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April 16, 2001

Mr. Tom Dorman
Executive Director
Kentucky Public Service Commission
730 Schenkel Lane
Frankfort, Kentucky 40602

Re: Petition by AT&T Communications of the South Central States, Inc. and TCG Ohio 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. 2000-465

Dear Mr. Dorman:

Enclosed please find the electronic copy of AT&T's Post-Hearing Brief in the above-referenced proceeding.

This electronic filing is a true representation of the original documents prepared in this case. Also attached is a document entitled "index.pdf," which lists all documents attached to this electronic filing. The original and one copy are being overnighted to the Commission, and copies are being served on all parties.

If you have questions, please call me. Thank you for your attention to this matter.

Respectfully Submitted,

Jim Lamoureux
Senior Attorney

cc: All parties of record

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February 20, 2001

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COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

A PETITION BY AT&T COMMUNICATIONS OF THE SOUTH CENTRAL STATES, INC. AND TCG OHIO FOR ARBITRATION OF AN INTERCONNECTION AGREEMENT WITH BELLSOUTH TELECOMMUNICATIONS, INC. PURSUANT TO SECTIONS 252(b) OF THE TELECOMMUNICATIONS ACT OF 1996	)))))))	CASE NO. 2000-465

POST ARBITRATION HEARING BRIEF OF AT&T COMMUNICATIONS OF THE SOUTH CENTRAL STATES, INC. AND TCG OHIO

NOW COMES AT&T Communications of the South Central States, Inc., and TCG Ohio, (collectively, "AT&T"), which respectfully submit this post arbitration hearing brief regarding interconnection agreement issues in dispute with BellSouth Telecommunications, Inc. ("BellSouth").

I. BACKGROUND

Pursuant to Sections 251 and 252 of the Telecommunications Act of 1996 (the "Act"), AT&T petitioned this Commission in 1996 to arbitrate certain issues arising out of negotiations between AT&T and BellSouth for the initial interconnection agreement ("Initial Agreement") between the parties. On January 29, 1997, this Commission issued its Order in Docket No. 96-482 resolving the issues presented in that Arbitration. The parties incorporated the Commission's decision into the Initial Agreement. The term of the Initial Agreement was three years, and it remained in effect until August 13, 2000.

Pursuant to the Act and the Initial Agreement, on May 3, 2000, AT&T sent a notice of non-renewal to BellSouth and formally requested to open negotiations for a new agreement.[1]

On October 5, 2000, because the parties were unable to reach agreement on all of the disputed issues, AT&T filed a Petition for Arbitration with this Commission. The matrix that was attached to the Petition indicated that there were twenty-seven "core" issues in dispute. The parties ultimately agreed to arbitrate thirteen issues that significantly impact AT&T's ability to remain a provider of telecommunication services in the Kentucky local market, and the arbitration hearing was held on February 26, 2001, in Frankfort, Kentucky. For each of the remaining fourteen issues, the parties either settled the issue, agreed to consider the issue in a generic cases, or agreed to further negotiate the issue at a later date.

ISSUE 1: SHOULD CALLS TO INTERNET SERVICE PROVIDERS ("ISPs") BE TREATED AS LOCAL TRAFFIC FOR PURPOSES OF RECIPROCAL COMPENSATION?

Reciprocal compensation for ISP-bound traffic that both originates and terminates within the same local calling area is required as a direct consequence of Sections 251 and 252 of the Act. Section 251(b)(5) of the Act requires that all LECs, including incumbent LECs such as BellSouth, have the duty to establish reciprocal compensation arrangements for the transport and termination of *telecommunications*. A customer's dial-up call to an ISP is clearly "telecommunications" as defined in the Act and, therefore, subject to the reciprocal compensation obligations of the Act.

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[1] Pursuant to Section 2.3, the Initial Agreement remains in effect until superseded by a new agreement.

Dial-up ISP-bound calls are technically and functionally equivalent to any other communications traversing the local circuit-switched network. Information originated by the calling party is not changed or transformed in any way until the called party, in this case an ISP, responds to the calling party's request by opening a path to the Internet through its server. Thus, the communications between the calling party and the ISP satisfies the Act's definition of "telecommunications" as "the transmission between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." 47 U.S.C. § 3 (48). The ISP, in turn, provides an information service to fulfill the calling party's request.

Section 252 of the Act defines the circumstances under which the terms and conditions of reciprocal compensation arrangements may be considered just and reasonable. In particular, Section 252(d)(2) states that, for purposes of compliance by an incumbent with Section 251(b)(5), a state commission shall not consider terms and conditions to be just and reasonable unless such terms and conditions both:

- 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
- "determine such costs on the basis of the reasonable approximation of the additional costs of terminating such calls."

These statutory requirements can only be satisfied when the terms and conditions of reciprocal compensation arrangements established under Section 251(b)(5) provide compensation for the delivery of dial-up ISP-bound traffic at the same cost-based rates as for any other traffic traversing the local network. The costs a carrier incurs when it

terminates usage is determined by the network architecture it employs. Calls that terminate on another carrier's network, and use the same network facilities, equipment and functions, generate the same costs. Given that calls to ISP servers, residential customers, and business customers terminate in the same manner, the costs are the same, and the Act's cost-based rate requirement mandates that compensation must be the same.

The Act provides that each carrier has the opportunity to recover its terminating costs when the calling party is the customer of another carrier, and that the carrier billing the retail customer must reimburse other carriers for the costs of terminating calls originated by its customers. This plain meaning of "mutual" and "reciprocal" under Section 252(d)(2) clearly requires that carriers be fully compensated for the forward-looking economic costs they incur in terminating dial-up ISP-bound traffic in the same manner as any other terminating local usage.

The FCC has issued a Declaratory Ruling and initiated a rulemaking proceeding addressing the issue of reciprocal compensation for ISP traffic. *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Inter-Carrier Compensation for ISP-Bound Traffic,* FCC 99-38; CC Docket No. 96-98; 99-68, February 26, 1999 ("ISP Declaratory Ruling"). The FCC has not yet issued its rules, however. Further, while the FCC concluded in its *ISP Declaratory Ruling* that ISP-bound traffic is jurisdictionally mixed and appears to be largely interstate in nature, the FCC also cautioned that nothing in its *ISP Declaratory Ruling* "should be construed to question any determination a state commission has made, or may make in the future, that parties have agreed to treat ISP-bound traffic as local traffic under

existing interconnection agreements."[2] The FCC determined that states could continue to mandate reciprocal compensation for dial-up ISP traffic pursuant to interconnection agreement provisions and state regulatory decisions. As the FCC noted, efficient pricing rules must accurately reflect the actual cost characteristics of the service being provided to originating carriers – a condition not met by access charges due to both the implicit and explicit subsidies contained therein – but fully met by reciprocal compensation arrangements.

Moreover, even the FCC's determination that ISP-bound calls appear to be largely interstate was vacated by the United States Court of Appeals for the D.C. Circuit in *Bell Atlantic Telephone Companies v. FCC*, 206 F.3d 1 (D.C. Cir. 2000) ("Bell Atlantic"). In *Bell Atlantic*, the court held that:

a. the FCC's interpretation of call "termination" in its *ISP Declaratory Ruling* rested on a jurisdictional end-to-end analysis that is inapplicable to the reciprocal compensation arena.[3] The court held that "the cases (the FCC) relied on for using this 'end-to-end' analysis are not on point."[4]

b. calls to ISPs meet the FCC's regulatory definition of "termination" stating "Calls to ISPs appear to fit this definition (of termination): the traffic is switched by the LEC whose customer is the ISP and then delivered to

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[2] *ISP Declaratory Ruling* ¶¶ 1, 24.
[3] *Bell Atlantic*, 206 F.3d at 4-5.
[4] *Id*. at 5.

the ISP, which is clearly the "called party"". *Id*., at 6; and

c. calls to ISPs may terminate at the ISP because the information services that an ISP provides are distinct from the separate telecommunications services used to connect the caller to the ISP.[5] The court recognized that "[i]n this regard, an ISP appears no different from any businesses such as 'pizza delivery firms, travel reservation agencies, credit card verification firms, or taxi cab companies,' which use a variety of communications services to provide their good or services to their customers."[6]

The mere fact that ISP traffic is jurisdictionally interstate does not mean that Section 251(b)(5)'s obligation to pay cost-based reciprocal compensation for such traffic does not apply. This is true for two reasons. First, Section 251(b)(5), by its plain terms, imposes the reciprocal compensation obligation on all "telecommunications," not just "local" traffic. AT&T uses the same facilities and incurs the same costs when delivering traffic to an ISP as it does when delivering other calls. Second, under the FCC's longstanding enhanced service provider ("ESP") exemption – which the FCC expressly indicated it would not reconsider – ISP traffic is *treated* as local for virtually every purpose other than jurisdiction, including tariffing, ratesetting, and separations.

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[5] *Id*. at 7.
[6] *Id.*

Unless reciprocal compensation applies to ISP-bound calls, BellSouth would be forcing the costs of such calls upon new entrants such as AT&T. Clearly, the Act did not envision an entire class of calls for which BellSouth could use AT&T's or another CLEC's network without paying for such use.

That ISP-bound traffic is local and thus subject to reciprocal compensation is supported by a recent decision of the United States Court of Appeals for the Tenth Circuit, which affirmed the Oklahoma Corporate Commission's ("OCC") determination and an Oklahoma United States District Court's finding that reciprocal compensation must be paid for ISP-bound traffic. *Southwestern Bell Telephone Co. v. Brooks Fiber Commun. of Oklahoma*, 235 F.3d 493 (10th Cir. 2000). This case involved the breach of an interconnection agreement regarding reciprocal compensation and ISP traffic. The OCC required payment of reciprocal compensation for calls to ISPs relying on the FCC's decision in its Access reform proceeding, *In the Matter of Access Charge Reform Price Cap Performance Review for Local Exchange Carriers Transport Rate Structure and Pricing End User Common Line Charges*, 12 F.C.C.R. 15,982, 12 FCC Rcd. 15982, 7 Communications Reg. (P&F) 1209 F.C.C. May 16, 1997 ("Access Charge Reform Order"). According to that FCC order, "ISPs should not be subjected to an interstate regulatory system designed for circuit-switched interexchange voice telephony solely because ISPs use incumbent LEC networks to receive calls from their customers."[7] In its conclusion in the *Access Charge Reform Order*, the FCC stated, "ISPs should remain classified as end users for purposes of the access charge system."[8] The Tenth Circuit court found that "the OCC properly determined that the FCC had an established policy of

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[7] *Access Charge Reform Order* ¶ 343.

treating ISPs as end-users."[9] Under this analysis, when a BellSouth end-user calls an ISP end-user, the call is terminated when the ISP end-user answers the call. The Tenth Circuit court further concluded, "calls to ISPs are 'terminating traffic' subject to reciprocal compensation."[10] The court affirmed the OCC's finding that "the point of termination of calls to ISPs is the location of the ISP. Moreover, where the calling party and the called party, in this case the ISP, are located in the same local calling area, the call is 'local traffic.'"[11]

The Tenth Circuit court also took into consideration the recent *ISP Declaratory Ruling*, since both parties in the case relied heavily on that ruling. In its consideration of the D.C. Circuit's action to vacate and remand the *ISP Declaratory Ruling* for want of reasoned decision-making, the Tenth Circuit court articulated that the "FCC acknowledged that it had historically directed states to treat ISP traffic as local."[12] The court concluded that the FCC's policy has always been to require LECs to treat ISPs as end-users or local service business customers rather than interexchange carriers.

2. This Commission and Others Have Ordered BellSouth to Pay Reciprocal Compensation for ISP Traffic Originated by Its End Users

In its May 16, 2000, Order in Case No. 98-212, this Commission held BellSouth responsible for reciprocal compensation for ISP traffic. *In the Matter of: American Communications Services of Louisville, Inc. d/b/a e.spire Communications, Inc., American Communications Services of Lexington, Inc. d/b/a e.spire Communications, Inc., CLEC, Inc., and Hyperion Communications of Louisville, Inc. f/k/a Louisville*

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[8] *Access Charge Reform Order* ¶ 348.
[9] *Southwestern Bell Telephone Co.*, 235 F.3d ¶¶ 493, 499.
[10] *Southwestern Bell Telephone Co.*, 235 F.3d ¶¶ 493, 499.
[11] *Id.*

Lightwave, Case No. 98-212, Kentucky Public Service Commission (May 16, 2000). ("ACSI Order"). The *ACSI Order* specifically focused on whether or not "calls made by BellSouth's customers to an Internet service provider ('ISP') that is served by Hyperion are 'local traffic' calls such that they should be included within the reciprocal compensation provisions of the contract." *ACSI Order* at 3. In holding that BellSouth must pay reciprocal compensation for ISP traffic, the Commission stated that "ISP-bound traffic is local traffic which is subject to reciprocal compensation," and further concluded "that a call is 'terminated' locally if it is not toll billed and if answer supervision occurs." *ACSI Order* at 6.

Similarly, in a recent Georgia Public Service Commission arbitration, BellSouth was ordered to pay reciprocal compensation to Intermedia for calls to ISPs. *In re: Petition of BellSouth Telecommunications, Inc. For Arbitration of an Interconnection Agreement With Intermedia Communications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*. GPSC Docket No. 11644-U (June 29, 2000) ("Georgia Order"). The *Georgia Order* held that the FCC's *ISP Declaratory Ruling* provided authority to order BellSouth to compensate Intermedia, because the Commission determined that "CLECs should be compensated for costs imposed on their systems, including costs for transport and delivery of ISP-bound calls." *Georgia Order* at 5. State Commissions in North Carolina[13] and Alabama[14] also have recently held ILECs

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[12] *Southwestern Bell Telephone Co.*, 235 F.3d ¶¶ 493, 500.

[13] Order Concerning Reciprocal Compensation For ISP Traffic, *In The Matter of Enforcement of Interconnection Agreement Between Intermedia Communications, Inc. and Verizon South Inc., f/k/a GTE South Incorporated* North Carolina Utilities Commission, Docket No. P-504, Sub 8 (October 24, 2000) ¶ 8 ("Virtually all state commissions and arbitrators which have considered this issue have ruled that reciprocal compensation should be paid for ISP-bound traffic. . . . [I]f ISP-bound traffic is not reciprocally compensated as local traffic, neither Verizon nor Intermedia will receive any compensation for the transport and termination of this traffic.")

financially responsible for their originating traffic terminated at ISPs served by a CLEC's network.

This Commission has the authority to order reciprocal compensation for calls made by BellSouth's customers to AT&T's local ISP customers. BellSouth is not entitled to use AT&T's network without paying for the costs associated with that use. It would be unfair and unrealistic to require AT&T to continue to incur the cost to handle ISP-bound calls from BellSouth customers with no opportunity to recover those costs. AT&T requests that the Commission order the parties to adopt AT&T's proposed language that requires reciprocal compensation for ISP bound traffic. BellSouth must compensate AT&T for the costs incurred by AT&T and the usage of AT&T's systems and networks to terminate ISP-bound calls originated by BellSouth's end users.

ISSUE 4: WHAT DOES "CURRENTLY COMBINES" MEAN AS THAT PHRASE IS USED IN 47 C.F.R. §51.315(B)?

ISSUE 5: SHOULD BELLSOUTH BE PERMITTED TO CHARGE AT&T A "GLUE CHARGE" WHEN BELLSOUTH COMBINES NETWORK ELEMENTS?

For nearly five years, BellSouth has done everything in its power to deny CLECs access to UNEs in combined form at forward-looking, cost-based prices. In virtually every proceeding since the Act was passed, BellSouth has in some way succeeded in limiting CLECs to either buying discrete UNEs or reselling BellSouth's retail services,

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[14] Final Order On Arbitration, *In The Matter Of: Petition by ITC^DeltaCom Communications, Inc. Arbitration of Interconnection Agreement with BellSouth Telecommunications, Inc Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Alabama Public Service Commission, Docket No. 27091 (2000) ("dial-up calls to ISPs should be subject to reciprocal compensation"); Final Order On Arbitration, *In The Matter of: Petition by ICG Telecom Group, Inc. for Arbitration of Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the*

and thus succeeded at forestalling any serious challenge to its monopoly over local telephone service.

At first, despite the mandates of the Act and the FCC's rules and regulations, BellSouth simply refused to allow CLECs to purchase UNEs in combined form at cost-based rates if those UNEs could be used to replicate a BellSouth retail service. BellSouth consistently and successfully maintained this position for the entirety of the first year following passage of the Act. Indeed, the Kentucky Public Service Commission was one of the few Commissions to reject BellSouth's outright refusal to provide UNE combinations. Moreover, the Eighth Circuit eventually put an end to this obstructionist tactic when it upheld the FCC's rules and regulations allowing CLECs to provide service entirely through UNEs, and to pay UNE rates, thus rendering BellSouth's outright refusal illegal.

Not surprisingly, however, the Eighth Circuit's decision did not deter BellSouth. Instead, in response to the Eighth Circuit's decision, BellSouth evolved its strategy to one of forcing CLECs to purchase uncombined, discrete UNEs, which then had to be reassembled in collocation space purchased by the CLECs before they could be used to provide telephone service. In essence, BellSouth once again forced CLECs to either buy discrete UNEs or resell BellSouth's retail services, this time by making the use of UNEs in combined form uneconomical, impractical, and inferior in service. That tactic lasted another year.

Of course, the United States Supreme Court eventually declared that approach illegal as well. The Supreme Court reversed the Eighth Circuit. In doing so, the

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Telecommunications Act of 1996, Alabama Public Service Commission, Docket No. 27069 (November

Supreme Court clearly and unequivocally affirmed the longstanding FCC requirement that BellSouth must provide in combined form those UNEs that BellSouth currently combines in its network. The Court found:

> [The Act] forbids incumbents to sabotage network elements that are provided in discrete pieces, and thus assuredly contemplated that elements may be requested and provided in this form (which the Commission's rules do not prohibit). But it does not say, or even remotely imply, that elements must be provided only in this form and never in combined form.

AT&T Corp., et. al. v. Iowa Utils. Bd., et. al., 119 S.Ct. 721, 737 (1999). The Court reasoned that, in the absence of UNE combinations, "incumbents could impose wasteful costs" on carriers who requested network elements, even if entrants did not seek access to the to entire pre-assembled networks. Id. at 737-738. The Court held that the FCC therefore had acted reasonably "to opt in favor of ensuring against an anticompetitive practice." Id. at 738. This Commission also held the line in favor of UNE combinations when it ordered BellSouth to provide written methods and procedures for ordering UNE combinations and to establish an end-to-end electronic process for UNE combinations. Order, *In the Matter of AT&T Communications of the South Central States, Inc. v. BellSouth Telecommunications, Inc.*, Case No. 97-521 at 7 (Nov. 6, 1998).

The Supreme Court's decision and the decisions of this Commission should have conclusively eliminated the legal basis for BellSouth's recalcitrance on this issue. After all, the Court said that CLECs could provide service entirely through UNEs and that CLECs could buy UNEs in combined form, and it upheld the jurisdiction of the FCC to issue its rules governing the provision of UNEs, including pricing. Moreover, the Court

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10, 1999) ("dial-up calls to ISPs should be subject to reciprocal compensation.")

affirmatively rejected the arguments, repeated ad nauseum by BellSouth, that provision of UNEs in combined form at cost-based rates "eviscerates the distinction between resale and unbundled access." Id. at 737. Instead, the Court made clear that there is nothing unlawful about a requirement that "could allow entrants access to an entire preassembled network." Id. at 738. Thus, after three years, it appeared that CLECs would finally gain access to one of the most potent tools available for developing meaningful broad based competition for local telephone service.

BellSouth, however, continues to impede the effective use of UNEs in combined form to bring broad scale local competition to Kentucky consumers. As it has for nearly 5 years, in this proceeding BellSouth confused the issue so much that it may not be obvious what its current position is. A careful review of its testimony in this proceeding, however, reveals BellSouth's continued refusal to allow CLECs a meaningful opportunity to use UNEs in combined form to compete in Kentucky.

BellSouth now says it will provide combinations to CLECs at cost-based UNE prices "consistent with BellSouth's obligations under the 1996 Act and applicable FCC rules." (Ruscilli Dir. at 14.) Apparently, this means that BellSouth will not provide a particular UNE combination necessary to serve a specific customer, unless the discrete elements that comprise that combination are physically combined at the time of purchase (whether or not those elements have ever been combined anywhere in BellSouth's network, including for that customer) and are being used by BellSouth to provide service to the customer. (Ruscilli Dir. at 14; Tr. at 257-58.)

Thus, BellSouth will not provide UNEs in combined form to allow CLECs to provide second lines, to serve new customer locations, or to provide services in addition

to those currently being provided by BellSouth, even though BellSouth routinely and ordinarily uses those very same UNEs in combined form in order to provide those very same services to its own customers. Rather, BellSouth will provide UNE combinations only when the UNEs are currently combined and providing service to the customer that the CLEC desires to serve.

Specifically, for loops and switching, even though BellSouth routinely combines loops and switching throughout its network and uses combinations of loops and switching to provide service to its own customers (Tr. at 281), BellSouth will not sell AT&T a loop-switching combination UNE rates to serve a particular customer, unless the loop to that customer's premise is already connected to a BellSouth switch ***and*** BellSouth is currently using that loop-switching combination to provide the service to that customer that AT&T wants to provide. (Follensbee Reb. at 4.) It is time for BellSouth to finally and fully comply with the Act, the FCC's rules and regulations, and the decision of the United States Supreme Court, and to finally provide UNEs in combined form to CLECs at cost-based rates, without restriction.

A. ANY RESTRICTIONS ON THE USE OF UNES IN COMBINED FORM WILL CONTINUE TO HINDER THE DEVELOPMENT OF ROBUST COMPETITION, INCLUDING FACILITIES-BASED COMPETITION, IN KENTUCKY

The underlying premise of BellSouth's position on this issue appears to be that the Commission has the legal authority to make local entry more difficult and costly. There is no rational justification, however, for making local competition harder, and therefore more costly, than it already is. At issue here is a simple choice. Should BellSouth provision network element combinations in the most efficient manner (*i.e.*,

combining those elements for entrants that it routinely combines today), or should it be allowed to require additional and unnecessary work – for both itself and the entrant – to get to the same result?

BellSouth absurdly suggests that its position will promote rather than hinder competition. (Ruscilli Dir. at 17.) Mass-market competition, however, depends upon efficient provisioning systems structured to reduce cost and accommodate volume. (Follensbee Reb. at 5.) The Commission underscored this when it ordered BellSouth to implement end-to-end electronic systems for UNE combinations. This same conclusion applies with equal force to *new* combinations as it does to *existing* arrangements. (Follensbee Reb. at 5.) Consumers will not accept new entrants that can serve an existing line, but cannot provision additional lines, cannot serve the customer at a new location, and cannot add features to the service they are currently purchasing from BellSouth. (Follensbee Reb. at 5.) The Commission should remain committed to policies that foster competition through the use of UNE combinations.

What BellSouth really seeks here is to subvert the FCC's impairment decision in its *UNE Remand Order* by imposing requirements that would increase the cost to CLECs for using UNE combinations to which they are legally entitled. (Follensbee Reb. at 10.) The Commission, however, has already agreed that inefficient systems, particularly inefficient systems for UNE combinations, will not promote competition.

Widespread competition for average consumers requires that competitors be able to access and use network elements in a simple and cost-effective manner. This means, as a practical matter, that CLECs must have access to combinations of network elements to provide service. BellSouth's refusal to provide combinations that it "currently

combines" means that AT&T and BellSouth have to spend more time, more money and more resources to obtain what BellSouth currently provides to its own customers. This additional work, time and cost to both BellSouth and AT&T can be eliminated by simply requiring BellSouth to provide combinations that it routinely and ordinarily combines for its own customers.

CLECs cannot compete against BellSouth if they are forced to serve a customer at a greater cost or less efficiently than BellSouth. Although it is possible to "piece together" serving arrangements using discrete UNEs, the past 5 years demonstrates that these "hand crafted" arrangements are primarily useful to serve larger business customers desiring services more amenable to individual provisioning. (Follensbee Dir. at 14-15.)[15] Access to combinations of network elements is what is needed for broad local competition to develop for average consumers and small businesses. The use of UNEs in combined form provides for the immediate development of mass market competition for local telephone services.

A CLEC can use UNEs in combined form to offer different services and pricing plans in ways that resale does not allow. UNEs in combined form thus enable the market to rapidly transition to facilities-based competition once the CLEC has had the opportunity to "stand in the shoes of the LEC." UNEs in combined form thus do not displace or preclude facilities-based competition. Rather, they can augment and spur such competition to develop.

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[15] BellSouth's restrictions also stand in glaring contrast to what BellSouth will be able to do when it is permitted to provide long distance service. It will not build facilities, and it will have no restrictions on its ability to lease combined elements on long-distance networks over which it will sell its services, and it will be able to lease those facilities at cost-based rates, in other words, a "platform" for the provision of long distance.

With respect to UNE-P, the absurdity of BellSouth's position is highlighted by its admission that it will provide stand alone loops to CLECs at UNE prices to serve customers to which no loops are currently provisioned but to which BellSouth would *ordinarily* provision such loops. (Tr. at 270-71, 280-81.) BellSouth has admitted that for such customers in its serving area (*e.g.*, customers in new subdivisions), BellSouth would have to sell AT&T a loop at UNE prices even though no such loop is in place today (and thus no Bellsouth service). (Tr. at 270-71.) Yet, even though BellSouth would sell AT&T that loop at UNE prices, BellSouth will not sell AT&T that very same loop connected to the BellSouth switch as a loop-switching combination (UNE-P), because that combination of loop and switch are not connected today and being used by BellSouth to provide service to the customer. (Tr. at 270.)

B. THE COMMISSION SHOULD REJECT BELLSOUTH'S PROPOSED RESTRICTIONS ON THE USE OF UNE COMBINATIONS AS ILLEGAL AND ANTICOMPETITIVE

There are two legal approaches available to the Commission to make sure that BellSouth combines elements for entrants that it ordinarily combines for itself. The first is to determine that current FCC rules require this result. In particular, the Commission could simply determine that FCC rule §51.315(b) – which provides that BellSouth must offer network elements that it currently combines – requires BellSouth to provide in combined form those UNEs that BellSouth ordinarily combines for itself, even if the particular UNEs being purchased in combined form by a CLEC to provide service to a particular customer have not yet been physically connected by BellSouth at the time of service.

BellSouth asserts that as a result of the Supreme Court decision, it is "clear that BellSouth has "no obligation to combine UNEs for CLECs when the elements are not currently combined in BellSouth's network and providing service to the particular customer the CLEC wishes to serve." (Ruscilli Dir. at 15.) This statement of position is novel in that it is both accurate and inaccurate. First, it is accurate in that BellSouth has no obligation to provide combinations that are not found in its own network. However, it is inaccurate in that AT&T is ***not*** requesting that the Commission order BellSouth to provide combinations that are not currently found anywhere in BellSouth's own network. Rather, AT&T is requesting only that BellSouth provide those combinations that are ordinarily combined by BellSouth for itself in its own network.[16]

Moreover, and perhaps more fundamentally, BellSouth's position is inaccurate in its suggestion of clarity as to the absence of any requirement that BellSouth provide to CLECs those UNEs in combined form that BellSouth ordinarily combines in its own network.[17] FCC Rule 315(b) is part of a "suite" of combination rules -- §51.315 (a) through (f) -- that the FCC had initially adopted to implement the Act. Together, Rule 315(b) and (c) collectively defined the scope of BellSouth's obligation to provide UNE combinations. Together, these rules provided:

> §51.315(b) -- Except upon request, an incumbent LEC shall not separate requested network elements that the ILEC currently combines.
>
> § 51.315(c) --Upon request, an incumbent LEC shall perform the functions necessary to combine unbundled

[16] Indeed, such UNEs, while perhaps not physically connected and providing service to all customers to whom CLECs desire to provide service, are, ***in fact***, combined with BellSouth's network.

[17] BellSouth admits that no rule supports its position that service must currently be provided to a customer before a CLEC may purchase a UNE combination from BellSouth to serve that customer. (Tr. at 264-65.)

> network elements in any manner, even if those elements are not ordinarily combined in the incumbent LEC's network, provided 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.

In its entirety, Rule 315 thus clearly obligated BellSouth to provide all UNE combinations to CLECs. Unfortunately, the first rule -- § 51.315(b) -- has been reinstated by the Supreme Court , while the latter -- § 51.315(c) -- remains vacated by the Eighth Circuit. Thus, the potential for confusion has been created by the fact that a single rule now remains in effect where the FCC had originally adopted that rule as part and parcel of a unified set of rules.

The narrative portion of the FCC's *Local Competition Order* reflects this unified approach. The FCC determined that the language in section 252 (c)(3) of the Act requiring incumbent LECs to provide access to "unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide" a telecommunications service, "bars incumbent LECs from imposing limitations, restrictions, or requirements on requests for, or the sale or use of, unbundled elements that would impair the ability of requesting carriers to offer telecommunications services in the manner they intend." *Local Competition Order* ¶ 292. Thus, the FCC determined that "incumbents must provide, as a single, combined element, facilities that could comprise more than one element. This means, for example, that, if the states require incumbent LECs to provision subloop elements, incumbent LECs must still provision a local loop as a single, combined element when so requested, because we identify local

loops as a single element in this proceeding." *Local Competition Order* ¶ 295. Finally, the FCC held that "***incumbent LECs are required to perform the functions necessary to combine those elements that are ordinarily combined within their network, in the manner in which they are typically combined***." *Local Competition Order* ¶ 296.

Because of issues remaining in the Eighth Circuit, the FCC in its subsequent *UNE Remand Order* declined to revisit the "currently combines" requirement of Rule 315(b). *UNE Remand Order*, ¶ 479. The FCC did restate, however, the conclusion in its *Local Competition Order* that the "***proper reading of `currently combines' in rule 51.315 (b) means `ordinarily combined within [the incumbent's] network, in the manner which they are typically combined***.'" Id. (emphasis added)

In deciding this issue, the Commission thus could, consistent with the intent of the FCC, simply determine that Rule 315(b) encompasses the obligation to provide to CLECs all UNEs in combined form which BellSouth ordinarily combines in its network. This is the path chosen by the Georgia Public Service Commission, which ruled that 'currently combines' [as set forth in Rule 315(b)] means ordinarily combined within the BellSouth network, in the manner in which they are typically combined. Thus, CLECs can order combinations of typically combined elements, even if the particular elements being ordered are not physically connected at the time the order is placed."[18] This also was the approach of the Tennessee Regulatory Authority. (Tr. at 282.) To date, no Commission has sided with BellSouth on this issue (Tr. at 282-83), and this Commission would be the first to restrict the ability of CLECs to use UNEs in combined form as requested by BellSouth.

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[18] *Order*, Georgia Public Service Commission, Docket No. 10682-U, February 1, 2000 at 11.

Alternatively, the Commission can avoid the need to determine the precise scope of FCC Rule 315(b), and simply rely upon its own authority to order that BellSouth combine elements for CLECs. BellSouth places great emphasis on the decision from the Eighth Circuit (which the FCC and a number of other parties have requested the Supreme Court review) that had the effect of leaving vacated FCC rule 315(c). The Eighth Circuit's decision, however, does not preclude this Commission from relying upon its own authority in deciding this issue on its merits.

Requiring BellSouth to provide in combined form those UNEs that BellSouth ordinarily combines in its own network also would remain consistent with other FCC rules. FCC Rule 309(a) specifically 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 telecommunication carrier intends.

BellSouth admits that it cannot restrict the use of stand-alone loops (or switching, or transport) to serve only customers who currently receive service from BellSouth. (Tr. at 278-79.) For instance, when a CLEC orders a loop to serve a particular customer, it is illegal under FCC Rule 309(a) to require that the customer already be served over such a facility, because such a requirement would impair the ability of that CLEC to offer a telecommunications service in the manner it intends. Similarly, Rule 309(a) prohibits BellSouth from restricting the use of elements based on the physical status of its connections to other elements (*e.g.*, BellSouth could not prevent a CLEC from using a

loop to serve a particular customer because that loop was or was not connected to a switch at the time).

Moreover, BellSouth admits that it will provide a loop to a CLEC to serve a customer even if there is no loop yet deployed to serve that customer. (Tr. at 270-71, 280-81.) Yet, for that same customer, BellSouth will not deploy that very same loop to allow the CLEC to use a combination of that loop and switching to provide service to that very same customer. This restriction is plainly contrary to the prohibition of Rule 309(a), and BellSouth should not be allowed to restrict the use of combinations of elements in such manner.

There should be no doubt that Rule 309(a) applies with equal force to elements in combined as well as discrete form. A combination of elements is just that – a combination ***of elements***. BellSouth is not allowed to control how, when or where a CLEC provisions service once the CLEC purchases UNEs, whether in discrete or in combined form. Under FCC Rule 309(a), it is just as illegal for BellSouth to impose restrictions on the use of elements in combined form as it is for BellSouth to impose restrictions on the use of those same elements in discrete form. There is no basis for BellSouth to impose restrictions on the use of elements merely because they are provisioned in combined rather than discrete form.

Congress understood that local competition would not emerge rapidly, if at all, if the fundamental questions of how, when and where BellSouth's facilities would be made available to new entrants were left to the whim of the monopoly. Thus, it created specific guidelines to remove these decisions from BellSouth and to provide CLECs with a

measure of certainty and stability in order to formulate, support and follow through on rational business plans for entry into local markets.

Under the unlawful limitations advocated by BellSouth, entry into the local market through UNEs in combined form would remain a losing proposition. Accordingly, the Commission should order BellSouth to provide UNEs in combination throughout its network as long as it provides the same combination to itself anywhere in its network. Moreover, the Commission should hold that only the approved UNE rates will be applied to such combinations, with no "glue charge" or any other additive included.

ISSUE 6: UNDER WHAT RATES, TERMS, AND CONDITIONS MAY AT&T PURCHASE NETWORK ELEMENTS OR COMBINATIONS TO REPLACE SERVICES CURRENTLY PURCHASED FROM BELLSOUTH TARIFFS?

In its *UNE Remand Order*,[19] the FCC allowed for conversion of special access services to either unbundled network elements or to a combination of unbundled network elements, as long as the requesting carrier was providing a "significant amount of local exchange service." *UNE Remand Order* ¶ 5. BellSouth proposes charging AT&T "termination liability charges" when special access services are converted to either unbundled network elements or a combination of unbundled network elements. Ruscilli Dir. at 25. Such a termination charge would, in effect, nullify the FCC's *UNE Remand Order*.

In essence, BellSouth is asking this Commission to punish AT&T for doing what it is entitled to do under the law. AT&T is merely seeking to have its current service

converted to a different rate structure. Follensbee Dir. at 20. AT&T is not "terminating" the service. The loop-transport combination would continue to serve the same purpose, have the same features, perform the same functions and serve the same customer.

BellSouth presents this issue as being the result of AT&T's "choice" of purchasing special access under a volume or term contract rather than on a month-to-month basis. However, it is the ***lack of choice*** that lies at the heart of this issue. The fact is that BellSouth has denied AT&T the choice of purchasing loop-transport combinations, and it is that denial that forced AT&T to purchase special access in the first place. Indeed, it is particularly telling that BellSouth does not even discuss the reason AT&T purchased special access in the first place. Until a year ago, BellSouth refused to provide UNE combinations to AT&T and other CLECs. AT&T thus had ***no choice*** but to purchase special access in lieu of UNE combinations. Even today, BellSouth does not allow AT&T to purchase those UNE combinations electronically, continuing to deny them for all practical purposes.

That AT&T purchased special access under more favorable rates and conditions than BellSouth's month-to-month tariff rates should come as no surprise. Having been denied the ability to purchase UNE combinations, it should come as no surprise that AT&T would seek to reduce the cost of BellSouth's refusal to provide those combinations. Having been forced to purchase special access rather than UNE combinations, AT&T should not now be punished even further for now converting

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

special access to the UNE combinations that AT&T should have been able to purchase all along.

Moreover, footnote 985 from the FCC's *UNE Remand Order* does not require the Commission to approve BellSouth's proposal to impose termination liability charges. That footnote is in paragraph 486 of the *UNE Remand Order*. The first sentence of that paragraph provides that "under existing law, a requesting carrier is entitled to obtain existing combinations of loop and transport between the end user and the incumbent LEC's serving wire center on an unrestricted basis at unbundled network element prices." Moreover, the sentence to which the footnote is appended, provides that, "to the extent those unbundled network elements are already combined as a special access circuit, the incumbent may not separate them under rule 51.315(b), which was reinstated by the Supreme Court." Thus, the footnote allowing termination liability charges is premised on the availability of combinations of elements, the very same combinations that BellSouth denied AT&T, thus forcing AT&T to purchase special access.

In a recent Order, the Georgia Public Service Commission ordered BellSouth to provide CLECs with the ability to convert special access services to loop-transport combinations.[20] In doing so, the Georgia Public Service Commission determined that for those loop-transport combinations currently in place, BellSouth's non-recurring cost model would be used. *Georgia Order* at 22. Those rates did not include, nor did BellSouth argue for, "termination liability charges." It was only after the Georgia Public Service Commission rejected BellSouth's request for a "reasonable profit" in addition to

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[20] Order, *In re: Generic Proceeding to Establish Long-Term Pricing Policies For Unbundled Network Elements*, Dkt. No. 10692-U (February 1, 2000) ("Georgia Order").

the TELRIC costs for UNE combinations that the issue of "termination liability charges" arose.

In its March 6, 2001 AT&T/BellSouth arbitration decision, the Georgia Public Service Commission further ruled that AT&T is not required to pay "termination liability fees" when it converts special access services AT&T currently has in place to unbundled network elements. The Georgia Public Service Commission held that the rates charged for such conversions should be consistent with the rates previously approved by the Commission.

Similarly, this Commission should not allow BellSouth to punish AT&T and other CLECs who convert special access services to network elements. The conversion of special access to network elements is a mere billing change from special access rates to UNE rates. AT&T does not "want out of the contracts" as BellSouth argues. (Tr. at 58.) Instead, AT&T "want[s] to convert some of the circuits that are in those contracts. The rest of the contract will go forward." (Tr. at 58.) If this Commission approves BellSouth's proposal, BellSouth ends up with what it wanted all along – to prevent CLECs from using network elements to serve customers who are currently served through special access service.

ISSUE 7: HOW SHOULD AT&T AND BELLSOUTH INTERCONNECT THEIR NETWORKS IN ORDER TO ORIGINATE AND COMPLETE CALLS TO END-USERS?

When BellSouth customers call AT&T customers in Kentucky, those calls first travel over BellSouth's network, are directed to AT&T's network, and then travel over AT&T's network, before they are finally connected to AT&T's customers. In order to

get those calls from BellSouth's customers to AT&T's customers, AT&T and BellSouth have reached agreement on several issues. First, AT&T and BellSouth agree on the manner in which AT&T and BellSouth physically interconnect their networks. (Tr. 96) In addition, both parties agree that AT&T may choose to interconnect with BellSouth at a single point in a LATA. (Ruscilli Dir. at 39.) Finally, AT&T agrees that it bears financial responsibility for getting all calls from its customers to BellSouth's customers. (Tr. 96) The only remaining area of disagreement is whether BellSouth should bear equivalent financial responsibility for getting all calls from its customers to AT&T's customers. (Tr. 96.)

Rather than bear equivalent financial responsibility, BellSouth would have the Commission declare that, in certain circumstances, BellSouth is not responsible for all of the costs of getting calls from its customers to AT&T's customers. (Tr. 95) More specifically, Issue 7 requires the Commission to determine whether BellSouth is financially responsible for all of the costs of getting calls from its customers in a basic local calling area to AT&T's customers in that same basic local calling area, when the point of interconnection is outside that basic local calling area; or whether BellSouth is only responsible for getting those calls as far as some arbitrary point in BellSouth's basic local calling areas, at which point AT&T would bear the remaining financial responsibility for getting BellSouth's own traffic to the point of interconnection in the LATA. (Tr. 50)

This issue thus centers on BellSouth's traffic and who is responsible for the cost of BellSouth's traffic. (Ruscilli Dir. at 28) Basic fairness requires that BellSouth should be responsible for the cost of its own traffic, whether that traffic is from one BellSouth

customer to another or from a BellSouth customer to an AT&T customer. Just as AT&T will bear financial responsibility for getting its traffic to BellSouth's switches, BellSouth should bear equivalent financial responsibility for getting its traffic to the AT&T switch or switches within a given LATA.[21]

BellSouth continues to portray this issue as one "caused" by AT&T as a result of AT&T's local network design. That simply is incorrect. This issue arises because the BellSouth network and the AT&T network are configured differently, yet still must interconnect to serve a similar geographic base of customers. Those differences, thus, are not "caused" by AT&T. Indeed, it is just as easy, and correct, to say that those differences are "caused" by BellSouth because BellSouth chose to design ***its*** local network different than AT&T's network.

It is entirely inappropriate to look at this issue from the perspective of either BellSouth's or AT&T's network. Neither network should be viewed as the "correct", "baseline", or "primary" network. Nor is it appropriate to conclude that any network "causes" any costs that must be incurred to interconnect those networks. It is the interconnection of ***both*** networks that should be the focus of this issue. Accordingly, the Commission should approach this issue without any bias in favor of ***either*** network, and should adopt a resolution that is neutral to network design.

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[21] Consistent with AT&T's architecture, there are certain LATAs in which AT&T has not physically deployed a switch. AT&T has agreed that, in such cases, AT&T will establish at least one physical point of interconnection ("POI"), and AT&T will provide all of the facilities (for both originating and terminating traffic) between its switch and the POI. Follensbee Reb. at 5-6. Where AT&T has chosen not to deploy a switch within a LATA, the POI will be treated as if it were an AT&T switch. The AT&T architecture, therefore, provides a switch (or switching presence) in every BellSouth LATA. Further, although AT&T believes it has the legal right to establish only one POI at the most efficient, technically feasible point, AT&T also agrees to establish at least two physical POIs within each LATA where BellSouth provides service today, unless there is a de minimus volume of traffic across the LATA. *Id.*

The fact that BellSouth portrays this issue as "caused" by AT&T's network design demonstrates that the BellSouth proposal is inherently biased. The Commission should reject this approach and should adopt the proposal that is neutral with respect to network architecture and design. Only the AT&T proposal--that each party (regardless of network design) is responsible for all of the costs of its own originating traffic--meets this requirement.

BellSouth also would have the Commission believe that there are no rules or regulations that resolve this issue. That also is incorrect.

The law provides that each carrier should be financially responsible for all of the costs of transporting its own originating traffic to the terminating carrier's network. Indeed, based on the law, resolution of this issue ***should*** be simple. Under the law, BellSouth may not charge AT&T for the cost of local calls that originate on BellSouth's network. None of the arguments raised by BellSouth refute the plain and simple fact that the law dictates the outcome of this proceeding.[22]

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

There are two avenues of legal authority relating to Issue 7. First, there is legal authority which specifically addresses whether BellSouth may charge AT&T for the cost of local traffic that originates on BellSouth's network. The Act and FCC regulations independently require each carrier to bear financial responsibility for the cost of transporting its own originating traffic. These provisions also require mutual and reciprocal recovery of costs associated with transport and termination of calls originating on another carrier's network. The FCC's regulations clearly and specifically provide that

BellSouth may not charge AT&T for any of the costs of transporting BellSouth's originating traffic.

Second, there is statutory, regulatory, and judicial law on the issue of interconnection. The Act and FCC regulations unequivocally provide that, as a CLEC, AT&T has the legal right to determine where it will interconnect with BellSouth, both for purposes of where AT&T will terminate its originating traffic and for purposes of where BellSouth must deliver its originating traffic to AT&T. This statutory right is meaningful, however, *only if* the allocation of financial responsibility for transporting traffic corresponds to the interconnection points chosen by AT&T.

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

Congress and the FCC have both established that the financial consequences of interconnection must be mutual and reciprocal. Section 252(d)(2)(A) of the Act provides:

> [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 of the other carrier.

47 U.S.C. § 252(d)(2)(A). Under this provision of the Act, the originating carrier continues to collect and keep local revenues, and, where a CLEC is used to terminate the call (because the terminating customer obtains service from a competing local provider),

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[22] It is particularly telling that BellSouth fails to even mention, let alone address, the most pertinent FCC

the Act establishes reciprocal compensation to compensate the terminating carrier for its costs of transport and termination.

The Act does not alter the long-standing economic model for interconnection, under which the originating carrier collects local revenues and is responsible for all of the costs of originating, transporting and terminating its own traffic. Consistent with this obligation, 47 C.F.R. § 51.703(b) provides that "[a] LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network." This provision, in no uncertain terms, thus prohibits BellSouth from charging AT&T for calls from BellSouth's customers to AT&T's customers. The FCC clearly adopted this rule to foster competition and to prevent incumbent LECs from doing precisely what BellSouth is trying to do in this case:

> Because an incumbent LEC currently serves virtually all subscribers in its local serving area, an incumbent LEC has little economic incentive to assist new entrants in their efforts to secure a greater share of that market. An incumbent LEC also has the ability to act on its incentive to discourage entry and robust competition by not interconnecting its network with the new entrant's network or by insisting on supracompetitive prices or other unreasonable conditions for terminating calls from the entrant's customers to the incumbent LEC's subscribers.

Local Competition Order ¶ 10 (footnote omitted).

This single regulation should resolve this entire dispute. There is no question that the calls at issue originate on BellSouth's network. (Tr. 97.) Indeed, BellSouth is quite clear that the ***only*** calls in dispute are calls from BellSouth customers to AT&T customers. (Tr. 97.) The calls in question are also local telecommunications traffic. 47

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regulations on this issue anywhere in its testimony.

C.F.R. § 51.701(b)(1) defines local telecommunications traffic as traffic that originates and terminates in a local service area approved by the Commission. The traffic at issue in this case originates and terminates in the same BellSouth basic local calling areas. (Tr. 64.) Those basic local calling areas are local service areas approved by the Commission, as set forth in BellSouth's tariffs.

Thus, BellSouth never denies that the calls in question are local telecommunications traffic. BellSouth also never denies that the calls in question originate on BellSouth's network. In short, BellSouth never denies that the calls in question fall within the prohibition of Rule 51.703(b). Essentially, BellSouth would have the Commission sanction what the FCC has already told BellSouth it may not do. The BellSouth proposal is illegal, and the Commission must reject it. (Tr. 64.)

The FCC has addressed this issue in an adjudicatory proceeding. In *TSR Wireless, LLC, et. al., v. U.S. West*, several paging carriers alleged that US West and other ILECs had improperly imposed charges for facilities used to deliver LEC-originated traffic.[23] The paging carriers based their complaint on 47 C.F.R. § 51.703(b) and sought an order from the FCC prohibiting the ILECs from charging for dedicated and shared transmission facilities used to deliver LEC-originated traffic. The FCC agreed with the paging carriers. In its Order, the FCC determined that "any LEC efforts to continue charging [the paging carriers] or other carriers for delivery of such [LEC-originated] traffic would be unjust and unreasonable." *Id.* ¶ 29. The FCC concluded that

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

FCC "rules prohibit [the ILECs] from charging for facilities used to deliver LEC-originated traffic [to the paging carriers.]" *Id.* at ¶ 25.[24]

The FCC also recently addressed this issue in its order in *Memorandum and Order,* FCC 01-29, Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-region, interLATA Services in Kansas and Oklahoma, CC Docket No. 00-217 (January 22, 2001)("SBC Kansas & Oklahoma Order"). In its *SBC Kansas and Oklahoma Order*, the FCC was presented with the issue of the incumbent effectively denying "a competing carrier the right to select a single point of interconnection by ***improperly*** shifting to competing carriers inflated transport and switching costs associated with such a [single point of interconnection] arrangement." *Id.* at ¶ 233. The issue before the FCC was thus the same issue in this proceeding, and SBC took the same position before the FCC that BellSouth has presented in this proceeding. (Tr. 205.) Although the issue was one of future compliance, the FCC nonetheless cautioned SWBT "from taking what appears to be an expansive and out of context interpretation of findings we made in our *SWBT Texas Order* concerning its obligation to deliver traffic to a competitive LEC's point of interconnection." *SBC Kansas and Oklahoma Order* ¶ 235. In particular, the FCC confirmed that its decision allowing a CLEC to designate a single point of

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[24] In the *TSR* case, the calls in question originated, terminated, and did not travel outside the MTA, which is essentially a wireless local calling area. (Tr. at 35-36.) That fact, however, does not alter the applicability of the decision to this case. The calls in question in this proceeding originate and terminate in the same BellSouth basic local calling area, and never travel outside the LATA. The LATA is a local service area approved by the Commission as set forth in BellSouth's tariffs, similar to a wireless MTA. (Tr. at 35-36.)

interconnection did not in any way "change an incumbent LEC's reciprocal compensation obligations under our current rules." *Id.*

The FCC specifically referenced the very same rules addressed above (47 C.F.R. §§ 51.703(b) and 51.709(b)), which "preclude an incumbent LEC from charging carriers for local traffic that originates on the incumbent LEC's network." *Id.* The FCC also specifically referenced its *TSR Wireless* decision. *Id.* at n. 698. 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.

It is particularly telling that BellSouth never directly addresses Rule 51.703(b) in its testimony. Rather than address the rule itself, BellSouth merely raises a diversionary assault on the *TSR Wireless* decision. BellSouth contorts the result of that decision to suggest a construction of Rule 51.703(b) that alleviates BellSouth's financial responsibility for all of its own local traffic. In its *SBC Kansas and Oklahoma Order*, however, the FCC specifically referenced both 47 C.F.R. §§ 51.703(b) ***and*** its *TSR Wireless* decision in warning SWBT against "taking what appears to be an expansive and out of context interpretation of findings we made in our *SWBT Texas Order* concerning its obligation to deliver traffic to a competitive LEC's point of interconnection." *SBC Kansas and Oklahoma Order* ¶ 235. Of course, that "expansive and out of context interpretation" is the very same interpretation that BellSouth would have the Commission now endorse.

Moreover, even the construction of Rule 51.703(b) suggested by BellSouth fails to support its position on this issue. In order to support its interpretation of Rule

51.703(b), BellSouth relies heavily on the fact that the phrase "local telecommunications traffic" in Rule 51.703(b) is defined to include calls that originate and terminate in a local service area approved by the Commission. 47 C.F.R. § 701(b)(1). Thus, by its logic, BellSouth concludes that the decision in *TSR Wireless* -- that an ILEC may not charge for CMRS calls that originate and terminate in the same MTA means that for non-CMRS calls, BellSouth is obligated only to deliver at no charge those calls that originate and terminate in, ***and never leave***, the same BellSouth local calling area.

Of course, the FCC made no such pronouncement in its *TSR Wireless* decision. Neither the scope of the local calling area (*i.e.* the MTA), nor telecommunications traffic traveling outside that local calling area were at issue in *TSR Wireless*. Simply put, the FCC in *TSR Wireless* made no pronouncement that the scope of Rule 51.703(b) is in any way limited to calls that originate and terminate in, **but never leave** the boundaries of, a local calling area. The FCC simply reinforced that Rule 51.703(b) prohibits an ILEC from charging for any local telecommunications traffic that originates on its network.

More fundamentally, this deviation from the plain words of Rule 51.703(b) is unsupported by the rule itself or any other legal authority. Neither the rule itself or the definition of local telecommunications traffic say that telecommunications traffic is local "unless it travels outside the local service area in which it originates and terminates." Rather, it says that traffic is local ***only if it*** originates and terminates in the same local service area. Had the FCC wanted to limit the rule, it could have done so by including the limitation advocated by the Staff. Simply put, the traffic in question originates and terminates in the same local calling area, and, is, therefore, local. Accordingly, under

Rule 51.703(b), BellSouth may not charge AT&T for any portion of the cost of that traffic.

Moreover, even if BellSouth is correct in its interpretation of Rule 51.703(b), that is ***not*** what BellSouth has proposed to the Commission in this proceeding. What BellSouth wants the Commission to hold is that BellSouth is only responsible for the cost of calls that originate and terminate in, and never leave, the same BellSouth ***basic*** local calling area. A basic local calling area, however, is not the same as a local calling area, and there is a reason that BellSouth offers no law or analysis in support of its proposition that its responsibilities are limited to calls that originate and terminate in and never leave the same basic local calling areas. Simply put, there is none.

BellSouth admits that all the calls in question originate and terminate in the same LATA. BellSouth also admits that under its own Kentucky tariffs, a LATA is a local calling area. 47 C.F.R. § 701(b)(1) very specifically defines "local telecommunications traffic" as traffic that originates and terminates in "***a***" local service area approved by the Commission (not a basic local calling area), and there is no doubt that the Commission has approved LATA wide local calling as a local service area in Kentucky. Thus, the calls in question originate and terminate in the same local calling area (and never leave that local calling area), and, under Rule 51.703(b), BellSouth may not charge AT&T for the cost of those calls.

Purely as a matter of law, therefore, BellSouth bears financial responsibility for all the costs of its own local traffic, and is prohibited from charging AT&T for any of the costs of those calls. BellSouth should not be permitted to use the Commission to approve

what the FCC has already told BellSouth it may not do. The BellSouth proposal is illegal, and the Commission is legally prohibited from adopting that proposal.

The Indiana Commission reached a similar conclusion when it determined the allocation of financial responsibility for facilities necessary to deliver originating traffic to the interconnection point. Decision, *Petition for Arbitration of a Interconnection Rates, Terms and Conditions and Related Arrangements with Indiana Bell Telephone Company, Inc., d/b/a Ameritech Indiana Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Cause. No. 40571-INT-03, p. 27-28 (IURC Nov. 20, 2000) ("Indiana Order"). The Indiana commission adopted AT&T's position and required that each party be financially responsible for ensuring that sufficient facilities are in place to deliver traffic originating on its network to the top of the other party's network, and for bearing the cost of providing those facilities. *Id*. at 28. Justifying its decision on fairness grounds, the commission found that "it is not equitable for one party to provide all of the facilities (or a disproportionate amount of such facilities) for both parties' traffic." *Id*. The commission held: "The fundamental concept of AT&T's model for equitable interconnection is that the originating carrier bears the financial responsibility for the origination and termination of its traffic. Ameritech Indiana's interconnection proposal is not reciprocal and would shift a portion of its interconnection costs to AT&T." *Id*.

The Ameritech proposal in Indiana resembles the BellSouth proposal in this case in that it required AT&T to bear all of the facility costs to deliver its traffic deep within the Ameritech network and sought to share the cost of facilities carrying Ameritech-originated calls to the top of AT&T's network. The Indiana commission rejected

Ameritech's proposal on policy grounds, because it "would result in a skewed balance of financial responsibility and would reduce carriers' incentives to invest in interconnection facilities in Indiana, which is contrary to the Act." *Id.*

The state commission in Wisconsin also relied upon the Act and regulations when allocating financial responsibility for transport of traffic. *See* Arbitration Award, *Petition for Arbitration to Establish an Interconnection Agreement Between Two AT&T subsidiaries, AT&T Comm'ns of Wisconsin, Inc. and TCG Milwaukee and Wisconsin Bell, Inc., (d/b/a Ameritech Wisconsin)* at 37, O5-MA-120 (Oct. 12, 2000). The commission accepted AT&T's proposal for equivalent financial responsibility and prohibited Ameritech from requiring AT&T to pay tandem switching and common transport costs for termination of AT&T originated traffic. Instead, the commission ordered that AT&T would retain control over the economic choices available to terminate its originating traffic to Ameritech customers. *Id.*

In its discussion of the requirement that ILECs provide technologically feasible advanced network interfaces upon request, the commission noted that "[o]ne primary method CLECs use to compete with Ameritech is to provide more technologically advanced services before Ameritech does so." *Id.* Similar considerations of efficiency and the pro-competitive benefits of technological advancement support the commission's order requiring equivalent financial responsibility for interconnection traffic. *See also* Michigan Public Service Commission Order at 9, *AT&T Comm'ns of Michigan Inc. and TCG Detroit's Petition for Arbitration*, Case No. U-12465 (November 20, 2000) (rejecting without discussion Ameritech Michigan's arguments and adopting AT&T's proposal for equitable sharing of costs for interconnection facilities).

Most recently, the Florida Public Service Commission rejected the same BellSouth proposal put forth here in Kentucky. Final Order on Petition for Arbitration, Order No. PSC-01-0806-FOF-TP. *In re: Petition by Level 3 Communications, LLC for Arbitration of certain terms and conditions of a proposed Agreement with BellSouth Telecommunications, Inc.,* Docket No. 000907-TP (Mar. 27, 2001) ("Level 3 Order"). In its *Level 3 Order*, the Florida Public Service Commission held that "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. We find nothing in the record of this proceeding that gives BellSouth the option of designating its own POIs, either in a LATA or in local calling areas within a LATA." (*Level 3 Order* at 10.)

The Act and FCC regulations specifically prohibit shifting the costs of transport for originating traffic. BellSouth's interconnection proposal would violate this requirement by shifting to AT&T a substantial portion of the costs of transporting BellSouth's own traffic. AT&T's proposal, in contrast, provides a reciprocal approach under which each party bears comparable costs.[25] Sound statutory, policy, and equity grounds support AT&T's proposal, and this Commission should follow the lead of several other commissions on this issue and adopt the reciprocal interconnection proposal sponsored by AT&T.

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

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

The configurations of AT&T's and BellSouth's networks lie at the heart of this issue. If AT&T had replicated BellSouth's network in Kentucky, there would be no dispute. AT&T and BellSouth would have the same number of switches and could interconnect at each switch location. AT&T, however, is not required to replicate BellSouth's network in Kentucky, nor would Kentucky customers best be served if AT&T and every other CLEC were required to replicate BellSouth's network.

Moreover, this issue does not arise because AT&T has chosen to design its network in some unique or complicated manner. Rather, it arises from the fact that BellSouth's network and AT&T's network are configured differently, yet still must still interconnect to serve a similar geographic base of customers. Because of those differences, if AT&T designates a single point of interconnection in a LATA, it is possible that a call from a BellSouth customer in a BellSouth basic local calling area to an AT&T customer in that same basic local calling area will have to travel outside the basic local calling area to the point of interconnection before it reaches AT&T's switch and ultimately AT&T's customer. This possibility reflects the different network configurations deployed by AT&T and BellSouth, and, in particular, the different emphasis on the number and location of switches.

This difference in design should be a difference without a distinction as far as financial responsibility is concerned. Just as AT&T has agreed to pay all of the costs of getting calls from its customers to BellSouth's customers, BellSouth should pay all of the costs of getting calls from its customers to AT&T's customers, no matter where the

customers are and no matter where the point of interconnection is. In addition, the fact that a call from a BellSouth customer to an AT&T customer may have to travel outside the basic local calling area should not in any way undermine AT&T's legal right to designate a single point of interconnection in a LATA.

In effect, however, that is precisely what BellSouth's proposal does. BellSouth does not dispute that AT&T has the right to interconnect with BellSouth's network at a single point within each LATA. Ruscilli Dir. at 28. BellSouth's position, however, is that it nonetheless should have the unilateral and arbitrary right to designate where its financial responsibilities for transporting traffic from its own customers will end. BellSouth contends that in certain circumstances it is not responsible for all of the costs associated with transporting its traffic beyond an arbitrary and unspecified point in each of its basic local calling areas. In particular, for calls from customers in a BellSouth basic local calling area to AT&T customers in that same basic local calling area which must travel outside the basic local calling area to get to the point of interconnection, BellSouth would have the Commission declare that BellSouth bears no financial responsibility for the cost of getting those calls from some unspecified and arbitrary point in the basic local calling areas to the point of interconnection. According to BellSouth, in those circumstances, AT&T would be responsible for the costs of the facilities needed to transport ***BellSouth's own traffic*** from the BellSouth basic local calling area to the point of interconnection.

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

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

Section 251(c)(2) of the Act imposes upon the ILEC:

> The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network –
>
> (A) for the transmission and routing of telephone exchange service and exchange access;
>
> (B) ***at any technically feasible point within the carrier's network***;

47 U.S.C. § 251(c)(2)(emphasis added). In its *Local Competition Order*, the FCC stated that section 251(c)(2) "allows ***competing carriers*** to choose the most efficient points at which to exchange traffic with incumbent LECs, thereby lowering the competing carriers' costs of, among other things, transport and termination of traffic." First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd. 15499, FCC 96-325 ¶ 172 Aug. 8, 1996 ("Local Competition Order").

The FCC has consistently applied this statute to prevent incumbent LECs from increasing costs by requiring multiple points of interconnection. In its order approving SWBT's application for interLATA authority in Texas, the FCC made clear that this provision gives competing local providers the option to interconnect at as few as one

technically feasible point within each LATA. (Tr. 322) Memorandum Report and Order, *Application by SBC Communications Inc., Southwestern Bell Telephone Company, And Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas*, CC No. 00-65, ¶ 78 (rel. June 30, 2000) (hereinafter *"Texas 271 Order")*. As the FCC explained:

> New entrants may select the most efficient points at which to exchange traffic with incumbent LECs, thereby lowering the competing carriers' cost of, among other things, transport and termination.

Id. The FCC was very specific:

> 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.

Id. (citing *Local Competition Order* ¶¶ 172, 209). As a result of this decision, AT&T is not required to bear the financial cost of any SWBT originated calls in Texas. That financial responsibility rests solely with SWBT.

The FCC has found the right of a competing carrier to choose the point of interconnection, and conversely the unlawfulness of any attempts by incumbents to dictate points of interconnection, sufficiently clear and compelling to intervene in court reviews of interconnection disputes. For example, in an interconnection dispute in Oregon, the FCC intervened as *amicus curiae* and urged the court to reject US West's argument that the Act requires a competing carrier to "interconnect in the same local

exchange in which it intends to provide local service." Memorandum of the Federal Communications Commission as Amicus Curiae, at 20-21, *US West Communications Inc., v. AT&T Communications of the Pacific Northwest, Inc., et al.* (No. CV 97-1575-JE) (D. Or. 1998). The FCC stated:

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

Id. at 20. The FCC based its argument on both statutory and policy grounds.

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

Similarly, in Washington, the district court affirmed the state commission's determination that AT&T may establish a single interconnection point within each LATA and rejected the ILEC's contention that an CLEC must have an interconnection point in

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

Moreover, nearly every state commission that has considered this issue in an AT&T arbitration to date has rejected the ILEC's position and has ruled in AT&T's favor on this issue. For example, the Indiana commission recently adopted AT&T's network architecture proposal, permitting interconnection at the top of the respective networks – for AT&T, at its switch in the LATA, and for Ameritech, at its tandems and certain end offices with trunks. *Indiana Order* at 19.

The Indiana commission based its decision upon statutory, policy and equity grounds. *Id.* First, the commission relied on the Act, which imposes an obligation upon the ILEC to allow AT&T to connect at any technically feasible point on its network, but includes no reciprocal obligation for AT&T. *Id.* at 20. Next, the commission acknowledged that if Ameritech's proposal (which is nearly identical to BellSouth's proposal) were adopted, "AT&T would be required to build its network to mirror

Ameritech Indiana's – in effect – replacing Ameritech Indiana's network with a redundant AT&T network." *Id.* at 21. The commission "reject[ed] the notion that Ameritech Indiana can compel a carrier to engage in this type of wasteful effort." *Id.* Finally, the efficiency inherent in AT&T's proposal and the control it gives each party over its own network also supported the commission's decision to adopt AT&T's interconnection proposal. *Id.*

In California, the state commission similarly considered both statutory and policy grounds when deciding to adopt AT&T's proposal. Opinion, *Application of AT&T Communications of California, Inc. (U 5002 C), et al., for Arbitration of an Interconnection Agreement with Pacific Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996*, No. 00-01-022, p. 13 (CA PUC Aug. 3, 2000). The commission approved the arbitrator's findings that AT&T could save on its interconnection costs if it was not required to interconnect at each Pacific Bell end office. *Id.* at 13. Moreover, the commission found that "AT&T is in the best position to analyze its traffic volumes and decide, in specific circumstances, whether it is more economical to interconnect at the tandem or end office." *Id.* At AT&T's request, the commission set default points of interconnection at AT&T's switch and Pacific Bell's tandem switch. *Id.*

The Kansas Corporation Commission also rejected SWBT's interconnection point arguments and ordered that TCG should be permitted to establish an interconnection point at SWBT's local and access tandems while SWBT should establish its interconnection point at TCG's switch. *See* Order Addressing and Affirming Arbitrator's Decision, *In the Matter of the Petition of TCG Kansas City, Inc. for Compulsory Arbitration of Unresolved Issues with Southwestern Bell Telephone Company Pursuant to*

Section 252 of the Telecommunications Act of 1996, p. 9 (Aug. 7, 2000). The Kansas commission affirmed the decision of the arbitrator, who relied upon the Act in determining that "[t]he criterion for interconnection is whether interconnection is technically feasible at the requested point in the network." Arbitrator's Order No. 5: Decision, p. 3. The arbitrator also cited the Texas 271 Order and, upon finding that SWBT did not assert that the CLEC's proposal was not technically feasible, adopted the TCG proposal. *Id*. at 3-4.

The Michigan Public Service Commission similarly rejected the ILEC's proposed interconnection points. *See* Decision of Arbitration Panel, *AT&T Comm'ns of Michigan Inc. and TCG Detroit's Petition for Arbitration*, Case No. U-12465 (Oct. 18, 2000). (The Michigan Public Service Commission affirmed this portion of the Arbitration Panel's Decision by Order dated November 20, 2000). The arbitration panel found "AT&T has offered the better resolution" to the interconnection issue. Panel Decision at 4, 19. The Commission adopted the panel's recommendation and AT&T's proposal, stating, "Ameritech Michigan must provide transit service upon request when technically feasible." Commission Order at 8, Panel Decision at 18.

In sum, the FCC, numerous district courts, and state commissions have consistently interpreted the Act to allow CLECs to interconnect at a single technically feasible interconnection point chosen by the CLEC. These agencies and tribunals find support for their decisions in both the language of the Act and the pro-competitive policies underlying the Act. The right of a CLEC to choose its interconnection points furthers the objective of allowing CLECs to choose among the most economically

efficient means of interconnection, and, in particular, allowing CLECs to reduce their cost of transport and termination.

Although BellSouth on the one hand accepts AT&T's legal right to designate a single interconnection point per LATA, the compensation elements of BellSouth's proposal essentially eliminate that right. BellSouth has proposed forcing AT&T to be financially responsible for picking up BellSouth traffic at some arbitrary and unspecified point in each BellSouth basic local calling area and transporting that traffic to the point of interconnection in the LATA. This proposal would render AT&T's chosen interconnection points meaningless; AT&T derives no benefit from its right to designate interconnection points unless they serve their intended purpose – delineating the boundaries of AT&T's network responsibility. By agreeing that AT&T may interconnect at a single point in a LATA, BellSouth knows it offers nothing more than the sleeves out of its own vest. By requiring AT&T to pay the cost of transporting BellSouth's own traffic from the boundaries of its basic local calling areas to the point of interconnection designated by AT&T, BellSouth, would, ***in effect***, require AT&T to construct a point of interconnection in each BellSouth basic local calling area.

It is a hollow gesture to allow AT&T to designate a single point of interconnection and then require AT&T to pay the difference of the cost of that single point of interconnection and the cost of multiple points of interconnection in every BellSouth basic local calling area. BellSouth's proposal would effectively eliminate AT&T's right to designate a single point of interconnection, because it would force AT&T to pay BellSouth ***as if*** AT&T were required to establish multiple points of interconnection in all of BellSouth's basic local calling areas. It would be plainly

contrary to the objectives set forth by the FCC to allow a CLEC to interconnect at a single point, but then require that CLEC to pay the incumbent carrier for transport facilities as if the CLEC were required to interconnect at multiple points. Any such decision would render meaningless the CLEC's ability to interconnect at a single point in a LATA.

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

AT&T has proposed equivalent interconnection points, which would require each party to bear financial responsibility for delivering its originating traffic to a comparable entry point into the other's network. (Follensbee Reb. at 20) The benefits of the AT&T proposal thus include its reciprocal nature – each party bears the equivalent financial burden of transporting its own traffic through its network to the top level of the other network and of terminating traffic from the top level of its own network to the appropriate customer. (Follensbee Dir. at 38-39) The AT&T proposal is, in the words of the Indiana commission, "consistent with federal law and good telecommunications policy." *Indiana Order* at 20. Commissions in Kansas, California, Texas and Wisconsin have agreed that the comparable top-level points proposed by AT&T are the fair and equitable interconnection points for each carrier. *See* decisions cited in Section 1, *supra*.

Under AT&T's proposal, neither party is required to transport traffic within the other's network, and each party retains control of its own network. Under AT&T's proposal, there is no cost-shifting and no requirement to bear the cost of the embedded network. Most importantly, the costs associated with each party's inefficiencies rest appropriately upon the party who incurred these costs, thus providing incentives for efficiency-enhancing change. Only the AT&T proposal is neutral to the design of each

party's network. (Follensbee Reb. at 32-33, 36) Such a result promotes the kind of pro-competitive progress contemplated by the FCC and the Act.

Far from comparable or fair obligations, BellSouth proposes points of interconnection that are skewed to BellSouth's benefit for both originating and terminating traffic. (Follensbee Dir. at 26,27). Such inequitable favorable treatment of the incumbent confounds the pro-competitive purposes of the Act.

Basic fairness also compels this result. While requiring AT&T to deliver all of its calls to the appropriate BellSouth switch, BellSouth will not agree to deliver all of its calls to the AT&T switch. Instead, BellSouth would have the Commission declare that BellSouth may choose an arbitrary point in each of its basic local calling areas at which BellSouth may shift responsibility for the cost of its own traffic to AT&T. BellSouth's position is thus inconsistent with its rallying cry of "fundamental fairness." Just as AT&T agrees to bear responsibility for all of the costs of its own traffic, and just as BellSouth bears responsibility for all of the costs of calls from one BellSouth customer to another, fundamental fairness requires that BellSouth should bear responsibility for all of the costs of all calls from BellSouth's customers to AT&T's customers.

It is important to remember that the costs in dispute are the costs of ***BellSouth's own traffic***. It also is important to remember that under its prior contract with AT&T, BellSouth voluntarily agreed to bear the cost of such traffic. Only now, more than five years after passage of the Act, is BellSouth claiming that fundamental fairness requires that some of the cost of its own traffic be shifted to AT&T. To the contrary, BellSouth's proposal is biased and unfair. BellSouth's proposal would impose even more costs that

CLECs will have to bear and more hurdles they will have to overcome in trying to compete with BellSouth to provide local telephone service in Kentucky.

BellSouth's proposal essentially would require AT&T to bear the cost of BellSouth's hierarchical network, and it represents a major shift in financial burdens. Until now, BellSouth has agreed to pay to transport calls from its customers to AT&T's customers. (Tr. 326.) BellSouth's proposal would thus accomplish nothing more than shift responsibility for the costs of transporting BellSouth's calls from BellSouth to AT&T. (Tr. 326.) AT&T's proposal maintains the status quo. (Tr. 326)

BellSouth's proposal is neither reciprocal nor fair. For both AT&T originated traffic and BellSouth originated traffic, BellSouth proposes an arrangement that benefits BellSouth, but restricts competition and hinders the advancement of telephony technology. If BellSouth's proposal is adopted, AT&T would be responsible for all of the costs of getting all of its calls from its customers to BellSouth's customers. Additionally, for BellSouth originated traffic, BellSouth disregards AT&T's designated interconnection points, proposing instead that BellSouth would deliver its traffic only to some arbitrary and unspecified point in each of basic local calling areas. BellSouth would then require AT&T to bear the cost of transporting BellSouth's traffic from each basic local calling area within the BellSouth network to AT&T's interconnection point. (Tr. 327.) Thus, under BellSouth's proposals, AT&T must come to each of BellSouth's basic local calling areas to get BellSouth's traffic, *and* AT&T bears financial responsibility for transporting its own traffic all the way to BellSouth's tandem switches.

Under BellSouth's proposal, AT&T would not merely pick up BellSouth's traffic at AT&T's chosen interconnection point, as the Act and the FCC contemplate; rather,

AT&T would actually have to transport BellSouth's own traffic within BellSouth's network and would incur all the attendant inefficiencies and costs of BellSouth's network. AT&T's efforts to compete using an efficient, technologically-advanced network would be hampered by this required subsidy of BellSouth's embedded architecture. (Follensbee Dir. at 25; Follensbee Reb. at 20). Moreover, the resulting arrangement would perpetuate and compound inefficiencies, because BellSouth would have no incentive to improve or update its network. (Follensbee Reb.)

If AT&T is forced to take financial responsibility for transporting BellSouth's own traffic within BellSouth's network, AT&T will be forced either to build or lease network facilities it would not otherwise need to provide service in Kentucky. AT&T and Kentucky customers would thus be unable to benefit from the efficiencies of modern network technology and design. (Follensbee Dir. at 24; Tr. 327) Perpetuating reliance upon BellSouth's embedded network architecture confounds the purpose of the Act to enhance competition and to promote increased efficiency through technological advancement. Resolution of Issue 7 will impact not only AT&T, but all CLECs and, therefore, the future of competition in Kentucky.

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

pro-competitive policies of the Act. Accordingly, the Commission should reject Bellsouth's proposal on Issue 7, and should adopt AT&T's proposal.

ISSUE 9: SHOULD AT&T BE PERMITTED TO CHARGE TANDEM RATE ELEMENTS WHEN ITS SWITCH SERVES A GEOGRAPHIC AREA COMPARABLE TO THAT SERVED BY BELLSOUTH'S TANDEM SWITCH?

This issue, like Issue 7, is a legal issue. The legal question is whether AT&T must satisfy a geographic comparability test in order to charge the tandem reciprocal compensation rate, or whether AT&T must satisfy both a geographic comparability and a functional equivalence test in order to charge the tandem rate. There is only one rule that addresses this issue. That rule is FCC Rule 51.711(a)(3). No other rule specifically (or even generally) addresses the question of which rate CLECs may charge for reciprocal compensation. Further, FCC Rule 51.711(a)(3) contains only one test for determining whether AT&T may charge the tandem rate. That test is a geographic comparability test.

Contrary to FCC regulations, BellSouth takes the position that AT&T's switches must meet ***both*** a geographic and a functionality test before AT&T is entitled to charge tandem interconnection rates for the use of its switches. (Tr. 340.) AT&T's position, consistent with FCC regulations, is that to be entitled to charge tandem rates, AT&T switches need only cover the same geographic area as BellSouth's tandem switches. (Tr. 340.) Further, even if a functionality test must be met, AT&T's switches perform many of the same functions as BellSouth's tandem switches. (Tr. 350.) Therefore, even assuming, for the sake of argument, that BellSouth's position is correct, AT&T is entitled to charge tandem rates.

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

FCC regulations require only a geographic test to determine whether a CLEC, such as AT&T, should be entitled to charge the tandem switch rate for its switches. The FCC rule addressing this issue provides:

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

(47 C.F.R. 51.711(a)(3)). The plain language of the regulation sets out a test of geographic comparability.

BellSouth's reliance on Rule 51.711(a)(1) and paragraph 1090 of the FCC's *Local Competition Order* is misplaced. Rule 51.711(a)(1) discusses the requirement of symmetrical rates for the same services. It does not specifically address the more precise question of whether a CLEC may charge the tandem rate. Moreover, while BellSouth refers to the first sentence of paragraph 1090, it conveniently omits the last sentence, which bears directly on the question of geographic comparability:

> 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.

Of course, the rationale for imposing symmetrical rates for the same services is to ensure that carriers are compensated equally for services which have the same cost. The FCC has made clear that the underlying determinant of whether CLEC switching services have the same costs as ILEC tandem switching is whether the CLEC switch serves a

geographically comparable area as the ILEC tandem switch. Thus, even if BellSouth is correct that FCC Rule 51.711(a)(1) somehow requires a functionality test (and it does not), the FCC made clear in its *Local Competition Order* that the geographic comparability test specifically identified in FCC Rule 51.711(a)(3) is sufficient to satisfy that functionality test.

AT&T's position is supported by the recent ruling of the Indiana Utility Regulatory Commission ("Indiana Commission") finding that AT&T was entitled to charge tandem rates based on satisfying the geographic comparability test alone.[26] The Indiana Commission found that FCC Rule 51.711(a)(3), combined with the FCC's *First Report and Order* ¶ 1090, requires only a geographic test. In its Order, the Indiana Commission stated, "[t]he FCC rules ignore tandem functionality as a factor for purposes of determining whether a CLEC meets the requirements under 47 C.F.R. 51.711(a)(3)." *Indiana Order* p. 36. The Indiana Commission concluded, "it is not necessary for AT&T to demonstrate that its switches provide such tandem functionality in order to satisfy the requirements of the FCC rule." *Indiana Order* at 37. The Indiana Commission explained:

> [a] state commission may also find that a tandem rate could be charged even when the carrier does not serve a comparable geographic area. That is why the FCC states (in the middle of paragraph 1090, quoted above) that states shall also consider whether new technologies perform functions similar to an incumbent LEC's tandem switch. **It is not that functionality is an addition requirement – it is that a state commission could find a tandem rate is applicable based upon functionality as an alternative.**

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

> Ameritech Indiana, however, turns the FCC's test more restrictive by requiring that both tests (comparable geographic coverage and tandem functionality) be met. We reject this approach.

Id. at 36 n.19. (Emphasis added).

Consistent with the Indiana Commission's decision, several state public service commissions in the BellSouth region also have held that the only test that is used to determine a carrier's entitlement to charge tandem rates is the geographic comparability test. In its DeltaCom/BellSouth arbitration Order, the North Carolina Utilities Commission ("NCUC") held that the geographic comparability test is the only test used to determine a carrier's entitlement to tandem rates.[27] In its Order, the NCUC stated, "we believe that the language in the FCC's Order treats geographic coverage as a proxy for equivalent functionality, and that the concept of equivalent functionality is included within the requirement that the equipment utilized by both parties covers the same basic geographic area."[28] Thus, according to the NCUC's analysis, if a carrier shows that its switch covers the *same geographic area* as BellSouth's tandem switch, it has proven that its switch is the practical equivalent of a tandem switch.

Moreover, in its ICG/BellSouth arbitration Order, the Kentucky Public Service Commission ("KPSC") rejected the exact same argument BellSouth makes in this proceeding.[29] The KPSC ordered BellSouth to compensate ICG at the tandem

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

[28] *NCUC Order*, at 25.

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

interconnection rate citing the geographic test specified in FCC Rule 51.711(a)(3) as the only test that applies when determining a carrier's entitlement to charge tandem rates.[30]

If the FCC meant to require CLECs to satisfy a functionality requirement in addition to the geographic test when it adopted Rule 51.711, it would have explicitly done so in that regulation. However, the FCC has not adopted any regulation that requires AT&T's switches to perform functions identical to BellSouth's tandem switches in addition to covering the same geographical area before AT&T can charge tandem rates. Moreover, BellSouth's witness admitted in the hearing that the portion of rule 51.711 that discusses a CLEC's ability to charge tandem reciprocal compensation requires only a geographic test and does not mention a "functionality test." (Tr. 79)

AT&T's switches cover the same geographic area as BellSouth's tandem switches, entitling AT&T to the tandem rate. As consistently stated throughout Mr. Follensbee's testimony, AT&T switches have the capability of serving virtually any qualifying local exchange customer in Kentucky.[31] The fact that AT&T does not serve as many customers as BellSouth, or serve customers in every location in Kentucky, is irrelevant to the determination of whether AT&T is entitled to charge the tandem rate.

BellSouth also claims that AT&T presented no evidence that its switches "are actually serving" a geographic area comparable to BellSouth's tandem switches. Of course, those are not the words in FCC Rule 51.711(a)(3). Specifically, what BellSouth means is that AT&T did not demonstrate that its base of paying customers matches the geographic scope of BellSouth's customer base in Kentucky. Such a test, in addition to

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[30] *KPSC Order*, at 4.

not being required under FCC rules, would be an impossible test for any CLEC to meet at this time. No CLEC could ever prove that it has a comparable number or diffusion of customers as the incumbent monopolist. Moreover, BellSouth provided the Commission with no standards for determining whether any CLEC could ever prove that its customers were located in such a manner as to be geographically comparable to BellSouth's customers. Indeed, BellSouth could not even tell the Commission whether the test should be one of the number of customers or the diffusion of customers.

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

Even if a functionality requirement must be met in addition to the geographic comparability test, AT&T's switches perform primary tandem switch functions and therefore qualify for the tandem rate.[32] The primary function of a tandem switch is to aggregate traffic between customers calling outside of their immediate exchange.[33] AT&T's switches perform a substantial amount of traffic aggregation. Indeed, AT&T's switch, rather than BellSouth's switch, performs the traffic aggregation for the preponderance of traffic from or to AT&T local exchange customers.

Presently, AT&T's switches route interLATA traffic directly to the applicable interexchange carrier. (Follensbee Dir. at 54.) Additionally, for traffic between AT&T customers, direct trunking has been established to permit completion of calls across the LATA or across the state solely on AT&T's network. (Follensbee Dir. at 30.) Moreover, for traffic between AT&T and BellSouth customers, AT&T has established direct

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[31] Follensbee Dir. at 34; *See Also* Follensbee Reb. at 26 (Comparing AT&T's and TCG's switch service areas to BellSouth's tandem service area shows that AT&T and TCG meet the requirement of 51.711(a)(3))

[32] Tr. page 43.

trunking to each BellSouth tandem to avoid transiting multiple AT&T or BellSouth switches. (Follensbee Dir. at 29) These are essentially the same functions performed by BellSouth's tandem switches. (Follensbee Dir. at 29.) BellSouth's proposed functionality test, which would require AT&T switches to perform identical tandem functions, is unduly burdensome, illogical, and not mandated by FCC rules.

In its recent decision in the AT&T/BellSouth arbitration, the Georgia Public Service Commission ("Georgia Commission") held that AT&T's switches serve a geographic area that is comparable to any single BellSouth switch. [34] The Georgia Commission additionally found that AT&T's switches are functionally equivalent to BellSouth's tandem switches. Consequently, the Georgia Commission ordered that BellSouth must pay AT&T the tandem rate for the use of its switches.

Similar to the Georgia Commission's holding, the NCUC's recent decision in the BellSouth/AT&T arbitration concluded that AT&T was entitled to receive the BellSouth tandem interconnection rate for the use of its switches.[35] The NCUC held that AT&T "met [its] burden of proof with respect to the functionality test, regardless of the proper interpretation of the FCC's Rule and Paragraph 1090 of the First Interconnection order."[36] The Commission concluded that AT&T met the functionality test because AT&T's switches perform "certain tandem functions" and used direct trunking to each BellSouth tandem where traffic traverses the LATA or across the state, without transiting

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[33] *See* Follensbee Dir. at 34, n.14.

[34] The Georgia Public Service Commission adopted the Staff's Recommendation on this issue in open session on March 6, 2001. The Georgia Commission has not yet issued a written Order.

[35] Recommended Arbitration Order, *In the Matter of Arbitration of Interconnection Agreement Between AT&T Communications of the Southern States, Inc. and TCG of the Carolinas, Inc. and BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996*, North Carolina Utilities Commission, Docket No. P-140, Sub 73, Docket No. P-646, Sub 7 (March 9, 2001).

multiple AT&T switches or multiple BellSouth tandems.[37] In so concluding, the Commission acknowledged that BellSouth's current architecture "employs two separate switches to accomplish these tandem end office functions" while AT&T's switches "perform all of these functions within the same switch."[38]

Thus, accepting for the sake of argument BellSouth's position that a functionality test must be met in addition to the geographic comparability test, AT&T's switches satisfy that functionality test. Accordingly, AT&T is entitled to receive the tandem rate.

ISSUE 13: WHAT IS THE APPROPRIATE TREATMENT OF OUTBOUND VOICE CALLS OVER INTERNET PROTOCOL ("IP") TELEPHONY, AS IT PERTAINS TO RECIPROCAL COMPENSATION?

This issue involves the provision of services using packet technology. Packet technology divides any communication (voice or data) into individual digital "packets" that are routed independently to a destination address. Because these packets may traverse several different networks to reach their final destination, a standard protocol is used so that these networks may interoperate. Packet technology reduces *any* communication to a common-denominator, thereby enabling information (*i.e.*, data) and voice to be seamlessly integrated together. Because packet technology is indifferent to the form of the communication, it is ideally suited to support "convergence services" that combine communications and information capability together.

The protocol that is the industry standard today is known as Internet protocol, or IP. The most prominent use of this protocol is the "network" that carries its name, *i.e.*,

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[36] Recommended Arbitration Order, North Carolina Utilities Commission, Docket No. P-140, Sub 73, Docket No. P-646, Sub 7 (March 9, 2001), p. 19.
[37] *Id.*

the Internet. The Internet is made possible because of the adoption of the IP protocol, which enables packet-based networks to interconnect in a known and reliable manner.

As with any emerging technology, there is no single consensus definition of "IP telephony. Generally, "IP telephony" is short hand for an entire variety of applications (and, more importantly, *potential* applications) that involve the transmission of voice using packet technology, where IP is the protocol used for interoperability of the packet networks. Included in that variety is "pure" IP telephony – that is, the use of IP packet networks to transmit simple voice service. However, the real value of packet technology is its ability to integrate data and voice together, making possible hybrid enhanced services.

Understanding the full variety of potential IP services is critical to understanding the regulatory status of such services. Moreover, those services most likely to find commercial success are hybrid services that combine a voice and information capability. Importantly, these hybrid services are classified as information services and are not subject to regulation (and access charges) by the FCC.

A. The FCC Has Exclusive Jurisdiction Over IP Telephony.

The applicable regulatory framework is set forth in the FCC's 1998 Report to Congress. In the Matter of Federal-State Joint Board on Universal Service, *Report to Congress*, CC Docket 96-45, FCC 98-67, Adopted April 10, 1998. This Order addressed, among other topics, the definition of "information service," the FCC's policy that such services are not subject to access charges, and the unique issues presented by new technology, including so-called "IP telephony." The first important conclusion reached

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[38] *Id.*

by the FCC was that the Telecommunications Act of 1996 established two service categories. A service is *either* a telecommunications service, *or* it is an information service. Thus, the FCC informed Congress:

> After careful consideration of the statutory language and its legislative history, we affirm our prior findings that the categories of "telecommunications service" and "information service" in the 1996 Act are mutually exclusive. Under this interpretation, an entity offering a simple, transparent transmission path, without the capability of providing enhanced functionality, offers "telecommunications." By contrast, when an entity offers transmission incorporating the "capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information," it does not offer telecommunications. Rather, it offers an "information service" even though it uses telecommunications to do so. We believe that this reading of the statute is most consistent with the 1996 Act's text, its legislative history, and its procompetitive, deregulatory goals.

Id. ¶ 39. Information services are not regulated as telecommunications services. Moreover, any service that includes an information component is considered an information service in its entirety (Report to Congress, ¶¶'s 58 and 59, footnotes omitted):

> The Commission has considered the question of hybrid services since *Computer I*, when it first sought to distinguish "communications" from "data processing." *Computer II* provided a framework for classifying such services, under which the offering of enhanced functionality led to a service being treated as "enhanced" rather than "basic." An offering that constitutes a single service from the end user's standpoint is not subject to carrier regulation simply by virtue of the fact that it involves telecommunications components.

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> Stated another way, if the user can receive nothing more than pure transmission, the service is a telecommunications service. If the user can receive enhanced functionality, such as manipulation of information and interaction with stored data, the service is an information service.

Id. ¶¶ 58, 59.

The FCC has clearly defined the outer parameters of the IP telephony debate, releasing hybrid services from traditional regulation (and access charges), while leaving open the possibility that pure IP telephony *might* be subject to regulation in the future. Even on that issue, however, the FCC refused to find that even a pure "phone-to-phone IP telephony" service is necessarily a telecommunications (as opposed to an information) service. Specifically, the FCC found:

> The record currently before us suggests that certain "phone-to-phone IP telephony" services lack the characteristics that would render them "information services" within the meaning of the statute, and instead bear the characteristics of "telecommunications services." We do not believe, however, that it is appropriate to make any definitive pronouncements in the absence of a more complete record focused on individual service offerings.

Id. ¶ 83. The relevant question here is thus whether the Commission should try to close the remaining ambiguity in the federal system to impose its regulation on an emerging technology and market.

There is only one area where the Commission may apply any such regulation, and that is the case of "pure" IP Telephony. There is no evidence in the record in this proceeding, however, that would support any such regulation. There is no evidence as to whether the services involved are enhanced services or "pure" telecommunications services or hybrid services. The fact that a telecommunications service crosses a LATA

boundary, alone, is insufficient to determine whether such service is an enhanced service, a "pure" telecommunications service, or a hybrid service. This proceeding is simply not the appropriate forum to debate all the ramifications of this issue, and there is insufficient record in this proceeding to justify any determination that access charges should be applied to IP telephony services.

Moreover, the mere possibility of a "gray area" does not justify regulation for its own sake. The future of IP is likely to be services that blend voice and information capabilities in hybrid arrangements that are clearly not subject to regulation. The fact is that while IP technology *can* support pure-IP Telephony services, there is no evidence that such services are substitutes for conventional long distance services. The Commission should not impose regulation and additional costs on these services based on purely hypothetical speculation by BellSouth as to what one carrier might provide using IP telephony.

In its recent BellSouth/AT&T arbitration order, the NCUC declined to require a definition of switched access traffic that specifically included IP telephony.[39] The NCUC adopted AT&T's position in full."[40] Similarly, in its March 6, 2001 decision, the Georgia Commission adopted the Staff's recommendation and AT&T's proposal to defer ruling on subjecting IP telephony to access charges until the commission has had an opportunity to analyze and consider the issue in greater detail.

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[39] Recommended Arbitration Order, *In the Matter of Arbitration of Interconnection Agreement Between AT&T Communications of the Southern States, Inc. and TCG of the Carolinas, Inc. and BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996*, North Carolina Utilities Commission, Docket No. P-140, Sub 73, Docket No. P-646, Sub 7 (March 9, 2001).

[40] *Id.* at page 24.

This Commission similarly should decline to address the appropriate treatment of IP telephony as it pertains to reciprocal compensation. This Commission also should decline to require a definition of switched access that would include IP telephony. This issue is under the exclusive jurisdiction of the FCC and the FCC should decide on a uniform basis how this new technology should be treated.

B. Should This Commission Find That It Has Jurisdiction Over This Issue, It Should Rule That Switched Access Charges Should Not Be Applied To Voice Calls Using IP Telephony.

If this Commission exercises jurisdiction over this issue, it should reject BellSouth's proposed language and find that IP telephony is not subject to switched access charges. As an initial matter, AT&T and BellSouth have different interpretations regarding which calls using IP telephony are in dispute. AT&T understands that the issue involves any voice calls that use the Internet. (Follensbee Dir. at 57.) BellSouth's proposed language, however, makes all toll calls using IP telephony subject to switched access charges.[41] BellSouth contends that the proposed definition for IP telephony would address only phone-to-phone voice calls using IP telephony, even though BellSouth agrees with AT&T that IP telephony can include computer-to-computer IP Telephony. By excluding computer-to-computer calls from arbitration, BellSouth seems to concede that access charges do not apply to certain "types" of IP telephony, including but not limited to, computer-to-computer calls. There is no basis for this distinction because of the nature of IP technology.

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[41] During negotiations, BellSouth proposed the following definition for "Internet Protocol Telephony": real-time voice conversations over the Internet by converting voice into data which is compressed and split into packets, which are sent over the Internet like any other packets and reassembled as audio output at the receiving end."

This Commission should not impose regulatory rules upon this innovative technology. Although BellSouth argues that there is no service distinction involved between IP and circuit-switched networks the nature of IP could make enforcement of traditional regulatory classification next to impossible. (Follensbee Dir. at 59.) IP technology blurs traditional distinctions between local and long distance service and between voice, fax, data, and video services. The fundamental design of IP networks converts all forms of information into indistinguishable packets of digital bits. Packets are routed through networks based on a non-geographical, non-hierarchical addressing scheme that allows packets to follow several possible routes between network nodes. (Follensbee Dir. at 59.) Because of the way packets are routed through the network, it can be difficult to determine points of origination and destination.

This Commission should not stifle innovation that creates new methods for transmitting traditional interstate phone calls, such as IP. Regulation of this new technology would create a barrier that will simply frustrate competition and motivation to enhance archaic networks. Presently, it is impossible to determine the geographic origin of an incoming packet, or its destination. (Follensbee Dir. 59) To prematurely label and regulate this traffic could have a detrimental effect on its future and the development of other more efficient networks for all CLECs.

To make sure that the greatest possible benefit from the convergence of these technologies reaches consumers, the Commission should *encourage* hybrid services that can be used by standard telephones. The telephone is the most successful "information appliance" ever introduced. Sound public policy and sound commercial incentives both mean that hybrid services should be designed for consumers whose only form of access is

the conventional phone, as well as consumers that will increasingly rely on more sophisticated "appliances" (such as computers and even more advanced televisions) to obtain communication services. That public policy outcome can only be achieved if the Commission forbears from any determination that IP telephony is subject to access charges.

ISSUE 16: IS CONDUCTING A STATEWIDE INVESTIGATION OF CRIMINAL HISTORY RECORDS FOR EACH AT&T EMPLOYEE OR AGENT BEING CONSIDERED TO WORK ON A BELLSOUTH PREMISES A SECURITY MEASURE THAT BELLSOUTH MAY IMPOSE ON AT&T?

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

This Commission should allow BellSouth to impose only reasonable security arrangements, as provided for in the FCC's *Advanced Services Order.*[42] BellSouth has already implemented some of the measures recommended by the FCC in its *Advanced Services Order*, such as cameras, special card readers, special photo identification badges, and special electronic keys that keep a record of who enters the building, at what time and when they leave. Thus, AT&T employees do not have "unfettered access to

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

BellSouth's premises" as claimed by BellSouth. These additional measures will not increase the level of security that already exists.

The current proposal violates the FCC's rules by requiring AT&T to comply with security arrangements that increase AT&T's security costs without providing a "concomitant benefit of providing necessary protection" of BellSouth's equipment (Tr. 637). They also violate the spirit of the FCC's collocation rules, which are intended to reduce the cost and delay associated with the provisions of collocation.[43] BellSouth cannot point to ***any*** incident where AT&T, having access to BellSouth facilities, has intentionally damaged its network. [44]

BellSouth has not established that a criminal background check is superior to any of the other reasonable measures that can prevent network damage. BellSouth has produced no evidence in the record that its proposed measures provide additional security for its network. Accordingly, the Commission should reject BellSouth's proposal to require AT&T's employees to undergo criminal background checks before gaining access to AT&T's collocation space.

ISSUE 18: HAS BELLSOUTH PROVIDED SUFFICIENT CUSTOMIZED ROUTING IN ACCORDANCE WITH STATE AND FEDERAL LAW TO ALLOW IT TO AVOID PROVIDING OPERATOR SERVICES/DIRECTORY ASSISTANCE AS A UNE?

Summary: In order to avoid providing OS/DA as a UNE, at UNE prices, BellSouth must provide customized routing to CLECs to allow them to route traffic to *alternate* OS/DA providers. BellSouth has not yet done so, and in fact, recently withdrew an OSS upgrade that would have allowed electronic ordering of customized

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

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

OS/DA routing. The Commission therefore should require BellSouth to provide OS/DA services to AT&T as a UNE at UNE prices.

When OS/DA is competitively provided, it makes sense to allow it to be competitively priced also. But it can't be provided competitively until CLECs can route their OS/DA calls to other providers on a competitive basis via customized routing. BellSouth has the burden of proving that it makes customized routing available, and simply has not met its burden. AT&T's experience, shown through its extensive testimony and exhibits, shows that BellSouth does not currently provide customized routing on a competitive basis.

In its Local Competition Order, the FCC required that "[a]n incumbent LEC must provide customized routing as part of the local switching element, unless it can prove to the state commission that customized routing in a particular switch is not technically feasible." (Local Competition Order at 15709.)

Later, in its UNE Remand Order, the FCC determined that incumbent LECs remain obligated under the non-discrimination provisions of 47 U.S.C. § 251(c)(3) to comply with reasonable requests from CLECs who purchase OS/DA to rebrand or unbrand those services, and to provide directory assistance listing updates in daily electronic batch files. However, the FCC determined that incumbent LECs are not required to unbundle their OS/DA pursuant to 47 U.S.C. § 251(c)(3), *if* the incumbent LEC provides customized routing to CLECs to allow them to route traffic to *alternate* OS/DA providers. Thus, the FCC now requires BellSouth to provide customized routing as a pre-condition to allowing BellSouth not to offer OS/DA as a UNE.

BellSouth has proposed two possible ways of providing customized routing: Advanced Intelligent Network (AIN) and Line Class Codes (LCCs).[45] Although BellSouth's witnesses Pate and Milner assert that BellSouth meets this requirement, BellSouth has not actually provided customized routing to any competitor: Mr. Milner admitted there are no commercial customized routing arrangements in existence anywhere within its nine state region. (Milner Florida deposition transcript at pg. 41.) [46] Nor has BellSouth offered any evidence to back up Mr. Milner's assertion that competitors may order customized routing via either AIN or LCCs. Neither Mr. Milner nor Mr. Pate mentioned any business rules, provisioning intervals, stated prices, or any terms and conditions whatsoever available to a competitor who wishes to obtain customized routing by either the AIN or LCC methods. The reason they aren't a part of the record in this case is simple: they don't exist. (Bradbury Direct p. 45, Bradbury Cross p. 145.)

BellSouth has asserted that customized routing via AIN is available, but has provided (and can provide) no details. And the only "proof" BellSouth provided to this Commission that it provides customized routing via LCCs is limited to Mr. Pate's Exhibit RMP-4, which states that CLECs desiring OS/DA routing via Line Class Codes should contact their Account Team. This simply does not prove that competitors actually have a commercially viable means to route their OS/DA calls to other providers.[47] (JMB-R8;

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[45] BellSouth also plans to provide routing to its own OS/DA platform through Originating Line Number Screening (OLNS), but because OLNS will route calls only to the BellSouth platform, it does not provide customized routing and therefore is irrelevant to this issue. (Tr. p. 144)

[46] Parties have agreed to use discovery from other arbitration proceedings within the Southern Region. As such, attached are deposition transcripts for Keith Milner (Attachment A) and Ronald Pate (Attachment B) from the Florida Arbitration Proceeding, Docket No. 000731-TP.

[47] Please note that this notation predates BellSouth's decision to remove electronic OS/DA ordering from Release 8.0.

Pate Florida deposition transcript, pg. 19) This statement simply does not prove that competitors actually have a commercially viable means to route their OS/DA calls to other providers.

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

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

While the Commission could determine this issue based solely on BellSouth's failure to meet its burden of proof because it provided no evidence of specific, verifiable

terms and conditions for ordering and provisioning customized routing, it is not necessary to do so. AT&T has provided ample evidence that BellSouth has not yet provided customized routing on a commercially available basis. AT&T has been requesting OS/DA routing via LCCs since 1998, yet there is still no process by which AT&T can order customized routing. *See* FCC BellSouth Second Louisiana 271 Order, para. 223. Although it does not believe that it was required to do so, in February, 2000, AT&T filed a Change Request through the OSS Change Control Process, asking BellSouth to provide electronic ordering functionality for customized routing. (Bradbury Direct p. 32; Exhibit 1 to Milner Florida deposition.) In response, BellSouth planned to make electronic OS/DA ordering available on an industry-wide basis in Release 8.0 of its ordering software, (Bradbury Direct p. 33) but in October, BellSouth made a unilateral last-minute decision to remove the electronic ordering capability from Release 8.0. (Bradbury Direct pp. 32, 34, JMB-4, 5, 6, 7); Bradbury Rebuttal p. 9)

When AT&T brought this action to the attention of the Georgia Public Service Commission during an arbitration hearing, Mr. Milner testified that the ordering capability had been reinstated. (JMB-6) Mr. Milner continues to make this assertion in this docket. Mr. Bradbury's testimony and exhibits show that this statement simply is not true. (Bradbury Direct pp. 34-36; Bradbury Rebuttal p. 9; JMB-4, 5, 6, 7) AT&T's original Change Request should have resulted in an electronic process by which any CLEC could order OS/DA routing via LCCs in connection with any customer's order in any BellSouth central office. For reasons unknown to AT&T or the CLEC community, BellSouth decided not to implement this capability. Instead, in an attempt to rescue Mr. Milner's Georgia testimony, BellSouth contacted AT&T after the Georgia hearing to

discuss an extremely limited OS/DA ordering capability for a limited AT&T UNE-P test, in one central office, using only one interface (EDI), to provide only "unbranded" BellSouth OS/DA, could not be used with live customers (even by AT&T), and would not support all possible order types. [48] (Bradbury Direct pp. 33-36) Mssrs. Pate and Milner rely upon this test capability as support for their assertion that BellSouth need not provide OS/DA as a UNE, at UNE prices, because it has made customized routing available so CLECs can reach other OS/DA providers.

Clearly, this is nothing more than an attempt by BellSouth to put a good face on a bad situation.

BellSouth has the burden of proving that it can provide customized OS/DA routing, but all it has offered in the way of proof is Mr. Milner's assertions.[49] AT&T, on the other hand, has shown that it has made efforts to get customized routing via LCC for several years, that BellSouth has repeatedly reneged on its promise to provide the means for AT&T to order such routing, and that there is no identifiable process for ordering or provisioning customized routing, nor are there any specific business rules, terms and conditions to instruct CLECs how to order customized routing or what they must do to prepare their interfaces.

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[48] As noted in Mr. Bradbury's rebuttal testimony, in its haste to rescue Mr. Milner's false Georgia testimony by substituting a form of electronic OS/DA ordering, however limited, BellSouth provided line class codes for one office (the 5ESS in which AT&T is conducting its test) but developed the new software, screening, and lookup tables for another office (a DMS in the same wire center available to but not being used by AT&T). (Bradbury Direct pp. 35-36); Bradbury Rebuttal p. 10; (JMB-R).

[49] The Commission should be wary of BellSouth's unproven assertions that various functionalities are actually available to CLECs. Just as Mr. Milner's Georgia testimony that BellSouth had reinstated OS/DA ordering capability proved to be untrue, his testimony regarding OLNS availability CLECs also has proven to be untrue. During the Florida Arbitration hearing, Mr. Milner testified that OLNS would be implemented in Florida on March 23, 2000. On March 7, however, BellSouth for the first time announced during a regularly scheduled Florida Third Party Test call that OLNS would not be available in Florida before the third quarter of 2000.

BellSouth certainly can't "provide" customized routing unless it can be ordered, processed and provisioned according to a known and verifiable process, with specific business rules, terms and conditions to protect CLECs and assure the Commission that CLECs can, indeed, route their OS/DA calls to competitive providers. This process does not exist, and the Commission should deny BellSouth's attempt to charge "market" rates for its OS/DA services until such time as BellSouth provides CLECs with a workable process for routing their OS/DA calls to other providers.

ISSUE 19: WHAT PROCEDURE SHOULD BE ESTABLISHED FOR AT&T TO OBTAIN LOOP-PORT COMBINATIONS (UNE-P) USING BOTH INFRASTRUCTURE AND CUSTOMER SPECIFIC PROVISIONING?

Summary: The Commission should require BellSouth to provide AT&T with ordering capability that will allow AT&T to place individual customer orders electronically, utilizing a single region-wide indicator for each routing option. The orders should flow through, and AT&T should not be required to place line class codes on any order, nor should AT&T be required to place any indicator on orders when only one arrangement exists in a given footprint area. BellSouth should be ordered to provide these capabilities within 6 months of the Commission's order.

Although the parties have discussed settling this issue, they have not been able to reach agreement. It therefore will be necessary for the Commission to settle this issue by ordering BellSouth to provide AT&T with a specific ordering capability.

AT&T has asked for a specific two-part procedure for ordering Operator Services/Directory Assistance ("OS/DA") in conjunction with loop-port combinations (the Unbundled Network Element Platform or UNE-P). AT&T has requested a process

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

There are two areas of disagreement related to this process. First, despite repeated requests by AT&T, BellSouth has failed to provide detailed technical information on the process BellSouth would require in order to implement each of the three OS/DA routing strategies that AT&T may use. (Bradbury Direct p. 22) In the past, BellSouth has stated its willingness to provide the information to AT&T, but has not produced detailed technical methods and procedures sufficient to inform AT&T of requirements for ordering customized routing.[50] Without this information, AT&T cannot develop the internal systems and processes it will need to submit orders to BellSouth. AT&T asks this Commission to order BellSouth to provide such documentation by a date certain.

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[50] BellSouth's most recent proposal, for example, failed to commit to provisioning intervals. (Milner Florida deposition transcript at pg. 36)

Next, BellSouth wishes to force AT&T into one of two unacceptable alternatives: either AT&T must agree to route all of its Florida OS/DA calls to one location, or it must accept a costly and complex ordering process. Neither alternative is acceptable to AT&T from a competitive point of view, and neither alternative complies with FCC orders.

The FCC has determined that incumbent LECs, including BellSouth, are required to provide customized routing as part of the switching function, unless they can prove that customized routing in a particular switch is not technically feasible. FCC Local Competition First Report and Order, 11 FCC Rcd at 15709. BellSouth hasn't claimed that customized routing isn't feasible in its switches; instead, BellSouth argues that it is only obligated to provide only one OS/DA routing per competitor.[51] That is, BellSouth will agree to assign and look up specific Line Class Codes to accomplish one customized OS/DA routing option, but will not agree to assign and look up the Line Class Codes for a second routing option. Mr. Milner attempted to convince the Commission its position was based on the need for information from AT&T, stating:

> So AT&T wants BellSouth to read AT&T's mind and assign Line Class Codes correctly. This is simply not possible. If AT&T will commit to the single default routing plan contemplated by the FCC in its Second Louisiana Order and inform BellSouth of its routing plan, then and only then can BellSouth correctly assign Line Class Codes on AT&T's orders.

(Milner Rebuttal Testimony at 16)

[51] During its cross examination of Mr. Bradbury, BellSouth's attorney attempted to develop the argument that AT&T was not entitled to more than one customized OS/DA routing option because BellSouth had only one routing for its own OS/DA calls. Mr. Bradbury, however, pointed out that BellSouth chose to route all of its calls to a BellSouth platform, and that BellSouth could instead have chosen to route its customers' calls to other providers simply by installing the appropriate line class code. (Tr. pp. 159-161)

Upon closer review, however, it becomes clear that BellSouth's real reason for refusing to assign and look up the Line Class Codes for a second routing option was not the need for information – which could be supplied in the form of an "indicator" rather than the actual Line Class Code – but instead, BellSouth simply does not believe the FCC's order imposed an obligation to provide more than one routing option to AT&T.

Thus, BellSouth insists that if AT&T wants more than one OS/DA routing – which could, of course, be used to gain a competitive edge by tailoring plans to specific customer segments – then AT&T must somehow ascertain (and presumably assign) the specific Line Class Codes necessary to accomplish the second routing within a given BellSouth central office. BellSouth offered no evidence of exactly how AT&T could accomplish this task, which is not a simple one. BellSouth has 240 central offices in Florida, each with up to thousands of Line Class Codes that are not uniform among central offices. Thus, the actual code for ordering (for example) customized OS/DA routing to BellSouth's unbranded platform may vary among central offices, even though they provide the same instructions to the switch.

BellSouth, on the other hand, maintains a database of Line Class Codes, known as the Line Class Code Assignment Module ("LCCAM"). LCCAM determines, from the information on a retail service request, and the identification of the central office that will be used to serve the customer's line, the proper LCC to put on a service order. (Bradbury Direct p 28) BellSouth must assign and look up a Line Class Code for of number of different functions other than OS/DA routing, such as 900 blocking, choice of intraLATA toll provider, international blocking, and hunting.

The process for providing a second customized OS/DA routing option to AT&T via Line Class Codes is exactly the same process that would be used for providing the first option via Line Class Codes. In fact, it is exactly the same process that BellSouth routinely uses to route any CLEC customer's call via Line Class Codes. BellSouth has provided no technical basis for its refusal to perform the exact same function to allow AT&T to provide a competitive edge to its customers, and a review of the applicable FCC order reveals no legal basis for its refusal.

The FCC has not limited BellSouth's obligation to provide OS/DA routing on a "one per CLEC" basis. Although BellSouth claims that certain language in paragraph 224 of the FCC's Second Louisiana Order implies that CLECs would have one routing plan on a region-wide basis, an examination of that paragraph reveals exactly the opposite: The FCC anticipated that CLECs may have more than one OS/DA routing option, and instructed BellSouth to simplify its ordering processes accordingly:

> We agree with BellSouth that a competitive LEC must tell BellSouth how to route its customers' calls. If a competitive LEC wants all of its customers' calls routed in the same way, it should be able to inform BellSouth, and BellSouth should be able to build the corresponding routing instructions into its systems just as BellSouth has done for its own customers. (Footnote 705) If, however, a competitive LEC has more than one set of routing instructions for its customers, it seems reasonable and necessary for BellSouth to require the competitive LEC to include in its order an indicator that will inform BellSouth which selective routing pattern to use. (Footnote 706) BellSouth should not require the competitive LEC to provide the actual line class codes, which may differ from switch to switch, if BellSouth is capable of accepting a single code region-wide. (FCC Second Louisiana Order at ¶ 224, emphasis added.)

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

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

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

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

The FCC's order is perfectly clear: AT&T is free to select more than one OS/DA routing option, and BellSouth may not require AT&T to provide actual line class codes in order to obtain any OS/DA routing option if BellSouth is capable of accepting a single code, or indicator, on a region-wide basis. And the testimony is unequivocal that BellSouth is, indeed, quite capable of accepting a single region-wide code, or indicator, for each of the OS/DA routings that may be requested by AT&T. (Bradbury Direct p. 29; Milner Florida deposition transcript p. 25) BellSouth has never attempted to demonstrate that does not have this capability.

AT&T is more than willing to inform BellSouth how to route its OS/DA calls, via the indicator process approved by the FCC, and to pay BellSouth to establish the line class codes necessary for such routing. The process requested by AT&T is reasonable,

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

ISSUE 22: SHOULD THERE BE A COMPREHENSIVE CHANGE CONTROL PROCESS?

The Change Control Process does not currently include provisions that are adequate for handling the above situations. AT&T has proposed language in Exhibit JMB-2 (with which other CLECs have concurred) that addresses each of these situations. The Commission should correct deficiencies in the current Change Control Process by adopting the revised version of the CCP found in Exhibit JMB-10 in the context of whatever is the most current version of the Change Control document.

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

BellSouth asserts that the Change Control Process and OSS functionality should be negotiated using the Change Control Process itself, rather than arbitrated, but has failed to identify any provision of the Telecommunications Act or any FCC order that even hints at this conclusion. It is not surprising that BellSouth would prefer to negotiate OSS functionality through its Change Control Process; as discussed below, BellSouth retains absolute veto power over any request proposed by an CLEC. In fact, OSS and Change Control issues are precisely the sort of issue that Commissions should arbitrate, because the parties stand very little chance of reaching an agreement – particularly when one party can veto the wishes of its competitor.

The Telecommunications Act of 1996 requires telecommunications companies, including AT&T and BellSouth, to negotiate, without exception, "the particular terms and conditions of agreements to fulfill the duties" imposed by Section 251 of the Telecommunications Act, including "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 . . . " Section 251(a)(1) and (c). If those negotiations fail, as in this case, the Telecommunications Act requires state Commissions to arbitrate, also without exception, all "open" or "unresolved" issues remaining after negotiation. Section 252(b)(1), 252(c). Thus, BellSouth's position is contrary to the Telecommunications Act itself.

At least one federal court has upheld the duty of a state regulatory commission to arbitrate all issues presented in an arbitration proceeding. The U.S. District Court for the Northern District of Florida recently reviewed a decision issued by the Florida Public Service Commission in an arbitration between BellSouth and MCI. AT&T Exhibit 4: Order on Merits issued June 6, 2000 in Case No. 4:97cv141-RH, *MCI Telecommunications Corporation, et al. vs. BellSouth Telecommunications, Inc., et al.* ("MCI Order"). The Florida Commission had declined to address an issue presented by MCI, in part, on the grounds that "the Telecommunications Act authorized arbitration only on 'the items enumerated to be arbitrated in Sections 251 and 252 of the Act, and matters necessary to implement those items'", and that the matter presented by MCI "was not such an item." (*MCI Order* at 32.)

The federal judge disagreed, explaining that:

> the right to arbitrate is as broad as the freedom to agree; any issue on which a party unsuccessfully seeks agreement [though negotiation] may be submitted to arbitration….

(Id. at 33.) Citing Section 252(b)(4)(C) of the Act, the judge further held that when the state PSC undertook the arbitration, it was obligated to decide all issues:

> When the Florida Commission chose to act as the arbitrator in this matter, its obligation was 'to resolve each item set forth in the petition and the response, if any'.

(Id. at 33-34.)

BellSouth asks this Commission not to resolve the open issue of OSS functionality or Change Control matters. For the reasons explained above, the Commission should reject BellSouth's unlawful request. Nor is it appropriate, as BellSouth suggests, for the Commission to refer these matters to the Change Control Process. As explained below, such a decision would not "resolve" the issues; instead, it amounts to ordering AT&T to negotiate – again – with BellSouth, but in a forum within which BellSouth retains veto power.

1. The Change Control Process Should be More Comprehensive

A comprehensive Change Control Process ("CCP") is nothing more than a plan for managing change, which allows all parties to develop business systems and plans based on a set of agreed-upon expectations. This issue is vitally important to AT&T's ability to compete against BellSouth in the local telecommunications market. If the Change Control Process does not specify a procedure for handling an issue, or if the specified procedure is insufficient to lead to a resolution, AT&T is forced to address that issue with BellSouth on an ad hoc, case-by-case basis, with no way to plan or prepare for contingencies. Lack of a specified process clearly disadvantages AT&T and other CLECs, while putting BellSouth firmly in the driver's seat.

AT&T has asked this Commission to implement certain modifications to BellSouth's Change Control Process, as discussed below. These modifications are both necessary to AT&T's business and appropriate for arbitration. According to BellSouth's witness, Mr. Pate, however, BellSouth would rather negotiate these issues through the Change Control Process than arbitrate them. (Tr. 289; Pate Direct p. 23) The reason for

BellSouth's preference is clear: BellSouth retains veto power over any change requested by CLECs through the Change Control Process, and thus need never change the document or process unless it suits BellSouth. (Bradbury Direct pp. 57-59; Bradbury Rebuttal pp. 28-37) This lack of true collaboration is precisely the reason AT&T has presented these issues for Commission resolution. BellSouth's disregard of the Change Control Process (and the need for the Commission to address this issue) can be illustrated by two examples:

Electronic OS/DA Ordering Capability

After over two years of having its requests for electronic flow through OS/DA ordering ignored, AT&T placed a formal change request with BellSouth for the capability in February 2000. BellSouth accepted the request, committed resources to the project and announced to the CLEC community that the capability for electronic ordering of one custom routing option (to BellSouth's platform unbranded) would be provided in Software Release 8 on November 18, 2000. BellSouth repeatedly reaffirmed this schedule in industry meetings up to and including a meeting on September 29, 2000. (Bradbury Direct pp. 32,33) On October 11, 2000, however, BellSouth made the unilateral decision to remove this change from the Release. BellSouth informed the CLEC community the next day during a Requirements Review Meeting. (JMB-4) When confronted with this information on October 31, 2000, during an AT&T/BellSouth arbitration hearing in Georgia, Mr. Milner claimed that no such decision had been made, and that the memo announcing it was a "mistake". (JMB-6) As explained in Mr. Bradbury's direct testimony and clearly illustrated in his exhibits, however, BellSouth never reinstated the planned functionality. (JMB-4, 5, 6, 7) Instead, in an attempt to rescue Mr. Milner's Georgia testimony, BellSouth contacted AT&T to discuss a "substitute" OS/DA ordering capability, which would be limited to AT&T's UNE-P trial, in one switch within one central office, using only one interface (EDI), to provide only

"unbranded" BellSouth OS/DA, could not be used with live customers (even by AT&T), and would not support all possible order types.

Neither BellSouth's decision to drop the functionality nor its subsequent decision to introduce a severely limited substitute was made or communicated in accordance with the Change Control Process. BellSouth's absolute control over the process, as well as its ability ignore the process when convenient, makes it impossible for CLECs to develop and implement business systems and plans that require the use of BellSouth's OSS.

Veto of CLEC-Approved Changes to Process

In accordance with the Change Control Process, AT&T filed a Change Request on September 9, 2000, requesting amendments to the process itself. (JMB-10) Other CLECs concurred with the request, and after a four-month series of meetings, BellSouth agreed to allow a ballot on the requested changes – so long as BellSouth could veto any result with which it did not agree. The ballot that ultimately was distributed included 34 issues, seven of which were the subject of disagreement between BellSouth and the CLECs. Despite the fact that no CLEC voted in favor of BellSouth's position on these seven issues, BellSouth vetoed the CLECs' vote and included its own language in the next version of the Change Control document. (Bradbury Redirect pp. 251-252)

The Commission need not rely solely on these two examples of BellSouth's disregard of the Change Control Process to determine that the Change Control Process is not truly collaborative. Mr. Bradbury's testimony includes many more examples that directly and adversely impact AT&T and other CLECs, such as BellSouth's improper August, 2000 release of Issue 9G of its Business Rules for Local Ordering[52], unilateral

[52] Because BellSouth circumvented the CCP, CLECs were unable to make the required coding and process changes by the proposed October 2, 2000, implementation date. BellSouth nevertheless refused to withdraw these unapproved changes and implemented the software changes on October 2, 2000. In addition to rejecting the previously valid CLEC orders impacted by these unilaterally imposed changes, BellSouth's software release also contained coding errors that caused the rejection of other types of CLEC orders. (Bradbury Rebuttal, p 21)

changes to Releases 9 and 10 of its ordering software in November, 2000,[53] preferential treatment of BellSouth-initiated change requests[54], unilateral decision to implement a new process for discussing changes to the CCP requested by AT&T[55], prolonged failure to implement highly-prioritized Change Requests[56], and CLECs' inability to discuss Change Requests with the BellSouth personnel who decide whether to implement them.[57]

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[53] At the November 13, 2000, Release 9 User Requirements Meeting, BellSouth announced that three features based on CLEC change requests and previously scheduled for Release 9 would not be included in the scope of the release, that it was probable that not all of them would even be in Release 10, and that Release 11 was yet to be scheduled. Further, BellSouth revealed that its implementation of UNE to UNE migrations (per its self-initiated CR-0030) would include only the capability to migrate from UNE-P to a UNE loop without number portability, the least likely scenario, and that if any other capability was desired, a new change request would have to be submitted. The resulting release included no CLEC initiated change request implementations, and the UNE to UNE capability that was provided has little practical value to CLECs. (Bradbury Rebuttal p.23; JMB-R6)

[54] BellSouth submitted four "Type 4" (BellSouth initiated) change requests on November 13th. BellSouth targeted these changes for implementation in November 2000, in violation of the Change Control Process. None of the requests were scheduled for or subject to a prioritization review, as is required for all non-defect change requests. Various CCP log entries reflect that change requests 216, 218, and 219 were implemented as of December 20, 2000. Only fixes for defects are entitled to this "fast track" treatment, yet BellSouth treated its own change requests in this preferential fashion. (Bradbury Rebuttal, p 23; JMB-R7)

[55] AT&T requested consideration of specific changes to the Change Control Process, in accordance with procedures specified by the Process. According to the CCP, this request should have been discussed during Monthly Status Meetings. BellSouth refused to do so, however, and instead established a separate series of CCP Process Improvement meetings. (Bradbury Direct p 62; JMB-R9, 10, 11)

[56] AT&T and other CLECs first requested BellSouth to provide parsed CSRs in September, 1998, as part of its requirements for the OSS99 upgrade. BellSouth refused to include parsed CSRs in the upgrade, and thus AT&T had to resubmit its request through change control in September, 1999. This was one of eleven pending change requests prioritized by the CLECs, and it received the number one ranking by the group for the TAG interface. Despite CLEC agreement on the high priority of this request, it has been languishing ever since. A review of the September 28, 1999 meeting minutes, provided in Mr. Pate's (RMP-13), shows that this change request was targeted for implementation in April, 2000. Others were requested in similar time frames, and still others were to be completed as soon as possible ("ASAP"). However, to date, BellSouth has only implemented four of the eleven change requests prioritized in September 1999, although it has implemented a total of 76 other change requests of varying types since that meeting. BellSouth made the unilateral decision to downgrade this important request, and announced its decision to the CLECs. Thus, the March 29, 2000 change control meeting minutes (Pate Exhibit RMP-14) shows that the status of AT&T's request was downgraded from "Targeted for release 4/20/2000" to "Subteam being formed to perform planning and analysis during 2000." As noted above, CLECs votes parsed CSRs as their number one priority for TAG interface changes during the September 18, 1999 meeting, and they have never re-prioritized this issue. During the September 18, 2000, Release Package Meeting, BellSouth again downgraded and delayed the implementation of this change, and now stated that "Parsed CSR could possibly be implemented with Release 10.0 in May 2001." On December 5, 2000, BellSouth published its proposed schedule to the sub-team mentioned above, showing a planned implementation date of December 31, 2001, for parsed CSRs. Therefore, due to BellSouth's unilateral control of this process, a request that has been pending for two years now has a scheduled implementation date over three years from the CLEC's original request.

[57] Pate Florida deposition transcripts pgs. 74-77).

The changes to the Change Control Process originally requested by AT&T are shown in (JMB-10). The version in which the CLEC community concurred is shown as(JMB R-12). (Please note that the CLEC changes and BellSouth's responses are color-coded in (JMB-R10) with both sets of comments appearing in the same document. e must have an original color-coded document in order to follow the various changes and responses; it is virtually impossible to do so from a black and white copy.) As Mr. Bradbury explained during the hearing, AT&T asks the Commission to order BellSouth to adopt the changes suggested by the CLEC community in (JMB-R12), but to do so in the context of whatever is the then-most-current version of the Change Control document (Bradbury Rebuttal p. 42).[58] Highlights of AT&T's specific requests are discussed below.

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

AT&T agrees with and accepts most provisions of the CCP version currently proposed by BellSouth, but believes that it is not sufficiently comprehensive. As explained above, if a particular process is not specified in the formal change control document, BellSouth may proceed however it wishes, to the CLECs' detriment. Therefore, AT&T asks the Commission to order BellSouth to adopt AT&T's requested revisions to the CCP, which will result in a comprehensive CCP that provides "cradle to grave" coverage of the life cycle of an interface or process, and its supporting documentation (such as specifications, business rules, methods and procedures). AT&T's changes address development and implementation of new interfaces, management of interfaces in production (including defect correction), and retirement of interfaces, and provide a normal process, an exception process, an escalation process, and

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

a dispute resolution process with ultimate recourse to the Commission, mediation, or court adjudication. Additionally, AT&T suggests a process by which the Change Control Process can be changed (JMB-R12 at pg. 66). Lack of a comprehensive process has caused direct harm to AT&T's customers. As explained in Mr. Bradbury's rebuttal testimony, BellSouth's development of its Local Number Portability Gateway and the processes supporting local number portability outside of the Change Control Process caused a problem with Dillard's Department Stores Caller ID service that still has not been completely resolved, and also caused telephone numbers assigned to AT&T's customers to be reassigned to new BellSouth customers. Both of these problems could have been avoided had BellSouth's development process been more transparent to CLECs. (Bradbury Rebuttal at 32-35)

b. The Test Support Process Should be Subject to the CCP

BellSouth currently employs a test support process, but there is no organized method for negotiating changes to this process. AT&T has proposed language that would allow parties to manage such change requests through the CCP if BellSouth's test support process fails to meet CLEC needs (JMB-R12 at pg. 69).

c. The CCP Should Include a Process for Timely Responses to CLEC Inquiries regarding Interface Functionality and Document Interpretation.

CLECs currently submit such questions to their account teams, who may take two or three months to respond. AT&T seeks a process that specifies a particular length of time within which the CLEC could expect a reply (JMB-R12 at pg. 66). AT&T has not suggested any specific amount of time for replies to various types of questions, but instead, anticipates that the parties can negotiate such time periods if the Commission orders them to do so.

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

The CCP recognizes six types of change requests, which it identifies as Types 1 – 6 (JMB-R12 pp. 13, 14). BellSouth's existing and proposed process (found largely in Section 5 of Version 2) remains focused on notification and contains excessively long intervals for correction. (Bradbury Direct p. 73) The "Draft Expedited Feature Process" proposed by BellSouth is applicable neither to defect correction nor emergency changes.

AT&T asks this Commission to adopt a methodology that would rank Type 6 Change Requests (which involve CLEC-impacting defects) according to impact, such that problems with the most severe impact on CLECs receive the fastest attention. AT&T's proposed language is found on pages 44-52 of JMB-R12.

The use of impact or severity levels is standard in the information technology ("IT") industry, as is the use of three descending levels, as proposed by AT&T. Designated impact levels with target response times not only allow affected CLECs to prepare contingency plans, but also aid BellSouth in deploying its resources. For Low Impact problems (interface works normally but process clarification is necessary), AT&T has agreed to the cycle times proposed by BellSouth. Thus, the only cycle times in dispute are for High Impact problems (the interface is totally unusable and there are no feasible workarounds) and Medium Impact problems (the interface is affected but workarounds are available). In those instances, AT&T has proposed a very reasonable total cycle time of three business days to the implementation of a work around. (JMB-R-12, pp. 44-50) The Commission should reject as excessive BellSouth's suggestion that the CCP include a 4-to-25-business-day range, with BellSouth committing to provide its best effort to minimize the interval. The three business day interval proposed by AT&T is already generous to BellSouth: if the problem occurred on a Thursday or Friday, AT&T's proposal actually would mean that CLECs would be unable to use the interface properly for (or at all, in

[59] Impact levels may also be referred to or designated as "severity " levels.

the case of a High Impact problem) for a total of five days. This time period could extend even longer if the week included a holiday.

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

Whenever BellSouth makes changes to its OSS interfaces, CLECs typically need to make responsive changes to their own interfaces. They cannot begin this process without appropriate documentation from BellSouth. AT&T has requested that BellSouth provide this documentation 90 days in advance of the software release date so CLECs can begin preparing their interfaces for BellSouth's software release.

The FCC has recognized the importance of draft software specifications to CLECs. In its recent order addressing Southwestern Bell's (SWBT's) long distance application, it noted with approval that SWBT had committed to provide such information to competitors:

> We further note that the change agreement includes a schedule for the distribution of draft specifications or business rules, receipt of competing carrier comments on the documentation, and distribution of final documentation that is based on the consensus of the parties.

(*Texas 271 Order* at 111). As Mr. Bradbury testified, CLECs need draft specifications in order to start developing their own software coding. These specifications must be in existence, or BellSouth would not be able to prepare its software release or modification. AT&T merely asks that this documentation, the importance of which is recognized by the FCC and acknowledged by BellSouth, be provided to CLECs 90 days in advance of the software release. (JMB-R12, pp. 24).

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

BellSouth currently retains the right to reject an CLEC change control request unilaterally and without discussion. That is, BellSouth can exercise veto power "up front" and prevent a change control request from entering the process at all, citing cost/benefit, resource commitments, industry direction or BellSouth direction. While those are certainly reasons to consider when determining which change control requests to implement and how to prioritize them, AT&T believes that in a truly collaborative process, each and every CLEC change request would be presented to the change control body as a whole, not just those requests that BellSouth allows to be considered by the group. BellSouth has cited no reason whatsoever for foreclosing discussion on such requests, particularly when such discussion could be via conference call or during monthly status meetings. At the very least, discussion would allow interested parties to develop options to resolve the issue.

As currently configured, BellSouth's Change Control Process fails to meet the needs of AT&T and other CLECs and fails to comply with the FCC's guidelines. AT&T asks the Commission to order BellSouth to adopt all of the language suggested by AT&T and the CLEC community, as shown in "redline" format in JMB-R12, and to do so within the context of the CCP version most current at the time of the Commission's Order. As Mr. Bradbury testified, all CLECs that participate in the Change Control Process were invited to review the language proposed by AT&T herein, and all who participated in the review have concurred in the changes.

ISSUE 23: WHAT SHOULD BE THE RESOLUTION OF THE FOLLOWING OSS ISSUES CURRENTLY PENDING IN THE CHANGE CONTROL PROCESS BUT NOT YET PROVIDED?

a) Parsed customer service records for pre-ordering? The Customer Service Record (CSR) information currently provided by BellSouth does not allow AT&T reliably to automatically populate its service orders. AT&T needs parsed CSRs in order to fully integrate its ordering systems with BellSouth's and to obtain the functionality now available to BellSouth. Parsing rules have been available in industry standards since the publication of the LSOG3/TCIF9 guidelines in July, 1998.

(b) Ability to submit orders electronically for all services and elements?

(c) Electronic processing after electronic ordering, without subsequent manual processing by BellSouth personnel?

This Commission has found that BellSouth should provide electronic interfaces that require no more manual or human intervention than that involved when BellSouth performs a similar function for itself. BellSouth currently enjoys the ability to submit electronic orders for all services and elements, which are processed electronically, without subsequent manual handling. The Commission therefore should order BellSouth to provide this same functionality to AT&T within 12 months of the Commission's order.

AT&T is Entitled to OSS Equivalent Functionality (Issue 31)

AT&T has asked BellSouth to provide a number of improvements to its OSS so that AT&T may enjoy the same level of OSS functionality that BellSouth uses to provide service to its retail customers. Specifically, AT&T asks this Commission to order BellSouth to provide the following:

1) parsed customer service records for pre-ordering;
2) the ability to submit electronic orders for all services and elements; and
3) electronic processing after electronic ordering, without subsequent manual processing by BellSouth personnel.

Contrary to BellSouth's assertions, these issues are not only appropriate for arbitration, but are reasonable, practical, and necessary to ensure that AT&T can provide the same level of service that BellSouth provides to its retail customers, as explained below.

1. BellSouth Should Provide AT&T with Parsed Customer Service Records

AT&T needs parsed customer service records ("CSRs") in order to fully integrate its pre-ordering and ordering systems with BellSouth's, thereby obtaining the functionality now available to BellSouth. (Bradbury Direct p. 84). Because BellSouth's internal systems parse the sections and fields of the CSR as needed to meet software program requirements, BellSouth's service representatives need not re-enter or reformat CSR information when processing orders.[60] BellSouth's failure to provide parsed CSRs forces AT&T's representatives to identify and transfer this information manually from pre-ordering responses into its ordering system, which is more expensive, less efficient, and more prone to error (Bradbury Direct pp. 85-86; Bradbury Rebuttal p. 44; (JMB-R17)). Although it may seem like a small issue for an AT&T customer service representative to type a customer's name rather than automatically populate data fields, the discriminatory effect of BellSouth's failure to provide parsed CSRs becomes apparent

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

when the additional burden is multiplied by the number of other fields that require manual transfer and by thousands of customer transactions each day.[61]

Mr. Bradbury explained in his direct and rebuttal testimony, as well as upon cross-examination, that BellSouth's internal systems parse CSRs for its own service representatives. There is no evidence in the record to the contrary. Mr. Pate does not dispute this fact in his testimony, but instead, attempts to direct the Commission's attention away from the parsed information available to BellSouth service representatives by discussing the information "retained" by BellSouth. This is not the same thing. As shown in Mr. Bradbury's JMB-R22, the form that AT&T service representatives must complete requires customer names to be entered in at least two parts, or fields. BellSouth provides this information to its service representatives in a parsed format so that such fields can be populated automatically. AT&T asks this Commission to order BellSouth to provide the equivalent functionality to AT&T.

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

The ability to submit orders electronically for all services and elements and the ability to have all electronically submitted orders processed without subsequent manual intervention, which is discussed below, are sequentially and dependently related - it is impossible to have the second ability until the first has been provided. Ideally, both should be provided simultaneously because BellSouth possesses both capabilities for every service and product that it provides to its own customers. Although BellSouth enjoys the benefits of electronically ordering and every service and product, and each of

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[61] As noted by Mr. Bradbury, parsed CSRs should be provided for preordering pursuant to industry standards: parsing rules for CSRs have been included in industry standards since the publication of the LSOG3/TCIF9 guidelines in July, 1998. (Bradbury Direct p. 84)

its orders is processed electronically, it refuses to provide these capabilities to CLECs (Bradbury Direct p. 37).

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

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

The Commission has never receded from the criteria set forth in its order. In 1998, this Commission found BellSouth's arguments concerning its reliance upon manual

processing and failure to provide end-to-end electronic ordering to be lacking.[62] In its order, the Commission directed that "BellSouth should establish an end-to-end electronic process for UNE combinations." The Commission noted that "The anti-discrimination provisions that permeate the Act prohibit BellSouth from providing service to a CLEC that is inferior to that provided to itself, and the current process, which includes manual handling, is lengthier and more prone to error than BellSouth's electronic process," and that "Neither the law not the Agreement appears to support BellSouth's argument that its manual procedures and an uncertain set of methods to order UNE combinations are sufficient." (Order pages 7-8.) Although Mr. Bradbury's testimony supports, in detail, AT&T's request for equivalent functionality, AT&T's position can be explained very simply by reference to Mr. Pate's (RMP-34). That exhibit shows illustrates BellSouth's retail ordering process for MultiServ, a complex business service. Although the exhibit depicts a number of manual pre-ordering processes, the ultimate ordering process itself is electronic: the BellSouth service representative sits at a terminal and types the order into ROS (BellSouth's ordering system), which edits and formats the service representative's inputs into an electronic message. That message flows through to SOCs, BellSouth's Service Order Control System, where it is subjected to final editing and if accepted becomes a valid order. Mr. Pate admitted that BellSouth service representatives can order each and every retail service offered by BellSouth in exactly this fashion: they enter the order into the appropriate ordering system, and the order flows through to SOCs. As shown on Exhibit RMP-34, AT&T service representatives cannot – because BellSouth has not provided AT&T with equivalent functionality.

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[62] Case No. 97-521, In the Matter of: AT&T Communications of the South Central States, Inc. vs.

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

BellSouth argues that it already provides "competitively neutral processes" to AT&T, but it does not. Not only is the electronic ordering and processing available to BellSouth cheaper, faster, and less prone to error than the manual and partially automated ordering and processing available to CLECs for most services, but it also offers BellSouth another, significant advantage: once the BellSouth service representative enters an order into a BellSouth front-end system, BellSouth has an electronic record of the order, which then automatically can populate various other BellSouth systems, including provisioning databases, billing systems, and customer service information records (Bradbury Rebuttal p. 56). In contrast, when BellSouth enters a CLEC order into its front-end system (which it must do unless and until it offers CLECs the ability to do so for themselves), the CLEC has no similar electronic record with which to populate its own provisioning databases, billing systems, and customer service information records. The only way in which these CLEC systems can be synchronized with the information about the CLEC's customer that exists in BellSouth's systems is to perform an additional separate manual input.

By the single act of entering order information into an electronic front-end system, BellSouth service representatives create an order and populate a number of different databases – and do so in a manner that is cheaper, faster, and less prone to error

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BellSouth Telecommunications, Inc., November 6, 1998.

than the method that BellSouth provides for CLEC use. Further, that order will flow through to BellSouth's service order control system, without the need for expensive and time-consuming manual handling. These procedures give BellSouth a genuine advantage in the marketplace, and simply cannot be considered "competitively neutral".

BellSouth already offers this functionality to CLECs for some services, most notably for business and residential POTS resale (Tr. 367). In order to meet the requirements of the Act, however, BellSouth must provide this functionality for ordering and processing all services and elements. BellSouth's reasons for refusing to do so are instructive.

Regarding electronic ordering, Mr. Pate argues that "non-discriminatory access does not require that all LSRs be submitted electronically and involve no manual processes. BellSouth's own retail processes often involve manual processes . . . ." (Pate Direct Testimony pg. 18) This argument is mere sleight-of-hand, designed to direct the Commission's attention away from the issue. Mr. Pate's own Exhibit RMP-35 very clearly shows that the "manual handling" to which he refers consists of pre-ordering processes, while he admitted that BellSouth service representatives order all services electronically.

Mr. Pate also addressed electronic processing of orders, stating that "Non-discriminatory access does not require that all LSRs be submitted electronically and flow through BellSouth's systems without manual intervention." (Pate Direct Testimony pg. 98) Mr. Pate wrong on the first count, and therefore his conclusion is incorrect. Non-discriminatory access does, indeed, require BellSouth to provide CLECs with the ability to submit their orders electronically and flow through BellSouth's systems, simply

because all of BellSouth's orders are treated in this fashion.[63] BellSouth has identified no rule, order, or provision of the Act that suggests anything less.

AT&T and BellSouth agree that electronic ordering and processing benefits competition because it is cheaper, faster and less prone to errors than manual ordering. This Commission has the unique opportunity to create a pro-competitive environment by ordering BellSouth to provide AT&T with electronic ordering and processing capability. Competition cannot flourish until Florida customers have a choice of providers, all of which can order services just as quickly and easily as BellSouth can today.

ISSUE 24: SHOULD BELLSOUTH PROVIDE AT&T WITH THE ABILITY TO ACCESS, VIA EBI/ECTA, THE FULL FUNCTIONALITY AVAILABLE TO BELLSOUTH FROM TAFI AND WFA?

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

D. BellSouth Should Provide AT&T with a Full Function Machine-to-Machine Integrateable Maintenance and Repair Interface (Issue No. 32)

The FCC has determined that the two interfaces BellSouth currently offers for access to aintenance and repair functions fail to provide non-discriminatory access as required by the Act. *FCC Louisiana II Order* ¶ 148. AT&T therefore asks this

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[63] The Act does not require BOCs to provide CLECs with a capability that is not available to the BOC itself. Therefore, BellSouth would not be required to provide CLECs with electronic ordering or processing for any service that BellSouth was forced to order or process manually – which explains Mr. Pate's attempt to divert the Commission's attention to "manual handling". As Mr. Pate finally admitted however, BellSouth orders and processes all services electronically. Tr. 354.

Commission to order BellSouth to provide a full function, machine-to-machine, integrateable Maintenance and Repair interface.

BellSouth provides CLECs with two options for electronic trouble reporting, neither of which provides non-discriminatory access. For many (but not all) services associated with a telephone number, BellSouth offers access to its proprietary Trouble Analysis Facilitation Interface ("TAFI"). For both telephone number associated exchange services and individually designed services, BellSouth provides electronic trouble reporting through an electronic communications gateway which BellSouth calls the Electronic Communication Trouble Administration ("ECTA") gateway.[64] (Bradbury Direct p. 107)

For services associated with a telephone number, TAFI has more extensive functionality than ECTA, but TAFI is a human-to-machine interface (Bradbury Direct pp. 107-108). Consequently, when a CLEC submits a trouble report via TAFI, that order must be manually entered into the CLEC's own internal OSS. ECTA, on the other hand, is a machine-to-machine interface and can be integrated with a CLEC's own OSS, but does not have the functionality of TAFI. Thus, there is no combination of choices that allows CLECs to obtain nondiscriminatory access to BellSouth's OSS for maintenance and repair functions (Bradbury Direct at p. 108). This places CLECs at a competitive disadvantage.

If CLECs elect to use the extensive functionality available through TAFI for many telephone number-associated services, they have no functionality for other services,

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

and must engage in costly and error-prone double entry. If they elect to integrate ECTA into their CLEC systems, they obtain only a limited set of functionality for any type of service. Using both interfaces is likewise unsatisfactory because it simply brings the CLEC the disadvantages of both with no gain in effectiveness or efficiency and at a higher cost of operations (Bradbury Direct p. 108).

The FCC has found that neither of these two choices provides competitors with OSS functionalities equivalent to BellSouth's own capabilities. *FCC Louisiana II Order* ¶ 148. The FCC concluded that TAFI does not provide nondiscriminatory access because it cannot be used for all types of orders and because TAFI is a "human to machine interface," meaning that new entrants cannot integrate it with the new entrant's own back office systems. *FCC Louisiana II Order* ¶¶ 149-52. The lack of integration the FCC describes requires a TAFI user to take information from the TAFI system and manually re-enter it into their own computer systems and vice versa. *FCC Louisiana II Order* ¶152.

The FCC likewise concluded that ECTA, as provided by BellSouth, does not provide parity to competitors because, as BellSouth itself pointed out, the legacy system TAFI is superior in functionality. *FCC Louisiana II Order* ¶ 157.

Nothing has changed since the FCC issued its Second Louisiana Order. BellSouth made no showing at any point in this proceeding that it has undertaken even the slightest effort to address the FCC's findings. In fact, Mr. Pate fails to mention the FCC's findings in his testimony, and makes no attempt to claim that BellSouth has made changes or improvements to its systems that might provide this Commission with an

opportunity to reach a conclusion different from that reached by the FCC.[65] As the FCC stated: "We also note that BellSouth concedes that it derives superior integration capabilities from TAFI than the capabilities offered to competitors." *FCC Louisiana II Order*, ¶151.

If CLECs hope to compete with BellSouth, they must provide equal or better customer service and lower prices. CLECs must be able to efficiently access all of an individual customer's data on every call in order to address that customer's needs. Therefore CLECs must be able to access their own data as well as ILEC data. For example, if an CLEC wants to issue credits to a customer who had experienced recurring repairs, it would need access to billing data and maintenance histories. If the CLEC needed to determine whether a customer was being billed for specific services, it would need access to information about which services were billed and which services were provided, and also would need the ability to change the services being provided if they did not match the services billed to that customer. CLECs must be able to add or change services and adjust calling plans for customers, and require access to customer service record information to keep contact information up-to-date (Bradbury Direct p. 110).

A full-function, machine-to-machine interface is essential in a competitive market. With a successful market entry, maintenance and repair volumes will increase quickly. Mr. Bradbury testified that approximately 4% of lines will need repair treatment monthly, with customer contacts to service existing lines expected on 6% of lines each

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[65] The FCC noted in its Second Louisiana Order (and reiterated in its reviews of Bell Atlantic's New York 271 application and Southwestern Bell's Texas 271 application) that an integrated interface was not, per se, required if the BOC demonstrates that it provides equivalent access in another manner. BellSouth does not provide equivalent access in another manner, and has not attempted to make such a showing in

month. According to Mr. Bradbury, within 30 months of a successful consumer market entry, a CLEC can expect one third of its total customer contacts to be for repair and maintenance. AT&T's repair call volume 30 months after a successful market entry across the BellSouth states easily could approach 60,000 calls per month. (Bradbury Direct p. 110). Without a full function machine-to-machine interface, an CLEC must engage in dual entry for each of these repair contacts, entering the contact into BellSouth's system as well as its own. Moreover, in order for the CLEC to provide efficient customer service, this dual entry must occur while the customer is on the line with the service representative. Because dual entry is more time consuming and results in more mistakes, CLECs will require more service representatives in order to provide the same level of service that BellSouth can provide. Lack of a full function machine-to-machine interface also deprives the CLEC of performance information essential to the management of its service representatives. Use of an interface like TAFI that requires dual entry and is not integrated with AT&T's own OSS means AT&T will not have real time access to call volume and connect time data, which is required for efficient staffing. (Bradbury Direct p. 111.)

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this docket. *FCC Louisiana II Order* ¶152; *FCC Bell Atlantic Order* ¶215; *FCC Texas Order* ¶203, FN 565.

Respectfully submitted,

_____

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April 16, 2001

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 000731-TP

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 Communications, Inc., pursuant to 47 U.S.C. Section 252

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DEPOSITION OF

W. KEITH MILNER

January 26, 2001

9:15 a.m.

1200 Peachtree Street, N.E.

Atlanta, Georgia

Sharon A. Gabrielli, CCR-B-2002
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APPEARANCES OF COUNSEL

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RHONDA MERRITT, ATTORNEY AT LAW

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Also Present:

Ron Mills

Jay Bradbury

Deposition of W. Keith Milner

January 26, 2001

W. KEITH MILNER, having been first duly sworn, was deposed and testified as follows:

EXAMINATION

BY-MS.RULE:

Q. Can you please state your name and business address?

A. Yes. Me name is W. Keith Milner, M-I-L-N-E-R. And my business address is 675 West Peachtree Street, Atlanta, Georgia.

Q. What does the W stand for?

A. It's my mother's maiden name, which is Warren.

Q. I just always kind of wondered that. And you're testifying in the AT&T arbitration in Florida on issues 23 and 25, are you not?

A. I believe that's correct. Yes.

Q. Okay. And those are customized routing issues, generally speaking, correct?

A. Yes.

Q. If I look at your testimony on page 62 of your direct --

A. Okay.

Q. -- beginning on line 20, there is a question about whether BellSouth has provided sufficient information such as ordering instructions and supporting documentation for each of the customized routing options that BellSouth will provide?

A. Right.

Q. And your answer is that BellSouth has provided proposed contract language. When was that contract language first proposed, approximately?

A. I'm not sure when it was first proposed. I know that some change language was provided in the last several months. I'm trying to recall the exact date. We were -- it was shortly before the hearing in this arbitration case in Georgia.

Q. How many versions of contract language has BellSouth provided AT&T?

A. I don't know. I don't follow that part very closely, but at least that one. That's the one that I'm familiar with.

Q. Okay. Do you know whether more than one version has been provided?

A. I don't know.
Q. Are you familiar with the details of the contract language that was provided?
A. I saw a copy of it already, yes.
Q. So if there is more than one version of contract language out there, to which version does your testimony refer on pages 62 and 63?
A. It refers to the version that I read that was provided to AT&T, as I say, sometime shortly before the hearing in this case in Georgia.
Q. And that was August?
A. No. Later than that. October.
Q. October. It was October?
A. October, I believe.
Q. So you're not familiar with any language that was proposed after that?
A. After that, no.
Q. Okay. And turning to the bottom of page 63, there is a question whether BellSouth has an obligation that its customized routing architecture must be fully implemented and available in every end office where technically feasible. And your answer

explains from your point view that it wouldn't be wise for BellSouth to spend money to equip each and every one of its end offices for customized routing.

What does equipping an end office for customized routing entail?

A. Well, it depends on which method of customized routing we are referring to. So let me highlight the work required. And then to the extent we need to, we'll get into the details.

In the case of the so-called line class code method, there is actually -- most of the work is done at the end office level. And with that method, as far as equipping the central offices, there are routing tables and translations that have to be created within the switch itself.

There is also some work that has to be done in the ordering systems to accept orders for individual customers. So there is really two levels of work that has to be done. One that equips the capability in the first place for some number of offices that AT&T might want customized routing in.

And then there is also work to prepare the ordering system such that once orders start to flow for individual customers, that those orders will be treated appropriately.

So here I'm drawing a distinction between generally offering a functionality, such as customized routing, which we do, with implementing that functionality upon request from AT&T or another CLEC.

For the advanced intelligent network version, there is work to be done in two places within the network in addition to the ordering process that would need to be attended to.

First of all, there are translations again at the end office level, again using these things called line class codes but a very minimal set of line class codes. And there is also work to be done at what we call our advanced intelligent network hub to implement the proper translations in that hub such that when database lookups are done, they are done appropriately and that the routing flows as it should.

Q. The AIN hub, is that a tandem switch?

A. It behaves as a tandem switch. It is the point at which the call is received from an end office. And then the database is queried to determine -- let's use AT&T as an example. The database is queried to determine AT&T's preference for how a call from that customer should be routed. And then it sends that call forward from there. So yes, it behaves as an aggregation point similar to a tandem, but it also does the database lookup.

Q. Okay. You need to help me out on what you mean by behaves like a tandem. What is the piece of equipment?

A. What is the piece of equipment?

Q. Yes, that's behaving like a tandem.

A. Well, it has much of the same functionality of the tandem. It doesn't have all of the functionality of what we call a traditional tandem. It doesn't do AMA recording. It doesn't offer access to directory assistance platforms directly.

There are a lot of things that traditional tandems do that the AIN hub does not do. It's a tandem but it's a more specialized tandem.

Q. Is that because it simply doesn't have the technological ability or it hasn't been programmed in that fashion?

A. It doesn't have the need for all those functions, in that its reason for being in the processing of the call is to do that database lookup and route that call appropriately.

There are other tandems in the network, local tandems, access tandems and such, E-911 tandems that also have specialized functions.

Q. Okay. I understand that part, but I still don't understand is it it does not have the capability, the technological capability of doing the other functions or it simply has not been programmed because it's not needed for those other functions?

A. It has not been programmed because it is not needed for those other functions.

Q. Is it a physically different

switch from the local tandem that serves the same area?

A. Yes, it is.

Q. Always?

A. When you say "always," we've not deployed these because we are going to deploy them upon request. At the time that we get requests from AT&T or other CLECs, we'll make a decision as to whether they use an existing tandem or another tandem. And that will be a functionality of how much capacity there is and then how much of the capability that we need for this function is already there, things of this nature.

MR. LACKEY: Let's find out who joined us, if you don't mind. Who joined us, please?

MS. MERRITT: Rhonda Merritt of AT&T in Tallahassee.

MR. LACKEY: Sorry.

Q. (By Ms. Rule) So if I understand you correctly, what you said is that BellSouth may deploy an entirely different piece of equipment to use as the AIN hub or depending on its network needs may use an

existing piece of equipment that's already functioning as a tandem switch?

A. Yes, that's right.

Q. Okay. I understand. Another question, could you repeat what you said about it not having the ability to route to the DA or directory assistance platform?

A. It does not route to the same platform in most cases as BellSouth would send its traffic. So by that I mean that it would not necessarily send calls to BellSouth's directory assistance platform. Instead it would send calls -- if AT&T chooses for those calls to be sent to its own platform, it would send those calls to AT&T's choice rather than BellSouth's choice.

Q. And would it be because BellSouth had programmed it that way?

A. Well, it would be because BellSouth had programmed it that way in response to AT&T's request that they wanted it that way.

Q. So it could be programmed to go to either BellSouth's platform or a third-party platform?

A. Certainly.

Q. Turning over to pages 65 and 66, on page 65, beginning at line 5, you have a discussion of BellSouth's opinion of what AT&T is requesting, correct?

A. Yes.

Q. Okay. And on line 8, it says "BellSouth believes that AT&T is asking BellSouth to create a situation where AT&T, too, can have a default for its customers." I'm not clear where that came from. Is that found somewhere in AT&T's testimony in this case?

A. No. That's my reading of Mr. Bradbury's testimony in this case. I don't think he used those specific words, but I think that's what he means, that just as -- just as BellSouth has a default routing plan, choice of routing for its own customers, that AT&T, too, wants a plan where it need not specify on each of its orders to BellSouth what its choice is, but rather to have some default choice that we would know to program to unless AT&T instructed us otherwise.

Q. So you're referring to BellSouth's

default as a choice for its routing, correct?

A. Yes. For example, BellSouth's choice is that directory assistance calls from BellSouth's customers go to BellSouth's directory assistance operators. Likewise, I think AT&T wants a default choice that absent some other instruction says when you get a call from an AT&T customer handled by a BellSouth switch, we would like that call to be handled in this process; whether that's to BellSouth's platform on an unbranded basis or to AT&T's platform or to a third-party platform, that would be AT&T's choice. But my reading of Mr. Bradbury's testimony is that that's what they want to have happen unless they instruct us otherwise.

Q. And BellSouth agrees that so long as the region for that choice was to BellSouth's liking that would be an okay thing to do, correct?

A. That's not the only possibility, but, yes, that is okay with us.

Q. On the next page, page 66, you discuss the FCC's Louisiana 2 order, specifically you mention paragraph 224. And

you've got a sentence underlined here. It starts out, "If, however, a competitive LEC has more than one set of routing instructions for its customers, it seems reasonable and necessary for BellSouth to require the competitive LEC to include in its order an indicator that will inform BellSouth which selective routing pattern to use."

If I understand you correctly, you're saying that indicator must be the line class code; is that correct?

A. No, that's not what I'm saying. That the -- let me explain further. Line class codes are just the software instructions within the switch that informs the switch how to route a certain call based on things such as the class of service of the end user customer plus what digits that customer dialed. Line class codes may serve different classes of service and, in fact, may be invoked by dialing different patterns. So the distinction is not to what line class code it is assigned, but rather what is AT&T's desire for how calls are to be handled.

We need not to have instructions

as to which particular line class code should be used if AT&T has a single plan for its customers.

Q. Okay. But going back to the sentence you've underlined, we are talking about where a competitive LEC has more than one set of routing instructions. In that case, if there is more than one set, if I understand you correctly, you said that no problem about one set; you just order one set and they all go to the someplace. But if you've got more than one set, you need an indicator. What would that indicator be?

A. The indicator would be something on AT&T's order to BellSouth that says which of those sets to use.

Q. Now, could it say, for example, set A versus set B?

A. It could be used -- it could be something close to that. It could be an indication that says use the default, or absent the default, handle it in this fashion.

Q. Okay. And when AT&T got right down to the point of filling in the field on

the order that said handle it in this fashion, what information would BellSouth expect to see in that field?

A. In that case, we would be using -- under the line class code method, we would expect that AT&T would specify the line class code that it wanted used on that particular order for that particular customer.

Q. Now, line class codes are not the same for every BellSouth end office, are they?

A. I think what you're asking me is the same line class code number used in all central offices to connote the same thing --

Q. That's a better way to say it.

A. -- and to cause the desired routing outcome. No, they are not the same.

Q. How does BellSouth know what code means what in each end office?

A. We have a mechanized system that keeps track of that. And so since we only use one -- we only have one routing preference, that is, to use our own operators, then it's pretty straightforward for us to develop a method that looks at the

class of service and determine how -- and call restrictions such as whether certain calls are blocked or not to determine what line class code in a certain central office should be used.

Q. So if I pick that up correctly, what you're saying is when BellSouth wants to, I guess, instruct that calls be routed to its default OS/DA plan, that BellSouth's systems look up a set of tables and determine what the individual code is for each end office to accomplish that routing. Did I get it right?

A. Yes, that's right so far.

Q. Okay. But line class codes are used for lots of other things in addition to OS/DA routing, right?

A. That's correct.

Q. And, in fact, BellSouth's systems would have to do pretty much the same thing every time. And if you want to use a line class code for something, since the actual code itself may differ from end offices, wouldn't you have to look in your tables each time to see end office A line class code,

end office B, and assign it correctly?

A. No, because our ordering process does not require that. In other words, we don't have to determine the line class code as part of the service rep receiving the call from an end user. Again, we only have one set of routing instructions. Therefore, there is a lot of that discrimination work of figuring out how to route a certain call from a certain customer that we don't have to do for ourselves.

However, if we decided we have different routing for different customers of the same class of service and otherwise similarly situated, then we would have to do what you're suggesting; that is, to look up the right line class code to be assigned on a certain order.

Q. What else are line class codes used for?

A. Well, line class codes are used in general for routing all types of calls, not only operator services and directory assistance calls.

Q. Let's go back to my prior

question, because what I was trying to ask you is for line class code usage other than OS/DA routing.

A. Okay.

Q. Wouldn't you have to do that kind of database or table lookup to find the correct line class code for a particular end office? I think I understood you to say that for OS/DA routing, no, because it's all the same. It's done once and it's taken care of?

A. That's right.

Q. But what about the use of line class codes for purposes other than OS/DA routing?

A. Okay. Now, what's your question?

Q. Wouldn't you have to do -- or wouldn't BellSouth's system have to do a table lookup each time?

A. I don't know that it would have to do a table lookup each time. For example, if we are adding another customer that is just a single party residential service, one FR, let's use the shorthand, the routing tables for how to treat one party

flat rate residential customers are already built into our switches. So there is not new assignments to be made. As soon as we assign --

MR. LACKEY: We are not doing any more depos at your place. We're going to mine.

MS. RULE: Let the record reflect Mr. Lackey is unhappy with AT&T's facilities.

(Whereupon, a discussion ensued off the record.)

MS. RULE: Perhaps you could read back where Mr. Milner left off.

(Whereupon, the record was read by the court reporter as follows:

Answer: I don't know that it would have to do a table lookup each time. For example, if we are adding another customer that is just a single party residential service, one FR, let's use the shorthand, the routing tables for how to treat one party flat rate residential customers are already built into our switches. So there is not new assignments to be made. As soon as we assign --)

THE WITNESS: As soon as we assign that customer to that class of service, then they would just use the line class codes that have already been established and would use the routing tables that result from those assignments without any further work.

Q. (By Ms. Rule) The line class code for one FR wouldn't be the same in every end office, would it?

A. No, and that's the information that's kept in these mechanized databases.

Q. So if BellSouth then has a mechanized database, it can use that mechanized database to determine for one FR, I guess, what the code number is in each end office to accomplish one FR. Have I got that right?

A. Yes, because the alternative is to have people do that, you know, work at the time that they create all those different routing tables. So instead of keeping track of that manually, we just put it into a database.

Q. And when your customer service rep

is indicating one FR on an order, so they just do that the same way on every order. It doesn't matter what end office it's going to go to, they use a single indicator?

A. That's right.

Q. Okay. And if I understand your testimony correctly, BellSouth is capable of picking one single indicator that AT&T could use for what you've called a default routing plan?

A. Yes. And I understand we've already done that, yes.

Q. And if we wanted two sets of default routing plans to choose between, BellSouth is capable of having two separate indicators, correct?

A. No. We have not done that for ourselves. We don't have mechanized processes that make routing decisions dependent on class of service. And by that I mean, all of our customers' calls to operator services or directory assistance go to BellSouth's platform. We do not have a way that I'm aware of other than handling it manually to make it situational that -- let's say you and

you are both BellSouth's customers, we both have the same class of service, but for some reason you want your calls routed to AT&T's platform instead of BellSouth's platform. We've not done that. That would take manual intervention. It would ultimately be routed differently than -- your calls would be routed differently from mine and we would be using different line class codes in the switch to accomplish that.

Q. That was not my question. Let's back up. Let me ask you another one first. Are you saying BellSouth is not capable of accepting a single indicator, for example, OS/DA routing to BellSouth's unbranded platform?

A. From whose customers?

Q. AT&T's.

A. I didn't say that. We were talking about -- you were asking me about BellSouth's customers and how BellSouth's customers would be treated. You didn't -- you were not asking about how BellSouth would treat AT&T's customers.

Q. I don't think I did, but let's

move on from that. If AT&T said we want our calls, our OS/DA calls routed to BellSouth's unbranded platform, and we would like to do it for the State of Florida, is BellSouth capable, are their systems capable, not currently programmed but capable of accepting a single indicator for that instruction?

A. Yes.

Q. And if AT&T then said and in Georgia, we would like the calls routed to an AT&T platform, is BellSouth's system capable of taking a single indicator for that routing?

A. Yes.

Q. So those two single indicators could exist at the same time in BellSouth's system, correct?

A. Yes, by state. What we -- as we were discussing here on page 66 of my testimony, our rating of the FCC's order implies to me at least that what the FCC was referring to as a single plan was a single plan that covered all of BellSouth's region, all nine states. We are willing to volunteer that AT&T's choice of routing plan may be on

a state basis rather than on a region basis.

Q. Okay. But BellSouth is capable, if I understand you, of accepting a single code region-wide to route to BellSouth's unbranded platform?

A. Yes.

Q. And it's also capable of accepting a single code region-wide for routing to AT&T's platform, correct?

A. That's also correct.

Q. And both of those single codes could exist at the same time, could they not?

A. I'm not following your question.

Q. Well, let's go back to the FCC order, maybe that will help. You've quoted from paragraph 224, and I've provided you with a copy of that. And you stop short of the last sentence in that paragraph. I think you've included the entire paragraph in here except that last sentence. And the last sentence, after saying that, "If a competitive LEC has more than one set of routing instructions, it seems reasonable and necessary to require an indicator."

And the next sentence says,

"BellSouth should not require a competitive LEC to provide actual line class codes which may differ from switch to switch if BellSouth is capable of accepting a single code region-wide."

If I understand you, you just told me that BellSouth is capable of accepting a single code region-wide for both the options I mentioned; BellSouth unbranded platform and AT&T OS/DA platform, correct?

A. But that's not one plan. That's two routing plans.

Q. Well, let's go back to that. Is BellSouth capable of accepting a single code region-wide for each plan?

MR. LACKEY: You're asking the same question over and over again.

MS. RULE: I'm not certainly getting the same answer.

MR. LACKEY: Yes, you are, and I'm getting tired of it.

MS. RULE: Let's go off the record.

(Whereupon, a discussion ensued off the record.)

Q. (By Ms. Rule) If I understand you correctly, you're saying if an ALEC wants two different region-wide sets of instructions, you will accept an indicator on one of them, but you're going to require the ALEC to provide the actual line class codes on the other one; is that correct?

A. That's right, with the first being the ALEC's choice or default, as I've used the phrase, of their routing choice. And the second being their exception choice for routing.

Q. Okay. And is that because BellSouth cannot accept a single indicator or does not does not believe it has to?

A. Both.

Q. Okay. In what way could -- I believe you just told me BellSouth could accept a single indicator for each of the options. So in what way can BellSouth not do that?

A. Okay. Well, let's go through it again. You asked me about various states. So first of all, let's stay at the region level, meaning all nine states. If AT&T has

a default routing choice, let's say that that routing choice is to send their calls to BellSouth's platform on an unbranded basis, then BellSouth can program its switches and program its ordering capability to accommodate that.

If AT&T chooses not to use that default, then AT&T must instruct us of what their choice is. And we've said that the way that they should do that is by specifying the line class code that they want used on that particular order.

Q. Okay. Now, in terms of specifying the line class code, what is it about BellSouth's systems that's incapable of setting up two indicators as opposed to one indicator and then another just go find the line class code system?

A. It deals with the amount of work that's done in BellSouth's ordering systems to be able to recognize two things: first of all, AT&T's choice of routing, that is, to an unbranded platform or to its own platform or to whoever's platform, and then to properly associate the right line class code with that

order.

We can do that. It's not burdensome to do that on a region-wide basis, but it is burdensome to do that on a choice-by-choice basis, office-by-office basis.

Q. Okay. So the objection is that it's burdensome to do; is that correct?

A. Yes.

MR. LACKEY: Let's see who joined us, please. Who just joined us?

MR. FULWOOD: This is Lennie Fulwood with the Public Commission Staff, with the Florida Public Service Commission.

Q. (By Ms. Rule) I want to make sure I understand what you mean by burdensome. It seems to me what you're saying is there are two parts to this. The first is the what I would call the ordering process where you have to figure out what indicator means what end result. And the second part is a programming part where you have to actually go in and figure out if I want to accomplish the end result we've just decided upon, where do I have to go and which switch to get the line class code to

make it come up on that end.

I know I'm not being very clear, but I would like you to help me out and figure where it is that the burden comes. Because it seems to me there is already a set of tables that tells BellSouth exactly which line class code goes where in every end office, so that doesn't appear to be burdensome.

A. That is not the burden I'm referring to. I'm referring to the burden in the ordering process of trying to discriminate upon receipt of an order which particular line code to use to fulfill that order. We are able to do that once and we've done that. What we are not -- what is burdensome, though, is to try to maintain four or five different versions of the ordering scenario, such that as we process your order, we can sort of or somehow determine what you want done for a given customer.

So it's burdensome from the ordering process. I'm presuming that AT&T had already ordered and we had programmed the

line class codes for all of its options sometime before its first order for a specific end user customer came across the bridge to us.

So there is two sets of work, as I mentioned earlier. There is the actual creation of the line class codes in the end office switch. AT&T asks for, you know -- or asks BellSouth to provide it certain routing options, and then we program line class codes in response to that.

There is also work in the ordering system to determine which line class code should be used to fulfill the given order. We are able in that process for AT&T's default choice, whatever that choice is, whether it's in BellSouth's platform or somewhere else, we can do that. What we cannot do is replicate that work four or five times in the ordering platform to make that discrimination. So that's the burden.

The other point that I made is that we don't feel that we have a legal obligation, in the first place, to do that if AT&T is not going to provide a single routing

plan for use in all of its customers.

Q. Okay. Going back to a statement you made about not being able -- you said you cannot replicate the process. Are you saying it's impossible to do or you don't believe you have to?

A. Well, with enough time and money, most things are possible, but we don't think we need to do that under the FCC's rules. We've made an accommodation, I believe, already to handle AT&T's default choice of routing. We don't believe we are obligated to spend more money developing further ordering systems to make decisions on AT&T's behalf as to how it wants calls from a certain customer routed.

Q. So that BellSouth is willing to do the work to assign line class codes for one ordering option but not for two ordering options?

A. That's correct. And we believe that's imperative of what we provide for ourselves. We don't have multiple routing choices for our own end users. A given customer by class of service and call

restrictions goes to one platform, and that's our platform. And we've given AT&T the same option. It can give us a default choice. We'll arrange the end offices, and we'll arrange our ordering process to accommodate that.

Q. Turning to your rebuttal testimony.

A. Okay.

Q. On page 26, beginning on line 20, you state, "AT&T need only place an order with BellSouth for customized routing and BellSouth will provide it," correct?

A. I'm sorry, the line number?

Q. 20.

A. Yes, I'm there.

Q. Are you aware that BellSouth or that AT&T has placed an order with BellSouth for one type of OS/DA from one office?

A. Yes.

Q. When was that done?

A. When was the order placed?

Q. Yes.

A. I've got some notes here I'll refer to. Let's see. I have a note that says in July that AT&T modified their request

to establish customized routing in our Peachtree Place central office only. I believe that was the last instruction that we got, was in the July time frame.

Q. That would be July 2000?

A. Yes, ma'am.

Q. And it sounds like then there was an order before that, then, that was modified?

A. Yes. AT&T earlier -- let me go backwards. In March of 2000, AT&T clarified the request for how they wanted the routing to be done. There may have been an earlier request than that. So at least -- well, there must been an earlier order because AT&T clarified its order in March of last year and then modified their order one more time in July of last year.

Q. Okay. So do you know whether that has yet been provided by BellSouth?

A. Yes, it has, in a couple ways. Line class codes were established in the Peachtree Place central office. That's that first level of work that's required to program specific line class codes to effect

the routing.

The second piece of work, it was to make changes to BellSouth's ordering system software was placed on November 18 of 2000. There was an error in that software load, which was fixed on January the 13th of 2001.

Q. And I believe you said one step was that the line class codes were established in the Peachtree Place central office. When was that?

A. Let me see if I have a note that shows that. I don't see a date for when those were actually put in place. It was done sometime after July of 2000.

Q. Okay. How long would it typically take for AT&T to place the order with BellSouth for customized routing and BellSouth to provide it?

A. How long would it customarily take?

Q. Let me strike that. You state that AT&T need only place an order and BellSouth will provide it. What's the time interval within which BellSouth will provide it?

A. We have not offered a standard interval for how long this would take. The time required is based on the scope of AT&T's request. The number of central offices, the number of line class codes, questions of that nature.

Q. And the request that predated the first March clarification, let's call it pre-March since -- would you accept, subject to check, that it would be February?

A. That is before March, so certainly I'll accept that.

Q. Okay. Let's call it February, then. That was for one central office?

A. No. I believe that that was for more. My notes tell me that AT&T changed its mind somewhere along the way to limit to one central office. And I think that was what was done perhaps as late as July. My note says that AT&T modified its request for Peachtree Place central office only. So that tells me that earlier there may have been -- AT&T may have considered customized routing in more than one central office.

Q. And then how long did it take to

implement the request for one central office?

A. Which part? The end office part or the ordering part?

Q. Well, how long did it take BellSouth to provide customized routing in response to AT&T's order?

A. Well, the last clarification was in July. We programmed the line class codes. We updated the software to handle this default routing in November. There was a problem detected in that. It was fixed in January.

Q. So at a minimum, then, five months?

A. No. Going forward, it won't take that long because the software that we put in back in November is fixed. So in that case, AT&T would have placed its order with us sometime in July, and the software to electronically process the orders would have been in place November 18th.

Going forward, since that software is already available and can be easily augmented, then the controlling time for how long it takes will be how long it takes to

program the line class codes which is a function of how many of those AT&T orders.

Q. Has BellSouth done anything to demonstrate that it can make customized routing available upon ordering?

A. Help me with that question. I'm not sure what you --

Q. Well, we've talked about one example where BellSouth has made customized routing available in one central office.

A. Yes.

Q. How can AT&T be assured that BellSouth can make it available upon ordering, as you testified, across the BellSouth region?

A. Well, BellSouth is capable of programming line class codes upon request of AT&T. There is no problem in that part of the -- in that part of fulfilling AT&T's request. We can do that again for as many central offices that AT&T requests. We've updated our software. As I pointed out, there was a problem, we fixed it. Likewise, going forward, that should not be a problem. So, there again, we can provide electronic ordering of AT&T's request using that same

software.

Q. If I understand, the current Peachtree Place central office, the ordering capability that can be used there is good for only one type of order, isn't it?

A. No, that's not really accurate. You say the software is only good. AT&T requested that we put software in place for only one central office, one switch within the Peachtree Place central office. But that software can easily be used for other central offices. It's just a matter of enlarging the scope of the application of that software.

Q. So would you characterize the November problem as a developmental problem that probably shouldn't occur when you implement it in other end offices?

A. Yes, I would. The problem was a miscommunication between two of the software developers. One was a requirements developer, and the other person was actually writing the software. There are two switches in Peachtree Place. The requirements developer thought that one of the switches was the correct one to write the software for, and

that's how it was written. It turns out that that was wrong. The software itself worked fine. It was just programmed for the wrong central office.

Q. So then it shouldn't be much of a problem to take that same software and program it for other central offices, correct?

A. That's correct, yes.

Q. Do you know whether AT&T has placed orders in that central office?

A. After January 13 or before?

Q. After November.

A. After November, I understand that it did, and that that was one of the ways we found out there was a problem in the software.

Q. Can AT&T now place orders?

A. It's my understanding that they can, yes.

Q. Who is Cheryl Richardson?

A. I don't recall the name.

Q. Okay. Are you aware that BellSouth has required AT&T to execute a test agreement before it can execute orders in the Peachtree Place central office?

A. I'm not aware of that. I'm not surprised by that. The Peachtree Place central office tests are -- I believe you're referring to what's been called the Georgia 1,000 test. It has a lot of different facets, so I'm not surprised that there is a formal agreement around that test.

Q. You also discuss some AIN arrangements or AIN solution that BellSouth has proposed. Can you tell me how many AIN, working AIN routing arrangements are in service today in your region?

A. Well, there are a lot of AIN routing arrangements. If you mean how many customers are using AIN for customized routing, then the answer is none. But AIN is a robust platform that has lots of applications running on it right at this moment.

Q. Are there any working line class code, OS/DA customized routing arrangements in service today?

A. There are some -- there are test arrangements in place. The one closest to having real customers on it is AT&T's test

here in Georgia.

Q. And is that the Georgia 1,000 you just mentioned?

A. Yes.

Q. Are there other CLECs testing it?

A. Testing what?

Q. The line class code OS/DA routing.

A. Yes. We've worked with MCI, for example, MCI Worldcom in Florida and in Georgia to test the line class code method. They have also requested that we do some testing with them that would allow certain calls to be handled via Feature Group D. And all of those tests were successful.

MCI is not testing the so-called footprint order of platform of handling default routing plans, to my knowledge, but we have tested with them in other parts of the line class code solution.

Q. On page 29, your first bullet point, you discuss the use of appropriate AIN triggers for all call types rather than only a limited set of call types.

A. Yes.

Q. If an ALEC orders AIN, are all of

its customers calls routed using AIN?

A. No.

Q. Which ALEC customer calls would be subject to AIN routing?

A. Just those that need AIN functionality. For example, if AT&T chose BellSouth's AIN customized routing solution, then appropriate triggers would be established on calls where the customer dialed zero or 411. There are other types of calls that also invoke the use of AIN triggers, such as calls that require database lookup for calling number display, for any number of different things.

Q. If you've got an OS/DA AIN routing arrangement in place, and then the customer places another call that would require AIN routing, where does that go? Does it go to the same place where the OS/DA information is kept, or does it go someplace else to get the information?

A. In that case, it would go somewhere else.

Q. Where would that be?

A. Well, it would not go to an AIN

hub. In some cases, end offices have access through some devices called signal transfer points and get to the databases directly. So it's situational.

Let's say that an AT&T customer who is certified by a BellSouth switch makes a long distance credit card call. In that case, the call would traverse or would go from BellSouth's switch up to the signal transfer point. The signal transfer point would invoke the service control point or SCP, which is the database for something called LIDB, L-I-D-B. It would pass information back about your credit card number, whether it was valid or not, and the call would progress from there.

That's a different routing than you would have just for an O minus call, where you wanted that call to go to a certain operator services platform or where the customer dialed 411 for directory assistance. So it's situational.

What we are talking about in terms of the AIN platform for customized routing is sending all those calls to a centralized

place so that the lookup is done at that hub rather than at the end office. And it is done that way for the reasons I name here on page 29.

Q. On page 40 of your testimony, you discuss a change request that was incorporated into release 8.0. What was your understanding of the scope of the change request?

A. The scope of the change request was to modify the order processing system to do a couple things. One was to develop a software generally to provide for ways of looking up the correct line class codes to use in fulfilling an ALECs order for which the ALEC wanted its default choice of routing invoked.

The second thing that it did was to build specific information into the ordering process for BellSouth's Peachtree Place central office.

Q. And it was your rebuttal testimony that that change request was -- when you say it was incorporated into release 8.0, do you mean that release 8.0 fulfilled the change

request?

A. It did, yes. On November 18 that software was installed as we had scheduled.

Q. Okay. I would like to hand you a copy of that change request and ask you to take a look at it.

A. Sure.

MR. LACKEY: Let me see it.

Q. (By Ms. Rule) Have you now had an opportunity to review that with your attorney?

A. Yes.

Q. Are you familiar with that change request?

A. Yes.

Q. And that's the one you were referring to on page 40 of your testimony?

A. Well, I'm referring to it generally, yes. What I just discussed in terms of what our response to this change request was in terms of the software development and allowing the association for the Peachtree Place was our implementation of this change request. This change request is not that specific. But our response to this

change request made those changes to the software.

Q. So is it your testimony that BellSouth has completely implemented that change request and done all the work to fulfill the request that was made on that form?

A. To the extent that it requests that we develop software, yes, we've done that. We've not implemented that software everywhere because we've not had a request to do that yet. There is work to be done both at the central office level and at the ordering process level if and when AT&T expands its request for customized routing beyond the Peachtree Place central office.

So we'll have to revisit that part of software and incorporate changes for other central offices. We don't know how to do that because we don't know what AT&T's choice is for anything other than Peachtree Place. But when AT&T make its choice known to us, we can expand that software and accommodate AT&T's orders in any central office in any of our states. So, yes, we've accommodated

AT&T's request as it's stated here on this change request form.

Q. My understanding of the functionality incorporated in release 8.0 was that it's only available to and applicable to AT&T only for one type of order and only in one central office; is that correct?

A. That is the way that we implement it because that was AT&T's instructions to us, was to implement it for request type M, which is a specific type of order. And further they clarified that to mean that they only wanted that in the Peachtree Place central office. If AT&T desires to expand beyond that, we'll be happy to do that. The software itself that figures out how to assign line class codes is done. It's in place. And it's just a matter of expanding the use of that software to other central offices.

Q. I've got to take you back one more place to your direct, and then I think we are done.

A. Okay. All right.

Q. Take a look on page 60.

A. Okay. I'm there.

Q. You beat me there. And on page 60, the first five lines, you discuss AIN trials. And you specifically mention one that was successfully completed in August 1999. Who participated in that trial?

A. BellSouth invited all CLECs to participate in that. And all CLECs declined that. So BellSouth did its own technical trial in that time frame.

Q. Were there any auditors involved in the trial?

A. Do you mean auditors outside of BellSouth?

Q. Internal or external.

A. No. There were subject matter experts who audited the processing of orders, but our internal audits group did not participate.

Q. Was there any published, internally or externally published report detailing the trial?

A. I doubt there was anything externally published. I don't recall that there was. I saw -- I don't know if I

would characterize them as reports, but I saw progress reports from the trial, you know, at that time, yes.

Q. And a little farther down on page 60, line 11, you mention that BellSouth completed end-to-end testing of the AIN service management system enhancements; is that correct?

A. Yes.

Q. Who participated in that test?

A. This would be the product managers and the project managers and the software developers who were involved in this enhancement to our service management system.

In other words, these were BellSouth employees who had developed this functionality and then looked at it from all aspects of it to see whether the orders flowed correctly, was billing done properly, all of those sorts of things.

Q. So that was the BellSouth internal test you were referring to?

A. Yes.

Q. And you mentioned that the test was successfully completed on June 14th, and

you anticipated offering the enhanced method in fourth quarter 2000. Does BellSouth now offer the enhanced method?

A. Yes. If you would like to know the specific date, I'll show you the --

Q. Sure.

A. Unfortunately, there is not a date on this page, but I would be glad to leave it with you or show it to you.

Q. Is that a carrier notification letter?

A. This is an -- this is a notification that's on BellSouth's web site. And I think perhaps in my rebuttal testimony I state when that went -- let me look. I thought somewhere I named the date that that notification was placed. I'm sorry, I would have to look through here. It was -- I'm going to guess and say it was in the November time frame. But in the fourth quarter of last year we did what I said here; that is, we finished the work and we published this notification to the industry that the method was available.

Q. So may we assume since your

testimony is dated November 15th, that if it was available in the fourth quarter, it became available sometime after November 15th?

A. No. I'm just saying that I don't recall the exact date that we put this message on our web site announcing it. And I don't recall if it was -- if this notice went on the web site before or after I filed my testimony.

Q. So when you say BellSouth anticipates offering it, you didn't know whether it was being offered or planned to be offered, but sometime in the fourth quarter you expected it to become available?

A. No. The work was to be completed and was completed. And this web site notification went on our web site sometime I want to say in November. I just can't recall if it was before or after the date I filed it.

Q. Okay. And typically would this information also be provided by a carrier notification letter?

A. It sometimes is. I don't recall if this was or not.

Q. And would the carrier notification letter usually have been close to the time that such a notice would have been posted?

A. It would -- yes, it should predate that. In fact, usually the carrier notification letter will just say simply that the information is on the web site and give the web address such that you could go pull it.

Q. If the test was concluded successfully in June, why was the enhanced method not available to carriers until the fourth quarter?

A. Because there was still work required to document findings of the testing, basically just finish up all the paperwork.

MS. RULE: Okay. Thank you very much.

THE WITNESS: You're quite welcome. Thank you. (Whereupon, a discussion ensued off the record.)

MS. RULE: I would like to identify a Deposition Exhibit number 1, change request form number ED-10209000001.

(WHEREUPON, Milner Exhibit-1 was

marked for identification and a brief recess was taken.)

EXAMINATION

BY-MR.LAMOUREUX:

Q. Good morning, Mr. Milner.

A. Good morning, Mr. Lamoureux.

Q. How are you?

A. I'm well. Thank you.

Q. Welcome back from Baton Rouge.

A. Thanks.

Q. I want to begin by talking about something that's in your direct testimony --

A. Okay.

Q. -- at around page 49 and 50. You have a quote from the DC circuit decision there dealing with co-location. And in particular you're discussing cross-connects?

A. Yes.

Q. Now, I want to explore a little bit what position you are taking with respect to your obligation to provide cross-connects to CLECs.

A. Okay.

Q. Is it BellSouth's position that it's no longer obligated to provide any

cross-connects to CLECs at all?

A. No.

Q. Will BellSouth continue to provide cross-connects to connect the CLEC to the BellSouth network?

A. Yes.

Q. Okay. And, in fact, there are rates established in many states for those cross-connects; is that correct?

A. That's correct.

Q. And BellSouth will continue to provide those cross-connects at those rates?

A. Well, I'm not sure at those rates, but BellSouth intends to continue providing cross-connects. As you probably know, I'm not the cost person, so I don't know what's going on there, but --

Q. Well, do you have any knowledge that BellSouth would try to provide those cross-connects at different rates than have been established in the various states for cross-connects?

A. No, unless those rates were modified in a state proceeding.

Q. Okay. Now, will BellSouth provide

cross-connects between one CLEC co-location space and another CLEC co-location space?

A. To the extent that the CLECs involved have a provision in their interconnection agreement that allows them to do that, we will continue to honor that interconnection agreement for the life until it expires. Our policy going forward is that we will not negotiate new interconnection agreements that allow CLEC to CLEC, or some people call them co-carrier cross-connects.

Q. So for purposes of this arbitration with AT&T, BellSouth will take the position that it will not provide those co-carrier cross-connects to link up one CLEC co-lo space to another CLEC co-lo space; is that right?

A. Yes, that's correct.

Q. Now, is that also true that BellSouth will not allow CLECs to do that cross-connect work themselves to link up one CLEC co-lo space to another CLEC co-lo space?

A. Yes, that's right.

Q. Is it fair to say, then, that on a going forward basis, BellSouth will not in

any manner allow cross-connects to connect one CLEC co-lo space to another CLEC co-lo space?

A. That's not entirely correct. We will not allow what we are calling cross-connects here at TELRIC rates. BellSouth has other offers that will have the effect of providing the same functionality. One example might be that that the two ALECs could order and BellSouth would provide special access.

Q. Well, now, these cross-connects that we are talking about that would connect up one CLEC co-lo space to another CLEC co-lo space, essentially all we are talking about is a piece of wire that connects the equipment in those two co-lo spaces; is that right?

A. In many cases, that's correct. In other cases, CLECs have asked that those connections be fiber optic cable instead of copper pairs. But in many cases, it will be copper wire.

Q. Let me just talk about copper wire connections. Essentially we are just talking about copper wire that would connect up the

facilities in those two CLEC co-lo spaces; is that right?

A. Yes.

Q. So is it your position, then, that you will offer that copper wire connection at special access rates as opposed to UNE TELRIC rates for cross-connects; is that the essential difference?

A. That's the difference.

Q. So you allow the connection to take place. It's a question of what rate you will charge those CLECs; is that a fair assessment?

A. Yes.

Q. For copper cross-connects to connect up CLEC co-location spaces, do you know what rates BellSouth will propose to charge as special access for that connection?

A. Not without going to the state-specific tariff or, rather, to the access tariff to look it up, no, I wouldn't know off the top of my head.

Q. The rates in a state tariff, a special access would apply to that connection.

I'm sorry. That was a bad

question. I guess my question is, is it the rate that simply exists in the tariff or would there have to be another rate established for that particular cross-connection?

A. I'm sorry to confuse you. No, it would be the rate that's in the tariff already.

Q. Now, would you agree with me that as a result of the FCC order issued, I guess, last week dealing with line splitting, that BellSouth does have an obligation to allow CLECs to engage in line splitting?

A. With some provisos, but yes.

Q. And would you agree with me, and as I understand it, BellSouth's position is that it will not provide CLECs with a BellSouth provisioned splitter to allow the CLECs to engage in line splitting; is that correct?

A. That's our policy, yes.

Q. And so BellSouth will require the CLECs to own their own splitter if the CLECs want to engage in line splitting?

A. Well, BellSouth will require one

of the CLECs to own a splitter that would be used. And my guess, customarily I would expect that that would be the voice provider.

Q. And my question is, assuming a CLEC wants to partner up with another CLEC where one CLEC is the voice provider and the other is the data provider, would you agree with me that in that situation, in order to engage in line splitting, and assuming that those two CLECs have separate co-location spaces, there has to be some way to connect up the facilities in those two co-location spaces?

A. Yes, given that they have -- given that the two CLECs have chosen two different co-location arrangements in which to effect that line splitting, yes.

Q. And as an example, if AT&T decides to be the voice provider, and let's say it partners with Covad to be the data provider, and let's say AT&T decides that it will own the splitters, there has to be some way to get the data part of the transmission from the AT&T co-lo space over to the Covad co-lo space in my situation where they have

separate co-lo spaces. Would you agree with that?

A. Yes. Yes, I agree with that.

Q. Now, in my situation where we have separate co-lo spaces, one CLEC decides to be a voice provider and one decides to be a data provider, would you agree with me that if BellSouth will not provide the connection between those facilities as a cross-connect, the CLECs are going to have to purchase that connection as special access?

A. Given your predicate that the two CLECs insist on having separate and distinct co-location arrangements, then yes. Our denial to provide carrier to carrier cross-connections would mean that you would have to order those from our access tariff.

Q. And the logic I'm trying to get at is assuming that they have separate co-lo spaces, there has to be some way to connect up the facilities in those spaces. And since BellSouth will not provide that connection as a cross-connect, the only choice that the CLECs would have would be to purchase that connection as special access. Is that logic

correct?

A. Yes. And my point is -- or the point I'll probably get to sooner or later is that we don't think you necessarily have to have two different co-location arrangements.

Q. I might as well follow up on that now. I guess your point would be the two CLECs could decide to share co-location space?

A. Yes. And in that case, BellSouth -- let's say AT&T and Covad decide that they want to do that, AT&T -- well, let's say that AT&T is going to be the voice provider and Covad is going to be the data provider. AT&T could buy its own splitters and put in its co-location arrangement. Covad would share AT&T's co-location arrangement, would order cross-connections from BellSouth that would run from the BellSouth distributing frame to the Covad -- excuse me, to AT&T's co-location arrangement.

BellSouth would extend loops and ports and whatever other unbundled network elements AT&T had orded to that same co-location arrangement. And within that co-location arrangement, AT&T would -- then

Covad would wire the splitter such that the data traffic was delivered back over to Covad.

Q. I take it BellSouth will allow CLECs to share co-location space?

A. Yes. We have for some time.

Q. Does BellSouth have any procedures in place to allow sharing of co-location space?

A. Last -- yes. And they have been -- again, they have been there for quite sometime, yes.

Q. Suppose there is a central office where AT&T and Covad already have their own co-location spaces and they don't want to order cross-connections as special access. Does BellSouth plan on offering any sort of special accommodation to allow Covad and AT&T to buy bigger co-location space so that they can share it, or will that simply be the regular process of one of those carriers applying for new co-location space?

A. Well, we've not -- we've not come up with different processes than we already had, but I'm not sure that they would be

needed. If you follow the situation or the scenario that I laid out, there is not -- there is not necessarily a whole lot of new equipment in that co-location arrangement. AT&T already has its loops and ports terminated to their -- it provides its splitters. We think that the sharing of that co-location arrangement allows AT&T the ability to put the data traffic on that connecting facility that belongs to Covad. And then it's -- you know, then Covad does with it whatever they had anyway.

So I don't believe that the size of the co-location arrangement is necessarily going to be different than would be otherwise because we are just talking about bringing one new cable into the co-location arrangement and terminating that.

Q. So your belief, then, let's say that we start with the AT&T co-lo space and AT&T puts the splitters in its co-lo space. You would believe that Covad could bring its equipment into the AT&T co-lo space; in most instances, there's enough space there to do that?

A. No, not necessarily all of its equipment. What it could do, though, is bring one connecting facility into that arrangement such that you could put the data traffic on it and get it back to Covad that way.

Q. And the way we do that is there would be an intermediate connection through the BellSouth main distribution frame back and forth between those two co-location spaces; is that right?

A. Well, not directly. AT&T would -- there would be two facilities into that co-location arrangement. Covad would have one; AT&T would have one. The other end of both of those cables is an AT&T distributing frame.

Q. Okay.

A. Covad would order unbundled network elements to which we would, you know, connect, to which we would connect to that connecting facility. AT&T might order other unbundled network elements, which likewise would connect to AT&T's cable, and then AT&T and Covad use the splitter within that

co-location arrangement to route the data signals, which then traverse back out of the co-location arrangement over Covad's connecting facility, not AT&T's. It's kind of hard to visualize without a drawing.

Q. Well, I guess what I'm thinking the data traffic has to get from the splitter to the DSLAM. And if the DSLAM remains in the Covad co-location space, there is no way to get that traffic directly from the AT&T co-location space to the Covad co-location space if we don't buy that special access connection, right?

A. Without having thought this thing entirely through, since I only saw the order a couple of days ago, that sounds right. I need to study it some more, but that sounds right.

Q. Okay.

A. But now you said -- you offered what may be the most obvious solution to that might be that Covad not only would have that connecting facility to AT&T's co-location arrangement, but would also put its DSLAMs in there. That's another possibility.

Q. And that's what I was thinking, is that if there is not enough space in the AT&T co-lo space for that DSLAM to go in there, essentially the most obvious solution would be for AT&T and Covad jointly to buy bigger co-location space. And what I was wondering is would BellSouth provide any special discounts or provisioning process for that situation?

A. I don't think our thinking has progressed far enough along to know the answer to that.

Q. Just a couple of last questions generally about line splitting, and then I want to shift a little bit. My understanding is BellSouth, because it will not provide its splitters to CLECs, it will not allow the situation where AT&T buys a loop, a splitter, and switching as a combination from BellSouth; is that correct?

A. Yeah, that's right. Yes, that's correct. The reason being the -- that is different from what traditionally we've referred to as the loop and port combination, in that now those things have to be taken

apart, new cross-connects placed, the splitter stuck in the middle and then put back together.

Q. And I just want to confirm, I think you agree with me on this. In Tennessee, there is no technical reason BellSouth can't provide a combination of loop/splitter switching to allow AT&T to do what it calls UNE-P line splitting?

A. That's right, there is not a technical reason that would prevent that.

Q. Let me switch topics on you. And I have just a few questions since we've done this dance before on sub loops. I want to talk specifically about sub loops in high-rises, okay?

A. Sure.

Q. Now, as I understand it, in provisioning sub loops -- let me back up. In provisioning INC in high-rises, BellSouth will not pre-wire the connections between its current panels in the wiring closets to the access panel that it proposes to install; is that right?

A. Yes, but let me clarify what I

think I heard you saying. We will pre-wire what an ALEC requests us to pre-wire. We will not pre-wire every pair that appears there.

Q. Okay. Well, let me start with that, then. Let's say that happens, that an ALEC decides to go ahead and request some pre-wiring in the event that it might obtain some customers in a high-rise.

A. Okay.

Q. In that situation, BellSouth will not pre-wire working pairs that are being used to provide service to customers in the high-rise, right?

A. Ordinarily not. But if those are the only pairs that are available, then we will bridge those across such that they appear on the access terminal as well.

In a high-rise setting, especially in the business setting, if there are spare pairs to a given floor or suite, we think ordinarily that would be the ALEC's first choice rather than a working pair.

Q. Well, in my situation, the ALEC doesn't have any customers yet. It's just

deciding it's going to get some connections made up to the access terminal in the event it might get some customers.

A. Okay.

Q. In that situation, you would not make any connections with active working pairs, would you?

A. In that case, no.

Q. Okay. So you would provide spare pairs in that pre-wiring situation?

A. Yes.

Q. All right. Now, if there are no spare pairs available, obviously you would not be able to do any pre-wiring in that situation, correct?

A. No. We would still be able to do the pre-wiring. What that would amount to is having the working pair appear on the access terminal, such that AT&T could use it in the event that that end user decides not to take its service from BellSouth any longer.

Q. So there would be a connection from the BellSouth panel to the access panel, but it would not be able to make any connection from the access panel to the AT&T

panel because you would have to take the pair out of service to be able to do that?

A. No, no. The pair need not be taken out of service to have it appear over the access terminal. What we would do, within our terminal, let's think of it as the loop that comes in and then the INC pair that leaves. And there is a cross-connection between those two things. When we talk about pre-wiring, if the pair is working, we would extend a pair of wires, let's say from the INC part over to the access terminal and punch it down. We would extend a pair of wires from the incoming loop part that's at the loop distribution over to the access terminal.

The original cross-connection is still there. Then we would make a new cross-connection on the access terminal that connects the loop distribution pair and the INC pair together at the access terminal. And then we would remove the cross-connection from our first terminal.

So at all times the loop distribution pair and the INC pair are always

connected together, okay. So that's how, even where service is working, you would bridge those things over to the access terminal.

Q. Okay. And in order to do that, of course, to gain this pre-wiring ability, AT&T would have to pay for, in my situation, INC pairs and the access terminal without having any customers in order to gain that advantage of having some pre-wiring done?

A. Yes.

Q. And if, in my situation, the pre-wiring was done with spares, those would not be the first pairs that are being used to provide service to the customer today, correct?

A. Well, let me make sure when you say the first pairs, let's decide on what we mean by that phrase. The first pair in a residential setting has some significance because when you plug a phone into a jack in the wall, there are often two pairs that appear there. And so when you plug in there, it makes a difference as to whether you're hitting the so-called first pair or

the second pair.

In business settings, where the customer may have, you know, big cables of 25 pairs, there is no significance to the first pair or the 25th pair. In other words, there is more wiring that has to be done. So the significance of the first pair being important in the residential setting but usually not in the business setting.

Q. But there are situations in high-rise situations as well where the first pair does have that significance, particularly for smaller tenants and smaller businesses in the building?

A. A business that had only or had at most two lines, that would be important, yes. But more than two lines, it would cease to be important.

Q. But more generally, if you wired up the spare pairs to do my pre-wiring in my situation, you would not be wiring up the pairs that are being used to provide service today to them --

A. That's correct.

Q. -- to the customers?

A. Yes, that's correct.

Q. Now, let's assume that AT&T does not do any pre-wiring, that we don't ask BellSouth for any pairs or the access terminal until we actually know that we are about to get or have a customer in the building?

A. Okay.

Q. Now, I believe there are basically two options, and correct me if I'm wrong, as to how we can go about getting that customer wired up.

The first would be if there is enough spare facilities up to that customer premise we could just use those spare facilities, wire it up to the access terminal and that we connect to. The second would be if there are not enough spare facilities, you would have to disconnect the working pairs to be able to connect them to the access terminal. And then we could connect to the access terminal ourselves. Would you agree with me on that?

A. Yes. Yes, this would be analogous to a hot cut in a central office, in now

that there is some coordination that is required to disconnect the working service from BellSouth's network and reconnect it to AT&T's network.

Q. And the reason for that hot cut process would be to minimize any amount of time that the customer would have to be out of service as the lines are being disconnected from your terminals, connected to to the access terminal, and our connection to the access terminal being made?

A. Yes.

Q. And would you agree with me in that situation, again, in order to minimize as much as possible that customer outage time, there would have to be a substantial amount of coordination between our technician and the BellSouth technician?

A. Yes, there is coordination required.

Q. I mean, essentially they both have to be there in the wiring closet as your technician disconnects a service, our technician is ready to make our connection so that the customer is out of service as little

as possible?

A. Not necessarily. And here is why I say not necessarily: In the State of Georgia, for example, we have come to an accommodation where BellSouth's technician need not be present even in the case where service is working.

In Georgia, under the agreement that BellSouth struck with MediaOne, MediaOne's technicians and now AT&T's technicians can remove the jumper between BellSouth's network and the network terminating wire pair in the garden apartment setting and place a new jumper connecting that network terminating wire pair and AT&T's network.

You know, if we can strike an agreement like that, then we would allow AT&T's technician to remove that same type of jumper in the high-rise setting and reattach it -- or cross-connect from its network to that INC pair.

Q. So essentially this accommodation you're discussing, the AT&T technician is allowed to disconnect the customer from the

BellSouth network in order to -- and then reconnect the customer up to the AT&T network, all the while going through this access terminal?

A. But only in the setting where BellSouth had pre-wired that working connection over to the access terminal.

Q. Okay. In my scenario, where there is no pre-wiring that happened.

A. Yes. In that situation, then there is going to be substantial coordination required, which could be obviated by, you know, establishing the access terminal up front, doing the pre-wiring up front. But if you don't do those things up front, then yes, there is going to be some fairly close coordination required to prevent customers being out of service.

Q. Okay. You discussed the point where the BellSouth loops comes into the building and then there is a block where that loop connects, and then a cross-connect to another block where the INC part of the facility runs up to the top of the building.

A. Right.

Q. Typically what we are talking about is in the basement of the building, there is a plywood panel on the wall with 25 pair connector blocks where the loop will come into one and then cross-connect up to the other connector block where the INC pair then rises up the building?

A. You're getting good at this, yes. That's right.

Q. And my question is this: What happens if there is not enough room in this wiring closet for BellSouth to install an access panel for the CLEC to gain access to those INC pairs? How does BellSouth propose to make the sub loop facilities available to CLECs in that situation?

A. Well, first of all, I've never seen -- I've never encountered that situation. Yes, you know, equipment rooms have a finite amount of space within them, and it's all subject to the laws of physics. The blocks themselves are not especially large, so I'm not quite sure what we would do in that case.

It is possible that we would go

in, we would look to see if there are connector blocks that have been there for long periods of time but are not, you know, in use for any, you know, reason, remove those to make room.

Second choice would be to see if we could make higher utilization of blocks that are there by moving some service from one block to another.

So there are other things that we could do that might forestall, you know, just an absolute exhaustion of space.

Q. Is it fair to say BellSouth hasn't put forth any definitive plans about what it will do in the event that space is not available to install an access terminal?

A. I have not seen any. So I'm not sure if the -- if the product managers have envisioned that or not. But I haven't been in lots and lots of equipment closets. I don't see that being a problem.

Q. The reason I ask is I finally found on the web site the document that discusses --

A. I brought you a copy just in

case.

Q. -- INC pairs.

A. Yes.

Q. And in the order and provisioning section, it says, "If facilities are available, BellSouth will install an access terminal." And I take that to mean that if BellSouth determines that space is not available, it simply won't install an access terminal and won't allow access to the sub loops?

A. No. That's not how I read this -- that's not how I read this one sentence. Let me read it, though.

Q. Sure.

A. The previous sentence, it says, "The CLEC will issue a service inquiry for each cross box location through its BellSouth account team representative/complex resale service center in order to determine the availability of unbundled sub loops or USLs," as it says here. If facilities are available, a site setup will be completed. And then it's talking about, you know, whether it's in the field or whether it's in

a high-rise building or whatever.

So this sentence I think is meant to say that it's situational. If there are facilities available, then things would progress. And then the things that will progress are, you know, dependent on what type site is being worked on. I don't read this to mean conditional, that it says if there is not room, then all bets are off and we are going to stop.

Q. Last couple of questions actually deal with network terminating wire.

MR. LACKEY: Before you go into that is Lee Fordham on the phone?

MR. FULWOOD: I guess not.

MR. LACKEY: Off the record.

(Whereupon, a discussion ensued off the record.)

Q. (By Mr. Lamoureux) Mr. Milner, in Tennessee, I was very proud that I had drawn a very comprehensive diagram of how I think we managed to agree the wiring is going to look like in the garden terminal situation?

A. Yes.

Q. And if I recall, essentially the

BellSouth distribution facilities come into its garden terminal on a block, and today typically that will be cross-connected over to a smaller block, and then the terminating wire runs directly to the particular tenant premise?

A. That's right.

Q. And when BellSouth installs what I call the intermediary access terminals, essentially what BellSouth will do is have a connection from that first block in its garden terminal over to a block in the access terminal, again a cross-connection to a smaller block, which -- then run a facility back over to the smaller block in its garden terminal, and then again the network terminating wire will run directly to the customer premise?

A. Yes. Now, let me -- you're using the word smaller block. Let me just clarify, there is not a block for -- I presume that's apartment A, apartment B and apartment C. There is not a block for apartment A and a different block for apartment B. They all share that one block. So you can draw

another line like so. But, yes, that's how it works.

Q. And I call them smaller blocks, but really probably they are both 25 pair blocks inside the garden terminal, and there is a cross-connection between the two blocks?

A. That's right.

Q. And the way AT&T would gain access is it would have a connection between probably a 25 pair block or some amount of pair of block in its terminal to the access terminal. And then when it acquired a customer, in the access terminal, AT&T would disconnect the BellSouth cross-connect and then reinstall its own cross-connect. So it would then have facilities connecting through all the way to the customer premise?

A. That's right.

MR. LAMOUREUX: I would actually like, as inartful as this is, I would like to make it an exhibit, if you don't mind. Mr. Milner and I have worked very hard working this out.

MR. LACKEY: I don't mind.

(Whereupon, a discussion ensued off

the record.)

(WHEREUPON, Milner Exhibit-2 was marked for identification.)

Q. (By Mr. Lamoureux) Now, my question is this: I see that the CLEC information package for network terminating wire has been revised, and there is actually now a diagram in here. And the diagram, as I see it, shows the BellSouth facilities coming into its garden terminal facilities, then running over to the network terminating wire, and then even BellSouth's facilities continuing directly from the access terminal to the customer premise, and the disconnections from BellSouth's garden terminal to the customer premise no longer being there, which seems to be at odds with how we've diagrammed out the situation here and in Tennessee?

A. I'll have to admit to having not seen this. I notice the date is December 29. So it has been out there a few weeks. I'll just have to check into it and see. I will be surprised if that is what the authors actually meant because that means that those

network terminating wire pairs would actually have to be physically moved from this terminal to the other. I'll be surprised if that's what they really meant because any time you do that there is always the risk that you break something or you don't put it in the right place.

I'll clarify with the authors to see if that's what they really meant. I do genuinely expect that it really is going to be the way that you and I have traced it out, but I'll verify it.

Q. You would agree with me that the way it's been diagrammed out in this current version of the CLEC information package is at odds with the way you and I have guy diagrammed it out today and in past proceedings?

A. Yes. In that it could be read to imply that we actually moved that wire from one terminal to another. Let me be specific, the network terminating wire from one to another.

Q. Okay. That's all I have on the sub loop issues. I just have some questions

on a few other somewhat scattered issues. Let me ask you a few questions about hot cuts.

A. Okay. Could I take just a second? I want to make sure I don't forget to look --

Q. Sure. You can have this.

A. Oh, thank you.

Q. I want to talk about the issue of doing the facilities check before returning the firm order confirmation --

A. Okay.

Q. -- which I think you discuss in your direct and in your rebuttal. My question is: Is it technically feasible for BellSouth to perform a facilities check prior to issuing the firm order confirmation?

A. Let me answer in -- in two ways. Yes, with enough time and money, we can make changes to our process to make that check before the FOC is returned. In other words, we can make changes to our system such that an FOC is not released back to AT&T until the outcome of that facility check has been made.

That raises the question, then, as to what style facility check we mean. If we mean a check of the records, that can somehow be done automatically, then perhaps that -- the holding of that FOC might not be a very -- of very long duration.

If, on the other hand, by a facilities check you mean putting someone in a truck and driving out to see if pair 23 which was intended to be used on that cut-over is working, available, ready to go, that would elongate the return of the FOC by a pretty good margin.

Q. Okay. Let me take those two in turn. The first one will be what I would call a facilities database check. If BellSouth were to be able to do a facilities database check before -- an automated facilities database check before it returned the FOC, can you estimate how long that might delay the return of the FOC in order to perform that automated facilities database check?

A. I have -- I don't know. Again, it's a function of how elaborate the check

is. It's also a function of the manner in which the systems that would do the check are run. Certain processes are only one time a night. Others are continually processing information all through the day. So I just don't have enough expertise to tell you with any real precision how long it would delay the FOC.

Q. Can you estimate how long it might take if we were to talk about an actual physical check of facilities?

A. Well, I can tell you that probably some minimal amounts of time, even if everything worked precisely, that AT&T sent its order, it was error-free and progressed immediately to the facilities checking stage, and that got to a work center at, you know, two seconds later, then we are at least talking about travel time to the site, which could be an hour or more, travel time back to update the records and release the order. So at a minimum we would be talking in magnitude of hours. And that would be in a perfect world where everything clicked just right. More likely it's going to be measured

in days, while we wait for all those things to align such that the order gets to a work center, the work center has adequate personnel to dispatch them to that site to make the check. So hours and days compared to perhaps minutes or hours, if everything fell together well on doing it mechanically.

Q. Would you agree with me that for both the automated facilities database check and the physical facilities check, there is no technical impediment to doing either one of those before returning an FOC. It's, as you said, just a question of time and money to implement those processes?

A. Well, from that angle, yes, it's a question of time and money. There is also a question of, you know, of a legal question of whether we are required to do that, to provide service in parity to what we provide our retail customers. But leaving that part aside, you know, the systems could be modified or processes could be put in place to do that sort of check before the FOC was returned.

The obvious, you know, outcome of

all that is that it's going to take longer to get FOCs back to the requesting ALEC, not shorter.

Q. That's a good segue for my next question. Is the delay or potential delay in returning the FOC the only reason BellSouth will not agree to perform facilities checks before returning the FOC?

A. Well, no. That's not the only reason. We've got one set of ordering devices which are available to all ALECs. Some choose one method; some choose another. If we change this process to make that facility check before the FOC is returned, we are going to have to change it for all ALECs who use that particular order entry vehicle.

So I think there is some buy in that we are going to have to achieve from all ALECs potentially that would be affected by this change.

So there is that, there is that consideration. There is also the consideration of how the costs would be recovered for doing these additional things. So it's not just a matter of how long is it

going to take to write the software to develop the process.

Q. Can you identify for me the complete list of the reasons why BellSouth will not agree to do facilities checks before returning the FOC?

A. Okay. I'll try to. To start at the highest level, we don't think there is a require -- a legal requirement for us to do that. We think we are handling AT&T's orders and doing facility checks in the same manner as we do for our own similarly situated retail customers. So if -- and, you know, at the highest level, we don't think we've got a legal obligation.

Dropping down from that, there is the question of parity between ALECs. We believe we've got an obligation to treat them all the same way, and that is to process their orders in the same way. That's what we were just talking about. If we make a change for AT&T, that change is going to affect all of the ALECs since we only have one set of ordering tools.

And then dropping down from that,

there are the issues of cost recovery, of sequencing this type work in for a -- with other requests. I've never come up with an exhaustive list. I think those are probably the headlines, though.

Q. Would you agree that lack of available facilities or facilities shortages tend to be the most frequent cause of hot cut failures between BellSouth and AT&T?

A. If it's not the -- if it's not the most often incurred, it's up there. I've not looked at numbers recently to confirm that that's still the case, but it has been in the past.

Q. Facilities issues are a significant cause of the hot cut failures between AT&T and BellSouth; would you agree with that?

A. Well, yes. And likewise, facility problems and shortages are, you know, the top, if not among the top one or two reasons that BellSouth's retail orders are not fulfilled on time. So problems with having facilities where you needed them, finding out late in the process that a particular facility is broken or defective or already in

use is a problem for hot cuts. It's a problem for BellSouth's retail operation.

Q. And would you agree that included among those facilities issues or facilities database problems?

A. Well, all databases that I've ever been associated with have some level of corrupted data or incorrect data. They are certainly not perfect. They are better than manually kept records, but they are not perfect.

Q. Has any other ALEC requested facilities checks be performed before BellSouth returns an FOC?

A. If they have, I've not heard of it; so I just don't know.

Q. Has any ALEC indicated that it is opposed to BellSouth changing its systems to be able to do a facilities check before returning an FOC?

A. Likewise, I don't know.

Q. Okay. Let me switch subjects again a little bit. Is it technically feasible for BellSouth to issue a jeopardy notice rather than a clarification when there

are problems with a CFA?

A. That is possible. And I understand just on a conversation I overheard yesterday that BellSouth is reassessing whether it should send a clarification or a jeopardy notice in the case of CFA assignment discrepancies and is in the process of determining, A, is it appropriate under the rules set out in the ordering and billing form to handle it that way. And if it is appropriate, how long will it take to make software changes.

Q. Is that something that has to go through the change control process? I'm trying to get a sense of the process that BellSouth would go through in this assessment of jeopardy versus clarification notices. Is that something that it can do, just decide that it's going to change, or is that something that it has to go through the change control process to do?

A. That's a good question. I don't know the answer to that. What we are doing at the moment is revisiting that issue to see if our interpretation of OBF rules is

appropriate or not.

So it may be that we were right the first time and that should be a clarification situation. We just don't know right now. But concurrently, we are seeing how much time and effort it would take to make it be a jeopardy notice, if under the OBF rules that's what's appropriate.

Q. Do you have any idea when this assessment will be completed?

A. I don't. Perhaps Mr. Pate could fill in some of the details there.

Q. Are there any different systems or personnel used for issuing a jeopardy notice as opposed to a clarification notice, to your knowledge?

A. Probably -- again, that may be a question best answered by Mr. Pate. But I'm not aware of any, since both clarifications and jeopardy notices are sent back electronically. In other words, these are, you know, in some cases human intervention to determine that there is a problem, but then the notices are handled mechanically. So I'm not aware of any personnel differences.

Q. Do you know is a jeopardy notice issued only when it' s BellSouth's responsibility for an error, or can it be issued for any type of error?

A. Well, you said could it. Every day I'm amazed about something new. But jeopardy notices traditionally have been used to connote that an error occurred and that it was BellSouth's, that is, the service provider's responsibility of fixing it rather than -- or resolving that problem rather than the customer.

So, you know, would we issue jeopardy notices to a customer? You know, we could do that, but I'm not aware that we've ever done that in the past. What we have done is sort of used that language or that vocabulary to mean a jeopardy situation is one that BellSouth is or should be accountable for and clarifications and reject notifications are things that we are not accountable for.

Q. In BellSouth's own retail operations, does BellSouth issue a jeopardy to itself when there are problems processing its

own retail orders?

A. Yes.

Q. Not a clarification?

A. Well, BellSouth does not send orders to itself. BellSouth fulfills its own orders. But yes, there are occasions where we are fulfilling an order and we find out that facilities are not available, other resources are not available, and we put that in jeopardy status.

Q. And what happens is the downstream systems will return a jeopardy notice back to the BellSouth, I guess, the provisioning folks or it will go all the way back to the service folks?

A. No. I've not seen a situation where the order once complete and accurate ever was jeopardized back to the originating entity, that is, the service representative organization. In other words, jeopardies have traditionally meant the order got out of here, okay, it's clear, I received the order and I'm going to fulfill it. And if problems occur in the fulfillment of that good clean order, then that's a jeopardy

situation. But I've never seen a situation where we sent a jeopardy notice back to the ordering part of our retail operations.

Q. And just to figure out where the -- obviously the jeopardy notice has to go somewhere. It will be transmitted, I, presume to the provisioning personnel to try and clear the jeopardy?

A. Exactly right. That notification is to the people that are trying to fulfill that order. It does not ask the ordering entity in the retail unit to do something with the order to change it. In other words, that's not where the error was or where the situation occurred. The jeopardy condition occurred in the process of fulfilling that order.

Q. We are still on track that we only have four open issues on the hot cuts issue, are we not?

A. At most four, I understand. And perhaps only three.

Q. On the hot cut issues, is there still any dispute anymore about the 800 number issue?

A. Not to my knowledge.

Q. How about on the issue of BellSouth personnel being transferred to voice mail when they call to confirm that a hot cut has been completed. Is there still any problem with that, to your knowledge?

A. I've only heard anecdotal stories about that that say that that may still be a problem. But I have not seen any hard facts that says, you, know the number of incidents. But when I last talked to our staff folks, they say yes, that still occasionally occurs.

Now, what do they mean by occasionally? Was it before or after we were in North Carolina for that hearing, I don't know. So but it's certainly not a severe problem, if it is a problem at all.

Q. And you don't know how often it has occurred if at all?

A. No. We have not kept statistics.

Q. Just a question or two on this issue of the condominium co-location issue.

A. Yes.

Q. Would you agree there is no commission order, court decision or FCC rule

that prohibits direct interconnection between BellSouth and AT&T and in a condominium arrangement?

MR. LACKEY: Excuse me. You're not asking him about a legal opinion about whether it's parity or not. You're asking about an actual decision he can point you to?

MR. LAMOUREUX: That's right. And I'm not asking him to interpret anything. I'm just asking if he is aware of anything that prohibits BellSouth from doing that.

THE WITNESS: I'm not sure. And the reason I'm not sure is that I need to go back and look at some of the language in the consent decree that resulted in modification of final judgment and where it talks about joint ownership and also the so-called shared network facility agreement that was put in place between -- well, all of the RBOCs and AT&T to see if there are prohibitions against joint use of facilities there.

Q. Here is what I'm trying to get at: Is it your position that BellSouth is legally prohibited from allowing this type of

arrangement, or is it your position that BellSouth is not obligated to provide this sort of arrangement and, therefore, chooses not to do so?

A. Well, actually the former. We think there is a precedent for not offering AT&T a form of interconnection that we are unwilling or unable to provide to other competing carriers, ALECs. The situation we are talking about is one that only AT&T could enjoy because only AT&T has these condominium type arrangements with BellSouth. In Florida, I believe there are six buildings. So it's really on the basis of our not being able to offer ALECs this same form of interconnection that would be the result of our allowing this type of cross-connection being used.

Q. Well, by virtue of the fact that there does not exist in this universe an unlimited amount of physical space anywhere, wouldn't that same logic prohibit you from offering co-location to anyone because at some point co-location space will be exhausted?

A. No. I don't think that's the right analog because the FCC specifically put

in rules, put in place rules governing what would happen when we ran out of co-location space. It caused a company like BellSouth to make a showing to file for a waiver of co-location. In other words, there is a provision to set aside that rule in the case of co-location that would be required to offer co-location if we are out of space. And if we move that, there is not a waiver that says if you can't offer form of interconnection to another ALEC, prove that and then you can set aside that obligation.

Q. I take it by your statement that you don't think you can offer it to one CLEC, a form of interconnection that is not available to another, you would agree that there are some efficiencies that you would be allowing AT&T if AT&T were allowed to engage in this condominium ang.

A. Yes, there are benefits that would accrue to AT&T, not to BellSouth, but to AT&T if this were allowed, yes.

Q. Let me just ask a question or two on the criminal background checks issue.

A. Okay.

Q. The damage or potential damage that you discuss in your testimony to the network or to central offices or to co-location space, wouldn't you agree that the majority of that tends to be caused by negligence rather than willful conduct?

A. To date that has been the case. Let me expand on your list. It's not only the, you know, the equipment and the tables and chairs that we are concerned about. We are also concerned about the people that work there, not only BellSouth's employees but ILECs employees who are there, you know, doing work at their co-location arrangement. So the people as well as the equipment is what we are concerned for the safety of.

Q. But would you agree that damage that has occurred to date, be it to equipment or people, the majority of it has been through accidents and negligence, not through intentional conduct?

A. To a degree, that's true. What we have determined of late is that the amount of theft that has occurred inside our central offices is greater since the advent of

co-location. Is that a direct result of co-location? You know, it may be or it may be not. That may be a phenomenon, you know, unrelated to co-location. But we have noticed an increase of loss and theft of company property in central offices where there's been co-location.

Q. Would you agree that criminal background checks are not going to do anything to reduce the amount of damage caused by accidents or negligence?

A. Not -- well, generally I would agree with that, yes.

Q. How would AT&T be able to know whether a former BellSouth contract -- whether either its contractors or its current employees or anybody that uses in co-location spaces happens to be a BellSouth contractor who was kicked off property because he committed some owe offense against BellSouth?

A. In some cases, just through human contact, AT&T may come by that knowledge. You know, AT&T could ask BellSouth and we would tell you. I think -- I can look it up. But the thought that the words in our

proposed language were that you would not knowingly hire such an employee. In other words, if you had information that says this person was discharged for or this agent or vendor was discharged for illegal acts, that you would not, in possession of that knowledge, would not hire that person and then expect to have that person dispatched to BellSouth's central offices.

Q. Would you agree that there are already significant security measures in place with respect to co-location in central offices that are designed to reduce the risk of either intentional or negligent harm to either property or people such as card readers, separate access requirements for co-lo space, video cameras, sign-in logs and the like?

A. To a degree, but only to a degree, I agree with you. Those devices are meant to keep track of who was in a given certain -- in a given central office at a certain time. What time they entered, what time they left, what parts of the building they visited. Those are good measures. They are necessary measures. By themselves, they

don't provide the level of protection that BellSouth believes is appropriate because that implies that once you've got one of those magnetic key cards that your actions are always going to be appropriate.

We are saying that there is another step that could and should be taken, and that is to make sure that the people that are in possession of those key cards don't have a criminal background. But yes, the measures we put in place do a good job of keeping track of the people that have those cards. What it doesn't and is not capable of doing is knowing anything about any criminal intent or any criminal background that those people might possess.

Q. Just a few last questions to follow up on some of the earlier questions I asked you about, technical feasibility with respect to line splitting.

A. Okay.

Q. Would you agree that there is no difference in the length and number of tie cables and cross-connects as between line sharing and what I've called UNE-P line

splitting?

A. Let me think about that for a moment. Generally, that is true if you set aside any -- if you set aside the cross-connections, you know, specifically between BellSouth's main distributing frame and the co-location arrangement. If you set those aside, then all the other lengths would be similar.

Q. I'm talking specifically about what I call UNE-P line splitting, which is where we don't have co-location arrangements.

A. I'm sorry. Then yes, in that case I agree with you.

Q. And let's take the situation where an end user customer is already getting both voice and data, either BellSouth is line sharing itself, self provisioning, or it happens to be line sharing with a data provider, so there is already a splitter there for that customer. Well, let me back up. Let me make it specific. Let me say it's line sharing.

A. Okay. I was going to say there may or may not be a splitter there.

Q. Okay. I've got to get my hypothetical down. End user customer BellSouth is providing the voice; BellSouth is line sharing with, let's say, Covad to provide the data. So there is already a splitter that's on that length of facilities. Would you agree in that situation, let's say AT&T was able to get that customer and it wanted to do what I call UNE-P line splitting, which is a combination of loop, splitter, switching, there is no changes in wiring or any other changes in the CO that would have to occur to allow that to happen.

A. And the predicate is that BellSouth and Covad were already line sharing?

Q. That's right.

A. There are no differences that I can think of.

Q. Let's say that there is no splitter installed currently on the facilities running to an end user customer. And again, let's say, you know, either --

A. Can I go back to my last answer?

Q. Yes, of course you can.

A. Because I just thought of one.

In the situation you described, BellSouth was the voice provider, and I'm presuming that it owned the splitter rather than Covad.

Q. Absolutely.

A. Okay. Well, then, on that basis, then to, you know, convert that to a UNE-P arrangement where AT&T and Covad were line splitting, then there would be a requirement to make some changes because BellSouth would not agree for its splitter to remain part of that, you know, part of that arrangement.

Q. All right. I had an implied assumption in my hypothetical. Let me make it explicit. Let's say BellSouth either agreed to provide splitters to AT&T or was ordered to make splitters available.

A. Okay.

Q. So BellSouth is providing the loop, switching and splitter to AT&T?

A. All as unbundled elements?

Q. I don't want to engage in a semantic debate about that. Let's just say they are providing all three of those things to AT&T as in a combination.

A. Okay.

Q. In that situation to go from line sharing to what I call UNE-P line splitting, there is no changing in wiring or any other changes in the central office or facilities that need to be made.

A. Given that rather extensive list of predicates, right.

Q. Okay. Now, let's say we've got an end user customer that the splitter is not deployed anywhere in the facilities from the CO to the end user customer, and let's say again for whatever reason BellSouth is going to be provisioning a splitter to allow us to do UNE-P line splitting and so it has to go in and install a splitter, right?

A. Okay.

Q. Do you have any idea how long the service might be disrupted in such a situation like that to the customer in order to have a splitter installed?

A. When you say disruption, I presume you're referring to taking the loop and the port apart and inserting the splitter and then making the cross-connections.

Q. That's right.

A. I think it would be on the -- I think it would be in the same order of magnitude as a hot cut. Because all of -- or not all, but a number of the steps could be provisioned up front, you know, wiring of the splitter over to a distributing frame, you know, wiring all of those cross-connections back and forth such that the work involved was to remove one jumper that connected the loop and the port and then reconnect the loop to a different place on the frame essentially so it gets to a splitter and then another connection back on the frame to get it back to where it goes.

So without having done any, you know, time in motion studies or anything like that, I would expect that, you know, the outtage time would be similar. Longer by some degree, but similar to the outage that you would have on a hot cut.

Q. Would you agree that any service disruption associated with again what I call UNE-P line splitting, which is BellSouth providing the loop, the splitter and the port but where the splitter doesn't happen to

exist in that combination today would be analogous to where BellSouth has to deploy a splitter for a particular customer to allow line sharing to happen with a data provider?

A. Yes, there is that analog. I mean, some of the statements -- some of the same work steps are required unlike the first case we talked about where BellSouth would be providing, you know, all of those devices, it gets a little more complicated when the CLEC provides some of them but which increases the amount of coordination but the work steps taken altogether are analogous.

Q. And from my hypothetical where the splitter already exists for whatever reason to a particular customer and BellSouth is going to be providing the splitter and will be providing it in combination with loops and switching, because there is no change in wiring or any other changes in the CO that had to be made, there would be no service disruption to go from line sharing to UNE-P line splitting, would there?

A. Well, again, tracking down that whole list of predicates that you named, that

we had an obligation to, that it was already done, you know, two or three others that you named, assuming all those predicates, then yes, the two situations would be analogous. But I don't want to imply in any way that I agree with all your predicates. But just from a technical standpoint of the amount of work that would have to be done, I agree with that.

MR. LAMOUREUX: Okay. That's all I have.

MR. LACKEY: Thank you, sir.

(Whereupon, the deposition was concluded.)

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INDEX OF EXHIBITS

EXHIBIT	IDENTIFICATION
1	Change request form
2	Drawing

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(Exhibits are attached to original deposition.)

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STATE OF GEORGIA:

COUNTY OF FULTON:

I hereby certify that the foregoing transcript was reported, as stated in the caption, and the questions and answers thereto were reduced to typewriting under my direction; that the foregoing pages represent a true, complete, and correct transcript of the evidence given upon said hearing, and I further certify that I am not of kin or counsel to the parties in the case; am not in the employ of counsel for any of said parties; nor am I in anywise interested in the result of said case.

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Disclosure Pursuant to O.C.G.A. 9-11-28 (d):

The party taking this deposition will receive the original and one copy based on our standard and customary per page charges. Copies to other parties will be furnished based on our standard and customary per page charges. Incidental direct expenses of production may be added to either party where applicable. Our customary appearance fee will be charged to the party taking this deposition.

SHARON A. GABRIELLI, CCR-B-2002

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CAPTION

The Deposition of W. Keith Milner, taken in the matter, on the date, and at the time and place set out on the title page hereof.

It was requested that the deposition be taken by the reporter and that same be reduced to typewritten form.

It was agreed by and between counsel and the parties that the Deponent will read and sign the transcript of said deposition.

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CERTIFICATE

STATE OF :

COUNTY/CITY OF :

Before me, this day, personally appeared, W. Keith Milner, who, being duly sworn, states that the foregoing transcript of his/her Deposition, taken in the matter, on the date, and at the time and place set out on the title page hereof, constitutes a true and accurate transcript of said deposition.

W. Keith Milner

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SUBSCRIBED and SWORN to before me this day of , 2001 in the jurisdiction aforesaid.

My Commission Expires Notary Public

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DEPOSITION ERRATA SHEET

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RE: Alexander Gallo & Associates

File No. 1247

Case Caption: In re: Petition by AT&T Communications of the Southern States, Inc.,

Deponent: W. Keith Milner

Deposition Date: January 26, 2001

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To the Reporter:

I have read the entire transcript of my Deposition taken in the captioned matter or the same has been read to me. I request that the following changes be entered upon the record for the reasons indicated. I have signed my name to the Errata Sheet and the appropriate Certificate and authorize you to attach both to the original transcript.

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23 SIGNATURE:_____DATE:_____

24 W. Keith Milner

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 000731-TP

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 Communications, Inc., pursuant to 47 U.S.C. Section 252

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DEPOSITION OF

RONALD M. PATE

January 26, 2001

1:05 p.m.

1200 Peachtree Street, N.E.

Atlanta, Georgia

Sharon A. Gabrielli, CCR-B-2002
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APPEARANCES OF COUNSEL

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On behalf of AT&T (Via Telephone):

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Also Present:

Ron Mills

Jay Bradbury

Deposition of Ronald M. Pate

January 26, 2001

RONALD M. PATE, having been first duly sworn, was deposed and testified as follows:

EXAMINATION

BY-MS.RULE:

Q. Mr. Pate, I'm Marsha Rule. I work for AT&T. And we've met before, have we not?

A. Yes, we have.

Q. Could you state your name and address for the record?

A. My name is Ronald P. Pate, address, 675 West Peachtree, Atlanta, Georgia.

Q. And you filed both direct and rebuttal testimony in docket number 000731 in Florida, did you not?

A. Yes, I did.

Q. I would like to ask you some questions about your testimony. And I would like to start with your rebuttal. On page 2, you discuss that BellSouth has taken positive steps to respond to AT&T's formal requests if doable and reasonable. And

that's on lines 12 and 13. Do you see that?

A. Yes.

Q. And my question is: How do you define doable?

A. Give me a second to read it over.

MS. RULE: Who just joined us?

MS. MERRITT: It's Rhonda Merritt at AT&T.

MS. RULE: Hello, Rhonda, we've already started.

THE WITNESS: In this context, since we were talking about all the issues doable, you had to be able to do it. Sometimes doable could be something from a technical standpoint. Sometimes doable could be something from a resource standpoint. So it was just the doability of whatever specifically we are talking about.

Q. (By Ms. Rule) So it wasn't an issue of whether it could technically or physically be accomplished. It was whether BellSouth could accomplish it within whatever constraints exist; is that correct?

A. Well, I would say that's correct

with taking a look at their constraints, as well as there may be a technical aspect associated with it also. And then you have to look at them both together, doability and reasonability.

Q. So it's a broad term as you use it?

A. Yes.

Q. And reasonable, I would expect to take it in the context, then?

A. I would put it in the same context. There is a reasonableness associated with anything. For example, off the top of my head, not specific to these issues, but if somebody wanted you to go to the store for them, it would be reasonable if the weather was nice. It might not be reasonable if we had ice on the roads and it's still coming down. So it's a reasonable -- even though it could still be doable, what would be reasonable in that situation.

Q. And moving on to the next page, there is some discussion about methods and procedures for implementing operator services,

directory assistance routing. You discuss three sets -- or propose contractual language for three types of routing. And that's in your Exhibit RNP 19, correct?

A. Let me look at the exhibit and see if that's correct. Yes, that's correct.

Q. Okay. And looking at RNP 19, I see what looks like three different sets of contract language. It looks like the numbering on each of them is pretty much the same.

A. I'm not sure of how they do the numbering. I mean, this is from the negotiation team working on the contract. So that's where it came from.

Q. Well, on the first one, and let's make sure we both are looking at the same first one.

A. Certainly.

Q. I see "draft" at the top of the page.

A. Yes.

Q. And then "proposed contract language addition for AT&T," and then there is a number "3.20, procedures for selective

carrier routing." Is that what yours says?

A. Yes.

Q. And on this one, 3.20.1 says, "In order for BellSouth to provide unbranded BellSouth operator services, two options may be elected." So this appears to be the language you were discussing that refers to unbranded OS/DA?

A. Yes.

Q. Okay. The next one is also entitled "procedures for selective carrier routing," but it starts at 3.21.

A. Yes.

Q. So am I to take it that this -- the second contract language is to be taken in addition to, rather than instead of the previous one?

A. I think they were together, if I recall. Once again, I wasn't part of this. I got this from the negotiation team. The first one you just referred to and this one were given at the same time to show option for an unbranded as well as a branded.

Q. Okay. If you turn to the third contract language that starts over again at

3.20, procedures for selective carrier routing. And 3.20.1 says, "In order for BellSouth to provide branded or unbranded services, two options may be elected." It appears to me that the third piece may replace the first two; is that your understanding?

A. That's what I think, but you would have to go back to the negotiation team because what happened with the third piece that was missing from the other two, is there was nothing dealing with routing to an alternative platform or third party platform. And that's what this incorporated in in some of the further paragraphs.

I think you would have to go to the 3.20.9, which is on the very last page of that, where AT&T is using an alternative operator services provider. So my understanding is this was used to incorporate that because it was missing from the prior.

Q. So on page 3, your testimony says that the three documents -- that each document provides the process for establishing the footprint order, but it sounds like we

started out with two separate documents that have been subsumed into one. Is that your understanding?

A. I'm not really sure. We would have to go back to the negotiation team and ask them because this was part of the -- just trying to get the language that was going to be incorporated into the interconnection agreement.

Q. Okay. And are you familiar with negotiations that have resulted in language after the -- I guess the language included in your RNP 19?

A. No, I have not looked at any of that.

Q. Do you know whether any of the language that's included in RNP 19 provides intervals for ordering?

A. We would have to look. I'm not that intimate with it. I see, just a quick glance looking on the very first page of the first one, at 3.20.4, it refers to an interval. The interval for the provision of the trunk group should be approximately 45 calendar days. So there appears to be some

incorporation of intervals there.

Q. How about in the next piece?

A. On the second page of the next piece which is carried over 3.20 -- excuse me, 3.20.4, the interval for this process is 30 days for up to 20 line class codes per in office. I see that cited.

Q. Okay. And how about for the final piece, do you see any intervals there?

A. In 3.20.6, that final piece is interval for this process is 30 days for up to 20 line codes per end office.

Q. Do you know who Michael Willis is?

A. Yes, I know Michael.

Q. And who is that?

A. Michael is a lady, I have to say that because the name Michael people don't realize such, and she is a member of the negotiation team.

Q. Would she have likely been involved in the negotiation of the language in your Exhibit RNP 19?

A. May have, but I don't know for sure who drafted or negotiated this part of it.

Q. I would like to hand you an E-mail, and a copy of a document attached to it and ask you to take a look at it for a minute.

MS. RULE: Who just joined?

MR. BARON: Michael Baron, commission staff in Florida.

MS. RULE: Hello, Michael. We have already begun.

MR. BARON: No problem. I'm just on standby.

MS. RULE: Okay. Did somebody just join or just drop off?

THE WITNESS: Am I supposed to have -- help me with the pages here because it looks like I've got a page that probably just got copied twice. How many pages? I'm missing a page or something. I don't know.

Q. (By Ms. Rule) You know, and so do I.

MR. BRADBURY: You've got two pages 3.

MS. RULE: Do we have an original here?

MR. BRADBURY: If not, I'll go

find an original.

Q. (By Ms. Rule) Why don't we put this aside, Mr. Bradbury will go find us a page 2, and we'll come back to it.

In moving further down on page 3, you mentioned that BellSouth provided user requirements for unbranded OS/DA with ordering instructions to AT&T in mid-November 2000 in response to their actual request for that option for a specified project, the so-called friendly test. Is that friendly test also known as the Georgia 1,000 test?

A. I'm trying to find where you're reading from. What were the lines?

Q. I'm sorry. Why don't you start at page 3, line 18, 19.

A. Yes. My understanding, that's the Georgia 1,000 trial used that terminology, used to describe that as well.

Q. And the request for the option for the specific project, how was that request made?

A. That request would have been made by whoever is working on your project. I know Ms. Joe Williamson, I've seen her name

on a lot of that. I'm sure there was others involved. I've seen a -- I can't remember his name. I want to say Bobbick or something similar to that. And they would be making those requests back to their account team representatives, the BellSouth account team for AT&T.

Q. AT&T also submitted a change request for electronic OS/DA ordering; is that correct?

A. Yes, I do recall seeing that.

Q. And a change request is made for a change that BellSouth would make for the industry as a whole, correct?

A. Typically, it could be industry as a whole, but I guess there is situational things where it could be something just to an individual CLEC, but typically yes, for the industry as a whole.

Q. So a change request wouldn't have been made for a specific test project, would it?

A. It could be. I don't recall the wording on that particular change request. I have read it before. I just don't recall how

it was worded, but it could be.

Q. Okay. You are aware that AT&T made a change request for BellSouth to develop electronic OS/DA ordering?

A. That's what that change request was that we are discussing now, yes.

Q. And that was a general change request not specific to the Georgia 1,000 test?

A. I don't know that it was interpreted that way. I don't get involved with working on individual change requests. What I do know from talking with people about this situation is that change request was treated as an individual request specific to AT&T to that Georgia 1,000 trial. But it identified only that central office, only that switch. So that's the way it worked. Whether that was the intent or not, I cannot speak to.

Q. So you're saying the change request identified a specific switch?

A. I would have to go back and read it. I'm just telling you how that change request was worked --

Q. Okay.
A. -- from my understanding.
Q. Moving on to the next page, you discuss some user requirements. What are user requirements?
A. The user requirements would be -- first off, let me make sure I'm saying it in the proper context from how you're referencing it. Could you point me to where specifically you're referring to?
Q. At the bottom of page 3 and then continuing through the top of page 4, you said user requirements document is provided as Exhibit RNP 20.
A. The user requirements document that I'm referring to here is the document that we have developed based on the requests from -- this specific request from AT&T. So that actually spells out the specifications how this will work. So it's a document that is given back to the user, to the AT&T that then identifies how the request will be functioning, what you have to do, what you have to enter and so forth. It's those requirements. It's written by a requirements

writer based on requests that was made.

Q. Okay. So when it says user requirements, I guess do you interpret that as requirements for the user or not requirements from the user?

A. Well, it's a combination of both. It's the user saying what they want. And as a result of that, you write those requirements. It's just the standard way you develop and implement a functionality.

Q. Is that in the nature of more technical specifications?

A. It will lead to the technical specifications, but usually this is more of an English language written version. Then at some point in time the programmer would use that to do the programming necessary.

Q. Do you know when the user requirements were provided?

A. I brought a copy of those because I know we furnished them as they --

Q. It's RNP 20, I think.

A. Is it in here? It's dated. It has a date of November 16th on the user requirements. And what I recall is they

were actually given -- even though it's dated the 16th, a few days, a couple days before that to AT&T.

Q. So mid-November time frame?

A. Yes.

Q. And those user requirements are specific to the central office used in the Georgia 1,000 test?

A. That's what it's supposed to be, yes.

Q. So I couldn't take those user requirements and place a general order for OS/DA routing across BellSouth's region?

A. You could not take these user requirements. But from the work done from these user requirements, the bulk of that's done to be able to do that anywhere else. But each one for line class codes would be specific to that particular switch in that central office.

Q. Okay. Moving on to page 6, we've got a paragraph that starts on line 14. Take a second and read that.

A. I've read it.

Q. Okay. Now, it references a

carrier notification. What function does a carrier notification serve?

A. A carrier notification is a letter that we put out on our web site that advises something that -- of some nature associated with the systems. We always put them out there advising when there is a change to the system and the functionality.

For example, we put them out there when there is a release that's about to go in, describes what's on the release. So its whole intent is to notify the ALEC industry as a whole it's something that's about to happen to the system. We also put them out there, for example, if we have some scheduled downtime for a system release. So it's just a method we use for notification.

Q. Let's take a look at Exhibit RNP 21. And that's the November 22nd carrier notification that you reference on page 6. Do you have it?

A. Yes.

Q. Okay. Now, on line 14, you say that BellSouth has made that process -- and I think you're referring to the OS/DA process

that was made available to AT&T in the Georgia 1,000 test; is that correct?

A. Yes, that's correct.

Q. And you're saying that BellSouth has made that process available to all CLECs. How can I tell from this carrier notification how to get that process for a different company?

A. Well, it states here, it's down on the first page, next to the bottom, let me read it. "The ability to control branding on operator assistance and directory assistance using specific line class codes was implemented for AT&T in Georgia. Other CLECs interested in this capability should contact their account team representatives."

So the process it's saying is if you want to use this methodology, line class codes for OS/DA, then contact your account teams and they will work with you to establish such.

Q. Okay. Isn't that similar to, like, working on an individual case basis?

A. With line class codes for an ALEC, you do have to work on an individual case

basis. It's not something you can do across the board because you have to define what that particular ALEC is wanting to do. It gets back to the user requirements. You might be able to reuse something if it's the same as what someone else has already done, but there could be something unique to that particular ALEC.

Q. Assuming that ALEC A, ALEC B, and ALEC C all want to do OS/DA ordering using line class codes, the process should be the same, shouldn't it; it's just the codes that were different?

A. Most of the processes are the same, but when you program, then, for those particular ALECs, you're going to have to put some programming in our system that identifies just those ALECs. It would be done by an identification of their OCN, their operating company number is one thing.

So we have to put that programming in place. So that is something unique. Even though they can share a lot of the other common programming that's done, the bulk of the work, as I said earlier, already being

done, there is some unique things that have to be accomplished.

(Whereupon, a discussion ensued off the record.)

Q. (By Ms. Rule) So let me assert to you and you can have this subject to check, if you like, that this is a document received from Michael Willis, was sent January 15th, 2001, and that the cover sheet is correct. And it includes BellSouth's redline of AT&T's proposal for selective routing via line class code/OLNS language.

One of the things I noticed when I looked through here is on page 2 at the bottom. And it's page numbered page 2. And on the other documents that we discuss that are in RNP 19, you point out that had intervals associated with them. And I notice here it appears that BellSouth has deleted the intervals and said that they would be negotiated. Do you know why that is?

A. No, I have not been a party to any of that. I do not know.

Q. Are you aware of any other language that has been discussed between the

parties after the exchange of this E-mail?

A. No.

Q. On page 7 --

A. Of my rebuttal?

Q. Yes. You asked the Commission to find that BellSouth has responded to AT&T's change request to implement electronic ordering for OS/DA capability based upon the parameters of its specified project.

I would like to hand you a change request form. And you can see on the second page it's identified as ED-10209000001. Is this the change request to which you refer in that testimony?

A. Yes, yes. This is the one I have referred to.

Q. Can you point me to the parameters of the specified project that you're referring to?

A. This is written very broadly. What the parameters that I'm referring to is from as a result of this change request working with AT&T, my understanding is the request is specific to one switch in one central office and worked under the guise of

this change request. That's how my language is intended, and that's what it's referring to.

MR. 1234: Off the record.

(Whereupon, a discussion ensued off the record.)

(WHEREUPON, Pate Exhibit-1 and Pate Exhibit-2 were marked for identification.)

Q. (By Ms. Rule) Moving onto page 10 of your rebuttal. The first paragraph you're discussing the change control process and you use the word collaboratively. And the sentence reads, "it's not clear how BellSouth and the other ALECs could be acting more collaboratively." Could you define collaboration in the sense that you're using it here with the quotation marks around it. I just want to make sure I understand it.

A. Let me read the paragraph and I'll respond. Well, the word is put in quotations because it has been bounced back and forth between Mr. Bradbury's testimony and mine. And I know Mr. Bradbury has accused us of not acting in a cooperative effort. And that's what I mean by

collaborative effort. You act cooperatively as a group. And we take exception to that. We think we have acted and we've acted in good faith and we are acting in a cooperative approach. That's what I am referring to here.

Q. Okay. So I could substitute the word cooperative, and it would be correct?

A. Cooperative, but collaborative also deals as a group. Collaborative act is a group cooperation. It's not just two parties. It's usually something more than that, but it could be used for two as well.

Q. And over on page 11, you discuss an instance where a consensus is required. Could you also define exactly what consensus is?

A. Well, to me that's a rough one. But first point me to to where I used that, please.

Q. Look on page 11, line 14, is one place where it appears.

A. Okay. Let me first go back and say where I started, that's a rough one. I know that in the document I've usually seen

the word -- the change control document the word consensus. Now, to me, consensus means everybody agrees. And that's a level of cooperativeness, collaborative effort that's very, very hard to achieve in any group setting, particularly where members of a group are going to change.

And in the setting we are dealing with here, that's part of the process. You've got different people representing the ALEC community at different times for various business reasons that are appropriate. But for a group to be truly able to work in a consensus environment, they have to mature under a team approach and figure out how do we come to a common understanding that we'll all agree to that's for the best of the team, whatever the project is they are working on, even though individually some people may have wished something a little bit different.

The way I see consensus used a lot in the change control process is more of a majority, voting on something. So the reference here where consensus is required to

make decisions is more from a change control standpoint in the majority.

Q. If I were to then insert, I guess, majority decision in the change control document wherever it says the group must reach a consensus or if a consensus occurs, would that be a correct usage?

A. I don't know. I would have to go back and look at the document and see. A lot of times, you know, you could use in this effort a majority approach if it's something that just requires a simple vote and the outcome of the vote would be acceptable, that's great. But sometimes consensus or a majority may need to go hand in hand because you're asking for a vote but still it has to be subject to what we used earlier the doability and reasonableness associated with with what that request is. BellSouth may still have some reasons why it can't do it.

Q. Well, I guess that is where I'm going about the question about consensus. Does consensus mean something less than 100 percent agreement?

A. It shouldn't. If you really look at the word consensus and what it means around working as a team, but in the way I've seen it used in the context of these proceedings, CCP, it appears to be.

Q. Well, would it be useful to define consensus in the CCP, the change control process?

A. If that's -- you know, if I currently have a team working on that, if that would be useful, if they think that's necessary, then I'm going to say since that's the team that has to live with that, for them to define it. If it's not necessary for them, then they can define whatever it is they want. It needs to be clear how it operates. That, I'll agree with you.

Q. Well, I guess that puts us into kind of a circular problem. If we don't know what it takes to reach consensus, how do would know when we get there? And if it requires 100 percent agreement, that's easy to determine. If it requires something less than that, where do you draw the line?

A. I'm not sure. That's where the

team would have to define where they draw the line. That's what I'm saying, is if they need more clear definition around it, I have to put myself personally at that avenue, that particular fine aspect where that word is used; but if clarity is not there, then the current team as well as on an on-going-forward basis, because things evolve and change, then you put the clarity in place.

Q. Do you participate in the change control process?

A. Not in the meetings, no, no. I see things from that, but I'm not a member of the change control process itself.

Q. If the change control document calls for consensus and 100 percent of the CLECs agree and BellSouth does not agree, is that a consensus?

A. I would have to first go back and look at how we are using it, in what context. So I mean I can't answer that question. If you've got a specific example, give it to me and let me see.

Q. Why don't we work from RNP 22,

since I'm going to come up to that one next. And RNP 22 is your exhibit that shows, I guess, BellSouth's redline of the CLEC redline of versions 2.0 of the change control document; is that correct?

A. Right, that's correct.

Q. Okay. Now, I'll direct you to the page number where it printed out on mine. It's on my page 29. But that's in -- let's see what section it's in. It's in table 4-3, types 2 through 5, detail process flow. And I realize at that it may not be on the same page for you.

A. What step are you looking at?

Q. Step 8.

A. Step 8.

Q. Sub part 5.

A. Okay.

Q. And then in the BellSouth orange language, it says "Based on BST/CLEC consensus, determine which scenario should be implemented."

MR. LACKEY: Off the record.

(Whereupon, a discussion ensued off the record.)

THE WITNESS: I just have to give you my interpretation. We would have to go back to the author of this. But it reads, "Based on BST/CLEC consensus, determine which scenario should be implemented."

And my interpretation would mean that then this is based on the CLEC community as a whole and then BST coming to a consensus, an agreement that that is the scenario, whatever the scenario is specifically, should be implemented. That's the way I would interpret it.

What I'll have to say, if it's not clear, if it's creating confusion, this word has been used before and, you know, the team that's out there needs to get definition around it so there isn't any confusion. There should be clarity. And that's what part of that subcommittee that's being charged out there to do should be doing.

Q. Well, again, it kind of puts us in a circular situation. If you have to reach consensus about it, what it means and you don't know what it means, what is the first step towards breaking that deadlock and

getting there?

A. The first step is the parties discussing what it means. It should be the author here representing BellSouth in that language with the team, the subcommittee team members and their interpretation, and they should discuss it in their meeting, what does it mean and break it down.

Q. Do you know what interpretation BellSouth has placed on that term generally in the context of the change control document?

A. No. I haven't looked at it that way. I have not viewed it that closely, but I see the word consensus. And the answer to you is no, I haven't looked at it that way.

Q. So you can't tell me, then, whether it means BellSouth must agree or there is no consensus?

A. Well, as I said earlier, the way it's used in this particular one that you reference, that's the way I would interpret it, that the consensus means between the CLEC community and BellSouth, we agree in the scenario. But I'm not saying or even

implying that that was the intent of how it's used. Just as we sit here and talk, that's the way it impacts me.

Q. Okay. Again, I realize the pages may not be the same, but on my copy, if you turn two pages farther to page 31, that puts you step 10, for me it's the second page of step 10, it looks like sub step or sub part 4. Do you see that?

A. I found sub part 4.

Q. Okay. And do you see the -- well, I guess there is some blue language, an orange note, more blue language, orange language, blue language.

A. Mine is printed off in different colors, so you're going to have to direct me.

Q. At the very end on my page and maybe not on on yours, there is a parenthetical that says "BellSouth cannot support."

A. The square before it reads "implementation will occur NLT 90 days."

Q. It's right after that. Do you see that?

A. Where you cited "BellSouth cannot support"?

Q. Yes. Okay. What does that mean?

A. They could not support the change that was being requested.

Q. So in other words, BellSouth will not agree to it?

A. Yes.

Q. What is the effect of BellSouth not agreeing?

A. Well, at this point, this was part of the document that was developed for one of their subcommittee meetings. So they are saying we can't agree with that. They were supposed to take this back to that meeting, explain why and work from there. So that was just input from BellSouth. We could not support the language that the CLEC community was requesting.

Q. And you're aware, aren't you, that there was recently a ballot regarding some of the suggested changes to the change control document, correct?

A. Yes.

Q. And, in fact, the balloting closed

last night at midnight, right?

A. That's my understanding.

Q. Assume with me for a moment that there was some BellSouth language and some CLEC language, if BellSouth could not support the CLEC language, but the CLEC language got, let's say, 100 percent consensus from the CLEC community under the change control process, would the CLEC language go into effect?

A. It's not my understanding that it would, no. If we can't support it, there may be some -- I would have to look at some specific language what that result is, but there may be some reasons, it goes back to that doable and reasonableness issue, that we cannot do that.

But for sake of conversation, it may be an interval that's being requested that is beyond reasonableness what our processes internally would support what to do, whatever that particular thing is. And when we get to that and we can't do it, we'll have to sit down and deal with it.

Q. So if I see BellSouth cannot

support in that context, it basically tells me it's not going to go into effect over BellSouth's objection; correct?

A. That's -- let me back up. This was meant to send back to the committee to work. I think we got to get to that point to identify those where we say we will not support. I'm not certain, I was not directly involved with all of this where it says cannot support, that that was the intent of this at that point in time. It could have been so we can't support that, we can work with that language, I do not know. We would have to get the people that got that specific. But at some point in time there may be items where we say we cannot support. It's beyond what we can do. We are going to have to deal with those.

Q. So if it came down to a vote as with the recent vote, and there was some language CLECs proposed and that BellSouth could not support, then 100 percent CLEC concurrence would not be enough to overcome BellSouth's lack of support?

A. Well, yes. And I'm going to

relate that back to this scenario. If I put a vote out there right now to all the people that work directly for me, that. They want a 20 percent increase next year in their salaries because it's that time you've got to look at it, BellSouth is not going to support that. It's going to be beyond the reasonableness. Even though they may have the financial ability to do it, they are going to say no. And I, as their manager, their director, is going to say no. Thanks for the vote. I appreciate the input. Now let's sit down and talk about what we can do.

Q. Okay. Skipping ahead to page 14 of your rebuttal testimony. If you start at the very last of line 25, you explain that "BellSouth has committed to following the CCP, and we have agreed to language that requires us to do so." I couldn't find where that language was. Could you show me what it is?

A. Let me read this real quick. Well, this whole area is referring to an issue that was issue 9-G of the BellSouth

business rules. And what this is written to is we have acknowledged here that under that, the change control process was not followed as it is written. And what we are saying is if you go back -- this is not a systematic problem. We are going to follow the language as its written, and there is notification languages in here -- we'll have to find it -- associated with documentation. Give me one second. Page 22, all additions --

Q. And you're --

A. I'm sorry, page 22.

Q. Of RNP 22 --

A. Yes. Look and see if we are on the same page again. Page 22 at the bottom. It appears that we are. And the very last bullet point says, "All additions and changes to BellSouth business rule documentation will be provided to CLECs no later than 30 days in advance of the release implementation date," or saying we have built a notification here and I think we have come to agreement on that. I'm not sure where the team is, but that's what I'm talking about, what I'm

referring to when I say the document itself. Our company is committed to following the CCP. We have agreed to language that requires us to do so. That's what I mean.

Q. Okay. I was thinking that your testimony said you've agreed to language that requires BellSouth to follow the CCP. Is there any language that I could find that?

A. I'm not sure that there is language, but that's the whole intent of the document. Why are we going through this process of putting a document together and working with the CLECs if we are not going to follow it. We've got better use of our time.

Q. Well, that's was kind of the gist of my question of when you said that you agreed to language that requires us to do so, I just couldn't find that language. And I was wondering if you had a cite to it.

A. No. That's not what I meant from that standpoint, the way it's used in this.

Q. I understand. Okay. Moving on to introduction of new interfaces, which you begin discussing on page 17 of your rebuttal.

Are you there?

A. Yes.

Q. Okay. BellSouth is developing OSS today outside of the change control process, correct?

A. I'm not aware of any that they are developing right at the moment specifically targeted to CLECs other than the DLEC TAFI being charged to that subset -- I'll call the data LECs a subset of CLECs or ALECs as we refer to them in Florida. Other than that and that was being developed with those data LECs, I'm not aware of any development outside of change control.

Now, hold on. Let me back up. I've got to rethink through this. We have some XDSL processing that's taking place, loop makeup, all that area. That I would be -- that's to comply with regulatory. So we had that development and a solution that's being taken place. But that has been shared with the -- in many workshops and forums extensively.

Q. But it's not being developed in accordance with the change control process?

A. Well, I don't know where -- the change control process specific area you're referring to so, why don't you help me by pointing out what we are not compliant with.

Q. Has any DLEC submitted a change request through the change control process asking for XDSL, OSS functionality?

A. Well, that's a regulatory issue.

Q. Okay. And doesn't the change control document say that regulatory requirements will be handled through the change control process?

A. Yes, it does.

Q. Has BellSouth initiated a change request to handle this regulatory requirement through the change control process?

A. I don't recall a change request; however, I don't interpret the development of the interface to require a change request. As I recall the document, it talked about in terms of introducing sharing with the CLEC community, what that was and particularly for new interface development and get their interest. That's what I recall.

Q. How about regulatory requirements?

Aren't those to be developed through the change control process?

A. The regulatory requirements should be shared through the change control process. Whether that means that you submit a change request or not, I don't know. I haven't looked at it and interpreted it that way. I know it would be feasible to submit change control requests for some of the regulatory requirements. It may be -- and I don't have one off the top of my head, but it maybe on the magnitude -- I'm thinking of the UNE remand order, what all is going there, as large the scope of that is, that it would be hard to incorporate it in just a change request. It's a pretty big undertaking.

Q. Do you know whether -- and let me make sure I use your language. I think you said it would be appropriate to share the development through the change control process. Did I get that right?

A. Yes. And we have in here for new interfaces that we would bring that to the change control. I'll have to put that language out and share with them to get

interest. However, I think that's more intended, when I think of an interface, I think of something like our TAG interface, or our LENS interface, where we are developing something of that nature as opposed to something that may be far, far more reaching and when I referred to the UNE remand and all of that and we are having to develop a whole new architect associated with processing those orders.

It's more than just -- the interface that would be used for that is the same interface. You would submit the orders via TAG but some of the architecture behind it being developed would be different.

Q. What exactly is BellSouth developing in the way of XDSL OSS?

A. We are putting a new corporate gateway in place that will be where those requests come through. And the architecture behind that, it will not be going through the LEO LESOG that you're more accustomed to. That's how the local service requests route today. Instead it will come through a corporate gateway that will have a router

there that will do the same things through LEO and LESOG, but it will have more capacity and be able to handle and designed to handle the specific XDSL as well as eventually line sharing. And line sharing is not in place right now.

Q. So that would be an had interface, right?

A. No. That's what I'm trying to clear up. The interface and what we are trying to describe in the change control process is the interface that the CLEC uses to actually input that order. That's going to be coming through the same interface as it is today.

Q. Which is?

A. TAG, EDI, LENS is what I'm referring to.

Q. So if I understand you correctly, then, if I'm the CLEC and I'm using whatever interface I'm currently using, TAG, EDI, I will enter my orders, for example, into the interface I'm already using. After the information leaves my interface, it goes to the new gateway --

A. Yes.

Q. -- a new corporate gateway?

A. So that's still developing OSS, when you use the term. But the OSS is all that architecture behind it. It's not the interface associated with getting that data transmission for that request. And what we are trying to focus here in the change control process is the interface.

Q. If I'm a user of EDI, and I'm sending, I guess, orders that are going to the corporate gateway, what's different about those orders or -- strike that.

Is the path that those orders travel after they leave my interface the same as they would be if it went through LEO and LESOG?

A. No. It will take a different path, but that will happen once it comes to BellSouth. And then it will be identified, send it to that route to take it to the corporate gateway.

So from a CLEC user's perspective, you'll still use your same interface. We are giving you the business rules or whatever

you need to do to modify or change that, but it will be routed differently when it comes over to BellSouth.

Q. So is there a router in between?

A. There is a router in between. I have to go back and think through this. I haven't looked at the diagram in a while.

(Whereupon, a discussion ensued off the record.)

Q. (By Ms. Rule) I've handed you a document prepared by Mr. Bradbury that's a colored chart with many boxes with arrows. Do you have that?

A. Yes, I do.

MS. RULE: Why don't we identify that as an exhibit.

(WHEREUPON, Pate Exhibit-3 was marked for identification.)

Q. (By Ms. Rule) And have you had an opportunity to look at it a little bit?

A. Yes, I have.

Q. Now, this is Mr. Bradbury's attempt to put on paper what he understood the corporate gateway to be and how it worked with some other BellSouth systems?

A. Okay.

Q. And I understand you have a proprietary document in front of you that you cannot share that you're able to compare with this.

A. Yes, it's a proprietary document because it's one that's not produced by BellSouth. The corporate gateway solution that we are currently deploying comes from Telcordia Technologies. So I'm looking at their document. And that's why it's --

Q. So you're able to compare the Telcordia diagram with Mr. Bradbury's diagram?

A. I can try to compare, but I can probably better just describe the flow, so if I can't answer your questions from that standpoint.

Q. Let's try it that way.

A. If I recall the question, you wanted to understand how an XDSL order would be routed. And it depends on what interface you're using. If you're using a TAG or RoboTAG, it's going to be routed directly to the corporate gateway. As well as for LENS, it will go directly to the corporate gateway.

If you're coming via EDI, which AT&T is primarily an EDI user, it's going to go through the EDI central over to the local service request router referred to as LSRR in Mr. Bradbury's diagram. And the LSRR will identify that as an XDSL transaction and route that to the corporate gateway. So only for EDI does it come in via the LSRR. The rest of it or all others, it goes directly to the corporate gateway.

Q. And going back to something you said earlier, you said that, please correct me if I've got it wrong, but this was not an interface because the CLEC or DLEC uses the TAG, the EDI, the LENS interface to, I guess, prepare and send their orders, correct?

A. That's correct. The interface that currently exists today are the same interfaces that are used. It just would be routed via a different gateway.

Q. So it falls in the category of operation support systems but not an interface?

A. That's the way I described it, and

that is the intent of the change control. All this architecture, OSS incorporates all of our back -- further downstream legacy provisioning systems. This is a rather encompassing term.

Q. Mr. Bradbury has been very clear with me on that issue. So if I'm a DLEC or CLEC user, then I will need to get information from BellSouth to program my interface, so it can appropriately interact with the corporate gateway, correct?

A. Sure.

Q. And is that the business rules you were referring to?

A. Yes.

Q. And there would also be some technical specifications?

A. Yes.

Q. Would the business rules be developed through the change control process?

A. The business rules for this initially were being developed through some BETA testing because of this being put in a whole new architecture in place. So I don't believe -- I don't know whether these

business rules were ever shared with the change control process. I don't know. What I do know is it was worked in a cooperative effort with several BETA testers that we identified. And we do this periodically. I mean, AT&T has participated in such things before to come in and BETA test it, fine tune, and work these out.

Q. Is there a separate DLEC change control process?

A. No.

Q. Going back to Exhibit 3, I guess the question is does Mr. Bradbury have it mostly right down here? Are there any changes you could make to if he has got it wrong somewhere? I would really, of course, like to see the proprietary document. But failing that, I just want to make sure I understand the flow and perhaps we can work off this one.

A. Well, I get confused by his flow because the way he does it, he just points from the ALEC premises to this larger big box. And you got to go a little bit different route than that. For example, his

EDI client, that should be drawn directly to the LSRR, the local service request router. Then the RoboTAG and --

Q. Okay. Got it.

A. The RoboTAG and the TAG client is going to be going right to the corporate gateway. And I'm confused by the way he has his EDI, LENS server and TAG server. If he means BellSouth's server, which I think he does, I'm just confused by how he has got that down.

Q. I believe everything in the big yellow box is BellSouth.

A. That's what I think he intends as well, but it's going TAG, API is pointed right to the corporate gateway.

Q. It wouldn't be -- see where he has TAG server going to LSRR?

A. Yes, that line would not be there for an XDSL transaction. However, it would be there if it was other than an XDSL transaction.

Q. Okay.

A. So his diagram has got me even confused. He is usually more simplistic than

this.

Q. Okay. Let me make sure I understand. If I am a DLEC, and I'm sending an XDSL order from an EDI client, it goes directly to the LSRR and from there it goes to the corporate gateway; is that correct?

A. That's right. And we would have EDI central coming into the EDI server somewhere positioned in between. It takes it right to the LSRR. So that's where it's initially received our server for EDI.

Q. Okay. Which --

A. I'm not sure if that's what it means or not.

Q. But if I drew an EDI server in there, that would be in between the EDI client and LSRR?

A. Yes. And then goes next to the electrical service request router. And it's saying it looks at that transaction when it gets into the local service request router, that's asking is this an XDSL transaction or is it everything else today? Is it an everything else would be a resell transaction or UNE-P or loop order. If it's that, then

the LSRR takes it to the LEO LESOG route.

Q. Okay. So then if I'm the DLEC using the EDI client, every one of my orders is going that route?

A. Yes.

Q. Not just my XDSL orders?

A. That's correct. It's only EDI that's the exception. For TAG and LENS, it is going directly to the corporate gateway. If it's XDSL, but everything else is going via over to the LEO LESOG route which first comes into LSRR to get there.

Q. Okay. So --

A. Understand -- let me back up for you so you can put this piece together. He has got -- he has got it captured that the -- one of the main reasons of the local service request order was to determine whether it was LNP or not. And if it was an LNP transaction, it would send it to the LNP gateway, which he has that captured. If it was not LNP, it sent it to LEO and LESOG. Now we've introduced this new component just for EDI coming in which is saying if it's XDSL, take it over to the

corporate gateway.

Q. So for a EDI client, then LSRR is basically a router for everything. It looks at and routes all orders coming from the EDI client?

A. That's correct.

Q. But for RoboTAG and the TAG client, it sounds like the DLEC or CLEC interface itself splits the orders and sends XDSL to the corporate gateway and the rest where?

A. It will send the rest over back to the LSRR or first come into our server which will take it to the local service request router. And for those transactions all it is saying, is it LNP or not.

Q. Now, I want to go to something you said before, and I'm not sure I understood. I think you said the corporate gateway was going to take the place of LEO and LESOG?

A. I said it could potentially. Some of those transactions down the road, as we take at look at it is one span or capacity, whatever the corporate gateway may allow us

to do, that that will be something we'll look at.

Q. What exactly do you mean by that?

A. By capacity?

Q. Well, I mean, yes, let's talk about capacity?

A. Well, what I'm saying as the industry continues to grow, there is going to be more volume we expect. And so you're always looking at the scaleability of your system meaning how can you grow that capacity and grow that volume. It will be constantly watching this and there may be certain transactions that we will start to take via the corporate gateway. We definitely continue to try to work on all the UNE remand 319 products. And probably as those are developed, whatever we can develop for mechanization, they will probably come to the corporate gateway and not via LEO or LESOG.

(Whereupon, there was a brief recess.)

Q. So would you envision then over time LEO and LESOG being phased out?

A. I can't see that far at this

point. I don't see LEO and LESOG being phased out at any point in time in the near future. Could its use change, different transactions going that way, potentially yes, but phase out, I don't see at this point.

Q. Okay. Going back to Exhibit 3, down at the bottom left there is a box and it says BellSouth ROS, and an arrow, direct API, and it's pointing at corporate gateway. How does BellSouth or how will BellSouth enter orders into the corporate gateway?

A. Right now BellSouth does not enter orders into the corporate gateway. It goes directly to the service order communication system, SOCS.

Q. What's the relationship between ROS and the corporate gateway?

A. There is none today.

Q. Will there be when the corporate gateway is fully implemented?

A. I don't know. There's been discussion of routing transactions through the corporate gateway. BellSouth's all their retail units come in in that way, but I'm not sure where that is. There has been some

discussions.

Q. What advantage might that offer?

A. I don't know if it's more of an advantage, you could categorize it as that or just more us being -- I say us -- where I work being the network organization, we would ensure that all transactions are coming in the same way.

Q. Is there anything fundamentally wrong with Mr. Bradbury's diagram?

A. Well, I point out some of the arrows and whatever, and I would have to sit down and study it in a little bit more detail. It's looks like he's got all the piece parts identified. I would just have to look at each individual arrow and how he has it going. It's kind of difficult for me to embrace that all right here on the spot. So I'm just not going to be able to answer that without studying all this. I don't know what he means by New SOG, service order gateway.

MR. BRADBURY: Service order generator.

THE WITNESS: Service order

generator, okay. I would have to study it. I like mine better but I can't give it to you.

MS. RULE: Well, if there is any way that you could give it to us, I would very much appreciate it.

MR. LACKEY: Why don't you just keep bringing that up. Let me tell you what I'll do, I charge you to go find out when you get permission from Telcordia to give them that.

THE WITNESS: I have already written myself a note. I want to look at that.

(Whereupon, a discussion ensued off the record.)

Q. (By Ms. Rule) Are you familiar with the CLEC test environment now being built under change control?

A. Yes, I have some familiarity with it, yes.

Q. Will the CLEC test environment be able to work with the corporate gateway?

A. I haven't looked at it. I really don't know. And my reaction would be yes,

it should, but I don't know.

Q. Do you know of any reason at this time why it wouldn't be able to?

A. No. I don't know of any reason why it would not.

Q. Does BellSouth currently have any OSS in place that will facilitate line sharing?

A. Yes, there is currently today -- it went in September 30th of last year where you could submit line sharing orders electronically and it went via the LEO LESOG route. We were also -- that's sort of for us an interim measure, line sharing. We, as part of this overall Telcordia solution, will have in place right now, targeted towards probably third quarter's time frame, where it will come in via the corporate gateway. But we went ahead and put the interim solution in place via LEO and LESOG.

Q. How about for line splitting?

A. Nothing on line splitting.

Q. Do you know whether BellSouth has any plans to put OSS in place for line splitting?

A. I don't know what the plans are. I haven't been close to that one.

Q. Do you know who would be?

A. I mean, that would come from our IT group headed up from the BellSouth's standpoint by Mr. MacDougal. And, of course, Mr. Stacy is involved with that as well. I just have not gotten close to the line splitting.

Q. Would the OSS for line sharing be similar to the OSS for line splitting?

A. Well, I don't know since I said I haven't gotten close to the line splitting.

Q. Okay. I thought you weren't close to the plans. Does BellSouth currently have in place its own electronic interfaces that it uses for provisioning or providing XDSL?

A. You're referring to -- ask me the question again, please. I'm sorry.

Q. Let me ask it in a different way. How does BellSouth order XDSL services for its retail customers?

A. We have an ADSL product offering, I think it's called fast access. I haven't looked at that closely. And so I'm not

familiar with exactly how that order flows. Our ADSL offerings, we offer a tariff ADSL to network service providers. And there is some relationship that we, our retail units sell fast access, but I just don't know the details of that, I'm sorry.

Q. Well, would you agree that whatever interfaces or systems BellSouth has in place for delivering XDSL to its customers, it must make equivalent functionality available to the CLECs?

A. Corporate functionality, access to corporate functionality, I will agree.

Q. Are you familiar with the Access 271 order?

A. I've read at least parts of it, yes.

Q. And that's the order that came out last June of 2000?

A. Whatever time, yes.

Q. Are you aware of the position that the FCC took regarding line splitting with UNE-P?

A. No.

Q. Are you familiar with an August

2000 ex parte, a BellSouth ex parte to the FCC regarding line splitting?

A. No.

MS. RULE: Off the record.

(Whereupon, a discussion ensued off the record.)

Q. (By Ms. Rule) Okay. Back on the record. The FCC recently issued a line sharing and line splitting order in this month, as a matter of fact, that said ILECs and CLECs should work toward processes to develop a single order process to add XDSL to UNE-P voice customers. Are you aware of any developments in process toward that goal?

A. No, not at this point.

Q. Do you know of any CLECs in BellSouth's territory that are currently engaging in line splitting?

A. No.

Q. Okay. Skipping way ahead to page 25 of your rebuttal. See a list of various types on lines, it looks like 15 through 19. Do you see that?

A. Yes.

Q. And then over on the right-hand

side of the page, you've got various dates listed as turnaround.

A. Yes.

Q. Could you tell me exactly what turnaround means? When would be the start and when would be the end of the turnaround?

A. Well, what turnaround means is, as the name implies, from the time you received it and you turn it around and get it back to the individual or the party that gave it to you. Turnaround should be -- I don't know how it's defined here very specifically, if they have gotten that level of detail, it should be date and time you receive it and the date and time you send it back out.

Q. So would turnaround mean that the problem should be resolved or that a response would have been given? I'm not sure which one.

A. Well, I'm just defining the word turnaround. I haven't looked in the context specifically with what the question was here. So let me read it first. We are talking about the escalation process. And AT&T was referring to specific intervals it had added

for the steps in the process, the steps being defined as when you go from one level of escalation to the next level. And I think there is three or four levels of escalation. And depending on the type of the change request we are dealing with, we have different intervals that were being proposed.

So what we are referring to is you have a response for type one issue of a one-day turnaround for that escalation. And then if it went to the next level, it would be another day turnaround is the way I'm interpreting this.

Q. So turnaround would basically mean completion of that step, whatever that meant?

A. Yeah, you got a response. It may not be the response, you wanted but you've got a response.

Q. And going ahead to page 30, I would like you to take a minute to read line 15 through 4 of the next page.

A. Okay.

Q. Now, it seems to me on line 24, where you say that a single employee types

the order into DOE, we are referring to a BellSouth employee, correct?

A. Yes.

Q. So when the BellSouth employee types the order into DOE, the ALEC still has to go back and add information into its own internal systems, correct?

A. Sure, if you -- for your ordering system itself, whatever you're tracking. Now, you say add information. You've given us an order, and we've inputted the order at that point in time. So I'm not sure what information you're adding. When you're saying if something comes back on the order, then, yes. But if you want to keep your OSS, internal OSS, your database updated, you're going to have to key that information in.

Q. Okay. Okay. On page 35 -- actually beginning at the very bottom of page 34. You state that 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.

What are those many lower volume complex retail services to which you're referring to?

A. Well, I don't have a list in front of me, but I would think probably multi serves is an example. I would have to go back to the actual retail operations of wanting to develop a specific list. However, what I'm referring to is these transactions are very complex by the nature of the service that you're requesting, that you're ordering.

And if you look at the overall business transactions that we do that fall into the complex categories, it's a small percentage. It's not big volume produced type transactions. And a lot of these design services makes them unique. And that even complicates it further for mechanization.

Q. When you say there are many, you know, without having a list, I'm not sure what that means. Is that, like, 50, 10?

A. Well, no. You could go to the listing of the services from a resell service standpoint that's in the service quality measurement that talks about flow through.

And I think it's got most of the products identified there. And you could work from there. I don't have that with me.

Q. Okay. I notice in this testimony, you discuss pending SUPPs in connection with flow through. And it looks like it begins over on page 39. And you mention that this was a new category to add with the September report as a result of an exception in the Georgia third-party test, correct?

A. That's correct.

Q. Are you aware that KPMG has reopened this exception recently?

A. They reopened it as a result of this. I thought it's also now closed as well.

Q. Okay. There is another thing on page 43 that confused me. And that's where you're talking about nine users combining for over half the LSR business resell volume? So we are talking about I guess the majority of the volume coming from nine users, correct?

A. That's correct.

Q. I just really don't understand how

a majority of the data can skew the results. I mean, I don't understand your sentence on page 9.

A. No. It's not saying a majority of the data can skew the results. It's the fact that the majority of the data comes from a minority of users can skew the results.

Q. But it's still the majority of the volume percentage?

A. It is the volume percentage; however, what's dictating that volume is the particular type of orders and whatever those few users were doing. If you had across the board everybody doing the various different orders, you would have a different base from which the data would be coming from.

So based on these nine users, their plans, if they are more predominant users of electronic interfaces, as well as their particular market niche they have carved out is given a particular order type to come to us, then I think that skews the data. The systems may be capable of many more things.

Q. But if this is the type of order that the systems are largely being asked to handle, wouldn't then the data be indicative of how that type of order is handled?

A. For those nine users.

Q. For that amount of volume?

A. For those nine users.

Q. Does that mean yes or does that mean no?

A. I'm saying it's representing more based on nine users instead of the CLEC community as a whole because those nine users are the predominant users of the system.

Q. So basically those are the users you have to look to to determine the volume?

A. Those are the users you have to look to what the data is reflecting.

Q. And moving on to page 53. On line 5, you say, "TAFI cannot be integrated for either user community." And I believe in that context you're referring to the ALECs and to BellSouth, correct?

A. That's correct.

Q. If you look on your direct testimony, on page 84, beginning on line 4,

you have a statement that starts out, "While it can be said that TAFI is integratible (interfaces) with BellSouth's back end legacy systems, TAFI is not integrated with BellSouth's marketing and sales support systems RNS and ROS."

Could you, I guess, rationalize these two statements for me?

A. What I'm trying to do is play with the term that I feel like has been misused. It's a quote, and I don't know if it was of Mr. Stacy's or whomever that was made back in the reference to one of the FCC rulings saying that we had superior integratability with TAFI -- or I forgot the exact quote, but that's what a lot of this -- both these sections are dealing with. So when I say while it can be said that TAFI is integratible, I'm trying to refer back to that. And I tried to clear it up in the rebuttal that we think it's just a misinterpretation, that you just misunderstood what someone had said. It's really not integrating with any of the systems. It's using data, getting data from that system to

perform its functions. And that's what I'm trying to better articulate here.

Q. I'm still not sure I understand exactly what you mean.

A. Okay. Well, let me go back to page 53 of my rebuttal. Down at the bottom of line 22, I read the statement made by BellSouth in the Louisiana 271 application before the FCC was misinterpreted by AT&T. "The statement, in quotes, 'BellSouth concedes that it derives superior integration capabilities from TAFI,' means that TAFI obtains data from various OSSs where given a trouble condition and then mechanically integrates this information to form the analysis to determine the course of action to effect a repair."

The integration that we are trying to refer to that I say back over here, while it can be said that TAFI is integratible, is the integration of that information from the various systems into TAFI so that it can perform its function, which is the function of assessing and doing screening for that particular trouble. It is not trying to

clear up. It is not integrating information with the systems in BellSouth. It's using that information.

Q. Do you happen to have Mr. Bradbury's direct testimony with you?

A. No, I don't have any of Mr. Bradbury's.

Q. Let me share with you just a page from his testimony that I believe has the quote to which you're referring.

A. Which do you want me to look at?

Q. If you start down at the bottom of the page. I think you see the question and quotes over on the next page continuing to the page after that. Could you take a look at that?

A. Okay.

Q. Could you show me where in that quote or what in that quote supports your definition of integration?

A. Well, that's what I'm saying, we think the party is confused with this quote. I know we've had interaction with the FCC staff since this came out. We think that confusion is cleared up at this point in

time. And our next application will support that clarity.

Other than that, where they say at the end, in other words, TAFI is integrated with BellSouth's other back offices systems, that's what I'm saying; it really is not integrated with those systems. And that's what some of the confusion, I think, is generated here from.

Q. Tell me again why you say it's not integrated.

A. It gets information from the systems. For example, if TAFI -- TAFI is a front end system to LMOS, which is really the processing for trouble tickets take place in LMOS. If you shut TAFI down tomorrow, LMOS and all the other OSS still functions.

Q. If you shut LMOS down, would TAFI still function?

A. No, TAFI can't function without LMOS. It gets information from LMOS. It gets information from other sources depending on the trouble ticket as well. We built the intelligence into TAFI that someone physically use to have to sit there and do to screen

it.

Q. So LMOS is integrated with TAFI, but TAFI is not integrated with LMOS?

A. No, I didn't say LMOS is integrated with TAFI. It's a front end that TAFI would send information to LMOS to start and open a trouble ticket and do things.

Q. So it interacts with LMOS, but it's not integrated with LMOS?

A. Someone has to physically sit there at TAFI. It's a human and a machine. And they are going to have to be sitting there doing things and telling it to do things. It's just submitting a transaction and then goes into LMOS to open a trouble ticket. It's not dependent upon TAFI. Someone could directly go into LMOS and open a trouble ticket.

Q. But if I understand you, TAFI is dependent upon LMOS, in that if you pull LMOS, TAFI won't work properly?

A. Dependent upon LMOS? There is no need for TAFI without LMOS, if you want to say it that way. TAFI is the front end to LMOS. It's just -- I'm trying to think of

a better way to describe it and compare it to some other systems.

Q. No. That's fine. Are you familiar with the form of the change control ballot that was recently distributed and used to vote on process changes to the CCP?

A. I read it one time. Same time it went out I saw it.

Q. And did you notice that it didn't have a yes or a no vote approach to a decision?

A. It had different levels, strongly agree or disagree type of approach and four or five categories, but I've forgotten the specific ones.

Q. Is BellSouth willing to agree that that's an acceptable way of balloting in the future?

A. I can't speak for that. I don't know.

Q. I've got some questions about change control groups. And one of them is called the triage group. What is the function of the triage group?

A. You said change control group as

far as a part of the change control process?

Q. Well --

A. CLECs?

Q. Why don't we change it. Why don't you just tell me what the function of the triage group is.

A. I've seen the term but I'm not close to what the triage group does, so I'm not sure. My understanding of the triage that I was aware at one time was it consist of a lot of project managers representing -- taking a look at wholesale systems, retail systems and then -- or like their terminology, downstream back end systems. That's where the triage terminology, I think, came from, but I'm not sure.

So these were the project managers representing those different systems, and they would take a look at all the different changes and assess, based on that change, what systems would be impacted, what needed to be done.

Q. Does the triage group have any relevance with regard to the change control process?

A. I'm sure they would have some relevance as to when they know the changes are coming, they would look at it to make sure all system impacts had been taken into consideration for implementation. But I don't know how -- where that specifically fits in.

Q. Do you know what the senior board of directors is?

A. There is a -- senior board of directors is a term or board of directors, I forget the specifics. I don't require -- excuse me, I don't recall that being within the change control document itself. But there is a board of directors at BellSouth that sort of counsels, gives advice to the change control administrators in this case, the change control manager, whatever issues are coming up in change control. And these are the same people that are involved, actually, from a reporting structure to those individuals. It has some relationship as well. So it's just directors.

Q. So some of the change control personnel would typically report to persons

on the senior board?

A. One of the persons, yes. Actually, it's their director that they report to. Another one is someone that's closer to the systems but has a lot of interaction as well. It's not a reporting relationship, but would have a lot of interaction day in and day out. And I think there is three of them. I'm trying to remember who the third one is. They are all people that day in and day out are involved with the systems either from an administration or changes. But they don't -- they are not an active participant as far as the way the change control process is defined as a member. We have, you know, Valerie Coddingham, who is a change control manager and the staff that supports her.

Q. What is the change review board?

A. I'm not sure if it's different than what I just described, and I may have the two confused.

Q. We've talked about some language that has been proposed by CLECs and proposed by BellSouth, you know, generally we've

talked about it in the -- I believe it's RNP 22. And I'm kind of confused about who within BellSouth actually is proposing the language? Would it be Valerie Coddingham's group?

A. I think she has probably several people that she goes to, the directors that we just talked about, senior directors board, whatever the term we use is probably one of the main components associated with that. Those are the individuals that are more of a senior manager level in the company and have, therefore, a better understanding of a broader picture of how things impact. So a lot of that would be getting input from those individuals.

And thinking back on your question on the change review board, I'm not sure, but that may be referring to some of the actual SMEs associated with whatever area. SMEs being the subject matter expert. There may be a board there, but I'm not sure how that functions when you submit a change request, and I would take a look at that.

As a result of that, they go back

to those particular subject matter experts if there is a given area as part of this language, and they would be giving their input as well.

Q. What is the actual internal BellSouth process by which BellSouth decides whether to agree or disagree with CLEC proposed language?

A. Well, that's what we are just talking about. Those individuals would be -- primarily that those individuals on that board, that director board would be the ones that take a look at that and take a look at whether it's something we could do or not do, talk with the various subject matter experts. They come more into play when you're looking at an internal process intervals, how quickly can you do things. They're going to have to put those in place. And they would then look at that and give that direction back to Ms. Coddingham.

Q. Would CLECs ever interact directly with the senior board of directors?

A. Not as a board, I don't think they do. I don't think they do. They may

interact with some of them individually, but I don't think they do as a board.

Q. How would that come about, the individual interaction?

A. Just if they happen to be someone representing the aspect at a meeting telling them about something that's going on. They wouldn't be doing it in in the capacity of a member of that board.

Q. How many CLECs participate in change control process improvement meetings?

A. The improvement sub team or the CCP monthly meetings? Please clarify.

Q. Well, let's talk about both of them.

A. Okay.

Q. Because I'm not sure of the difference, so please tell me what you mean by the sub team first.

A. Well, the sub team that I'm referring to is a team that was chartered out of the change control process to go and take a look at this document and then try to come together to help finalize this and get down to those -- particularly those issues

that we discussed earlier where we definitely just cannot agree. And that's where a lot of the ballot just went out about.

Q. And that would be the process improvement sub team?

A. Yes. And I don't know how many individuals are on that. I think there is -- I'm guessing here -- it's about six or seven participating CLECs in that process, as well as the BellSouth representatives.

Now, the second thing I was referring to is the monthly meetings themself in the change control process. And from my review of the minutes, there is only a handful, 10 to 12 that really participate in those meetings on an ongoing -- if you look at them on an ongoing regular basis, you would probably only get there is six or seven that participate. And there is a few that jump in and out if something to their interest is before them in that change control process.

Q. I've seen a number of E-mails from a change control group at BellSouth, and it seems like they notice everybody who wants to

hear anything.

A. Well, that's not everybody. It's those who have registered to be a participant. And at last count, it was close to a hundred CLECs that were registered. So they get the E-mails of everything, the minutes, they have E-mails sent to them. And for a lot, that's probably all they need. And they feel like that satisfies their need. And they go on about their business. I don't know what they do with it, but they have signed up as a member. But I talk about registered members and I talk about participating members. And what I described to you, those few who are participating members, that are small in number.

Q. So it sounds like about a hundred or so members, and I think you said two sets of numbers, six to seven to maybe 10 to 12 would participate in monthly meetings?

A. That's correct.

Q. And then perhaps even a smaller group of six or seven who are in the process improvement subgroup.

A. I have not done a comparison. That process improvement team are those ongoing members that show the interest and work in the CCP. And to take it one step further, the participating -- or excuse me, the registered members are only about one-third of the total active CLECs that we have. So we have, you know, two-thirds that don't care or whatever, I don't know, but they don't participate at any level through registration or attending the meetings.

Q. And we've gone back and forth in other states about I think what we've called the CLEC or ALEC redline version of 2.0 of the change control document, right?

A. That's correct.

Q. And after AT&T first proposed that, there was a subgroup formed to look at changes to the process, correct?

A. That's correct.

Q. And, in fact, that subgroup has reviewed the redline version and come up with some further changes, haven't they?

A. Yes, they have.

Q. So your Exhibit 22 is based on

the CLEC version, not the AT&T version redline; is that correct?

A. That's correct.

Q. Okay. Do you know how many CLECs concurred in this document?

A. Not specifically, no, not -- as I said earlier, that's six or seven that are participating, but that's all I know.

Q. So pretty much everybody who participated concurred?

A. When you say concurred, they were involved with here is the document that we are going to give back, that redline version, if that's what you mean by concurred. I can't speak to say that every single one of them concurred with everything, how did they reach, as we talked about earlier, their consensus. I don't know. I wasn't involved in this process.

Q. I may have misspoken. I don't know if you were the one who used the word or I was the one who used the word. But the process improvement group is open to any CLEC, is it not, any CLEC who is a member of the change control group?

A. I don't know how they did that. I didn't look at it. I don't know if they chartered saying these are the ones. I don't know how they formed that group. I didn't look at it at that level. I just know the group was formed.

Q. So if we have used the term subgroup, it doesn't presuppose a particular membership process, then?

A. No, no. I was just referring to that as a group under the umbrella of the change control process being directed to go and work on this.

MS. RULE: Thank you very much.

(Whereupon, the deposition was concluded.)

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INDEX OF EXHIBITS

EXHIBIT	IDENTIFICATION
1	E-mail from Michael Willis plus attachment
2	Change request form
3	Architecture for ALEC LSRs LNP & DSL

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(Exhibits are attached to original deposition.)

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STATE OF GEORGIA:

COUNTY OF FULTON:

I hereby certify that the foregoing transcript was reported, as stated in the caption, and the questions and answers thereto were reduced to typewriting under my direction; that the foregoing pages represent a true, complete, and correct transcript of the evidence given upon said hearing, and I further certify that I am not of kin or counsel to the parties in the case; am not in the employ of counsel for any of said parties; nor am I in anywise interested in the result of said case.

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The party taking this deposition will receive the original and one copy based on our standard and customary per page charges. Copies to other parties will be furnished based on our standard and customary per page charges. Incidental direct expenses of production may be added to either party where applicable. Our customary appearance fee will be charged to the party taking this deposition.

SHARON A. GABRIELLI, CCR-B-2002

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CAPTION

The Deposition of Ronald M. Pate, taken in the matter, on the date, and at the time and place set out on the title page hereof.

It was requested that the deposition be taken by the reporter and that same be reduced to typewritten form.

It was agreed by and between counsel and the parties that the Deponent will read and sign the transcript of said deposition.

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CERTIFICATE

STATE OF :

COUNTY/CITY OF :

Before me, this day, personally appeared, Ronald M. Pate, who, being duly sworn, states that the foregoing transcript of his/her Deposition, taken in the matter, on the date, and at the time and place set out on the title page hereof, constitutes a true and accurate transcript of said deposition.

Ronald M. Pate

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SUBSCRIBED and SWORN to before me this day of , 2001 in the jurisdiction aforesaid.

My Commission Expires Notary Public

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DEPOSITION ERRATA SHEET

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RE: Alexander Gallo & Associates

File No. 1247

Case Caption: In re: Petition by AT&T Communications of the Southern States, Inc.

Deponent: Ronald M. Pate

Deposition Date: January 26, 2001

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To the Reporter:

I have read the entire transcript of my Deposition taken in the captioned matter or the same has been read to me. I request that the following changes be entered upon the record for the reasons indicated. I have signed my name to the Errata Sheet and the appropriate Certificate and authorize you to attach both to the original transcript.

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Page No./Line No. Reason:

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SIGNATURE:_____DATE:_____

Ronald M. Pate