BELLSOUTH TELECOMMUNICATIONS, INC.

DIRECT TESTIMONY OF JOHN A. RUSCILLI

BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION

CASE NO. 2000-465

FEBRUARY 6, 2001

Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC. ("BELLSOUTH") AND YOUR BUSINESS ADDRESS.

A. My name is John A. Ruscilli. I am employed by BellSouth as Senior Director for State Regulatory for the nine-state BellSouth region. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR BACKGROUND AND EXPERIENCE.

A. I attended the University of Alabama in Birmingham where I earned a Bachelor of Science Degree in 1979 and a Master of Business Administration in 1982. After graduation I began employment with South Central Bell as an Account Executive in Marketing, transferring to AT&T in 1983. I joined BellSouth in late 1984 as an analyst in Market Research, and in late 1985 moved into the Pricing and Economics organization with various responsibilities for business case analysis, tariffing, demand analysis and price regulation. I served as a subject matter expert on ISDN tariffing in various commission and public service commission staff meetings in Tennessee, Florida, North Carolina and Georgia. I later moved into the State Regulatory and

External Affairs organization with responsibility for implementing both state price regulation requirements and the provisions of the Telecommunications Act of 1996, through arbitration and 271 hearing support. In July 1997, I became Director of Regulatory and Legislative Affairs for BellSouth Long Distance, Inc., with responsibilities that included obtaining the necessary certificates of public convenience and necessity, testifying, Federal Communications Commission ("FCC") and PSC support, federal and state compliance reporting and tariffing for all 50 states and the FCC. I assumed my current position in July 2000.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to present BellSouth's position on numerous issues as raised by AT&T Communications of the South Central States, Inc. and TCG Ohio (collectively "AT&T") in its Petition for Arbitration filed with the Kentucky Public Service Commission ("Commission") on October 5, 2000. BellSouth witnesses Mr. Keith Milner and Mr. Ron Pate will also file direct testimony in this case. In my testimony, I respond to the following issues, in whole or in part, as stated in the Issues Matrix: 1, 4-7, 9, 13, 18, 21 and 25.

Issue 1: Should calls to Internet service providers be treated as local traffic for the purposes of reciprocal compensation? (Attachment 3)

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. Reciprocal compensation should not apply to ISP-bound traffic. Based on the Telecommunications Act of 1996 (the "Act") and the FCC's Local Competition First Report and Order issued August 8, 1996 ("Local Competition Order"), reciprocal compensation obligations under Section 251(b)(5) apply only to local traffic. ISP-bound traffic constitutes access service, which clearly is not local traffic. Consequently, inter-carrier compensation for joint provision of this service is not an obligation under the Act. Also, such service is predominantly interstate in nature and is within the exclusive jurisdiction of the FCC.

Q. WHAT IS AT&T'S POSITION ON THIS ISSUE?

A. Although AT&T has publicly stated that ISP-bound traffic is access traffic, AT&T wants ISP-bound traffic to be treated as local traffic for purposes of reciprocal compensation. As I will show, AT&T's position is clearly at odds with the FCC's findings and should not be endorsed by this Commission.

Q. DOES IT MAKE SENSE FOR ONE LEC TO PAY RECIPROCAL COMPENSATION TO ANOTHER LEC FOR ISP-BOUND TRAFFIC ORIGINATED BY A LOCAL SERVICE CUSTOMER?

A. No. In order to explain why it is inappropriate for one LEC to provide such

compensation to another LEC for ISP-bound traffic, first let me step through the more familiar situation of compensation for long distance calls that, of course, involve an interexchange carrier ("IXC"). In my example, I am going to assume that BellSouth has an extended area service arrangement with GTE and that the IXC's (AT&T in my example) point of presence is in GTE's service area.

Let's assume that end user A, who obtains local service from BellSouth, subscribes to AT&T for its long distance service. The end user would pay BellSouth each month for his local service. When end user A places a long distance call, as opposed to a local call, end user A pays AT&T for the call. AT&T then pays both BellSouth and GTE for the portion of originating switched access service provided by each company. There is absolutely no dispute that payment for an inter-company long distance call is made in this manner.

Now, let's compare what occurs when end user A subscribes to Internet service. Just as with long distance service, end user A must subscribe separately for Internet service. In effect, end user A presubscribes to an ISP for Internet service. Instead of building facilities to end users, an ISP collects access traffic over facilities it leases from a LEC just like a long distance company does. For the purpose of continuing the example, let's assume the ISP obtains its access service from GTE and is located in GTE's portion of that same extended area service that I described earlier. As in the long distance example, end user A pays BellSouth for his local exchange service. End user A also pays the ISP for his Internet access, just like he pays for long distance service, although the ISP service may be flat-rated rather than usage-based as are toll rates. However, the ISP, unlike the IXC, does not pay BellSouth for originating traffic that BellSouth is helping to carry from the ISP's customer to the

ISP's location where the call will go out over the Internet.

It is obvious from these examples that, when end user A accesses the Internet through an ISP who is a customer of GTE, the only party not being compensated for the costs it incurs is BellSouth. In the first example detailing a typical long distance call, AT&T would pay both BellSouth and GTE originating switched access. However, in the second example, the ISP only pays GTE for the access service it receives. BellSouth does not receive any compensation for this call even though it incurs costs on behalf of the ISP.

Indeed, if ISPs had not been exempted by the FCC from paying access charges for the access service they receive, BellSouth would receive originating access from the ISP just like it would from AT&T in the long distance example. GTE would only receive a portion of the full access charges paid by AT&T. However, due to the exemption, the ISP only pays basic local business rates to the service provider who provided the connection to its premises – in this case, GTE. Therefore, since BellSouth is not compensated for delivery of ISP-bound traffic, it would be nonsensical for GTE to claim that it is somehow owed additional compensation from BellSouth for such traffic. GTE is receiving its compensation from the ISP. If reciprocal compensation were required for this traffic, the additional payment would be nothing more than a windfall for GTE. Indeed, GTE would be paid both by the ISP and by BellSouth for the same traffic.

Q. IS IT REASONABLE TO CONCLUDE THAT THE ACT REQUIRES RECIPROCAL COMPENSATION TO APPLY TO ISP-BOUND TRAFFIC?

A. No. It does not make sense to think that Congress intended for the Act to create a windfall for competitive local exchange carriers ("CLECs"); however, paying reciprocal compensation for ISP-bound traffic cannot be viewed as anything but a windfall. The huge dollar amounts being billed by CLECs to ILECs do not represent revenues that CLECs have earned as a result of providing local service. Nor do these dollar amounts represent cost recovery for completing local calls originated by BellSouth's end users. To the contrary, these revenues represent new money for CLECs resulting from an inappropriate application of reciprocal compensation. However, there are no new revenues or cost reductions for BellSouth to fund these new revenues for CLECs.

Q. OTHER THAN THE REASONS YOU HAVE JUST PROVIDED, ARE THERE OTHER REASONS THAT PAYMENT TO CLECs FOR ISP-BOUND TRAFFIC WOULD BE INAPPROPRIATE?

A. Yes. Specifically, the local exchange rates paid by end user customers were never intended to recover costs associated with providing non-local service. Indeed, those rates were established long before the Internet became popular. Local exchange rates provide compensation (and, often, not adequate compensation) only for calls that originate and terminate in the same local calling area. ISP-bound traffic characteristics and volume, which vary significantly from local traffic, were never considered when basic local exchange rates were established.

Q. DO THE LOCAL INTERCONNECTION RATES PREVIOUSLY

ESTABLISHED BY THE COMMISSION REFLECT ISP-BOUND TRAFFIC?

A. No. The local interconnection rates approved by this Commission in Case Nos. 96-431 and 96-482, as well as those being considered by the Commission in Administrative Case No. 382, were based on cost studies specific to originating local traffic. Switching costs have two major components – call set-up costs and call duration costs. Call set-up costs occur irrespective of how long the call actually lasts, and are a significant part of the costs of originating calls. Conversely, call duration costs are specifically related to how long the call actually lasts. On average, a local call is 3 minutes long, so the call set-up cost is divided by 3 in order to recover the cost on a per minute basis. Then, the per minute duration cost is added to the per minute set-up cost. The result is the per minute cost for originating calls. For simplicity, this same rate has been used for reciprocal compensation applicable to local traffic.

While the typical call duration for a local call is approximately three minutes, an Internet session generally lasts much longer than three to four minutes. According to Nielson/NetRatings, for the month of December, 2000, 98.7 million persons out of 158.3 million persons who have access to the Internet from their homes actually surfed the Internet.[1] The average time spent surfing the Net was over thirty-one minutes per individual session, with an average of 17 sessions per month and an average of 9 unique sites visited. A cost study done to represent the costs caused by a 30-minute call would involve dividing the call set-up cost by 30 (rather than by 3). Obviously, this would result in a significantly lower per minute cost for an ISP-

[1] Nielson/NetRatings, "Average Web Usage, Month of December, 2000, U.S.": http://209.249.142.27/nnpm/owa/nrpublicreports.usagemonthly, 1/23/01.

bound call.

Again, the rates this Commission approved for local interconnection are appropriately based on costs associated with an average originated local call of approximately three minutes. This discussion is provided simply to demonstrate that per minute costs would be different if long-duration ISP-bound traffic were considered.

Q. IS BELLSOUTH'S POSITION REGARDING JURISDICTION OF ISP-BOUND TRAFFIC CONSISTENT WITH THE FCC'S FINDINGS AND ORDERS?

A. Yes. BellSouth's position is supported by, and is consistent with, the FCC's findings and Orders stating that, for jurisdictional purposes, traffic must be judged by its end-to end nature, and must not be judged by looking at individual components of a call. BellSouth's position is also consistent with the FCC's historical treatment of ISP traffic. Therefore, for purposes of determining jurisdiction for ISP-bound traffic, the originating location and the final termination must be looked at from an end-to-end basis. BellSouth's position is consistent with long-standing FCC precedent and has been reaffirmed numerous times. For example, in its December 23, 1999 Order on Remand, Footnote 73, the FCC lists its previous decisions in 1988, 1992, 1995 and 1997 reaching the same conclusion about the end-to-end nature of ISP traffic. Clearly, the prevailing view of the FCC has been that jurisdiction of a call is

determined by its end points and that ISP traffic is jurisdictionally interstate access service.

The FCC's position is clear that no part of an ISP-bound communication terminates at the facilities of an ISP. Once it is understood that ISP-bound traffic "terminates" only at distant websites, which are almost never in the same exchange as the end-user, it is evident that these calls are not local.

Q. WHAT IS THE STATUS OF THE FCC'S FEBRUARY 26, 1999 DECLARATORY RULING?

A. On March 24, 2000, the D.C. Circuit Court of Appeals vacated the FCC's Declaratory Ruling and remanded it "for want of reasoned decision-making." (*Bell Atlantic Telephone Companies v. FCC, 206 F. 3d 1 (D.C. Cir. 2000))* ("D.C. Order"). The D.C. Order, however, does not contradict the FCC's conclusion that ISP-bound traffic is non-local traffic. It simply puts the burden back on the FCC to provide further documentation or reasoning for its decision. The D.C. Order states, "[b]ecause the Commission has not supplied a real explanation for its decision to treat end-to-end analysis as controlling, we must vacate the ruling and remand the case." (D.C. Order at 8).

In its decision, the D.C. Circuit Court recognized that, under the FCC's regulations, reciprocal compensation is due on calls to the Internet if, and only if, such calls "terminate" at the ISP's local facilities. The Court held, however, that the FCC had not adequately explained its conclusion that calls to an ISP do not terminate at the

ISP's local point of presence but instead at a distant website. It therefore remanded the matter to allow the FCC to provide a "satisfactory explanation." The Court also found that the FCC had not adequately addressed in its Declaratory Ruling whether ISP-bound traffic was exchange service or exchange access service.

Q. WHAT ARE THE IMPLICATIONS OF THE D.C. CIRCUIT COURT'S DECISION ON THIS ISSUE?

A. The D.C. Circuit Court's action has no effect on the determination that ISP-bound traffic is access traffic. The Declaratory Ruling simply reiterated previous findings of the FCC. Those findings are in other effective orders of the FCC, as previously discussed, and were not affected by the D.C. Circuit Court's ruling.

For example, in its August 22, 1983, Memorandum Opinion and Order in CC Docket No. 78-72, the FCC addressed whether to assess surcharges on enhanced service providers, of which ISPs are a subset. It stated that "were we at the outset to impose full carrier usage charges on enhanced service providers … who are currently paying local business exchange service rates *for their interstate access*…". (¶84, emphasis added). The FCC reiterated its position that such traffic is jurisdictionally interstate in its orders in 1987 (Notice of Proposed Rulemaking, Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, FCC 87-208, released July 17, 1987) and 1999 (Order on Remand, *Deployment of Wireline Services Offering Advanced Telecommunications*

Capability, FCC 99-413, 1999 WL 1244007 issued Dec. 23, 1999 ("Advanced Services Order on Remand")).

Q. HAS THE FCC ALREADY ADDRESSED ONE OF THE PRIMARY CONCERNS RAISED IN THE D.C. CIRCUIT COURT'S ORDER?

A. Yes. The D.C. Circuit Court concluded that the FCC had not sufficiently explained in the order under review why Internet service constituted "exchange access" and not "telephone exchange service." At the same time, however, the Court acknowledged that the "statute appears ambiguous as to whether calls to ISPs fit within 'exchange access' or 'telephone exchange service' and on that view any agency interpretation would be subject to judicial deference." (D.C. Order at 9). In its Advanced Services Order on Remand, at ¶ 43, the FCC explained in detail that calls to ISPs of the sort at issue here constitute interstate "exchange access" not "telephone exchange service." The D.C. Circuit Court declined to consider that conclusion, however, because "[t]he Commission . . . did not make this argument in the ruling under review." (Id. at 9).

Q. HOW DOES THE FCC BELIEVE THE D.C. CIRCUIT COURT'S ACTIONS WILL AFFECT ITS CONCLUSIONS REGARDING THE NATURE OF ISP-BOUND TRAFFIC?

A. The FCC has already indicated informally that it believes it can provide the requested clarification and support the conclusion it previously reached -- that is, that

Internet-bound calls do not terminate locally. *See* TR Daily, *Strickling Believes FCC Can Justify Recip. Comp. Ruling in Face of Remand*, March 24, 2000 (stating that the Chief of the FCC's Common Carrier Bureau "still believes calls to ISPs are interstate in nature and that some fine tuning and further explanation should satisfy the court that the agency's view is correct").

Q. HOW DOES THE D.C. CIRCUIT COURT'S TREATMENT OF THE FCC'S DECLARATORY RULING AFFECT A STATE COMMISSION'S COMMISSION TO ADDRESS AN INTER-CARRIER COMPENSATION MECHANISM FOR ISP-BOUND TRAFFIC?

A. The D.C. Circuit Court's action could have a substantial impact on whether states can address the issue of compensation for ISP-bound traffic in arbitration proceedings. The Declaratory Ruling was the only order which specifically authorized states to develop a compensation mechanism for ISP-bound traffic. Unlike the issue of the jurisdictional nature of the traffic, which is addressed in several other orders, no other order has conferred authority on the states to develop such a mechanism. Obviously, since the Declaratory Ruling is vacated, and it was the only order conferring authority to the state commissions, there now is no order conferring such authority. In fact, the Court pointed out that its having vacated the FCC's ruling leaves the incumbents "free to seek relief from state-authorized compensation that they believe to be wrongfully imposed." (D.C. Order at 9).

Q. HAS ANOTHER COMMISSION IN BELLSOUTH'S REGION RULED ON THIS SAME ISSUE IN AT&T'S ARBITRATION WITH BELLSOUTH?

A. Yes. In its Order issued January 30, 2001, the Public Service Commission of South Carolina approved the language proposed by BellSouth for inclusion in the Interconnection Agreement, finding that ISP-bound traffic is non-local interstate traffic that is not subject to the reciprocal compensation obligations of the 1996 Act. (SCPSC Order at page 12). In support of its decision, the South Carolina Commission stated:

> In the record before this Commission in the instant arbitration, AT&T agrees that the traffic in question is interstate, not local. This traffic does not originate and terminate in the same local service area under any viable theory that has been advanced in this case. As the Massachusetts and Colorado Commissions have so clearly stated, the conclusion that AT&T wants this Commission to reach is not in the public interest and in fact creates disincentives for CLECs to offer residential or advanced services themselves. (SCPSC Order at pages 11-12).

Q. WHAT ACTION IS BELLSOUTH REQUESTING THE COMMISSION TAKE?

A. BellSouth requests that the Commission find that reciprocal compensation is not due on ISP-bound traffic because such traffic constitutes access service, and the reciprocal compensation obligations under Section 251(b)(5) apply only to local traffic. BellSouth is aware that the Commission ruled on this same issue in the ICG Arbitration, finding that "in the wake of the FCC's pending determination, the most reasonable method of compensation is at the current rate for local calls. However, in addition the parties should track the minutes or use for calls to ISPs and be prepared to 'true-up' the compensation consistent with the FCC's decision. Thus, the

compensation ordered herein for ISP-bound traffic should be retroactively 'trued-up' to the level of compensation ultimately adopted by the FCC." (ICG Order dated March 2, 2000, at page 3). Rather than taking the Commission's time to re-litigate this issue, and without waiving its right to appeal or to seek judicial review on this issue, BellSouth is willing to agree to abide by the ICG Order on this issue in this arbitration.

Issue 4: What does "currently combines" mean as that phrase is used in 47 C.F.R. § 51.315(b)? (Attachment 2)

Issue 5: Should BellSouth be permitted to charge AT&T a "glue charge" when BellSouth combines network elements?

Q. PLEASE BRIEFLY EXPLAIN THESE ISSUES.

A. These issues simply address whether BellSouth is obligated to combine unbundled network elements ("UNEs") for CLECs when the elements are not already combined in BellSouth's network.

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. BellSouth's position is that it will provide combinations to AT&T at cost-based prices if the elements are, in fact, combined and providing service to a particular customer at a particular location. That is, BellSouth will make combinations of UNEs available to AT&T consistent with BellSouth's obligations under the 1996 Act and applicable FCC rules. As the Eighth Circuit Court of Appeals confirmed in its July 18, 2000 decision, BellSouth has no obligation to combine network elements for

CLECs when those elements are not currently combined in BellSouth's network.

Q. WHAT IS AT&T'S POSITION ON THIS ISSUE?

A. Apparently, AT&T continues to believe that "currently combined" and "currently combines" mean that if BellSouth combines the requested UNEs anywhere in its network, BellSouth has to produce the same combination of UNEs whenever and wherever AT&T demands.

Q. WHAT IS THE BASIS FOR BELLSOUTH'S POSITION?

A. As a general matter, it is neither sound public policy nor an obligation of BellSouth to combine UNEs. In the FCC's Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238, released November 5, 1999 ("UNE Remand Order"), the FCC confirmed that ILECs presently have no obligation to combine network elements for CLECs when those elements are not currently combined in BellSouth's network. The FCC rules, Section 51.315(c)-(f), that purported to require incumbent LECs to combine unbundled network elements were vacated by the Eighth Circuit, and those rules were neither appealed to nor reinstated by the Supreme Court.

On July 18, 2000, the Eighth Circuit Court held that Incumbent Local Exchange Carriers ("ILECs") are not obligated to combine UNEs, and it reaffirmed that the FCC's Rules 51.315(c)-(f) remain vacated. Specifically, referring to Section 251(c)(3) of the 1996 Act that requires ILECs to provide UNEs in a manner that allows requesting carriers to combine such elements in order to provide

telecommunications services, the Eighth Circuit stated: "[h]ere Congress has directly spoken on the issue of who shall combine previously uncombined network elements. It is the requesting carriers who shall 'combine such elements.' It is not the duty of the ILECs to 'perform the functions necessary to combine unbundled network elements in any manner' as required by the FCC's rule."

Q. HOW DID THE FCC ADDRESS BELLSOUTH'S OBLIGATON TO COMBINE UNES IN ITS UNE REMAND ORDER?

A. The FCC concluded that BellSouth has no obligation to combine UNEs. As the FCC made clear, Rule 51.315(b) applies to elements that are "in fact" combined, stating that "[t]o the extent an unbundled loop is in fact connected to unbundled dedicated transport, the statute and our rule 51.315(b) require the incumbent to provide such elements to requesting carriers in combined form." (¶ 480, emphasis added). The FCC declined to adopt a definition of "currently combines," as AT&T proposes in this case, that would include all elements "ordinarily combined" in the incumbent's network. *Id.* (declining to "interpret rule 51.315(b) as requiring incumbents to combine unbundled network elements that are 'ordinarily combined'…"). It is nonsensical to suggest that the FCC meant for its Rule 51.315(b) to cover anything other than specific pre-existing combinations of elements for a customer when the FCC's orders specifically state that ILECs are not required to combine elements. As previously discussed, the Eighth Circuit has reaffirmed that BellSouth has no such obligation.

Q. WHY IS IT GENERALLY NOT IN THE PUBLIC INTEREST TO REQUIRE BELLSOUTH TO COMBINE UNEs?

A. First, requiring BellSouth to combine UNEs does not benefit consumers as a general matter, and would unnecessarily reduce the overall degree of competition in the market. Congress established several means to introduce competition, namely, resale, unbundling and facilities constructed by new entrants. The requirements of the 1996 Act attempt to balance these three entry methods such that firms use the most efficient method. However, the greatest benefits occur when firms build their own facilities. Expanding BellSouth's obligations beyond the 1996 Act's requirements would upset the balance intended by the 1996 Act. This is not just BellSouth's view – Justice Breyer of the Supreme Court agrees. As Justice Breyer points out in his opinion concurring in the Supreme Court's vacating of the FCC's unbundling rules:

> [i]ncreased sharing (unbundling) by itself does not automatically mean increased competition. It is in the unshared, not in the shared, portions of the enterprise that meaningful competition would likely emerge. Rules that force every firm to share every resource or element of a business would create, not competition, but pervasive regulation, for the regulators, not the marketplace, would set the relevant terms.
>
> The upshot, in my view, is that the statute's unbundling requirements, read in light of the Act's basic purposes require balance. Regulatory rules that go too far, expanding the definition of what must be shared beyond that which is essential to that which merely proves advantageous to a single competitor, risk costs that, in terms of the Act's objectives, may make the game not worth the candle. (142 L. Ed. 2d 834, 880).

Second, requiring BellSouth to combine UNEs at cost-based prices, particularly at Total Element Long Run Incremental Cost ("TELRIC")-based prices, reduces BellSouth's incentive to invest in new capabilities. TELRIC-based prices do not cover the actual cost of the elements, let alone do such prices represent a fair price in the market place. Again, Justice Breyer agrees, as evidenced by his observation that

> [n]or can one guarantee that firms will undertake the investment necessary to produce complex technological innovations knowing that any competitive advantage deriving from those innovations will be dissipated by the sharing requirement. The more complex the facilities, the more central their relation to the firm's managerial responsibilities, the more extensive the sharing demanded, the more likely these costs will become serious. (142 L. Ed. 2d 834, 879).

Finally, requiring BellSouth to combine elements where such combinations do not, in fact, exist is inconsistent with the 1996 Act's basic purpose, which is to introduce competition into the local market. The intent was not to subsidize competitors where CLECs have reasonable alternatives to BellSouth combining UNEs. CLECs can combine the UNEs themselves in collocation spaces, use alternatives to collocation such as the assembly point option, or build their own facilities. This view is also supported in Justice Breyer's opinion:

> [i]n particular, I believe that, given the Act's basic purpose, it requires a convincing explanation of why facilities should be shared (or 'unbundled') where a new entrant could compete effectively without the facility, or where

practical alternatives to that facility are available. (142 L. Ed. 2d 834, 879).

Clearly, expanding BellSouth's obligation to include combining UNEs does not benefit consumers. Such action only provides an unwarranted subsidy to CLECs, removes incentives for BellSouth to invest in its network, and discourages CLECs from building their own networks.

Q. CAN AT&T STILL COMPETE VIGOROUSLY FOR LOCAL SERVICE WITHOUT HAVING BELLSOUTH COMBINE UNES AT COST-BASED PRICES?

A. It certainly can. There are over 1.2 million lines in service provided by BellSouth in Kentucky today. Each of those lines consists of existing combined facilities that AT&T can, in fact, purchase from BellSouth at cost-based rates. In addition, AT&T has several means to serve both new and existing customers, other than by having BellSouth combine UNEs. Any argument that AT&T cannot compete because BellSouth won't put UNEs together just doesn't make sense.

Q. SPECIFICALLY REFERENCING ISSUE 3, WHAT IS BELLSOUTH'S POSITION REGARDING WHETHER A "GLUE CHARGE" SHOULD APPLY WHEN BELLSOUTH COMBINES UNES?

A. First, I need to explain what a "glue charge" is. Where BellSouth agrees to physically combine UNEs for a CLEC, the prices for such combinations will be market-based. AT&T contends that the Commission should order BellSouth to combine UNEs at cost-based prices. The difference between market-based and cost-based prices is referred to as a "glue charge" in this issue. The "glue charge" is not necessarily a separate charge; it is simply the difference in prices described above.

There is one exception to BellSouth's general position of requiring market-based prices to combine UNEs. BellSouth has elected to be exempted from providing access to unbundled local switching to serve customers with four or more lines in Density Zone 1 of a top 50 MSA.[2] To avail itself of this exemption, the FCC requires BellSouth to combine loop and transport UNEs (also known as the "Enhanced Extended Link" or "EEL") in the geographic area where the exemption applies. The FCC also requires that such combinations be provided at cost-based rates. BellSouth will physically combine loop and transport UNEs at FCC mandated cost-based prices as required in the FCC's UNE Remand Order in order to have the exemption from providing local circuit switching.

Beyond this limited exception dictated by the FCC, BellSouth is under no obligation to physically combine network elements, where such elements are not in fact combined. Nevertheless, BellSouth is willing to negotiate rates for combining UNEs; however, such negotiations are outside of a Section 251 arbitration, and the rates for this service are not subject to the pricing standards in Section 252 of the 1996 Act.

[2] BellSouth includes this discussion for completeness; however, this situation is not applicable in Kentucky, as Kentucky has no top 50 MSAs in the state.

Q. HAS BELLSOUTH REACHED AGREEMENT WITH ANY CLECS CONCERNING THE CONDITIONS UNDER WHICH BELLSOUTH WILL COMBINE UNES?

A. Yes. Certain CLECs have requested that BellSouth provide the service of combining elements on the CLECs' behalf. These CLECs have entered into amendments to their interconnection agreements with BellSouth. The rates these CLECs pay for new combinations are market-based and appropriately compensate BellSouth for the service it is providing.

Q. HAS THE COMMISSION PREVIOUSLY ADDRESSED THIS ISSUE?

A. Yes, the Commission addressed this issue in the ICG Arbitration, finding that "BellSouth should combine previously uncombined elements for a reasonable cost-based fee in situations where those elements currently are not combined in the BellSouth network." (ICG Order dated March 2, 2000, at page 6). Clearly, the Commission recognized that BellSouth is not required to combine elements for CLECs at no charge.

As for whether this Commission's direction to apply "a reasonable cost-based fee" applies here, I would point out that the Eighth Circuit Court's ruling making it clear that ILECs are not required to combine elements for CLECs was issued several months after this Commission's ICG Order. Therefore, this Commission did not have the benefit of the Court's views when it reached its conclusion in the ICG arbitration. BellSouth believes that the Eighth Circuit Court is clear that ILECs have

no obligation to combine elements that are not currently combined and providing service to a location or a customer. Therefore, if BellSouth were to combine unbundled network elements for AT&T, it would be appropriate to apply a market-based rate for this service.

Q. WHAT DOES BELLSOUTH REQUEST OF THIS COMMISSION?

A. BellSouth requests this Commission find that BellSouth is obligated to provide combinations to CLECs only where such combinations currently, in fact, exist and are providing service to a particular customer at a particular location. Nothing further is required or should be required of BellSouth in this regard. BellSouth also requests the Commission find that if AT&T wants BellSouth to combine unbundled network elements for AT&T that are not presently combined, that BellSouth is entitled to charge AT&T a market-based rate for doing so.

Issue 6: Under what rates, terms, and conditions may AT&T purchase network elements or combinations to replace services currently purchased from BellSouth's tariffs? (Attachment 2)

Q. PLEASE BRIEFLY EXPLAIN THIS ISSUE.

A. This issue involves the rates, terms and conditions that should govern the conversion of special access services and other services to unbundled network elements. All aspects of this issue have been resolved except for the following two areas:

(1) Costs/Prices for converting other (non-special access) services to UNEs and

(2) the application of termination liability charges to services converted to UNEs.

I understand that the parties have agreed to defer all rates issues to the pending Administrative Case 382; therefore, I will not address sub-issue (1) at this time.

Q. WHAT LANGUAGE HAS BELLSOUTH PROPOSED TO AT&T REGARDING THE REMAINING SUB-ISSUE?

A. The contract language that BellSouth proposed to AT&T for conversion of tariffed services to UNEs is attached to my testimony as Exhibit JAR-1.

Q. WHAT IS BELLSOUTH'S POSITION REGARDING THE APPLICATION OF TERMINATION LIABILITY CHARGES AND VOLUME AND TERM DISCOUNTS WHEN SERVICES ARE CONVERTED TO UNES?

A. First, let me explain that whether the tariffed service was purchased on a month-to-month (non-contractual) basis or under a volume and term or other contractual basis, BellSouth will convert such service to the appropriate pre-existing combination of UNEs upon request by AT&T at the rates in the agreement for the UNEs. However, if the tariffed service is currently provided under a contractual agreement with BellSouth, then the terms of the retail agreement or contract that are applicable to early termination, including payment of early termination liabilities, must be satisfied.

AT&T has purchased tariffed services from BellSouth under an agreement that promised a certain amount of billings from BellSouth to AT&T each month. In return for this level of billings, AT&T got a lower unit price for the services it purchased. AT&T now wants to convert a portion of these tariffed services to UNEs, which will have the impact of lowering AT&T's monthly payments to BellSouth below the agreed upon minimums. BellSouth's position is that AT&T, by changing the contractual relationship, has an obligation to meet the termination provisions to which AT&T agreed when the contract was made. Now that AT&T can obtain a portion of the service at UNE rates that are lower than tariff rates, it seeks to ignore that contractual obligation. If the contractual revenue commitment is no longer met after AT&T converts these tariffed services to UNE combinations, then the termination liabilities provisions of the contract are applicable.

By purchasing tariffed services under contract, a customer, such as AT&T, pays lower rates than it would pay if it were not under contract. One purpose of termination liabilities is to ensure that the service provider receives a fair price for the service in the event the customer terminates the contract early. Therefore, if a contract is terminated early, it is appropriate for BellSouth to receive payment of the early termination charges. Moreover, to allow AT&T, which has obtained the benefits of a lower price by promising to meet certain conditions, to avoid these termination liabilities discriminates against other similarly situated customers who must abide by the terms of their agreements.

Q. HAS ANOTHER COMMISSION IN BELLSOUTH'S REGION RULED ON THIS SAME ISSUE IN AT&T'S ARBITRATION WITH BELLSOUTH?

A. Yes. In its ruling on this issue, the South Carolina Commission approved AT&T's language for inclusion in the Interconnection Agreement, stating that "AT&T should not be subject to termination penalties for converting special access purchased under tariffed services pursuant to contracts to network elements." (SCPSC Order at page 16). BellSouth respectfully disagrees with the South Carolina Commission's decision. BellSouth believes that it should be able to rely on existing contract provisions to which AT&T has agreed. AT&T should not be allowed to circumvent the contract provisions when AT&T no longer lives up to the volume and term contract.

Q. WHAT DOES BELLSOUTH REQUEST OF THE COMMISSION?

A. BellSouth requests the Commission find that BellSouth's proposed contract language, as reflected in Exhibit JAR-1, is appropriate.

Issue 7: How should AT&T and BellSouth interconnect their networks in order to originate and complete calls to end-users? (Attachment 3)

Q. WHAT IS THE ESSENCE OF THE DISPUTE BETWEEN THE PARTIES ON THIS ISSUE?

A. The issue is pretty simple. BellSouth has a local network in each of the local calling areas it serves in Kentucky. BellSouth may have 10, 20 or even more such local

networks in a given LATA. Nevertheless, AT&T wants to physically interconnect its network with BellSouth's "network" in each LATA at a single point, or perhaps two points. This approach simply ignores that there is not one BellSouth "network" but a host of networks that are all interconnected.

Importantly, BellSouth does not object to AT&T designating a single Point of Interconnection at a point in a LATA on one of BellSouth's "networks" for traffic that AT&T's end users originate. Further, BellSouth does not object to AT&T using the interconnecting facilities between BellSouth's "networks" to have local calls delivered or collected throughout the LATA. What BellSouth does want, and this is the real issue, is for AT&T to be financially responsible when it uses BellSouth's network in lieu of building its own network to deliver or collect these local calls.

AT&T, to contrast its position with BellSouth's, expects BellSouth to collect local traffic bound for AT&T's end users in each of BellSouth's numerous local calling areas in the LATA, and AT&T expects BellSouth to be financially responsible for delivering, to a single point (or, at most, to two points) in each LATA, local calls that are destined for AT&T's local customers within the same local calling area where the call originated. I should point out that AT&T has said that, for network security reasons, AT&T may establish a second point of interconnection in a LATA. However, whether or not that point is ever established, AT&T maintains that the location of the point is solely at AT&T's discretion. Indeed, AT&T has only committed to establish a single point of interconnection in each LATA.

BellSouth agrees that AT&T can choose to interconnect with BellSouth's network at any technically feasible point in the LATA. However, BellSouth does not agree that

AT&T can impose upon BellSouth the financial burden of delivering BellSouth's originating local traffic to that single point. If AT&T wants local calls completed between BellSouth's customers and AT&T's customers using this single Point of Interconnection, that is fine, provided that AT&T is financially responsible for the additional costs AT&T causes.

Q. DOES BELLSOUTH'S POSITION MEAN THAT AT&T HAS TO BUILD A NETWORK TO EVERY LOCAL CALLING AREA, OR OTHERWISE HAVE A POINT OF INTERCONNECTION WITH BELLSOUTH'S LOCAL NETWORK IN EVERY LOCAL CALLING AREA?

A. No. AT&T can build out its network that way if it chooses, but it is not required to do so. AT&T can lease facilities from BellSouth or any other provider to bridge the gap between its network (that is, where it designates its Point of Interconnection) and each BellSouth local calling area. BellSouth will be financially responsible for transporting BellSouth's originating traffic to a single point in each local calling area. However, BellSouth is not obligated to be financially responsible for hauling AT&T's local traffic to a distant point dictated by AT&T.

Q. WHAT IS A POINT OF INTERCONNECTION?

A. The term "Point of Interconnection" describes the point(s) where BellSouth's and AT&T's networks physically connect. In its First Report and Order, at paragraph 176, the FCC defined the term "interconnection" by stating that:

> We conclude that the term "interconnection" under section 251(c)(2) refers only to the physical linking of two networks for the mutual exchange of

traffic.

Therefore, the Point of Interconnection is simply the place, or places, on BellSouth's networks where that physical linking of AT&T's and BellSouth's networks takes place. Simply put, the Point of Interconnection is the place where facilities that AT&T owns connect to facilities owned by BellSouth.

The term "interconnection point" is used by AT&T and BellSouth to define the place where financial responsibility for a call changes from one carrier to the other. The "Point of Interconnection" and the "interconnection point" can be at the exact same physical point, or they can be at different points.

Q. IF AT&T CAN INTERCONNECT WITH BELLSOUTH'S NETWORK AT ANY TECHNICALLY FEASIBLE POINT, WHY IS THIS AN ISSUE?

A. Recall that what we are talking about here is the interconnection of "local networks." AT&T's network deployment is significantly different from BellSouth's, which is the main reason that this issue exists between the parties. BellSouth has a number of distinct functional networks. For example, BellSouth has local networks, long distance networks, packet networks, signaling networks, E911 networks, etc. Each of these networks is designed to provide a particular service or group of services. With regard to "local networks," BellSouth, in any given LATA, has several such local networks, interconnected by BellSouth's long distance network. BellSouth's networks are "seamless" in the sense that a customer connected to one network can access another network upon payment of the appropriate fees and they overlap, in the sense that an end office is used for both local and toll calls. However, these networks are individual networks in the sense that when a customer pays for local

service in the Louisville local calling area, that is what the customer gets. The customer does not get access to other distant local calling areas, at least not without payment of the appropriate fees.

For instance, in the Louisville LATA, BellSouth has local networks in Louisville, Frankfort, Port Royal and Shelbyville, as well as several other locations. Customers who want local service in a particular local calling area must be connected to the local network that serves that local calling area. For example, a BellSouth customer who connects to the Louisville local network will not receive local service in the Shelbyville local calling area because Shelbyville is not in the Louisville local calling area. Likewise, a CLEC who wants to connect with BellSouth to provide local service in Shelbyville has to connect to BellSouth's local network that serves the Shelbyville local calling area. BellSouth's local calling areas, I would add, have been defined and set out over the years either by this Commission or by BellSouth with the approval of this Commission.

When AT&T has a single switch in a LATA, then, by definition, that switch is located in a single BellSouth local calling area, for example, the Louisville local calling area, if that is where the switch is located. When a BellSouth local customer in Louisville wants to call an AT&T local customer in Louisville, BellSouth delivers the call to the appropriate point of interconnection between BellSouth's network and AT&T's network in Louisville. This network configuration is illustrated on Page 1 of Exhibit JAR-2 attached to my testimony. BellSouth would be financially responsible for taking a call from one of its subscribers located in the Louisville local calling area and delivering it to another point in the Louisville local calling area, the AT&T Point of Interconnection. This scenario is not a problem.

Next, consider the scenario shown on Page 2 of Exhibit JAR-2, which is a call between two BellSouth customers in Shelbyville. In that scenario, the call originates with BST EU A and terminates to BST EU C. Again, the call would not leave the local calling area and, in this situation, BellSouth would be responsible for both the origination and termination of the call.

The problem arises when a BellSouth customer located in a distant local calling area from AT&T's Point of Interconnection wants to call his next-door neighbor who happens to be an AT&T local subscriber. This scenario is shown on Page 3 of Exhibit JAR-2. Assume that a BellSouth customer in Shelbyville calls an AT&T customer in Shelbyville. The originating customer draws dial tone from BellSouth's Shelbyville switch. The BellSouth customer then dials the AT&T customer and, under AT&T's proposal, the call has to be hauled outside of the local calling area from Shelbyville to AT&T's Point of Interconnection in Louisville. AT&T then carries the call to its switch in Louisville and connects to the long loop serving AT&T's customer in Shelbyville. Again, and importantly, as shown on Page 2 of Exhibit JAR-2, the call never needed to leave the Shelbyville local calling area. However, under AT&T's proposal as shown on Page 3, the same call would have to be hauled by BellSouth all the way to Louisville, simply because Louisville is where AT&T decided to designate its Point of Interconnection. Simply put, the issue here involves who is financially responsible for the facilities that are used to haul calls back and forth between AT&T's Point of Interconnection in Louisville and the BellSouth Shelbyville local calling area.

Q. HOW WOULD AT&T CONNECT TO BELLSOUTH'S LOCAL NETWORKS

THAT ARE OUTSIDE THE LOCAL CALLING AREA WHERE AT&T'S SWITCH IS LOCATED?

A. It is my understanding that AT&T has agreed to establish at least one Point of Interconnection in each LATA. This is necessary because BellSouth is still not authorized to carry traffic across LATA boundaries. AT&T would build facilities from its switch (wherever it is located) to the Point of Interconnection in the LATA where the BellSouth local network is located. Once that Point of Interconnection is established, the issue remains the same. Who is financially responsible for the facilities needed to carry calls between that Point of Interconnection and the distant BellSouth local calling area in which a local call is to be originated and terminated? Since AT&T must establish a Point of Interconnection in each LATA, whether or not AT&T also has a switch in each LATA is not relevant to resolving the problem that AT&T's network design has created.

Q. WHY DO YOU SAY THAT AT&T MUST BE FINANCIALLY RESPONSIBLE FOR THE TRANSPORT OF THESE CALLS FROM LOCAL CALLING AREAS THAT ARE DISTANT FROM THE POINT WHERE AT&T HAS CHOSEN TO INTERCONNECT ITS NETWORK WITH BELLSOUTH'S?

A. First, that is the only approach that makes economic sense. I will explain the rationale for this statement later. Second, the Eighth Circuit determined that the ILEC is only required to permit a CLEC to interconnect with the ILEC's existing local network, stating that:

> The Act requires an ILEC to (1) permit requesting new entrants (competitors) in the ILEC's local market to interconnect with the ILEC's existing local network and, thereby, use that network to compete in providing local telephone service (interconnection)…. (Eighth Circuit Court Order dated July 18, 2000, page 2).

This is a very important point. When AT&T interconnects with BellSouth's local network in Louisville, it is not also interconnecting with BellSouth's local network in Shelbyville for the purpose of receiving BellSouth's originating local traffic from Shelbyville. AT&T is only interconnecting with the Louisville local network. The fact that AT&T is entitled to physically connect with BellSouth at a single point in the LATA cannot overcome the fact that the single Point of Interconnection cannot, by itself, constitute interconnection with every single local calling area in a LATA for BellSouth's originating local traffic from those local calling areas.

Q. PLEASE EXPLAIN HOW AT&T IS ATTEMPTING TO SHIFT ITS FINANCIAL RESPONSIBILITY TO BELLSOUTH.

A. As I have explained above, AT&T's network design results in additional costs that AT&T inappropriately contends BellSouth should bear. Again, AT&T wants BellSouth to bear the cost of the facilities used to haul the call I just described between Shelbyville and Louisville. There is nothing fair, equitable or reasonable about AT&T's position. Because AT&T has designed its network the way it wants, and has designed its network in the way that is cheapest for AT&T, AT&T must bear the financial responsibility for the additional facilities used to haul the call between Shelbyville and Louisville. AT&T does not have to actually build the facilities. It does not have to own the facilities. It just has to pay for them.

BellSouth objects to paying additional costs that are incurred solely due to AT&T's network design. It is simply inappropriate for AT&T to attempt to shift these costs to BellSouth.

Q. DO BELLSOUTH'S LOCAL EXCHANGE RATES COVER THESE ADDITIONAL COSTS?

A. No. BellSouth is, in theory at least, compensated by the local exchange rates charged to BellSouth's local customers for hauling all calls from one point within a specific local calling area to another point in that same local calling area. Certainly there would be no dispute that the local exchange rates that BellSouth's customers pay were not intended to cover and, indeed, cannot cover, the cost of hauling a local call from one Shelbyville customer to another Shelbyville customer by way of Louisville.

Indeed, if AT&T is not required to pay for that extra transport which AT&T's network design decisions caused, who will pay for it? The BellSouth calling party is already paying for its local exchange service, and certainly will not agree to pay more simply for AT&T's convenience. Who does that leave to cover this cost? The answer is that there is no one else, and because AT&T has caused this cost through its own decisions regarding the design of its network, it should be required to pay for this additional cost.

Q. IS THE ARRANGEMENT THAT AT&T IS PROPOSING EFFICIENT?

A. No. AT&T seems to equate efficiency with what is cheapest for AT&T. Of course, that is not an appropriate measure of efficiency. Indeed, to measure efficiency, the cost to every carrier involved must be considered. Presumably, AT&T has chosen its particular network arrangement because it is cheaper for AT&T. A principal reason that it is cheaper for AT&T is because AT&T is expecting BellSouth's customers to bear substantially increased costs that AT&T causes by its network design. It simply makes no sense for BellSouth to bear the cost of hauling a local Shelbyville call outside the local calling area just because that is what AT&T wants BellSouth to do. AT&T, however, wants this Commission to require BellSouth to do just that. If AT&T bought these facilities from anyone else, AT&T would pay for the facilities. AT&T, however, does not want to pay BellSouth for the same capability.

AT&T's method of transporting local traffic is clearly more costly to BellSouth, but AT&T blithely ignores the additional costs it wants BellSouth to bear. Of course, these increased costs will ultimately be borne by customers, and if AT&T has its way, these costs will be borne by BellSouth's customers. Competition should reduce costs to customers, not increase them. Competition certainly is not an excuse for enabling a carrier to pass increased costs that it causes to customers it does not even serve. BellSouth requests that the Commission require AT&T to bear the cost of hauling local calls outside BellSouth's local calling areas. Importantly, AT&T should not be permitted to avoid this cost, nor should AT&T be permitted to collect reciprocal compensation for facilities that haul local traffic outside of the local calling area.

Q. HOW HAS THE FCC ADDRESSED THE ADDITIONAL COSTS CAUSED BY THE FORM OF INTERCONNECTION A CLEC CHOOSES?

A. In its First Report and Order in Docket No. 96-98, the FCC states that the CLEC must bear the additional costs caused by a CLEC's chosen form of interconnection. Paragraph 199 of the Order states that "a requesting carrier that wishes a 'technically feasible' but expensive interconnection would, pursuant to section 252(d)(1), be required to bear the cost of that interconnection, including a reasonable profit." (emphasis added). Further, at paragraph 209, the FCC states that "Section 251(c)(2) lowers barriers to competitive entry for carriers that have not deployed ubiquitous networks by permitting them to select the points in an incumbent LEC's network at which they wish to deliver traffic. Moreover, because competing carriers must usually compensate incumbent LECs for the additional costs incurred by providing interconnection, competitors have an incentive to make economically efficient decisions about where to interconnect." (emphasis added).

Clearly, the FCC expects AT&T to pay the additional costs that it causes BellSouth to incur. If AT&T is permitted to shift its costs to BellSouth, AT&T has no incentive to make economically efficient decisions about where to interconnect.

Q. WOULD AT&T'S ABILITY TO COMPETE BE HAMPERED BY AT&T'S INABILITY TO OBTAIN FREE FACILITIES FROM BELLSOUTH?

A. Absolutely not. First, AT&T does not have to build or purchase interconnection facilities to areas that AT&T does not plan to serve. If AT&T does not intend to serve any customers in a particular area, its ability to compete cannot be hampered.

Second, in areas where AT&T does intend to serve customers, BellSouth is not requiring AT&T to build facilities throughout the area. AT&T can build facilities to a single point in each LATA and then purchase whatever facilities it needs from BellSouth or from another carrier in order to reach individual local calling areas that AT&T wants to serve.

Q. HAS ANOTHER COMMISSION IN BELLSOUTH'S REGION RULED ON THIS SAME ISSUE IN AT&T'S ARBITRATION WITH BELLSOUTH?

A. Yes. In its ruling on the issue, the South Carolina Commission stated "while AT&T can have a single POI in a LATA if it chooses, AT&T shall remain responsible to pay for the facilities necessary to carry calls from distant local calling areas to that single POI. That is the fair and equitable result." (SCPSC Order at page 28). The South Carolina Commission approved BellSouth's proposed contract language for inclusion in the Interconnection Agreement.

Q. WHAT DOES BELLSOUTH REQUEST OF THIS COMMISSION?

A. BellSouth requests the Commission to find that AT&T is required to bear the cost of facilities that BellSouth may be required to install, on AT&T's behalf, in order to connect from a BellSouth local calling area to AT&T's Point of Interconnection located outside that local calling area. I believe this to be an equitable arrangement for both parties.

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? (Attachment 3)

Q. PLEASE BRIEFLY EXPLAIN THIS ISSUE.

A. The FCC's rules established that, when two carriers are involved in delivery of local traffic, the originating carrier would compensate the terminating carrier for certain additional costs incurred to transport and terminate local calls from the originating carrier's customers. The FCC limited such compensation to be symmetrical unless the CLEC could demonstrate that it was using an efficient configuration to transport and terminate the calls and that such configuration justified asymmetrical rates. Under symmetrical reciprocal compensation, the CLEC applies the ILEC's rate for transport and termination. The FCC determined that there should be two rates for transport and termination. One rate applies where tandem switching is involved (tandem rate) and the other rate applies where tandem switching is not involved (end office rate). The tandem rate simply consists of both the end office switching rate and the tandem switching rate. As a surrogate for these two rates, many state commissions have used the UNE rates of the involved network components as the basis for reciprocal compensation.

Q. HOW DOES BELLSOUTH USE TANDEM SWITCHES?

A. BellSouth has both local and access tandems. First, I will address local tandems. Sometimes there are so many local switches in a given local calling area that it makes economic sense to create a local tandem to help handle the flow of local calls between the end office switches. In this case, the local tandem is connected to numerous end office switches in the local calling area, thereby eliminating the need to have every end office switch in that local calling area connected directly to every other end office switch in that local calling area. In this situation, a caller who is served by one end office switch can place a local call to a subscriber served by another end office switch, and the call can be routed through the local tandem, rather than being trunked directly to the called party's local end office switch. Obviously, if there are a lot of end office switches in a local calling area, using a tandem switch to aggregate traffic and to act as a central connection point makes economic sense and avoids a lot of extra trunking that would otherwise be required to ensure that call blockage was limited to acceptable levels.

The local tandem is functionally quite similar to what is often referred to as an access tandem. An access tandem is a tandem switch that is also connected to all of the local central offices in a given area. The difference is that the access tandem handles both local and long distance traffic while the local tandem only handles local traffic.

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. In order for AT&T to appropriately charge for tandem switching, AT&T must

demonstrate to the Commission that: 1) its switches serve a comparable geographic area to that served by BellSouth's tandem switches and that 2) its switches actually perform local tandem functions. AT&T should only be compensated for the functions that it actually provides.

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

Q. WHAT IS AT&T'S POSITION ON THIS ISSUE?

Apparently, because AT&T's switches are capable of serving the same geographic area, AT&T's position is that AT&T should always receive the rate for tandem switching, regardless of whether AT&T actually performs the tandem function for a particular local call. AT&T contends it should be allowed to charge BellSouth for tandem switching on every local call, regardless of whether AT&T incurs the cost.

Q. WHAT IS THE BASIS FOR BELLSOUTH'S POSITION ON THIS ISSUE?

A. In its Local Competition Order, the FCC stated that the "additional costs" of transporting and terminating local traffic vary depending on whether or not a tandem switch is involved. (¶ 1090). As a result, the FCC determined that state commissions can establish transport and termination rates that vary depending on

whether the traffic is routed through a tandem switch or directly to a carrier's end-office switch. *Id.* To that end, BellSouth has separate rates for transport and termination depending upon whether tandem switching is involved. When a CLEC's end user originates a local call that terminates on BellSouth's local network, BellSouth charges the CLEC a different rate for reciprocal compensation based on whether or not local tandem switching is involved in that call. When a BellSouth end user originates a local call that terminates on the CLEC's network, the CLEC should only charge the tandem rate when the CLEC actual provides the tandem switching function.

The FCC, of course, recognized that a CLEC might not use the same network architecture as BellSouth or any other incumbent carrier. In order to insure that a CLEC would receive the equivalent of a tandem switching rate if it were warranted, the FCC directed state commissions to do two things. First, the FCC directed state commissions to "consider whether new technologies (e.g., fiber ring or wireless network) performed functions similar to those performed by an incumbent LEC's tandem switch and thus whether some or all calls terminating on the new entrant's network should be priced the same as the sum of transport and termination via the incumbent LEC's tandem switch." (Local Competition Order ¶ 1090, emphasis added). Second, the FCC stated that "[w]here the interconnecting carrier's switch serves a geographic area comparable to that served by the incumbent LEC's tandem switch, the appropriate proxy for the interconnecting carrier's additional costs is the LEC tandem interconnection rate." *Id*.

Therefore, the FCC posed two requirements that must be met before a CLEC would be entitled to compensation at both the end office and the tandem switching

rate, as opposed to only the end office rate, for any particular local call. The tandem switch involved has to serve a comparable geographic area, and it has to perform the tandem switching function for the local call for which compensation is sought.

BellSouth notes that in Section 51.711(a)(1) of its Rules, the FCC states that "symmetrical rates are rates that a carrier other than an incumbent LEC assesses upon an incumbent LEC for transport and termination of local telecommunications traffic equal to those that the incumbent LEC assesses upon the other carrier for the same services." (emphasis added). Again, in Section 51.711(a)(3), the Rule states that "[w]here the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate." The FCC clearly has two requirements that must be met before the tandem rate for transporting and terminating traffic applies.

Q. DOES THE COMMISSION NEED TO DECIDE WHETHER A NEW TECHNOLOGY USED BY AT&T PERFORMS A FUNCTION SIMILAR TO TANDEM SWITCHING?

A. No. The basic network architecture used by AT&T is the same as BellSouth, so the Commission does not need to attempt to determine whether some new technology used by AT&T performs functions similar to tandem switching. The Commission simply needs to determine whether AT&T is actually providing tandem switching on each and every local call. Thus, pursuant to Section 51.711, in order to charge BellSouth the tandem rate, AT&T must show not only that its switches serve a

geographic area comparable to BellSouth's tandem switches, but also that AT&T's switches are providing the same services as BellSouth's tandem switches for local traffic.

Q. HAS THE FCC DEFINED WHICH FUNCTIONS A TANDEM SWITCH MUST PROVIDE?

A. Indeed it has. In its recently released Order No. FCC 99-238, the FCC's rules at 51.319(c)(3) state:

> *Local Tandem Switching Capability*. The tandem switching capability network element is defined as:
>
> (i) Trunk-connect facilities, which include, but are not limited to, the connection between trunk termination at a cross connect panel and switch trunk card;
>
> (ii) The basic switch trunk function of connecting trunks to trunks; and
>
> (iii) The functions that are centralized in tandem switches (as distinguished from separate end office switches), including but not limited, to call recording, the routing of calls to operator services, and signaling conversion features.

Of course, this definition of tandem switching capability has long been accepted and applied within the telecommunications industry. The introduction of local competition has no effect on the definition of tandem switching capability.

Q. HOW DOES THE FCC'S DEFINITION OF TANDEM SWITCHING APPLY TO THIS ISSUE?

A. To receive reciprocal compensation at the tandem rate, a carrier must be performing the functions described in the FCC's definition of tandem switching. It is not enough that the switch "can" provide the function of a tandem switch; it has to actually be providing those functions for the local call for which compensation is sought. This is true if for no other reason than because the difference between the end office and tandem rates for reciprocal compensation is the same as the UNE rate for tandem switching. That rate recovers the cost of performing, for local calls, the functions described in the FCC's definition. If the CLEC were not performing those functions, the CLEC would simply be receiving a windfall.

AT&T's switches are not providing a tandem function to transport any local calls, let alone all local calls, but are only switching traffic through AT&T's end office switches for delivery of that traffic from those switches to the called party's premises. As stated in the FCC's definition, to provide transport utilizing tandem switching, AT&T's switch must connect trunks terminated in one end office switch to trunks terminated in another end office switch. In other words, a tandem switch, as defined by the FCC, provides an intermediate switching function. As AT&T has admitted, its switch is not providing that function. During cross-examination in North Carolina Dockets No. P-140, Sub 73 and No. P-646, Sub 7, AT&T witness Mr. David Talbott concurred that "[t]here is not an intermediate switching function within the AT&T network." (Transcript, Vol. 2, August 1, 2000, p. 227, lines 6-9). Further, when asked if AT&T's switch would qualify for the tandem rate if the North Carolina Commission concludes that an intermediate switching function is required, Mr. Talbott stated "[o]ur switch would not qualify." (Id., p. 227, line 21-p. 228, line 1).

As confirmed by AT&T's own witness, AT&T's switch connects trunks to end user's lines, and does not connect trunks to trunks. In this regard, there is nothing different about AT&T's network design in Kentucky as compared to its network design in North Carolina. The end office rate for transport and termination fully compensates AT&T for the functions its end office switches perform.

Q. HAS THIS COMMISSION PREVIOUSLY, IN AN ARBITRATION PROCEEDING, CONSIDERED THE ISSUE OF APPLICABILITY OF RECIPROCAL COMPENSATION TO TANDEM SWITCHING?

A. Yes. In the ICG Arbitration, the Commission determined that "ICG should be compensated at the tandem interconnection rate." (ICG Order dated March 2, 2000, at page 4). BellSouth respectfully disagrees with the Commission's determination that ICG met its burden of proof on this issue. In any event, previous rulings with respect to another carrier are not relevant to addressing this issue for AT&T. Whether the tandem rate applies is dependent upon how a particular carrier's network handles each individual local call. Also, it is not appropriate to conclude that the tandem rate applies on every local call if the CLEC incurs tandem costs only on some local calls.

Q. HAS ANOTHER COMMISSION IN BELLSOUTH'S REGION RULED ON THIS SAME ISSUE IN AT&T'S ARBITRATION WITH BELLSOUTH?

A. Yes. In its ruling on this issue, the South Carolina Commission determined that "in order to qualify for the tandem switching rate, an AT&T switch must serve a

geographic area comparable to that served by BellSouth's tandem and the switches must perform the functions of a tandem switch for local traffic." (SCPSC Order at page 34). Finding that AT&T's switches in South Carolina do not perform tandem switching functions, the Commission concluded that AT&T did not satisfy the second prong of the test and directed that the Interconnection Agreement reflect BellSouth's position.

Q. WHAT DOES BELLSOUTH REQUEST THE COMMISSION DO?

A. Importantly, BellSouth is not disputing AT&T's right to compensation at the tandem rate where the facts support such a conclusion. However, in this proceeding, AT&T is seeking a decision that allows it to be compensated for the cost of equipment it does not own and for functionality it does not provide. Absent real evidence that AT&T's switches actually serve a geographic area comparable to BellSouth's tandems, and absent evidence that AT&T's switches actually perform tandem switching functions for local traffic, BellSouth requests that this Commission determine that AT&T is only entitled, where it provides local switching, to the end office switching rate.

Issue 13: What is the appropriate treatment of outbound voice calls over internet protocol ("IP") telephony, as it pertains to reciprocal compensation? (Attachment 3)

Q. PLEASE EXPLAIN BELLSOUTH'S UNDERSTANDING OF THIS ISSUE.

A. This issue addresses the appropriate compensation for phone-to-phone calls that

utilize a technology known as Internet Protocol ("IP"). First, let me be clear on the distinction between "voice calls over the Internet" and "voice calls over Internet Protocol ("IP") telephony." IP Telephony is, in very simple and basic terms, a mode or method of completing a telephone call. The word "Internet" in Internet Protocol telephony refers to the name of the protocol; it does not mean that the service necessarily uses the World Wide Web.

Q. WHAT IS PHONE-TO-PHONE IP TELEPHONY?

A. Phone-to-Phone IP Telephony is telecommunications service that is provided using Internet Protocol for one or more segments of the call. Technically speaking, Internet Protocol, or any other protocol, is an agreed upon set of technical operating specifications for managing and interconnecting networks. The Internet Protocol is a specific language that equipment on a packet network uses to intercommunicate. It has nothing to do with the transmission medium (wire, fiber, microwave, etc.) that carries the data packets between gateways, but rather concerns gateways, or switches, that are found on either end of that medium.

Currently there are various technologies used to transmit telephone calls, of which the most common are analog and digital. In the case of IP Telephony originated from a traditional telephone set, the local carrier first converts the voice call from analog to digital. The digital call is sent to a gateway that takes the digital voice signal and converts or packages it into data packets. These data packets are like envelopes with addresses that "carry" the signal across a network until they reach their destination, which is known by the address on the data packet, or envelope. This destination is another gateway, which reassembles the packets and converts the

signal to analog, or a plain old telephone call, to be terminated on the called party's local telephone company's lines.

To explain it another way, Phone-to-Phone IP Telephony occurs when an end user customer uses a traditional telephone set to call another traditional telephone set using IP technology. The fact that IP technology is used at least in part to complete the call is transparent to the end user. Phone-to-Phone IP Telephony is identical, by all relevant regulatory and legal measures, to any other basic telecommunications service, and should not be confused with calls to the Internet through an ISP. Characteristics of Phone-to-Phone IP Telephony are:

- IP Telephony provider gives end users traditional dial tone (not modem buzz);
- End user does not call modem bank;
- Uses traditional telephone sets (vs. computer);
- Call routes using telephone numbers (not IP addresses);
- Basic telecommunications (not enhanced); and
- IP Telephone providers are telephone carriers (not ISPs).

Phone-to-Phone IP Telephony should not be confused with Computer-to-Computer IP Telephony, where computer users use the Internet to provide telecommunications to themselves.

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. As with any other local traffic, reciprocal compensation should apply to local telecommunications provided via IP Telephony, to the extent that it is technically feasible to apply such charges. To the extent, however, that calls provided via IP

telephony are long distance calls, access charges should apply. Application of access charges for long distance calls does not depend on the technology used to transport such calls. Due to the increasing use of IP technology mixed with traditional circuit switching technology to switch or transport voice telecommunications, BellSouth's position is that it is important to specify in the agreement that long distance calls, irrespective of the technology used to transport them, constitute switched access traffic and not local traffic.

Switched access charges, not reciprocal compensation, apply to phone-to-phone long distance calls that are transmitted using IP telephony. From the end user's perspective – and, indeed, from the IXC's perspective – such calls are indistinguishable from regular circuit switched long distance calls. The IXC may use IP technology to transport all or some portion of the long distance call, but that does not change the fact that it is a long distance call.

Q. WHAT IS AT&T'S POSITION ON THIS ISSUE?

A. It appears that AT&T is attempting to inappropriately assert the ESP exemption to all calls, and treat all calls using IP telephony as local traffic. Consider the example of a call from Louisville to Paducah sent over AT&T's circuit switched network. Certainly, this call is a long distance call, and access charges would apply. However, if AT&T transported that same call using IP telephony, AT&T evidently would claim that the call from Louisville to Paducah is a local call and that reciprocal compensation applies. Now, AT&T makes this claim despite the fact that it charges the customer the same long distance price in either case. This position is ridiculous. AT&T's choice of transmission medium does not transform a long distance call into

a local call.

Q. DOES THE FCC VIEW CALLS TO INFORMATION SERVICE PROVIDERS ("ISP-BOUND TRAFFIC") DIFFERENTLY THAN PHONE-TO-PHONE IP TELEPHONY IN TERMS OF APPLICABLE CHARGES?

A. Yes. Neither ISP-bound traffic nor the transmission of long distance services via IP Telephony traffic is local traffic; however, the FCC has treated the two types of traffic differently in terms of the rates that such providers pay for access to the local exchange company's network. Calls to Information Service Providers have been exempted by the FCC from access charges for use of the local network in order to encourage the growth of these emerging services – most specifically access to the Internet. The FCC has found that ISPs use interstate access service, but are exempt from switched access charges applicable to other long distance traffic. As a result of this FCC exemption, ISP-bound traffic is assessed at the applicable business exchange rate.

On the other hand, the transmission of long-distance voice services - whether by IP telephony or by more traditional means - is not exempt from switched access charges. The FCC has provided no exemption from access charges when IP telephony is used to transmit long distance telecommunications.

The FCC's April 10, 1998 Report to Congress states: "The record… suggests… '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 'telecommunication services'." Further, Section 3 of the 1996 Act

defines "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." Thus, IP Telephony is telecommunications service, not information or enhanced service.

Long distance service is a mature industry, and simply changing the technology that is used to transmit the long distance service does not change the service. All other long-distance carriers currently pay these same access charges, and there is no Commission to exempt them, regardless of the protocol used to transport such calls. To do otherwise would unreasonably discriminate between long-distance carriers utilizing IP telephony and those who do not.

Q. HAVE OTHER STATE COMMISSIONS IN BELLSOUTH'S REGION DETERMINED THAT LONG DISTANCE VOICE CALLS TRANSMITTED VIA IP TELEPHONY ARE SUBJECT TO ACCESS CHARGES?

A. Yes. In the BellSouth/Intermedia arbitration proceeding in Florida, the Florida Commission determined that phone-to-phone calls transmitted via IP telephony to which access charges would typically apply are switched access calls. The Florida Commission's August 22, 2000 Order states:

> …phone-to-phone IP Telephony is technology neutral. A call provisioned using phone-to-phone IP Telephony but not transmitted over the internet, to which switched access charges would otherwise apply if a different signaling and transmission protocol were employed, is nevertheless a switched access call. Except for, perhaps, calls routed over the internet, the underlying technology used to complete a call should be irrelevant to whether or not

switched access charges apply. Therefore, like other telecommunications services, it would be included in the definition of switched access traffic. (Order No. PSC-00-1519-FOF-TP, page 57).

Q. WHAT IS BELLSOUTH REQUESTING THE COMMISSION DO?

A. BellSouth requests that the Commission determine that access charges, rather than reciprocal compensation, apply to long distance calls, regardless of the technology used to transport them.

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 ("OS/DA") as a UNE?

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. BellSouth witness Mr. Milner addresses the technical aspects of BellSouth's provision of customized routing and demonstrates that BellSouth is providing sufficient customized routing to allow BellSouth to avoid providing Operator Services/Directory Assistance as UNEs. The rates BellSouth will charge AT&T for its Line Class Code-based and AIN-based solutions for customized routing are being addressed by the Commission in Administrative Case 382.

Issue 21: Should the Commission or a third party commercial arbitrator resolve disputes under the Interconnection Agreement?

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. BellSouth's position is that the appropriate regulatory Commission should resolve disputes and that BellSouth should not be precluded from petitioning the Commission for resolution of disputes under the Interconnection Agreement.

Q. WHAT IS THE BASIS FOR BELLSOUTH'S POSITION?

A. BellSouth originally agreed to use third party arbitrators to resolve disputes involving its interconnection agreements because we thought that with the state commission's crowded calendars, commercial arbitration could provide a speedy and inexpensive way to resolve disputes. Although the first interconnection agreement between BellSouth and AT&T contained an alternative dispute resolution provision, the two parties have never used that provision. However, BellSouth has used it in disputes with other CLECs. The process has proven to be neither speedy, nor inexpensive. Our experience shows that it is simply not possible to get neutral commercial arbitrators that are sufficiently experienced in the telecommunications industry. Consequently, a neutral arbitrator must be trained on the very basics of our industry, and decisions are not made expeditiously. In short, commercial arbitration simply does not work very well. The Commission and its staff are clearly more capable of handling disputes between telecommunications carriers than are commercial arbitrators. BellSouth should not be obligated to waive its right to have the Commission hear disputes.

Interestingly, although this is AT&T's issue, it evidently agrees with BellSouth's position. A "third party arbitration" clause was contained in the parties' prior

interconnection agreement. Nonetheless, AT&T filed complaints with at least two state commissions during the term of the prior agreement, rather than seeking third party arbitration. Indeed, in one instance, based on the hearing officer's initial report, AT&T asserted that third party arbitrations are too slow. Therefore, it is not at all clear to BellSouth why AT&T continues to insist on including such a clause in its interconnection agreement.

Q. HAS THE COMMISSION PREVIOUSLY ADDRESSED THIS ISSUE?

A. Yes. In the recent Pilgrim Arbitration, the Commission ordered that "BellSouth shall not be required to include a provision for binding arbitration in its interconnection agreement with Pilgrim," finding that "any contract term regarding arbitration which precludes a party from petitioning the Commission for resolution of disputes arising under the agreement is contrary to the public interest." (Pilgrim Order dated January 12, 2001, at page 6).

Issue 25: Should AT&T be allowed to share the spectrum on a local loop for voice and data when AT&T purchases a loop/port combination and if so, under what rates, terms and conditions? (Attachment 2)

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. First, let me state BellSouth's understanding that the parties have agreed to consider the rates, terms and conditions for line sharing in Administrative Case 382. Therefore, in this proceeding, the parties are only addressing the issue of whether BellSouth is obligated to allow a CLEC to share the spectrum on a local loop when

the CLEC purchases the loop/port combination, which is commonly referred to as the UNE Platform or UNE-P. As I will explain in detail, BellSouth is under no obligation to offer line sharing on the UNE-P.

Q. PLEASE EXPLAIN "LINE SHARING" AND "SPECTRUM MANAGEMENT."

A. The local loop from the central office to the customer's premises can be used to provide both voice and packet data service. There are a number of carriers who want to use that loop to provide packet data service while the ILEC would continue to provide voice service. Inserting specific equipment on the line enables the spectrum to be "shared" by the voice provider and the data provider, a functionality also known as "line sharing." In its Line Sharing Order, the FCC specifically states "[t]he provision of xDSL-based service by a competitive LEC and voiceband service by an incumbent LEC on the same loop is frequently called 'line sharing.'" (Line Sharing Order at ¶ 4).

Q. UNDER WHAT CONDITIONS IS AN ILEC SUCH AS BELLSOUTH OBLIGATED TO PROVIDE LINE SHARING?

A. ILECs are only obligated to provide line sharing to a single requesting carrier at the same customer address as the traditional POTS analog voice service provided by the incumbent. Line sharing as ordered by the FCC is available under the following conditions:

- Two carriers – one voice provider (ILEC) and one data provider (CLEC) – serve one customer per loop (Id. ¶ 74);

- The ILEC provides traditional POTS analog voiceband service to the customer on the line to be shared (Id. ¶ 19);
- The CLEC provides xDSL-based service to the customer (Id. ¶ 13);
- The CLEC's xDSL technologies do not use the frequencies immediately above the voiceband, thereby preserving them as a "buffer" zone to ensure the integrity of the voiceband traffic (Id. fn 136);
- The CLEC's xDSL technology does not interfere with analog voiceband transmission (Id. ¶ 70-71); and
- If the ILEC's retail customer disconnects his/her POTs service, the data provider must purchase the entire stand-alone loop if it wishes to continue providing xDSL service to the customer. Similarly, ILECs are not required to provide line sharing to a requesting carrier when the CLEC purchases a combination of network elements known as the UNE platform. (Id. ¶¶ 72-73)

The "platform" referred to is the loop/port combination. Clearly, BellSouth is obligated to provide line sharing to CLECs only where BellSouth is providing the voice service. The FCC's Line Sharing Order clearly found that CLECs are not impaired without access to line sharing when the ILEC is not providing the voice service. Indeed, in its recent decision released January 19, 2001[3], the FCC reaffirmed its previous ruling, stating: "[w]e deny, however, AT&T's request that the Commission clarify that incumbent LECs must continue to provide xDSL services in

[3] *In the Matter of Deployment of Wireline Services Offering Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order on Reconsideration in CC Docket No. 98-147, Fourth Report and Order on Reconsideration in CC Docket No. 96-98, Third Further Notice of Proposed Rulemaking in CC Docket No. 98-147, Sixth Further Notice of Proposed Rulemaking in CC Docket No. 96-98.

the event customers choose to obtain voice service from a competing carrier on the same line because we find that the *Line Sharing Order* contained no such requirement." (January 19, 2001 Order at ¶16).

Q. WHAT DOES BELLSOUTH REQUEST OF THE COMMISSION?

A. BellSouth requests the Commission to find, consistent with the FCC, that BellSouth is obligated to provide line sharing to CLECs only where BellSouth is providing the voice service.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

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