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Subject: 050119-TL and 050125-TP BellSouth's Post-Hearing Brief
Attachments: 050119 Post Hearing Brief.DOC; 050119 Post Hearing Brief.pdf

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- B. Docket Nos. 050119-TL and 050125-TP; Consolidated Pursuant to Order No.: PSC-05-05-17-PAA-TP
- C. BellSouth Telecommunications, Inc.
 on behalf of John T. Tyler
- D. 41 pages total (word version in lieu of disk)
- E. BellSouth Telecommunications, Inc.'s Post Hearing Brief.

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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of TDS Telecom d/b/a TDS)	
Telecom/Quincy Telephone, ALLTEL Florida,)	
Inc., Northeast Florida Telephone Company d/b/a)	Docket No. 050119-TP
NEFCOM, GTC, Inc. d/b/a GT Com, Smart City)	
Telecommunications, LLC d/b/a Smart City)	
Telecom, ITS Telecommunications Systems, Inc.)	
and Frontier Communications of the South, LLC,)	
concerning BellSouth Telecommunications, Inc.'s)	
Transit Service Tariff)	
)	
In re: Petition and Complaint of AT&T)	
Communication of the Southern States, LLC)	Docket No. 050125-TP
For suspension and cancellation of Transit Traffic)	
Service Tariff No. FL2004-284 filed by)	
BellSouth Telecommunications, Inc.)	Filed: June 9, 2006
)	

**BELLSOUTH TELECOMMUNICATIONS, INC.'S
POST-HEARING BRIEF**

BellSouth Telecommunications Inc. ("BellSouth") hereby respectfully submits its Post-Hearing Brief. This Docket deals with BellSouth's transit service. A service that allows customers of other carriers to complete calls in instances where the networks of an originating carrier and a terminating carrier are not directly interconnected. In such instances calls may transit BellSouth's network for completion.

BellSouth has no legal obligation to provide a transit service, but is willing to do so as long as it is fairly compensated for the use of its network. BellSouth has entered into transit service agreements with many providers, but unfortunately there are other providers who (despite BellSouth's best efforts in negotiations and attempts to renegotiate) have not entered into agreements with BellSouth and yet continue sending transit traffic over BellSouth's network without paying BellSouth any compensation. In the latter instance BellSouth's Transit Traffic

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Tariff (“Tariff”) applies – when providers continue sending transit traffic over BellSouth’s network but do not have a contractual right to do so, and have heretofore refused to compensate BellSouth for the use of its network.

BellSouth’s Tariff is presumptively valid as a matter of law. Those challenging the Tariff had the burden of proving invalidity – this they did not do. For the reasons set forth herein, the challenges to BellSouth’s Tariff should be dismissed. Specifically, the parties challenging the Tariff have failed to demonstrate why the Tariff – which is presumptively valid under Florida law – should be deemed invalid. Further, the parties challenging the Tariff have offered no evidence or legal basis for the Commission to disregard its sound precedent established in the context of an arbitration involving BellSouth and two CLECs (NuVox, and Xspeidus) wherein the Commission squarely held that transit service is not a Section 251 obligation and should not be priced at TELRIC.¹ Finally, the parties challenging the Tariff have offered no evidence to support their baseless paranoia and speculation that the Tariff will cause BellSouth to refuse to negotiate a transit traffic rate other than the tariffed rate. To the contrary, the record demonstrates that since the implementation of the Tariff, BellSouth has agreed to transit service rates that are *lower* than the tariffed rate.² In fact while this Docket was pending BellSouth and one former petitioner entered into a transit agreement. In sum, the Commission should disregard the unsubstantiated allegations regarding the Transit Traffic Tariff and therefore dismiss all such complaints.

¹ *Final Order Regarding Petition for Arbitration*, Docket No. 040130-TP, Order No. PSC-05-0975-FOF-TP, issued October 11, 2005 at 52 (“*Joint Petitioners Arbitration Order*”); Tr. at 228, 539.

² Tr. at 290-292; Exhibit 42 (AT&T witness Guepe acknowledged that in March 2006, AT&T and BellSouth agreed to a non-TELRIC transit rate that is lower than the tariffed transit rate).

BACKGROUND

On January 27, 2005 BellSouth issued General Subscriber Service Tariff A16.1 Transit Traffic Service (previously defined as “Tariff”). By operation of law the Tariff became effective on February 11, 2005.³ On February 11, 2005, TDS Telecom d/b/a TDS Telecom/Quincy Telephone; ALLTEL Florida Inc.; Northeast Florida Telephone Company d/b/a NEFCOM; GTC, Inc., d/b/a GT Com; Smart City Telecom; ITS Telecommunications Systems Inc.; and Frontier Communications of the South, LLC (collectively “Petitioners”) filed a joint petition objecting to BellSouth’s General Subscriber Services Tariff A16.1 Transit Traffic Service, and requesting that the Tariff be suspended and cancelled. Docket No. 050119-TP was opened in response to that petition. On February 17, 2005, AT&T Communications of the Southern States, LLC, (“AT&T”) also filed a petition and complaint for suspension and cancellation of the Tariff. Docket No. 050125 was opened in response to AT&T’s petition.⁴

BellSouth filed an Answer in Docket No. 050119-TP on March 3, 2005. On March 4, 2005, BellSouth filed an Answer in Docket No. 050125 and a motion seeking consolidation of the two dockets.⁵ In Order No. PSC-05-0623-PAA-TP the Commission denied the request for suspension of the Tariff and consolidated the two dockets. On August 26, 2005, Petitioners filed

³ As further explained below, in accordance with Florida Statute § 364.051 (5)(a), BellSouth may set or change a tariff for a non-basic service offering (such as transit service) and upon 15 days’ notice “the rate shall be presumptively valid.”

⁴ In March 2006, BellSouth and AT&T subsequently entered into a new agreement which contains (among other things) rates, terms, and conditions for transit traffic service. As such, the Tariff does not apply to AT&T. Moreover, AT&T witness Guepe conceded that the parties agreed to a non-TELRIC transit rate structure and the agreed upon rates are lower than the tariffed rate. Tr. at 290-292; Exhibit 42. Given the fact that the Tariff was in effect during the AT&T negotiations, this evidence completely and conclusively demonstrates that the assertions that BellSouth will “hide behind the tariff” and refuse to negotiate transit rates (other than the tariffed rate) are unsubstantiated claims that completely lack merit. See Tr. at 448 (Gates Direct Testimony); Tr. at 706 (Wood Rebuttal Testimony).

⁵ Several parties, including CompSouth MetroPCS, and the Florida Cable Telecommunications Association intervened in the consolidated docket.

a petition requesting a generic investigation into third-party transit traffic. On November 10, 2005, the Commission issued Order No. PSC-05-1133-PCO-TP denying that petition.

On March 29, 2006 and March 30, 2006 the Commission conducted a hearing in the consolidated dockets. At the conclusion of the proceeding the parties agreed to hold the docket in abatement for 30 days, during which time they would attempt to reach a negotiated settlement of the issues. During the 30-day abatement period, BellSouth and the Small LECs negotiated in good faith on several occasions in an attempt to reach a settlement of the issues in dispute; but, these negotiations were unsuccessful. Therefore, in accordance with the Commission's directive, BellSouth hereby submits its Post-Hearing Brief.

ISSUE-BY-ISSUE ANALYSIS

Issue 1: Is BellSouth's transit service tariff an appropriate mechanism to address transit service provided by BellSouth?

*****Summary of BellSouth's Position:** Yes, unless the tariff is superseded by a contract addressing transit traffic service. BellSouth is using its network to provide a value-added service and should be compensated accordingly.***

The parties agree that the transit service that BellSouth provides is a valuable service that BellSouth voluntarily provides.⁶ One of the obvious values is that it allows end users to complete calls in instances where the originating carrier and the terminating carrier have chosen not to directly connect their facilities. BellSouth is willing to provide this valuable service to other carriers – but certainly not for free, and not at an improper, non-mandated Total Element Long Run Incremental Cost (“TELRIC”) rate.

Recognizing the value of this voluntary the service, many service providers have contractually agreed to pay BellSouth for the transit service BellSouth provides on calls that are

⁶ See e.g., Tr. at 399.

originated by their end users.⁷ Indeed, as testified by BellSouth witness McCallen, *BellSouth's tariffed transit rate is comparable to the transit service rate voluntarily agreed to by over 270 CLECs.*⁸ The Tariff does not apply to those service providers.⁹

Instead, the Tariff only applies when service providers like certain Small LECs, who have not contractually agreed to pay BellSouth for transit service, nevertheless decide to continue sending calls bound for other carriers through BellSouth's network.¹⁰ In those situations, the Small LECs and any similarly situated service providers pay the tariffed rate for the transit service they knowingly and intentionally use. Without the Tariff, BellSouth would not be compensated when it provides valuable transit service to service providers who have not been willing to enter into contractual arrangements to pay BellSouth for this service.¹¹ BellSouth, therefore, filed the Tariff in order to be compensated for providing transit service under these circumstances.

It bears repeating that the only time a service provider pays BellSouth under the Tariff is when that provider has decided not to enter into a contractual arrangement addressing transit traffic and nevertheless decides to send this type of traffic to BellSouth for termination to another carrier.¹² BellSouth incurs a cost each time it transits traffic of other providers over its network, and it ought to be compensated.¹³ The Tariff is an appropriate mechanism to ensure that BellSouth is appropriately compensated.

⁷ Tr. at 67 See revised KRM-2 (Exhibit 39) and KRM-3 (part of Composite Hearing Exhibit 2). As explained below, the prices these service providers have voluntarily negotiated for BellSouth's transit service are comparable to BellSouth's tariffed price for transit service. In addition to agreements listed in KRM-2 and KRM-3 it should be noted that, while this Docket was pending, BellSouth and one former petitioner entered into a transit agreement.

⁸ Tr. at 116-117; Exhibit 39.

⁹ See Tariff A16.1.2.B. Attached hereto as Exhibit A.

¹⁰ See *Id.*

¹¹ See Tr. at 65.

¹² See *Id.*

¹³ Tr. at 399.

In the absence of a contractual agreement that includes rates, terms, and conditions for transit service, the Tariff is an appropriate mechanism that allows BellSouth to be compensated for providing a valuable service.¹⁴ Some witnesses, including CompSouth witness Timothy Gates, claim that the FCC's *T-Mobile* Decision¹⁵ supports the proposition that the Tariff is inappropriate and/or that the Traffic Tariff should somehow be considered a wireless termination tariff.¹⁶ Such allegations lack merit. As an initial matter, *T-Mobile* involves a tariff that was designed to establish *reciprocal compensation* arrangements between CMRS providers and LECs.¹⁷ Unlike reciprocal compensation, which is specifically addressed in Section 251(b)(5) of the Act, there is no Section 251 transiting obligation.¹⁸ Further, the FCC recognized that in certain circumstances default tariffs (like the Tariff) are permissible.¹⁹ Finally, the FCC resolved *T-Mobile* by amending an FCC rule (Rule 20.11) that has absolutely nothing to do with transit service and pursuant to a federal Statute (47 U.S.C. § 332(c)(1)(B) that has absolutely nothing to do with transit service. Tellingly, in the entire transit service section of the FCC's Further Notice of Proposed Rule Making in the pending Intercarrier Compensation docket,²⁰ the FCC does not even mention the *T-Mobile* decision. This is not by oversight. Separate and distinct from transit service issues, the FCC specifically mentions the *T-Mobile* decision in the next section of the *Intercarrier Compensation FNPRM*, which deals with CMRS issues.²¹ In sum, the FCC's *T-*

¹⁴ Tr. at 69.

¹⁵ *In the Matter of Developing a Unified Intercarrier Compensation Regime, T-Mobile, et al Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariff*, CC Docket No. 01-92, FCC 05-42 (released February 24, 2005). ("*T-Mobile*").

¹⁶ Tr. at 494-495.

¹⁷ *T-Mobile* at ¶ 1.

¹⁸ As demonstrated during cross-examination, CompSouth witness Gates has a tendency to blur (or eliminate) the distinction between reciprocal compensation issues and transit service issues. Tr. at 546-547; Exhibit 47.

¹⁹ *T-Mobile* at ¶ 13 & fn. 55.

²⁰ *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, 20 FCC 05-33 (released March 3, 2005) ("*Intercarrier Compensation FNPRM*") at ¶¶ 120-133.

²¹ *Intercarrier Compensation FNPRM* at ¶¶ 139, 140, and fn. 397.

Mobile decision is distinguishable because it is limited to reciprocal compensation for CMRS providers, and it does not require this Commission to invalidate BellSouth's Tariff.

Both the CompSouth witness (Timothy Gates) and the Florida Cable Telecommunications Association ("FCTA") witness (Don Wood) make the unsubstantiated claim that (1) the Tariff will adversely effect contract negotiations; and (2) BellSouth will refuse to agree to any transit rate other than the tariffed rate so long as the Tariff is in effect.²² These claims lack merit. As an initial matter, *neither witness has participated in any transit-related negotiations with BellSouth.*²³ Accordingly, their testimony regarding BellSouth negotiation tactics is nothing more than pure speculation with no basis in fact or experience.²⁴ To the contrary, BellSouth witness Blake plainly testified that BellSouth has offered carriers transit rates that are *lower* than BellSouth's tariffed rate.²⁵ Moreover, BellSouth witness McCallen testified that notwithstanding the implementation of the Tariff, *BellSouth has continued to negotiate with the Small LECs.*²⁶

In short, the record conclusively establishes that the Tariff does not impede contract negotiations. Moreover, no party challenging the Tariff presented any specific evidence or example that BellSouth refuses to negotiate transit terms and conditions since the Tariff became effective.²⁷

Further, CompSouth witness Gates conceded that he did not know whether any CompSouth member that supported his testimony had been involved in any transit-related

²² Tr. at 448 (Gates Direct Testimony); Tr. at 720 (Wood Rebuttal Testimony).

²³ Tr. at 539 (Gates); Tr. at 744 (Wood)

²⁴ Additionally, BellSouth witness Blake testified that she had no knowledge of any BellSouth negotiation "policy" that involved a refusal to negotiate a transit traffic rate. Tr. at 234-237.

²⁵ Tr. at 239.

²⁶ Tr. at 139.

²⁷ Although MetroPCS may claim that BellSouth refused to negotiate a transit rate (other than the tariffed rate), the record does not support such a claim. Specifically, the record makes clear that MetroPCS and BellSouth settled their transit rate issue by agreeing that the transit rate that the Commission approves in this docket will be incorporated into MetroPCS' interconnection agreement. Tr. at 260-261.

negotiations with BellSouth since the Tariff went into effect.²⁸ In a similar manner, FCTA witness Wood also did not know whether any FCTA member had been involved in any transit-related negotiations with BellSouth since the Tariff went into effect.²⁹ Moreover, FCTA witness Wood was unaware of any FCTA member that buys BellSouth's transit service out of the Tariff.³⁰ Likewise, CompSouth witness Gates freely admitted that CompSouth members buy BellSouth's transit service pursuant to their respective interconnection agreements (and thus not out of the Tariff).³¹

Of course the suppositions of Gates and Wood cannot be reconciled with the facts. The record demonstrates that since the Tariff went into effect BellSouth has in fact agreed to a transit rate in Florida that is not TELRIC-based and is *lower* than the tariffed rate,³² and has continued to negotiate with the Small LECs.³³ It is respectfully submitted that this Commission should disregard speculative testimony that has no basis in fact or experience and therefore should reject the arguments made by witnesses for CompSouth and FCTA that the Tariff will have some damaging effect on contract negotiations.

The record also demonstrated that MetroPCS's sole objective in this docket is to increase its operating revenue (i.e. profits) by decreasing its operating costs (by requesting a TELRIC-based transit service rate). MetroPCS (a CMRS provider) sends a substantial amount of transit traffic to BellSouth.³⁴ MetroPCS's claims that its business is booming, as it has passed the 2

²⁸ Tr. at 539. Of course, CompSouth member NuVox was a party to the arbitration decision wherein the Commission correctly concluded that transit service is not a § 251 obligation and should not be priced at TELRIC. *Joint Petitioners Arbitration Order* at 52. NuVox did not seek reconsideration of the Commission's *Joint Petitioners Arbitration Order*. Tr. at 557.

²⁹ Tr. at 745.

³⁰ Tr. at 745-746.

³¹ Tr. at 440.

³² Tr. at 290-292; Exhibit 42.

³³ Tr. at 139.

³⁴ Tr. at 261.

million subscriber milestone in just over 4 years of operation.³⁵ MetroPCS has grown its business notwithstanding the fact that under its interconnection agreement MetroPCS pays BellSouth the rate BellSouth charges in the Tariff for transit service.³⁶ In short, the record demonstrates that MetroPCS does not need a TELRIC-based transit rate to operate and grow its wireless business as they claim.

Further, MetroPCS offers flat rate wireless calling plans.³⁷ MetroPCS can raise or lower the price of such plans.³⁸ Despite this flexibility, it is telling that the MetroPCS witness *refused* to commit that MetroPCS would lower its rate plans if the Commission ordered a TELRIC-based transit service rate.³⁹ The reason is simple. MetroPCS believes a TELRIC-rate transit rate will be lower than the tariffed transit rate. A lower transit rate means lower operating costs for MetroPCS.⁴⁰ Will MetroPCS pass these cost savings on to their customers? Of course not. As such, a TELRIC-based transit service rate will serve only to pad the profits of a wireless provider (MetroPCS) whose business in Florida is flourishing without a TELRIC-based transit service rate.

Because BellSouth is a price-regulated local exchange company, its tariffs automatically became presumptively valid as a matter of law. The tariff at issue in this docket, became effective on February 11, 2005 – 15 days after it was filed. Specifically, Section 364.051(5)(a) of the Florida Statutes provides: [e]ach company subject to this section shall maintain tariffs with the commission containing the terms, conditions, and rates for each of its nonbasic services,

³⁵ Tr. at 262.

³⁶ Tr. at 261, 262.

³⁷ Tr. at 264.

³⁸ Tr. at 264.

³⁹ Tr. at 264-265.

⁴⁰ MetroPCS' quest for a TELRIC-based transit service rate to increase its profits has nothing to do with any regulatory policy. Indeed, the MetroPCS witness: (i) incorrectly believed that all telecommunications services offered by an ILEC must be priced at TELRIC (Tr. at 262); admitted that she had not reviewed any FCC Order, FCC rule, or court opinion regarding when TELRIC pricing is applicable (Tr. at 262-263); and (iii) proclaimed any rate other than a TELRIC rate to be "excessive." (Tr. at 262).

and may set or change, on 15 days' notice, the rate for each of its non-basic services. . . and the rate shall be presumptively valid." And, consistent with the law, the Commission has consistently held that BellSouth's tariffs are "presumptively valid." See Docket No. 000733-TL, Order No. PSC-01-2348-PCO-TL (Issued December 6, 2001) ("Pursuant to Section 364.051(5)(a), Florida Statutes, since BellSouth is a price-regulated Local Exchange Company, BellSouth's tariff filings are presumptively valid and may go into effect fifteen (15) days after the filing."); Docket No. 020119-TP, Order No. PSC-02-1295-PCO-TP (Issued September 23, 2002) ("Section 365.051(5), Florida Statutes, clearly provides that after 15 days notice, tariffs are presumptively valid."); Docket No. 040130-TP, Order No. PSC-05-0975-FOF-TP (Issued October 11, 2005) ("[T]here exists no requirement that an incumbent provide supportive evidence for its tariffed rates; tariffs are presumptively valid."); Docket No. 010795-TP, Order No. PSC-03-0048-FOF-TP (Issued January 7, 2003) ("Pursuant to Section 364.051, Florida Statutes, tariff revisions made by price regulated ILECs are "presumptively valid" and applicable to those carriers that must purchase from the tariff,").

The statute defines non-basic service as meaning "any telecommunications service provided by a local exchange telecommunications company other than a basic local telecommunication service, a local interconnection arrangement described in § 364.16, or a network access service described in § 364.163."⁴¹ Section 364.051(5), Florida Statutes. BellSouth's transit service falls clearly within the miscellaneous non-basic services category tariff basket. As such, the Tariff became effective and is presumptively valid as on February 11, 2005 - 15 days after it was filed. Under the price regulation statute, there are few restrictions on a non-basic service offering. Specifically, Florida law requires that

⁴¹ Fla. Stat. § 364.02(10).

a non-basic service be priced above cost.⁴² In this docket there has been no evidence presented (or allegation made) that the Tariff rate has been priced below cost. To the contrary, the unsubstantiated allegations have been just the opposite.⁴³ Thus, no party presented any valid argument to defeat BellSouth's Tariff as required under Florida law.

As testified by BellSouth witness McCallen, the Public Service Commission of South Carolina ("SC PSC") recently dismissed challenges to BellSouth's South Carolina Transit Traffic Tariff.⁴⁴ The South Carolina and Florida Tariffs are substantially similar (if not identical).⁴⁵ A similar result should be reached in this docket.

As the parties challenging the Tariff, the petitioners bore the burden of overcoming this statutory presumption of validity.⁴⁶ A review of the evidence adduced in this Docket makes it quite clear that they did not meet that burden.

Issue2: If an originating carrier utilizes the services of BellSouth as a tandem provider to switch and transport traffic to a third party not affiliated with BellSouth, what are the responsibilities of the originating carrier?

*****Summary of BellSouth's Position:** The originating carrier, or cost-causer, should pay for the transit and termination of the traffic. This is appropriate because the originating carrier collects the revenue from the originating caller.*******

It is the service provider that originates the call that should pay the transit charge.⁴⁷ It is appropriate to require the originating provider to pay, because the originating provider decides so

⁴² Florida Statutes 364.051(5)(c) ("The price charged to a consumer for a nonbasic service shall cover the direct cost of providing the service")

⁴³ CompSouth witness Gates testified that BellSouth's tariffed rate was priced above BellSouth's costs. Tr. at 570-571.

⁴⁴ Tr. at 210; SC PSC Docket No. 2005-63-C, Order No. 2006-199, issued March 28, 2006.

⁴⁵ Additionally, despite the Small LECs' claim that BellSouth's transit traffic tariff in Tennessee "is not in place" (Tr. at 423), BellSouth's tariff in Tennessee is in fact in place. BellSouth has only ceased collecting charges during an abeyance, and has a right to a subsequent true up. See Order Granting Request To Hold Proceedings In Abeyance, TRA Docket No. 04-000380.

⁴⁶ Cf. *Western Union Tel. Co. v. Call Pub. Co.*, 181 U.S. 92, 98 (1901) (The burden of proof is upon the plaintiff to show by a preponderance of the evidence the existence of the discrimination claimed by it; also that the differences in conditions shown are disproportionate to the difference in charges made, as well as all the other material allegations of its petition.).

⁴⁷ Tr. at 70.

sends its traffic to BellSouth for completion. The originating provider can choose whether to directly connect with other providers or to use BellSouth's transit service to send its originating traffic indirectly to other providers.⁴⁸ If carriers decide that they do not want to compensate BellSouth for the service, they can make alternative business decisions regarding transiting.

Indeed, if parties do not want to avail themselves of the Tariff they have several options.⁴⁹ As an initial matter, they can enter into a contractual agreement with BellSouth, which would render the Tariff inapplicable to them. Second, they can avoid using (and thus paying for) BellSouth's transit service by directly connecting their networks with the networks of other carriers. Moreover, they could simply stop sending transit traffic over BellSouth's network.⁵⁰ Finally, they also could avoid using (and thus paying for) BellSouth's transit service if another service provider is willing to provide them the service. Other carriers are free to provide the transit service and BellSouth is aware of at least one other carrier, Neutral Tandem, which purports to offer transit service in Florida.⁵¹ If a carrier chooses to utilize BellSouth's transit service, BellSouth should be compensated for that service – which is the exact purpose of BellSouth's Tariff.

Requiring the originating provider to pay transit charges is consistent with general industry concepts regarding cost-causation, and it also is consistent with the notion that the originating provider pays the terminating provider for providing the terminating service. Additionally, BellSouth's agreements with the Competitive Local Exchange Carriers ("CLECs") and Commercial Mobile Radio Service Carriers ("CMRS carriers") are consistent with the

⁴⁸ Tr. at 68.

⁴⁹ Tr. at 68-69.

⁵⁰ Tr. at 61, 401-403.

⁵¹ Tr. at 131, 152-153, 758.

originating party pays concept.⁵² All the parties with the exception of the Small LECs agreed with this well-established industry-wide standard that the cost causer (the originating party) pays for the cost it causes.⁵³

Issue 3: Which carrier should be responsible for providing compensation to BellSouth for the provision of the transit transport and switching services?

*****Summary of BellSouth's Position:** The originating carrier (cost-causer) of the transit traffic should be responsible for paying the transit charges to the transit provider. BellSouth should not be required to use network capacity to complete calls for the originating carrier without compensation.***

In a transit traffic scenario, BellSouth does not receive compensation from the originating provider's end user, because that end user is not a BellSouth customer. Similarly, BellSouth is not receiving compensation from the terminating provider's end user, because that end user is not a BellSouth customer. The originating party as the cost-causer that chooses to send the transit traffic over BellSouth's network should compensate BellSouth.⁵⁴ With the exception of the Small LECs, *all parties agree that the cost-causer (i.e. the party that decides to use BellSouth as a transit provider) should pay BellSouth for acting as a transit provider.*

When BellSouth acts as a transit carrier, BellSouth connects two carriers that are not directly connected.⁵⁵ All parties are in agreement on this fundamental fact. Because the carriers that use BellSouth as a transit carrier are not directly interconnected, it naturally and logically follows that such carriers may have no need to establish a point of interconnection ("POI") on each other's respective network. Stated differently, if a CLEC or a CMRS provider has decided to use BellSouth's transit service to send calls originated by its customers to a Small LEC customer, then such CLEC or CMRS provider has no reason to also establish a direct connection

⁵² Tr. at 66-67.

⁵³ See e.g. Tr. at 399-400; 678-679

⁵⁴ Tr. at 66, 399-400; 678-679.

⁵⁵ Tr. at 59-60.

with such Small LEC. In short, absent a direct connection, there may be no POI between such CLEC or CMRS provider and such Small LEC, and thus no POI issues.

Not surprisingly, POI is not one of the seventeen (17) issues that the Commission identified for resolution in this consolidated docket. Of course, this makes complete sense since POI issues are typically associated with direct connection between carriers and this docket involves the compensation owed to BellSouth when BellSouth connects carriers that are not directly connected. Notwithstanding the obvious irrelevance of POI in the context of this docket, the Small LECs attempted to sidetrack the Commission by introducing one sentence from a 2001 Commission Order arising out of an arbitration involving Level 3 and BellSouth,⁵⁶ and another sentence from the Commission's Order issued in a generic *reciprocal compensation* docket.⁵⁷ The Commission should disregard the Small LECs' attempt to confuse this docket by raising irrelevant issues (such as POI and reciprocal compensation arrangements) in a futile and failed effort to hide the fact that they disagree with the bedrock telecommunication principal that the cost-causer (i.e. the party that originates a call that transits BellSouth's network) should pay BellSouth for the use of BellSouth's network.⁵⁸

Issue 4: What is BellSouth's network arrangement for transit traffic and how is it typically routed from an originating party to a terminating third party?

*****Summary of BellSouth's Position:** Traffic is generally routed through a BellSouth tandem office to the terminating third-party carrier. The originating ICO should route the call over a common trunk group directly to the BellSouth tandem, or route the call to a BellSouth end office over the EAS trunk group for termination.***

⁵⁶ Tr. at 563-564; Exhibit 48. The one sentence from the Order provides "A competitive LEC has the authority to designate the point or points of interconnection on an incumbent's network for the mutual exchange of traffic." To state the obvious, the POI between a CLEC and an ILEC is not an issue in this docket.

⁵⁷ Tr. at 564-565; Exhibit 49. The one sentence provides in relevant part: "we find that ALECs have the exclusive right to unilaterally designate single POIs for the mutual exchange of telecommunications traffic at any technically feasible location on an incumbent's network within a LATA." Again, to state the obvious, the POI between an ALEC and an ILEC is not an issue in this docket.

⁵⁸ Tr. at 400-401.

This routing would be done in accordance with the Local Exchange Routing Guide. In the case of local number portability, because the ICO does not perform the query in the database to determine if the number has been ported, it may believe the call to be destined for termination to BellSouth and therefore route the call to a BellSouth end office over the EAS trunk group – where the call may be further routed in order to be successfully delivered to the appropriate terminating carrier.⁵⁹

Issue 5: Should the FPSC establish the terms and conditions that govern the relationship between an originating carrier and the terminating carrier, where BellSouth is providing transit service and the originating carrier is not interconnected with, and has no interconnection agreement with, the terminating carrier? If so, what are the appropriate terms and conditions that should be established?

*****Summary of BellSouth's Position:** No. Both the originating and terminating carriers have the obligation to negotiate interconnection agreements. Both carriers have options as to how to deliver traffic to the other party. If those carriers cannot agree upon terms and conditions, either may petition the FPSC to arbitrate the unresolved issues. ***

As a preliminary matter, BellSouth does not seek to dictate any terms and conditions between other parties.⁶⁰ The provisions of the Telecommunications Act of 1996 require both the originating and terminating carriers to negotiate interconnections agreements, and both parties have options regarding how they deliver traffic.⁶¹ In the even the parties cannot reach agreement, then pursuant to Section 252 of the Act, either can seek the Commission's intervention through arbitration.

Issue 6: Should the FPSC determine whether and at what traffic threshold level an originating carrier should be required to forego use of BellSouth's transit service and obtain direct interconnection with a terminating carrier? If so, at what traffic level should an originating carrier be required to obtain direct interconnection with a terminating carrier?

⁵⁹ Tr. 70, 82-84.

⁶⁰ Tr. 71.

⁶¹ Tr. 71, 86, 87.

*****Summary of BellSouth's Position:** No. The threshold for direct interconnection should be negotiated between the carriers that originate and terminate the traffic, and if those carriers cannot agree, either carrier may petition the FPSC pursuant to Section 252 of the Act to arbitrate the unresolved issues.***

The traffic level at which any carriers decide to directly interconnect is not a matter within BellSouth's control. The threshold for interconnection is matter to be determined by the relevant carriers.⁶²

Issue 7: How should transit traffic be delivered to the small LEC's networks?

*****Summary of BellSouth's Position:** Most third-party carriers interconnect with the BellSouth's network at the tandem. Calls are routed from the tandem over the common trunk group to the ICO network.***

If the ICO is not interconnected at the tandem where the third-party carrier delivers the traffic to BellSouth, BellSouth will route the call to the tandem at which the ICO is interconnected and will then route that call over the common trunk group to the ICO.⁶³ Some Non-Meet-Point-Billed traffic may be routed directly to an end office and be assumed to route over the EAS trunk group.⁶⁴

Like other telecommunications providers, BellSouth sends various types of traffic over a single trunk group. Despite the Small LEC's ruminations about the need for traffic to be segregated out, such that only one type of traffic flows over a trunk, they did not provide any authority for that strange position -- there is none. Indeed as others in this Docket agree, by sending various types of traffic over a single trunk, BellSouth is making efficient use of its network in a manner common to the industry.⁶⁵

Issue 8: Should the FPSC establish the terms and conditions that govern the relationship between BellSouth and a terminating carrier, where BellSouth is providing transit service and the originating carrier is not interconnected

⁶² Tr. 72.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ Tr. 289, 680.

with, and has no interconnection agreement with, the terminating carrier? If so, what are the appropriate terms and conditions that should be established?

*****Summary of BellSouth's Position:** No. BellSouth is not required, but willing to provide transit service. BellSouth's Transit Tariff contains sufficient terms and conditions regarding its relationships to the originating and terminating carriers involved in transit traffic. Additionally, BellSouth is willing to negotiate interconnection agreements with carriers addressing transit traffic service. ***

BellSouth Is Not Obligated To Provide Transit Service

The transit service governed by the Tariff is an intrastate service. Accordingly, federal law addressing the rates, terms, and conditions of interstate services does not apply. Moreover, as explained below, the interconnection provisions of Section 251 of the federal Telecommunications Act of 1996 ("the "Act") do not require BellSouth to provide transit service, and they do not require BellSouth to charge TELRIC prices for the transit service it voluntarily provides. Indeed, in the context of an arbitration involving NuVox, Xspedius, and BellSouth, this Commission correctly concluded that transit service has not been determined to be a Section 251 obligation and should not be priced at TELRIC.⁶⁶ The same conclusion should be reached in this docket. It is telling that while MetroPCS asserted that BellSouth's transit service should be priced at TELRIC, its witness did not even know what the acronym stands for.⁶⁷ BellSouth does not have a legal obligation to provide a transit service, and as will be demonstrated below, it logically follows that there simply is no rational basis for the parties' purported belief that transit service must be priced at TELRIC.

⁶⁶ *Joint Petitioners Arbitration Order* at 52.

⁶⁷ *See Tr.* at 263

No federal statute, FCC ruling, or court decision explicitly requires BellSouth (or any other service provider) to provide transit service.

The FCC's Wireline Competition Bureau has declined to find that Incumbent Local Exchange Carriers ("ILECs") have an obligation to provide a transit function at TELRIC prices:

We reject AT&T's proposal because it would require Verizon to provide transit service at TELRIC rates without limitation. While Verizon as an incumbent LEC is required to provide interconnection at forward-looking cost under the Commission's rules implementing section 251(c)(2), the Commission has not had occasion to determine whether incumbent LECs have a duty to provide transit service under this provision of the statute, nor do we find clear Commission precedent or rules declaring such duty. In the absence of such a precedent or rule, we decline, on delegated authority, to determine for the first time that Verizon has a section 251(c)(2) duty to provide transit service at TELRIC rates. Furthermore, any duty Verizon may have under section 251(a)(1) of the Act to provide transit service would not require that service to be priced at TELRIC.⁶⁸

The Wireline Competition Bureau subsequently reaffirmed these principles in denying AT&T's request for reconsideration, stating that (1) it "did not find that Verizon had a legal obligation to provide transit service at TELRIC"; (2) it did "not agree with AT&T's assertion that the Virginia Commission would have been required to agree with AT&T that Verizon must provide transit service under the Act, nor do we agree that the Bureau was required to so conclude."⁶⁹

The Common Carrier Bureau's analysis was confirmed by the FCC itself in the *Triennial Review Order*. In that Order, the FCC clearly pronounced that "[t]o date, the [FCC]'s rules have not required incumbent LECs to provide transiting."⁷⁰ A necessary corollary to this

⁶⁸ Memorandum Opinion and Order, *In the Matter of Petition of Worldcom, Inc. Pursuant to Section 252(E)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, 17 FCC Rcd. 27,039 at ¶117 (July 17, 2002).

⁶⁹ Order on Reconsideration, *In the Matter of Petition of Worldcom, Inc. Pursuant to Section 252(E)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, 19 FCC Rcd. 8467 at ¶3 (May 14, 2004).

⁷⁰ Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket Nos. 01-338 et al., FCC 03-36, 18 FCC Rcd 16978 at ¶ 534, n. 1640 (Aug. 21, 2003)

pronouncement is that to date, the FCC's rules have not required incumbent LECs to provide transiting at TELRIC prices.

The FCC made this pronouncement for good reason – there simply is no federal statute that requires BellSouth to provide a transit service at all, and particularly not at TELRIC prices. As an ILEC as that term is defined in the federal Act, BellSouth is subject to all of the obligations placed upon all telecommunications carriers generally, as well as those placed upon ILECs specifically, in Section 251 of the Act. Pursuant to that section, BellSouth and other carriers have broad duties they are required to perform, particularly with regard to other telecommunications carriers:

All carriers are required to “interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers...”⁷¹

ILECs are required to interconnect with the facilities and equipment of any requesting telecommunications carrier at any technically feasible point within the ILEC's network, for the transmission and routing of telephone exchange service and exchange access service.⁷²

ILECs are required to provide “nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable and nondiscriminatory...”⁷³ and

In addition to a number of other duties not relevant to the resolution of this issue, ILECs are required “to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers...”⁷⁴

Neither these requirements, nor any other requirements of federal or state law, explicitly impose an obligation upon BellSouth or any other carrier to provide a transit service to other telecommunications carriers.

⁷¹ 47 U.S.C. §251(a)(1).

⁷² *Id.*, §251(c)(2).

⁷³ *Id.*, §251(c)(3).

⁷⁴ *Id.*, §251(c)(4).

No federal statute, FCC ruling, or court decision implicitly requires BellSouth (or any other carrier) to provide transit service.

Since there is no explicit decision by the FCC or the courts on this issue, CompSouth and the FCTA have attempted to read a transiting obligation into the language of Section 251(a)(1) of the federal Act. This statute imposes a duty on every telecommunications carrier to “interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers”⁷⁵ This section clearly does not require every telecommunications carrier in the country to provide a transiting function to any other carrier that asks for it.

Instead, Section 251(a)(1) deals with the requirement that telecommunications carriers interconnect their networks, which has nothing at all to do with any carriers’ purported obligation to transport calls between two or more other carriers. In fact, although the decision was reached in another context, the FCC has already determined that the duty to interconnect imposed by Section 251(a)(1) does not include any obligation to transport traffic. Specifically, the FCC considered this issue in its decision in a case involving AT&T and two other carriers in Oklahoma.⁷⁶ One of the issues in that proceeding was whether AT&T could refuse to buy access services from Total Telecommunications Services, Inc. (“Total”). In its decision, the FCC described the situation as follows:

During the period at issue here, when an AT&T subscriber placed a long distance call to Audiobridge in Big Cabin, Oklahoma, the call was initially handled by the subscriber's local telephone company. In this context, the local telephone company is known as the “originating access provider.” The local telephone company transported the call to AT&T, which transported the call across AT&T's long distance network to an AT&T point of presence (“POP”) located in an area of Oklahoma near Big Cabin served by Southwestern Bell Telephone Company (“Southwestern Bell”). From the AT&T POP, the call was transmitted through

⁷⁵ Thus, to read a transit obligation into Section 251(a)(1) would be to impose that obligation on all telecommunications carriers and not just on ILECs such as BellSouth.

⁷⁶ *In the Matter of Total Telecommunications Services Inc. and Atlas Telephone Company, Inc. v. AT&T Corporation*, File No. E-97-003, *Memorandum Opinion and Order*, 16 FCC Rcd 5726 (2001), *affm in part, remanded in part*, *AT&T Corporation v. FCC*, 317 F.3d 227 (D.C. Circuit 2003).

Southwestern Bell's facilities to a "meet point" with Atlas. Atlas carried the call over its facilities, switched the call through its access tandem switching equipment, and ultimately transported the call to a meet point with Total (the "terminating access provider"). Atlas charged AT&T a relatively modest fee for this tandem switching service pursuant to the NECA tariff. As the "terminating access provider," Total routed the call to its sole end user customer, Audiobridge. Total then separately billed AT&T for terminating access services.⁷⁷

Evidently, Total's terminating access charges were significantly higher than Atlas' access charges. AT&T claimed that the arrangement was a sham and blocked the traffic that was sent to Total's customer.

Atlas and Total filed a number of complaints, ultimately ending up at the FCC. Among other things, Atlas and Total argued that Section 251(a)(1) "requires AT&T to purchase Total's terminating access services and refrain from blocking calls to Audiobridge."⁷⁸ More particularly, Atlas and Total argued that "a carrier's duty to 'interconnect' under section 251(a) encompasses a duty to transport and terminate all traffic bound for any other carrier with which it is physically linked."⁷⁹ In other words, Total and Atlas argued that section 251(a)(1) required AT&T to deliver all traffic "bound for any other carrier with which it is physically linked" (i.e., provide a transit function).

The FCC concluded that this was not what the law required. Instead, the FCC concluded that the term "interconnection," as it is used in Section 251 (a)(1), "cannot reasonably be interpreted to encompass a general requirement to transport and terminate traffic."⁸⁰ Clearly, although the FCC has not been faced with the precise issue presented in the case pending before this Commission, the FCC has concluded that Section 251(a)(1) does not require a carrier to "transport and terminate" calls to any carrier with which the transiting carrier is interconnected.

⁷⁷ *Id.* at ¶6
⁷⁸ *Id.* at ¶22.
⁷⁹ *Id.*
⁸⁰ *Id.* at ¶26.

This portion of the FCC's order has been affirmed by the United States Court of Appeals for the District of Columbia.⁸¹ Consequently, Section 251(a)(1) does not require BellSouth to provide a transiting function.

Transit service is not "indirect interconnection" that is required by Section 251(a)(1) of the Act.

When faced with this compelling authority, CompSouth and the FCTA (collectively, "CLECs") have attempted to argue that a duty to provide a transiting service should be imposed on ILECs because absent such a duty, no telecommunications carrier could interconnect "indirectly" with other telecommunications carriers. They argue, therefore, that even if not expressly stated, such a requirement must exist by necessary implication, otherwise the requirement that carriers interconnect "directly or indirectly" would be rendered meaningless. That argument is clearly without merit. Even though a carrier cannot be forced to provide a transit service, it may elect to do so (as BellSouth has done) at prices and on terms and conditions that are set out in its tariffs or in contracts that it negotiates with other carriers that use its transit service. That is where Section 251(a)(1) comes into play.

Section 251(a)(1) requires that when TSP 1 chooses to interconnect with TSP 2 "indirectly" by using a transiting service that an intermediary carrier is willing to provide, TSP 2 cannot refuse the interconnection merely because there is no "direct" connection between itself and TSP 1. That is, if TSP 1 interconnected with BellSouth, and BellSouth interconnected with TSP 1, TSP 1 could interconnect indirectly with TSP 1 via BellSouth's network (assuming BellSouth agreed), and TSP 1 could not refuse the traffic. Such an interpretation clearly harmonizes all of the diverse sections of the federal Act, without doing damage to any of them,

⁸¹ *Id.*

which cannot be said of any argument that the federal Act requires ILECs and all other carriers to provide a transit function.

Transit service is not “transmission and routing of telephone exchange service and exchange access” that is required by Section 251(c)(2)(A) of the Act.

The CLECs also suggest that ILECs have a duty to provide transit service based on the language of Section 251(c)(2)(A), which requires ILECs to interconnect with “the facilities and equipment of any requesting telecommunications carrier” for the “transmission and routing of telephone exchange service and exchange access” Their argument is that this section does not specifically limit the “transmission and routing of telephone exchange service and exchange access” only on the ILEC’s network. They argue that in the absence of such a limitation, a transit service clearly falls within the ILEC’s obligation to provide transmission and routing of the traffic to interconnecting carriers.

There are at least two problems with this interpretation of the law. First, in its *Local Competition Order*,⁸² the FCC clearly stated:

We conclude that the term "interconnection" under section 251(c)(2) refers only to the physical linking of two networks for the mutual exchange of traffic. Including the transport and termination of traffic within the meaning of section 251(c)(2) would result in reading out of the statute the duty of all LECs to establish “reciprocal compensation arrangements for the transport and termination of telecommunications,” under section 251(b)(5).⁸³

Therefore, the FCC has stated, clearly and without equivocation, that Section 251(c)(2) only relates to interconnection and does not implicate transport. Some carriers might try to argue that this section actually requires “transmission and routing” of calls, rather than merely requiring interconnection. The FCC, however, has said as clearly as possible that this section only relates

⁸² *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996. Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 96-98, CC Docket No.95-185, *First Report and Order*, 11 FCC Rcd 15499 (1996).

⁸³ *Id.* at ¶176

to the physical linking of the networks and that any requirement of transporting or terminating traffic has to be found elsewhere. As conceded by CompSouth witness Timothy Gates, “indirect” interconnection is not mentioned in Section 251(c)(2) and the FCC’s definition of the term “interconnection” refers to the linking of two networks for the mutual exchange of traffic ***and does not include the transport and termination of traffic.***⁸⁴ Of course, when BellSouth acts as a transit carrier it transports a call originated by TSP1 and terminates such call to TSP2. Clearly such a function falls outside of the scope of Section 251(c)(2) and the FCC’s definition of interconnection. In sum, there is absolutely no statutory basis for this Commission to interpret Section 251(c)(2) in a manner that would encompass indirect interconnection or an obligation for an ILEC to provide transit service.

Second, and equally as important, such an interpretation is illogical because while the federal Act provides a specific method that allows the ILEC to recover its costs for every other service or facility it provides to CLECs, it does not provide a specific method for the ILEC providing the transit service to recover its costs. That is, the federal Act clearly provides for the recovery by an ILEC of its costs for the “transport and termination of telecommunications.”⁸⁵ The federal Act also clearly provides for the recovery of the ILEC’s cost of interconnecting its network with that of another telecommunications carrier.⁸⁶ The federal Act likewise specifically provides for the ILEC to recover its costs for providing Unbundled Network Elements (“UNEs”) and for the provision of services for resale by other telecommunications carriers.⁸⁷ However, there is no provision for the recovery of the cost of calls that “transit,” but do not terminate on,

⁸⁴ Tr. at 543-544; Exhibits 45 & 46.

⁸⁵ §251(b)(5).

⁸⁶ §251(c)(2)(D).

⁸⁷ §251(c)(3)&(4).

the ILEC's network. Indeed, the FCC recognized this situation specifically in its *Local Competition Order*, saying:

In addition, in setting the pricing standard for section 251(c)(2) interconnection, section 252(d)(1) states it applies when state commissions make determinations "of the just and reasonable rate for interconnection of *facilities and equipment* for purposes of subsection (c)(2) of section 251." Because section 251(d)(1) states that it only applies to the interconnection of "facilities and equipment," if we were to interpret section 251(c)(2) to refer to transport and termination of traffic as well as the physical linking of equipment and facilities, it would still be necessary to find a pricing standard for the transport and termination of traffic apart from section 252(d)(1).⁸⁸

The logical reason for the absence of such a provision is that transiting was not contemplated by the federal Act. Instead, the federal Act contemplates that ILECs will interconnect with other telecommunications carriers, will accept local traffic at the interconnection point, and will then transport and terminate that traffic on the ILEC's network to the ILEC's subscribers. The federal Act makes provision for cost recovery for each of these steps.

If Congress had intended to also require the ILEC to provide a transit service, it would also have provided a cost recovery method. It did not. The only conclusion that can be reached from the absence of a cost recovery method for transiting is that Section 251(c)(2) cannot be fairly read to require transiting.

The Florida Commission Previously Found That Transit Service Is Not A Section 251 Obligation.

Less than one year ago, the Commission squarely addressed the issue of whether transiting is a Section 251 obligation – and found conclusively that it is not.⁸⁹ Specifically, in its Final Order in Docket No. 040130-TP issued October 11, 2005, the Commission correctly concluded that: “[a] **TELRIC rate is inappropriate because transit service has not been**

⁸⁸ 47 U.S.C. § 251(d)(1) (emphasis added).

⁸⁹ Tr. at 218.

determined to be a Section 251 UNE.”⁹⁰ The Commission went on to say, “[w]e agree with the reasoning of the FCC Wireline Competition Bureau in rendering the Virginia Arbitration Order that found no precedent to require the transiting function to be priced at TELRIC under § 251(c)(2).”

Issue 9: **Should the FPSC establish the terms and conditions of transit traffic between the transit service provider and the small LECS that originate and terminate transit traffic? If so, what are the terms and conditions?**

*****Summary of BellSouth’s Position:** No. The carrier originating the traffic has the obligation, to negotiate the rates, terms and conditions with the terminating LEC. No carrier is obligated to provide a transit function. Carriers must negotiate with the transiting company. If a carrier refuses to negotiate yet uses those services, transit providers should be compensated.***

Because there is no obligation for a carrier to provide a transit service (as discussed in Issue 8 above) the Commission should not establish rates, terms and conditions of this voluntary offering. All relevant information regarding the provisioning of transit service is set forth within the content of the language found in BellSouth’s Tariff.⁹¹ Additionally, BellSouth remains willing to negotiate transit agreements with any carrier wishing to enter into such negotiations.⁹²

Issue 10: **What effect does transit service have on ISP bound traffic?**

*****Summary of BellSouth’s Position:** ISP traffic is included in transit traffic charges. BellSouth is neither the originator nor terminator of the ISP traffic and should to be compensated for the use of the network. The originating carrier, as the cost causer, should compensate other carriers that assist in the termination of such traffic. ***

Although CompSouth and the Small LEC try to muddy the waters regarding the applicability of the Tariff to ISP-bound traffic⁹³, the Tariff does properly apply to ISP-bound traffic, and the reason is simple and legally sound. TSPs that send their originated ISP-bound

⁹⁰ See *Joint Petitioners Arbitration Order* at 52 (citing TRO footnote 1640)(emphasis added).

⁹¹ The Tariff is attached hereto as “Exhibit A.”

⁹² Tr. 73.

⁹³ Tr. 469-472; 367-368.

traffic to BellSouth are using BellSouth's network and BellSouth's transit service, and they should not be permitted to do so without compensating BellSouth. For purposes of the use of the network, BellSouth's transiting function does not discriminate between the types traffic transiting its network.⁹⁴

There is nothing anomalous about ISP-bound traffic. BellSouth is neither the originator nor the terminator of the traffic and, as with any other transit traffic, BellSouth should be compensated for the use of its network. The originating carrier is compensated by the originating end-user, and the originating carrier as the cost causer should compensate other carriers that assist in the termination of such traffic.⁹⁵ An ICO originated call that transits over BellSouth's network and that is bound for an ISP number served by a non-BellSouth provider constitutes transit traffic as certainly as would any similarly routed local voice call using the BellSouth network. Therefore, it would not be appropriate to exclude ISP-bound traffic from BellSouth's transit tariff.⁹⁶

Issue 11: How should charges for BellSouth's transit service be determined?

*****Summary of BellSouth's Position:** BellSouth will apply the transit traffic rate to the local usage and local ISP-bound usage transited between other carriers.***

(a) What is the appropriate rate for transit service?

*****Summary of BellSouth's Position:** BellSouth has established a composite transit tariff rate for all entities of \$0.003 per MOU. This rate is comparable to rates in recently negotiated agreements between BellSouth and CLECs, and between BellSouth and CMRS carriers.***

⁹⁴ See Tr. at 87.

⁹⁵ Tr. 87-89.

⁹⁶ Tr. at 65,66.

The comparability of the contractually agreed upon rates and the Tariff rate establishes the validity of the fact that the Tariff rate is indeed at an appropriate market based rate level.⁹⁷ Moreover, as discussed in a detailed analysis in Issue 8 above, because BellSouth is not required to provide transit service, there can be no proper mandate that the service be priced at TELRIC. Again, less than one year ago this Commission agreed when it concluded in its Final Order in Docket No. 040130-TP issued October 11, 2005, that: “[a] **TELRIC rate is inappropriate because transit service has not been determined to be a Section 251 UNE.**”⁹⁸ And that: “[w]e agree with the reasoning of the FCC Wireline Competition Bureau in rendering the Virginia Arbitration Order that found no precedent to require the transiting function to be priced at TELRIC under § 251(c)(2).”

Even the Joint Petitioners acknowledge that if transiting is not a Section 251 obligation, which it is not, then it logically follows that there can be no lawful mandate that the service be priced at TELRIC.⁹⁹ Even more telling, within the Interconnection Collocation and Resale Agreement for the State of Florida, between LecStar Telecom, Inc., and Sprint Florida dated February 9th 2006, the parties explicitly state that transit service is a “non-251 service.”¹⁰⁰ Furthermore, the issue of whether transiting is a Section 251 requirement is a red herring that was not even identified by any party, prior to the hearing, as one of the issues to be addressed by the Commission in this Docket.¹⁰¹

It is the height of hypocrisy for Petitioners to argue that BellSouth’s transit service rate of .003 is improper when some of them charge substantially higher rates for the same transit service. Specifically, the interconnection agreement between GTC, Incorporated, doing business

⁹⁷ See Tr. at 89; Exhibits KRM-2, KRM-3.

⁹⁸ See *Joint Petitioners Arbitration Order* at 52 (citing TRO footnote 1640)(emphasis added).

⁹⁹ Tr. at 681-682.

¹⁰⁰ Tr. at 683-684; Exhibit 50.

¹⁰¹ See Tr. at 218

as GT Com, and Sprint Communications Company, Limited Partnership contains a transit service rate of .008 per minute of use (“MOU”).¹⁰² The Interconnection Collocation and Resale Agreement for the State of Florida, between LecStar Telecom, Inc., and Sprint Florida contains a transit service rate of .005. per MOU. Likewise, the transit rate in the Verizon Wireless agreement with Smart City is .005 per MOU.¹⁰³ It would be patently discriminatory to mandate a lower rate for BellSouth’s service while allowing other similarly situated carriers to charge substantially more for the same transit service.

(b) What type of traffic do the rates identified in (a) apply?

*****Summary of BellSouth’s Position:** The rates apply to local traffic and local ISP-bound traffic originated by a carrier, handed to BellSouth for transiting and ultimate delivery to the appropriate terminating third-party carrier. Either the rate established by BellSouth’s Transit Tariff or within an agreement addressing transit traffic with the originating carrier would apply.*******

The transit rate applies equally for all transit traffic in instances where the originating party has not entered into a transit agreement with BellSouth. Transit traffic is traffic that neither originates nor terminates on BellSouth’s network, but that is delivered to BellSouth by the telecommunications service provider (“TSP”) that originated the traffic so that BellSouth can deliver the traffic to the service provider that will terminate the traffic.¹⁰⁴ For example, if a customer of TSP 1 places a call to a customer of TSP 2, and TSP 1’s network is not directly interconnected to TSP 2’s network, TSP 1 may originate the call and deliver it to BellSouth who, in turn, will deliver the call to TSP 2, so that it can terminate the call to its end user.¹⁰⁵

¹⁰² Tr. at 407-408; Exhibit 44.

¹⁰³ Tr. at 592.

¹⁰⁴ Tr. at 59. *See also* Tariff A.16.1.1.; Prehearing Order Docket Nos. 050119-TP, 050125-TP at 3.

¹⁰⁵ *See e.g.*, Tr. at 59 and diagram of transit traffic service at 60.

Transit traffic includes wireline-to-wireline traffic; wireless-to-wireless traffic; wireline-to-wireless traffic; wireless-to-wireline traffic; and Internet Service Provider-bound (“ISP-bound”) traffic.¹⁰⁶

Issue 12: **Consistent with Order Nos. PSC-05-0517-PAA-TP and PSC-05-0623-CO-TP, have the parties to this docket (“parties”) paid BellSouth for transit service provided on or after February 11, 2005? If not, what amounts if any are owed to BellSouth for transit service provided since February 11, 2005?**

*****Summary of BellSouth’s Position:** Yes. Since February 11, 2005, ICO parties have paid BellSouth, via the existing BellSouth-ICO monthly settlements system, at the tariffed rate for usage. ***

Those payments are entirely appropriate because, on February 11, 2005, BellSouth’s Tariff became presumptively valid as matter of law. The complete analysis of the presumptive validity of tariffs under Florida law is provided in Issue 1 above.

Issue 13: **Have parties paid BellSouth for transit service provided before February 11, 2005? If not, should the parties pay BellSouth for transit service provided before February 11, 2005, and if so, what amounts, if any, are owed to BellSouth for transit service provided before February 11, 005?**

*****Summary of BellSouth’s Position:** No. ICO’s have not paid BellSouth for local transit services prior to February 11, 2005. So long as the Tariff remains effective, BellSouth will not seek to collect any funds due from the Small LEC’s for local transit prior to February 11, 2005, and therefore this issue is moot.***

Issue 14: **What action, if any, should the FPSC undertake at this time to allow the small LECs to recover the costs incurred or associated with BellSouth’s provision of transit service?**

*****Summary of BellSouth’s Position:** BellSouth is not in a position to determine or address the financial position and recovery options of other carriers.¹⁰⁷***

Issue 15: **Should BellSouth issue an invoice for transit services and if so, in what detail and to whom?**

¹⁰⁶ Tr. at 65.

¹⁰⁷ Tr. at 76.

*****Summary of BellSouth's Position:** No. BellSouth includes transit charges on existing ICO settlements system reports, in the established monthly payment process. A line item for transit traffic is identified with the month of usage on the Miscellaneous Settlement report. Monthly Transit Minutes of Use can also be found at a BellSouth web-site for further validation.***

It is unnecessary for BellSouth or the ICOs to develop a different process for billing and paying for transit services than that currently utilized for other services. BellSouth and the ICOs utilize a customary process of settlement system reports and statements.¹⁰⁸ Additional supporting verification details are available in an on-line Summary Report which includes detail on Minutes of Use, messages, message date, type of terminating carrier, the terminating carrier name and the Operating Company Number.¹⁰⁹

Issue 16: Should BellSouth provide to the terminating carrier sufficiently detailed call records to accurately bill the originating carrier for call termination? If so, what information should be provided by BellSouth?

*****Summary of BellSouth's Position:** BellSouth provides Industry Standard EMI Records, where available, to terminating carriers for billing. Summary Reports are also provided for UNE-P CLEC usage and for Non-MPB CMRS usage. Summary Reports contain adequate information to allow the terminating carrier to invoice the originating carrier.

The Small LECs have suggested that they do not receive appropriate billing records from BellSouth so that they can bill originating carriers for transit traffic that terminates on the Small LECs' networks. However, that assertion is without merit, BellSouth provides industry-standard EMI Records, whenever available, to terminating carriers for traffic from Meet-Point-Billed carriers.¹¹⁰ The terminating carrier can and should refer to industry standard documentation for the EMI call detail record data that BellSouth provides.¹¹¹ In fact, when questioned about these billing records on cross-examination, Small LEC witness Mr. Watkins admitted that EMI records

¹⁰⁸ Tr. 77
¹⁰⁹ Tr. 90.
¹¹⁰ Tr. at 77.
¹¹¹ *Id.*

are an industry-standard billing record which allows Small LECs to bill other carriers for traffic that does not originate with BellSouth, but merely transits BellSouth's network and terminates on a Small LEC's network.¹¹² Mr. Watkins goes on to admit that the real issue is not whether BellSouth submits adequate records but rather whether the billed party pays the bills submitted by the Small LEC.¹¹³ That obviously is an issue between the Small LECs and the originating carriers, not of BellSouth's making and beyond BellSouth's control.

In addition to EMI Records, for billing purposes, BellSouth also provides Summary Reports for Non-MPB CMRS usage.¹¹⁴ The Summary Reports contain adequate information to allow the terminating carrier to invoice the originating carrier, and these reports are available on BellSouth's web-site for the terminating carrier's review, analysis, downloading and billing purposes.¹¹⁵ These billing records and methodologies have been the accepted practice in the industry for years.

The Small LECs' assertions about the inadequacy of records is simply a last ditch effort to create an issue where none exist, and should not be taken seriously. If the Small LECs have genuine issues with third parties, they are within their rights to bring those issues to the Commission's attention at the appropriate time. They should not be allowed to improperly interject such matters into the current proceeding.

Issue 17: How should billing disputes concerning transit service be addressed?

*****Summary of BellSouth's Position:** Any disputes involving the validity of the terminating carrier's billing to the originating carrier, or the authority of the terminating carrier to bill the originating carrier should be resolved by the controlling regulatory body or pursuant to the dispute resolution process in accordance with their contract. ***

¹¹² See Tr. at 398, 404-405.

¹¹³ See Tr. at 404-405.

¹¹⁴ Tr. at 77,78

¹¹⁵ *Id.*

To the extent the dispute involves questions related to the minutes of use billed or other issues surrounding the record information supplied by BellSouth pursuant to the transit tariff, BellSouth will provide support regarding questions on the data.¹¹⁶ If disputes between BellSouth as transit provider and one of the carriers arise, as with any tariff, the dispute would be resolved by the Commission in accordance with the terms of the tariff.

CONCLUSION

For all of the reasons set forth above, BellSouth respectfully requests that the Commission enter an order denying all complaints against BellSouth's transit tariff.

Respectfully submitted, this 9th day of June 2006.

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¹¹⁶ Tr. at 78.