

RUTLEDGE, ECENIA, PURNELL & HOFFMAN

PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

ORIGINAL

STEPHEN A. ECENIA
JOHN R. ELLIS
KENNETH A. HOFFMAN
THOMAS W. KONRAD
MICHAEL G. MAIDA
J. STEPHEN MENTON
R. DAVID PRESCOTT
HAROLD F. X. PURNELL
GARY R. RUTLEDGE

POST OFFICE BOX 551, 32302-0551
215 SOUTH MONROE STREET, SUITE 420
TALLAHASSEE, FLORIDA 32301-1841

TELEPHONE (850) 681-6788
TELECOPIER (850) 681-6515

OF COUNSEL:
CHARLES F. DUDLEY

GOVERNMENTAL CONSULTANTS:
PATRICK R. MALOY
AMY J. YOUNG

July 20, 2000

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center, Room 110
Tallahassee, Florida 32399-0850

HAND DELIVERY

RECEIVED-FPSC
00 JUL 20 PM 3:48
RECORDS AND REPORTING

Re: Docket No. 000084-TP

Dear Ms. Bayo:

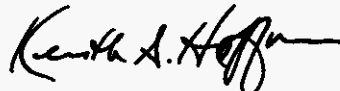
Enclosed herewith for filing in the above-referenced docket on behalf of US LEC of Florida, Inc. ("US LEC") are the following documents:

1. Original and fifteen copies of US LEC's Response to BellSouth's Petition for Arbitration and New Matters Raised by US LEC; and
2. A disk Word Perfect 6.0 containing a copy of the document.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the copy to me.

Thank you for your assistance with this filing.

Sincerely,



Kenneth A. Hoffman

APP _____
 CAF _____
CMP _____
 COM 3 _____
 CTR _____
 ECR _____
 LEG 1 _____
 OPC _____
 PAI _____
 RGO _____
 SEC 1 _____
 SER _____
 OTH _____

KAH/rl
Enclosures
Trib.3

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

08801 JUL 20 00

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition by BellSouth Telecommunications, Inc.)
for approval of arbitration of an interconnection)
agreement with US LEC of Florida, Inc. pursuant)
to the Telecommunications Act of 1996.)
_____)

Docket No. 000084-TP

Filed: July 20, 2000

**US LEC OF FLORIDA, INC.'S RESPONSE
TO BELLSOUTH'S PETITION FOR ARBITRATION
AND NEW MATTERS RAISED BY US LEC**

Respondent US LEC of Florida, Inc. ("US LEC"), hereby responds to the Petition for Arbitration of an Interconnection Agreement Between BellSouth Telecommunications, Inc. and US LEC of Florida, Inc. pursuant to Section 252(b) of the Telecommunications Act of 1996 ("Petition") filed by BellSouth Telecommunications, Inc. ("BellSouth"). For its response ("Response"), US LEC states as follows:

A. STATEMENT OF FACTS

1. US LEC admits the allegations of paragraph 1 of the Petition.
2. US LEC admits the allegations of paragraph 2 of the Petition.
3. US LEC states that Section 251(c) of the Telecommunications Act of 1996 (the "1996 Act") speaks for itself and therefore neither admits nor denies the allegations of paragraph 3 of the Petition.
4. US LEC states that Section 252(d) of the 1996 Act speaks for itself and therefore neither admits not denies the allegations of paragraph 4 of the Petition.
5. US LEC admits the allegations of paragraph 5 of the Petition.
6. US LEC admits the allegations of paragraph 6 of the Petition.
7. US LEC admits the allegations of paragraph 7 of the Petition.

DOCUMENT NUMBER-DATE

08801 JUL 20 8

FPSC-RECORDS/REPORTING

B. JURISDICTION AND TIMING

8. US LEC admits in part and denies in part the allegations of paragraph 8 of the Petition. The allegations are correct as of the date of the filing of the Petition. The parties previously agreed, however, to an initial 90 day extension and a second 60 day extension of the deadline for a response by US LEC to BellSouth's Petition and a decision by the Florida Public Service Commission ("Commission"). These stipulated requests for extensions were granted by the Prehearing Officer. See Order Nos. PSC-00-0645-PCO-TP issued April 6, 2000 and PSC-00-2029-PCO-TP issued June 9, 2000.

C. STANDARD OF REVIEW

9. US LEC admits the allegations of paragraph 9 of the Petition.

D. ISSUES FOR ARBITRATION

10. US LEC admits that resolved issues between US LEC and BellSouth are now reflected in Exhibit B attached to the Petition and that some of the unresolved issues are set forth in the Petition. US LEC denies the remaining allegations of paragraph 10 of the Petition.

ISSUES FOR ARBITRATION

ISSUE ONE

11. **BellSouth's position:** US LEC admits that BellSouth accurately states BellSouth's position and proposed language with regard to Section 5.1 of the Interconnection Agreement.

12. **US LEC's position:** US LEC admits that BellSouth accurately states US LEC's proposed language for Section 5.1 of the Interconnection Agreement. US LEC further states that this issue is appropriate for Section 252 arbitration. Section 252(b)(4)(C) provides that "[t]he State commission shall resolve each issue set forth in the petition and the response." BellSouth sets forth

this issue in its Petition and cannot be permitted both to raise an issue in a Section 252 arbitration petition and to assert that the same issue is not appropriate for arbitration. If BellSouth believed that this issue was not appropriate for arbitration, BellSouth should not have raised the issue in its Petition. Moreover, Section 252(e)(3) expressly provides that "nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of an agreement."

13. Although this Commission declined to require incumbent LECs to provide an ALEC logo on the ILEC's directory covers in the initial arbitration proceedings opened after the passage of the 1996 Act, recent state regulatory pronouncements have recognized the need to embrace such an ILEC obligation. For example, in Georgia, Georgia Public Service Commission Regulation §515.12-1.10(4) requires that US LEC's name appear, along with BellSouth's name, on the front cover of the directory containing names and telephone numbers of US LEC's customers. Moreover, since 47 U.S.C. §251(b)3 requires BellSouth to provide non-discriminatory access to directory listings, US LEC is entitled to have its name and logo appear on the directory cover in the same size and same manner as the BellSouth name and logo.

14. In March, 1998, the Tennessee Regulatory Authority resolved this same issue against BellSouth in a Declaratory Order, In re: Petition of AT&T Communications of the South Central States, Inc. for a Declaratory Order as to the Applicability of T.C.A. §§ 65-4-104, 65-4-114(1), 65-4-117(3) and 65-4-122(c), and Rule 1220-4-2.15 to Telephone Directories Published and Distributed on behalf of BellSouth Telecommunications, Inc. Containing the Names and Telephone Numbers of Customers of AT&T Communications of the South Central States, Inc., Docket No. 96-01692 (March 19, 1998) ("TRA Directory Order"). Like Georgia PSC Regulation §515-12-1-.10(4), TRA

Rule 1220-4-2-.15 provides that "[t]he name of the telephone utility, an indication of the area included in the directory and the month and year of the issue shall appear on the front cover." See TRA Directory Order, at 6 n.8. The TRA ruled:

in the publication of these directory listings on behalf of BellSouth [Telecommunications] which contain the listings of local telephone customers of AT&T and other competing local exchange providers, BAPCO must provide the opportunity to AT&T to contract with BAPCO for the appearance of AT&T's name and logo on the cover of such directories under the same terms and conditions as BAPCO provides to BellSouth [Telecommunications] by contract. Likewise, BAPCO must offer the same terms and conditions to AT&T in a just and reasonable manner.

TRA Directory Order, at 8.¹

ISSUE TWO

15. **BellSouth's position:** US LEC admits that BellSouth accurately states BellSouth's position and proposed language with regard to Section 5.6 of the Interconnection Agreement.

16. **US LEC's position:** US LEC admits that BellSouth accurately states US LEC's proposed language for Section 5.6 of the Interconnection Agreement. US LEC further states that this issue is appropriate for Section 252 arbitration. Section 252(b)(4)(C) provides that "[t]he State Commission shall resolve each issue set forth in the petition and the response." BellSouth set forth this issue in its Petition and cannot be permitted both to raise an issue in a Section 252 arbitration petition and to assert that the same issue is not appropriate for arbitration. If BellSouth believed that

¹BellSouth Advertising & Publishing Corporation ("BAPCO") is an affiliate of BellSouth Telecommunications that publishes directories on behalf of BellSouth Telecommunications. See TRA Directory Order at 7. The TRA found that "[a]lthough BAPCO is not a public utility, by virtue of BAPCO's contract... with BellSouth regarding the publication of basic White pages directory listings, to the extent that BAPCO acts on behalf of BellSouth in providing such directories, BAPCO is bound by this declaratory order." TRA Directory Order at 8 n.10.

this issue was not appropriate for arbitration, BellSouth should not have raised the issue in its Petition.

17. BellSouth is paid on a per-listing basis for subscriber listing information ("SLI") that BellSouth provides to third party publishers, including SLI relating to US LEC's customers. Upon information and belief, BellSouth does not incur any incremental cost in providing US LEC's SLI to third party publishers along with BellSouth's SLI. Accordingly, US LEC, and not BellSouth, is entitled to receive the payments from third party publishers for US LEC's SLI.

18. Moreover, upon information and belief, BellSouth maintains US LEC's SLI in BellSouth's directory databases in the same manner as it maintains BellSouth's own SLI. Since BellSouth has already incurred the costs for developing and maintaining its own SLI and for providing that SLI to third party publishers, and since BellSouth will provide SLI to third party publishers without making any distinction between BellSouth's SLI and US LEC's SLI, there should be no need to modify BellSouth's systems in order to provide US LEC's SLI to third party publishers along with BellSouth's SLI. If BellSouth has previously modified its systems in order to avoid providing US LEC's SLI to third party publishers along with BellSouth's SLI, thereby frustrating US LEC's right to have its SLI provided to third party publishers together with BellSouth's SLI, then BellSouth should bear any cost associated with undoing these modifications. It would be inequitable to require US LEC to bear any cost associated with reversing modifications to BellSouth's systems that were made in order to deny US LEC its rights.

19. Finally, upon information and belief, BellSouth's costs of modifying its systems in order to provide CLECs' SLI to third party publishers together with BellSouth's SLI have already been reimbursed by a group of third party publishers and other ALECs. To require US LEC to

reimburse those same costs would result in double recovery by BellSouth.

ISSUE THREE

20. **BellSouth's position:** US LEC admits that BellSouth accurately states BellSouth's position and proposed language with regard to Attachment 3, Section 1.7.2 of the Interconnection Agreement.

21. **US LEC's position:** US LEC admits that BellSouth accurately states US LEC's proposed language for Attachment 3, Section 1.7.2 of the Interconnection Agreement.

22. Section 251(c)(2) of the Telecommunications Act requires incumbent LECs such as BellSouth "to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network... (B) at any technically feasible point within the carrier's network." This requirement of federal law has been recognized by this Commission. See Order No. PSC-97-0122-FOF-TP issued February 3, 1997, at 11-13. The Federal Communications Commission ("FCC") consistently has held that the obligations imposed by §251(c) do not apply to competing LECs such as US LEC.

23. The FCC has held that §251(c)(2) grants competing carriers such as US LEC the right to choose the points of interconnection. See Local Competition Order,² at ¶172 ("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"); see also Local Competition Order, at ¶220, n. 464 ("requesting carriers

²Second Report and Order and Memorandum Opinion and Order, In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98 (Rel. August 8, 1996).

have the right to select points of interconnection at which to exchange traffic with an incumbent LEC under section 251(c)(2)"). No such right is given to the incumbent carrier, only to new entrants.

24. US LEC's right to designate the point of interconnection so as to lower its costs, including its cost of transport and termination of traffic, includes the right to designate the point of interconnection associated with traffic that originates on BellSouth's network, which US LEC must terminate.

25. BellSouth may want to designate its end offices as the point of interconnection for traffic it originates. Such a designation would force US LEC to build facilities to each BellSouth end office or to pay to transport BellSouth traffic to US LEC's network. This position would be inconsistent with the Local Competition Order and the 1996 Act. US LEC is not required to extend its facilities to each BellSouth end office or to any other point designated by BellSouth; instead, BellSouth is obligated to provide interconnection for US LEC facilities at points designated by US LEC.

26. Finally, US LEC states that BellSouth's proposal not only contradicts prevailing law, but also would force US LEC to bear unnecessary costs and/or would create an inefficient network structure.

ISSUE FOUR

27. **BellSouth's position:** US LEC admits that BellSouth accurately states BellSouth's position and proposed language with regard to Attachment 3, Section 1.8.4 of the Interconnection Agreement.

28. **US LEC's position:** US LEC admits that BellSouth accurately states US LEC's proposed language for Attachment 3, Section 1.8.4 of the Interconnection Agreement.

29. The Commission should resolve this issue by directing the parties to incorporate US LEC's proposed language into their interconnection agreement.

ISSUE FIVE

30. **BellSouth's position:** US LEC admits that BellSouth accurately states BellSouth's position and proposed language with regard to Attachment 3, Section 1.8.6 of the Interconnection Agreement.

31. **US LEC's position:** US LEC admits that BellSouth accurately states US LEC's proposed language for Attachment 3, Section 1.8.6 of the Interconnection Agreement. US LEC further refers to Issue No. 3, *supra*, and incorporates that discussion herein by reference.

32. As stated in response to Issue No. 3, §251(c)(2) gives US LEC the right to interconnect with BellSouth's network "at any technically feasible point," but no provision of law authorizes BellSouth to select the point of interconnection ("POI") at which it will deliver traffic to US LEC for termination on US LEC's network. BellSouth may deliver traffic to US LEC at the POI or POIs chosen by US LEC, or US LEC will agree to permit BellSouth to transport its traffic directly to US LEC's switch, but having no right to select the POI, BellSouth cannot require US LEC to provide facilities to transport BellSouth-originated traffic from a POI selected by BellSouth.³

ISSUE SIX

³To the extent that US LEC may for technical reasons need to interconnect at specific points in BellSouth's network or more than one POI in order to receive traffic from some portions of BellSouth's network or to receive transit traffic originating on third party carriers' networks and delivered by them to BellSouth for retransmission to US LEC's network, US LEC may need to designate more than one POI and/or may need to designate a particular point on BellSouth's network as its POI and may need to provide facilities to transport traffic from the POI(s) so designated, but BellSouth cannot be permitted to dictate the location of those POIs and to require US LEC to provide transport facilities from POIs not designated by US LEC.

33. **BellSouth's position:** US LEC admits that BellSouth accurately states BellSouth's position and proposed language with regard to Attachment 3, Section 1.9.3 of the Interconnection Agreement.

34. **US LEC's position:** US LEC admits that BellSouth accurately states US LEC's proposed language for Attachment 3, Section 1.9.3 of the Interconnection Agreement but states that BellSouth inaccurately identifies this language as language proposed for "section 6.1.6." (See Petition at 9).

35. US LEC proposes that the parties employ a composite rate for the transport and termination of traffic that is based upon average or typical traffic delivery patterns, and not upon the actual switching and transport facilities provided on a call-by-call basis, with an annual redetermination of the composite rate based upon changes in such average or typical traffic delivery patterns. Such an approach, which would employ a single rate per minute of interconnected traffic, would vastly simplify the computation of reciprocal compensation payments, as opposed to requiring the computation of a separate payment for each delivered call based upon the actual routing of that call, and would not materially affect the total compensation paid by either party to the other for the transport and termination of traffic in the aggregate. Moreover, the specific composite rate formula proposed by US LEC would, for traffic delivered to BellSouth by US LEC, favor BellSouth because it includes a charge for tandem switching that would apply whether or not tandem switching is required for a particular call or minute of traffic. As a result, US LEC's aggregate payments for reciprocal compensation to BellSouth would be greater under US LEC's proposal than under BellSouth's proposal to the extent that US LEC delivers traffic directly to BellSouth end offices for termination at those end offices. US LEC believes that the savings resulting from the administrative

simplicity of its proposal would offset any additional reciprocal compensation payments to BellSouth resulting from such an arrangement and notes that BellSouth would also realize those administrative savings without the risk of paying more reciprocal compensation to US LEC than would be due under BellSouth's elemental rate proposal because, as discussed in connection with Issue Ten, *infra*, US LEC is entitled to be paid the tandem switching rate element for all traffic that it terminates for BellSouth in any event.

36. US LEC further refers to the discussion of Issue Ten, *infra*, and incorporates that discussion by reference herein.

ISSUE SEVEN

37. **BellSouth's position:** US LEC admits that BellSouth accurately states BellSouth's position and proposed language with regard to Attachment 3, Sections 6.1-6.4 of the Interconnection Agreement.

38. **US LEC's position:** US LEC further states that section 251(b)(5) of the 1966 Act requires ILECs to "establish reciprocal compensation arrangements for the transport and termination of telecommunications." The FCC has limited the application of this provision to "local telecommunications traffic." 47 C.F.R. §51.701(a).

39. US LEC further states that section 251(b)(5) of the 1996 Act requires ILECs to "establish reciprocal compensation arrangements for the transport and termination of telecommunications." The FCC has limited the application of this provision to "local telecommunications traffic." 47 C.F.R. §51.701(a).

40. In its Petition, BellSouth relies on the FCC's declaratory ruling in In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC

Docket No. 96-98 ("ISP Declaratory Ruling"). BellSouth fails to note that the ISP Declaratory Ruling explicitly authorizes state commissions to determine in arbitrations that reciprocal compensation must be paid for ISP-bound traffic, relying instead on the FCC's determination that ISP-bound traffic is predominantly interstate in nature. As the Commission is well aware, the FCC's determination that ISP-bound traffic is predominantly interstate was vacated and remanded by the United States Court of Appeals for the District Court of Columbia Circuit in Bell Atlantic Telephone Companies v. FCC, Case No. 99-1094, 2000 WL 273383 (D.C. Cir. 2000) ("Bell Atlantic").

41. In Bell Atlantic, the Court found that the FCC had "not provided a satisfactory explanation why LECs that terminate calls to ISPs are not properly seen as "terminat[ing]...local telecommunications traffic," subject to the statutory obligation to pay reciprocal compensation. The Court also criticized the FCC's use of the traditional end-to-end analysis in its ruling. Finally, the Court found that the FCC did not satisfactorily explain why calls do not terminate at the ISP and why "an ISP is not, for the purposes of reciprocal compensation, simply a communications-intensive business end user selling a product to other consumers and end users."

42. The Court's holding has a profound impact on the instant matter. It supports US LEC's argument that there is a clear distinction between analyzing the jurisdiction of ISP-bound traffic and assessing how that traffic should be treated for reciprocal compensation purposes.

43. Importantly, the Court's decision vacates and remands the FCC's determination that calls to ISPs are not eligible for reciprocal compensation under the 1996 Act. Until the FCC addresses the issue on remand, the Court's decision brings ISP-bound calls back within the ILEC's statutory obligation to pay reciprocal compensation under Section 251(b)(5), and clearly undercuts BellSouth's arguments.

44. State commissions have authority to entertain disputes over compensation for ISP-bound traffic, and, more importantly, they may order in arbitrations that reciprocal compensation be paid for the transport and termination of such traffic. See ISP Declaratory Ruling, CC Docket Nos. 96-98 and 99-68.

45. This Commission has previously determined in numerous arbitrations, prior to remand of the FCC's ISP Declaratory Ruling, that reciprocal compensation should be paid for ISP-bound traffic. See In re: Complaint of WorldCom Technologies, Inc. against BellSouth Telecommunications, Inc., et al., Order No. PSC-98-1216-FOF-TP issued September 15, 1998; In re: Request for Arbitration Concerning Complaint of American Communications Services of Jacksonville, Inc. d/b/a e.spire Communications, Inc. and ACSI Local Switched Services, Inc. d/b/a e.spire Communications, Inc. against BellSouth Telecommunications, Inc., Order No. PSC-99-0658-FOF-TP issued April 6, 1999; and, In re: Request for Arbitration concerning Complaint of Intermedia Communications, Inc. against GTE Florida, Incorporated, Order No. PSC-99-1477-FOF-TP issued July 30, 1999. See also, following the Bell Atlantic decision, In re: Complaint and/or Petition for Arbitration by Global NAPS, Inc. for Enforcement of Section VI(B) of its Interconnection Agreement with BellSouth Telecommunications, Inc., Order No. PSC-00-0802-FOF-TP issued April 24, 2000. The Commission's analytical approach to this issue reflected in the foregoing orders is entirely consistent with the D.C. Circuit's opinion in Bell Atlantic reversing and remanding the ISP Declaratory Ruling.

46. The most recent decisions of the courts and state regulatory commissions confirm US LEC's position. In BellSouth Telecommunications, Inc. v. MCIMetro Access Transmission Servs., Nos. 1:99-CV-0248-JOF, et al., 2000 W.L. 656527 (N.D. Ga. May 3, 2000) ("BellSouth Order"),

the district court reviewed the decision of the Georgia PSC interpreting interconnection agreements between BellSouth and several competitive local exchange carriers. Like the Florida Commission in the above-referenced orders, the Georgia PSC in BellSouth had determined that reciprocal compensation was due for calls to Internet Service Providers under the parties' interconnection agreements. The district court held that the Georgia PSC's determination did not violate federal law, that the interpretation of the agreement was governed by state law -- not federal law, and that the Georgia PSC correctly interpreted the interconnection agreements to require reciprocal compensation for calls to ISPs. Further, just last week, by order issued on or about July 12, 2000, the North Carolina Utilities Commission ordered BellSouth to provide reciprocal compensation payments to ITC DeltaCom for traffic terminated to ISPs.

47. US LEC further states that the definition of Local Traffic in the parties' interconnection agreement should not explicitly exclude IP Telephony. Although the FCC has suggested that some IP telephony resembles switched access traffic, it has not made a definitive determination concerning the regulatory treatment of IP telephony. Accordingly, the parties' interconnection agreement should not prejudge this issue, but should be silent on it. Alternatively, US LEC would agree to a provision stating that the parties will treat IP telephony in accordance with any subsequent decision of the FCC concerning the nature of this traffic.

ISSUE EIGHT

48. **BellSouth's position:** US LEC admits that BellSouth accurately states BellSouth's position and proposed language with regard to Attachment 3, Section 6.2 of the Interconnection Agreement.

49. **US LEC's position:** US LEC admits that BellSouth accurately states US LEC's

proposed language for Attachment 3, Section 6.1.3 of the Interconnection Agreement.

50. US LEC further states that the heart of this controversy is whether US LEC's ability to assign NPA/NXXs as it sees fit should be subject to BellSouth's control. Granting BellSouth control over US LEC's operations in such a fashion would permit BellSouth to control significant aspects of US LEC's product planning and market development and would impede US LEC's ability to compete with BellSouth by differentiating its services from those offered by BellSouth. No law authorizes BellSouth to exert such control over US LEC's operations.

51. US LEC further states that the public benefits of US LEC's position are enormous. The United States is facing numbering exhaust problems which are exacerbated by the current practice of assigning each ALEC an NPA/NXX for each rate center. This Commission has placed significant emphasis on numbering exhaust issues and has held public hearings and implemented a host of number conservation measures, including 1,000 number block pooling in three area codes, to combat the problem. See Order Nos. PSC-00-0543-PAA-TP issued March 16, 2000 and Order No. PSC-00-1046-PAA-TP issued May 30, 2000. US LEC's approach would help alleviate the problem of numbering exhaust by being able to assign an NPA/NXX to customers located in different rate centers, while BellSouth's position would result in continued waste of scarce NXX resources.

ISSUE NINE

52. **BellSouth's position:** US LEC admits that BellSouth accurately states BellSouth's position and proposed language with regard to Attachment 3, Section 6.4 of the Interconnection Agreement.

53. **US LEC's position:** US LEC admits that BellSouth accurately states US LEC's

proposed language for Attachment 3, Section 6.5 of the Interconnection Agreement. The only difference between BellSouth's proposed language and US LEC's proposed language is that US LEC's proposed language would treat ISP-bound traffic as "local traffic" for purposes of computing the PLU. US LEC submits that the Commission should adopt US LEC's proposed language on this issue for the same reason that it should adopt US LEC's position on Issue Seven and refers to the discussion regarding Issue Seven (discussion of local traffic and ISP), *supra*, and incorporates that discussion hereby by reference.

54. US LEC further states that any allegations of the Petition not specifically admitted herein are denied.

NEW ISSUE TEN

55. US LEC further states a new issue for determination:

Is US LEC entitled to be paid reciprocal compensation for the transport and termination of traffic at a rate that includes the tandem switching rate element based upon the fact that US LEC's switch serves a geographic area comparable to the area served by a BellSouth tandem as provided in 47 CFR §51.711(a)(3)?

56. This issue appears to be subsumed within BellSouth's statement of Issue Six. In its statement of its position on that issue, BellSouth argues that "[u]nder no circumstances should an ALEC be entitled to an elemental rate for a function that the ALEC's network does not perform."⁴ While BellSouth has not clearly stated its position in its Petition, US LEC understands this to mean that BellSouth believes that US LEC should not be compensated at a rate that includes the tandem switching rate element unless US LEC's switch functions precisely like BellSouth's tandem switches.

⁴See BellSouth's Petition, at 9.

57. BellSouth's position is contrary to the FCC's determination in 47 CRF §51.711(a)(3) that ALECs should be compensated for tandem switching if their switches cover a geographic area comparable to the area covered by an ILEC's tandem, regardless of the precise functionality of the switch. FCC Rule 51.711(a)(3) provides unequivocally:

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.

58. BellSouth's position is that if US LEC's switch is not utilized in precisely the same manner as BellSouth's tandems, then US LEC should not be compensated for its use at the tandem rate. Basically, BellSouth believes that only tandem functionality matters, not geographic comparability. This position is in direct contradiction to Rule 51.711(a)(3) and the precedent of this Commission.

59. This Commission has previously rejected the ILEC position that payment by the ILEC of reciprocal compensation rate elements to an ALEC must be predicated on a determination that the ALEC uses the same facilities as the ILEC to transport and terminate calls. In In re: Petition by Wireless One Network, L.P., d/b/a Cellular One of Southwest Florida for arbitration with Sprint-Florida, Order No. PSC-98-0140-FOF-TP issued January 26, 1998, the Commission concluded that Wireless One's wireless-based network and Sprint's landline-based network utilized "equivalent facilities" as contemplated by FCC Rule §51.701(d) to transport and terminate calls thereby requiring Sprint to pay Wireless One reciprocal compensation for transport, tandem and end-office switching rate elements. In reaching the determination that Sprint should pay Wireless One the tandem switching rates, the Commission held that Wireless One's mobile telephone switching office

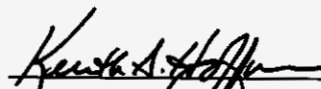
was functionally equivalent to Sprint's tandem switch. See 98 F.P.S.C. 1:505 at 512 (1998).

60. Other jurisdictions have applied the plain meaning of Rule 51.711(a)(3) and determined that ALECs are entitled to reciprocal compensation at the tandem level based principally on a showing of geographic comparability. See, e.g., Petition of Media One Telecommunications of Massachusetts, Inc. and New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts, Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement, D.T.E. 99-42/43, 99-52 (rel. Aug. 25, 1999). In the Matter of Petition by ITC DeltaCom Communications, Inc. For Arbitration of Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996, Dkt. No. P-500, Sub 10 (North Carolina Utilities Commission; Order issued April 20, 2000); In the Matter of Petition of BellSouth Telecommunications, Inc. For Arbitration of Interconnection Agreement with Intermedia Communications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996, Dkt. No. P-55, Sub. 1178 (North Carolina Utilities Commission; Order issued June 13, 2000).

61. US LEC's switch serves an area comparable to the area served by a BellSouth tandem switch. Accordingly, US LEC is entitled to be compensated for the transport and termination of BellSouth-originated traffic at a rate that includes the tandem switching rate element.

WHEREFORE, US LEC respectfully requests that the Commission arbitrate the issues set forth herein and enter an Order directing that US LEC's positions on the issues raised herein and US LEC's proposed language be incorporated in to the Interconnection Agreement between US LEC and BellSouth. US LEC further requests that the Commission order such other and further relief as it may deem appropriate.

Respectfully submitted,



Kenneth A. Hoffman, Esq.

John R. Ellis, Esq.

Rutledge, Ecenia, Purnell & Hoffman, P.A.

P. O. Box 551

Tallahassee, Florida 32302

(850) 681-6788 (Telephone)

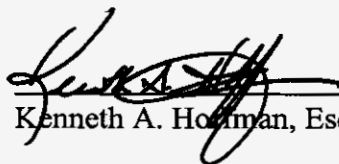
(850) 681-6515 (Telecopier)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by hand delivery(*) or U. S. Mail to the following this 20th day of July, 2000:

Michael P. Goggin, Esq.
c/o Nancy H. Sims
150 South Monroe Street
Suite 400
Tallahassee, Florida 32301-1556

Diana Caldwell, Esq. (*)
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Room 370
Tallahassee, FL 32399-0850



Kenneth A. Hoffman, Esq.

USLEC/response