BEFORE THE

KENTUCKY PUBLIC SERVICE COMMISSION

PREFILED REBUTTAL TESTIMONY OF

GREGORY R. FOLLENSBEE

ON BEHALF OF

AT&T COMMUNICATIONS OF THE SOUTH CENTRAL STATES, INC.

AND TCG OHIO

DOCKET NO. 2000-465

FEBRUARY 20, 2001

Q. PLEASE STATE YOUR NAME, ADDRESS AND EMPLOYMENT.

A. My name is Gregory R. Follensbee. I am employed by AT&T Corp. ("AT&T") as a Director in its Law & Government Affairs organization, providing support for AT&T's regulatory and legislative advocacy in the nine states that make up AT&T's Southern Region. My office is at 1200 Peachtree Street, Suite 8100, Atlanta, Georgia 30309.

Q. DID YOU PREFILE DIRECT TESTIMONY ON FEBRUARY 6, 2001 IN THIS PROCEEDING?

A. Yes, I did.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. I will be rebutting the testimony of Mr. Ruscilli for Issues 1, 4, 5, 6, 7, 9, 13, and 21.

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

Q. ON PAGES 12 AND 13, BELLSOUTH ACKNOWLEDGES THAT THE COMMISSION HAS PREVIOUSLY ORDERED ISP-BOUND TRAFFIC BE TREATED AS LOCAL FOR PURPOSES OF RECIPROCAL COMPENSATION, WHICH SUPPORTS AT&T'S POSITION, BUT REQUESTS THAT SUCH TRAFFIC BE SUBJECT TO RETROACTIVE TRUE-UP FOR RECIPROCAL COMPENSATION WHEN THE FCC

ESTABLISHES ITS MECHANISM FOR COMPENSATION OF SUCH TRAFFIC. DO YOU AGREE WITH THIS REQUEST?

A. No. There is no reason to make this an interim solution, subject to true-up on a retroactive basis once the FCC renders a decision on how this traffic will be treated. Calls made by either BellSouth or AT&T end users, that are ISP-bound, should be treated as local, and reciprocal compensation should be paid for such calls, until the Commission is pre-empted by the FCC from treating the calls in this manner. No true-up or retroactive application of any FCC rule is appropriate or warranted.

Q. WHY IS AT&T OPPOSED TO TRACK AND TRUE- UP?

A. Under the terms of AT&T's agreement that ended on August 13, 2000 but which is continuing in use until replaced by this renewal agreement, the rates, terms and conditions of the renewal agreement are retroactive to the day after the previous agreement expired. If AT&T is subject to a track and true-up provision on ISP-bound traffic, it will have to go back to August 14, 2000 and try to find records that can be used to determine what amount, if any, of the local traffic it both received and sent to BellSouth may have been ISP-bound traffic. Additionally, AT&T and BellSouth would have to reach agreement on how much of this traffic, and future traffic, was subject to tracking. AT&T has had experience with such a process with BellSouth, and has found that the parties cannot agree on how much of the total local traffic is ISP-bound. Thus, AT&T believes the more appropriate solution is to treat the traffic as local and only change that designation once the FCC asserts jurisdiction over how the traffic will be compensated. According to all information AT&T has available, the FCC does not intend to apply any future

decision in a retroactive manner. AT&T would recommend this Commission also adopt any retroactive treatment as well.

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?

Q. HAVE YOU REVIEWED BELLSOUTH'S TESTIMONY (RUSCILLI, PAGES 14-22) ON THESE ISSUES?

A. Yes. However, BellSouth has blurred and obscured this issue so much that it may not be obvious what its position is, or, more precisely, what limitations it proposes on the use of combinations so as to render them less useful to CLECs. BellSouth says it will provide combinations to AT&T at cost-based prices "if the elements are, in fact, combined, and providing service to a particular service to a particular customer at a particular location." What does this mean? In plain English, what I understand this to mean is that BellSouth will not provide a particular combination for a specific customer to AT&T (or any other CLEC) at UNE prices, unless the discrete elements that comprise that combination for that customer 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. In other words, AT&T may only use combinations to provide the same service to the same customers BellSouth is currently serving today, even though

BellSouth routinely uses those same combinations throughout its network to provide service to its own customers in Kentucky. Specifically, for loops and switching, BellSouth readily agrees that it routinely combines loops and switching throughout its network and uses combinations of loops and switching to provide service to its own customers. However, BellSouth will not sell AT&T a loop-switching combination (often referred to as the UNE Platform or UNE-P) at 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. BellSouth's plea that the Commission "find that BellSouth is not obligated to combine UNEs that are not already physically combined," thus obscures the real goal of BellSouth on this issue, which is to severely limit the use of UNE combinations by CLECs in Kentucky and thus continue to make local entry more difficult for CLECs.

Q. HOW DOES BELLSOUTH JUSTIFY ITS POSITION ON THIS ISSUE?

A. BellSouth's testimony is a blend of legal argument and economic rationalization. The goal of its legal argument is to assert that the Commission has the legal authority to make local entry even more difficult and expensive, while its remaining testimony tries to justify why it makes sense to do so. In the rebuttal that follows, I explain that even if BellSouth's legal reasoning were correct – an issue with which I disagree, but that I fundamentally leave to the brief – there is no rational justification for making local competition harder, and therefore more costly, than it already is.

In support of its basic position that the Commission should make entry more difficult by sanctioning BellSouth's refusal to offer any combination of network elements that it currently combines for itself, BellSouth advances three basic theories:

- Forcing entrants to combine elements in inefficient ways will somehow produce efficient results;
- Combining elements for entrants will discourage BellSouth from introducing innovative new technologies; and
- Requiring BellSouth to combine elements is "...inconsistent with the Act's basic purpose, which is to introduce competition into the local market."

As I explain below, however, none of these "justifications" can be squared with basic policy goals. 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? There is one clearly favorable outcome – i.e., that elements be combined in the most efficient manner – that can be achieved only if the Commission rejects BellSouth's proposal.

The core "combinations" issue before the Commission in this arbitration is simple, yet far-reaching. Mass-market competition depends upon *efficient* provisioning systems structured to minimize cost and accommodate volume. This same basic conclusion applies with equal force to *new* combinations as it does to *existing* arrangements. Consumers are unlikely to accept entrants that can serve an existing line, but cannot provision additional lines or serve the customer at a

new location. Consumers will not benefit from policies that make local competition more complex, more cumbersome and more expensive. If the Commission wants competition for average consumers, then it must be committed to policies that make entry more simple and cost-effective.

Q. DO YOU INTEND TO RESPOND TO BELLSOUTH'S LEGAL ARGUMENT?

A. No, not in any detail. Addressing the legal basis underlying BellSouth's position is more appropriate to post-hearing briefs than testimony. Without attempting to render a legal opinion, however, I do believe a number of points should be considered.

First, it would seem that the central legal issue concerns the limits of the Commission's discretion – that is, may the Commission evaluate BellSouth's obligation on its merits, or must the Commission sanction BellSouth's proposal, without regard for the consequences to Kentucky consumers. As I explained in my direct testimony, I believe that the Commission has the authority to judge the issue on the merits. Indeed, it already has.

For its part, BellSouth places great emphasis on a 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 an FCC rule that would have removed any uncertainty that BellSouth was obligated to combine elements that it routinely combined. The Eighth Circuit's decision, however, does not preclude this Commission from deciding the issue on its merits. For instance, the United States Courts of Appeals for the Fifth and Ninth Circuits have determined that it is consistent with the Telecommunications Act of 1996 and the decision of the U.S.

Supreme Court for state commissions to require ILECs to combine network elements. *US West Communications v. MFS Intelenet,* 193 F.3d 1112 (9th Cir. 1999); *Southwestern Bell Telephone Co. v. Waller Creek Communications, Inc., et. al.,* 221 F.3d 812 (5th Cir. 2000). These decisions have the practical effect that the ILEC must provide combinations to CLECs where the ILEC ordinarily combines such network elements to provide service.

Moreover, BellSouth never tries to reconcile its position with other FCC rules that prohibit restricting network elements. For instance, 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.

There is no apparent dispute that BellSouth cannot restrict the use of stand-alone loops (or switching or transport) to serve only customers who currently receive service from BellSouth. For instance, when an entrant orders a DS-1 loop to a customer premise, there is no requirement that the customer already be served over such a facility. BellSouth should not be allowed to restrict the use of combinations of elements in such manner. A combination of elements is just that – a combination of elements. There is no basis for BellSouth to impose restrictions on the use of such elements merely because they are provisioned in combined form.

Q. WHAT POLICY RATIONALE DOES BELLSOUTH USE TO JUSTIFY ITS REFUSAL TO COMBINE ELEMENTS FOR ENTRANTS THAT IT

CURRENTLY COMBINES FOR ITSELF (OR, IN THE ALTERNATIVE, CHARGE A GLUE CHARGE)?

A. BellSouth offers three "policy reasons" for its position. The first of these justifications is that requiring BellSouth to combine elements would (Ruscilli, page 17), according to BellSouth:

> ... not benefit consumers as a general matter, and would unnecessarily reduce the overall degree of competition in the market.

Q. DOES THIS CONCLUSION MAKE SENSE?

A. No. The *reason* that entrants want BellSouth to combine elements is precisely because that is the *most efficient* way to obtain ordinary combinations. BellSouth routinely combines elements in the network today. It is reasonable to expect that its central offices are designed so that facilities used for routine cross-connection are easily (if not electronically) accessible, with procedures employed to avoid unnecessary reconfiguration and investment.

Remarkably, rather than simply combining elements for entrants at those points in the network (such as existing cross-connect frames) that BellSouth has established for precisely this purpose, BellSouth is proposing to create new environments where entrants would do the same work. Under BellSouth's proposal, entrants would combine elements in collocation space, or use assembly "rooms" or "points" specially constructed for this purpose. These additional steps – creating the assembly room/point, and then extending requested elements via new facilities and additional cross-connections – does nothing but create increased cost and points of potential failure. With respect to UNE-P, the absurdity of BellSouth's

position is highlighted by its admission of its obligation to provide loops to CLECs at UNE prices to serve customers to which no loops are currently provisioned. 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). 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.

The central criterion of "efficiency" is the elimination of unnecessary costs, yet in the *name* of efficiency BellSouth proposes the opposite result. Importantly, BellSouth's proposal would result in *more* work and *increased* costs for both itself and new entrants. Even BellSouth would do "more combining" by cross-connecting the requested elements to the facilities necessary to extend the elements to the CLEC, not to mention the cost -- in time, money and space – to create the associated "assembly areas." Expending resources for the sole purpose of achieving a less reliable and more costly environment is a wasteful exercise that can find no support in economics, common sense or sound policy.

Q. SHOULD THE COMMISSION EXPECT *LESS* COMPETITION IF BELLSOUTH IS REQUIRED TO COMBINE ELEMENTS IT ROUTINELY COMBINES TODAY?

A. No. Before addressing this point on the merits, however, consider the following paradox: Would it really make sense for BellSouth – the incumbent monopolist –

to advocate positions that *increase* competition, while AT&T – the new entrant – promotes policies that would produce *less*? Of course not.

The more simple and cost effective it is to obtain network elements, the more customers entrants can reasonably serve. This proposition cannot be denied. BellSouth's complaint is not that entrants won't compete more extensively; its real complaint is that BellSouth does not want to "share" its network with competitors.

Q. BELLSOUTH QUOTES SUPREME COURT JUSTICE BREYER'S OBSERVATION THAT "...IS IN THE UNSHARED, NOT IN THE SHARED, PORTIONS OF THE ENTERPRISE THAT MEANINGFUL COMPETITION WOULD LIKELY EMERGE" (RUSCILLI, PAGE 17) TO SUPPORT ITS POSITION. IS BELLSOUTH'S USE OF JUSTICE BREYER'S OPINION HERE RELEVANT?

A. No. Justice Breyer was addressing the threshold question as to *what* elements should be made available, while the issue here concerns *how* they should be offered. The FCC has already addressed the issue raised by Justice Breyer by concluding that entrants would be impaired -- and that competition would therefore be less -- without access to the network elements in question.

What BellSouth seeks here is to subvert the FCC's impairment decision by imposing provisioning practices that would increase the entrants' cost to use the network elements to which it is legally entitled. There is nothing in Justice Breyer's analysis that offers support for the proposition that inefficient provisioning systems will promote competition. If an entrant is impaired without

access to an element, then the law requires that it be available in a manner that is nondiscriminatory.

Q. BELLSOUTH ALSO CLAIMS THAT COMBINING ELEMENTS FOR ENTRANTS WOULD DISCOURAGE FACILITIES-INVESTMENT BY BELLSOUTH (RUSCILLI, PAGE 18). IS THIS VIEW REASONABLE?

A. No. First, BellSouth's objection appears directed more at the TELRIC pricing standard than the requirement to combine elements (Ruscilli, page 18):

> ...requiring BellSouth to combine UNEs at cost-based prices, particularly at Total Element Long Run Incremental Cost (TELRIC)-based prices, reduces BellSouth's incentive to invest in new capabilities. TELRIC-based prices do not cover the actual cost of elements ...

As to the TELRIC pricing standard, BellSouth is simply wrong when it claims that TELRIC rates do not cover actual cost. The TELRIC standard explicitly requires that prices accurately reflect the *forward-looking* cost of network elements for the precise reason that it is an element's forward-looking cost that will guide investment decisions. Just as BellSouth's earlier argument was structured to undermine the FCC's impairment analysis, BellSouth's testimony here is nothing more than an attempt to negate the TELRIC pricing standard.

Moreover, BellSouth's again misapplies Justice Breyer's opinion for the proposition that BellSouth would not:

> ... undertake the investment necessary to produce complex technological innovations knowing that any competitive advantage deriving from those innovations will be dissipated by the sharing requirement.

It is important to appreciate, however, that there is no "complex technological innovation" at issue here. BellSouth is refusing to combine basic building blocks

– i.e., loops to ports, or digital facilities (with multiplexing) to standard interoffice transport – that are generic, not proprietary. It is because these building blocks are *routinely* combined that makes possible the efficiencies of the present system. There is nothing unique about these standardized combinations that would give rise to some "complex technological innovation." This is network engineering, not improvisation.

Q. FINALLY, BELLSOUTH ARGUES THAT REQUIRING IT TO COMBINE NETWORK ELEMENTS IS INCONSISTENT WITH THE ACT'S BASIC PURPOSE (RUSCILLI, PAGE 18). DO YOU AGREE?

A. No, not at all. BellSouth's final objection is based on its view that the Act is intended to "introduce competition" not "subsidize competitors" (Ruscilli, page 18). On this much, we agree. However, there is nothing to suggest that requiring BellSouth to combine elements for rivals that they routinely combine for themselves would result in less competition or subsidized competitors.

Consider the practical reality here. A customer moves into a new home and AT&T requests the combination (loop and port) needed to serve that customer. Under the approach recommended by AT&T, BellSouth would be required to combine these elements as they routinely do today. Once combined, even BellSouth would agree that the combination would be available to other competitors – including BellSouth – so that the customer could easily change local carriers in the future. Simple system, low cost, greater competition.

In contrast, under BellSouth's proposal, these same elements (loop and port) would be extended to a *different* location in the central office (such as AT&T's

collocation space or an "assembly room/point") where they would then be cross-connected. The result: higher costs and additional points of failure. Moreover, under BellSouth's approach, if the customer sought to change carriers, then the entire exercise of manually reconfiguring the requested combination to a different "assembly frame" would need to be repeated – at least until the customer moved to BellSouth.

Q. SHOULD BELLSOUTH BE PERMITTED TO IMPOSE A "GLUE CHARGE"?

A. No. Even BellSouth acknowledges that the term "glue charge" is synonymous with "market rate"(Ruscilli, page 20). Of course, if a functioning "market" existed, there would be no need for UNEs. The requested facilities are deemed to be "unbundled network elements" precisely because entrants would be impaired – and, therefore, competition would be harmed – if they were not available at cost-based rates.

Furthermore, the entrant is already compensating BellSouth for the elements it purchases – BellSouth's "glue charge" is no different than a demand for above-cost rates. Glue charges must ultimately be recovered in the prices charged to end-users. BellSouth's proposal is nothing more than a request to inflate its rivals' *costs* so that it may inflate its rivals' *prices*, thereby assuring that its own monopoly prices are protected from competition. The Commission should reject its proposal.

Q. WHAT IS AT&T ASKING THE COMMISSION TO DO?

A. AT&T asks that the Commission find that BellSouth must provide a combination throughout its network as long as it provides the same combination to itself anywhere in its network and that only the approved UNE rates will be applied to such combinations, with no "glue charge" added on.

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

Q. ON PAGE 23 OF HIS DIRECT TESTIMONY, MR. RUSCILLI STATES THAT IF THE END USER IS CURRENTLY UNDER A CONTRACTUAL AGREEMENT WITH BELLSOUTH, THEN THE TERMS OF THE RETAIL AGREEMENT OR CONTRACT THAT ARE APPLICABLE TO EARLY TERMINATION, INCLUDING PAYMENT OF EARLY TERMINATION LIABILITIES, MUST BE SATISFIED. HE FURTHER STATES THAT IF A CONTRACT IS TERMINATED EARLY, IT IS APPROPRIATE FOR BELLSOUTH TO IMPOSE A CHARGE FOR EARLY TERMINATION. DO YOU AGREE?

A. No. In cases where AT&T is the wholesale purchaser of special access, it is not appropriate for BellSouth to apply early termination charges to AT&T.

Q. WHY IS IT INAPPROPRIATE FOR BELLSOUTH TO APPLY EARLY TERMINATION CHARGES WHEN AT&T SEEKS TO CONVERT A PURCHASE OF TARIFFED SERVICES TO A PURCHASE OF

NETWORK ELEMENTS (OR COMBINATIONS OF NETWORK ELEMENTS)?

A. First, AT&T is not a "retail user" of the tariffed services, as Mr. Ruscilli uses the term. AT&T purchases wholesale services from BellSouth. In these circumstances there should be no termination liability assessed when AT&T seeks to convert, not terminate, such tariffed services to unbundled network elements. The main reason termination liability charges should not apply is because BellSouth has not established that the termination charges are anything other than a huge penalty and an unjustified windfall. The penalty is not tied to any costs BellSouth incurs in processing the conversion. In fact, unlike when a retail end user changes providers from BellSouth to a CLEC, BellSouth is not losing AT&T as a customer. Rather, AT&T is merely seeking to change how the UNE combinations are billed.

What BellSouth seeks to do contravenes the clear intent of the FCC's Supplemental Order Clarification (Order No. FCC 00-183 released June 2, 2000 in Docket No. 96-98). If this Commission approves BellSouth's proposal, then BellSouth ultimately ends up with what it wanted all along –CLECs would not be able to use Enhanced Extended Loops (EELs) or other combinations to serve customers who are currently served through special access service. Additionally, if CLECs are required to pay termination charges, then it will have a chilling effect on competition. CLECs will not be able to pass on these additional and unwarranted costs to their customers.

Q. WHAT DOES AT&T REQUEST REGARDING THIS ISSUE?

A. AT&T asks that the Commission prohibit BellSouth from applying termination charges when AT&T converts a purchase of tariffed services to a purchase of network elements (or combinations of network elements), such as converting the purchase of special access services to EELs.

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

Q. MR. RUSCILLI USES THE TERMS POINT OF INTERCONNECTION ("POI") AND INTERCONNECTION POINT ("IP") IN HIS DIRECT TESTIMONY. DO BELLSOUTH AND AT&T AGREE ON THE MEANING OF THESE TWO TERMS?

A. AT&T and BellSouth agree on the meaning of the terms, but AT&T cannot agree with Mr. Ruscilli's incorrect usage of them. Mr. Ruscilli is quite clear in his explanation of the terms Point of Interconnection ("POI") and Interconnection Point ("IP"), but he is not entirely consistent in his application of these terms. Indeed, as I will describe later in this testimony, Mr. Ruscilli misapplies certain FCC rules addressing physical network interconnection as if these rules apply to the establishment of IPs (strictly a financial matter)[1]. This Commission must be careful to understand the basis and usage of these two terms throughout this proceeding.

[1] When I refer to 'POI" I am referring to the point where AT&T and BellSouth's networks physically interconnect. When I refer to "IP" I mean the point on the terminating party's network to which the originating party is obligated (*i.e.*, has financial responsibility) to provide network interconnection facilities for the delivery of its originating traffic.

Q. DOES MR. RUSCILLI ACCURATELY DESCRIBE THE DISPUTE BETWEEN THE PARTIES ON THIS ISSUE?

A. No. Mr. Ruscilli misstates AT&T's proposal in a number of respects. First, AT&T has stated that it will establish two IPs in each LATA, unless there is a *de minimus* volume of traffic that only justifies one IP. AT&T also agrees to establish an IP for each AT&T switching center in the LATA. Accordingly, if AT&T is successful in the Kentucky marketplace, AT&T will add switching centers and will establish an additional IP for each switch it adds in a LATA. Second, BellSouth fails to point out that AT&T proposes that the parties first attempt to come to mutual agreement as to the location of each party's IP in each LATA and that the IP be based on the terminating NPA-NXX. This is a far cry from the unilateral designation that Mr. Ruscilli asserts is required under AT&T's proposal.

Q. WHAT DO YOU UNDERSTAND BELLSOUTH'S PROPOSAL TO BE?

A. First, that AT&T should be financially responsible for transporting its originating traffic all the way to each BellSouth end office in each BellSouth basic local calling area. Second, that AT&T should be financially responsible for transporting BellSouth's own originating traffic from some point in a BellSouth basic local calling area to AT&T's switch.

Q. HOW DOES AT&T'S PROPOSAL DIFFER FROM BELLSOUTH'S PROPOSAL?

A. AT&T agrees that AT&T should be financially responsible for transporting AT&T's originating traffic to each BellSouth end office. This is consistent with applicable law and regulations. AT&T would provide the transport facilities between its switches and the BellSouth IP and AT&T would pay BellSouth a fixed, per-minute reciprocal compensation rate for the transport between the BellSouth IP and the BellSouth end office. This does not appear to be objectionable to BellSouth.

However, contrary to BellSouth's proposal, AT&T asks that BellSouth bear a reciprocal financial obligation for the transport of BellSouth's originating traffic and not arbitrarily shift the cost for such transport to AT&T. Thus, under AT&T's proposal, for BellSouth's originating traffic, BellSouth would provide the transport facilities between its switches and AT&T's IP, and BellSouth would pay AT&T a fixed, per-minute reciprocal compensation rate for the transport between the AT&T IP and the AT&T end office.

With respect to the method that will be used to establish the IP locations in each LATA, AT&T proposes that the parties first attempt to come to mutual agreement as to the location of each party's IP in each LATA and that the IP be based on the terminating NPA-NXX. BellSouth, in contrast, proposes that the originating party have a unilateral right to designate where its traffic must be "picked up", meaning the IP would be based on the originating NPA-NXX. BellSouth's position is wrong, as I explain later, in that it forces AT&T to establish numerous IPs throughout the state and become responsible for BellSouth's originating costs, in direct conflict with existing law and FCC rules.

Q. UNDER AT&T'S PROPOSAL WHAT WOULD BELLSOUTH HAVE TO DO?

A. First, BellSouth would provide the transport facilities from the BellSouth switch from which the call originates to the same relative point on AT&T's network to which AT&T delivers its originating traffic on the BellSouth network. I use the term "top of the network" to identify that comparable point on each party's network. Each party's IP should be established at the top of its network.

Second, BellSouth would pay AT&T the identical fixed, per-minute reciprocal compensation rate for the transport that AT&T provides for the termination of BellSouth traffic from AT&T's IP across AT&T's network.

Q. WHY DOES AT&T BELIEVE THIS IS FAIR?

A. As I stated in my direct testimony, AT&T's network covers a geographic area comparable to that covered by BellSouth's network. Given this geographic comparability, it is only fair that each party have comparable and equivalent interconnection. The Commission should not give BellSouth's network preferential treatment simply because it pre-existed local telephone competition or is based on a traditional hierarchical network architecture. Conversely, the Commission should not penalize AT&T because it has chosen a different network design than that used by BellSouth. The real test for equivalency should be geographic comparability that provides the two parties the means to effectively compete. AT&T's network meets this test.

Q. DO YOU AGREE WITH MR. RUSCILLI'S ASSERTION THAT BELLSOUTH DOES NOT HAVE A NETWORK, BUT "A HOST OF NETWORKS THAT ARE GENERALLY INTERCONNECTED"?

A. No. Mr. Ruscilli made numerous claims throughout his testimony that BellSouth has a "separate" network in each BellSouth basic local calling area.[2] Under scrutiny, such "Balkanization" of BellSouth's network is nothing more than a semantic effort by BellSouth to buttress its theory as to why AT&T should interconnect wherever BellSouth determines.

Q. PLEASE EXPLAIN.

A. There is no such thing as a "BellSouth local network" that can be physically separated and identified. BellSouth has not labeled each piece of switching or transmission equipment as "local-only", "toll-only" or "access-only." There is simply no business reason to do so. The assertion that a local-only network exists is contrary to the way that equipment and facilities are assigned to provide new services. BellSouth has designed a highly integrated network to provide BellSouth the flexibility to adjust to changes in traffic volumes of the various services it offers according to market conditions. In other words, a certain piece of equipment in the BellSouth network used today to provide local service may become spare and used tomorrow to provide a toll service. To do otherwise, would create a risk of stranding plant for some services and exhausting plant for other services.

---

[2] For example, on page 24 Mr. Ruscilli states that "With regard to 'local networks,' BellSouth, in any given LATA, has several such local networks, interconnected by BellSouth's long distance network. Again, on page 33 Mr. Ruscilli asserts that "BellSouth may have fifteen or twenty calling areas in the LATA."

Q. HOW DOES THIS APPLY TO LOCAL SWITCHING?

A. The typical end office switch is used to originate and terminate local traffic, intraLATA toll traffic, and inter-exchange traffic from and to inter-exchange carriers. If BellSouth's claim that is has deployed a "distinct" local network were true, then BellSouth would have deployed three separate local switches, one for each type of traffic in each local calling area. BellSouth has not done so. That would be an inefficient design.

Another example of BellSouth network integration can be found in the manner in which BellSouth combines local, toll and access traffic on common trunks between its tandem switches and end office switches. BellSouth does not create separate trunk groups for each class of services. To do so would require that BellSouth install many additional trunks, since the period of peak traffic load often varies by the type of traffic. Accordingly, the call carrying capacity of a trunk group having a mix of traffic is greater than a single-use trunk group.

However, the most probative evidence that BellSouth's assertion about a basic local network in each BellSouth basic local calling area is inaccurate is BellSouth's use of local tandem switches. In Kentucky, BellSouth has more local calling areas than it has local tandems. The fact that BellSouth has fewer tandems than local calling areas means that, contrary to Mr. Ruscilli's assertions, BellSouth is routing some of its local traffic beyond the boundaries of its local calling areas for its own reasons. In fact, it would be very surprising to find that BellSouth did not subscribe to this common engineering practice. Every large local telephone company uses local tandem switches because it is the least costly

method of interconnecting many end offices until certain traffic thresholds are reached, and this method provides alternative routing during peak traffic periods. For instance, in the Louisville LATA, BellSouth has established thirty-three basic local calling areas, collectively served by a single local tandem. Using the implausible standard suggested by BellSouth, the Commission would conclude that BellSouth has thirty-three "local networks", each serving a basic local calling area. In this specific case, as well as numerous other areas across the state, BellSouth carries its local traffic beyond the basic local calling area, because that is the least costly and most efficient way to provide telephony service.

BellSouth's primary objection to AT&T's proposal is its claim that it has one network per basic local calling area, rather than one integrated network, and thus a CLEC must provide physical interconnection at every one of these "basic local networks." However, BellSouth asks this Commission to reject AT&T's proposal on an incorrect premise. BellSouth's network should not be viewed as an integration of individual networks, but rather the integrated network that it is.

Moreover, Mr. Ruscilli's claim of separate and distinct networks that require multiple connections to each one is contradicted by his company's own press statements. In one press release, BellSouth states:

> BellSouth's e-Platform provides unique "bunker-like" security and reliability against potential natural and man-made disasters because BellSouth utilizes "battle-tested," existing facilities that have weathered hurricanes like Hugo, Andrew, and Floyd. BellSouth is also building upon some three million miles of fiber optic cable, 1,650 central offices, 50 BellSouth Managed Facilities, 15,000 Sonet rings and over 500 fast-packet switches with its e-Platform initiative.[3]

[3] *BellSouth Launches 'E-Platform' for Business; New E-Biz Centers to Unleash Power of Extensive, fiber-based Network*, BellSouth News Release (Sept. 26, 2000).

In another press release, BellSouth touts itself as an "integrated communications services company" that provides customers with "integrated voice, data, video, and data services to meet their communications needs."[4] BellSouth cannot have it both ways. It cannot claim Balkanized specialized networks for competitors while touting integrated networks for its end user customers.

Q. SHOULD THE BELLSOUTH BASIC LOCAL CALLING AREAS BE THE BASIS OF NETWORK INTERCONNECTION?

A. No. BellSouth repeatedly asserts that AT&T should be required to pay for transport of BellSouth's own local calls beyond the BellSouth basic local calling areas. Contrary to these assertions, basic local calling areas should not form the basis of network interconnection. First, basic local calling areas may be subject to substantial changes as BellSouth and CLECs seek competitive advantages to their respective local service offerings. A case in point is BellSouth's Area Plus calling plan, which allows its customers to make local calls throughout a LATA on a flat-rate basis. Second, to be fair, interconnection should not be done solely on the basis of BellSouth's existing basic local calling areas. Basic local calling areas bear no relationship to the geographic scope or capability of telecommunications equipment, such as switches. To base interconnection on BellSouth's basic local calling areas would completely disregard the legitimacy of a CLEC's local calling area, would discourage CLECs from expanding local calling areas for the benefit of customers and competition, and certainly would not be reciprocal or fair.

---

[4] *BellSouth Third Quarter EPS Increases 10%*, BellSouth New Release (Oct. 19, 2000).

Third, using BellSouth's basic local calling areas as the basis of network interconnection substantially compromises the network efficiencies of the alternative network architectures deployed by AT&T and other CLECs in Kentucky, forcing each CLEC into a BellSouth-look-a-like interconnection arrangement. Lastly, AT&T and BellSouth have agreed that most of the traffic within each LATA will be classified as local for purposes of compensating each other for completing the other party's calls. Thus, the local calling area for purposes of reciprocal compensation is now LATA wide.

Q. MR. RUSCILLI'S TESTIMONY PROVIDES SEVERAL EXAMPLES OF HYPOTHETICAL CALLS BETWEEN BELLSOUTH AND AT&T CUSTOMERS IN THE LOUISVILLE LATA. HAS BELLSOUTH ACCURATELY REPRESENTED AT&T'S PROPOSAL IN THESE EXAMPLES?

A. No. BellSouth's hypothetical examples are inaccurate in a number of respects. First, as I have previously stated, AT&T agrees that the parties should establish at least two IPs in each LATA in which AT&T offers local exchange service, unless there is a *de minimus* volume of traffic. For instance, this means that under AT&T's proposal, in the Louisville LATA, AT&T and BellSouth would each have an IP in two locations. Second, BellSouth fails to provide examples of calls originating on AT&T's network and terminating on BellSouth's network. Such examples show the inequitable nature of BellSouth's proposal.

Q. WOULD YOU PLEASE PROVIDE ACCURATE EXAMPLES OF HYPOTHETICAL CALLS BETWEEN BELLSOUTH AND AT&T UNDER EACH PARTY'S PROPOSAL?

A. Yes. First, assume that AT&T's has designated an IP in Louisville and an IP in Shelbyville.

1. An AT&T customer in Shelbyville calls a BellSouth customer in Shelbyville.

Under AT&T's proposal, AT&T would be financially responsible for providing the transport between its switching center (regardless of how distant) and the BellSouth IP in Louisville. In addition, AT&T would pay reciprocal compensation for the transport between the BellSouth IP in Louisville and the BellSouth end office in Shelbyville. AT&T may choose to avoid tandem switching and common transport reciprocal compensation payments by purchasing dedicated transport from the BellSouth IP in Louisville to the BellSouth end office in Shelbyville.

Under BellSouth's proposal, AT&T would be financially responsible for providing the transport between its switching center and the BellSouth end office where the call is to be terminated. AT&T may elect to route the traffic on dedicated transport or on common transport.

Although these proposals differ somewhat, there is little financial difference to the parties.

2. A BellSouth customer in Shelbyville calls an AT&T customer in Shelbyville.

Under AT&T's proposal, BellSouth would be financially responsible for providing the transport between its Shelbyville end office and the AT&T

IP in Shelbyville. In addition, BellSouth would pay reciprocal compensation to AT&T for the use of AT&T's network to complete the BellSouth originated call.

Under BellSouth's proposal, BellSouth would only be financially responsible for providing the transport between its Shelbyville end office and IP located within the Shelbyville local calling area, that BellSouth designates, at its own discretion. AT&T would be financially responsible for providing the remaining transport for BellSouth's own originated calls between the BellSouth-designated IP and the AT&T switching center. BellSouth does not pay AT&T a transport component or tandem switching component as a part of reciprocal compensation, only local switching.

The biggest difference between these proposals is that under BellSouth's proposal, AT&T must provide the transport from the BellSouth-designated IP across its network (from the Shelbyville IP to the AT&T switch) without any compensation for such costs from BellSouth.

3. An AT&T customer in Shelbyville calls a BellSouth customer in Louisville.

Under AT&T's proposal, AT&T would be financially responsible for providing the transport between its switching center and the BellSouth IP in Louisville. In addition, AT&T would pay reciprocal compensation for the transport between the BellSouth IP in Louisville and the BellSouth end office. AT&T may choose to avoid tandem switching and common transport reciprocal compensation payments by purchasing dedicated transport from the BellSouth IP in Louisville to the BellSouth end office.

Under BellSouth's proposal, AT&T would be financially responsible for providing the transport between its switching center and the BellSouth Louisville end office where the call is to be terminated. AT&T may elect to route the traffic on dedicated transport or on common transport. Although these proposals differ somewhat, there is little financial difference to the parties.

4. A BellSouth customer in Shelbyville calls an AT&T customer in Louisville.

Under AT&T's proposal, BellSouth would be financially responsible for providing the transport between its Shelbyville end office and the AT&T IP in Louisville. In addition, BellSouth would pay reciprocal compensation to AT&T for the use of AT&T's network to complete the BellSouth originated call.

Under BellSouth's proposal, BellSouth would be financially responsible for providing the transport only between its Shelbyville end office and an IP located within the Shelbyville local calling area, that BellSouth designates, at its own discretion. AT&T would be financially responsible for providing the remaining transport between the BellSouth-designated Shelbyville IP and the AT&T switching center in Louisville. BellSouth does not pay AT&T a transport or tandem switching component as a part of reciprocal compensation, only local switching.

The biggest difference between these proposals is that under BellSouth's proposal, AT&T must provide the transport from the BellSouth-designated Shelbyville IP across the LATA to AT&T's network without any compensation for such costs from BellSouth.

Q. WOULD YOU SUMMARIZE THE AREAS OF AGREEMENT AND DISAGREEMENT?

A. AT&T has agreed that for its originating traffic it will be financially responsible for all the transport required to carry its traffic across the LATA to the BellSouth end office. BellSouth has not objected to this in Mr. Ruscilli's testimony. AT&T also has agreed to establish at least two IPs in each LATA in which AT&T provides local exchange services, unless the volume is too small to justify two IPs. BellSouth omitted to mention this point in Mr. Ruscilli's testimony, but seeing as that resolves many of BellSouth's concerns about transporting its traffic outside its basic local calling area, BellSouth may find this also acceptable. Given these areas of agreement, the area of disagreement relates to BellSouth's originating traffic that terminates to an AT&T customer within the LATA.

Q. HOW DO YOU RESPOND TO BELLSOUTH'S ASSERTION THAT, "AT&T'S THEORY WOULD MEAN THAT AT&T COULD HAVE A PHYSICAL POINT OF INTERCONNECTION WITH BELLSOUTH'S 'NETWORK' IN KNOXVILLE, AND BELLSOUTH WOULD BE REQUIRED TO HAUL LOCAL CALLS ORIGINATING IN SHELBYVILLE AND DESTINED TO TERMINATE IN SHELBYVILLE ALL THE WAY TO KNOXVILLE, AT NO COST TO AT&T."

A. This is simply wrong. First, there are LATA restrictions and the FCC rules and orders adopting those rules were established knowing there are LATA restrictions still in place. If LATA restrictions are removed in the future, I have no doubt that the FCC would readdress its orders and rules to revise them to comport with the

lifting of the LATA restrictions. Second, as I have stated previously, AT&T has agreed to establish at least two IPs in each LATA in which AT&T offers service, unless there is a *de minimus* volume of traffic. In any event, AT&T will have at least one IP in each LATA and BellSouth's assertion that it would be responsible for hauling local calls in one LATA into another LATA for completion has no basis in fact.

Q. HOW DO YOU RESPOND TO MR. RUSCILLI'S CLAIM THAT UNDER FCC RULES AT&T IS OBLIGATED TO PAY THE COSTS OF INTERCONNECTION?

A. Mr. Ruscilli's reliance on paragraphs 199 and 209 of the FCC's First Order and Report is misplaced. Under FCC rules, the ILEC may recover its costs to terminate the CLEC's originating traffic, and the CLEC may recover its costs to terminate the ILEC's originating traffic. Under FCC rules, the CLEC's terminating costs are presumed to be the same as the ILECs. The CLEC, however, may make a showing to the state commission that its actual costs may be higher, and the state commission may adopt those rates for the CLEC. *See* 47 C.F.R. § 51.711. The FCC never contemplated that one party or the other is to be less than fully compensated for its costs to terminate the originating party's traffic. Moreover, the FCC rule also makes clear that "one LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on that LEC's network."[5] As I stated in my direct testimony, this is exactly what BellSouth is proposing.

[5] 47 CFR §51.703(b).

In its role as originating carrier, AT&T agrees to fully compensate BellSouth for transport that it provides to AT&T to complete AT&T's traffic, but does not propose to have BellSouth financially responsible for any of the cost that AT&T incurs to bring AT&T originated traffic to BellSouth's network for completion by BellSouth. BellSouth should be required to do the same.

Q. HAS THE FCC DISCUSSED THE CONCEPT OF EQUIVALENT POINTS OF INTERCONNECTION?

A. Yes, as outlined in my direct testimony, in its order on SBC's 271 application for Texas, the FCC made clear its view that under the Telecommunication Act, CLECs have the legal right to designate the most efficient point at which to exchange traffic. 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."[6]

The FCC has also articulated its view in other litigation. For example, in *In re TSR Wireless, LLC, et. al., v. U.S. West*[7] decision, the FCC reiterated its position that ILECs may not impose upon other telecommunications carriers charges for the facilities used to deliver LEC originated traffic.

Most recently, the FCC addressed this very 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

---

[6] Memorandum Report and Order, Application of 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 Docket No. 00-65, ¶ 78 (June 30, 2000).

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") (relevant excerpts attached). The SBC Kansas and Oklahoma Order relies upon and discusses the very same legal authority I address in my testimony, and reaches the same conclusions. In short, the SBC Kansas and Oklahoma Order provides specific and unequivocal direction to the Commission that the BellSouth proposal is illegal under FCC rules and regulations.

In its Kansas and Oklahoma Order, the FCC addressed 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 FCC was addressing the very same issue raised by AT&T in this arbitration.[8] 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." *Id.* ¶ 235. In particular, the FCC confirmed that its decision allowing a CLEC to designate a single point of interconnection did not in any way "change an incumbent LEC's reciprocal compensation obligations under our current rules." *Id.* The FCC specifically referenced the very same rules I address in my testimony (47 C.F.R. §§ 51.703(b) and 51.709(b)),

---

[7] 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).

[8] "For example, AT&T avers that, in a technical conference in Oklahoma after the adoption of the 02A, SWBT advanced several compensation arrangements relating to a competing carrier's choice of interconnection and collocation which require AT&T to pay inflated transport costs upon exercising its right to a single point of interconnection." *Id.* ¶ 233.

which "preclude an incumbent LEC from charging carriers for local traffic that originates on the incumbent LEC's network." *Id.*

The SBC Kansas & Oklahoma Order demonstrates the fundamental fallacy of the BellSouth position. 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. Thus, aside from being illegal under 47 C.F.R. §§ 51.703(b) and 51.709(b), the BellSouth 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.

Q. WHAT HAVE OTHER STATE COMMISSIONS HELD REGARDING AT&T'S PROPOSAL?

A. Other state Commissions specifically have rejected the argument BellSouth proffers here that CLECs should be required to pay the costs to receive traffic within each local calling area established by the ILEC. For example, the Kansas Commission found 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.[9] Similarly, The California Commission found that AT&T was not required to interconnect at each Pacific Bell end office and set default points of interconnection at AT&T's switch and Pacific Bell's tandem switch.[10] Likewise, the Texas Public Utilities Commission specifically rejected SWBT's argument that AT&T must interconnect in each local calling area.[11] According to the Texas decision, "The FCC has clearly stated that the CLEC is the one that determines at which points on the ILEC's network it wants to interconnect, unless the ILEC demonstrates that the CLEC's proposal is technically infeasible."[12] Arbitrators in Michigan, Indiana, and Wisconsin also have held that each party is financially responsible for delivering its originating interconnection traffic to the terminating party's interconnection point.[13]

---

[9] Arbitrator's Order No. 5: 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*, pp. 4, 10 (Aug. 7, 2000). The Kansas Corporation Commission affirmed the arbitrator's decision on this issue on September 8, 2000, making a clarification as to the cost to be imposed to convert trunks. *See* Order Addressing and Affirming Arbitrator's Decision at 9.

[10] 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*, Dkt. No. 00-01-022, p. 13 (CA PUC Aug. 3, 2000).

[11] Revised Arbitration Award, *Petition of Southwestern Bell Telephone Company for Arbitration with AT&T Communications of Texas, L.P., TCG Dallas and Teleport Communications, Inc. Pursuant to Section 251(B)(1) of the Federal Communications Act of 1996,* Docket No. 22315. (Texas PUC Sept. 27, 2000.).

[12] *Id.* at 9.

[13] *See* Arbitration Award, *Petition for Arbitration to Establish an Interconnection Agreement Between two AT&T subsidiaries, AT&T Communications of Wisconsin, Inc. and TCG Milwaukee and Wisconsin Bell, Inc. (d/b/a Ameritech Wisconsin)*, 05-MA-120 (Oct. 12, 2000); Decision of Arbitration Panel, *AT&T Communication's 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); Order, *AT&T Communications of Indiana TCG Indianapolis, Petition for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Indiana Bell Telephone Company, Incorporated d/b/a Ameritech Indiana Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Cause No. 40571-INT-03 (Nov. 20, 2000). The Oklahoma Corporation Commission, as part of its 271 deliberations, originally held that SWBT should allow CLECs to interconnect at a single technically feasible point to meet CLEC needs. However, the Commission modified its decision on this issue. *See* Order No. 445340, Order Nunc Pro Tunc Regarding Order No. 445180, Corporation Commission of Oklahoma, Cause No. PUD 970000560 (Oct. 4, 2000).

Q. DOES BELLSOUTH'S PROPOSAL TO AGGREGATE ITS ORIGINATING TRAFFIC TO A SINGLE POINT OF ITS CHOOSING WITHIN THE BELLSOUTH LOCAL CALLING AREA NULLIFY AT&T'S CONCERNS ABOUT COLLOCATION SPACE EXHAUSTION AND HAVING TO GO TO EACH END OFFICE?

A. No. Under BellSouth's proposal, BellSouth may unilaterally select an end office where collocation space is limited or exhausted. In such instances, AT&T would be required to interconnect at many end offices in a LATA.

Q. HOW DO YOU RESPOND TO MR. RUSCILLI'S ASSERTION ON PAGE 36 THAT AT&T IS NOT HAMPERED IN ITS ABILITY TO COMPETE IF THE BELLSOUTH PROPOSAL IS ADOPTED?

A. BellSouth fails to recognize that BellSouth's proposal not only increases CLECs' costs to enter the market, but also requires CLECs to create networks mirroring the embedded network BellSouth has in place today. As a result, a CLEC's ability to differentiate itself in the market is severely hampered. Because AT&T and BellSouth have agreed that all calls within the LATA are local, and BellSouth continues to sell more and more LATAwide local calling plans, BellSouth's proposal will result in AT&T having to place an IP in every local calling area, contrary to BellSouth's testimony that it will not.

Q. IN HIS DIRECT TESTIMONY MR. RUSCILLI SUGGESTS THAT THE ISSUE IS ONE OF COST ALLOCATION BASED ON THE AT&T NETWORK DESIGN. IS HE CORRECT?

A. No. The question is not whether the parties' networks will be interconnected based on the network design of one party, but rather will the parties' networks be interconnected in a manner that is neutral to network design. It is only fair and equitable that an interconnection arrangement does not favor any particular design.

AT&T should not suffer a burdensome and discriminatory network interconnection arrangement because it chooses to deploy a more efficient network design than the classic hub-and-spoke telephony architecture. The Commission should be sensitive to issues which give the incumbent carrier substantial competitive advantages over competing carriers. Accordingly, the fair outcome is for both AT&T and BellSouth to be interconnected on an equitable basis.

Q. HOW DO YOU RESPOND TO THE CLAIM THAT BELLSOUTH'S LOCAL EXCHANGE RATES DO NOT COVER ADDITIONAL TRANSPORT COSTS?

A. In none of the call examples provided above, in which BellSouth is the originating party, is BellSouth required to provide transport for which it has no means to recover its costs.

With respect to a call from a BellSouth customer to an AT&T customer within the Shelbyville local calling area, where BellSouth has no toll revenue, BellSouth would have no obligation to provide transport beyond the Shelbyville local calling area, since AT&T has indicated it might place its IP in Shelbyville. With respect to a call from a BellSouth customer in Shelbyville to an AT&T customer in Louisville, BellSouth would have an obligation to provide transport to AT&T's IP

in Louisville; however this may be a toll call under BellSouth's current local calling areas, and BellSouth would have the option to collect toll revenue for these calls to cover its additional transport expenses to AT&T.

Therefore, the Commission should disregard BellSouth's baseless assertion that AT&T's proposal would impose costs on BellSouth for which it has no means to recover.

Q. IS AT&T'S PROPOSAL NOTHING MORE THAN AN ELABORATE RUSE THAT AT&T ATTEMPTS TO USE TO IMPOSE THE ADDITIONAL COSTS OF ITS NETWORK DESIGN ONTO BELLSOUTH?

A. Absolutely not. First, AT&T's solution maintains the status quo of how the financial responsibility is assigned today. AT&T's network design has been in place for several years, and AT&T's proposed solution is what is occurring today. BellSouth is currently financially responsible for bringing its originated traffic to AT&T's switch, and has not disputed any billing by AT&T that reflects this. By the same token, AT&T is financially responsible for getting its originated traffic to BellSouth's POI and has not objected to this responsibility. BellSouth's proposal is the one that will change the imposition of costs on the other party, not AT&T's. BellSouth's proposal will result in AT&T having to incur new additional costs that it does not incur today.

Second, when BellSouth states that AT&T's proposal will raise its costs that are not currently being recovered by its current basic local rates, this is simply not true. AT&T's proposed solution – the status quo of today - has been in effect for

several years, and this Commission has yet to see a filing by BellSouth asking to raise any of its rates to cover this "additional cost."

Q. WHAT IS AT&T ASKING THIS COMMISSION DO?

A. AT&T is asking that the Commission retain the status quo and find that BellSouth shall continue to be financially responsible for all of the costs of originating any of its traffic within the LATA and delivering such traffic to an AT&T switch or designated interconnection point(s) if the switch serving a LATA is located outside of that LATA.

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?

Q. HOW DO YOU RESPOND TO MR. RUSCILLI'S ASSERTION THAT AT&T IS NOT ENTITLED TO THE TANDEM RATE BECAUSE AT&T DID NOT SHOW THAT AT&T IS ACTUALLY PERFORMING A TANDEM FUNCTION?

A. Rule 51.711(a)(3) of the FCC's Interconnection Order provides, "Where the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the ILEC's tandem interconnection rate." The plain language of the order is that there is no requirement that a CLEC network actually have a tandem switch or perform an

intermediate switching function to receive the tandem interconnection rate. Any other conclusion would be illogical.

Carefully analyzing Mr. Ruscilli's argument illuminates its tortured logic. If a CLEC were providing the actual local tandem switching capability, then according to Mr. Ruscilli, BellSouth would agree to pay the tandem interconnection rate to the CLEC. Therefore, to reach Mr. Ruscilli's interpretation of Rule 51.711(a)(3), the FCC actually intended to make it more difficult for a CLEC to qualify for the tandem interconnection rate than an ILEC. Under Mr. Ruscilli's interpretation, BellSouth must merely provide tandem switching, but a CLEC must pass a two part test: first, it must actually provide the identical tandem switching functionality provided by the ILEC and the CLEC switch must also serve a geographic area comparable to the area served by the incumbent LEC's tandem switch.

It is important to note that AT&T's reliance on the FCC's proxy rule for compensating CLECs for reciprocal compensation is in lieu of making an individual cost showing that AT&T's costs are in fact higher than BellSouth's rate, and thus should be compensated at a higher rate than BellSouth. (FCC Rule 711(b)). It is quite possible for such a showing to be made by a CLEC, particularly in the early stages of construction of a local network that enjoys nowhere near the ubiquity and utilization that BellSouth's network does.

Q. WHAT ABOUT THE FCC'S LOCAL COMPETITION RULE, WHICH MR. RUSCILLI CITES?

A. Clearly the FCC did not intend to hold a CLEC to a higher standard to qualify for the tandem interconnection rate than an ILEC. Indeed, the FCC's own comments

demonstrate this intent in Paragraph 1090 of the Local Competition Order, the FCC stated:

> [s]tates shall also consider whether new technologies (*e.g.*, fiber ring or wireless networks) perform functions similar to those performed by an incumbent LEC's tandem switch.... (Emphasis added.)

This is not an additional test for CLECs, but an alternative by which the CLEC may qualify for a "proxy" of the CLEC's additional costs. Thus, it is clear that actual local tandem (i.e., intermediate switching) functionality is not a requirement for a CLEC to receive the tandem interconnection rate.

Q. ON PAGE 39 OF HIS DIRECT TESTIMONY, MR. RUSCILLI STATES THAT AT&T SHOULD ONLY BE COMPENSATED FOR THE FUNCTIONS IT ACTUALLY PERFORMS. DO YOU AGREE?

A. No. This is not the issue. The issue is whether AT&T should be compensated for its costs to terminate BellSouth's originated traffic. BellSouth is attempting to frame the issue in a different manner than how the FCC framed the issue. A careful reading of the FCC's First Order and Report, paragraphs 1085 through 1091 clearly shows that nowhere does the FCC say that parties should "only be compensated for the functions it actually provides, as BellSouth asserts. Instead of forcing the states into costly and lengthy cost proceedings for CLECs, the FCC proposes several proxies for "actual costs." In paragraph 1085 of the FCC's First Order and Report, the FCC found "We also conclude that using the incumbent LEC's forward-looking costs for transport and termination of traffic as a proxy for the costs incurred by interconnecting carries satisfies section 252(d)(2) that costs be determined 'on the basis of a reasonable approximation of the additional costs

of terminating such calls'". Again in paragraph 1088, the FCC stated that "We find, however, that incumbent LEC's costs, including small incumbent LEC's costs, serve as reasonable proxies for other carrier's costs of transport and termination". And in paragraph 1090 of this same order, it says "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". The Commission should reject the manner in which BellSouth has attempted to frame this issue and thereby reject BellSouth's arguments. It clearly was not the intent of the FCC for the amount of reciprocal compensation to be based on the actual costs of the functions provided by interconnecting carriers. If such were the case, then the FCC would never have allowed the incumbent LEC's costs to be used as proxies for CLEC's costs.

Q. FURTHER ON PAGE 39, MR. RUSCILLI STATES THAT AT&T MUST PROVIDE THE FUNCTIONALITY OF A TANDEM SWITCH TO INCUR THE COST OR IT SHOULD NOT CHARGE BELLSOUTH THE TANDEM SWITCHING RATE. DO YOU AGREE?

A. Absolutely not. In paragraph 1090 of the FCC's First Order, the FCC says that "states shall also consider whether new technologies (e.g., fiber rings or wireless networks) perform functions *similar* to those performed by an incumbent LEC's tandem switch and thus, whether some or all calls terminating on the new entrant's network should be priced the same as the sum of transport and termination via the incumbent LEC's tandem switch". Nowhere in its order does the FCC say that the interconnecting carrier must provide the identical functions.

Why? Because to do so would be irrelevant, since the CLEC can charge and BellSouth would pay, by its own admission, for providing identical functionality. Additionally, AT&T is permitted to charge for tandem switching on every local call because AT&T incurs its costs on every call. That is the point of the FCC's proxy.

Q. ON PAGES 40 AND 41, MR. RUSCILLI STATES THAT THE FCC POSED TWO REQUIREMENTS THAT MUST BE MET BEFORE A CLEC WOULD BE ENTITLED TO COMPENSATION AT BOTH THE END OFFICE AND TANDEM SWITCHING RATES. DO YOU AGREE?

A. No. If this were the intention of the FCC, it would have clearly stated that in its adopted rules. The rule in question, C.F.R. 55.711(a)(3) was first issued on August 8, 1996, as part of the First Order and Report issued by the FCC. The FCC has had over 4 years to revise this rule to reflect a two-part test if that is what it intended. I find it hard to believe that BellSouth thinks that the FCC made a mistake and "forgot" the second test when it wrote the rule or when it wrote the sentence quoted above. The FCC did not forget the second test because it would make no sense to include the second test proposed by BellSouth, since the CLEC would be, by BellSouth's own admission, entitled to the tandem rate by satisfying the so-called second test alone.

Q. ON PAGE 41, MR. RUSCILLI STATES THAT THE BASIC NETWORK ARCHITECTURE USED BY AT&T IS THE SAME AS BELLSOUTH, AND THUS THE COMMISSION NEED NOT MAKE ANY ATTEMPT TO DETERMINE WHETHER THE NEW TECHNOLOGY DEPLOYED BY

AT&T PERFORMS SIMILAR FUNCTIONS TO TANDEM SWITCHING. DO YOU AGREE?

A. No. There has been no evidence filed by BellSouth to support this assertion. AT&T has provided ample evidence in its direct testimony that AT&T's network architecture is substantially different than BellSouth's. BellSouth would have the Commission believe that any network that provides exchange and exchange access service must have identical architectures. This simply is not the case. Thus, the Commission should attempt, as other commissions have done, to determine whether the new technology deployed by AT&T performs a function similar to BellSouth's tandem switches. Again, the key word is similar, not exactly.

Q. BEGINNING ON PAGE 42, MR. RUSCILLI BEGINS A DISCUSSION OF WHAT TANDEM FUNCTIONALITY IS AND WHETHER AT&T'S SWITCHES PERFORM THE TANDEM FUNCTIONALITY DESCRIBED BY MR. RUSCILLI. WHAT RELEVANCE DOES THIS TESTIMONY HAVE?

A. None. For instance, Mr. Ruscilli on page 39 states "To receive reciprocal compensation at the tandem rate, a carrier must be performing the function described in the FCC's definition of tandem switching". This is simply incorrect. The rule BellSouth refers to is applicable to incumbent LECs only, not CLECs. BellSouth's false assertion directly contradicts the FCC in its First Order and Report at Paragraph 1090, when it talks about similar, not exact, functions. Further on in his testimony, Mr. Ruscilli states that AT&T switches must actually be performing the tandem functions, "if for no other reason than the difference

between end office and tandem rates for reciprocal compensation is the same as the UNE rate for tandem switching". Again, what Mr. Ruscilli fails to mention is that for AT&T these incumbent LEC rates are mere proxies for AT&T costs, in lieu of AT&T having to provide its own cost studies. These proxies are meant to compensate AT&T for the costs it incurs since it has a completely different network architecture than what BellSouth has in place.

Q. DO AT&T'S SWITCHES PERFORM THE FUNCTIONS OF A TANDEM SWITCH?

A. Although AT&T does not believe it must establish such functionality under applicable FCC rules, AT&T's switches do, in fact, provide the necessary functionality. In spite of this, AT&T provided evidence in its direct testimony demonstrating that AT&T's switches perform similar functions of a tandem switch. Despite BellSouth's attempt to try to convince this Commission that AT&T is an ILEC and must meet the requirements of an ILEC, AT&T's switches do perform similar tandem switch functions. The true purpose of a tandem switch is to aggregate traffic. A tandem switch does this through an intermediate switching step. AT&T's network is performing tandem-like functions by aggregating traffic. Since AT&T's network aggregates traffic differently than BellSouth's network, BellSouth is assuming we aggregate traffic the same way it does. However, intermediate tandem switching is not the sole means to aggregate traffic.

AT&T's network does indeed aggregate traffic across a broad geographic area, often a substantially larger area than a BellSouth tandem. This is something BellSouth has not disputed. Thus, the Commission should consider not whether

AT&T's network is capable of intermediate switching, but rather whether it is capable of traffic aggregation. If so, then AT&T's network does indeed perform functions "similar to those performed by an incumbent LEC's tandem switch".

To show the level of aggregation that AT&T's network performs please review the following table. However, as I said earlier, the FCC does not require a CLEC to meet such a test. Therefore, AT&T has met a higher standard than required by FCC rules.

TRAFFIC AGGREGATION FUNCTIONS

Traffic Type	BST Tandem	AT&T Network
Traffic between end office and IXC	YES	YES
Traffic between end office and other CLECs	YES	YES
Traffic between end office and independent LECs	YES	YES
Traffic between end offices	YES	YES
Traffic between AT&T switch and BST end office	YES	YES
Traffic between end office and operator service platform	YES	YES
Traffic between end office and 911 tandem	YES	YES
Overflow traffic	YES	NO

Q. CAN YOU SUMMARIZE THE EVIDENCE THAT AT&T HAS PROVIDED REGARDING GEOGRAPHIC COMPARABILITY?

A. Yes. In my direct testimony, AT&T provided a series of maps that show separately for AT&T and BellSouth the geographic area served by its respective switches (for AT&T) and tandems (for BellSouth) for each LATA in Kentucky. Comparing the AT&T switch service area to the BellSouth tandem service area shows that AT&T meets the requirement of § 51.711(a)(3).

Q. PLEASE SUMMARIZE WHAT YOU WANT THIS COMMISSION TO DO WITH REGARD TO ISSUE 9

A. AT&T requests the Commission conclude that AT&T switches serve a comparable geographic area as that served by BellSouth's tandem switches and that AT&T is thus entitled to the tandem interconnection rate.

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

Q. DO YOU AGREE WITH BELLSOUTH THAT ISSUE 13 RELATES ONLY TO PHONE-TO-PHONE IP TELEPHONY CALLS?

A. No. BellSouth has provided AT&T with two different sets of language to consider regarding treatment of IP Telephony calls. The first one is found in Attachment 3, section 6.19, as attached to BellSouth's reply to AT&T's petition for arbitration as follows:

> Neither Party shall represent access services traffic (e.g., Internet Protocol Telephony, FGA, FGB, etc.) as Local Traffic for purposes of payment of reciprocal compensation. "Internet Protocol Telephony" is defined as real-time voice conversations over the Internet by converting voices 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. (Attachment 3, section 6.19, as attached to BellSouth's reply to AT&T's petition for arbitration)

The second one was sent to AT&T by BellSouth via e-mail and is as follows:

> The origination and end point of the call shall determine the jurisdiction of the call. Unless expressly agreed to by the Parties in this Agreement, neither Party shall represent as local traffic any traffic for which access charges may be lawfully assessed. The Parties have been unable to agree as to whether a call that travels over transport protocol methods other than those being utilized by the Parties on the effective date of this Agreement and crosses LATA boundaries constitutes switched access traffic. However, because the Parties are not currently utilizing alternative transport

protocol methods on the effective date of this Agreement, the Parties will resume negotiations on this issue if and when either Parties adopts a new transport protocol method. If the parties are unable to resolve this issue, then the Parties will submit the dispute to the Kentucky Regulatory Commission or the Federal Communications Commission, whichever is appropriate, for resolution. (Language sent to AT&T in E-mail for consideration to close issue.)

Both sets of language would apply to all IP Telephony calls, not just phone-to-phone calls. Neither set makes a distinction between phone-to-phone, computer-to-phone, phone-to-computer, or computer-to-computer calls: the two sets of language would treat all forms of Voice-over Internet Protocol (VOIP) traffic as switched access traffic.

AT&T understood the use of the term "Internet" proposed by BellSouth in its reply to AT&T's petition to mean the World Wide Web. Thus, "over the Internet" referred to "over the World Wide Web". IP telephony and Internet Telephony utilize the same Internet protocol but are not the same.

Q. PLEASE EXPLAIN THE DIFFERENCE, IF ANY, BETWEEN IP TELEPHONY AND INTERNET TELEPHONY.

A. "IP Telephony" refers to traffic carried via Internet Protocol over the private network of a carrier, while "Internet Telephony" is limited to telephone calls carried over the Internet; that is, the World Wide Web. It is universally accepted that the term "Internet" references the World Wide Web, not the internal dedicated private networks of particular companies. The language proposed by BellSouth, however, shows that BellSouth intends to treat all types of calls as switched access traffic, "regardless of transport protocol" including Internet Telephony calls that travel over the World Wide Web.

The failure by BellSouth to make the distinction between IP Telephony and Internet Telephony calls is not an oversight: BellSouth indicated in negotiations with AT&T that it intends to treat both types of calls as switched access traffic. BellSouth now takes the position that computer-to-computer, computer-to-phone, phone-to-computer, and IP enabled phone-to-phone voice calls are no longer an issue to be addressed by this Commission. However, the language proposed by BellSouth does not eliminate these variations of calls from consideration.

Q. DO YOU AGREE WITH MR. RUSCILLI'S DEFINITION OF PHONE-TO-PHONE IP TELEPHONY?

A. No. Mr. Ruscilli concludes that phone-to-phone IP Telephony provided by a "local carrier" or "telephone carriers" is a basic telecommunications service rather than an "information service". He is incorrect. It is the nature of the service, not the nature of the entity providing the service that determines whether or not a local carrier or telephone carrier is eligible for the ISP exemption from payment of access charges. Although the FCC in its *Report to Congress (FCC 98-67, April 10, 1998)* recognized that IP Telephony bears the characteristics of a "telecommunications service" that provides pure transmission (rather than an "information service" that provides enhanced functionalities), today, the FCC treats IP Telephony as if it were an information service and thus exempts IP Telephony providers from paying traditional access charges. Therefore, to the extent that a local carrier or telephone carrier provides IP Telephony, it is eligible for the ISP exemption from payment of access charges, just like all other IP Telephony providers.

It's clear that Mr. Ruscilli advocates imposing access charges on all communications, both voice and data, transported via Internet Protocol regardless of whether the service may be telecommunications or information services. However, the FCC has determined that telecommunications services and information services are mutually exclusive categories. A particular service can be one or the other, but it cannot be both.

The FCC developed the distinction between "basic services" and "enhanced services" in the Second Computer Inquiry (1980) (Computer II). "Basic services" were defined by the FCC as "the common carrier offering of transmission capacity for the movement of information". A basic service transmits information generated by a customer from one point to another, without changing the content of the transmission. The "basic" service classification defines the transport transmission capacity that makes up traditional communications service, which the FCC considers to be "wholly traditional common carrier activities" (Title II of the Act).

In comparison, the FCC defined unregulated "enhanced service" as "services offered over common carrier transmission facilities...which [1] employ computer processing applications that act on the format, content, code, protocol...[2] provide the subscriber additional, different or restructured information; or [3] involve subscriber interaction with stored information." A service is generally enhanced if it meets one of the three criteria. The FCC has determined that protocol processing services that qualified as enhanced should be treated as information services under the Act (1996)(Non-Accounting Safeguards Order). Clearly IP Telephony qualifies as an information service under the Act because

the provider transforms a communication from circuit-switched transport to Internet Protocol transport and vice versa.

Q. MR. RUSCILLI QUOTES FROM THE APRIL 10, 1998 FCC REPORT TO CONGRESS. DO YOU AGREE WITH MR. RUSCILLI'S CHARACTERIZATION OF THAT REPORT?

A. Not entirely. While Mr. Ruscilli does provide accurate quotes from that report, the quotes do not answer the question. The question in his testimony was whether or not the FCC viewed calls to ISPs differently than phone-to-phone IP telephony as it relates to the applicable charges. The FCC did not address "applicable charges" for IP telephony in the Report to Congress. In fact, the FCC deferred the issue of determining the regulatory status of IP telephony, including payment of access charges:

> We do not believe, however, that is appropriate to make any definitive pronouncements in the absence of a more complete record focused on individual service offerings. ...We defer a more definitive resolution of these issues pending the development of a more fully-developed record because we recognize the need, when dealing with emerging services and technologies in environments as dynamic as today's Internet and telecommunications markets, to have as complete information and input as possible.[14]

Thus, contrary to BellSouth's statement, the FCC has not determined that IP Telephony is a telecommunications service subject to access charges.

[14] In the Matter of Federal-State Joint Board on Universal Service, FCC Report to Congress, CC Docket No. 96-45, (April 10, 1998) at ¶ 90.

Q. HAS THE FCC RECENTLY VOICED ITS POSITION ON THE ISSUE OF INTERNET TELEPHONY?

A. Yes. In a recent May 25th interview with Warren's Washington Internet Daily, Chairman Kennard stated he will not regulate Internet telephony. He stated that "it is important to recognize that legacy regulation is not necessarily appropriate to emerging network technologies, so when people start asking when are you to going to regulate IP telephony, my answer is always the same - never." Chairman Kennard said it is preferable to seek a more appropriate method of universal service funding than to apply outdated regulation to new technology. While Mr. Ruscilli mentions an FCC report dated April 10, 1998 as a basis for asserting that the FCC would find in BellSouth's favor, the May 25th statements by Chairman Kennard clearly indicate that the FCC no longer is pursuing a course of applying traditional regulatory solutions and rules to IP telephony calls. Chairman Kennard again reiterated this position in a speech in Atlanta on September 12, 2000 when he stated: " ...regulation is too often used as a shield, to protect the status quo from new competition—often in the form of smaller, hungrier competitors—and too infrequently as a sword—to cut a pathway for new competitors to compete by creating new networks and new services."

Q. HAS THE FCC GIVEN ANY OTHER INDICATION THAT IT WILL NOT AT THIS TIME APPLY TRADITIONAL ACCESS CHARGES TO IP TELEPHONY CALLS?

A. Yes. In April 1999, the FCC declined to act on a Petition U.S. West filed seeking an expedited declaratory ruling. U.S. West requested that the FCC determine that phone-to-phone IP Telephony is a telecommunications service subject to a

carrier's carrier charges (access) when the ILEC provides originating and terminating access.

Q. WHAT DOES AT&T RECOMMEND THIS COMMISSION DO WITH THIS ISSUE AS NOW CLARIFIED BY BELLSOUTH?

A. AT&T recommends that this Commission not adopt the language proposed by BellSouth, but should instead find that IP telephony calls are not subject to access charges.

Under the FCC's longstanding ESP exemption, AT&T suggests that the Commission rule that all forms of ISP Traffic, including IP telephony, should be treated as local and subject to cost based reciprocal compensation on a uniform basis with "local" voice and data traffic. Such a ruling would further support federal and state comity and facilitate the development of a uniform, nationwide, pro-competitive regulatory policy with regard to the treatment of IP telephony services.

ISSUE 21: SHOULD THE COMMISSION OR A THIRD PARTY COMMERCIAL ARBITRATOR RESOLVE DISPUTES UNDER THE INTERCONNECTION AGREEMENT?

Q. DO YOU AGREE WITH BELLSOUTH'S POSITION THAT THE USE OF THIRD PARTY ARBITRATORS TO RESOLVE DISPUTES IS IN FACT MORE COSTLY AND EXPENSIVE THAN SEEKING RESOLUTION FROM THE GOVERNING REGULATORY COMMISSION?

A. No. BellSouth and AT&T have not utilized the previous commercial arbitration clause. Therefore, the parties have no track record regarding this issue.

Q. HAS AT&T HAD DIFFERENT EXPERIENCES WITH COMMERCIAL ARBITRATION?

A. Yes. In AT&T's Pacific region, several matters have been resolved through commercial arbitration. In these proceedings, knowledgeable arbitrators were utilized to resolve disputes in a timely and cost effective manner for AT&T and Pacific Bell. Generally, the matter was heard over a one to two day period with minimal costs to the parties. The decisions were quick and allowed the parties to focus on performing pursuant to the interconnection agreement. In fact, in AT&T's recent arbitration proceeding for its second interconnection agreement with Pacific Bell, the California Commission agreed with AT&T's position. In its final order dated August 3, 2000, the Commission adopted AT&T's proposal to retain the requirement in the interconnection agreement that disputes under the agreement should go through an alternative dispute resolution process heard before third party arbitrators, not the commission. See Order in *Application by AT&T Communications of California, inc., et al, for Arbitration of an Interconnection Agreement with Pacific Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996*; Application 00-01-022, August 3, 2000: pages 28-29. I should note that Pacific Bell also raised the issue that private arbitrators were not qualified to resolve telecommunications disputes. The California commission rejected this argument.

While AT&T is well aware of this Commission's ability to handle complaints, this Commission may not have the resources to address each and every dispute

that could arise under the interconnection agreement, or to address them as promptly as could a commercial arbitrator.

Q. WHAT IS AT&T ASKING THAT THE COMMISSION DO WITH RESPECT TO THIS ISSUE?

A. The Commission should adopt AT&T's position regarding private arbitration for disputed issues between BellSouth and AT&T. This Commission has opened numerous generic dockets regarding important policy and pricing issues that are and will be applicable to all CLECs in Kentucky. In taking the position that Interconnection Agreements are commercial agreements between sophisticated parties, and disputes arising therein should be resolved in a private commercial forum, the Commission will be able to expand its focus on industry matters rather than spend time resolving two-party disputes under a negotiated agreement.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.