Legal Department

MICHAEL P. GOGGIN
General Attorney

BellSouth Telecommunications, Inc.
150 South Monroe Street
Room 400
Tallahassee, Florida 32301
(305) 347-5561

ORIGINAL

September 21, 2000

Mrs. Blanca S. Bayó
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: 000084-TP (US LEC Arbitration)

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Direct Testimony of Cynthia K. Cox, which we ask that you file in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

Michael P. Goggin

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

Enclosures

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey
Nancy B. White

CERTIFICATE OF SERVICE
Docket No. 000084-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via U.S. Mail this 21st day of September, 2000 to the following:

Diana Caldwell
Staff Counsel
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Aaron Cowell
Executive Vice President and General Counsel
US LEC Corporation
Transamerica Square
401 N. Tryon Street, Suite 1000
Charlotte, N.C. 28202
Tel. No. (704) 319-1117
Fax. No. (704) 319-0069

Kenneth A. Hoffman, Esq.
John R. Ellis, Esq.
Rutledge, Ecenia, Purnell & Hoffman
P.O. Box 551
Tallahassee, FL 32302
Tel. No.: (850) 681-6788
Fax. No. (850) 681-6515

Michael P. Goggin (BW)

BELLSOUTH TELECOMMUNICATIONS, INC.

DIRECT TESTIMONY OF CYNTHIA K. COX

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 000084-TP

September 21, 2000

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

A. My name is Cynthia K. Cox. 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 graduated from the University of Cincinnati in 1981 with a Bachelor of Business Administration degree in Finance. I graduated from the Georgia Institute of Technology in 1984 with a Master of Science degree in Quantitative Economics. I immediately joined Southern Bell in the Rates and Tariffs organization with the responsibility for demand analysis. In 1985 my responsibilities expanded to include administration of selected rates and tariffs including preparation of tariff filings. In 1989, I accepted an assignment in the North Carolina regulatory office where I was BellSouth's primary liaison with

the North Carolina Utilities Commission Staff and the Public Staff. In 1993, I accepted an assignment in the Governmental Affairs department in Washington D.C. While in this office, I worked with national organizations of state and local legislators, NARUC, the FCC and selected House delegations from the BellSouth region. In February 2000, I was appointed Senior Director of State Regulatory.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to present BellSouth's position on the unresolved issues in the negotiations between BellSouth and US LEC of Florida, Inc. ("US LEC").

Issue 1: Should BellSouth be required to include US LEC's logo on the cover of BellSouth's White Page and Yellow Page directories?

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

A. Neither the Telecommunications Act of 1996 ("the Act") nor the FCC rules require BellSouth to place an Alternative Local Exchange Carrier ("ALEC's") logo on the cover of BellSouth's White Page or Yellow Page directories.

Q. WHAT IS BELLSOUTH'S REQUIRED TO PROVIDE ALECS WITH RESPECT TO DIRECTORIES?

A. The only FCC Rule addressing BellSouth's obligation with respect to directory listings is 51.217(c)(3)(ii), which provides:

> *Access to Directory Listings. A LEC shall provide directory listings to competing providers in readily accessible magnetic tape or electronic formats in a timely fashion upon request. A LEC also must permit competing providers to have access to and read the information in the LEC's directory assistance databases.*

Further, Section 271(c)(2)(B)(viii), under the "checklist" items required for a Bell Operating Company ("BOC") to obtain approval to provide interLATA service, includes the requirement that a BOC provide white pages directory listings for customers of the other carrier's telephone exchange service.

BellSouth provides such access to all ALECs, including US LEC, thus fulfilling BellSouth's obligations under the Act and FCC rules.
There is no requirement in the Act or the FCC rules for BellSouth to place an ALEC's logo on BellSouth directories.

Q. HAS THIS COMMISSION PREVIOUSLY RULED ON THIS ISSUE?

A. Yes. This issue was addressed by the Commission in its December 31, 1996 Joint Order in the MCI, AT&T, and ACSI arbitrations with BellSouth, Order No. PSC-96-1579-FOF-TP, Dockets 960833-TP, 869846-TP, and 960916-TP. In that Order, the Commission concluded at p. 97:

We find that the obligation of BellSouth to provide interconnection with its network, unbundled access to network elements, or to offer telecommunications services for resale to the competitive LECs does not embrace an obligation to provide a logo appearance on its directory covers. In the absence of any express or implied language in either the Act or the rules to impose such an obligation we will not grant ATT's and MCI's requests on this issue. Therefore, we find it appropriate that it be left for AT&T and MCI to negotiate with the directory publisher for an appearance on the cover of the white page and yellow page directories.

No Commission in BellSouth's region has ruled that the Act or the FCC rules requires an appearance on BellSouth's directory cover.

As mentioned in US LEC's Response in the current case, the Tennessee Regulatory Authority (TRA) ordered in Docket No. 96-01692, March 19, 1998, that "BAPCO must provide the opportunity to US LEC to contract with BAPCO for the appearance of US LEC's name and logo on the cover of such directories under the same terms and conditions as BAPCO provides to BellSouth by contract." However, the TRA decision was based not on the Act or FCC rules, but on a rule specific to Tennessee (Rule 1220-4-2-.15) – a rule enacted in 1968, well prior to the Act and the current competitive telecommunications environment. In fact, one of the Directors of the TRA wrote in a separate opinion that the Tennessee rule should be revisited. No such rule exists in Florida, so references to the Tennessee decision provide no

basis to conclude that the request for logo appearance on directory covers should be granted to ALECs in Florida. Also, the Tennessee decision is currently on appeal to the Court of Appeals for the Middle Section of Tennessee (No. 01A01-9805-BC-00248, filed May 15, 1998), and the TRA's decision was stayed by the Court of Appeals effective January 8, 1999.

In addition, US LEC's Response states that in Georgia, Georgia PSC Regulation Sec. 515.12-1.10(4) requires that US LEC's name appear on the front cover of the directory. The rule cited states: "The 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." This rule was effective January 1, 1976. The Georgia Commission has made no ruling that the Act or its rules require BellSouth to include ALECs' logos on the front cover of its directories, nor has the Georgia Commission required BellSouth to place an ALEC's logo on the directory cover.

Q. WHAT IS BELLSOUTH REQUESTING OF THIS COMMISSION?

A. The Commission should affirm that neither the Act nor FCC Orders require BellSouth to place an ALEC's logo on the cover of BellSouth's White Page and Yellow Page directories. Consequently, BellSouth should not be required to do so.

Issue 2: Should BellSouth be required to provide US LEC's Subscriber Listing Information ("SLI") to third party publishers? If so, under what terms?

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

A. BellSouth is not required under the Act or FCC rules to furnish an ALEC's SLI to third party independent publishers, and no such requirement should be imposed. Although BellSouth can offer this service, such offering is not subject to the pricing requirements of the Act.

Q. PURSUANT TO THE ACT AND THE FCC RULES, WHAT OBLIGATIONS DOES BELLSOUTH HAVE WITH REGARD TO SUBSCRIBER LISTINGS?

A. As discussed under Issue 1, BellSouth's only obligation with respect to directory listings under Sec. 251 of the Act is as stated in Rule 51.217. In addition, under Sec. 271, BellSouth is required to list CLEC customers in its white pages. BellSouth fulfills both of these requirements. However, neither obligation requires BellSouth to furnish SLI to third parties.

Thus, it is the ALEC'S responsibility to provide its customers' SLI to independent directory publishers, not the LEC's responsibility. Unlike provision of listings to directory assistance providers, BellSouth is not obligated to act as a clearinghouse to provide ALECs' listings to directory publishers.

Q. HAS BELLSOUTH AGREED TO PROVIDE US LEC'S DIRECTORY LISTINGS TO THIRD PARTY INDEPENDENT PUBLISHERS?

A. Yes; however, this is not a service provided pursuant to obligations under the Act or FCC rules. Although not required to do so, BellSouth has agreed to provide US LEC's SLI to third party independent publishers under certain conditions. First, US LEC would reimburse BellSouth for US LEC's proportionate share of system upgrades as needed to administer the release of US LEC's SLI to third party publishers as requested by US LEC. Second, US LEC is not entitled to any specific compensation arrangements for these listings. This arrangement between BellSouth and US LEC results from a commercial negotiation outside of the Act. Consequently, the pricing standards of the Act do not apply. Any compensation arrangement must be agreed upon by US LEC and BellSouth. If the parties cannot agree, then BellSouth would not offer the service. There is no basis for this Commission to mandate a compensation arrangement for this service.

Q. WHAT IS BELLSOUTH REQUESTING OF THE COMMISSION?

A. BellSouth requests that the Commission affirm that neither the Act, FCC Orders, nor Orders of this Commission require BellSouth to provide US LEC"s Subscriber Listing Information to third party publishers.

Issue 3: Should BellSouth be permitted to designate more than one Point of Interface in the same LATA for BellSouth originated traffic to be delivered to US LEC? If so, under what conditions?

Issue 5: Should parties be required to provide facilities for the transport of traffic from a Point of Interface (POI) to their own end users?

Q. PLEASE DEFINE "POINT OF INTERFACE" AS USED IN THESE ISSUES.

A. The term Point of Interface is used in the Agreement, and in this issue, to describe the point where the two networks physically connect. With respect to the dispute in this issue, such point is defined by the FCC as the Point of Interconnection. 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 term "Point of Interconnection" is simply the place, or places, on the ILEC's network where that physical linking of US LEC's and BellSouth's networks takes place. Simply speaking, the Point of Interconnection is the place where facilities that US LEC builds connects to facilities built by BellSouth. Thus, I will use the term Point of Interconnection (POI) in my testimony to discuss this issue.

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 Florida. BellSouth may have 10 or 20 or even more such local networks in a given LATA. Nevertheless, US LEC wants to interconnect its network with BellSouth's "network" in each LATA at a single point. This approach simply ignores that there is not one "network" but a host of networks that are generally all interconnected. Importantly, BellSouth does not object to US LEC designating a single Point of Interconnection at a point in a LATA on one of BellSouth's "networks," and only building its own facilities up to that point. Further, BellSouth does not object to US LEC using the interconnecting facilities between BellSouth's "networks" to have calls delivered or collected throughout the LATA. What BellSouth does want, and this is the issue, is for US LEC to be financially responsible when it uses BellSouth's network in lieu of building its own network to deliver or collect these calls.

US LEC, to contrast its position with BellSouth's, expects BellSouth to collect its local traffic in each of its 10 or 20 local calling areas in the LATA and to be financially responsible for delivering calls destined for US LEC local customers in each of those local calling areas to a single point in each LATA. BellSouth believes that US LEC can choose to build its own facilities to connect with BellSouth at a single technically feasible point in the LATA

selected by US LEC. However, US LEC cannot impose a financial burden on BellSouth to deliver BellSouth's originating traffic to that single point. If US LEC wants calls completed between BellSouth's customers and US LEC's customers using this single Point of Interconnection, that is fine, provided that US LEC is financially responsible for the additional costs US LEC causes.

Q. DOES BELLSOUTH'S POSITION MEAN THAT US LEC HAS TO BUILD ITS 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. US LEC could build out its network that way if it chose, but it isn't required to do so. It 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. US LEC can pick any Point of Interconnection in the LATA that is technically feasible. It can choose to have one or more Points of Interconnection in the LATA. However, US LEC cannot shift its financial responsibility to BellSouth for carrying local calls by choosing to have a single Point of Interconnection in each LATA.

Q. IF US LEC 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 interconnection with "local networks." BellSouth actually has a number of distinct 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, usually interconnected by BellSouth's long distance network. For instance, in the Jacksonville LATA, BellSouth has local networks in Jacksonville, Lake City, St. Augustine, Pomona Park, etc. 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 customer who connects to the Jacksonville local network won't receive local service in the Lake City local calling area because Lake City is not in the local calling area of Jacksonville. Likewise, an ALEC who wants to connect with BellSouth to provide local service in Lake City has to connect to the local network that serves the Lake City local calling area. BellSouth's local calling areas, I would add, have been defined and set out over the years by this Commission.

Assume that US LEC has a switch in the Jacksonville LATA. Therefore, for US LEC to connect its customers in Lake City to BellSouth's customers in Lake City, US LEC has to connect its switch in Jacksonville to BellSouth's local network in Lake City. Of course, the need for US LEC to connect its switches to distant local calling areas is not unique to Lake City. US LEC has to do the same thing to serve any of its customers located outside of the local calling area where its switch is located. To connect with BellSouth's customers in Daytona, for example, US LEC would have to connect one of its switches (say, its Orlando switch) to BellSouth's local network in Daytona.

That scenario, of course, is not the problem. The problem is that US LEC wants BellSouth to provide facilities to serve all other local calling areas in the Jacksonville LATA using that same single Point of Interconnection at the Jacksonville tandem at no charge to US LEC. Suppose a BellSouth end user in Lake City wants to call a US LEC end user in Lake City. The BellSouth customer picks up his or her telephone, and draws dial tone from BellSouth's Lake City switch. The BellSouth customer then dials the US LEC customer. The call is routed from Lake City to US LEC's Point of Interconnection in the Jacksonville LATA, which is still collocated with the BellSouth access tandem. BellSouth provides these facilities from a location on BellSouth's Lake City local network to US LEC's Point of Interconnection in Jacksonville. US LEC then carries the call to its switch in Jacksonville and connects to the loop serving its customer in Lake City. This call routing is shown on Page 2 of Exhibit CKC-1.

Now, when a BellSouth customer in Lake City wants to call a US LEC customer in Lake City, US LEC wants BellSouth to be financially responsible for bringing the call from Lake City to Jacksonville, over whatever facilities BellSouth has or can build between those two points, and hand the call off to US LEC in Jacksonville. US LEC would then use its own facilities, or facilities leased from BellSouth or someone else, to carry the call back to Lake City for delivery to its subscriber. It is the financial responsibility for hauling the local calls from a distant local calling area (e.g., Lake City) to US LEC's Point of Interconnection (e.g., Jacksonville) that is the problem.

Q. WHY DO YOU SAY THAT US LEC MUST BE FINANCIALLY RESPONSIBLE FOR THE FACILITIES THAT CARRY THESE CALLS FROM LOCAL CALLING AREAS THAT ARE DISTANT FROM THE POINT WHERE US LEC HAS CHOSEN TO INTERCONNECT ITS NETWORK WITH BELLSOUTH'S?

A. That is the only approach that makes economic sense. The Act, as the Eighth Circuit determined, only required an ILEC 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)* (Emphasis added)

This is a very important point. When US LEC interconnects with BellSouth's local network in Jacksonville, it is not interconnecting with BellSouth's local network in Lake City. It is only interconnecting with the Jacksonville local network. The fact that it is entitled to physically interconnect with BellSouth at a single point cannot overcome the fact that the single Point of Interconnection cannot, by itself, constitute an interconnection with every single local network in the LATA.

Q. CAN YOU ILLUSTRATE WITH AN EXAMPLE WHY YOU SAY US LEC IS ATTEMPTING TO SHIFT ITS FINANCIAL RESPONSIBILITY TO BELLSOUTH?

A. Yes. The best way to describe these additional costs US LEC causes is to compare examples of two local calls in the same local area. One local call is between two BellSouth customers. The other local call is between a BellSouth customer and a US LEC customer. Let's assume these two customers are next-door neighbors in Lake City, just to make the point more emphatic. First, let's examine what happens if both customers are served by BellSouth. When one neighbor calls the other, the call originates with one customer, and is transported over that customer's local loop to a local switch in Lake City where the call is connected to the other customer's local loop. The call never leaves the Lake City local calling area. Therefore, the only cost other than the loop cost that BellSouth incurs for transporting and terminating that call is end office switching in Lake City. Importantly, those are the only costs reflected in the local rates charged to BellSouth customers in Lake City.

Now, let's compare what happens when one of these two customers obtains its local service from US LEC. Assume that the BellSouth customer calls the US LEC customer next door. The BellSouth customer is connected to BellSouth's switch in Lake City. The BellSouth switch then sends the call to Jacksonville because that is where US LEC told BellSouth to send the call. The call is then hauled over facilities owned by US LEC from the POI in Jacksonville to US LEC's switch in Jacksonville. US LEC then connects the call through its end

office switch to the long loop serving US LEC's end user customer back in Lake City. Again, these two customers live next door to each other. In one case, the call never left Lake City. In the other case, BellSouth hauled the call all the way to Jacksonville, and the only reason BellSouth did so was because that is what US LEC wanted.

Here is the point. US LEC wants BellSouth to eat the cost of the facilities used to haul the call I just described between Lake City and Jacksonville. There is nothing fair, equitable or reasonable about US LEC's position. BellSouth believes that US LEC, which has designed its network the way it wants, and designed that network in the way that is most efficient and cheap for US LEC, must bear the financial responsibility for the additional facilities used to haul the call between Lake City and Jacksonville. US LEC doesn't have to build the facilities. It doesn't have to own them. It just has to pay for them. It is these additional costs that BellSouth incurs solely at the insistence of US LEC that BellSouth objects to paying.

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. I say "in theory" because, as the Commission knows, there has always been a dispute about whether local exchange rates actually cover the costs of

handling local calls. 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 Lake City customer to another Lake City customer by way of Jacksonville.

Indeed, if US LEC is not required to pay for that extra transport which US LEC's network design decisions caused, who will pay for it? The BellSouth calling party is already paying for its local exchange service, and certainly won't agree to pay more simply for US LEC's convenience. Who does that leave to cover this cost? The answer is that there is no one else. US LEC 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. DOES BELLSOUTH RECOVER ITS COSTS FOR HAULING LOCAL CALLS OUTSIDE THE LOCAL CALLING AREA THROUGH RECIPROCAL COMPENSATION CHARGES?

A. No. Significantly, the facilities discussed in this issue facilitate interconnection, and these costs are not covered in the reciprocal compensation charges for transport and termination. In paragraph 176 of FCC Order 96-325, the FCC clearly stated that interconnection does not include transport and termination ("[i]ncluding the transport and termination of traffic within the meaning of section 251(c)(2) would result in reading out of the statute the duty of all LECs to establish 'reciprocal compensation arrangements for the transport and termination of telecommunications' under section 251(b)(5)").

Reciprocal compensation charges apply only to facilities used for transporting and terminating local traffic on the local network, not for interconnection of the parties' networks.

In the Lake City example, for instance, reciprocal compensation would only apply for the use of BellSouth's facilities within the Lake City local calling area. That is, reciprocal compensation would apply to the facilities BellSouth used within its Lake City local network to transport and switch a US LEC originated call. Reciprocal compensation does not include the facilities to haul the traffic from Jacksonville to Lake City. Second, in the illustrations I have been using, BellSouth's customer originates the call. BellSouth does not receive reciprocal compensation for any calls that originate from BellSouth and terminate to US LEC. However, US LEC wants BellSouth to build facilities, at no charge, for calls in both directions.

Q. IS THE ARRANGEMENT THAT US LEC PROPOSES EFFICIENT?

A. US LEC might claim that it is. This shouldn't be surprising, since US LEC equates efficiency with what is the most economical for US LEC. Of course, that is not an appropriate measure of efficiency. Indeed, to measure efficiency, the cost to every carrier involved must be considered because that is the cost that customers will bear. Presumably, US LEC has chosen its particular network arrangement because it is cheaper for US LEC. A principal reason it's cheaper for US LEC is because US LEC expects BellSouth's customers to bear substantially increased costs that US LEC causes by its network design. It

simply doesn't make any sense for BellSouth to eat the cost of hauling a local Lake City call outside the local calling area just because US LEC wants us to do so. US LEC, however, wants this Commission to require BellSouth to do just that. If US LEC bought these facilities from anyone else, US LEC would pay for the facilities. However, US LEC doesn't want to pay BellSouth for the same capability.

US LEC's proposed method of hauling local traffic seeks to shift its costs to BellSouth and its customers. Instead of encouraging competition, US LEC is asking BellSouth's customers to subsidize US LEC's network. Competition is supposed to 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 doesn't serve. BellSouth requests that this Commission require US LEC to bear the cost of hauling local calls outside BellSouth's local calling areas. Importantly, US LEC should not be permitted to avoid this cost by its proposal.

Q. HAS THE FCC ADDRESSED THE ISSUE OF RECOVERING ADDITIONAL COSTS CAUSED BY AN ALEC'S CHOSEN FORM OF INTERCONNECTION?

A. Yes. In its First Report and Order in Docket 96-325, the FCC states that the ALEC must bear those costs. 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 the that interconnection, including a reasonable profit." 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)

Thus, under the FCC's rules, a new entrant might establish POI's in each local calling area it intends to serve using its own facilities, or it might establish a single POI in for an entire LATA, and lease interconnection facilities to transport traffic between a local calling area it intends to serve and the remote local calling area where its POI is located, depending on which arrangement is more cost efficient. What US LEC proposes to do, however, is to build a single POI for a LATA, and to require BellSouth to provide interconnection facilities at no charge to transport traffic between the local calling areas it serves and the local calling area where its POI is located.

Clearly, the FCC expected US LEC to pay the additional costs that it causes BellSouth to incur. If US LEC is permitted to shift those costs to BellSouth, it has no incentive to make economically efficient decisions about where to interconnect.

Q. HOW DOES BELLSOUTH PROPOSE TO DELIVER ITS ORIGINATING LOCAL TRAFFIC TO US LEC?

A. Although not required to do so, BellSouth proposes to aggregate all of its customers' originated local traffic to a single location in the local calling area where such traffic will be delivered to the ALEC. In the case of Lake City, for example, BellSouth would transport the local traffic originated by all BellSouth customers in the Lake City local calling area to a single location in the Lake City local calling area. Although this single location where BellSouth aggregates its customers' local traffic is not a Point of Interconnection as defined by the FCC, BellSouth uses the term "point of interconnection" to describe that central location. US LEC can then pick up all local traffic that BellSouth's customers originate in the Lake City local calling area at a single location rather than having to pick up the traffic at each individual end office.

However, US LEC is not required to pick up traffic at the central point designated by BellSouth. If US LEC chooses to do so, it can pick up traffic at each individual end office instead of at the "point of interconnection" designated by BellSouth.

Q. WOULD US LEC'S ABILITY TO COMPETE BE HAMPERED BY US LEC'S INABILITY TO OBTAIN FREE FACILITIES FROM BELLSOUTH?

A. Absolutely not. First, US LEC does not have to build or purchase interconnection facilities to areas that US LEC does not plan to serve. If US

LEC doesn't intend to serve any customers in a particular area, its ability to compete cannot be hampered.

Second, in areas where US LEC does intend to serve customers, BellSouth is not requiring US LEC to build facilities throughout the area. US LEC 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 US LEC wants to serve.

Third, any such claim is irreconcilable on its face. All carriers must bear their own costs of interconnection. In this respect, US LEC would not be hindered from competing, as it would face the same choices with respect to how to arrange its network to minimize those costs as would any other carrier. US LEC would be unfairly benefitted, however, if it were permitted to shift its interconnection costs to BellSouth in the manner it proposes.

Q. HOW HAS THE FCC ADDRESSED THE ISSUE OF WHO ESTABLISHES THE POINT OF INTERCONNECTION?

A. The FCC addressed this issue in its Local Competition Order, in Section IV. In that Section, the FCC established the concept that, due to reciprocal compensation being paid by the originating company, the originating company may seek to determine its Point of Interconnection in order to minimize its reciprocal compensation obligation to the terminating company. For example,

in Subsection F, Technically Feasible Points of Interconnection, ¶ 209, the FCC states:

> *We conclude that we should identify a minimum list of technically feasible points of interconnection that are critical to facilitating entry by competing carriers. Section 251 (c) gives competing carriers the right to deliver traffic terminating on an incumbent LEC's network at any technically feasible point on that network rather than obligating such carriers to transport traffic to less convenient or efficient interconnection points. 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.*

This ruling requires the ALEC to establish a Point of Interconnection on the incumbent LEC's network and only permits the ALEC to designate that point for traffic originated by the ALEC. It does not allow the ALEC to specify a Point of Interconnection for traffic originated on the incumbent LEC's network. The rationale of this ruling clearly requires the ALEC to deliver its traffic to the incumbent's network and supports the right of the originating carrier to specify the Point of Interconnection. US LEC's proposed plan is contrary to this ruling by purporting to permit the terminating carrier to

designate the Point of Interconnection.

Q. HOW HAS THE FCC ADDRESSED THE ILEC'S ABILITY TO DESIGNATE A POINT OF INTERCONNECTION FOR ITS ORIGINATING TRAFFIC?

A. As previously discussed, the FCC permits the ILEC to designate the Point of Interconnection for its originating traffic, and does not require that point to be on the ALEC's network. The FCC has determined that issues regarding the location of Points of Interconnection should be determined through the negotiation and arbitration process. In the FCC's Order 96-325, MCI attempted to have the FCC require ILECs to specify a Point of Interconnection on the ALEC's network for the traffic originated by the ILEC's end user. In paragraph 214 of that Order, the FCC states:

> *MCI also urges the Commission to require incumbents and competitors to select one point of interconnection (POI) on the other carrier's network at which to exchange traffic. MCI further requests that this POI be the location where the costs and responsibilities of the transporting carrier ends and the terminating carrier begins.* [Emphasis added]

In paragraph 220, the FCC rejected MCI's request, stating that:

> *We also conclude that MCI's POI proposal, permitting interconnecting carriers, both competitors and incumbent LECs, to designate points of*

interconnection on each other's networks, is at this time best addressed in negotiations and arbitrations between parties.

Importantly, this ruling does not give an ALEC the right to establish the Point of Interconnection for ILEC originated traffic as MCI sought to do. It also rejects an attempt by MCI to interconnect at some place other than the ILEC's existing local network.

Q. WHAT DOES BELLSOUTH REQUEST OF THIS COMMISSION?

A. BellSouth simply requests the Commission find that US LEC is required to bear the cost of facilities that BellSouth installs on US LEC's behalf in order to connect from a BellSouth local calling area to a Point of Interconnection located outside that local calling area. The Commission should reject US LEC's proposal.

Issue 4: What is the appropriate definition of "serving wire center" for purposes of defining transport of the parties' respective traffic?

Q. PLEASE DESCRIBE THE DISPUTE IN THIS ISSUE.

A. As BellSouth understands it, the dispute in this issue is over the appropriate definition of serving wire center only when used to determine reciprocal compensation for call transport and termination. With respect to call transport and termination, the definition of serving wire center determines which prices

the originating carrier will pay the terminating carrier for terminating traffic over dedicated facilities.

The same term "serving wire center" is also used to determine the applicable rate elements when US LEC purchases dedicated transport UNEs from BellSouth. With respect to UNEs, the dedicated link from US LEC's premises to BellSouth's serving wire center is a local channel UNE billed at a flat rate. BellSouth understands that the definition of serving wire center when used to determine UNE billing is not in dispute.

Q. IS THE DEFINITION OF SERVING WIRE CENTER THE ACTUAL DISPUTE HERE?

A. No. Although the definition of serving wire center may be an issue, the actual dispute here is whether a carrier should only be paid for the services and/or functions it actually provides.

Q. WHY IS THE DEFINITION OF SERVING WIRE CENTER IMPORTANT?

A. The location of the serving wire center defines the rate elements that apply when dedicated transport services are used to transport and terminate traffic. Such transport services typically consist of two sets of rate elements. The first set is a flat-rated local channel which is the charge for the facility that connects the ALEC's physical location, i.e., Point of Presence or Point of Interconnection, to the BellSouth wire center that serves that location, or the

serving wire center. The second set of rate elements are distance sensitive charges that apply for facilities that are provided between BellSouth wire centers.

Q. WHAT HAS BELLSOUTH PROPOSED AS THE DEFINITION OF SERVING WIRE CENTER?

A. The definition of "serving wire center" that BellSouth has proposed to US LEC is consistent with the definitions in Tariff F.C.C. No. 1, Florida state access tariffs, and Newton's Telecom Dictionary. BellSouth proposes to define "serving wire center" as "*the wire center owned by one Party from which the other Party would normally obtain dial tone for its Point of Presence.*" This is the same definition used to develop prices approved by this Commission.

Q. WHAT HAS US LEC PROPOSED ON THIS ISSUE?

A. US LEC has proposed the following language: "For the purposes of this Attachment, Serving Wire Center is defined as the V&H coordinates within which the originating Party's Point of Presence is located." BellSouth contends that this definition is unclear. Vertical and Horizontal ("V&H") coordinates are the imaginary points on a grid to define a physical location. Based on discussions in the negotiations, BellSouth believes that US LEC is referring to V&H coordinates of the rate center in its proposed language.

Q. IS IT APPROPRIATE TO SUBSTITUTE RATE CENTER V&H COORDINATES FOR SERVING WIRE CENTER LOCATIONS?

A. No, the rate center cannot be used as a substitute for the location of the physical serving wire center. The parties would not be able to determine what call transport and termination rates to apply, utilizing this definition. Their definition would mean that no interoffice transport could be billed under call transport and termination, regardless of whether such transport is used in the exchange.

A rate center is an arbitrary point within each exchange that is used for measuring distance between exchanges to rate long distance calls. Each exchange has only one set of V&H coordinates to define the rate center. In many cases, the rate center location does not correspond to any physical BellSouth locations in the exchange. In addition, an exchange can have multiple serving wire centers, but will only have one location defined as the rate center. Since there is only one set of V&H coordinates per exchange, all transport within the exchange would be treated as a local channel under US LEC's proposal.

Q. WHAT IS BELLSOUTH ASKING THIS COMMISSION TO DECIDE ON THIS ISSUE?

A. This Commission should affirm that BellSouth is simply complying with the structure that the Commission and its rules have created and that BellSouth's

definition of Serving Wire Center is appropriate because it reflects the actual location of the Serving Wire Center.

Issue 6: a. Which rates should apply for the transport and termination of local traffic: composite or elemental?

Q. PLEASE DEFINE COMPOSITE AND ELEMENTAL RATES AS THEY RELATE TO THIS ISSUE.

A. Elemental rates, as proposed by BellSouth, are rates approved by the Commission for transport and termination of local traffic. These individual element rates are included in Exhibit A to Attachment 3 of the proposed Agreement filed with BellSouth's Petition. Note that in Florida the Commission ordered a separate reciprocal compensation rate for end office switching and for tandem switching that is different from the UNEs for end office switching and tandem switching.

A composite rate would be a single rate which would be applied, regardless of whether all of the related functions are performed. US LEC proposes that, for Florida, the composite rate should be the tandem local interconnection rate.

Q. WHAT IS BELLSOUTH'S POSITION ON THE APPLICABLE RATES FOR TRANSPORT AND TERMINATION OF LOCAL TRAFFIC?

A. The reciprocal compensation rates for terminating local traffic within a local calling area should be the Commission approved rates for reciprocal compensation. I should point out that these rates do not apply to interconnection facilities outside the local calling area as discussed under Issues 3 and 5. Of course, since ISP traffic is not local and such traffic characteristics were not reflected in the rates, these rates should not apply to ISP traffic. In Order No. PSC-96-1579-FOF-TP (12/31/96), the Commission ordered at page 68:

> *Upon consideration, we find that BellSouth and AT&T should compensate each other for transport and termination of calls on each other's network facilities at rates of $.00125 per minute for tandem switching and $.002 for end office termination. In so doing, we find that these rates, based on LRIC, are sufficient to cover the greater of TSLRIC or LRIC in addition to providing some contribution to common costs.*

Therefore, the appropriate rates for reciprocal compensation for local traffic are:

RECIPROCAL COMPENSATION RATES

Per FPSC Order No. PSC-96-1579-FOF-TP (12/31/96)

RATE ELEMENT	RATE
Tandem Switching, Per MOU	$ .00125
End Office Switching, Per MOU	$ .002
Common Transport - per mile, per MOU	$ .000012
Common Transport – Termination per MOU	$ .0005

The above rates should only apply if the applicable facilities are actually used to transport or terminate the local call within the local calling area. Elemental rates are more appropriate than a composite rate, because all elements may not be applicable in every case. For example, under BellSouth's proposal, if US LEC uses end office switching, tandem switching and transport to terminate BellSouth-originated traffic, then US LEC would charge BellSouth for all three elements. Conversely, if US LEC used only one or two of the elements, then only those one or two elements would be billed to BellSouth.

Q. WHAT IS BELLSOUTH REQUESTING OF THIS COMMISSION?

A. The Commission should affirm that the rates as ordered in Order No. PSC-96-1579-FOF-TP (12/31/96) are applicable to reciprocal compensation for local traffic.

Issue 6: b. If elemental rates apply, should US LEC be compensated for the tandem switching elemental rates for purposes of reciprocal compensation?

Q. PLEASE BRIEFLY EXPLAIN THIS ISSUE.

A. The network components potentially involved in the transport and termination of local traffic are end office switching, interoffice transport and tandem switching. However, all three components are not necessarily involved in every local call. BellSouth proposes to bill ALECs for use of a tandem only

when BellSouth incurs the cost of tandem switching. Further, BellSouth proposes to pay ALECs the tandem switching rate only when the ALEC's switch provides the geographic coverage and functionality of a tandem, as opposed to an end office switch. However, US LEC wants to charge BellSouth for tandem switching on every local call, regardless of whether US LEC incurs the cost.

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

A. In order for US LEC to appropriately charge BellSouth for tandem switching on any call, US LEC 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 perform local tandem functions. Even after meeting the above criteria, US LEC should only be compensated for the functions that it actually provides. US LEC is only entitled to charge for tandem switching on the calls that are in fact switched by the tandem. US LEC is not entitled to tandem switching compensation on local calls not switched by a local tandem even if US LEC has a local tandem.

Q. PLEASE DESCRIBE US LEC'S POSITION ON THIS ISSUE.

A. US LEC's position is that when its local switch covers a geographic area comparable to BellSouth's tandem, US LEC should always be compensated for the transport and termination of BellSouth-originated traffic at a rate that includes the tandem switching rate element. US LEC totally disregards the

FCC's second criteria for qualifying for tandem switching compensation – that US LEC's switch actually perform a tandem function on the call in order to bill tandem switching for the call.

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

A. Under Section 251(b)(5) of the 1996 Act, all local exchange carriers are required to establish reciprocal compensation arrangements for the transport and termination of telecommunications. 47 U.S.C. § 251(b)(5).

The terms and conditions for reciprocal compensation must be "just and reasonable," which requires the recovery of a reasonable approximation of the "additional cost" of terminating calls that originate on the network of another carrier. 47 U.S.C. § 252(d)(2)(A). The FCC's rules limited this obligation to local traffic. In its Local Competition Order, the FCC stated that the "additional costs" of transporting and terminating 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 this end, BellSouth has separate rates for local switching, transport and tandem switching. The ALEC is charged reciprocal compensation for transport and termination within the local calling area based on the parts of BellSouth's network that are actually used to complete a call.

The FCC, of course, recognized that the ALECs might not use the same network architecture that BellSouth or any other incumbent carrier uses. However, that concern is not an issue in this case. In order to ensure that the ALECs 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). Further, 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 before an ALEC would be entitled to compensation at both the end office and tandem switching rate for any particular local call. The switch involved has to serve the appropriate geographic area, and it has to perform tandem switching functions for local calls. BellSouth notes that in Section 51.711(a)(1) of its Local Competition Order, 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 FCC 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."

Therefore, pursuant to Section 51.711, US LEC must show not only that its switch covers the same geographic area as BellSouth's tandem switch but that US LEC's switch is providing the same services as BellSouth's tandem switch for local traffic before charging BellSouth the tandem switching rate.

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

A. Indeed it has. In its 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.

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

A. To receive reciprocal compensation for tandem switching, a carrier must be performing all of the functions described in the FCC's definition of tandem switching. It is not enough that the switch is simply "capable" of providing the function of a tandem switch, it has to be providing those functions for local calls. This is true if for no other reason than because the reciprocal compensation rate for tandem switching 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. Otherwise, the carrier would simply be receiving a windfall.

If US LEC's switches are only switching traffic for end users directly connected to that switch, then that is an end office switching function, not a tandem switching function. As stated in the FCC's definition, one of the three requirements of tandem switching is to connect trunks terminated in one end office switch to trunks terminated in another end office switch. Based on the limited information presently available to BellSouth, US LEC's switches do not appear to be providing that function. Instead, US LEC's switches are connecting trunks to end users' lines. The local end office switching rate fully compensates US LEC for performing this function. It is not clear whether US

LEC's switches perform the other two required functions, or whether they serve a comparable geographic area.

Q. PLEASE ADDRESS WHETHER THE ONLY RELEVANT CRITERIA FOR DETERMINING ELIGIBILITY FOR TANDEM SWITCHING CHARGES IS THE GEOGRAPHIC AREA SERVED.

A. As I have stated above, the FCC has a two-part test to determine if a carrier is eligible for tandem switching: 1) an ALEC's switch must serve the same geographic area as the ILEC's tandem switch, and 2) an ALEC's switch must perform tandem switching functions. By the way, this is not just BellSouth's view. In a case involving MCI (MCI Telecommunication Corp. v. Illinois Bell Telephone, 1999 U.S. Dist. LEXIS 11418 (N.D. Ill. June 22, 1999)), the U.S. District Court specifically determined that the test required by the FCC's rule is a functionality/geography test. In its Order, the Court stated:

> *In deciding whether MCI was entitled to the tandem interconnection rate, the ICC applied a test promulgated by the FCC to determine whether MCI's single switch in Bensonville, Illinois, performed functions similar to, and served a geographical area comparable with, an Ameritech tandem switch.*[9] (emphasis added)
>
> [9]*MCI contends the Supreme Court's decision in IUB affects resolution of the tandem interconnection rate dispute. It does not. IUB upheld the FCC's pricing regulations, including the 'functionality/geography' test.*

119 S. Ct. at 733. MCI admits that the ICC used this test. (Pl. Br. At 24.) Nevertheless, in its supplemental brief, MCI recharacterizes its attack on the ICC decision, contending the ICC applied the wrong test. (Pl. Supp. Br. At 7-8.) But there is no real dispute that the ICC applied the functionality/geography test; the dispute centers around whether the ICC reached the proper conclusion under that test. (emphasis added)

Indeed, the Ninth Circuit Court of Appeals viewed the rule in the same way, finding that:

[t]he Commission properly considered whether MFS's switch performs similar functions and serves a geographic area comparable to US West's tandem switch. (U.S. West Communications v. MFS Intelenet, Inc, et. al, 193 F. 3d 1112, 1124)

Q. DO US LEC'S SWITCHES SERVE A GEOGRAPHIC AREA COMPARABLE TO BELLSOUTH'S TANDEM?

A. Without additional information, it is not possible to determine whether US LEC's switch would actually serve a geographic area comparable to BellSouth's tandem. Although US LEC's pleadings tend to suggest that US LEC's switches cover an area comparable to BellSouth's tandem switches, US LEC offers absolutely no evidence to support such a position. Even if one were to assume that a US LEC switch covers a geographic area similar to

BellSouth's tandem, unless US LEC's switch is performing tandem functions, which the FCC has indicated is one of the required criteria that an ALEC's switch must meet, US LEC is not eligible for the tandem switching element of reciprocal compensation.

To illustrate the importance of this point, assume US LEC has ten customers in Miami, all of which are located in a single office complex next door to US LEC's Miami switch. Under no set of circumstances could US LEC seriously argue that, in such a case, its switch serves a comparable geographic area to BellSouth's switch. See Decision 99-09-069, In re: Petition of Pacific Bell for Arbitration of an Interconnection Agreement with MFS/WorldCom, Application 99-03-047, 9/16/99, at 15-16 (finding "unpersuasive" MFS's showing that its switch served a comparable geographic area when many of MFS's ISP customers were actually collocated with MFS's switch).

Q. HAS THIS COMMISSION PREVIOUSLY RULED ON THE ISSUE OF APPLICABILITY OF RECIPROCAL COMPENSATION TO TANDEM SWITCHING?

A. Yes. This issue was addressed by this Commission recently in its August 22, 2000 Order No. PSC-00-1519-FOF-TP in Docket No. 991854-TP (Intermedia/BellSouth Arbitration). At page 12, the Order states:

> *In evaluating this issue, we are presented with two criteria set forth in FCC 96-325, ¶1090, for determining whether symmetrical reciprocal*

compensation at the tandem rate is appropriate: similar functionality and comparable geographic areas.

Further, at page 14, the Order concludes:

We find the evidence of record insufficient to determine if the second, geographic criterion is met. We are unable to reasonably determine if Intermedia is actually serving the areas they have designated as local calling areas. As such, we are unable to determine that Intermedia should be compensated at the tandem rate based on geographic coverage.

As mentioned above, neither do we find sufficient evidence in the record indicating that Intermedia's switch is performing similar functions to that of a tandem switch. Therefore, we are unable to find that Intermedia should be compensated at the tandem rate based on similar functionality as well. This is consistent with past decisions of this Commission.

Earlier, the Florida Public Service Commission, in Order No. PSC-97-0294-FOF-TP, Docket 961230-TP, dated March 14, 1997, concluded at pages 10-11:

We find that the Act does not intend for carriers such as MCI to be compensated for a function they do not perform. Even though MCI argues that its network performs 'equivalent functionalities' as Sprint in terminating a call, MCI has not proven that it actually deploys both tandem and end office switches in its network. If these functions are not actually performed, then there cannot be a cost and a charge associated with them. Upon consideration, we therefore conclude that

MCI is not entitled to compensation for transport and tandem switching unless it actually performs each function.

Similarly, Florida Order No. PSC-96-1532-FOF-TP, Docket No. 960838-TP, dated December 16, 1996, states at page 4:

The evidence in the record does not support MFS' position that its switch provides the transport element; and the Act does not contemplate that the compensation for transporting and terminating local traffic should be symmetrical when one party does not actually use the network facility for which it seeks compensation. Accordingly, we hold that MFS should not charge Sprint for transport because MFS does not actually perform this function.

Reinstatement of the FCC's rules previously vacated by the Eighth Circuit Court of Appeals does not alter the correctness of this Commission's conclusions.

Q. WHAT DOES BELLSOUTH REQUEST THE COMMISSION DO?

A. Importantly, BellSouth is not disputing US LEC's right to compensation at the tandem rate where the facts support such a conclusion. However, in this proceeding, US LEC is seeking a decision that allows it to be compensated for functionality it does not provide. Absent real evidence that US LEC's switches actually serve the same geographic area as BellSouth's tandems, and absent evidence that US LEC's switches do perform the functions of a tandem switch,

BellSouth requests that this Commission determine that US LEC is only entitled, where it provides local switching, to the end office switching rate.

Issue 7: Should ISP-bound traffic be treated as local traffic for the purposes of reciprocal compensation, or should it be otherwise compensated?

Q. WHAT IS INCLUDED IN THIS ISSUE?

A. The wording of Issue 7 as stated in BellSouth's Petition actually contained three issues:

(1) Applicability of reciprocal compensation to ISP-bound traffic;

(2) Application of access charge for long distance Phone-to-Phone Internet Protocol Telephony;

(3) Exclusion of "false" traffic from the local traffic definition

At the FPSC Issue Identification session, the wording of Issue 7 was changed such that it implies that this issue only addresses ISP-bound traffic. However, I will address all three issues in my testimony.

ISP-BOUND TRAFFIC

Q. WHAT IS BELLSOUTH'S POSITION ON THE APPLICABILITY OF RECIPROCAL COMPENSATION FOR ISP-BOUND TRAFFIC?

A. As the Commission is well aware, BellSouth does not agree that ISP-bound traffic is local traffic subject to reciprocal compensation. US LEC has not provided any evidence to the contrary; therefore, BellSouth's position has not

changed with respect to this issue in this proceeding. BellSouth recognizes that the Commission has ruled on this issue in various arbitration proceedings, including Order No. PSC-00-1519-FOF-TP (Intermedia Arbitration), dated August 22, 2000.

In addition, this issue is currently being investigated at a generic level in Docket No. 000075-TP. BellSouth agrees to apply the Commission's Order in the Intermedia Arbitration proceeding to this case, as an interim mechanism, subject to retroactive true-up, for inter-carrier compensation for ISP-bound traffic. BellSouth agrees to this as a conciliatory offer that avoids requiring the Commission to rehear this issue. BellSouth reserves the right, however, to appeal or seek judicial review on this issue.

INTERNET PROTOCOL TELEPHONY

Q. WHY HAS BELLSOUTH INCLUDED AN EXCEPTION FOR LONG DISTANCE INTERNET PROTOCOL TELEPHONY ("IP TELEPHONY") IN ITS DEFINITION OF LOCAL TRAFFIC?

A. Due to the increasing use of IP technology mixed with traditional analog and digital technology to transport voice long distance telephone calls, BellSouth's position is that it is important to specify in the agreement that such long distance traffic is not local traffic, the same as any other long distance traffic is not local traffic. The jurisdiction of a call is determined by the end points of a call, not the technology used to transport the call. Therefore, phone-to-phone

calls using IP Telephony that originate and terminate in different local calling areas are long distance and subject to switched access today. Under no circumstance would such calls be subject to reciprocal compensation.

Q. WHAT IS IP TELEPHONY?

A. IP Telephony is telecommunications service that is provided using Internet Protocol for one or more segments of the call. 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 uses the World Wide Web. 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 which "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 is where an end user customer uses a traditional telephone set to call another traditional telephone set using IP Telephony. 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);
- 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 INTERNET PROTOCOL?

A. Technically speaking, internet protocol, or any other protocol, is an agreed upon set of technical operating specifications for managing and interconnecting networks. In the above example, I referred to the gateways which convert the digital carrier voice signal into data packets and then from data packets back to a digital carrier. The internet protocol is the language, or signaling, that these gateways use to talk to each other. It has nothing to do with the transmission medium (wire, fiber, microwave, etc.) that carries the data packets between the

gateways, but rather the gateways, or switches, that are found on either end of that medium.

Q. SHOULD INTERNET PROTOCOL TELEPHONY ("IP TELEPHONY") BE DEFINED AS SWITCHED ACCESS?

A. It depends. Calls utilizing Internet Protocol that originate and terminate in the same local calling area should be treated like any other local call. BellSouth's position is that, if such traffic is truly local in nature, then it is not subject to switched access charges. Applicable switched access charges, however, should apply to any traditional long distance telephone call regardless of whether Internet Protocol is used for a portion of the call.

Q. HOW ARE IP TELEPHONY CALLS DIFFERENT FROM INTERNET SERVICE PROVIDER (ISP) BOUND TRAFFIC?

A. Even though IP Telephony and ISP-bound traffic both have the word "Internet" in their name, they are completely different services and should not be confused. 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 Telecommunications Act of 1996 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.

Q. DOES THE FCC VIEW ISP-BOUND TRAFFIC DIFFERENTLY THAN IP TELEPHONY IN TERMS OF APPLICABLE CHARGES?

A. Yes. Neither ISP-bound traffic nor 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. ESPs, or Information Service Providers ("ISPs") have been exempted by the FCC from paying 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 ESPs and ISPs use interstate access service, but are exempt from switched access charges applicable to other long distance traffic. The FCC determined that an exception from access charges was appropriate for ESPs and ISPs because of the emerging nature of their industry. On the other hand, the transmission of long-distance voice services – whether by IP telephony or by more traditional means -- is not an emerging industry. In fact, it is a mature industry – one that is not exempt from paying access charges for the use of the local network. These same access charges are currently paid by all other long-distance carriers. BellSouth is required to assess access charges on long distance calls. To do otherwise would be to discriminate between long-distance carriers utilizing IP telephony and those who do not.

Q. WHY HAS BELLSOUTH INCLUDED AN EXCEPTION FOR LONG DISTANCE INTERNET PROTOCOL TELEPHONY ("IP TELEPHONY") IN ITS PROPOSED DEFINITION OF LOCAL TRAFFIC IN THE NEGOTIATIONS WITH US LEC?

A. In seeking to include a sentence addressing IP telephony, BellSouth is simply attempting to be clear in the agreement that 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 interexchange carrier's ("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.

Consider the example of a call from Jacksonville to Atlanta sent over US LEC's circuit switched network. Certainly, this call is a long distance call, and access charges would apply. If US LEC, however, transported that same call using IP telephony, US LEC's position appears to be that the call from Jacksonville to Atlanta would be a local call and that reciprocal compensation applies. Surely, US LEC's choice of transmission medium does not transform a long distance call into a local call.

Due to the increasing use of IP technology mixed with traditional analog and digital technology to transport voice long distance telephone calls, BellSouth's

position is that it is important to specify in the agreement that such traffic is not local traffic, the same as any other long distance traffic is not local traffic.

Q. WHAT IS BELLSOUTH ASKING THE COMMISSION TO DECIDE ON THIS ISSUE?

A. The Commission should specify that applicable switched access charges, not reciprocal compensation, should apply to any traditional long distance telephone call, regardless of whether Internet Protocol is used for a portion of the call.

"FALSE" TRAFFIC

Q. WHY HAS BELLSOUTH INCLUDED AN EXCEPTION FOR THE TYPE OF TRAFFIC DESCRIBED IN ITS DEFINITION OF LOCAL TRAFFIC, AT ATTACHMENT 3, SECTION 6.1.1 (i) and (ii)?

A. BellSouth challenged the compensability of traffic known as "false" traffic through a complaint filed with the North Carolina Utilities Commission (NCUC) by BellSouth against US LEC in Docket No. P-561, Sub 10. Generally speaking, the traffic at issue in that proceeding was router-to-router traffic originated by Metacomm, a company affiliated with US LEC and with whom US LEC agreed to share the reciprocal compensation it received from BellSouth when it terminated that traffic. Irrespective of any actual use of the network connections originated by its routers, these connections were kept

open between the BellSouth network and the US LEC network on essentially a 24 hour-a-day basis so as to generate reciprocal compensation payments from BellSouth to US LEC. The NCUC Order dated March 31, 2000, found that, "No reciprocal compensation is due for any minutes of use attributable to Metacomm or MCNC." By proposing to specifically exclude traffic described in Attachment 3, Section 6.1.1 (i) and (ii) from the parties' definition of local traffic, BellSouth has attempted to describe, albeit in a shorthand fashion, the type of traffic Metacomm originated--either for itself or on behalf of its own end-user customers--on BellSouth's network and for which US LEC attempted to collect reciprocal compensation from BellSouth. It remains BellSouth's position that traffic described in Section 6.1.1 (i) and (ii) is not local traffic subject to payment of reciprocal compensation.

Q. WHAT IS BELLSOUTH ASKING THIS COMMISSION TO DECIDE ON THE ISSUE OF THE DEFINITION OF LOCAL TRAFFIC?

A. BellSouth respectfully requests that this Commission adopt BellSouth's proposed definition of local traffic for inclusion in the Agreement.

Issue 8: Should US LEC be allowed to establish its own local calling areas and assign its NPA/NXX for local use anywhere within such areas, consistent with applicable law, so long as it can provide information permitting BellSouth as the originating carrier to determine whether reciprocal compensation or access charges are due for any particular call?

Q. WHAT IS THE DISPUTE IN THIS ISSUE?

A. This issue is the same issue that the Commission recently addressed in the arbitration proceeding with Intermedia. In that proceeding, the Commission agreed with BellSouth and decided that until Intermedia could provide information to permit proper billing, Intermedia could not give numbers to customers who are physically located outside the rate center where the NPA/NXX code is assigned.

Since the time of the Intermedia arbitration, we have identified a means to handle the end user billing. BellSouth would propose not to charge the end user for a long distance call, even though a long distance call had been made. This treatment is similar to the end user billing that applies when an end user calls an 800 number. The reason for this approach is that, like 800 service, US LEC is incurring the long distance costs in this case and would recover these costs from its end users. Of course, like 800 service, this is a long distance service. For example, if a BellSouth customer in Miami calls a US LEC customer in Jupiter, it is a long distance call, even if those two customers have telephone numbers with the same NPA/NXX. BellSouth should not be required to pay reciprocal compensation for this long distance traffic. US LEC is providing the long distance to its customer and that customer should pay US LEC for the service.

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

A. Provided that US LEC will separately identify such traffic for purposes of billing and intercarrier compensation, BellSouth would not object to permitting US LEC to assign numbers out of an NPA/NXX to end users located outside the local calling area with which that NPA/NXX is associated. Because of this freedom, US LEC can elect to give a telephone number to a customer who is physically located in a different local calling area than the local calling area where that NPA/NXX is assigned. If US LEC, however, chooses to give out its telephone numbers in this manner, calls originated by BellSouth end users to those numbers are not local calls. Consequently, such calls are not local traffic under the agreement and no reciprocal compensation applies.

Q. WHAT DO YOU MEAN WHEN YOU SAY AN NPA/NXX IS ASSIGNED TO A RATE CENTER?

A. When US LEC, or any other carrier, is given an NPA/NXX code by the North American Numbering Plan Administrator, the carrier must assign that NPA/NXX code to a rate center. All other carriers use this assignment information to determine whether calls originated by its customers to numbers in that NPA/NXX code are local or long distance calls. For example, assume that the administrator assigns the 561/336 NPA/NXX to US LEC. US LEC tells the administrator where 561/336 is assigned. Let's say US LEC assigns the 561/336 code to the Jupiter, Florida rate center. When a local carrier's customer calls a number in the 561/336 code, the local carrier bills its customer based upon whether a call from the location where the call originates to the Jupiter, Florida rate center is a local call or a long distance call. If a BellSouth

customer in the Jupiter local calling area calls a number in the 561/336 code in this example, BellSouth treats the call as a local call for purposes of billing its Jupiter, Florida customer. Likewise, if a BellSouth customer in Miami calls a number in the 561/336 code, BellSouth would bill the customer for a long distance call.

Q. UNDER BELLSOUTH'S PROPOSAL, IS US LEC RESTRICTED TO GIVING NUMBERS, ASSIGNED TO A PARTICULAR RATE CENTER, TO CUSTOMERS WHO ARE PHYSICALLY LOCATED IN THAT SAME RATE CENTER?

A. No. In the example above, US LEC is not restricted to giving numbers in the 561/336 code only to customers that are physically located in the Jupiter, Florida rate center. US LEC is permitted to assign a number in the 561/336 code to any of its customers regardless of where they are physically located. Again, BellSouth is not attempting to restrict US LEC's ability to do this.

US LEC could assign a number, say 561-336-7777, to one of its customers who is physically located in Jupiter, Florida. A BellSouth customer in Jupiter who calls 561-336-7777 would be billed as if he or she made a local call. BellSouth agrees that this is a local call and, therefore, appropriate reciprocal compensation should apply.

However, let's see what happens if US LEC disassociates the physical location of a customer with a particular telephone number from the rate center where

that NPA/NXX code is assigned. Assume that US LEC gives the number 561-336-2000 to one of its customers in Miami. If a BellSouth customer in Jupiter calls 561-336-2000, BellSouth will bill its customer in Jupiter as if the customer made a local call. However, BellSouth would hand off the call to US LEC at a BellSouth designated point of interconnection. US LEC would then carry the call from that point of interconnection to its end user in Miami. The end points of the call are in Jupiter and Miami, and, therefore, would normally be a long distance call. To use a more extreme example, US LEC could elect to assign another number, say 561-336-3000 to one of its customers who is physically located in New York. A call from a BellSouth customer in Jupiter, Florida to 561-336-3000 would be treated as if he made a local call, but the call would actually terminate in New York, which plainly would be a long distance call. Under US LEC's proposal, BellSouth would pay reciprocal compensation on those calls from Jupiter to Miami or from Jupiter to New York, which are clearly long distance calls and not subject to reciprocal compensation.

Q. IS TRAFFIC JURISDICTION ALWAYS DETERMINED BY THE RATE CENTERS WHERE THE ORIGINATING AND TERMINATING NPA/NXXs ARE ASSIGNED, AS INDICATED IN US LEC's PETITION?

A. No. Traffic jurisdiction based on rate center assignment may be used for retail end user billing, but not for inter-company compensation purposes. The FCC has made it clear that traffic jurisdiction is determined based upon the originating and terminating end points of a call, not the NPA/NXXs of the calling or called number. One example is originating Feature Group A (FGA)

access service. Even though the originating end user dials a number that appears local to him or her, no one disputes that originating FGA traffic is switched access traffic with respect to jurisdiction and compensation between the involved companies. As the Commission is aware, FGA access service is not a local service.

Another example is Foreign Exchange (FX) service. Here again, it appears to the originating customer that they are making a local call when, in fact, the terminating location is outside the local calling area. Further, because the call to the FX number appears local and the calling and called NPA/NXXs are assigned to the same rate center, the originating end user is not billed for a toll call. Despite the fact that the calls appear to be local to the originating caller, FX service is clearly a long distance service.

Q. WHAT IS THE CLOSEST PARALLEL TO THE SERVICE YOU HAVE DESCRIBED THAT IS THE SUBJECT OF THIS ISSUE?

A. The closest parallel is 800 service. While there are some comparable characteristics to the previously described Feature Group A (FGA) and Foreign Exchange (FX) service, the service described here does not use lines dedicated to a particular customer for transporting the call between rate centers. Instead, the calls in this issue are placed to a "toll free" number and routed over trunking facilities to a distant location that would normally incur a toll charge for the originating customer. By utilizing enough NPA/NXX codes, US LEC could provide this "toll free" 800-like service throughout the state or the

nation. Just as it is clear that 800 service is not local and that access charges apply rather than reciprocal compensation, it is also clear that service provided through the use of NPA/NXXs outside the local calling area where the NPA/NXX is assigned is not local and reciprocal compensation is not appropriate.

Q. WHEN US LEC ASSIGNS NUMBERS IN THE MANNER YOU HAVE DESCRIBED, IS IT ATTEMPTING TO DEFINE ITS OWN LOCAL CALLING AREA?

A. When US LEC assigns numbers in the manner described, US LEC is not attempting to define a different local calling area for its customers than the local calling area offered by BellSouth. In fact, in the previous hypothetical example of the 561/336 code that US LEC assigns to Jupiter, US LEC does not need to have any customers who are physically located in the Jupiter local calling area. What US LEC is doing is offering free interexchange calling to customers of other LECs (i.e. BellSouth). US LEC is offering a service that allows BellSouth's local service customers to make "local" calls to selected customers of US LEC who are physically located in a different local calling area. At best, in the Jupiter example, US LEC is attempting to redefine the local calling area of BellSouth's customers in Jupiter.

US LEC is only permitted to define the local calling area for its customers. If, in the example, US LEC had any of its own local service customers in Jupiter, and offered those customers the ability to call Miami without long distance

charges, then it could be said that US LEC was offering a local calling area in Jupiter that was different from BellSouth's. The local calling area, however, would be defined that way only for those customers to whom US LEC provided local service. US LEC is free to design whatever local calling area it wants for its customers. US LEC, however, is not free to determine the local calling area for BellSouth customers. Specifically, US LEC cannot provide interexchange service to BellSouth's local end-user customers and call that service local, even if it is provided on a toll-free basis.

Q. HOW DOES THE RESOLUTION OF THIS ISSUE IMPACT THE DEGREE OF LOCAL COMPETITION IN FLORIDA?

A. Some ALECs have claimed that BellSouth's position on this issue would impede local competition. However, the service at issue here has nothing to do with local competition. Using the Jupiter example, the service described in this issue does not create a local service, let alone any local service competition, in Jupiter. Local service competition is only created where US LEC offers local service to its own customers. The service at issue here is offered to BellSouth's local service customers in Jupiter, regardless of whether US LEC has any local service customers physically located in Jupiter. When US LEC allows a BellSouth customer in Jupiter to make a toll free call to one of its 800 service numbers, no local competition is created in Jupiter. Likewise, in the example, when US LEC assigns a number out of the 561/336 code to one if its customers in Miami, precisely the same amount of local competition is created in Jupiter (where the 561/336 code is assigned) as is created by US LEC's 800

service offerings; i.e., none. In this case, US LEC has no contact or business relationship with the BellSouth customers for use of this service. These customers remain, in fact, BellSouth's local service customers. There is nothing that US LEC is providing in this case that even resembles local service. Yet, US LEC claims that it should be paid reciprocal compensation for providing this service.

Q. WHAT OTHER COMMISSIONS HAVE ADDRESSED WHETHER THE SERVICE DESCRIBED IN THIS ISSUE IS LOCAL OR INTEREXCHANGE?

A. To my knowledge, only the Maine Commission has definitively ruled on whether the service described in this issue is local or interexchange service. The California Commission has heard the issue, but did not decide whether the service was local or interexchange and deferred the issue of appropriate inter-carrier compensation to a later date.

Q. BRIEFLY DESCRIBE THE MAINE COMMISSION'S ORDER THAT YOU REFERRED TO ABOVE.

A. The Maine Commission's Order, attached to my testimony as Exhibit CKC-2, was issued on June 30, 2000 in Docket Nos. 98-758 and 99-593. The service at issue in that order is the same type of service described in this issue. (Order at p. 4) Brooks Fiber ("Brooks" – a subsidiary of MCI WorldCom) had been assigned 54 NPA/NXX codes that it had subsequently assigned to various

exchanges that are outside the Portland, Maine local calling area. Brooks had assigned numbers from those codes to its customers who were physically located in Portland. The Maine Commission was trying to determine whether Brooks was entitled to retain the NPA/NXX codes used for the service. If the service was local, Brooks was entitled to the codes; if the service was interexchange, Brooks Fiber had to relinquish the codes. The Maine Commission concluded that the service was interexchange. Since Brooks did not have any customers at all in the rate centers where 45 of the codes were assigned, the Maine Commission ordered the Numbering Plan Administrator to reclaim those codes (Order at p. 29).

Now, there is a potential misunderstanding that could arise when reading the Maine Order. There are several references to ISP in the Maine Order. The reason is that Brooks had only given numbers in the NPA/NXX code to ISPs. This is not, however, the ISP reciprocal compensation that this Commission has previously addressed. Neither the Maine Commission findings on the nature of this traffic nor BellSouth's position on this issue depend on whether the number is given to an ISP. The same findings and the same position apply regardless of the type of customer who has been given the number. It is just a fact in the Maine case that Brooks had only given numbers to ISPs; therefore, there are references to ISPs in the Order.

Q. HOW DOES BELLSOUTH'S POSITION COMPARE TO THE MAINE COMMISSION ORDER?

A. BellSouth's position is completely consistent with the Maine Commission's Order. Most importantly, the Maine Commission found that the service was interexchange. (Order at pps. 4, 8-12, 18). The Maine Commission concluded that this service and FX service have some parallels but the closest parallel is 800 service. (Order at pps. 11-12) The Maine Commission found that Brooks is not attempting to define its local calling area with this service. (Order at p. 14) Finally, the Maine Commission concluded that this service has no impact on the degree of local competition. (Order at p. 13) Again, none of these findings depend on whether the number is given to an ISP or another type of customer.

Q. HAS THE COMMISSION ADDRESSED ASSIGNMENT OF NPA/NXXs IN ANOTHER PROCEEDING?

A. Yes. In its recent ruling in the Intermedia arbitration proceeding, Order No. PSC-00-1519-FOF-TP, Docket No. 991854-TP, dated August 22, 2000, this Commission stated, at p. 43,

> *If Intermedia intends to assign numbers outside of the areas with which they are traditionally associated, Intermedia must provide information to other carriers that will enable them to properly rate calls to those numbers. We find no evidence in the record indicating that this can be accomplished.*
>
> *Based on the foregoing, we find it appropriate that the parties be allowed to establish their own local calling areas. Nevertheless, the*

parties shall be required to assign numbers within the areas to which they are traditionally associated, until such time when information necessary for the proper rating of calls to numbers assigned outside of those areas can be provided.

Q. WHAT IS BELLSOUTH REQUESTING OF THIS COMMISSION?

A. BellSouth requests that the Commission find in a manner similar to its decision in the Intermedia arbitration proceeding. In the alternative, the Commission could adopt the proposal BellSouth has made here.

Issue 9: Should ISP-bound traffic be considered local traffic for the purposes of calculating Percent Local Usage ("PLU")?

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

A. No. ISP-bound traffic is not local traffic, and should not be considered local traffic for purposes of calculating Percent Local Usage. The PLU factor should be developed on the same basis upon which it is applied; that is, if the PLU is multiplied to a minutes of use total to determine minutes for application of reciprocal compensation, then only minutes of local traffic subject to reciprocal compensation should be included in calculating the factor. The Commission should determine the answer to this issue at the same time it, or the FCC, determines the applicability of reciprocal compensation to ISP-bound traffic.

Such a decision is expected to be rendered by the FCC or by the FPSC in its generic intercarrier compensation docket.

Q. EXPLAIN THE CALCULATION OF THE PLU FACTOR, AND THE IMPACT OF INCLUDING OR EXCLUDING ISP-BOUND TRAFFIC.

A. The PLU is a factor which represents the percentage of originating traffic that is local for purposes of applying reciprocal compensation versus switched access rates. In reality, BellSouth calculates a "PLU" for combined local and ISP-bound traffic originated by BellSouth's end user customers, and US LEC calculates a similar "PLU" for traffic originated by its end user customers. The reason for this deviation is that the originating company has the necessary information to determine the nature of the traffic. However, the originating party does not have the necessary information to identify ISP-bound traffic. Only the terminating party has this information. Therefore, the terminating party would have to provide the originating party with the necessary information to properly exclude non-local ISP-bound traffic from the calculation of the PLU. To date, US LEC has been either unable or unwilling to provide BellSouth with such necessary information.

In the interim, BellSouth will provide to US LEC a "PLU" factor that includes non-local ISP-bound traffic as well as local traffic. BellSouth is willing to include non-local ISP-bound traffic in the interim because BellSouth is unable to distinguish local traffic from non-local ISP-bound traffic. US LEC will be obligated to exclude ISP-bound traffic from the invoices it sends to BellSouth.

Under no circumstances does reporting of this factor in this manner constitute an acknowledgment that ISP-bound traffic is local. This is simply an interim arrangement until such time as US LEC provides BellSouth with the necessary information to appropriately exclude this traffic from the calculation of the PLU.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

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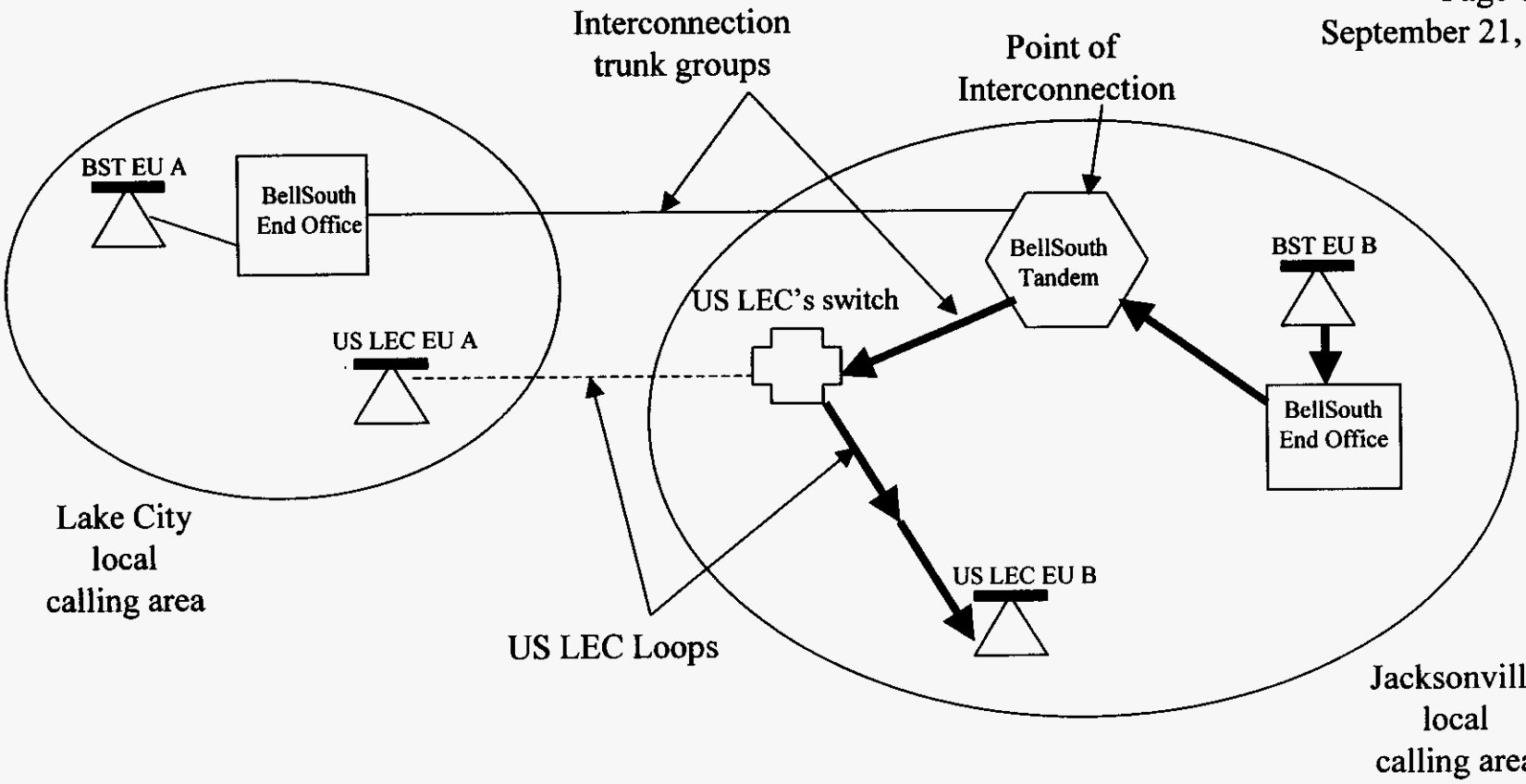
BELLSOUTH TELECOMMUNICATIONS, INC.
FPSC DOCKET 000084-TP
EXHIBIT CKC-1
Pages 1-2
SEPTEMBER 21, 2000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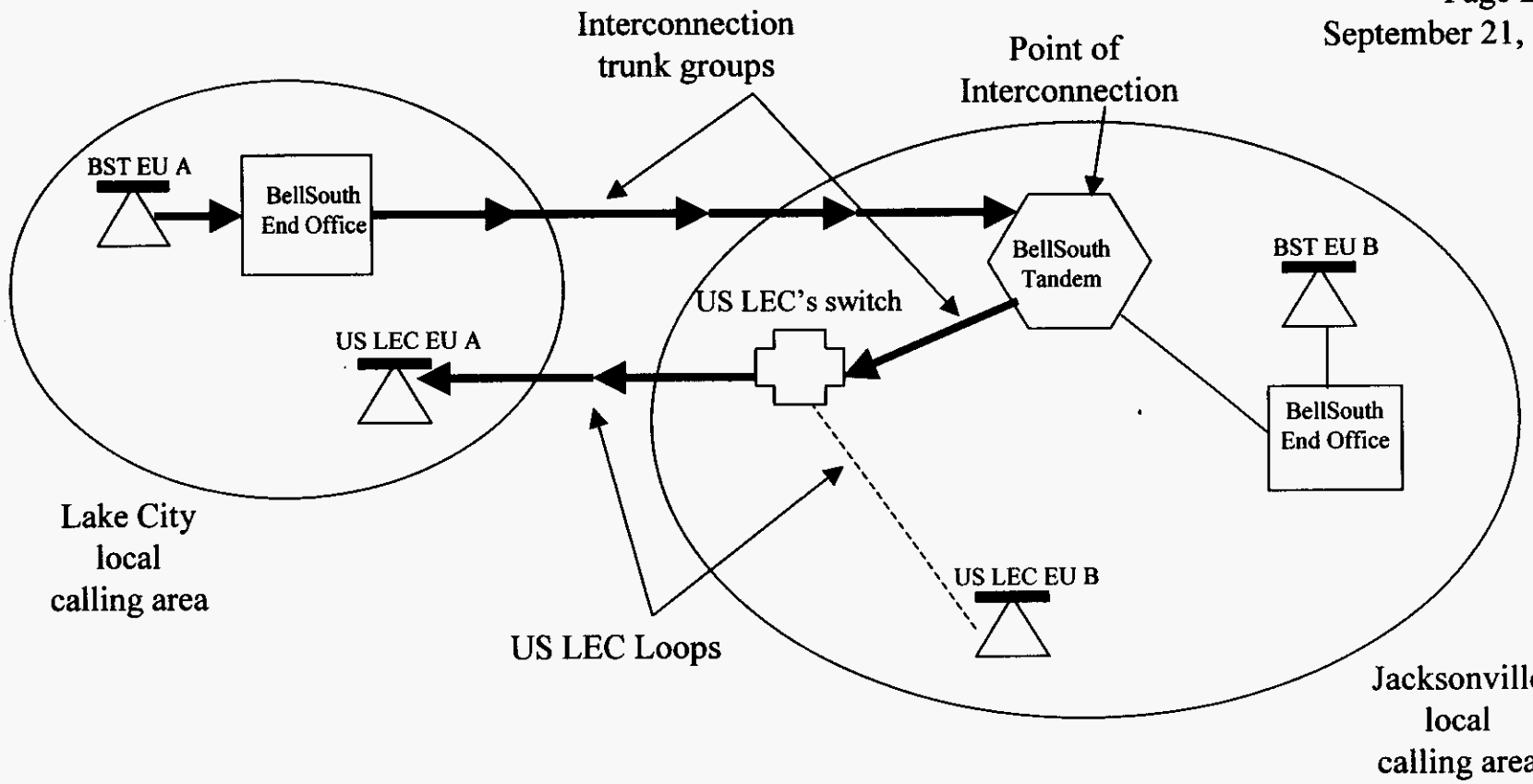
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BELLSOUTH TELECOMMUNICATIONS, INC.

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MAINE PUBLIC UTILITIES COMMISSION

DATED JUNE 30, 2000

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

June 30, 2000

PUBLIC UTILITIES COMMISSION
Investigation into Use of Central Office Codes (NXXs) by New England Fiber Communications, LLC d/b/a Brooks Fiber
Docket No. 98-758

ORDER REQUIRING RECLAMATION OF NXX CODES AND SPECIAL ISP RATES BY ILEC'S (ORDER NO. 4)

NEW ENGLAND FIBER COMMUNICATIONS D/B/A BROOKS FIBER
Proposed Tariff Revision To Introduce Regional Exchange (RX) Service
Docket No. 99-593

ORDER DISAPPROVING PROPOSED SERVICE (PART 2)

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

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I. SUMMARY OF DECISION

We address two cases in this Order. In the Investigation Case (Docket No. 98-758), we direct the North American Numbering Plan Administrator (NANPA) to reclaim the central office (NXX) codes acquired by New England Fiber Communications d/b/a Brooks Fiber (Brooks) that it is using for an unauthorized interexchange service and not for facilities-based local exchange service. Brooks shall discontinue the unauthorized service in six months. In a related matter, we find that Brooks's tariff filing in Docket No. 99-593 for a proposed "regional exchange" (RX) service is unjust and unreasonable, and we disapprove the filing.

In the Investigation Case, we also require Bell Atlantic-Maine (BA) (with the participation of all other incumbent local exchange carriers (ILECs) as access providers) to offer the special retail service to Internet Service Providers (ISPs) that Bell Atlantic proposed in response to our last order in the Investigation Case. In addition, we require Bell Atlantic to provide the same service with a wholesale discount.

II. BACKGROUND

In our Order issued on June 22, 1999 in the Investigation Case, we made factual findings and factual and legal conclusions, all of which we had proposed in prior orders. Those included findings that the service provided by Brooks was interexchange rather than local and that the 54 NXX codes Brooks had acquired outside its Portland area exchange were not being used to provide local service. We also requested comments about a proposal set forth in the Order for a special retail service to be offered by ILECs to ISPs. The proposed service would be an interexchange service, but would provide a substantial discount from existing retail toll rates. Because it would be an interexchange service, it also would provide a more appropriate level of revenue to the ILECs than Bell Atlantic was receiving for the "local" traffic under the interconnection agreement between BA and Brooks.

Following comments that we received on that proposal, the Staff Advisors for the Commission issued an Examiner's Report and Supplemental Examiner's Report. The Examiner's Reports not only addressed the issue of the discounted rate mentioned above, but also recommended that we should order the NANPA to reclaim the 54 NXX codes that have been assigned to Brooks, and that we should disapprove Brooks's tariff filing in Docket No. 99-593 for "RX service."

Several parties filed exceptions and other comments to the Examiner's Reports. We will discuss those within the headings below.

III. RECLAIMING NXX CODES

In the Notice of the Investigation Case, we raised questions about the resolution of this case with respect to Brooks's use of the 54 NXX codes assigned to areas outside its Portland area exchange that Brooks has claimed are being used for local service.

We have made findings and factual legal conclusions about Brooks's service and the use of those codes, but we have not addressed the issue of the disposition of those codes in any detail since the initial Notice.

In the June 22, 1999 Order, we found that Brooks was not providing local exchange service in those locations of the state that are outside of its Portland area exchange, and that it was not using the central office (NXX) codes it had acquired from the North American Numbering Plan Administrator (NANPA) for the purpose of providing local exchange service. We found that Brooks has no local switching facilities or loops deployed in any of the locations outside its Portland area exchange to which the 54 non-Portland codes are nominally assigned. Brooks was instead using the NXX codes for the purpose of providing an interexchange service that it characterized as like foreign exchange ("FX-like").

Brooks's "FX-like" service uses the interoffice trunking of another carrier rather than dedicated facilities provided by Brooks. Brooks created the FX-like service by the expedient of acquiring a group of NXXs from the NANPA and assigning various geographic locations to them that are outside of its Portland area exchange, even though it had no local exchange customers in those locations and all of its local exchange service customers were located in the Portland area exchange. As a result, calls to the numbers assigned to locations outside the Portland area exchange, which in reality were calls to Brooks customers located in the Portland area exchange, were rated (at least by Bell Atlantic) as if they were calls to the assigned locations, e.g., Augusta. If a call originated within the Augusta basic service calling area (BSCA) and was directed to a Brooks number that was assigned to Augusta, Bell Atlantic rated it as a "local" call. Nevertheless, the call would be routed from a Bell Atlantic customer over a local loop owned by Bell Atlantic, through a local switch owned by Bell Atlantic, over trunking owned by Bell Atlantic to Bell Atlantic's access tandem in Portland, then to Brooks's switch in Portland, and finally to a Brooks ISP customer, also located in Portland.

Because Brooks was not using the 54 NXX codes for the provision of local exchange service, we found that it had no need for them, that their use by Brooks could lead to the exhaustion of NXX codes in the 207 area code, and that Brooks's use of those codes was an unreasonable act or practice by Brooks under 35-A M.R.S.A. § 1306.

The Federal Communications Commission (FCC) has delegated "significant additional authority" to this Commission to "take steps to make number utilization more efficient" and authorized the Commission to utilize "tools that may prolong the life of the existing area code." *In the Matter of Maine Public Utilities Commission, Petition for Additional Delegated Authority to Implement Number Conservation Measures*, CC Docket No. 96-98, Order (Sept. 28, 1999) (FCC *Delegation Order*), ¶¶ 5, 8. The FCC stated:

> The CO Code Assignment Guidelines provide that carriers shall activate NXXs within six months of the "initially published effective date." We are, however, concerned that enforcement of the Guidelines has been lax. Reclaiming NXX codes that are not in use may serve to prolong the life of an area code, because these codes are added to the total inventory of assignable NXX codes in the area code. Therefore, we grant authority to the Maine Commission to investigate whether codeholders have activated NXXs assigned to them within the time frames specified in the CO Code Assignment Guidelines, and to direct the NANPA to reclaim NXXs that the Maine Commission determines have not been activated in a timely manner. We also extend this reclamation authority to instances where, contrary to the CO Code Assignment Guidelines and Maine's rules, a carrier obtaining NXX codes has not been certified as a provider of local exchange service or has not established facilities within the certified time frame. This authority necessarily implies that the Maine Commission may request proof from all carriers that NXX codes have been "placed in service" according to the CO Code Assignment Guidelines as well as proof of certification in the specified service area and proof that facilities have been established within the specified time frame. We further direct the NANPA to abide by the Maine Commission's determination to reclaim an NXX code if the Maine Commission is satisfied that the codeholder has not activated the code within the time specified by the CO Code Assignment Guidelines or has obtained numbering resources without being certified to provide local exchange service.

FCC *Delegation Order* at ¶ 19 (footnotes omitted). According to the quoted portions of the *Delegation Order*, this Commission may require the NANPA to reclaim codes when a carrier either is not certified as a provider of local exchange service or fails to establish facilities within the required time period. *Delegation Order* at ¶ 19. The NANPA *CO Code Assignment Guidelines* (*Guidelines*) require carriers to "activate" codes within six months of the "initially published effective date." *Guidelines* at § 6.3.3. The failure to establish facilities is by itself a ground for reclaiming NXX codes. *Delegation Order* at ¶19.

A. Requirements that a Carrier Using NXX Codes Have Local Exchange Authority and Facilities

In its exceptions, Brooks argued that, as long as it had either obtained authority to provide service, or has met the test of establishing facilities, we cannot require the NANPA to reclaim codes assigned to Brooks. According to this argument, Brooks would be permitted to keep all the codes if it were acting contrary to Maine law with respect to authority but had established facilities in a timely way; or it could keep all the codes if it had lawful authority but had built no facilities. Brooks has misread the *Delegation Order*. Under that Order, there are two independent conditions that allow the Maine PUC to require the return of the codes: first, if Brooks has no authority for the

service it provides; and second, regardless of whether or not Brooks has authority, if Brooks has not established facilities within the allowed time.

In fact, Brooks has failed both tests. Brooks has not established facilities for local exchange (or any other kind of) service within the 6-month period required by the NANPA *Guidelines* in the areas outside its Portland area exchange to which the 54 NXX codes are assigned. Brooks has built absolutely no facilities (e.g., loops or switching) for local exchange (or any other kind of service) in those exchanges and has no customers in those exchanges.

Brooks has obtained general statewide authority under 35-A M.R.S.A. § 2102 to provide both local exchange and interexchange service.[1] That does not end the inquiry into whether Brooks has authority to provide service to a specific area, however. The FCC *Delegation Order* states that a carrier must be "certified" to provide local exchange service. We construe that statement, consistent with language in the *Guidelines*, to require that a LEC must obtain all necessary authority to provide the service that requires the use of NXXs. The *Guidelines* § 4.1.4 states that an applicant for an NXX code:

> must be licensed or certified to operate in the area, if required, and must demonstrate that all applicable regulatory authority required to provide the service for which the central office code is required has been obtained.

We have previously found that Brooks does not have the authority under its approved terms and conditions to provide local exchange service in any location in Maine outside its Portland area exchange. Notwithstanding general authority under section 2102, a utility does not have the authority to provide service to an area, unless its approved terms and conditions define those areas as part of its facilities-based local exchange service territory. A utility cannot offer a service without approved terms and conditions "that in any manner affect the rates charged . . . for any service." 35-A M.R.S.A. § 304. Brooks's approved terms and conditions limit the service area in which it will provide local exchange service to its Portland area exchange. Under current policies, consistent with the *Central Office Code Guidelines* and the FCC *Delegation Order*, we will grant authority to provide facilities-based local exchange service only for areas where a LEC can demonstrate that it will be able to provide facilities-based service within six months. Absent that showing, we would not approve a term or

[1]As pointed out by Brooks's exceptions, Brooks does have authority under section 2102 to provide interexchange service. It obtained that authority on September 9, 1997 in Docket No. 97-559.

condition for Brooks to provide facilities-based local exchange service outside its Portland area exchange.[2]

B. Requirement that NXX Codes Be Used For Local Exchange Service

In addition to the two requirements that are specifically stated in the FCC *Delegation Order*, we believe the *Delegation Order* and the *Guidelines* also require that NXX codes must be used for local exchange service rather than interexchange service. In our prior order we found that the "FX-like" service presently provided unlawfully[3] by Brooks is interexchange. In reaching the conclusion in our prior orders that the Brooks "FX-like" service is an interexchange service, and that Brooks is not using the 54 non-Portland NXX codes for local exchange service, we relied primarily on the definitions of local exchange and interexchange services contained in Chapter 280 of the Commission's rules, and on the substantively identical definitions contained in the interconnection agreement between Brooks and Bell Atlantic.

In its exceptions, Brooks suggested that the NANPA *Central Office Assignment Guidelines* do not necessarily require that NXX codes be used only for local exchange service. We disagree. The *Guidelines* state that NXX codes "are assigned to entities for use at a Switching Entity or Point of Interconnection they own or control." *Guidelines* § 3.1 and 4.1. They "are to be assigned only to identify initial *destination addresses* in the public switched network." Guidelines § 3.1 (emphasis added). "Assignment of the initial code(s) will be to the extent required to *terminate* PSTN [public switched telephone network] traffic *as authorized or permitted by the appropriate regulatory or governmental authorities ...* ." Guidelines § 4.1 (emphases added).

The quoted *Guidelines* leave little doubt that NXX codes are to be used only for the purpose of providing facilities-based local exchange service. IXCs generally do not terminate traffic at end-user locations. Except where they use special access (which, because it is dedicated, does not require switching or NXX codes), IXCs hand over their interexchange traffic to a facilities-based local exchange carrier, most often at a tandem switch. The LEC carries the call to a local switch and local loop, and then

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[2]In our recent orders granting authority to provide facilities-based local exchange service, we have restricted the authority to provide service granted at the certification level pursuant to 35-A M.R.S.A. § 2101, rather than at the term and condition level. If Brooks should pursue an argument in any forum that it has the authority to provide facilities-based service throughout Maine solely because of the order granting it authority to provide local exchange service, issued pursuant to Section 2102 in Docket No. 97-331, we will not hesitate to reopen that Order and review whether we should amend it in a manner consistent with other recent orders.

[3]The "unlawfulness" of offering the present service is due to the fact that Brooks is offering the service without approved rate schedules and terms and conditions. As noted above, Brooks does have authority under 35-A M.R.S.A. § 2102 to provide interexchange service.

terminates the call at the called customer, i.e., the destination address. As we found in our prior orders, Brooks is not terminating traffic on "destination addresses" in any of the 54 non-Portland locations.

The conclusion that the *Guidelines* require that NXX codes be used only for local exchange service is supported by the requirement in the FCC *Delegation Order* that an applicant for an NXX code be certified as a provider of "local exchange service."

C. Further Discussion of Prior Finding that the Brooks Service is Interexchange

In finding that Brooks's "FX-like" service was interexchange, not local, we relied in part on Brooks's characterization of the service as being "like" foreign exchange service. Although foreign exchange service has a local component (the "local" service of one exchange is brought to a customer in another exchange, hence the name "foreign"), it is the routing of calls from one exchange to another, between which toll charges otherwise would apply, that makes the service interexchange.[4] Brooks is correct that FX service has attributes of local service, because it brings local service to a remote location, but the primary purpose of FX is as a toll substitute, and we reaffirm our prior finding that FX is an interexchange service.

[4]The interconnection agreement between Brooks and Bell Atlantic does provide definitions of local and interexchange traffic; these definitions apply to the traffic of both Brooks and Bell Atlantic. They are identical to the Commission's definitions in Chapter 280. Under those definitions, we concluded that the traffic that originated from areas outside the Bell Atlantic Portland BSCA, and that terminated in Portland, is interexchange. Bell Atlantic and the other ILECs gather that traffic using their loops and local switches in the various locations outside Brooks's Portland area exchange, and they carry it over interoffice transport facilities to Brooks's only switch, located in Portland. Because the traffic is interexchange, it is subject to the access charge provisions of the Brooks-BA interconnection agreement (for interexchange traffic) rather than the reciprocal compensation provisions (for local traffic).

As explained in our prior orders, the definitions of interexchange traffic in Chapter 280, § 2(G) and the BA-Brooks interconnection agreement expressly depend on toll charges applying; traffic between exchanges that have "local" (EAS or BSCA) calling is not considered interexchange. The BA-Brooks interconnection agreement refers to BA's retail tariff to determine whether a call is local or interexchange.

If any doubt should arise about our interpretation of the Brooks-BA interconnection agreement, we would not hesitate to reconsider our approval of that agreement to ensure that its definitions of local and interexchange traffic would not lead to an exhaustion of scarce public numbering resources.

FX (foreign exchange) service in effect brings the local exchange service of a distant ("foreign") exchange to another exchange. Thus, for example, a customer located in Portland who subscribes to FX service for Augusta will be provided with an Augusta telephone number and may make calls as if the customer were located in Augusta. Calls to locations within the basic service calling area (BSCA) for Augusta will be toll-free. If the customer's Augusta telephone number is provided to callers located in the Augusta BSCA, they may dial that number and be connected, toll-free, to the customer in Portland. For customers (e.g., ISPs) seeking to gather traffic from distant exchanges without the caller incurring a toll charge, this is a particularly valuable feature of FX service. However, for "traditional" FX service, the customer must pay for the cost of the transport facilities (ordinarily dedicated) between Portland and Augusta. Those costs are often substantial. Customers subscribe to FX to avoid paying toll charges, and to allow others to call them without toll charges,[5] but typically they must have substantial toll-calling volume between the two locations to justify the cost of the dedicated transport facilities.

Brooks's exceptions do not profess to relitigate our prior finding that its "FX-like" service is interexchange.[6] Nevertheless, Brooks does cite to us a decision of the California Public Utilities Commission, *Order Instituting Rulemaking on the*

[5]Customers occasionally subscribe to FX service for an exchange that is within the BSCA of the home exchange. Nevertheless, even that FX service normally is for the purpose of avoiding toll charges. For example, a Portland customer might subscribe to FX service for Freeport, which is within the Portland BSCA. Freeport's BSCA includes Brunswick, but Portland's does not. Accordingly, the Portland customer, using the Freeport number, may call toll-free to locations, including Brunswick, that are within the Freeport BSCA; and persons in Brunswick may call toll-free to the customer in Portland by dialing the Freeport number.

[6]On May 1, 2000, AT&T filed a Petition to Intervene, accompanied by comments that purport to address our Order issued on June 22, 1999. When we grant a late petition to intervene, the intervenor is entitled to participate only in issues that are not yet settled and cannot seek to relitigate decided issues. AT&T's comments, however, do primarily argue that Brooks's "FX-like" service is local, notwithstanding the fact that this issue has been fully litigated. Nevertheless, we grant AT&T's petition so that we can address other arguments in its comments.

We cannot let pass, however, AT&T's statement that "ILECs themselves treat calls from their end-user customers to their own foreign exchange customers as local under their retail tariffs." AT&T's statement is nothing more than a description of the "local" component of FX service; it ignores the interexchange component. In any event, the placement of a service in a carrier's tariff is not necessarily determinative of its substantive character. As we found in our prior orders, the very purpose of FX service is as a substitute for toll (interexchange) calling, and FX customers pay substantial amounts in lieu of toll charges. AT&T and Brooks would have us redefine the interexchange component as "local."

Commission's Own Motion Into Competition for Local Exchange Service, Rulemaking 95-04-043; *Order Instituting Investigation on the Commission's Own Motion Into Competition for Local Exchange Service*, Investigation 95-04-044, Decision No. 99-09-029, California Public Utilities Commission, (Sept. 2, 1999) (California PUC *Rulemaking/Investigation Order*) apparently to support its argument that its existing "FX-like" service, and its essentially identical proposed RX service, are "economically efficient" and will avoid "unnecessary duplication" of the incumbent's network. We address those arguments in Part IV below. Brooks also claims, however, that the California PUC designated "foreign exchange service as a local exchange service."

The California Commission addressed a service configuration established by a "competitive local carrier" (CLC) that is identical to the configuration that Brooks established in Maine, with the distinction (probably insignificant in the long run) that the California CLC was using only two NXX codes.

We see nothing in the California PUC decision (particularly in the portion of the order quoted by Brooks) that suggests that FX service as a whole is local rather than interexchange. The California Commission did rule that charges to the *caller* should be rated by virtue of the "location" of the rate center (i.e., the location to which the rate center is assigned) rather than by the rate center of the ultimate destination. Thus, as under the present Brooks configuration in Maine, if the NXX were assigned to an area within the local calling area of the caller, no toll charge would be assessed on the caller. To that extent, the California decision is not necessarily remarkable.[7] If, indeed, a carrier is offering a reasonable and legitimate FX service, the normal expectation is that end users who dial a "local" number will not be charged toll charges for those calls, even though those calls are routed to a place to which toll charges normally apply. Another normal expectation, however, is that the FX subscriber (the customer that causes the call to go to the remote exchange) pays rates for that transport service that take into account the lost toll revenue.

The California PUC did not ignore the interexchange component of the service. It addressed this component as a compensation issue, stating:

> We conclude that, whatever method is used to provide a local presence in a foreign exchange, a carrier may not avoid responsibility for negotiating reasonable interexchange intercarrier compensation for the routing of calls from the foreign exchange merely by redefining the rating designation from toll to local.

[7] What is remarkable about the California decision, however, is the fact that such a substantial portion of the order addressed the issue of how calls made by end-users should be rated. The California approach would be paralleled here if our investigation concentrated primarily on the fact that some of the independent ILECs in Maine have rated the calls to the 54 non-Portland codes as toll calls to Portland.

> The provision of a local presence using an NXX prefix rated from a foreign exchange may avoid the need for separate dedicated facilities, but does not eliminate the obligations of other carriers to physically route the call so that it reaches its proper destination. A carrier should not be allowed to benefit from the use of other carriers' networks for routing calls to ISPs while avoiding payment of reasonable compensation for the use of those facilities.

Cal. Order at 32.

And:

> We conclude that all carriers are entitled to be fairly compensated for the use of their facilities and related functions performed to deliver calls to their destination, irrespective of how a call is rated based on its NXX prefix. Thus, it is the actual routing points of the call, the volume of traffic, the location of the point of interconnection, and the terms of the interconnection agreement – not the rating point – of a call which properly forms a basis for considering what compensation between carriers may be due.

Cal. Order at 36.

The California PUC never labeled the California CLC's "FX-like" service as wholly local or interexchange.[8] Brooks's claim that the California PUC found the service to be local exchange service is incorrect.

While the comparison of Brooks's "FX-like" service to traditional FX service has some parallels, we find that an even better comparison is to 800 service. Unlike "traditional" FX service, the Brooks service does not use any dedicated lines. Instead, as in the case of 800 service, Brooks's "FX-like" calls are placed to a "toll-free" number and routed over trunking facilities to a distant location that normally incurs a toll charge. It is beyond argument that 800 service is interexchange and that the charges paid for 800 service are charges for an interexchange service, paid instead of regular toll charges.[9] As discussed in more detail below, in connection with our rejection of

[8]Based on its discussion about the considerations to be addressed in determining proper compensation, it is arguable that the California PUC considers FX service to be neither local nor interexchange, but *sui generis*.

[9]The California *Rulemaking/Investigation Order* recognized that, in addition to FX service, "another traditional method to provide toll-free calling is '800' service," and that if the California CLC had provided 800 service, it would have to pay "intercarrier switched access charges."

Brooks's proposed RX service, there is nothing preventing Brooks from providing a true 800 service, aside from its apparent unwillingness to pay for it.

We also doubt that Brooks has any real interest in retaining the 54 non-Portland NXX codes for any technical or engineering reason, or for any reason beyond the economic advantage that the codes provided, since 800 or some equivalent service would provide the same or better toll-free access to ISP customers. A toll-free service that uses trunking facilities rather than dedicated facilities can be provided efficiently (from an engineering perspective) using either the Brooks "FX-like" configuration or an "800-like" configuration. The significant difference between the two methods is the vastly greater number of NXX codes used in the Brooks configuration. We suspect that the real difference to Brooks between those two alternatives is that, by continuing to argue that it should be permitted to use 54 NXX codes to provide its service, on the ground that the "FX-like" service is "local exchange service," it may hold onto its hope that it might avoid paying Bell Atlantic for the interexchange transport service provided by Bell Atlantic. By contrast, under an 800-like service, it would be clear without any doubt that Brooks would have to pay the legitimate interexchange costs of long-distance transport, either by using (and paying access charges for) the facilities of another carrier or by paying for the costs of providing its own facilities.

The record makes clear that Brooks's "FX-like" service is being used by Brooks's ISP customers for the purpose of allowing the ISPs' customers who are outside Portland (and who are customers of Bell Atlantic or other ILECs rather than of Brooks) to call the ISPs from locations throughout the state without paying toll charges. It has exactly the same purpose as "traditional" FX service: it is a substitute for interexchange toll service. Alternatively, it is a variant on "800" service, which is a recognized interexchange service. We therefore reaffirm our finding that Brooks's "FX-like" service is an interexchange service, not a local exchange service.

D. *Conclusion to Part III: Reclaiming NXX Codes*

In this Order, pursuant to our authority under the FCC Delegation Order, we order the NANPA to reclaim the 54 non-Portland NXX codes assigned to Brooks, pursuant to the schedule described in Part V below. Brooks is not using those codes for purposes that are consistent with the NANPA *Guidelines* or the requirements of the FCC *Delegation Order*. It does not have the authority from this Commission to provide local exchange service to anywhere in Maine outside its Portland area exchange (the municipalities of Portland, South Portland and Westbrook); it has no loop, switching or other facilities in, or local exchange service to, those areas; and the "FX-like" service that it is providing with the use of the 54 non-Portland NXX codes is an interexchange service.

With regard to the procedure that we must use to order NANPA to reclaim NXX codes, the FCC stated:

> We note that the CO Code Assignment Guidelines dictate substantial procedural hurdles prior to reclamation of an unused NXX, in part to afford the codeholder an opportunity to explain circumstances that may have led to a delay in code activation... . We clarify that the Maine Commission need not follow the reclamation procedures set forth in the CO Code Assignment Guidelines relating to referring the issue to the Industry Numbering Committee (INC) as long as the Maine Commission accords the codeholders an opportunity to explain extenuating circumstances, if any, behind the unactivated NXX codes.

FCC *Delegation Order* at ¶ 20 (footnote omitted).

Brooks has had an ample opportunity in this proceeding to contest the findings and rulings we have made previously, and in this Order. Our findings fully support an order to the NANPA to reclaim the unused Brooks codes.

In Part VI below we address a service, to be furnished by the ILECs (and other carriers who wish to provide it), that will provide a reasonable substitute for the Brooks service, so that ISPs and their customers may continue to have affordable access to the Internet. We expect that it will take some time to implement that service, and we do not want to disrupt service to either ISPs that subscribe to the Brooks service or their customers. We therefore will delay the effective date of reclamation for a period of six months after the date of this Order so that Bell Atlantic and other ILECs will have sufficient time to establish the services and rates described in Part VI, and so that ISPs (and IXCs on a wholesale basis) will have a reasonable opportunity to subscribe to those services.

IV. CLAIMS BY BROOKS AND OTHER PARTIES THAT THE COMMISSION'S RULINGS IMPEDE COMPETITION AND EFFICIENCY

Brooks and others make an argument suggesting that the Commission's findings and rulings, and the rulings proposed in the Examiner's Report (that we now adopt), will impede local competition in Maine. In our view, the activities of Brooks that we have investigated in this case have nothing to do with local competition. Brooks's service does not create any local exchange service or competition whatsoever outside the Portland area exchange, which is the only exchange in which Brooks has any local exchange customers. The amount of local exchange competition created by Brooks's "FX-like" service is precisely the same as the amount of local exchange competition created by WorldCom's 800 service offerings in Maine's remote regions, i.e., none. Brooks has not built any local exchange facilities in the exchanges outside of Portland, and Brooks has no customers in those exchanges. Brooks has no contact with the callers in those exchanges who use Brooks's service to call the ISPs and has no idea who is "using" the service. The callers are in fact customers of Bell Atlantic, of the independent ILECs, and possibly of other CLECs. There is nothing that Brooks is providing in any of those non-Portland exchanges that resembles local competition in

any meaningful sense of the word, a fact borne out eloquently by all of the activities Brooks is not doing.

Contrary to what Brooks, AT&T and some others have implied, this Commission has been extremely receptive to, and supportive of competition for all facets of telephone service. On the interexchange side, the Commission has acted vigorously to reduce access rates everywhere in Maine, all to the advantage of vigorous interexchange competition. With respect to local competition, we have recently allowed, over the ILECs' objection, a trial of facilities-based local competition using Internet Protocol (IP) to go forward with virtually no regulatory intervention.[10]

The comments and exceptions filed by Brooks, as well as those by AT&T, also suggest that the Commission is constraining competition by placing restrictions on Brooks and other competitors in the way they define their local calling areas. Specifically, Brooks suggests the Commission is requiring it to be bound by the definitions used by incumbent local exchanged carriers (ILECs), and that such restrictions on competitive LECs are not appropriate in a competitive marketplace. On the contrary, we have not restricted Brooks or any other CLECs from how they define their own retail local calling areas or from the retail rates they want to charge. Brooks is free to offer calling areas of its own design so long as, when it uses the facilities of others to accomplish that end, it pays for those facilities on the basis of how their owners define them for wholesale purposes (interexchange or local). Wireless carriers already offer calling areas vastly different from those offered by wireline carriers, but have built (or leased) facilities that enable them to provide such calling areas.

With its "FX-like" service, however, Brooks is not attempting to define its own calling area. In the areas to which the 54 non-Portland Brooks NXX codes are assigned, Brooks is not offering a different calling area from those offered by the LECs. Its "FX-like" service is not a "local calling area" for Brooks's customers (who are all in Portland) or for anyone else. What Brooks is doing in the non-Portland locations is offering free interexchange calling to customers of *other* LECs that allows them to call a selected number of Brooks customers (ISPs) located in Portland. Brooks is in effect attempting to redefine the local calling areas of *other* LECs. If Brooks had any of its *own* customers served by its own facilities (either by building them itself or by purchasing UNEs), in one of the locations outside of Portland, e.g., Augusta, and offered those customers the ability to call *all* customers in Portland without toll charges, then it could be said that Brooks offered a local calling area in Augusta and, in particular, that its local calling area differed from the ILEC's local calling area. With its own customers in any area, Brooks would be free to delineate whatever "calling area" it wants for those customers, subject to the condition that if such a call is carried over the facilities of another carrier, it must compensate that carrier for the use of its facilities. However, Brooks has no authority to provide local exchange service and no facilities or

[10] *See Time Warner Cable of Maine, Request for Advisory Ruling Regarding Pilot Program,* Docket No. 2000-285, Advisory Ruling (Apr. 7, 2000).

customers in locations outside of Portland, and therefore cannot and does not have "local calling areas" in those places.

As discussed above, what Brooks is attempting to do is offer free incoming long distance *interexchange* service to customers of ILECs who are outside Portland and who want to call Brooks's customers in Portland. Although that goal should not be confused with the offering of a local calling area, we have no objection to the goal itself. Our objections are to the use of 54 NXX codes to accomplish that end, when reasonable alternatives exist; and to the notion that Brooks is somehow entitled to use the facilities of someone else, for free, to accomplish that goal. When a carrier uses facilities of others, it cannot unilaterally redefine wholesale arrangements between itself and the carriers that actually carry its traffic simply by declaring that its calls are "local" if that recharacterization is to its financial advantage. A carrier's retail definitions of local and interexchange do not govern whether it pays local or interexchange wholesale rates to other carriers that carry its traffic.

Brooks also suggests that we are deterring it from deploying a more efficient means of providing foreign exchange service, stating that its service is "an efficient functional equivalent to the *local* service provided by the incumbent BA-ME" (emphasis added). The claim is extravagant. Brooks is not offering an equivalent to local service, i.e., an ability to call all customers within a local calling area. At best, it is offering an "efficient functional equivalent" to Bell Atlantic's foreign exchange service. If the need to conserve NXX codes were not a concern, Brooks's claim that a trunking-based FX system is more economical than a system that uses private lines might have merit.[11] However, 800 service also uses trunking rather than dedicated lines between exchanges and provides the same level of efficiency as the Brooks "FX-like" configuration, but does not require any NXX codes.[12] Brooks's approach may be "innovative," but its claim that our orders "discourage the use of new technologies," and

[11]The use of trunking facilities, which are shared by all users, is typically more cost-efficient than the use of facilities that are dedicated solely to the use of a single customer. On the other hand, at least for some customers, foreign exchange service that uses private lines that are dedicated solely to the use of that customer are likely to be more reliable because blocking either of trunking circuits or switching, caused by high traffic volumes, is less likely to occur. Emergency 911 and alarm services typically use dedicated circuits to reach remote exchanges.

[12]The California *Rulemaking-Investigation Order* suggests that in the absence of allowing California CLCs the option of using NXX codes for the purpose of providing an "innovative" FX service, CLCs would be required to place switching in every location in which they wished to have a local presence. It does not appear that the California PUC considered 800 service as a reasonable alternative to the NXX-code-based FX service. If one of Brooks's customers in Portland subscribed to an 800 service (provided by Brooks or any other carrier), it would not be necessary for Brooks (or one of the California CLCs in a parallel situation) to place switching in remote exchanges. With 800 service, a local customer in Augusta who was served by a LEC other than Brooks

its suggestion that it should not be saddled with the configuration of the ILECs' network, is disingenuous. Brooks is quite willing to use that network to reach the Brooks switch in Portland, but does not want to pay for its use.

V. REJECTION OF BROOKS'S PROPOSED RX SERVICE

In Docket No. 99-593, Brooks filed proposed terms, conditions and rates schedules for it to provide "Regional Exchange (RX) service." We disapprove the filing because we find the proposed service is not just and reasonable and because Brooks cannot provide the service without the 54 non-Portland NXX codes, which are not available to it for this service.

Pursuant to the provisions of Chapter 110, § 1003(b) of the Commission's rules, we issued a summary Part I Order on May 26, 2000 for this docket stating our conclusions. Part V of this Order constitutes Part 2 of the Order for Docket No. 99-593.[13]

The proposed service would use 54 (or more) NXX codes solely for the purpose of rating calls, so that calls from various locations throughout the State that terminate in Portland would be rated as local (non-toll). While it is a legitimate goal for a carrier to provide toll-free interexchange calling, there are reasonable alternatives to the service proposed by Brooks that do not needlessly use scarce NXX codes. One of those is traditional 800 service; another is the 800-like service we have ordered the ILECs to provide. Neither of these uses any NXX codes within the 207 area code. Nothing prevents Brooks, as an interexchange carrier, from providing an 800-like service itself. Nothing prevents it from buying such a service from another carrier, for example, its parent WorldCom. Under the present circumstances, where we are attempting to avoid the need for an additional area code in Maine, and where other services are available that are technologically equivalent, Brooks's use of 54 codes solely for the rating of interexchange traffic is unreasonable.

No service (even if there were appropriate compensation to the carrier actually providing the interexchange transport) justifies the extravagant use of NXX codes and 7-digit numbers within those NXXs proposed by Brooks. It would take only two or three

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(e.g., Bell Atlantic) would dial an 800 number. That number would be switched by a switch owned by the LEC providing service in Augusta and then routed to Brooks's customer in Portland. Brooks would need switching only in Portland.

[13]On June 2, 2000, the Examiner, pursuant to Chapter 110, §§ 103 and 1302, issued a Procedural Order that stated good cause for suspending the 5-day deadline for the issuance of the Part 2 Order.

The Part I Order in Docket No. 99-593, as well as the Procedural Order, incorrectly identify the date of deliberations as May 16, 2000. The correct date was May 9, 2000.

more Brooks-like arrangements, each with one ISP customer, to completely exhaust Maine's numbering resources. Brooks proposes to use numbers at the rate of 550,000 for ten customers (equivalent to a "fill" rate of under two one thousandths of one percent). Brooks also suggests that "in a pooling environment, Brooks's . . . use of limited NXXs cannot be said to encourage exhaustion." "Pooling" is the allocation of 1000 numbers within an NXX, which contains 10,000 numbers. Although pooling, which will occur soon, provides sufficient flexibility to allow us to delay the return of the particular codes that Brooks is not using for local exchange service for six months, its suggestion is not persuasive. A use rate of ten in 55,000 is not that much better than ten in 550,000. It is also likely that in a majority of the locations to which the Brooks codes have been assigned, there will not be any competitive LEC service in the near future. If there are no other CLECs to use some or all of the other 9000 numbers, assigning Brooks 1000 numbers out of 10,000 effectively ties up all of the 10,000 numbers in an NXX and would prevent the NXX from being used more effectively in a different location. Moreover, if in exchange where only Brooks was assigned a 1000 block of numbers, it were to use only 10 numbers, the use rate is still only ten in 550,000.

Brooks's proposed service (like the identical "FX-like" service it is presently offering without authority) also *depends* on the use of the 54 non-Portland NXX codes; it cannot offer the service without them. Those codes are not available to Brooks for the proposed service any more than they are for its present "FX-like" service. The reasons given in Part III, in support of our ruling that Brooks could not use the codes for the present service, apply with equal force here. Brooks does not meet any of the requirements of the FCC *Delegation Order* and the NANPA *Guidelines*. It does not have authority to provide local exchange service in any of the 54 non-Portland areas, and it has no facilities in those locations for the provision of local exchange service. In addition, the proposed service is an interexchange service rather than a local exchange service, and NXX codes may be used only for local exchange service.

Brooks argues that we should follow the reasoning of the California PUC *Rulemaking-Investigation Order* in order to allow it to use the codes for the purpose of providing the FX-like/RX service. We decline to do so for three reasons. First, the California PUC did not even consider the important questions of whether a carrier using an NXX must provide local exchange service to the place where the code is assigned, whether it must have local exchange facilities, or whether NXX codes may be used for interexchange services. It did not discuss the NANPA Guidelines or the contents of the delegation order that the FCC has issued to the California PUC granting it certain authority over the use and assignment of NXX codes.[14]

[14]As discussed above in Part III, the California PUC did not even clearly rule that the service being offered by its CLCs – virtually identical to the service offered by Brooks in Maine – was a local exchange service.

Second, even if the California PUC could lawfully allow CLCs in California to use NXX codes for a service like Brooks's service in Maine, it is apparent, as a policy choice, that the California PUC has placed a higher value on the ability of its CLCs to offer the FX-like service based on the use of NXX codes than on the conservation of those codes. It stated:

> We disagree with Pacific's claim that the Pac-West service arrangement should be prohibited because it contributes to the inefficient use of NXX number resources. While we are acutely aware of the statewide numbering crisis and are actively taking steps to address it, we do not believe that imposing restrictions or prohibitions on CLC service options is a proper solution to promote more efficient number utilization.

We disagree. While the California PUC sees no reason to "impos[e] restrictions or prohibitions on CLC service offerings," we see no reason why a carrier should be permitted to use scarce NXX codes for gathering interexchange traffic when there are technologically efficient methods (e.g., 800 service) to accomplish the same end, without using NXX codes.[15] The California PUC did not address whether an 800 service configuration would be a reasonable alternative for using codes for a non-dedicated FX-like arrangement.[16]

Third, and perhaps most significant, it appears that the California CLCs may actually have been offering true local exchange service (in addition to the NXX-code-based "FX-like" service) in the locations to which the NXX codes had been assigned. The California Commission stated:

> Moreover, there is no reason to conclude necessarily that a carrier will use any NXX code only to provide service to ISPs which are located outside of the assigned NXX rate center. For example, both Pac-West and WorldCom report they are actively pursuing numerous opportunities to provide profitable telecommunications services throughout their service areas. Their current subscribers include paging companies that have a significant demand for local DID

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[15]The NANPA reports that California presently has 25 area codes. 12 of which codes are in "jeopardy" and 11 of those 12 are subject to "extraordinary measures," i.e., rationing. Number Assignments; NPAs in Jeopardy (visited June 20, 2000) http://www.nanpa.com

[16]Given the California PUC's statements that the CLCs should pay ILECs that transport the call more than nothing for that transport, but should also not pay switched access rates, it should make little difference to the California CLCs whether they offer an NXX-code-based FX service based on the use of NXX codes or an 800 service.

> numbers, which they, in turn, assign to local end users who typically *are* physically located in the assigned rate centers. (emphasis in original) Customers also include banks, retail stores, and other businesses, both located *inside* and outside the assigned rate centers. (emphasis added)

California PUC *Rulemaking/Investigation Order* at 16-17.

While that reason appears to be little more than "make-weight" to the California PUC, we would consider such service to be highly significant. If Brooks actually offered local exchange service to customers located in any of the areas to which the 54 non-Portland codes have been assigned (on other than a sham basis), it would have a legitimate claim to retain the codes.

For the foregoing reasons, we disapprove the proposed terms, conditions and rates proposed by Brooks in Docket No. 99-593. Brooks is, of course, presently providing the very service it has proposed in the tariff filing, but without authority. We will require Brooks to terminate the present unauthorized service on the date that the NANPA reclaims the NXX codes assigned to Brooks that are located outside the Brooks Portland area exchange. We will, however, delay the effective date of our orders to the NANPA for a period of six months and will permit Brooks temporarily to continue to offer the present service to its currently existing customers during that period. As stated in the Part I Order in Docket No. 99-593, Brooks must file a tariff for this grandfathered service, or special contracts with the existing customers.

VI. ILEC SNS/PRI ("500") SERVICE FOR ISPs AND IXCs THAT SERVE ISPs

A. Service Description and Requirement; Rates

In the June 22 Order, we proposed that Bell Atlantic and all other ILECs (the independent telephone companies or ITCs), in their roles as providers of interexchange service in Maine, offer a special service and retail rate for ISPs that would represent a substantial discount from existing retail toll rates. The service would also provide Bell Atlantic and the other ILECs with a more appropriate level of revenue than the amounts BA-ME has "received" as "local" reciprocal compensation (which actually are payments by BA to Brooks) under Brooks's interpretation of the interconnection agreement between Brooks and Bell Atlantic. We also proposed that the service be available on a wholesale basis to other IXCs.

There are two purposes to this service: to provide affordable statewide access to the Internet and to provide an appropriate level of compensation to interexchange carriers that actually carry the traffic and to LECs that originate and terminate the traffic. Those carriers include Bell Atlantic, other ILECs that provide interexchange service or interexchange access service, and any other IXCs that might offer similar special ISP service on their own. At present, Brooks is providing affordable access, but it is needlessly wasting 54 NXX codes to provide the service and is not

properly compensating Bell Atlantic and other ILECs for the use of their interexchange facilities. We have found Brooks's service to be unreasonable and unlawful. Brooks's service also has not been available statewide on a toll-free basis. Most ITCs have rated the traffic to the Brooks NXXs that are nominally assigned to areas outside Portland as toll, because the traffic actually terminates in Portland rather than in the nominally assigned locations, and at least two have blocked the traffic.

We note that some of the discussion below refers only to Bell Atlantic. Some refers to ILECs generally or to Bell Atlantic and other ILECs. For example, where we discuss present impacts of Brooks's service, we usually refer only to Bell Atlantic. Bell Atlantic has been the primary carrier of the traffic generated by the Brooks service. Bell Atlantic also has an interconnection agreement with Brooks, and, at least until we found that the traffic was interexchange, Bell Atlantic paid Brooks reciprocal compensation for the "local" traffic that Bell Atlantic carried over its toll network. By contrast, the other ILECs (ITCs) do not have interconnection agreements with Brooks. Most ITCs have rated the traffic to the Brooks 54 NXXs assigned to areas outside Portland as toll, with the result that there is relatively little traffic originating in ITC exchanges that terminates at Brooks's ISP customers in Portland. In addition, as explained below, Bell Atlantic will be providing the retail service and the other ILECs will be providing access service. We fully intend, however, that all ILECs will participate in providing the service, that the service will be available statewide on a toll-free basis to end-users who are customers of ISPs, and that there be reasonable compensation arrangements among Bell Atlantic, other ILECs and any other participants.

We proposed a special rate for two reasons. Both of these are related to our findings that the ISP traffic carried by Brooks (only from its switch to its ISP customers) is interexchange rather than local in nature; and that Bell Atlantic and other ILECs actually carried the traffic over their transport facilities from locations outside the Portland calling area to Brooks's Portland switch. First, we want to ensure that Internet subscribers are able to continue to subscribe to the Internet at reasonable rates, consistent with the Legislature's mandate of "affordable" Internet access in 35-A M.R.S.A. § 7101(4), even though the traffic at issue in this case is interexchange rather than local. Second, we intend that the rate will fairly compensate Bell Atlantic and other ILECs that will be carrying or providing access for this interexchange traffic. We proposed that the service would be toll-free to end-users, much like an 800 service, and that it would avoid the need to use NXX codes within the 207 area code, again much like an 800 service, which uses no 207 NXX codes.

In its comments of July 14, 1999, Bell Atlantic proposed a service (labeled Single Number Service/Hubbed Primary Rate ISDN, or SNS/PRI) essentially identical to that proposed by the Commission, except for price.[17] As under the Commission's proposal, the SNS/PRI service would use numbers that would be toll-free to end-user

[17]The SNS/PRI service configuration uses advanced intelligent network (AIN) database capability and is therefore technically superior to circuit-switched 800 service.

customers. Each ISP could be assigned one (or more) 7-digit number within the "500" prefix.[18] There would be no need to use any NXX codes within the 207 area code.[19]

The SNS/PRI service is an interexchange service, and the rate is an interexchange rate, for traffic that the Commission has found is interexchange. It is also a *retail* service offered to ISPs. The rate to ISPs will be flat. There will be no usage component (per-minute or otherwise). The subscribers to the rate will be ISPs, not individual customers of ISPs. The service is an *inward* (called party pays) service; ISP customers would be able to call the "500" numbers without paying toll charges.

Under recent changes to the interexchange relationship between Bell Atlantic and the other ILECs (ITC), Bell Atlantic provides retail interexchange toll services to ITC customers in the local service territories of all of the ITCs, except one.[20] The ITCs provide access service to Bell Atlantic and other IXCs. The IXCs pay access charges according to rate schedules on file with the Commission. Pursuant to contract, the ITCs also bill their local exchange customers for Bell Atlantic's retail toll service, and turn over that retail revenue to Bell Atlantic. Unlike the other ITCs, Saco River Telegraph and Telephone Company provides its own interexchange service to its local exchange customers and pays Bell Atlantic and other ITCs to terminate its traffic.

Some questions have been raised about the participation of the independent ILECs, specifically about "concurrence" by those companies in Bell Atlantic's interexchange rate schedules. Historically, the independent telephone companies (ITCs) have concurred in those schedules. Under that concurrence (and the now abandoned settlements process), Bell Atlantic and the ITCs provided interexchange services jointly. Although some ITCs may still "concur," we view concurrence, or the lack thereof, as irrelevant under the present arrangement between Bell Atlantic and the ITCs, where Bell Atlantic provides interexchange service to retail customers located in ITC local service territories and the ITCs provide interexchange access services to Bell Atlantic.

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[18]Brooks's exceptions claim that Bell Atlantic cannot use "500" numbers for the proposed service. If Brooks is correct, we expect Bell Atlantic to obtain another prefix that it may use for the service.

[19]Great Works Internet (GWI), a customer of Brooks, states, somewhat misleadingly, that the proposed SNS/PRI service would require "20,000 internet users to change their numbers." The service would not require any of these users to change their home or business telephone numbers. They would only have to change the number that they dial to access internet service. The vast majority of these users would have to make a one-time change to the number in their computer software that provides access to the Internet. That software automatically dials the number.

[20]Other IXCs, such as AT&T, Spring and WorldCom, also provide interexchange service to local service customers of ITCs.

In response to a set of questions filed by the ITCs, Bell Atlantic stated that the ITCs will offer the SNS/PRI services only if they specifically concur or independently establish their own rate schedules for these services and agree upon compensation with Bell Atlantic. Bell Atlantic also stated that the tariff it is preparing will not include provisions "for the exchange of traffic for this service between BA-ME and the ITCs, in either the originating (i.e., ITC originated to BA-ME's ISP terminating subscriber) or terminating (i.e., BA-ME originated to ITC's terminating ISP subscriber) direction."

Consistent with the description above concerning toll services generally, we will require Bell Atlantic to offer the retail SNS/PRI service to ISP customers located in ITC local exchange service areas, and to allow customers of ITCs to call ISPs located in Bell Atlantic local exchange territory.[21] We also will require the ITCs to provide access service to Bell Atlantic and other IXCs. Rate schedule concurrence is not necessary. ITCs will also provide (sometimes jointly with Bell Atlantic) any necessary dedicated facilities (local distribution channels) to ISPs located in their territory. In response to the question asked by the Telephone Association of Maine (TAM) in its exceptions, concerning whether we are requiring BA to offer "toll plans statewide," including areas served by ITCs, the answer for the SNS/PRI service is yes.

B. Retail Pricing

BA proposed rates that would be "non-usage sensitive and non-distance sensitive and will probably fall in the range of $500-$600 per month, per SNS/PRI facility." In its March 24, 2000 filing, it stated that the rate for such a facility would be "approximately $500." A retail ISP subscriber must obtain a minimum of two SNS/PRI facilities, one in each of the two "sector hubs" for the service, located in Portland and one in Bangor. In addition, an ISP would need "appropriately sized Local Distribution Channels to connect the ISP's location to a single interconnection point on BA-ME's network," at flat-rated prices equal to special access prices, which are distance sensitive.

Bell Atlantic characterized these rates as "affordable" (the statutory standard) rather than based on a possible pricing standard mentioned in the Commission's Order, long run marginal cost.

No party objected to BA's proposed pricing for the retail service, either in earlier comments or in exceptions. The earlier comments filed by Brooks claimed that the proposed Bell Atlantic retail rate would not allow Brooks to "compete." Brooks did not state the reason for this claim, beyond the further conclusory statement that the proposed rate includes a "discriminatory rate structure that will make this service

[21] In the case of 800 service, 800 service customers located in BA-ME territory are able to receive calls from *all* locations in Maine including calls originated by ITC end-users. A BA-ME 800 service customer does not have to subscribe to an ITC service to receive those calls from end-users whose exchange service is provided by an ITC. We expect the same to be true with this SNS/PRI (500) service.

uneconomical for CLECs [sic] to provide."[22] Nothing precludes Brooks from offering a similar retail service using its own facilities and ILEC access services or through resale of the Bell Atlantic service. As proposed in the Commission's June 22, 1999 Order and in Bell Atlantic's proposal, the retail rate would be available at a wholesale discount so that other IXCs would be able to resell it. Bell Atlantic states that the discount in Maine is presently 18-20%.

The rate proposed for this service by Bell Atlantic is acceptable. It represents a substantial discount from the toll rates for the calling volumes directed to ISPs. It satisfies the criterion of 35-A M.R.S.A. § 7101(4), which requires "affordable access" to computer-based information services. Although not required to do so, competitive IXCs may also offer a similar service. In order to facilitate such offerings by IXCs, Bell Atlantic shall also offer a discounted wholesale rate as required by 47 U.S.C. § 251(c)(4). That requirement applies to "any telecommunications service that the carrier [any ILEC] provides at retail to subscribers who are not telecommunications carriers." The requirement does not make any distinction between local exchange and interexchange service. The amount of the discount represents billing and other costs that the ILECs avoid by providing the service on a wholesale basis to IXCs rather than on a retail basis to ISPs.

The Examiner's Report proposed to require Bell Atlantic to provide an additional rate for wholesale customers (IXCs) that would equal the wholesale rate described above, but that would be broken down into separate components of switching, transport and a remaining "common line" amount, similar to the current structure for access rates. The Examiner and advisors apparently believed that a carrier providing service to an ISP could use its own switching, for example, and purchase only transport and the common line component from Bell Atlantic or other ILECs, thereby avoiding the ILEC switching charge. According to Bell Atlantic's exceptions, that assumption is not correct:

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[22]Because the service is interexchange, Brooks's statement quoted above should be read as applying to the ability of *IXCs* to provide the service.

Brooks's exceptions provide a little more specificity to its objection. We discuss that objection below.

> SNS/PRI uses select network facilities to extend a wide-area calling area to an ISP's end users from the PRI hub locations. This investment includes hub switching, direct interoffice transport (where available), Advanced Intelligent Network (AIN) database capability and dedicated terminating facilities to the ISP end user. All of these network components must be in place to efficiently route calls under the SNS/PRI service.
>
> As a consequence, a competing carrier wishing to provide a service comparable to SNS/PRI on a facilities basis cannot own only a terminating switch, as the Examiner apparently envisions. Instead, a competing facilities-based provider must obtain all of the foregoing network facilities which enable BA-ME to provide SNS/PRI. There is no way for BA-ME to "break down" its retail service architecture into a wholesale access rate structure, as the switched access rate categories of common line, switching, and transport do not correspond to the investment in SNS/PRI-related facilities.

Brooks made a similar argument, claiming in effect that the "bundled" service "excludes" competition for what it refers to as the "local service component," i.e., the local distribution channel. Brooks apparently views the "local distribution channel" as a "local component" in part because of its name and its location in Bell Atlantic's tariff. A "local distribution channel" is a facility that runs between a switching facility and a customer. Such a facility is dedicated to that customer's exclusive use and, depending on purpose, may also be called a "local loop" or "special access." The facility, whatever it is called, is capable of carrying both interexchange and local traffic. The service that Bell Atlantic's and the ITCs will offer is an integrated interexchange service that carries interexchange traffic. Brooks apparently agrees with Bell Atlantic's claim that the service is an integrated one and cannot feasibly be broken down into components. Accordingly, we will not require Bell Atlantic and the ILECs to offer services consisting of the three components individually as suggested by the Examiner's Report.

Brooks, in its earlier comments, also complained that if the Commission ordered the proposed service, it would not be permitted to collect anything for traffic that originates on another carrier's network and that terminates at Brooks's facilities. The problem for Brooks is not whether it may collect compensation for terminating traffic, but whether there will be any terminating traffic, once its present unauthorized "FX-like" service ceases. The Bell Atlantic-ILEC SNS-PRI service will be provided directly to ISPs that subscribe to the service. That traffic will be carried directly to a subscribing ISP by Bell Atlantic (and, if the ISP is located in ITC territory, locally by the ITC). Unless Brooks (as an IXC) establishes a competing similar interexchange service, which it is

obviously free to do, none of the present "FX-like" traffic will terminate on Brooks's facilities. The question of compensation for nonexistent traffic is therefore academic.[23]

C. Compensation Among ILECs

Many, and perhaps most, ISPs are located in Bell Atlantic territory.[24] Under the SNS/PRI service, if an end user who is located in independent telephone company (ITC) territory places a 500-NXX-XXXX call to one of the ISPs located in BA territory, the ITC is entitled a "terminating" access payment from Bell Atlantic.[25] Conversely, when an ISP is located in ITC territory, and a Bell Atlantic customer dials a 500 number assigned to that ISP, the ITC is entitled to an "originating" access payments. In its Response, Bell Atlantic stated that because the SNS/PRI service was heavily discounted, it would not pay the ITCs their standard access rates. Bell Atlantic stated:

> [T]he proposed tariff does not cover the terms and conditions for the exchange of traffic for this service between BA-ME and the ITCs, in either the originating (i.e., ITC originated to BA-ME's ISP terminating subscriber) or terminating (i.e., BA-ME originated to ITC's terminating ISP subscriber) *direction. The specific terms and conditions for the* exchange of this traffic would have to be negotiated in arrangements between BA-ME and the ITCs because existing agreements for the exchange of toll and local traffic between BA-ME and the ITCs do not cover the special class of traffic created by the Commission in this docket and served by this new SNS/PRI offering.

It also stated:

> An ITC would need to determine for itself whether it desired to offer this service to its subscribers by concurring

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[23]Even if Brooks were somehow able to retain the ISP customers (other than in a resale capacity), so that it still had terminating traffic, the traffic would be interexchange, not local. The BA-Brooks interconnection agreement requires that regular access charges apply to interexchange traffic. BA would not pay reciprocal compensation to Brooks.

[24]At the time the Commission made its factual findings in the Order issued on June 22, 1999, all of the ISPs that are customers of Brooks were located in Portland. Bell Atlantic is the ILEC that serves Portland.

[25]As in the case of 800 service, because it is an inward service (the called party pays), "originating" and "terminating" access designations are reversed.

> in BA-ME's filed tariff terms and conditions.[26] The terms and conditions (including cost recovery) for the exchange of traffic originating or terminating on an ITC's network would need to be negotiated between BA-ME and the ITCs, most likely on the basis of an equitable division of the retail rate permitted by the Commission to be charged to the ISP subscriber.
>
> The origination of a call by an ITC subscriber to a BA-ME "500" or "555" ISP subscriber is not traditional access service by the ITC because the Commission has determined that BA-ME's provision of the interoffice transport and delivery of this traffic is not to be considered or rated as traditional toll service. The Commission, in this docket, has created an entirely separate class of service for Internet-bound traffic only.

The Telephone Association of Maine (TAM) strongly urges us in its exceptions to address the matter of inter-company compensation. The Examiner's Report had suggested that under 35-A M.R.S.A. § 7901 jurisdiction over inter-company compensation issues may be limited to occasions where the companies cannot agree. Subsection 2 of section 7901 does indeed address dispute resolution. Subsection 1, however, makes clear that the Commission has direct jurisdiction over "rates, tolls or charges" for the "transfer of messages or conversations" over lines that are connected between carriers without regard to the existence of a dispute. In addition, we have ample authority under 35-A M.R.S.A. § 1303 to investigate a matter such as inter-company compensation, and that issue surely is reasonably now within the scope of this case, which is an investigation under section 1303.

At least initially, BA, the ITCs and the Commission staff shall address the question of inter-company compensation in a collaborative manner pursuant to a schedule to be established by the Examiner. For that reason, as noted in Part V, we will allow BA and the ITCs a period of up to six months to address compensation issues, as well as any administrative matters that may arise.[27]

In addressing the compensation issues, BA, the ITCs and the Advisory Staff should be aware of the following considerations:

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[26] We have addressed the "need" for ITCs to "concur" at Part VI.A above.

[27] As noted in Part V, Brooks may continue to offer the unauthorized NXX-based "FX-like" service to existing customers only for the full 6 months.

1. It is not entirely clear (contrary to Bell Atlantic's assertions) that "existing agreements for the exchange of toll and local traffic between BA-ME and the ITCs do not cover the special class of traffic . . . ." It is not clear that existing access tariffs or contractual arrangements between the Bell Atlantic and the ITCs exclude any specific class or type of interexchange traffic from existing access tariffs or compensation arrangements.

2. As claimed by Bell Atlantic, the Commission has established a special category of interexchange toll service for Internet traffic, to be priced substantially below existing toll rates. Bell Atlantic asserts that "BA-ME's provision of the interoffice transport and delivery of this traffic is not to be considered or rated as traditional toll service." The Commission, however, has not made any finding at this time concerning whether special compensation arrangements are necessary for the SNS/PRI service.

3. If the ITCs charged their existing access rates for the origination of this traffic, Bell Atlantic most likely would be paying more to the ITCs than it would be collecting from its retail customers, the ISPs. We also note, however, that in the recent past, there has been no direct relationship between access revenue billed as a result of calling by a particular customer and the amount of retail revenue obtained from that same customer. Access rates are the same for all minutes and no longer vary according to calling volumes (as they did under versions of Chapter 280 of the Commission's rules prior to the enactment of 35-A M.R.S.A. § 7101-B) Retail rates vary considerably, however.

4. A substantial amount of the Internet traffic originating in ITC territory that will terminate in Bell Atlantic territory will be incremental. At least two ILECs block the traffic that would otherwise be directed to ISP customers of Brooks. Most ITCs charge regular toll rates for that traffic. Accordingly, the ITCs presently are not receiving a significant amount of access revenue for that traffic because blocking prevents, and per-minute toll rates deter, end users from subscribing to ISPs that are located in Bell Atlantic territory.

D. Other Issues

The exceptions of the Telephone Association of Maine (TAM)[28] state that some ITCs have switches that are not currently capable of providing PRIs. We will request the ILECs to address this matter in the collaborative process that we require in Part VI.C above.

[28]The ITCs and Bell Atlantic are all members of TAM, but at least on the issues addressed in this Part VI, it is clear that TAM represents the interests of the ITCs.

TAM's exceptions also note that the June 22, 1999 Order stated that "the rate would not be available to ISPs that offer voice services over the Internet." TAM states that it:

> believes this to mean that no customer subscribing to the service may do so for the purpose of carrying voice traffic. TAM is not aware of anything in the proposal that would prevent a company other than an ISP from subscribing to this service.

TAM then asks whether the Commission intends that the service should only be used by ISPs.

We do intend that the service be available only to ISPs. That limitation should appear in Bell Atlantic's terms and conditions. 35-A M.R.S.A. § 7101(4) justifies a special rate for connecting to the Internet. It does not justify a similar special rate for ordinary toll traffic.

TAM then raises questions about the enforceability of the limitation. We agree that enforceability may be a difficult problem, and we expect the parties to address this in the collaborative process that also will address compensation. We believe that a reasonable policy as a starting point is that ISPs that offer Voice over Internet Protocol (VoIP) should not be permitted to subscribe to the SNS/PRI service and rate. By "offering," we mean marketing and/or providing software for VoIP. If it is feasible to segregate VoIP traffic, we could alter that policy. We doubt if it is possible to enforce such a policy against end users who, on their own, obtain and use VoIP software.

VII. CONCLUSION

We reaffirm our findings in prior orders that Brooks's use of the 54 NXX Codes outside its Portland area exchange is for interexchange purposes, not local, and that Brooks is not providing facilities-based local exchange service or any other facilities-based service in those exchanges. The "FX-like" service that Brooks is currently offering without authority is unreasonable and will not be approved. Accordingly, Brooks has no legitimate need for the 54 codes, and, as authorized by the FCC Delegation Order, we order the NANPA to reclaim them six months after the date of this Order.

Within 30 days following this Order, Bell Atlantic shall file rates, terms and conditions for the retail, wholesale combined, and wholesale components services described in Part IV above.

Ordering Paragraphs

Accordingly, we

1. FIND, in Docket No. 99-593, pursuant to 35-A M.R.S.A. § 310, that the proposed changes to the rate schedules and terms and conditions of the New England Fiber Communications L.L.C. contained in Maine PUC Tariff No. 1:

5th Revised Page 1.1 (cancels 4th Revised Page 1.1)
2nd Revised Page 12.1 (cancels 1st Revised Page 12.1)
1st Revised Page 12.4 (cancels Original 12.4)
1st Revised Page 12.5 (cancels Original 12.5)
1st Revised Page 12.6 (cancels Original Page 12.6)
Original Page 12.7

are UNJUST AND UNREASONABLE and we ORDER that they will not become effective;

2. ORDER New England Fiber Communications L.L.C. to file special contracts, for approval under 35-A M.R.S.A. § 703(3-A), or rate schedules and terms and conditions, for a limited continuation of its existing service that is similar to the disapproved service, as described in the body of this Order;

3. ORDER New England Fiber Communications L.L.C. to make the filing or filings described in paragraph 2 on or before July 18, 2000;

4. ORDER the North American Numbering Plan Administrator (NANPA), effective six months from the date of this Order, to reclaim the 45 central office (NXX) codes in the State of Maine that are assigned to New England Fiber Communications d/b/a Brooks Fiber, and that are outside New England Fiber Communications' Portland area exchange (consisting of the municipalities of Portland, South Portland and Westbrook, Maine);

5. ORDER New England Telephone and Telegraph Company d/b/a Bell Atlantic-Maine to file a schedule of rates, and terms and conditions for the Single Number Service/Hubbed Primary Rate ISDN (SNS/PRI) service described in Part VI of this Order. Bell Atlantic shall make that filing within 30 days of the date of this Order; and

6. ORDER New England Telephone and Telegraph Company d/b/a Bell Atlantic-Maine, the independent incumbent local exchange carriers of Maine IXCs that are parties to the case that intend to offer SNS/PRI or similar service, and the Commission Advisory Staff assigned to this case to engage in a collaborative process for resolution of questions having to do with compensation between Bell Atlantic and the independent ILECs, the question of whether there are technical problems in offering the service at some independent ILEC switches, and the question of restricting such service

to uses other than Voice over Internet Protocol. For the latter purpose, the Advisors may request information from other parties in this case and from outside persons. The Hearing Examiner shall establish a schedule for the collaborative process, which shall not exceed six months.

Dated at Augusta, Maine, this 30th day of June, 2000.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond

THIS DOCUMENT HAS BEEN DESIGNATED FOR PUBLICATION

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.