

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)	CASE NO.
AGREEMENT WITH BELLSOUTH)	2000-465
TELECOMMUNICATIONS, INC. PURSUANT TO)	
SECTIONS 252(b) OF THE)	
TELECOMMUNICATIONS ACT OF 1996)	

**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.

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

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.

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

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*

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 Carolina¹³ and Alabama¹⁴ also have recently held ILECs

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,

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

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

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.

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.

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

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

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.

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),

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

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

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.

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.**

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

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

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

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

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.*,

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

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.

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.

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.

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

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

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;

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.

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.

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 Ordering⁵², 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 requests⁵⁴, unilateral decision to implement a new process for discussing changes to the CCP requested by AT&T⁵⁵, prolonged failure to implement highly-prioritized Change Requests⁵⁶, and CLECs' inability to discuss Change Requests with the BellSouth personnel who decide whether to implement them.⁵⁷

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 misled by this argument. BellSouth's retail systems parse the CSR for BellSouth's service representatives and AT&T therefore is entitled to this same functionality. 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

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 nor 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.

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

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

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,

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

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.)

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

Respectfully submitted,

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