KITTINGER

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INVESTIGATION CONCERNING THE PROPRIETARY OF INTERLATA SERVICES BY BELLSOUTH TELECOMMUNICATIONS, INC., PURSUANT TO THE TELECOMMUNICATIONS ACT OF 1996	)	**CASE NO. 2001-105**

PREFILED TESTIMONY

OF MARK ARGENBRIGHT

ON BEHALF OF WORLDCOM, INC.

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COUNSEL FOR WORLDCOM, INC.

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Mark E. Argenbright. My business address is Six Concourse Parkway, Suite 3200, Atlanta, Georgia 30328.

Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

A. I am employed by WorldCom, Inc. in the Law and Public Policy group and hold the position of Senior Staff Specialist, State Regulatory Policy. In my current position, I assist in the development and coordination of WorldCom's regulatory and public policy initiatives for the company's domestic operations. These responsibilities require that I work closely with our state regulatory groups across the various states, including Kentucky.

Q. PLEASE SUMMARIZE YOUR TELECOMMUNICATIONS BACKGROUND AND EDUCATION.

A. My previous position within WorldCom was Senior Manager, Regulatory Analysis, in which I was responsible for performing regulatory analysis in support of a wide range of company activities. Prior to that, I was employed by the Anchorage Telephone Utility (now known as Alaska Communications Systems) as a Senior Regulatory Analyst and American Network, Inc. as a Tariff Specialist. I have worked in the telecommunications industry for sixteen years, with the majority of my positions in the area of regulatory affairs. I received a Bachelor of Science Degree in Business Administration from the University of Montana in 1980.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to show that BellSouth in Kentucky does not currently provide interconnection in accordance with the requirements of checklist item (i); that BellSouth does not currently provide unbundled local transport in accordance with the requirements of checklist items (ii) and (v); and that BellSouth does not currently provide reciprocal compensation in accordance with the requirements of checklist item (xiii).

Checklist Item (i)

Q. DOES BELLSOUTH CURRENTLY PROVIDE INTERCONNECTION IN ACCORDANCE WITH THE REQUIREMENTS OF THE TELECOMMUNICATIONS ACT OF 1996 ("ACT")?

A. No. BellSouth does not currently provide interconnection in accordance with the requirements of the Act. Specifically:

(1) BellSouth claims it has the right to designate the point of interconnection ("POI") in each LATA for its originating traffic, and seeks to impose on CLECs the financial responsibility for transporting traffic that originates from other BellSouth local calling areas within the LATA to the POI. I will refer to this as the "point of interconnection" issue.

(2) While BellSouth will interconnect with CLECs for the exchange of traffic, BellSouth seeks to require CLECs to establish unnecessary and inefficient interconnection trunking arrangements in order to separate local, intraLATA toll and transit traffic onto separate trunk groups. I will refer to this as the "trunk fragmentation" issue.

(3) While BellSouth will interconnect with CLECs for the exchange

of traffic, BellSouth refuses to allow CLECs who desire to serve as providers of terminating access service to route access traffic to BellSouth end offices over the same trunk groups used to terminate local traffic. I will refer to this as the "tandem provider" issue.

(4) BellSouth will provision two-way trunks when CLECs so request, but BellSouth claims that it is not necessarily required to use two-way trunks for its own traffic. I will refer to this as the "two-way trunking" issue.

POINT OF INTERCONNECTION ISSUE

Q. WHAT DOES IT MEAN TO "INTERCONNECT" CLEC AND ILEC NETWORKS?

A. Construction of a local network by a CLEC means nothing unless that network can be interconnected seamlessly with the ILEC's network and with the networks of other telecommunications carriers. In the context of my testimony, interconnection means the linking of networks. The point at which a CLEC's local network physically connects to the ILEC's network is called the point of interconnection, or "POI."

The POI plays a critical role in interconnection. From a financial perspective, the POI represents the "financial demarcation" -- the point where the CLEC's network ends and the ILEC's "transport and termination" charges begin and visa versa. From an engineering perspective, there are a variety of things that must happen at the POI to make interconnection seamless and complete.

Q. WHAT IS BELLSOUTH'S OBLIGATION TO ESTABLISH INTERCONNECTION ARRANGEMENTS WITH CLECs?

A. Section 251(c)(2) of the Act provides that an ILEC has the "duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network . . . at any technically feasible point within the carrier's network." BellSouth thus must allow a requesting carrier to interconnect at any technically feasible point.

The FCC explained the interconnection obligation in Paragraph 172 of its Local Competition Order, stating:

> The interconnection obligation of 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 carrier's costs of, among other things, transport and termination of traffic.

In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, *First Report and Order,* FCC-96-325 at ¶172 (rel. August 8, 1996) ("Local Competition Order") (emphasis added). The FCC also stated that "[o]f course, requesting carriers have the right to select points of interconnection at which to exchange traffic with an incumbent LEC under section 251(c)(2)." Local Competition Order ¶ 220, n.464. Because CLECs have the right to choose the point where the parties exchange traffic, CLECs have the right to select the POI for both the CLEC's originating traffic and for BellSouth's originating traffic.

Q. HOW HAS THE FCC ADDRESSED THIS INTERCONNECTION OBLIGATION IN ITS PRIOR SECTION 271 ORDERS?

A. In Paragraph 77 of its Texas 271 Order, the FCC ruled that a CLEC may choose to interconnect with an ILEC at a single point in each LATA. The FCC explained that:

> 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.

In the Matter of Application by SBC Communications Inc. et al. to Provide In-Region, InterLATA Services In Texas, CC Docket No. 00-65, *Memorandum Opinion and Order,* FCC 00-238 at ¶ 77 (rel. June 30, 2000) ("Texas 271 Order").

Q. HAS THE FCC ADDRESSED THE PARTIES' FINANCIAL RESPONSIBILITIES FOR DELIVERING LOCAL TRAFFIC TO THE DESIGNATED POI?

A. Yes, that responsibility is addressed both in the FCC Rules and in several FCC orders. FCC Rule 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."

In its decision earlier this year in the Kansas/Oklahoma 271 proceeding, the FCC confirmed that its decision in the Texas 271 Order to allow a single point of interconnection per LATA did not "change an incumbent LEC's reciprocal compensation obligations under our current rules." *In the Matter of Joint Application by SBC Communications Inc., et al. for Provision of In-Region, InterLATA Services in Kansas and Oklahoma,* CC Docket No. 00-217, *Memorandum Opinion and Order* at ¶235 (rel. January 22, 2001) ("Kansas/Oklahoma 271 Order"). The FCC noted, for example, that "these rules preclude an incumbent LEC from charging carriers for local traffic that originates on the incumbent LEC's network." *Id.* Thus, not only may a CLEC establish a single POI in each LATA, it may do so without being required to build, lease, or otherwise pay for facilities on BellSouth's side of the POI.

Q. ARE THERE ANY OTHER FCC ORDERS THAT ADDRESS THE RESPONSIBILITY OF A CARRIER TO DELIVER ITS ORIGINATING TRAFFIC TO A CO-CARRIER FOR TERMINATION?

A. Yes. The FCC places the responsibility for costs associated with originating traffic on the carrier that originates the call when the originated traffic must be delivered to another carrier's network for completion. This responsibility includes the facilities necessary to deliver the call to a co-carrier's network. The FCC addressed this point in *In re: TSR Wireless, LLC, et al v. U.S. West, et. al.*, Memorandum Opinion and Order, File Nos. E-98-13, E-98-15, E-98-16, E-98-17, E-98-18 (rel. June 21, 2000) ("TSR Wireless Order"). The TSR Wireless Order sets forth the framework by which carriers recover costs incurred in carrying both originating and terminating traffic. The FCC describes the obligations of a carrier when its customers originate traffic as follows:

> The Local Competition Order requires a carrier to pay the cost of facilities used to deliver traffic originated by that carrier to the network of its co-carrier, who then terminates that traffic and bills the originating carrier for termination compensation. In essence, the originating carrier holds itself out as being capable of transmitting a telephone call to any end-user, and is responsible for paying the cost of delivering the call to the network of the co-carrier who will then terminate the call. Under the Commission's

> regulations, the cost of the facilities used to deliver this traffic is the originating carrier's responsibility, because these facilities are part of the originating carrier's network. The originating carrier recovers the costs of these facilities through the rates it charges its own customers for making calls. This regime represents "rules of the road" under which all carriers operate, and which make it possible for one company's customer to call any other customer even if that customer is served by another telephone company.

TSR Wireless Order ¶ 34.

Q. THE FCC HAS RECENTLY ISSUED A NOTICE OF PROPOSED RULEMAKING TO ADDRESS THE DEVELOPMENT OF A UNIFIED INTERCARRIER COMPENSATION REGIME. DOES ANYTHING IN THIS NOTICE AFFECT BELLSOUTH'S FINANCIAL RESPONSIBILITY FOR TRANSPORTING TRAFFIC ORIGINATED ON ITS NETWORK TO THE POI?

A. No. The Notice of Proposed Rulemaking begins "a fundamental reexamination of all currently regulated forms of intercarrier compensation" and seeks comment on "the feasibility of a bill-and-keep approach for such a unified regime." *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Notice of Proposed Rulemaking* at ¶ 1 (rel. April 27, 2001) ("Intercarrier Compensation NPRM"). While the FCC seeks comments on whether the single POI per LATA rule and the current division of financial responsibility should continue to apply under a future bill-and-keep regime, the FCC actually reaffirms BellSouth's obligation, under current rules, to deliver traffic to the POI at its own cost, in stating as follows: "Our current reciprocal compensation rules preclude an ILEC from charging carriers for local traffic that originates on the ILEC's network." Intercarrier Compensation

NPRM at ¶ 112 and n.180.

Q. WHAT POSITION HAS BELLSOUTH TAKEN ON THIS ISSUE?

A. BellSouth contends that CLECs do not have the right to choose the POI in situations in which a CLEC serves a customer in one local calling area with a switch in another local calling area. For calls originated on BellSouth's network, BellSouth insists that it can establish a POI for each local calling area in which the CLEC is offering local service. Thus, the CLEC would be responsible for transporting that call (originated by a BellSouth customer) back through BellSouth's network to the CLEC's network.

Q. DOES THIS POSITION COMPLY WITH THE REQUIREMENTS OF CHECKLIST ITEM (i)?

A. No. BellSouth will not satisfy the requirements of checklist item (i), and will not be entitled to Section 271 relief, unless and until it accepts its obligation to deliver traffic to the POI at its own expense and incorporates that obligation into its Interconnection Agreements and its Statement of Generally Available Terms and Conditions (SGAT).

<u>TRUNK FRAGMENTATION ISSUE</u>

Q. CAN YOU PLEASE PROVIDE AN OVERVIEW OF WHAT YOU HAVE DESCRIBED AS THE TRUNK FRAGMENTATION ISSUE?

A. Yes. Once networks are physically connected, it is necessary from an engineering perspective to partition the interconnection facilities into various types of trunk groups required to carry the different types of interconnection traffic. Based on our experience, the most efficient way to segregate that traffic is as follows:

- A separate trunk group for local traffic, non-equal access intraLATA interexchange (toll) traffic, and local transit traffic to other LECs.
- A separate trunk group for equal access interLATA or intraLATA interexchange traffic that transits the ILEC network.
- Separate trunks connecting the CLECs switch to each 911/E911 tandem.
- A separate trunk group connecting the CLEC's switch to BellSouth's operator service center.
- A separate trunk group connecting the CLEC's switch to the BellSouth directory assistance center if the CLEC is purchasing BellSouth's unbundled directory assistance service.

Q. DOES BELLSOUTH DISPUTE THIS TRUNKING SCHEME?

A. Yes, in part. With respect to the first type of trunk group, BellSouth takes the position that it is necessary to "fragment" the traffic by separating local and intraLATA toll traffic from local transit traffic.

Q. WHAT IS THE PROBLEM WITH BELLSOUTH'S POSITION?

A. First, there is no technical requirement to segregate local, intraLATA toll, and transit traffic on separate trunk groups. BellSouth has available what it calls "super group" trunks than can accommodate local, intraLATA toll, and transit traffic on a single trunk group. Second, because of engineering efficiencies, it is often more efficient to "pack" a trunk group with both local traffic, intraLATA toll, and transit traffic than to require separate trunk groups for each type of traffic. Because these types of traffic are "rated" differently, the receiving carrier would either have to have a way to discern the jurisdiction of the traffic (for example, calling party number or "CPN") or would have to rely on reporting by the sending carrier, via a percent local usage (PLU) or similar reporting mechanism.

Q. DOES BELLSOUTH'S POSITION ON THIS ISSUE COMPLY WITH CHECKLIST ITEM (i)?

A. No. Checklist item (i) requires BellSouth to provide interconnection in accordance with the requirements of Sections 251(c)(2) and 252(d)(1). Under Section 251(c)(2)(D), interconnection must be provided "on rates, terms and conditions that are just, reasonable and nondiscriminatory." When BellSouth has super group trunks available that are capable of carrying local, intraLATA toll and transit traffic on the same trunk group, it is unjust and unreasonable for BellSouth to insist on using a less efficient form of interconnection that fragments such traffic. That inefficiency translates into unnecessary, increased costs for the CLEC who interconnects with BellSouth. Unless and until BellSouth agrees to exchange local, intraLATA toll and transit traffic with a CLEC over a single trunk group, and incorporates that requirement into its Interconnection Agreements and SGAT, BellSouth will not have satisfied its obligations under checklist item (i).

<u>**TANDEM PROVIDER ISSUE**</u>

Q. PLEASE PROVIDE AN OVERVIEW OF WHAT YOU HAVE CALLED THE TANDEM PROVIDER ISSUE.

A. This issue involves the question of whether a CLEC will be permitted to route terminating switched access traffic directly to BellSouth end offices over local interconnection trunks, or whether it will be required to deliver such traffic to BellSouth at BellSouth access tandems over access trunks.

Q. WHY DOES IT MATTER HOW A CLEC IS PERMITTED TO DELIVER TERMINATING SWITCHED ACCESS TRAFFIC?

A. Assume that a CLEC (such as WorldCom) wants to compete with BellSouth for providing terminating access service to interexchange carriers (IXCs). In this situation, an IXC could route its terminating traffic to a WorldCom tandem switch, from which WorldCom could terminate the call directly (if the called party were a WorldCom local customer) or could deliver the call to BellSouth's end office switch for termination (if the called party were a BellSouth local customer). In the case of a call to a BellSouth customer, BellSouth would be entitled to bill the IXC for the end office switching component of access charges, and WorldCom would be entitled to bill the IXC for the tandem switching and transport components.

If, however, WorldCom is not permitted to route terminating access traffic directly to BellSouth's end offices, but instead must send such traffic to BellSouth's access tandem via switched access trunks, then WorldCom is foreclosed from providing a competitive access service -- since BellSouth will always perform the tandem switching and transport functions, and will be entitled to bill the IXC for those services.

Q. WHY DOES BELLSOUTH INSIST THAT TERMINATING ACCESS

TRAFFIC BE DELIVERED TO ITS ACCESS TANDEM VIA ACCESS TRUNKS?

A. BellSouth claims that if a CLEC is allowed to deliver terminating switched access traffic to BellSouth end offices over local interconnection trunks, then BellSouth will not have the information necessary to identify and bill the appropriate IXC for its end office switching services.

Q. IS THIS A VALID CONCERN?

A. Yes and no. Clearly BellSouth must get the information necessary to bill the IXC for BellSouth's portion of the access charges. However, that information can be provided by the CLEC to BellSouth in standard EMI format. This is exactly the same way that BellSouth provides the CLEC with the data necessary for the CLEC to bill the IXC for end office switching when BellSouth delivers terminating access traffic bound for an CLEC customer. If a CLEC is willing and able to provide EMI records on a reciprocal basis, there is no reason for BellSouth to refuse to permit this traffic to be delivered directly to its end office switches other than a desire to foreclose competition.

Q. DOES BELLSOUTH'S POSITION ON THIS ISSUE COMPLY WITH CHECKLIST ITEM (i)?

A. As I previously stated, BellSouth is required under Section 251(c)(2)(D) to provide interconnection "on rates, terms and conditions that are just, reasonable and nondiscriminatory." When BellSouth is technically capable of accepting access traffic at its end office switches over local interconnection trunks, and a CLEC is technically capable of providing BellSouth, in industry standard format, with the information necessary to properly bill for such calls, it is discriminatory for BellSouth to require that such traffic be delivered instead via access trunks to its access tandem. This is particularly true when the result of such a requirement is that BellSouth retains a monopoly over the provision of terminating switched access service. Unless and until BellSouth agrees to allow CLECs to deliver such traffic directly to its end offices via local interconnection trunks, and incorporates that requirement into its Interconnection Agreements and SGAT, BellSouth will not have satisfied its obligations under checklist item (i).

<u>TWO-WAY TRUNKING ISSUE</u>

Q. WHY DO CLECS BENEFIT FROM TWO-WAY TRUNKING?

A. Trunks can be one-way or two-way. Generally, two-way trunking is more efficient than one-way trunking for traffic that flows in both directions (for example, local, intraLATA interexchange (toll), and transit traffic), because, with two-way trunking, fewer trunks are needed to establish the interconnection than are needed when BellSouth insists only on one-way trunking. Two-way trunking also is efficient in that it minimizes the number of trunk ports needed for interconnection. As a practical matter, engineers working for the CLEC and BellSouth will attempt to work out the best trunking arrangement in each case. But in the event the engineers cannot agree, the CLEC should have the right to require two-way trunking.

Q. WHY ARE CLECS ENTITLED TO TWO-WAY TRUNK GROUPS UPON REQUEST?

A. The applicable FCC rule provides that "[i]f technically feasible, an incumbent LEC shall provide two-way trunking upon request." 47 C.F.R. § 51.305(f). BellSouth has acknowledged that providing two-way trunks is technically feasible, and that BellSouth is willing to provide two-way trunks upon request, but BellSouth is not necessarily willing to use those trunks. If a CLEC orders a two-way trunk and BellSouth refuses to use that trunk for its traffic, however, the efficiencies of two-way trunking will be lost. Thus, if BellSouth's position were accepted, the FCC's two-way trunking rule would become meaningless.

<u>SUMMARY - CHECKLIST ITEM (i)</u>

Q. WHAT ACTION SHOULD THE COMMISSION TAKE WITH RESPECT TO CHECKLIST ITEM (i)?

A. For the reasons set forth above, the Commission should find that BellSouth does not currently meet its obligation to provide interconnection in accordance with the requirements of Sections 252(c)(2) and 252(d)(1), and thus fails to satisfy checklist item (i).

<u>Checklist Items (ii) and (v)</u>

Q. DOES BELLSOUTH CURRENTLY PROVIDE UNBUNDLED LOCAL TRANSPORT IN ACCORDANCE WITH THE REQUIREMENTS OF THE ACT AND THE FCC RULES?

A. No. BellSouth does not currently provide unbundled local transport in accordance with the requirements of the Act and the FCC rules. Specifically, BellSouth does not provide, as an unbundled network element (UNE), dedicated transport that (i) connects two points on a CLEC's network (such as two switches, a network node and a switch, or two network nodes), or (ii) connects a point on a CLEC's network to a point on the network of a different CLEC, even where the facilities to provide such UNEs are currently in place. BellSouth thus fails both checklist item (v) relating to unbundled local transport and checklist item (ii) which requires nondiscriminatory access to all unbundled network elements.

Q. WHAT FCC REQUIREMENTS APPLY TO THIS ISSUE?

A. FCC Rule 51.319(d) requires BellSouth to provide nondiscriminatory access to interoffice transmission facilities on an unbundled basis to any requesting telecommunications carrier for the provision of a telecommunications service. Dedicated transport is defined as

> incumbent LEC transmission facilities, including all technically feasible capacity-related services including, but not limited to, DS1, DS3 and OCn levels, dedicated to a particular customer or carrier, that provide telecommunications between wire centers owned by incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers.

47 C.F.R. § 51.319(d)(1)(A). BellSouth is required to "[p]rovide all technically feasible transmission facilities, features, functions, and capabilities that the requesting telecommunications carrier could use to provide telecommunications services." 47 C.F.R. § 51.319(d)(2)(B). Further, BellSouth must permit a requesting carrier to connect unbundled interoffice transmission facilities to equipment designated by the requesting carrier. 47 C.F.R. § 51.319(d)(2)(C).

BellSouth's unbundling obligation "extends *throughout* its ubiquitous transport network." *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *Third Report and Order and Fourth Further Notice of Proposed Rulemaking*, FCC 99-238 at ¶ 324 (emphasis added) ("UNE Remand Order"). Thus, BellSouth is not required to build new transport facilities to meet specific requests by CLECs for point-to-point service, but it is required to provide unbundled service where it has facilities in place.

Q. TO WHAT EXTENT IS BELLSOUTH OBLIGATED TO PROVIDE UNBUNDLED TRANSPORT?

A. Where BellSouth has dedicated interoffice transmission facilities currently in place, it is required to provide such facilities on an unbundled basis to the locations and equipment designated by a CLEC, including network nodes connected to CLEC wire centers and switches and to the wire centers and switches of other requesting carriers.

Q. WHAT IS BELLSOUTH'S POSITION REGARDING ITS OBLIGATION?

A. BellSouth contends that it is required to provide dedicated transport only between BellSouth switches/wire centers and CLEC switches/wire centers even if it has facilities in place to other locations that the CLEC wishes to connect.

Q. WHY DOES DO CLECS LIKE WORLDCOM NEED BELLSOUTH TO PROVIDE DEDICATED TRANSPORT TO POINTS THAT ARE NOT IN BELLSOUTH OR CLEC WIRE CENTERS OR END OFFICES?

A. WorldCom's local networks (and those of many other CLECs) utilize a very different architecture than the ILECs' networks. WorldCom does not have a "hub and spoke" architecture that connects all the loops (or "spokes") at various wire centers. Rather, WorldCom's "local loops" ride fiber optic SONET rings and can traverse several serving wire center territories to get between a customer and the serving switch. These "loops" can be routed through several transport nodes within WorldCom's network to connect the customer to the switch. The SONET rings that connect the switching node to the transport nodes (which then link to the separate SONET rings that terminate in the customer premise) act in a similar way to BellSouth's common transport. In other words, because of the way WorldCom's network is configured, it will often be most efficient to link transport nodes, which are WorldCom's traffic aggregation points, to BellSouth dedicated transport rather than making the link at the WorldCom switch.

Q. IS THIS APPROACH CONSISTENT WITH THE UNE REMAND ORDER?

A. Yes. In rejecting ILEC claims that unbundled transport should not be made available because competitive alternatives are available, the FCC noted that

> [t]he competitive alternatives that are available along limited point-to-point routes do not necessarily allow competitive LECs to connect their collocation arrangements or switching nodes according to the needs of their individual network designs. These carriers also require dedicated transport to deliver traffic *from their own traffic aggregation points* to the incumbent LECs network for purposes of interconnection.

UNE Remand Order, ¶ 346 (emphasis added)

BellSouth transmission facilities currently run to many nodes (traffic aggregation points) on WorldCom's network. These facilities are part of BellSouth's existing ubiquitous network. There is no legitimate reason for BellSouth's refusal to provide transport to locations that are currently part of its existing transport network.

Q. WHY DO CLECS LIKE WORLDCOM NEED BELLSOUTH TO PROVIDE DEDICATED TRANSPORT BETWEEN THE CLEC AND THIRD PARTY CARRIERS?

A. BellSouth typically will have transport facilities connecting its switches both to the CLEC locations and to locations of third party carriers with whom the CLEC needs to interconnect. In such cases, it frequently will be more efficient for the CLEC to obtain dedicated transport from BellSouth than to construct its own new transport facilities.

Q. IS BELLSOUTH REQUIRED TO PROVIDE DEDICATED TRANSPORT TO THIRD PARTY CARRIERS WITH WHICH BELLSOUTH IS INTERCONNECTED?

A. Yes. As I previously noted, the FCC has required ILECs to provide dedicated transport throughout their networks. UNE Remand Order, ¶ 324. In addition, the FCC's rules require BellSouth to provide transmission facilities to the locations of all requesting telecommunications carriers. The FCC's definition of dedicated transport applies to the provision of telecommunications between wire centers and switches of ILECs or "requesting telecommunications carriers." 47 C.F.R. § 51.319(d)(1). "Requesting telecommunications carriers" in this context means all requesting carriers with whom BellSouth is interconnected, not just a single requesting carrier. The reason is that BellSouth's transport network is ubiquitous and BellSouth typically will have transport facilities in place to all requesting telecommunications carriers

Q. DO YOU HAVE ANY SUPPORT FOR WORLDCOM'S INTERPRETATION THAT USE OF THE PHRASE "REQUESTING TELECOMMUNICATIONS CARRIERS" REQUIRES BELLSOUTH TO CONNECT THE LOCATIONS OF TWO DIFFERENT CARRIERS?

A. Yes, this is the conclusion reached by the Texas PUC regarding Southwestern Bell's unbundling obligation for dedicated transport in Docket 18117: Complaint of MCI Telecommunications Corporation and MCImetro Access Transmission Service, Inc. against SWBT for Violation of Commission Order in Docket Nos. 16285 and 17587 Regarding Provisioning of Unbundled Dedicated Transport.

Q. BELLSOUTH HAS PREVIOUSLY RELIED ON PARAGRAPH 440 OF THE LOCAL COMPETITION ORDER TO SUPPORT ITS POSITION THAT IT IS NOT REQUIRED TO PROVIDE TRANSPORT TO OTHER CARRIERS' LOCATIONS. DO YOU AGREE?

A. No. The FCC's rules are not as restrictive as BellSouth has claimed. For example, paragraph 440 of the Local Competition Order mentions a number of locations to which BellSouth must provide unbundled transport. One of those locations, for instance, is an IXC's point of presence. In this case, the FCC has clearly indicated that a CLEC is entitled to order unbundled transport to connect to another carrier, an IXC.

SUMMARY - CHECKLIST ITEM (v)

Q. WHAT ACTION SHOULD THE COMMISSION TAKE WITH RESPECT TO CHECKLIST ITEMS (ii) and (v)?

A. For the reasons set forth above, the Commission should find that BellSouth does not currently meet its obligation to provide nondiscriminatory access to the dedicated transport network element, and thus fails to satisfy both checklist items.

<u>Checklist item (xiii)</u>

Q. DOES BELLSOUTH CURRENTLY PROVIDE RECIPROCAL COMPENSATION ARRANGEMENTS IN ACCORDANCE WITH THE REQUIREMENTS OF THE ACT AND FCC RULES?

A. No. BellSouth does not currently provide reciprocal compensation in accordance with the requirements of the Act. Specifically:

(1) BellSouth does not pay reciprocal compensation at the tandem interconnection rate to CLECs that do not operate a traditional tandem switch, but who nevertheless utilize a switch that serves a geographic area comparable to that served by a BellSouth tandem switch. I will refer to this as the "tandem interconnection" issue.

(2) BellSouth has not agreed to pay reciprocal compensation in situations in which a CLEC provides a competitive foreign exchange (FX) service by assigning NXXs to a customer with a physical location outside the rate center in which the NXX is homed. I will refer to this as the "FX" issue.

TANDEM INTERCONNECTION ISSUE

Q. AS A THRESHOLD MATTER, WHAT IS BELLSOUTH'S OBLIGATION TO COMPENSATE CLECS FOR THE USE OF THEIR NETWORKS TO TERMINATE LOCAL TRAFFIC?

A. Section 251(b)(5) of the Act imposes on each local exchange carrier "[t]he duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications." Section 252(d)(2)(A) of the Act further provides as follows:

> For the purposes of compliance by an incumbent local exchange carrier with section 251(b)(5), a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless –
>
> (i) 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; and
>
> (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.

Q. GIVEN THAT THERE IS TO BE A RECIPROCAL COMPENSATION OBLIGATION FOR TRANSPORT AND TERMINATION, HAS THE FCC ADDRESSED THE LEVEL OF COMPENSATION THAT IS TO BE APPLIED?

A. Yes. After establishing how reciprocal compensation rates would be determined for ILECs, the FCC turned to the question of what rates should apply to CLECs. The FCC concluded in Paragraph 1085 of the Local Competition Order that the ILECs' reciprocal compensation rates should be adopted as the "presumptive proxy" for the CLEC's rates -- in other words, the rates were required to be the same. The only exception to this rule arises when a CLEC establishes that its transport and termination costs are higher than those of the ILEC. Local Competition Order, ¶ 1089; FCC Rule 51.711(b).

Q. WHAT REASONS DID THE FCC GIVE FOR ORDERING SYMMETRICAL TREATMENT?

A. The FCC provided a number of reasons for ordering symmetrical treatment, including the following:

> Typically the ILEC and CLEC will be providing service in the same geographic area, so their forward-looking costs should be the same in most cases. Local Competition Order, ¶ 1085.
>
> Imposing symmetrical rates would not reduce carriers' incentives to minimize their internal costs. CLECs would have the correct incentives to minimize their costs because their termination revenues would not vary directly with changes in their costs. At the same time, ILECs would have the incentive to reduce their costs because they could be expected to transport and terminate much more traffic originating on their own networks than on CLEC's networks. Thus, even assuming ILEC cost reductions were immediately translated into lower transport and termination rates, any reduction in reciprocal compensation revenues would be more than offset by having a more cost-effective network. Local Competition Order, ¶ 1086.
>
> Symmetrical rates might reduce ILEC's ability to use their bargaining power to negotiate high termination rates for themselves and low termination rates for CLECs. Local Competition Order, ¶ 1087.

Q. WHAT DID THE FCC CONCLUDE CONCERNING SYMMETRY OF TANDEM INTERCONNECTION RATES?

A. The FCC stated the following in paragraph 1090 of the Local Competition Order:

> We find that the "additional costs" incurred by a LEC when transporting and terminating a call that originated on a competing carrier's network are likely to vary depending on whether tandem switching is involved. We, therefore, conclude that states may establish transport and termination rates in the arbitration process that vary according to whether the traffic is routed through a tandem switch or directly to the end-office switch. In such event, states shall also consider whether new technologies (e.g., fiber ring or wireless networks) perform functions similar to those performed by an incumbent LEC's tandem switch 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. *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.*
>
> (Emphasis added)

Q. PLEASE EXPLAIN WHAT THIS LANGUAGE MEANS IN PRACTICAL TERMS.

A. The FCC reached three conclusions. First, it is appropriate to establish an additional rate for ILECs when they use a tandem switch in the transport and termination of CLECs' local traffic. Second, states may consider whether some or all calls terminated by a CLEC may be priced at that higher rate if the CLEC uses alternative technologies or architectures to perform functions similar to those performed by the ILEC's tandem switch. Third, the higher rate *must* be applied when the CLEC's switch serves a geographic comparable to that served by the ILEC's tandem switch.

Q. DOES THE FCC'S CODIFICATION OF THIS PRINCIPLE CONFIRM YOUR READING OF THE LOCAL COMPETITION ORDER?

A. Yes, it confirms my analysis. FCC Rule 51.711(a) provides as follows:

> Rates for transport and termination of local telecommunications traffic shall be symmetrical, except as provided in paragraphs (b) and (c) of this section. [These exceptions do not apply here.]
>
> (1) For purposes of this subpart, 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.
>
> (2) In cases where both parties are incumbent LECs, or neither party is an incumbent LEC, a state commission shall establish the symmetrical rates for transport and termination based on the larger carrier's forward-looking costs.
>
> (3) *Where the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate.*
>
> (Emphasis added)

The FCC could not have been more clear. The geographic comparability rule was adopted without exception or qualification.

Q. WHAT POSITION HAS BELLSOUTH TAKEN WITH REGARD TO A CLEC'S ENTITLEMENT TO RECEIVE THE TANDEM INTERCONNECTION RATE?

A. BellSouth has argued that the FCC did not establish a one-prong "either-or" test for determining entitlement to compensation at the tandem interconnection rate (the tandem switching, transport and end office switching rate elements), but instead established a two-prong "both-and" test." Under BellSouth's view, a CLEC must prove both geographic comparability and similar functionality in order to be entitled to compensation at the tandem interconnection rate. This position is based on BellSouth's interpretation of certain language in Paragraph

1090 of the Local Competition Order which permits the ILEC's rates for transport and termination to vary based on whether a tandem switch is involved and permits the state commissions in certain cases to consider whether new technologies deployed by CLECs provide similar functionality.

Q. HAS THE FCC RECENTLY READDRESSED THIS ISSUE?

A. Yes. In Paragraph 105 of the Intercarrier Compensation NPRM released on April 24, 2001, the FCC put to rest claims by carriers such as BellSouth that Rule 51.711 applies a two-prong "both-and" test for entitlement to compensation at the tandem interconnection rate:

> In addition, section 51.711(a)(3) of the Commission's rules requires only that the comparable geographic area test be met before carriers are entitled to the tandem interconnection rate for local call termination. *Although there has been some confusion stemming from additional language in the text of the Local Competition Order regarding functional equivalency* [¶1090], section 51.711(3) is clear in requiring only a geographic area test. Therefore we confirm that a carrier demonstrating that its switch serves "a geographic area comparable to that served by the incumbent LEC's tandem switch" is entitled to the tandem interconnection rate to terminate local telecommunications traffic on its network.

Intercarrier Compensation NPRM, ¶ 105 (emphasis added).

Q. IN LIGHT OF THIS REAFFIRMATION BY THE FCC THAT ITS RULE ESTABLISHES AN "EITHER-OR" TEST, WHAT SHOULD THIS COMMISSION DO?

A. Based on this clarification by the FCC, the Commission that BellSouth does not satisfy the requirements of checklist item (xiii), and will not be entitled to Section 271 relief, unless and until it accepts the obligation to provide reciprocal compensation at the tandem interconnection rate in such circumstances, and incorporates that obligation into its Interconnection Agreements and its Statement of Generally Available Terms and Conditions.

FX ISSUE

Q. PLEASE BRIEFLY DESCRIBE WHAT THE FX ISSUE INVOLVES.

A. The FX issue has also been characterized as an issue relating to a CLEC's right to assign NPA/NXX codes to end users located outside the rate center in which the NPA/NXX is homed. BellSouth and CLECs disagree concerning whether a party with originating FX traffic on its network must pay reciprocal compensation to the carrier terminating the FX traffic.

Q. WHAT IS BELLSOUTH'S OBLIGATION WITH RESPECT TO INTERCARRIER COMPENSATION FOR FX TRAFFIC?

A. BellSouth is clearly required by the Act and FCC Rules to pay reciprocal compensation for the termination of local calls, including local calls made to NPA/NXXs that the CLEC may have assigned to non-ISP customers who may be physically located outside the rate center to which the NPA/NXX is homed. Unless and until that obligation is reflected in BellSouth's Interconnection Agreements and SGAT, it will not satisfy checklist item (xiii).

Q. WHY DID YOU QUALIFY THE PRIOR ANSWER BY LIMITING IT TO CALLS TO "NON-ISP" CUSTOMERS?

A. I limited the response because the FCC recently ruled that calls to ISPs are "information access services" which are not subject to the reciprocal compensation provisions of the Act and has established an interim compensation mechanism for such calls. That compensation mechanism became effective on June 14, 2001, and will continue for thirty-six months, or until further FCC action, whichever is later. *In the Matters of Implementation of the Local Competition Provisions in the Telecommunications Act of 1999 and Intercarrier Compensation for ISP-Bound Traffic,* CC Docket Nos. 96-98 and 99-68, *Order on Remand and Report and Order*, FCC 01-131, ¶¶ 3-8 (ISP Remand Order). The issue of a permanent compensation mechanism for such ISP-bound traffic will be considered as part of the rulemaking the FCC initiated on April 27, 2001 regarding development of a unified intercarrier compensation regime. *See* Intercarrier Compensation NPRM.

Q. RECOGNIZING THAT THE AMOUNT OF TRAFFIC AFFECTED BY THIS ISSUE HAS BEEN NARROWED BY THE FCC'S RECENT RULING RELATED TO ISP-BOUND TRAFFIC, PLEASE SUMMARIZE WORLDCOM'S POSITION ON THIS ISSUE.

A. WorldCom's position is that (a) CLECs should be permitted to offer competitive FX service by assigning NPA/NXXs to end users who may be physically located outside the rate center in which the NPA/NXX is homed, and (b) CLECs are entitled to receive reciprocal compensation for local calls originated by BellSouth and terminated to such (non-ISP) end users.

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

A. As I understand BellSouth's current position, BellSouth does not object to CLECs assigning NPA/NXXs and providing FX service in the manner I described. However, BellSouth (a) would require the CLEC to identify NPA/NXXs which are assigned to customers located outside of the rate center in which they are homed, (b) would refuse to pay reciprocal compensation for local calls to such numbers, and (c) would bill the CLEC for originating switched access charges as if such calls were toll calls.

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

A. I will address this issue along the following lines:

- Foreign Exchange Service is a telecommunications service that has been available for years and is simply a response to customer demand for dial tone in an exchange separate from the customer's physical location.
- CLECs can provide FX service by assigning an NPA/NXX in the desired exchange to a customer who is physically located outside the rate center in which the NPA/NXX is homed.
- The CLECs' offering of FX service provides a competitive alternative to BellSouth's FX service.
- Treatment of FX traffic as "local" is consistent with industry precedent.
- Failure to treat CLEC-provided FX as local, consistent with the local treatment of BellSouth's FX service, will eliminate competition for FX service.

Q. WHAT IS FOREIGN EXCHANGE SERVICE?

A. Foreign exchange ("FX") service involves providing service to a customer physically located outside the rate center to which his or her NPA/NXX is assigned. For example, if a CLEC customer in Maysville is assigned an NPA/NXX from the Cynthiana rate center, that customer is receiving a foreign exchange service. Customers located in Cynthiana may call the CLEC customer's foreign exchange number and that call will be treated as a local call. This example holds true if BellSouth assigns the Cynthiana NPA/NXX to the Maysville customer.

Q. WHY DO SUBSCRIBERS WANT FX SERVICE?

A. Generally, users of FX service want to establish a local business presence in an area beyond their physical location. And, because being able to be reached via a local telephone call is an integral part of a business' "presence," this typically corresponds with that FX subscriber's desire to serve its customers that are located beyond the local calling area where the business is located. For example, a floral shop located in Maysville may desire a local presence in Cynthiana. While that floral shop may have the ability to accept and fulfill orders for the delivery of flowers in Cynthiana, it may not have the ability to actually open a store in Cynthiana. However, customers in Cynthiana are more likely to call a florist with a local Cynthiana telephone number, not just because it is a local call, but also because there may be an expectation on the part of the caller that a "local" florist would best be able to fulfill the need for a delivery of flowers in Cynthiana.

Q. IN YOUR EXAMPLE, COULDN'T THAT FLORAL SHOP SIMPLY SUBSCRIBE TO AN 800 NUMBER TO EXTEND ITS PRESENCE?

A. No. First, as I mentioned, there is the calling party's perception as to the local nature of the service being offered. When dialing a Cynthiana FX telephone number the calling party may not even be aware that the shop is actually located in Maysville. Second, while the 800 number would expand the "reach" of the

Maysville floral shop it would expand it well beyond the Cynthiana calling area and most likely beyond the capabilities of the floral shop to provide service. Use of an FX service only allows local calling from the Cynthiana local calling area whereas an 800 number would provide local calling from a much larger area such as the entire LATA or state of Kentucky.

Q. GIVEN THIS DEMAND FOR FX SERVICE, HOW HAS THE MARKET RESPONDED?

A. Both CLECs and ILECs have made FX service offerings available and actively compete for customers for FX service. Of course ILECs, as the monopoly local providers, were "first" to offer FX service. BellSouth's traditional FX offering is described in its General Subscriber Service Tariff for Kentucky (PSC KY Tariff 2A) at A9.1 as follows:

> Foreign Exchange service is exchange service furnished to a subscriber from an exchange other than the one from which he would normally be served or from a subexchange area which provides a different Local Calling Area from that provided by the normal serving subexchange area.

Just as with the CLECs' FX offerings, when BellSouth provides retail FX service, NPA/NXXs are assigned to end users located outside the local calling area of the rate center with which the NPA/NXX has been associated, and the jurisdiction (i.e., local vs. toll) of traffic delivered from the foreign exchange to the end user is determined as if the end user were physically located in the foreign exchange. Simply, the jurisdiction of the call is determined by comparing the called and calling party's NPA/NXXs, regardless of the physical location of the customers.

Q. HOW WOULD BELLSOUTH'S POSITION ON THE CLECS OFFERING OF FX SERVICES AFFECT THE COMPETITION YOU DESCRIBE?

A. BellSouth has proposed to classify CLECs' FX services as toll service and to impose access charges. Adoption of this position effectively would prohibit CLECs from offering FX service in competition with BellSouth. Because this proposal is anti-competitive, limits choices available to consumers, and is inconsistent with the notion of parity, the benefits of competition would be eliminated. These negative consequences would take place because adoption of BellSouth's position would raise the CLECs cost of providing a competitive service to a level that would effectively eliminate the CLEC's ability to offer a competing FX service.

Q. PLEASE EXPLAIN.

A. If BellSouth were permitted to apply switched access charges to CLECs' FX traffic, such above-cost pricing ultimately would make the offering of competitive alternatives by CLECs infeasible. This would limit BellSouth's end users to BellSouth's FX service. The California Commission has recognized the anti-competitive effects of applying access charges to a CLEC's FX service:

> The rating of a call, therefore, should be consistently determined based upon the designated NXX prefix. Abandoning the linkage between NXX prefix and rate center designation could undermine the ability of customers to discern whether a given NXX prefix will result in toll charges or not. Likewise, the service expectations of the called party (i.e., ISPs) would be undermined by imposing toll charges on such calls since customers of the ISPs would be precluded from reaching them through a local call. Consequently, the billing of toll charges for Internet access, which is designed to be local, could render an ISP's service prohibitively expensive, thus limiting the competitive choices for Internet access, particularly in rural areas.

Order Instituting Rulemaking on the Commission's Own Motion Into Competition for Local Exchange Service, Rulemaking 95-04-043 at 26 (California PUC, Sept. 2, 1999) ("California Order"). As the California Commission recognized, the retail offering of FX service and its associated rating (as a local call) based on the rate centers associated with the assigned NXXs must be applied to FX offerings from CLECs. Failure to do so distorts the way in which a CLEC can make a competitive FX offering available and, as described above, would in fact eliminate competition for this increasingly important service.

Q. HOW CAN THE BENEFITS OF A COMPETITIVE MARKET FOR FX SERVICE BE MAINTAINED?

A. For CLECs to be able to offer a competitive alternative to the BellSouth FX service offerings, the traffic associated with FX service must be classified as "local" just as BellSouth classifies its own FX traffic as local.

Q. IS THERE AN INDUSTRY STANDARD PRACTICE THAT, APPLIED TO FX TRAFFIC, WOULD RESULT IN THE CLASSIFICATION OF FX TRAFFIC AS LOCAL?

A. Yes. As indicated above relative to BellSouth's treatment of its own FX traffic, whether a call is local or not depends on the NPA/NXX dialed, not the physical location of the customer. Jurisdiction of traffic is properly determined by comparing the rate centers associated with the originating and terminating NPA/NXXs for any given call, not the physical location of the end-users. Comparison of the rate centers associated with the calling and called

NPA/NXXs is consistent with how the jurisdiction of traffic and the applicability of toll charges are determined within the industry today.

Q. SHOULD RECIPROCAL COMPENSATION APPLY TO FOREIGN EXCHANGE TRAFFIC?

A. Yes. As discussed above, this traffic is appropriately classified as local. Therefore, reciprocal compensation should be applicable. This is consistent with the purpose of reciprocal compensation, to compensate the terminating carrier for the costs associated with the termination of local traffic that originates on another carrier's network.

On this point the Michigan Public Service Commission in its Order on the application of reciprocal compensation to foreign exchange service made this finding:

> The Commission rejects the proposal to reclassify FX calls as non-local for reciprocal compensation purposes. Ameritech Michigan has not explained whether, or how, the means of routing a call placed by one LEC's customer to another LEC's point of interconnection affects the costs that the second LEC necessarily incurs to terminate the call.

In re: Application of Ameritech Michigan to revise its reciprocal compensation rates and rate structure and to exempt foreign exchange service from payment of reciprocal compensation, Case No. U-12696, Opinion and Order at 10 (Jan. 23, 2001) Just as the method for determining the jurisdiction of FX traffic must be applied equally and consistently between ILECs and CLECs, so too must the obligation remain with the originating carrier to compensate the terminating carrier for the termination of FX traffic.

Q. IS A CLEC'S OFFERING OF FX SERVICE CONSISTENT WITH THE

FCC'S RULES REGARDING POINTS OF INTERCONNECTION AND RESPONSIBILITY FOR TRANSPORT?

A. Yes. As discussed above, the FCC has made clear that a CLEC is allowed to select the point of interconnection and may establish one or more such POIs in a single LATA. Additionally, each carrier is responsible for delivering local traffic to the designated POI(s). A CLEC's offering of FX service does not place any additional burdens on the ILEC. The costs to the ILEC for transporting traffic to the POI are the same whether or not the call is an FX call. The CLEC's FX offerings do not require the ILEC to perform any additional functions or meet any additional obligations other than those called for in the FCC's rules with regard to POI and transport requirements.

Q. WHAT SHOULD THIS COMMISSION DO WITH REGARD TO THE FX ISSUE?

A. The Commission should find that BellSouth does not satisfy the requirements of checklist item (xiii), and will not be entitled to Section 271 relief, unless and until it accepts its obligation to pay reciprocal compensation on such calls and incorporates that obligation into its Interconnection Agreements and its Statement of Generally Available Terms and Conditions (SGAT).

SUMMARY - CHECKLIST ITEM (xiii)

Q. WHAT ACTION SHOULD THE COMMISSION TAKE WITH RESPECT TO CHECKLIST ITEM (xiii)?

A. For the reasons stated above, the Commission should find that BellSouth has failed to satisfy its obligation to provide reciprocal compensation unless and until BellSouth accepts its obligations with respect to payment of the tandem interconnection rate and payment of reciprocal compensation on calls to "FX" numbers.

Q. DOES THAT CONCLUDE YOUR TESTIMONY?

A. Yes.

Certificate of Service

A copy of the foregoing was served this 9th day of July, 2001, by first class, United States mail, postage prepaid, upon all parties of record.

C. Kent Hatfield

C. Kent Hatfield