth also votes as an ALEC in the determination of ALEC industry consensus, thus influencing the outcome of the vote. BellSouth makes unilateral decisions about the fate of change requests, the CCP itself, as well as disregarding CCP requirements on the timing of new releases and the scheduling of BellSouth-initiated change requests. BellSouth has often disregarded the ALEC's highest ranked priorities for inclusion in new interface releases.

While originators of BellSouth-initiated Change Requests are permitted to present their requests to the Change Review Board and other internal BellSouth decision-making functions, which may then reject, approve or schedule a Change Request, an ALEC must depend upon a BellSouth employee to advocate its Change Request to the same body.

BellSouth says that it "regards ALECs as customers" and finds "it is more appropriate to think of them as customers than competitors." We, however, believe it odd to disregard customers' expressed needs for services when they are paying fees to BellSouth as they use the interfaces. From our perspective, BellSouth's actions seem more like those of a direct competitor than a typical business selling to wholesale customers.

BellSouth offers two reasons why it has often not implemented various highly ranked change requests. First, BellSouth's response to our staff's interrogatories record that a lack of interface development resources explains why change requests, highly-ranked by ALECs, are often not included in new releases. AT&T concurs. Second, BellSouth says that the ability of the interface to "do what is requested" is another reason that BellSouth often does not include highly-ranked ALEC change requests in new releases of an interface. In support of its second reason, BellSouth cites a change request for an EDI test environment as an example of its

occasional inability to support new functionality requested by ALECs. We note that the EDI test environment project was eventually undertaken by BellSouth. Thus, the record reflects, as shown in exhibits presented by witness Bradbury, that BellSouth's addition of resources enabled BellSouth to add new functionality to the EDI interface. AT&T witness Bradbury also suggests that a lack of interface development resources explain why change requests highly-ranked by ALECs are often not included in new releases.

We believe that the process within the CCP manual for resolving the sub-issues raised by AT&T provides for only limited collaboration between an ALEC and BellSouth.

a. Defect Correction

AT&T's position is that BellSouth's existing process is centered on notification, not on timely remedies to defects which stymie an ALEC's use of an interface. AT&T argues that the CCP manual contains excessively long intervals for correction of high and medium impact defects. The CCP manual contains language permitting BellSouth up to 25 business days to correct defects of a severe nature when an interface is rendered totally unusable to the ALEC. The cycle time for Medium Impact defects is also excessively long.

BellSouth says this sub-issue addresses the time that BellSouth is allowed to make defect corrections. The time frames provided in the CCP only represent the "outside" parameters in which BellSouth will make a "best effort" to correct defects. BellSouth says that it is committed to responding as quickly as possible.

As previously stated, The parties have agreed on several items within the sub-process of correcting defects to BellSouth interfaces used by ALECs. Other items, including certain correction intervals, remain open. We believe that untimely validation, work around, and resolution intervals cause the defect correction process to be insufficient as currently written.

The definition of what constitutes a defect, including a ranking of the defect according to its severity of impact upon an ALEC user, was agreed upon by ALECs and BellSouth. This definition

was recently published in Version 2.1 of the CCP manual, Section 5, on February 9, 2001.

AT&T and ALECs have also agreed with BellSouth on the cycle times for low impact defect correction. The CCP manual has been recently amended to reflect that consensus. In dispute are the cycle times set forth in the CCP manual for correcting both high impact defects and medium impact defects.

A high impact defect in a BellSouth interface is a crucial problem for an ALEC. The record shows that a high impact defect is defined in the CCP manual as causing "impairment of critical system functions and no electronic work around solution exists." Such a defect renders an interface unusable by an ALEC which has retail customers waiting for service to be provided as they requested. For an ALEC, this is an emergency.

AT&T offers evidence from nine sources that it and other ALECs have repeatedly raised concerns about the effects on their businesses of what they consider untimely resolution of severe defects. We agree with AT&T that the intervals associated with the correction of severe defects are excessively long.

AT&T requests shorter intervals than BellSouth has unilaterally written into the CCP manual. AT&T witness Bradbury points to a defect correction process "that remains focused on notification and contains excessively long intervals for correction." AT&T incurs higher costs to process orders, longer times for provisioning service, and potential high error rates while waiting for an interface defect to be corrected.

The critical nature of the situation calls for an immediate solution, one which is delivered at the earliest possible stage by the party responsible, BellSouth. Referring to the definition of a high-impact defect, we note it means that an ALEC is unable to use the system to process orders and provide service requested by its retail customers. The solution to the high-impact defect needs to be rapidly communicated to all affected parties so that they may adapt their systems.

Further, AT&T says that Verizon in New York is committed to a permanent metric of resolving 95% of all severe defects, equivalent

to what is defined as a high-impact defect in the BellSouth CCP manual, within 48 hours. In comparison, AT&T in this proceeding requests a 4-10 day resolution "with best effort" of high-impact defects. We believe that AT&T's request is reasonable and feasible with the proper dedication of interface development resources by BellSouth.

First, AT&T argues that high-impact defects should be validated as such within one business day. The one day interval for BellSouth internal validation of high-impact defects under Step 3 is ordered, and Section 5 and all related Sections and Parts of the CCP manual shall be amended to reflect the new interval. Further, the CCP manual shall reflect that, if for any reason, BellSouth is unable to validate the high impact defect within one business day, BellSouth shall be required to discuss the matter with the requesting ALEC and also to disclose same to all others known to be affected by the defect with both stated reasons and expected time period in which the defect validation can occur.

Similar provision for a one day response interval shall be made under Step 4 of the defect process in Section 5.0 of the CCP manual. This provides for developing and validating a work around/temporary solution. The negative consequences to an ALEC for an uncorrected high-impact defect can put the ALEC at a significant competitive disadvantage due to the fault of BellSouth.

Second, AT&T argues that high impact defect corrections should be implemented "within a 4-10 business day range, best effort." We note that an interval of 10 business days can equal two calendar weeks or more with holidays. Ten business days, or at least two weeks, is a reasonable time to expect the owner of a system to correct critical flaws which affect wholesale customers' use.

BellSouth shall amend Section 5, Step 5, as shown on page 37 of Version 2.1 of the CCP manual, to effectuate a 10 business day range with "best effort." This will reduce the outside edge of the cycle time for implementation of the solutions to high-impact defects. Section 5 and related portions of the CCP manual should be amended to require BellSouth to daily discuss the situation with the ALEC which filed the Change Request asking for defect correction. Further, BellSouth shall provide daily updates to all other known affected parties on the current status of correcting

the high impact defect. The CCP manual shall reflect that if BellSouth is unable to meet the 10 business day requirement for fixing the high impact defect, it must notify the designated Change Control Manager of the requesting ALEC and discuss the specific reasons for the delay. All affected parties must also be notified of the reasons for delay in case they, too, may be adversely affected.

BellSouth witness Pate states, referring to the defect resolution time frame in the CCP manual, "this says implemented within 4 to 25 business days. So we are projecting that is the outset (sic) case . . . ." The effect of a high-impact defect is the inability of an ALEC to use vital interfaces to process orders, diagnose repair needs, etc. It is unacceptable that the correction of severe problems in BellSouth's systems could take as long as five or more weeks. The resulting impact on an affected ALEC could seriously impair its business and ability to compete.

According to the definition published in the CCP manual, a Medium Impact defect in a BellSouth interface is a significant and serious problem for an ALEC. However, also according to the definition in the CCP manual, the ALEC is able, in these circumstances (with BellSouth assistance), to use a temporary solution while the defect is fixed. Nonetheless, ALECs need the ability to prepare contingency plans which could include programming resources, re-allocation of personnel, development of manual methods, and other such refinements.

The interval for the development of a temporary solution to medium-impact flaws in BellSouth's interfaces is currently set at four business days. A two day interval is more appropriate. AT&T requests a one day response interval. The CCP manual shall be amended to reflect a two day response for development and validation of a workaround solution to medium impact defects.

A major role of this Commission in telecommunications today is that of promoting competition. Defects which render an ALEC unable to respond to the needs of its retail customer seriously hinder the ALEC's ability to fairly compete. Accordingly, the CCP should be sufficiently comprehensive to effectively handle defect corrections. For that reason, BellSouth response intervals for

correcting both high and medium- impact defects shall be shortened as described above.

b. Monthly eight-step cycle

The eight step cycle referred to by AT&T is a process flow set forth in the CCP manual. It provides for the review, scheduling and implementing of typical change requests, not including those involving BellSouth software defects.

AT&T witness Bradbury testified that for filed Change Requests, AT&T requests truncation of the cycles involving: 1)BellSouth review of Change Requests for acceptance; and, 2) BellSouth's own internal change management process.

BellSouth witness Pate believes that the cycle times AT&T requests are unreasonable and that the current cycle times are adequate and fair. BellSouth contends that AT&T's suggested time frames will only add chaos to the process.

The parties agree with the number and sequence of steps in the current CCP manual for Type 2-5 change requests. The parties also agree on a special process for expedited features and defects, notwithstanding the dispute over response intervals for the latter.

The current practice is to prioritize change requests quarterly. Until January 2001, the timing of prioritization meetings between ALECs and BellSouth varied and were tied only to an irregularly-published release schedule.

As noted above, BellSouth suggests that a lack of interface development resources explains in part why BellSouth has not implemented various highly-ranked change Requests. It also explains BellSouth's desire to retain long cycle times (Step 3) in which to review a change request for acceptance and also to analyze impacts of a change request for inclusion in a new software release (Step 7).

AT&T proposes changes to the intervals for both Step 3 and Step 7. In the case of Step 3, AT&T requests a reduction in the cycle time from twenty business days to ten business days. Ten business days can equal two weeks or more with holidays and is not

an unreasonably short period in which to expect a review on whether a CR is accepted. In the case of Step 7, AT&T requests a reduction in the cycle time from thirty business days to twenty-five business days. Twenty-five business days can equal five weeks or more with holidays and is not an unreasonably short period in which to expect analysis from BellSouth on sizing and impact estimation.

We are, again, faced with the challenge of seeing that ALECs are not placed in a position of competitive disadvantage. The CCP should be sufficiently comprehensive to ensure that there are processes to handle a monthly eight-step cycle. The eight step cycle is adequate. However, the time periods within Steps 3 and 7 of the cycle shall be shortened to 10 business days and 25 business days, respectively. The frequency of current quarterly prioritizations of change requests is adequate.

c. Change notification schedule

AT&T contends that it needs sufficient notice of modifications to BellSouth's systems and processes to enable it to make responsive changes in its own systems and thereby continue to provide service to its customers.

BellSouth argues that the schedules set forth throughout the CCP manual are adequate. AT&T may submit any changes it wishes to the CCP.

The resolution of sub-issue (a) above will mitigate AT&T's concerns which underpin its argument for a firm schedule of notifications. If ALECs are consulted during the development of interfaces that they will use, many problems associated with the introduction of new interfaces may be mitigated. The design characteristics and draft specifications of new releases may be reviewed by BellSouth's ALEC customers, prior to the current notification schedules. An open consultation may result in the development of a higher quality interface product which incorporates customer ideas.

However, on a number of occasions, BellSouth has deviated from the schedules and procedures set forth in the CCP manual. BellSouth-initiated Change Requests 216, 217, 218 and 219, were filed and immediately scheduled for a new release by BellSouth in

November 2000 without receiving prioritization or review by ALECs. This action diminishes the opportunity for ALEC-initiated and prioritized Change Requests to be scheduled into new releases. In late August 2000, contrary to stated procedure, BellSouth released new business rules for local ordering software which contained significant coding and process changes which were not submitted to the CCP as called for in the manual. BellSouth has made changes to Release 9 and 10 User Requirements, removing ALEC-initiated Change Requests from the releases. We are persuaded by the evidence that BellSouth has failed to follow the CCP document.

In contrast, AT&T states that AT&T ". . . has no method by which it can elect not to adhere to the documented CCP intervals or in any other way circumvent the CCP process." If ALECs are held to intervals and procedures set forth in the CCP manual, BellSouth should be bound to do so as well, notwithstanding regulatory of court ordered mandates. Accordingly, BellSouth shall comply with the Change Control Process document at all times. The CCP document should, but does not, contain language stating BellSouth's intent and obligation to do so.

Upon consideration, we shall not require an amendment to be made at this time to the release and documentation notification timelines set forth on page 22 of Version 2.1 of the CCP manual. BellSouth, however, shall follow a firm schedule of notifications associated with changes initiated by BellSouth and others. Moreover, BellSouth shall be required to adhere to the CCP manual in its entirety. Moreover, the CCP should be sufficiently comprehensive to ensure that there are processes for a firm schedule of notifications associated with changes initiated by BellSouth. The parties now agree on procedure for introduction of new interfaces. With settlement on that process, the disagreements within this area should be reduced.

d. Dispute Resolution

AT&T witness Bradbury said the current dispute resolution process does not become effective until the escalation process is exhausted. Therefore, escalations and dispute resolution processes should be considered together. BellSouth responds that the CCP contains an adequate and fair dispute resolution mechanism in Section 8 of the manual.

Within the CCP, Section 8, the escalation process is followed by text which sets forth the dispute resolution process. Dispute resolution occurs after AT&T or an ALEC has exhausted appeals inside BellSouth. The dispute resolution process provides for mediation through the state public service commission if available. The resolution applies to all affected ALECs.

Without prior mediation, either BellSouth or an ALEC may file a formal complaint with state regulators seeking redress. AT&T and other ALECs have the opportunity to negotiate terms for interconnection with BellSouth within the Joint Interconnection contract. They have the ability to request that state regulators resolve issues of contract interpretation.

Upon consideration, we find that an adequate dispute resolution process exists under Section 8 of the CCP manual. The current process is equitable, well defined and inclusive.

N. OSS RELATED ISSUES (ELECTRONIC ORDERING)

1. Parsed Records

The issue before us in this subsection is whether BellSouth should be required to provide CSR information in a format that permits its use in completing an order for service. Specifically, should BellSouth be required to parse CSR information in such a way as to enable AT&T to electronically populate a Local Service Request (LSR). The term "parse" means "to receive a stream of data from the CSR and break down that data into certain fields for further use."

AT&T witness Bradbury contends BellSouth provides parsed CSRs to its own retail customer service representatives but not to AT&T. As a result, BellSouth's systems are able to automatically populate retail orders, saving BellSouth time and money while providing a greater level of accuracy. Witness Bradbury concludes "because BellSouth provides parsed CSRs to its customer service representatives, it also is required to provide the same functionality to AT&T."

BellSouth witness Pate states AT&T is asking for "sub-line" parsing of the CSR data which goes beyond the level used and retained by BellSouth itself. Witness Pate provides the following example:

> BellSouth . . . retains the customer's listed name as a complete field - my listed name is "Pate, Ronald M." AT&T apparently wants "sub-line" parsing of "Pate, Ronald M" into three separate fields: last name ("Pate"), first name ("Ronald"), and middle initial, ("M.").

Witness Pate contends this level of parsing can be programed by AT&T on its side of the interface and that BellSouth has met its obligation by providing ALECs with CSR information in a non-discriminatory fashion. Witness Pate states BellSouth already provides AT&T and other ALECs a stream of data based on the Common Object Request Broker Architecture (CORBA) industry standard via the TAG pre-ordering interface. According to witness Pate, "this data is provided to ALECs in the same manner as it is to BellSouth's Retail units."

AT&T witness Bradbury rejects the argument that the level of parsing requested can be accomplished on AT&T's side of the interface as both irrelevant and incorrect. Witness Bradbury states BellSouth would have to provide AT&T with data that contains delimiters, along with rules by which the fields represented by the delimiters can be determined, in order for AT&T to parse BellSouth's data and populate the appropriate fields. Referring to the example given by witness Pate, witness Bradbury claims the "customer listed name" field is presented to AT&T as one field and that field is without delimiters. Without delimiters, Witness Bradbury argues, AT&T cannot parse the data. Witness Bradbury states that because BellSouth requires submission of an ordering form in which the customer name must be shown in a minimum of two fields, AT&T is forced to separate the information manually. Witness Bradbury concludes that as a result, ". . . AT&T is unable to reliably automatically populate its service orders with the CSR information BellSouth currently provides to ALECs [while BellSouth can]."

Witness Pate states BellSouth supports the current LESOG-4 (Local Exchange Service Order Generator) of the industry recognized

Ordering and Billing Forum. This is important because, according to witness Pate, the change from LESOG-3 to LESOG-4 was the result of the best parts of TCIF-7,8,9, and 10 being gleaned by the ALECs participating in the CCP along with BellSouth. The result was OSS99 which was implemented in January 2000. BellSouth states that meetings were held with the ALECs via the CCP prior to the move to LESOG-4 to discuss the impact. BellSouth states that "a decision was made by the members of the CCP, which included AT&T, to implement the components that were most critical to the ALECs. The subparsed CSR requested by AT&T was not included in this enhancement."

BellSouth further states AT&T submitted a Change Request (number TAG0812990003) to the CCP requesting parsed CSRs as part of pre-ordering functionality. BellSouth states the request was submitted on August 12, 1999 and was presented during the September 28, 1999 CCP Enhancement Review Meeting where it was prioritized as one of 11 items to be considered for implementation in 2000. During the November 1999 CCP meeting, the item was updated for planning and analysis to begin in mid-2000. Witness Pate states during the March 2000 CCP meeting, it was decided a sub-team would be formed in 2000 to investigate the implementation of sub-parsed CSRs. Witness Pate states "this change request was prioritized as the number one pre-ordering request during the June 28, 2000 Change Review Meeting."

Witness Pate further states the sub-team has been formed and includes members from BellSouth as well as ALEC CCP members. Sub-team meetings have subsequently been held on October 3, 2000 and October 19, 2000. Witness Pate noted the apparent lengthy time frames and commented "it is the ALECs that prioritize the changes that are addressed and implemented and the time frames that have resulted are the consequence of the ALECs themselves placing more important or critical changes ahead of the change request for parsing, particularly with regard to OSS99 release where other changes were made."

AT&T witness Bradbury concurs that the change request for parsed CSRs was submitted to the CCP process in September 1999, but states that AT&T, along with other ALECs first made the request to BellSouth a year earlier in September 1998, as part of the upgrade to OSS99. Witness Bradbury states BellSouth refused to accept the

parsed CSRs in the upgrade, and AT&T was forced to resubmit the request via the CCP. Witness Bradbury further concurs that parsed CSRs were one of eleven pending change control items and further states "it received the number one ranking by the group for the TAG interface." He further points out that the parsing change request submitted on September 28, 1999, "was targeted for implementation in April, 2000." He further states that during the March 29, 2000 CCP meeting, the status of AT&T's request was downgraded from "targeted for release April 20, 2000" to "subteam formed to perform planning and analysis during 2000." Though not downgraded by the ALECs, witness Bradbury states BellSouth subsequently downgraded and delayed implementation to May 2001, then to December 31, 2001.

Witness Pate further explains that the TAG pre-ordering interface can be integrated with the TAG ordering interface or the Electronic Data Interchange (EDI) ordering interface, allowing information received via TAG to be further parsed by the ALEC to exactly the level needed on an order. Witness Pate states that ALECs can integrate these interfaces with their own OSS , allowing the ALECs to manipulate the data obtained via the TAG pre-ordering interface, including the "ability to further parse the CSR." Data can then be manipulated so it will flow into an ALEC's OSS. BellSouth's witness Pate also argues, "furthermore, BellSouth does provide "sub-line" parsing of the end user's address during the address validation process in TAG. Thus, TAG allows ALECs to parse CSRs in the same way that BellSouth retail systems parse CSRs, and AT&T needs nothing further."

AT&T witness Bradbury claims that BellSouth provides parsed CSRs to its own Customer Service Representatives, saving time and money and insuring accuracy, and that the same should be provided to AT&T. AT&T witness Bradbury claims data parsing on their side of the interface requires field delimiters and associated rules by which to accomplish parsing.

On the other hand, BellSouth witness Pate claims AT&T is asking for a lower level of data parsing or "sub-line parsing" which is more than what BellSouth uses and retains for itself. Further, BellSouth contends AT&T can perform data parsing themselves on their side of the interface. BellSouth further contends it is already providing a stream of data based on the CORBA industry standard via the TAG interface. BellSouth witness

Pate further argues that integration of machine-to-machine interfaces, such as TAG pre-ordering with TAG ordering or EDI, allows the ALEC to manipulate the data obtained, which includes the ability to parse the CSR.

We agree with AT&T that data should be parsed and should be available to AT&T at the same level BellSouth provides itself. In the interim, in order to accomplish parsing themselves, field delimiters and the related rules to apply those delimiters must be provided to the ALEC upon request.

BellSouth's Witness Pate also points out that AT&T and other CCP members did not include parsed CSRs during the development of OSS99. BellSouth goes on to state that on September 28, 1999, AT&T submitted a Change Request to the CCP that requests parsed CSRs as part of pre-ordering functionality. The request was one of eleven to be considered for implementation in 2000. The parsing issue was the number one pre-ordering request at the June 2000 CCP meeting.

The record reflects that BellSouth has been aware of the issue of parsing for quite some time, but to date has yet to support parsing, for reasons that are not readily apparent. In his testimony, AT&T's witness Bradbury refers to the various dates related to the parsing issue and ultimately states that BellSouth is exercising unilateral control over the CCP, implying implementation of parsing of CSRs has been delayed for BellSouth's own purposes. Significant dates regarding this issue are listed below:

September 1998	Parsing requested by BST as part of OSS99 upgrade
August 12, 1999	Change Request submitted to CCP for parsed CSRs
September 28, 1999	Prioritized as 1 of 11 to be implemented in 2000
November 1999	Up-dated for planning and analysis to begin in 2000

March 29, 2000	Downgraded from "Targeted for release April 20, 2000" to "Subteam being formed to perform planning and analysis during 2000"
April 2000	Original Implementation date
June 28, 2000	Parsing is the number one pre-ordering item in the CCP.
September 18, 2000	Parsed CSR possible by May 2001
December 5, 2000	Parsed CSR due date changed to December 31, 2001.

Reviewing the dates indicated above, it appears the implementation date for parsed CSRs has been delayed for reasons that are not adequately explained. As noted, the issue of parsing was first brought up in September 1998 and a year later was prioritized for implementation in 2000. In March 2000, the status of the parsing issue was significantly changed when it was changed from being targeted for actual implementation (April 20, 2000) to merely being studied (subteam being formed to perform planning and analysis). June 2000 saw parsing as the number one pre-ordering issue in the CCP, while in September and December 2000 the implementation dates were again moved back. We find these slippages are unreasonable.

2. Electronic Ordering Capability

The issue before us here is whether BellSouth should provide AT&T with electronic ordering capability for all services and elements.

BellSouth's witness Pate states manual submission is non-electronic and can be accomplished by facsimile. Witness Pate further states that "manual submission is a result of the fact that the services ordered require substantial manual handling and cannot be submitted electronically."

AT&T argues that the manual handling referred to by witness Pate is simply part of the order preparation process and not part of the order submission process. Witness Bradbury goes on to state some level of manual collection of order information is necessary to effect input.

Witness Bradbury concludes that after the preparation is completed, "BellSouth has the ability - which AT&T does not - to input that data into its ordering system." Witness Bradbury states "BellSouth submits both its own electronic order and the ALEC's order." (Emphasis in original)

Witness Pate contends "...non-discriminatory access does not require that all LSRs be submitted electronically and involve no manual processes." Witness Pate further claims that "BellSouth's own retail processes often involve manual processes...."

Witness Pate states that "all change requests for BellSouth's electronic and manual interfaces should be submitted via the CCP." Witness Pate further states that "to BellSouth's knowledge, no such...change request has been submitted to the CCP."

AT&T implies its chief motive for obtaining electronic ordering capability for all services and elements is to reduce errors, intervals, and costs.

In this issue, AT&T is asking for the ability to electronically order all services and elements. Specifically, this request relates to the electronic ordering of complex residential services and elements, and business services and elements which currently require manual submission via facsimile followed by electronic entry by BellSouth representatives. We are persuaded that the manual handling described by witness Pate is largely part of the order submission process.

We agree with AT&T that BellSouth currently does have the technical ability to input its own complex residential and business orders when AT&T does not. Furthermore, we agree with BellSouth when witness Pate suggests that a mechanism is in place to address this issue which is the CCP. It appears no such change control request has been submitted to the CCP. This issue should first be addressed through the CCP.

AT&T's witness Bradbury suggests that the ability to electronically input complex orders itself would provide more accuracy, reduce intervals, and reduce costs. Though reasonable assumptions at first glance, we believe such benefits and improvements in performance cannot be predicted with certainty.

3. Electronic Processing

This issue concerns whether or not BellSouth should provide electronic processing, without any subsequent manual processing, after the service or element has been electronically ordered.

Witness Bradbury claims AT&T has a number of reasons for seeking electronic processing after electronic ordering, without further manual handling by BellSouth: BellSouth's own orders are processed that way, and it is less expensive, faster, and less error-prone. AT&T claims lack of this element puts it at a competitive disadvantage.

Within the record for this issue, we have identified five distinct subparts which will be discussed separately below:

a. Definition of Flow-Through
b. Feasibility of Complex Order Flow-Through
c. Comparison of Increase in Electronically Submitted Orders to Change in Electronic Flow-Through
d. Impact of Designed Manual Fall-Out and BellSouth Caused System Failures
e. Effect on Intervals Due to Fall-Out

a. Definition of Flow-Through

BellSouth witness Pate states in his direct testimony that "Non-discriminatory access does not require that all LSRs be submitted electronically and flow through BellSouth's systems without manual intervention."

AT&T rebuts BellSouth's position, stating that "because all of BellSouth's orders are capable of flow through, the ALECs' orders must be provided with the same capability."

AT&T argues that this Commission has itself "determined BellSouth must provide electronic interfaces that require no more human or manual intervention for ALECs than for BellSouth." AT&T quotes from Order No. PSC-97-1459-FOF-TL:

> . . . The interface must be electronic. The interface requires no more human or manual intervention than is

necessarily involved for BellSouth to perform a similar transaction itself.

Citing paragraph 107 of the Second BellSouth Louisiana Order, AT&T quotes the FCC's definition of flow-through as:

> A competing carrier's orders flow-through if they are transmitted electronically through the gateway and accepted into BellSouth's back office ordering systems without manual intervention.

BellSouth witness Pate provides the following definition of flow-through:

> Flow-through for an ALEC LSR occurs when the complete and correct electronically-submitted LSR is sent via one of the ALEC ordering interfaces (EDI, TAG, or LENS), flows through the mechanical edit checking and LESOG system, is mechanically transformed into a service order by LESOG, and is accepted by the SOCS without any human intervention.

AT&T rejects BellSouth's definition of flow-through, stating it goes further than making it specific to BellSouth's systems and has "in fact introduced significant requirements beyond the FCC's." While admitting "the flow-through process for BellSouth shares many commonalities with the ALEC flow-through process," AT&T offers its concept of BellSouth Retail flow-through based on its analysis of BellSouth's definition of ALEC flow-through. (Areas specific to BellSouth flow-through are presented in italics):

> *Retail* flow-through occurs when a complete and correct electronically submitted LSR is sent via one of the *retail* ordering systems *(RNS, ROS, or DOE)*, flows through the mechanical edit checking, and is accepted by the Service Order Control System (SOCS).

AT&T witness Bradbury notes the FCC's definition of flow-through addressed only ALEC service requests, and further claims the FCC's definition can be "encompassed to include both ALEC and BellSouth retail processes without introducing any spurious restrictions:"

> A service request that is input to a sales and marketing interface by the manual action of a CLEC or BellSouth employee and subsequently sent to and accepted by BellSouth's Service Order Control System ("SOCS") without any further human intervention has flowed-through.

AT&T witness Bradbury concludes that the above definition makes it clear that service orders placed through BellSouth retail sales and marketing interfaces are capable of flow-through to SOCS, while only a few such ALEC service orders are capable of similar flow-through.

BellSouth witness Pate states that to the company's knowledge, no ALEC has submitted a change request to the CCP regarding issue 31(c). BellSouth makes the claim that "AT&T is attempting to avoid the CCP" and restates the claim that "all requests for enhancements to BellSouth's electronic and manual interfaces should be submitted via the CCP."

AT&T witness Bradbury refutes BellSouth's denial of knowledge of any change requests and states "AT&T has submitted CRs 0137 and 0160 and other ALECs have also submitted flow-through related change requests." Witness Bradbury claims that proceeding via the CCP "is irrelevant to BellSouth's obligation to provide nondiscriminatory OSS functionality, including flow-through ordering." In addition, AT&T states it and BellSouth "have been engaged in on-going discussions of flow-through . . . since early 1997" with the most recent talks in August-September 1999 to present.

B. Feasibility of Complex Order Flow-Through

Witness Bradbury describes the front and back-end systems involved in BellSouth submitting LSRs:

> Once a BellSouth representative has gathered and arranged all of the information necessary to place a service request on behalf of a BellSouth retail customer, a process known as pre-ordering, the employee types the order into RNS or ROS. If the pre-ordering information is accurate and the employee has made no input errors, the service request will pass the RNS or ROS edits, be

> forwarded to SOCS, pass the SOER edits, obtain AO status and be distributed as necessary to BellSouth's downstream legacy systems. Thus, barring error, all BellSouth services and products can be requested and ordered as the result of the typed input of a single employee. AT&T seeks this same capability, which I shall refer to as "Flow-through Ordering."

AT&T witness Bradbury also provides a similar description and analysis for ALEC orders. In his analysis, witness Bradbury claims that orders submitted via BellSouth retail systems RNS and ROS are done so in a format different than that for ALECs. ALEC orders, according to witness Bradbury, are submitted in "LSR" format requiring a suite of hardware and software systems and programs to convert the ALEC LSRs into a format the [Service Order Completion System] can recognize." Witness Bradbury goes on to state "the suit of hardware and software systems and programs that BellSouth has built between the ALEC and SOCS was designed by BellSouth from end-to-end and is not controlled by any industry standards, which relate only to communications between the EDI and TAG portions of the interface."

Witness Bradbury further states that when service requests are formatted by LEO/LESOG or the LNP Gateway, they are forwarded on to SOCS. Witness Bradbury states the problem at this point is that BellSouth has not programmed LEO/LESOG or the LNP Gateway to be capable of further formatting ALEC orders into SOCS-readable requests, resulting in fall-out for manual handling. Witness Bradbury also claims that "LEO/LESOG, the LNP Gateway, and SOCS do not always perform as they should: they route a number of perfectly valid ALEC service requests to manual processing when they should not."

BellSouth witness Pate states that "In most cases [orders that fall out by design] are complex orders." Witness Pate states that, "the specialized and complicated nature of complex services, together with their relatively low volume of orders as compared to basic exchange services, renders them less suitable for mechanization, whether for retail or resale applications." Witness Pate continues:

> Complex, variable processes are difficult to mechanize, and BellSouth has concluded that mechanizing many lower-volume complex retail services would be imprudent for its own retail operations, in that the benefits of mechanization would not justify the cost.

Witness Pate concludes by stating "because the same manual processes are in place for both ALEC and BellSouth retail orders, the processes are competitively neutral, which is exactly what both the Act and the FCC require."

AT&T witness Bradbury admits that "complex services are rarely totally mechanized" but goes on to state that circumstance "is irrelevant to the issue of flow-through" implying those non-mechanized activities take place in the pre-ordering phase. Witness Bradbury reiterates that flow-through begins at the point of actual order entry (not pre-ordering) when BellSouth enters data into ROS and that data is received by SOCS.

Witness Pate goes on to list and explain why some orders fall out for manual processing:

1. LESOG has not been programed to handle requests for certain types of products and services:

    a. Complex products and services.
    b. Inability to justify the economics of programming for some types of low ordering volume products and services.

2. Unique circumstances related to the LSR:

    a. Pricing plans unique to the ALEC.
    b. Requests which have other related requests being processed.
    c. Subsequent requests on an account prior to the new telephone number being posted to the billing system.

Referring to item 1. above, witness Bradbury claims that "programming of LESOG is totally at BellSouth's discretion and is not limited by any industry standards or other external guidelines-

-it is simply BellSouth's, and BellSouth's alone, decision as to what programming to install in LESOG." To refute BellSouth's claim that "low ordering volume" is a legitimate reason not to complete LESOG programming, AT&T claims that for the month October 2000, 72,650, or 21% of the electronically submitted LSRs were subjected to manual handling.

AT&T witness Bradbury disputes the concept that orders must fall out for reasons of complexity; specifically, fall-out for circumstances unique to ALECs. Witness Bradbury lists several items (ALEC orders with more than 25 business lines, expedited orders, end-user outside moves, pending order activity on account, and transfer of calls option) that AT&T does not believe are unique to ALECs. Moreover, he believes that these types of orders do not fall out for BellSouth but do for ALECs. Witness Bradbury goes on to quote BellSouth witness Pate who does express some uncertainty as to whether these items are unique to ALECs.

c. Comparison of Increase in Electronically Submitted Orders to Change in Electronic Flow-Through

Witness Bradbury states that ALEC orders submitted electronically have increased from 49% to 82% of all ALEC orders over the one year period October 1999 to October 2000. Despite this increase in electronically submitted orders, witness Bradbury notes that total LSRs still subject to manual handling (both manually and electronically submitted) fell from 57% to 33%. Witness Bradbury claims that "electronically submitted LSRs subjected to manual handling actually rose from 16% to 23%."

AT&T also points out that while total manual and electronically submitted orders that were manually handled increased 7% from 1999 to 2000, total LCSC staff increased by 16%. Witness Bradbury notes "in 1999, 85% of such orders were fully manual while in 2000, only 37% were fully manual."

d. Impact of Designed Manual Fall-Out and BellSouth Caused System Failures

AT&T witness Bradbury states it is possible to quantify the impact of designed manual fall-out and BellSouth-caused system

failures on ALEC LSRs. Witness Bradbury states in January 2000 BellSouth began providing additional data for the level of Manual Fall-Out and BellSouth-caused system failures experienced on ALEC LSRs. Witness Bradbury states the data is available for LENS, TAG, and EDI, for LNP, UNE, Business Resale, and Residential Resale.

Witness Bradbury presents a series of tables and analysis in which AT&T claims "ALECs' maximum possible Flow Through opportunity-even if ALECs had submitted every service request with absolutely no input errors-was as low as 6%" which occurred in the category of LNP orders via TAG. Witness Bradbury's analysis also shows the highest flow-through occurring within the category of Residence Resale for TAG, EDI, and LENS at 94%, 65%, and 85%, respectively. Witness Bradbury claims the difference in the maximum percentage of ALEC LSR flow-through obtained without input error and 100% flow-through is entirely due to BellSouth fall-out and BellSouth Failures. Witness Bradbury states "BellSouth, and BellSouth alone controls the two components(manual fallout and system failure) that generate the low maximum flow-through percentages shown."

AT&T's witness Bradbury further presents a data table that AT&T states indicates the incidence of manual fallout and system failure for LNP, UNE, Business and Residential Resale for September 2000. Witness Bradbury states "the LEO/LESOG, LNP Gateway and SOCS systems in which these failures actually occur are common to all three TAG, EDI, and LENS interfaces." Witness Bradbury concludes that because the systems are common to all three interfaces, one would expect same, or similar, failure rates. Witness Bradbury also claims the failures in this case are even more significant in that they "occur on service requests that the systems were specifically designed to process." Witness Bradbury reinforces this idea by presenting a data table and analysis that AT&T claims "shows the percentage of validated LSRs, which BellSouth's systems were designed to process, but which nevertheless encounter unexpected failures."

Witness Bradbury implies the data indicate the interfaces failed to process. Recapping a data table prepared by witness Bradbury, the percentages below indicate the lowest and the highest percentage failure rates (among all service request types) by interface for the month measured:

TAG 4% (Residence Resale) to 92% (LNP)
EDI 30% (Business Resale) to 59% (UNE)
LENS 9% (Residence Resale)to 38% (Business Resale)

Though the data presented above is for the single month of September 2000, witness Bradbury expands on his analysis and states the results for the five month period May through September 2000 show no "significant or consistent improvement trend," and that "September's results for [TAG/LNP and EDI/UNI] are at all time lows."

BellSouth witness Pate states AT&T witness Bradbury "has intentionally misrepresented the data for the month of September 2000 to more favorably reflect his point of view in what is already a faulty analysis process." Witness Pate claims witness Bradbury took the data posted in BellSouth's Percent Flow-Through Service Requests (the "flow-through report") and added it to "Total Manual Fallout" from the flow-through report. Witness Pate claims that improper combination is shown as "Total Manual Fallout" in AT&T witness Bradbury's Exhibit JMB-20. Witness Pate provides a summary analysis which he claims illustrates his point.

Witness Pate states that the category "Pending Supps" is new, having been added with the September 2000 flow-through report. Witness Pate also states that BellSouth informed ALECs of this new category in September 2000 by posting a notice of the change on the performance measures web site where the flow-through report is located.

BellSouth's witness Pate explains the meaning and significance of "Pending Sups" meaning Pending Supplements;

> A Pending Supplement is the result of a LSR that has been submitted by an ALEC being changed (supplemented) by the ALEC prior to acceptance by BellSouth. It results in the initially submitted LSR going into a pending status as the mechanical system have recognized the subsequent LSR submittal. The LSR in the pending status will eventually be mechanically deleted by the system. These deleted LSRs are being categorized for purposes of flow-through as Pending Supps.

Witness Pate states the category of Pending Supps was developed as the result of an exception found during Third Party Testing in Georgia. Previously identified as ALEC errors, the third party tester, KPMG, and BellSouth ultimately redefined these LSRs as Pending Supplements. Though now recategorized, these types of LSRs have never been included in the calculation of Manual Fallout, according to witness Pate.

Comparing AT&T's flow-through data to that of ALEC aggregate and all interfaces used, witness Bradbury says that through his analysis "it is obvious that the flow-through capabilities available to AT&T from BellSouth are inferior to those available to the ALECs as a whole."

Comparing only EDI related data, which is the only ordering interface used by AT&T, witness Bradbury states he used "official flow-through data as reported by BellSouth" in calculating what he calls "System Potential Flow-Through" or "Potential EDI". This is labeled "ALEC Error Excluded Flow-Through" by BellSouth. Witness Bradbury recaps that calculation in a data table that presents a comparative analysis of "Potential EDI" between ALECs as a whole and AT&T for the months of May, June and July 2000. The data presented in the table indicates a significant disparity against AT&T in "Potential EDI" for LNP and UNE products. Results for the Business Resale product are shown as decidedly favoring AT&T. Referring to the results shown in the table, witness Bradbury concludes "it is obvious that the capabilities available to AT&T from BellSouth are inferior to those available to the ALECs as a whole." Further, witness Bradbury concludes "BellSouth's system design and operational performance discriminates against ALECs using LNP and UNE products as the basis of their market entry."

BellSouth witness Pate again states that "to understand this data and the impact it has on flow-through, one must have a thorough understanding of the individual ALEC data comprising the total." To illustrate his point, witness Pate selected the Percent Flow-Through Service Requests (Business Detail) for the month of September 2000 (for which he analyzed the dominant users for each interface. Dominant users placing 500 or more LSRs for the month. Witness Pate's analysis indicates nine dominate users for each of the three ALEC interfaces. These nine users, according to witness Pate's analysis, were responsible for 54% of that

month's Business Resale LSRs submitted via electronic interface. Witness Pate concludes that "when such a large percentage of the volume comes from such a small number of the users, the overall results for that area will be skewed by the performance of those few users. That is specifically the case for this situation."

BellSouth's witness Pate goes on to state the nine users in his analysis represent 63% of the total designed fall-out for all customers. By interface, the nine users account for the follow total designed fall-out: LENS/44%, EDI/98%, TAG/93%. Witness Pate concludes this "demonstrate[s] how incomplete knowledge can lead to incorrect conclusions."

BellSouth witness Pate continues in his analysis to state the majority of fall-out for two of the nine users was due to a particular resale service. Witness Pate predicts that with EDI Release 6.0 and TAG Release 3.0 and 3.1, with a January 14, 2000 implementation, the particular resale service will no longer fall-out. When questioned why fall-out rates had not changed, witness Pate states it is because users have not implemented the releases, which is the decision of the ALECs.

BellSouth witness Pate further concludes that if the TAG and EDI releases discussed above had been implemented by the users, AT&T witness Bradbury's analysis results would have been different. Witness Pate takes witness Bradbury's analysis and adjusts it to reflect a 50% manual fall-out, implementation of the new TAG and EDI releases, and adjustment of "Manual Fall Out" by subtracting "Pending Supps." Witness Pates analysis of the data is that:

> For EDI business resale, the results would have improved to 82.2% from . . . 66.3%. For TAG, the result would have improved to 75.3% from . . . 68.4%.

Concluding his analysis, witness Pate points out these results represent only Business Resale, and implies results for the remaining items would also improve.

AT&T witness Bradbury disagrees with witness Pate's position that underlying data is necessary for flow-through analysis, and rejects the conclusion that not upgrading to newer versions of EDI and TAG are the cause of two ALECs' orders falling out. Witness

Bradbury states that "flow-through does not occur at the interface level" but, referring to witness Pate's definition at TR 1334, in BellSouth's OSS (LEO/LESOG).

Witness Bradbury claims the service discussed by witness Pate as able to flow-through after upgrading EDI and TAG is Series Hunting. Witness Bradbury states that Series Hunting has been electronically orderable for three years, and that flow-through could have been provided at any time during those three years had BellSouth elected a change in programming to LEO/LESOG.

Witness Bradbury states witness Pate has not refuted his conclusion that BellSouth provides unacceptable levels of flow-through for business resale, and points out that the changes indicated by BellSouth's above analysis are still unacceptable. Witness Bradbury concludes "these inflated numbers, which indicate that orders fall out almost half the time, still stand in stark contrast to the 100% flow-through for BellSouth's own orders."

In addressing BellSouth witness Pate's analysis that over-all flow-through rates may be skewed as a result of a small number of high-volume ALECs using electronic interfaces, witness Bradbury states neither the number nor volume of ALECs is important as long as discrimination is occurring.

E. Effect on Intervals due to Fall-Out

Witness Bradbury states that when any ALEC's LSR encounters either a designed fall-out or system error, the LSR is routed to BellSouth's LCSC for manual handling, causing delay and increasing the probability of input and provisioning error. Witness Bradbury states it is not possible to quantify the additional error rate caused by manual processing after fall-out, but that any such error rate would be both undesirable and unreasonable. Witness Bradbury states that in March 2000, BellSouth began producing the ALEC LSR Report that clearly indicates ALEC LSRs subject to BellSouth system errors are not getting priority treatment as BellSouth claims.

AT&T witness Bradbury presents a data table and analysis in which he determines the claim interval for both Designed Fall-Out and BellSouth System error ranges from 29 to 40 hours for May and

June, 2000, for three AT&T operating company numbers (OCNs). The claim interval is the time from when the order falls out for manual handling to when it is picked up, or "claimed," by a BellSouth representative to begin working on it. In his rebuttal testimony, witness Bradbury includes data for the months of September and October 2000 showing the claim intervals ranging from 32 to 130 hours. According to AT&T, BellSouth responded on October 20, 2000 that "order volume had overwhelmed the center" and that 40 additional personnel would be added over the next two months.

Witness Bradbury concludes "delays of this length will often result in the issuance of an order with a change in installation due date, which may or may not be acceptable to the customer." Witness Bradbury goes on to say "many orders delayed in this manner will have to be canceled or supplemented."

In this issue, AT&T is asking for electronic flow-through of service requests equal to that which BellSouth experiences. Specifically, AT&T wants the ability to have electronically submitted LSRs flow through BellSouth's OSS to its Service Order Completion System (SOCS) without manual handling. AT&T's witness Bradbury suggests that electronic processing after electronic ordering without further manual intervention would provide more accuracy, reduce intervals, and reduce costs.

Though they may seem like reasonable assumptions at first glance, the evidence does not support the predictions of such benefits and improvements in performance. Providing the ALEC with the opportunity to input Local Service Orders for Complex Residential and Business electronically would, however, shift the responsibility of input errors from BellSouth to the ALEC.

Definition of Flow-Through

Both AT&T and BellSouth presented a number of definitions and analysis of those definitions in their arguments of issue 31(c). We believe the key elements in each of the definitions presented involve electronic submission of an LSR, manual handling, and ultimate acceptance by BellSouth's Service Order Control System (SOCS). Without presenting yet another definition, the central requirement of each definition should be parity with BellSouth retail.

AT&T submits its residential orders electronically although complex residential orders do fall-out, by design, for manual handling at the LCSC, while business orders must be submitted by mail or facsimile to the LCSC for input into DOE. Dropping out by design at the LCSC and requiring facsimile or mail delivery to the LCSC is not compatible with electronic submission because these methods require manual intervention. However, based on the record, it is our opinion that BellSouth must also manually submit equivalent orders for manual input into its new ROS system. Once entered into either DOE or ROS, there is no evidence to suggest AT&T and BellSouth orders flow-through to SOCS differently. Therefore, the effect of manual input of AT&T orders at the LCSC is competitively neutral. Once orders fall out for manual handling, AT&T is unable to exercise further control over timely and accurate input into DOE.

Change Control Process (CCP)

We agree with AT&T that change requests (numbers 0137 and 0160) were issued requesting that BellSouth modify its systems so that additional order types will flow through its systems without manual intervention. We disagree with BellSouth that "AT&T is attempting to avoid the CCP" on this issue.

We find that the proper mechanism to address this issue is the CCP. It would be beneficial for AT&T and other ALECs to have the ability to electronically enter all LSRs and have them flow through to SOCS without designed manual fall-out. However, the system in place does not create disparity for AT&T regarding order submission as stated earlier. Therefore, this issue is currently best suited to be pursued through the CCP process.

Feasibility of Complex Order Flow-Through

Witness Bradbury points to Witness Pate's testimony and notes the flow chart prepared by BellSouth indicates it enters order information into ROS, which then electronically flows-through to SOCS. We also point out that a companion BellSouth flow chart indicates identical electronic flow-through from DOE to SOCS for ALEC orders.

Witness Bradbury further points to the July 28, 2000 deposition of Mr. Douglas McDougal to reinforce the importance of flow-through, and to restate its definition. He states that orders are considered to flow-through once the orders are entered into DOE which "releases the order to the downstream systems, and it flows without erroring out." AT&T is referring to this testimony because it appears to speak of ALEC orders being received manually, being input into DOE, and flowing through. Witness Bradbury's analysis seems to conclude that if ALEC orders can flow through, the BellSouth Retail orders should also be considered to flow through.

We agree with BellSouth that "because the same processes are in place for both ALEC and BellSouth retail orders, the processes are competitively neutral . . . ."

Comparison of Increase in Electronically Submitted Orders to Change in Electronic Flow-Through

AT&T's percentage break-down is interesting, but does not provide adequate support for its position. AT&T seems to draw the conclusion that the percentage increase in electronically submitted orders experienced during the period October 1999 to October 2000 should be complemented by a corresponding decrease in total LSRs subject to manual handling. There is no evidence that such a trending relationship between the two exists. Due to the varied types of orders involved, no negative conclusion can be drawn from the increase in electronically submitted LSRs subject to manual handling that occurred during that same period.

Impact of Designed Manual Fall-Out and BellSouth Caused System Failures

The data presented by AT&T witness Bradbury in his analysis for the month of September 2000 is flawed because it does not take into consideration the reclassification to "Pending Supps" of certain LSRs previously categorized as ALEC errors when calculating "Manual Fall-Out."

The record shows that notification of this status change was given to ALECs in September 2000, the month selected for witness Bradbury's analysis. Accordingly, we do not believe this was an intentional error on AT&T's part.

The sample data shown in its data table "Maximum Possible Percentage Flow-Through Comparison" does indicate, for the three months selected, that AT&T received inferior service compared to the aggregate of ALECs using all ordering interfaces. The data presented in the table "System Potential Flow-Through", which restricts analysis to EDI users, also reflects AT&T received inferior service in all categories except Business Resale.

We agree with BellSouth's witness Pate that "to understand this data and the impact it has on flow-through, one must have a thorough understanding of the individual ALEC data comprising the total." It appears likely that "when such a large percentage of the volume comes from such a small number of the users, the overall results for that area will be skewed by the performance of those few users."

We question why AT&T did not implement the revised editions of TAG and EDI mentioned by BellSouth. However, we dismiss BellSouth's prediction of performance improvements indicated for these newer interface releases as being speculative.

Effect on Intervals due to Fall-Out

While the effect on intervals due to fall-out is important, and we understand AT&T's concern that non-flow-through may increase intervals, we do not believe the issue of intervals is germane to the strict issue of flow-through. Any increase or decrease in intervals is a separate issue, apart from whether or not an ALEC order should fall out for manual handling.

O. OSS RELATED ISSUES (REPAIR INTERFACES)

This issue addresses whether we should require BellSouth to provide AT&T with the same functionality of its TAFI proprietary human-to-machine maintenance and repair (M&R) interface in its electronic bonding industry-standard machine-to-machine ECTA M&R interface. Also at issue is whether BellSouth should be required to implement this functionality to provide nondiscriminatory access to its maintenance and repair OSS.

ARGUMENTS

According to BellSouth witnesses, BellSouth's two primary retail M & R systems for trouble reporting are the Trouble Analysis Facilitation Interface (TAFI) and the Work Force Administration (WFA) system. TAFI is a human-to-machine interface, requiring human input of specific data to identify the customer and trouble being reported. TAFI operates as a front-end system to the retail Loop Maintenance Operations System (LMOS) for repair trouble reporting. WFA is considered by BellSouth to be a human-to-machine application for reporting business retail complex and designed troubles, with manual intervention required for isolation testing and trouble resolution.

TAFI is used by both BellSouth retail Residence Repair Centers (RRC) and Business Repair Centers (BRC) to resolve POTS and telephone number identified, non-designed repair problems. It acts as a front end processor to LMOS, providing functionality to: (1)enter a trouble report; (2)modify the report; (3)obtain status information during the life of the report; and (4)cancel the report. TAFI also has the intelligence to execute an appropriate test of the telephone number reported and retrieve relevant data to analyze the trouble condition.

Based on the information TAFI collects, and the actions of downstream support systems, a recommendation may be made for a front-end close out (FECO). The FECO is completed by a representative only after customer approval is received, and is the same for both BellSouth and ALEC TAFI users. If the reported trouble condition is resolved through a test or modification, TAFI enters and then closes the LMOS report. A TAFI front-end close is generally completed with the customer still on the line. However, based on results, TAFI may also decide to route the report to a Maintenance Administrator for further screening, or for dispatch to a specific work group for resolution.

To open a repair ticket, TAFI users send the collected customer information, trouble analysis, and results of preliminary testing to the LMOS for ticketing and tracking. After TAFI passes the trouble information to LMOS, its work is complete. During the duration of the report users may request a status through TAFI via information recorded in LMOS.

The BellSouth WFA system is the equivalent to LMOS for handling retail circuit identified designed service repair reports. BellSouth business repair centers receive complex and designed customer trouble reports directly and enter them into WFA.

Currently, BellSouth does not integrate TAFI and WFA functionality to support BellSouth retail residence and business customers. Instead, BellSouth uses separate residence and business versions of TAFI to complete residence and business POTS repair requests, and uses WFA to satisfy complex and designed business repair requests.

BellSouth offers ALECs the ALEC TAFI human-to-machine interface for reporting simple telephone number identified, non-designed trouble reports. BellSouth asserts that all upgrades to retail and ALEC TAFI occur in parallel, and the response time and functionality of ALEC TAFI is the same as the version of TAFI used by BellSouth retail units. Furthermore, BellSouth claims that ALEC TAFI has superior functionality to BellSouth's TAFI version because it can process both residence and business trouble reports on the same processor.

BellSouth provides ALECs the Electronic Communication Trouble Administration (ECTA) machine-to-machine repair interface for reporting both residence and business POTS non-designed and business complex and designed services. According to BellSouth witness Pate, ECTA uses the T1M1 national standard for local exchange trouble reporting and notification, and is built on the ANSI T1.227, T1.228 and T1.262 standards. Witness Pate further testifies that the ANSI standards upon which ECTA is built do not support gathering all data elements requested by AT&T, and do not support the real time interactive human-to-machine interface necessary to deliver true TAFI functionality.

According to witness Pate, ECTA's functionality is limited by the national standards to: (1)entering a trouble report; (2)modifying an existing trouble report; (3)obtaining trouble report status information; (4) closing an existing trouble report; and (5) obtaining mechanized loop test ("MLT") data on a line without entering a trouble report. Witness Pate also noted that ECTA functionality may be changing to include a method to obtain trouble history data over ECTA. Once the standard is approved by

the Electronic Communications Implementation Committee (ECIC), the added functionality will be deployed in ECTA if ALECs request it.

BellSouth does not itself use ECTA to submit trouble reports to its OSS and claims that there is no analogous retail repair system. However, witness Pate states that response time and functionality are clearly defined in the ECTA Joint Implementation Agreement (JIA) agreed to by each ALEC and BellSouth.

BellSouth contends that AT&T's concerns related to this issue revolve around the inability of TAFI to be integrated with AT&T's own front-end computer systems. AT&T witness Bradbury testifies that TAFI provides extensive functionality for many services associated with a telephone number, but provides no functionality for other services, and requires costly and error-prone double entry into the ALEC's OSS. Witness Bradbury further states that while ALECs cannot integrate TAFI with their own "back office" systems, BellSouth can.

AT&T's concerns about ECTA are that it does not have the functionality of TAFI for POTS residence and business trouble reports, and that it only provides a limited set of functionality for any type service. AT&T states that obtaining and operating both interfaces brings the ALEC the disadvantages of both, with no gain in effectiveness or efficiency, at a higher cost of operations. AT&T concludes that BellSouth M&R interfaces do not provide AT&T non-discriminatory access because they either cannot be integrated with an ALEC's OSS (TAFI) or provide inadequate functionality to support all services (ECTA).

AT&T witness Bradbury points to: (1)a previous Georgia PSC Order in Docket No. 6352-U (July 2,1996); (2)a BellSouth Ex Parte letter to the FCC following a December 23, 1998 meeting; and (3)a formal AT&T change request through the BellSouth Interim Change Control Process on April 18, 2000, as evidence of AT&T's continued effort to gain TAFI functionality over the ECTA interface. Witness Bradbury contends that the Georgia Commission ordered BellSouth to complete TAFI enhancements to allow full operation of the required access by March 31, 1997, and despite the Georgia PSC order, BellSouth never provided the ordered enhancements.

AT&T also charges that during a December 23, 1998, FCC meeting, BellSouth representative William N. Stacy stated BellSouth could provide initial functionality in 13 months and complete functionality within 18 months. Yet, two years later, BellSouth still offers no TAFI functionality via the ECTA interface. Additionally, AT&T states it has pursued its own request for similar functionality at every opportunity since April 1996, and although BellSouth agreed that such access is technically feasible, it has not committed to an implementation date.

BellSouth believes AT&T's proposed solution is to either have it reprogram ECTA to have all the functionality of TAFI, or to have BellSouth create an entirely new interface that has those functions. In its defense, BellSouth cites the Bell Atlantic proceeding as having dealt with AT&T's assertion that BellSouth maintenance and repair interfaces lack integration and are discriminatory. BellSouth believes the FCC specifically concluded Bell Atlantic satisfied its obligations by demonstrating it offers competitors substantially the same means of accessing maintenance and repair functions as Bell Atlantic retail operations. Based on the FCC decision, BellSouth believes it provides ALECs electronic access to M&R OSS that far exceeds the web-based GUI in place at Bell Atlantic when it was approved for InterLATA authority by the FCC in December 1999.

BellSouth witness Pate testifies that AT&T has the same access to maintenance and repair systems as do BellSouth's retail operations. Therefore, BellSouth believes that it makes available to AT&T the same functionality provided for its retail units and nothing further is required for AT&T to have parity with BellSouth. BellSouth witness Pate also points out that AT&T concedes TAFI does not have to be integratable to satisfy AT&T, and with exception of the integration component, BellSouth has provided AT&T equivalent access to its maintenance and repair systems.

DECISION

Based on the testimony presented in this arbitration, we find that BellSouth provides AT&T access to its M&R trouble reporting systems in a manner similar to that it provides retail customers. While BellSouth's repair interfaces may not integrate all

functionalities AT&T desires, repair reporting access is similar to that of BellSouth retail maintenance and repair.

ECTA is BellSouth's industry standard wholesale maintenance and repair interface, providing ALECs electronic machine-to-machine repair reporting, testing, tracking, statusing and closeout functionality for resale and UNE non-designed and designed services. ECTA provides less functionality for non-designed resale than does TAFI, and requires the same manual intervention as WFA for UNE designed repair services. However, ECTA's combined functionality allows ALECs to handle, in one interface, similar maintenance and repair functions and services as BellSouth's retail TAFI and WFA interfaces. ECTA also eliminates the costly duplicate entry of TAFI maintenance information into ALEC OSS as described in testimony.

We are persuaded that AT&T's request to integrate the combined functionality of TAFI into ECTA would provide greater functionality to AT&T than BellSouth currently enjoys, and would cause BellSouth to incur additional expense to create such functionality for AT&T. Added functionality and cost to provide full TAFI functionality in ECTA should be incurred by the requestor, in this case AT&T, through a BonaFide Request.

We are also persuaded that BellSouth should continue to improve future ECTA maintenance and repair functionality as industry standards allow. TAFI functionality over the ECTA interface is a goal worth pursuing. However, we also recognize that adding increased TAFI and other M&R functionality to ECTA depends greatly on changing industry standards, allowing all ALECs using ECTA to enjoy improved functionality. As BellSouth witness Pate has acknowledged, once standards are approved, added functionality will be deployed in ECTA if ALECs so request.

As future functionality is introduced through industry standards, BellSouth should make improved ECTA functionality available to ALECs in a timely and efficient manner. This action would insure that ECTA remains a viable industry standard machine-to-machine maintenance and repair interface, offering ALECs the latest functionality for all BellSouth product offerings.

Upon consideration of the evidence, we find that if AT&T desires to integrate full TAFI functionality into ECTA on a non-industry standard basis, AT&T shall present a formal BonaFide Request to BellSouth and pay for the added functionality desired. BellSouth shall then expedite AT&T's BonaFide Request and implement the requested functionality within 12 months from the date of AT&T's request.

We also find that BellSouth shall be required to integrate future TAFI and industry standard M&R functionality into ECTA as industry standards allow, and make this improved functionality available to ALECs within one year from the date the standards become publicly available.

P. LINE SHARING

The issue before us is to determine under what rates, terms, and conditions AT&T should be allowed to share the spectrum on a local loop for voice and data when AT&T purchases a loop/port combination from BellSouth. The FCC Line Sharing Order, FCC Order 99-355, issued December 9, 1999, defines line sharing at paragraph 4 as the provision of xDSL-based service by a competitive LEC and voiceband service by an incumbent LEC on the same loop.

ARGUMENTS

BellSouth witness Ruscilli testifies that the FCC's Line Sharing Order determined that the incumbent LEC is obligated to provide line sharing under the following conditions:

> Two carriers-one voice provider (ILEC) and one data provider (ALEC)-serve one customer per loop Id. ¶74;
>
> The ILEC provides traditional POTS analog voiceband service to the customer on the line to be shared Id. ¶19;
>
> The ALEC provides xDSL-based services to the customer Id. ¶13;

> The ALEC's xDSL technologies do not use the frequencies immediately above the voiceband, thereby preserving them as a "buffer" zone to ensure the integrity of the voiceband traffic Id. Fn 136;
>
> The ALEC's xDSL technology does not interfere with analog voiceband transmission Id. ¶70-71; and
>
> If the ILEC's retail customer disconnects his/her POTS service, the data provider must purchase the entire stand-alone loop if it wishes to continue providing xDSL service to the customer. Similarly, ILECs are not required to provide line sharing to a requesting carrier when the CLP [competing local provider] purchases a combination of network elements known as the UNE platform. Id. ¶¶72-73

He believes that BellSouth is obligated to provide line sharing, when BellSouth is the voice provider. However, when an ALEC purchases the loop/port combination known as the UNE-platform (UNE-P), BellSouth is not required to provide line sharing.

As it refers to Issue 33, AT&T witness Turner adopted AT&T witness Follensbee's testimony. We refer to witness Follensbee's testimony as witness Turner's testimony from this point. We also note that the FCC, in its Order 99-355, issued December 9, 1999, defines a "splitter" as a device used to "bifurcates the digital and voiceband signals concurrently traversing the local loop, directing the voiceband signals through a pair of copper wires to the Class 5 switch, and directing the digital traffic though another pair of copper wires to a DSLAM attached to the packet-switched network."

AT&T witness Turner asserts that BellSouth agrees to provide the splitter in a "line sharing" arrangement, but denies AT&T access to the same splitter, when AT&T wins the voice customer. He states:

> .... the policy question this Commission needs to resolve, is that you cannot offer the splitter to one class of competition and deny it to another class of competition.

He believes that BellSouth is blatantly violating Sections 201 and 251 of the Act, which refers to "in the public interest" and "interconnection." Further, witness Turner claims that BellSouth's refusal to provide the splitter exploits the growing consumer demand for high-speed data services over existing voice lines and undermines competition.

AT&T witness Turner believes that where this Commission does not set forth a legal obligation for BellSouth to provide the splitter, BellSouth may discriminate between carriers. Moreover, since BellSouth can combine both voice and data over a single loop, AT&T should have the same opportunity via the UNE-P loop/port combination. Therefore, BellSouth should be required to insert a splitter on the UNE-P loop at AT&T's request. In support, he cites the FCC UNE Remand Order, FCC Order 99-238, issued November 5, 1999, which reads:

> For effective competition to develop as envisioned by Congress, competitors must have access to incumbent LEC facilities in a manner that allows them to provide the services that they seek to offer. . . . ¶13

Moreover, witness Turner asserts that ILECs are required to provide access to the high frequency portion of the loop under the FCC's Line Sharing Order. He believes that BellSouth has misinterpreted the order as it pertains to the UNE-P. Witness Turner explains that BellSouth concedes an obligation to insert a splitter on the loop, where BellSouth is the voice provider. However, if AT&T acquires the voice customer via UNE-P, BellSouth would remove the splitter from the loop. He claims that BellSouth's removal of the splitter is discriminatory.

BellSouth witness Ruscilli contends that BellSouth offers nondiscriminatory access to the high frequency portion of the loop whether it is a new or already operating UNE loop. Witness Ruscilli asserts that the Act was set forth to encourage facilities-based competition. He believes that there is robust competition in the data services market. Further, witness Ruscilli claims that the FCC's Line Sharing Order thoroughly examined whether ALECs would be impaired without access to "line splitting," and determined that no such impairment exists. Witness Ruscilli points out that paragraphs 72 and 73 of the Line Sharing Order

support BellSouth's position that "ILECs are not required to provide line sharing to a requesting carrier when the ALEC purchases a combination of network elements known as the UNE platform."

Also, BellSouth witness Ruscilli explains that in order for BellSouth to provide line splitting via the UNE-P, BellSouth would have to "physically separate the loop/port combination, add in a splitter, and then recombine." He points out that paragraphs 325 and 327 of the FCC's SBC Texas 271 Order, FCC Order 00-238, issued June 30, 2000, specifically address whether ILECs should be required to provide the splitter.

> Incumbent LECs have an obligation to permit competing carriers to engage in line splitting over the UNE-P where the competing carrier purchases the entire loop and provides its own splitter. Order at ¶325

> Incumbent LECs have no obligation to furnish the splitter when the ALEC engages in line splitting over the UNE-P. Order at ¶327

AT&T witness Turner challenges BellSouth's removal of the splitter from the loop, when he argues that the splitter is part of the loop under the definition of "attached electronics." He refers to ¶175 of the FCC's UNE Remand Order which outlines, "'attached electronics,' with the exception of DSLAMs, are regarded as part of the loop." Witness Turner believes that requiring BellSouth to provide the splitter as part of the loop's attached electronics is the only way an ALEC seeking to provide service via UNE-P could efficiently access the high frequency portion of the loop. In support of AT&T's position, he references ¶380 of the Local Competition Order, FCC Order No. 96-325, issued August 8, 1996, which reads:

> We further conclude that the local loop element should be defined as a transmission facility between a distribution frame, or its equivalent, in an incumbent LEC central office, and the network interface device at the customer premises. This definition includes, for example, two-wire and four-wire analog voice grade loops, and two-wire and four-wire loops that are conditioned to transmit the

> digital signals needed to provide services such as ISDN, ADSL, HDSL, and DS1-level signals. . . .

Moreover, he claims that BellSouth has chosen to ignore FCC Rule 51.307(c), which reads:

> An incumbent LEC shall provide a requesting telecommunications carrier access to an unbundled network element, along with all of the unbundled network element's features, functions, and capabilities, in a manner that allows the requesting telecommunications carrier to provide any telecommunications service that can be offered by means of that network element.

BellSouth witness Ruscilli retorts that the FCC was clear that it "did not identify any circumstances in which the splitter would be treated as part of the loop, as distinguished from being part of the packet switching element." The FCC declined to require that packet switching be provided on an unbundled basis. Therefore witness Ruscilli believes that "it is clear that the FCC does not consider the splitter to be part of the 'functionalities and capabilities' of the loop."

AT&T witness Turner argues that when the FCC determined that the splitter is not part of the loop, the FCC considered an integrated splitter and DSLAM, and not the splitter as a stand-alone device attached to the loop.

BellSouth witness Ruscilli adds that the splitter is electronics added to the loop for the exclusive purpose of separating the high frequency portion of the loop. The splitter would not exist without the need to access frequency bands. Moreover, he testifies that when AT&T purchases the UNE-P, AT&T is not "buying a loop," but is purchasing a loop/port combination. BellSouth witness Ruscilli explains that a loop/port combination is the "wire and wires connected to the main distribution frame, the main distribution frame is then connected to the port." When there is a splitter involved, technically the loop/port combination no longer exists, because the main distribution frame is connected to the splitter rather than the switch port. Witness Ruscilli agrees that BellSouth is obligated to combine a xDSL capable loop, circuit

switching, and shared transport at TELRIC rates, which allows a carrier to engage in "line splitting" over the UNE-P.

According to AT&T witness Turner, in order for AT&T to provision service BellSouth will:

> (1) require AT&T to place an order to disconnect the working combination;
> (2) remove its splitter;
> (3) force AT&T to provide its own splitter (or obtain the functionality from a D-ALEC); and
> (4) require AT&T to reconfigure the service by ordering an unbundled DSL-capable loop, and switch port, shared transport, and the necessary cross connects between the collocation space and both the switch and the distribution frame.

He adds that it is "cost prohibitive, and unduly disruptive to the customer," which basically precludes AT&T from employing the UNE-P to provide voice and advanced data services. Witness Turner continues that if this Commission does not require BellSouth to provide the splitter, steps should be taken to minimize outage time. He asserts that BellSouth should be obligated to coordinate the following procedures for minimal customer outages:

> (1) disconnection of the UNE-P,
> (2) connection of the loop to collocation,
> (3) connection of the switch port to collocation, and
> (4) associating the switch port with shared transport.

Witness Turner asserts that "if any of these steps becomes disassociated from the others, or is worked at a different time than the others, the customer will suffer."

BellSouth witness Ruscilli contends that BellSouth is willing to work with the ALECs on the following procedures concerning "line splitting" over the UNE-P:

> BellSouth will deal with one ALEC of record. That ALEC must have an interconnection agreement that authorizes it to buy loops and ports. The voice provider, the data provider, or both the voice and data providers will need

> a collocation agreement and will need authorization to order cross-connections. If more than one ALEC is involved, they will need an agreement to share BellSouth's ALEC of record's loop.
>
> After a loop and port is ordered, the ALEC of record would order cross connections to a collocation space where an ALEC owned splitter is located. Another cross-connection would need to be ordered from the splitter to the voice switch port.

Witness Ruscilli adds that "BellSouth would bill the ALEC that is the customer of record, and would only deal with the customer of record." Both parties agree that BellSouth is obligated to offer nondiscriminatory access to the high frequency portion of the loop.

DECISION

Although the stated issue before us is whether AT&T should be allowed to share the spectrum on a local loop for voice and data when AT&T purchases a loop/port combination, it appears that the dispute between the parties centers on whether BellSouth should be required to provide the splitter when AT&T wins a voice customer and serves the customer via the UNE-P. We note that AT&T seeks to establish procedures to modify the carrier of record with the minimum amount of service disruption to the customer.

BellSouth witness Ruscilli admits that there are no technical or legal limitations that inhibit BellSouth from providing the splitter, when AT&T provides voice service via the UNE-P.

AT&T's testimony suggests that BellSouth violates Sections 201 and 251 of the Act by offering the splitter in a "line sharing" arrangement, but denying AT&T access to the splitter in a "line splitting" arrangement. However, we note ¶78 of the FCC's Line Sharing Order, which reads:

> Allowing the incumbents to maintain control over the loop and the splitter addresses concerns that the competitive LEC might be able to use its control over the splitter to degrade the incumbent LEC's voice signal or to disconnect the customer without regard for the customer's voice

> service. This decision also addresses the incumbent's concern that the competitive LEC would be able to violate the privacy of an end user's voice communications when the end user's loop goes through a competitive LEC DSLAM.

Thus, when BellSouth is not the voice provider, it is reasonable to conclude that BellSouth would not maintain a continued interest in control over the loop or the splitter. There is no record evidence that BellSouth has engaged in "line splitting" via the UNE-P with a particular carrier, but refuses "line splitting" with AT&T. Therefore, we are not persuaded that BellSouth violates the Act, or is discriminating against AT&T.

We considered AT&T's concern that where BellSouth is both the voice and data provider, and AT&T wins the voiceband, BellSouth should not be permitted to discontinue providing data services. However, BellSouth witness Milner maintains that he is unaware of any circumstances where a BellSouth xDSL customer's contract has been terminated because BellSouth is no longer the voice provider. Moreover, he is not aware of any language in BellSouth's customer contract which gives BellSouth the right to terminate a data service contract, when BellSouth is not the voice provider. Since there is no record evidence that supports AT&T's concern, we simply note AT&T's claim.

We examined whether BellSouth should be obligated to provide the splitter pursuant to 51.315(b), FCC Rules, which reads:

> Except upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines.

We agree with BellSouth witness Ruscilli that FCC Rule 51.315(b) does not apply to the splitter, because the splitter is not an UNE.

We also considered AT&T's position that BellSouth's splitter should be regarded as part of the loop. AT&T witness Turner refers to language in ¶175 of the UNE Remand Order, which reads:

> Some loops, such as integrated digital loop carrier (IDLC), are equipped with multiplexing devices, without which they cannot be used to provide service to end

> users. Because excluding such equipment from the definition of the loop would limit the functionality of the loop, we include the attached electronics (with the exception of DSLAMs) within the loop definition. By contrast, and as we discuss below, we find that the DSLAM is a component of the packet switch network element.

FCC 99-238, issued November 5, 1999

We acknowledge that the FCC's language concerning the definition of the loop, more specifically "we include the attached electronics (with the exception of DSLAMs) within the loop definition," appears to include the splitter as part of the loop's "attached electronics." However, we note that subsequent to the UNE Remand Order, the FCC specifically addressed whether ILECs are obligated to provide the splitter in a "line splitting" arrangement. The FCC's Texas 271 Order, issued June 30, 2000, reads:

> . . . . The Commission has never exercised its legislative rulemaking authority under 251(d)(2) to require incumbent LECs to provide access to the splitter, and incumbent LECs therefore have no current obligation to make the splitter available. As we stated in the *UNE Remand Order*, "with the exception of Digital Subscriber Line Access Multiplexers (DSLAMs), the loop includes attached electronics, including multiplexing equipment used to derive the loop transmission capacity."

Order at ¶327

We considered AT&T's suggestion that the FCC's decision was based upon an integrated DSLAM and splitter, and not the splitter on a stand alone basis. Again, however, we cite the FCC's Texas 271 Order:

> . . . . We observed that "DSLAM equipment sometimes includes a splitter" and that, "[I]f not, a separate splitter device separates voice and data traffic." We did not identify any circumstances in which the splitter would be treated as part of the loop, as distinguished from being a part of the packet switching element. ¶327

> The *UNE Remand Order* cannot fairly be read to impose on incumbent LECs an obligation to provide access to their splitters. . . .

Id. at ¶328

Further, we note the FCC's Line Splitting Order reads:

> Thus, as AT&T and WorldCom contend, incumbent LECs have an obligation to permit competing carriers to engage in line splitting using the UNE-platform where the competing carrier purchases the entire loop and provides its **own** splitter.

FCC Order 01-26 at ¶19 (*emphasis added*)

We conclude that although a splitter may have appeared to be included under the definition of "attached electronics" in the UNE Remand Order, in subsequent orders the FCC clearly rejects arguments that an ILEC should be obligated to provide the splitter, where ALECs engage in "line splitting." Specifically, the FCC rejects AT&T's argument that the splitter should be included as part of the loop as "attached electronics."

Moreover, AT&T witness Turner concedes that FCC Order 01-26 does not require an ILEC to provide the splitter. According to the Order, he admits "that it is still the incumbents option." We note that AT&T witness Turner also concedes that the splitter is not necessary to provide basic telephone service

According to ¶19 of the FCC's Line Splitting Order, BellSouth is obligated to provide AT&T with an "unbundled xDSL-capable loop terminated to a collocated splitter and DSLAM equipment and unbundled switching combined with shared transport, to replace its existing UNE-platform arrangement with a configuration that allows provisioning of both data and voice services." BellSouth witness Ruscilli concedes that BellSouth will provide these elements at TELRIC rates.

An ALEC which provides data service in a line sharing arrangement, should have the first choice of purchasing the loop, because the loop has proven high-speed data capabilities. However, when AT&T and the data provider establish an agreement to engage in "line splitting," and AT&T wins the voice service and serves that

customer via the UNE-P, procedures should be in place to minimize service outages. In support, ¶73 of the FCC's Line Sharing Order provides:

> If the incumbent carrier has disconnected the customer's voice service in compliance with applicable federal, state and local law, then there is no longer an incumbent voiceband service with which the competitive LEC can share the loop. The same holds true if the customer voluntarily cancels incumbent LEC provided voiceband services on the shared loop. In those situations, in order to continue to provide data services to that customer, the competitive LEC must purchase the entire unbundled loop and must pay the incumbent LEC the forward looking cost for that unbundled network element. We would find it unacceptable, and potentially discriminatory under section 201 or a violation of section 251 obligations, however, for the incumbent to cause or require any interruption of the competitive LEC's service in order to execute such a loop access status change.

FCC 99-355

We believe that BellSouth should coordinate with AT&T regarding the following procedures, in order to minimize disruptions in a customer's service: disconnection of the UNE-P, connection of the loop to AT&T's or the sharing data provider's collocation space, connection of the switch port to AT&T's or the sharing data provider's collocation space, and associating the switch port with shared transport. Coordination of these activities should minimize disruptions in customer's service.

Additionally, BellSouth should only be required to deal with one customer of record per loop. However, BellSouth's OSS may need to be modified to support an ALEC's request for loop modifications involving the other ALEC sharing the loop where the voice provider differs from the data provider. Paragraphs 20 and 21 of the FCC's Line Splitting Order provide:

> 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, maintenance and repair, and billing for loops used in line splitting arrangements. Thus, an incumbent LEC must perform central office work necessary to deliver unbundled loops and switching to a competing carrier's physically or virtually collocated splitter that is part of a line splitting arrangement.
>
> We strongly urge incumbent LECs and competing carriers to work together to develop processes and systems to support competing carrier ordering and provisioning of unbundled loops and switching necessary for line splitting. In particular, we encourage incumbent LECs and competing carriers to use existing state collaboratives and change management processes to address, among other issues: developing a single-order process for competing carriers to add xDSL service to UNE-platform voice customers. . . .

(FCC 01-26)

BellSouth shall be required to allow AT&T access to the spectrums on a local loop for voice and data when AT&T purchases a loop/port combination, alternatively referred to as "line splitting." In order to facilitate "line splitting," BellSouth shall be obligated to provide an unbundled xDSL-capable loop terminated to a collocated splitter and DSLAM equipment, and unbundled circuit switching combined with shared transport at TELRIC rates. However, BellSouth will not be required to provide the splitter in a line splitting arrangement. BellSouth shall be obligated to coordinate with AT&T the following procedures associated with the tranfer of service: disconnection of the unbundled network element-platform, connection of the loop to AT&T's or the sharing data provider's collocation space, connection of the switch port to AT&T's or the sharing data provider's collocation space, and associating the switch port with shared transport. However, BellSouth shall only be required to maintain one customer of record per loop; thus, BellSouth should only be obligated to accept loop transactions from one ALEC per loop.

Q. UNE RATES

The issue for resolution by us is a determination of the appropriate recurring and non-recurring rates for line sharing.

Although AT&T raised this issue, it did not prefile direct testimony or rebuttal testimony on these pricing issues, did not present witnesses at the hearing on this issue and did not challenge any aspect of the cost study filed by BellSouth witness Caldwell in this matter. In its post-hearing brief, filed March 14, 2001, AT&T did not address this issue. In an amended post-hearing brief filed March 16, 2001, AT&T still did not address this issue. On March 26, 2001, AT&T filed a Motion to Clarify Position and Supplement Post Hearing Brief, in which it stated it has no objection to BellSouth's proposed line sharing rates.

Given that the parties have achieved consensus on the rates for line sharing, BellSouth's line sharing rates shall be incorporated in the parties' agreement.

VI. CONCLUSION OF LAW

We have conducted these proceedings pursuant to the directives and criteria of Sections 251 and 252 of the Act. We believe that our decisions are consistent with the terms of Section 251, the provisions of FCC rules, applicable court orders and provisions of Chapter 364, Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the specific findings set forth in this Order are approved in every respect. It is further

ORDERED that the issues for arbitration identified in this docket are resolved as set forth with the body of this Order. It is further

ORDERED that the parties shall submit a signed agreement that complies with our decisions in this docket for approval within 30 days of issuance of this Order. It is further

ORDERED that this docket shall remain open pending our approval of the final arbitration agreement in accordance with Section 252 of the Telecommunications Act of 1996.

By ORDER of the Florida Public Service Commission this 28th Day of June, 2001.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

CLF

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review in Federal district court pursuant to the Federal Telecommunications Act of 1996, 47 U.S.C. § 252(e)(6).