

James Meza III
Attorney

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

June 10, 2002

Mrs. Blanca S. Bayó
Director, Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: 000075-TP (Generic ISP Docket) (Phase IIA)

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Brief of the Evidence, 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,


James Meza III (LMB)

Enclosures

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

DOCUMENT NUMBER-DATE

06039 JUN 10 08

FPSC-COMMISSION CLERK

CERTIFICATE OF SERVICE
Docket No. 000075-TP (Phase IIA)

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via

Electronic Mail and First Class U.S. Mail this 10th day of June, 2002 to the following:

Felicia Banks
Staff Counsel
Florida Public Service
Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
fbanks@psc.state.fl.us

Michael A. Gross
Florida Cable Telecommunications
Assoc., Inc.
246 E. 6th Avenue, Suite 100
Tallahassee, FL 32303
Tel.: (850) 681-1990
Fax: (850) 681-9676
mgross@fcta.com

Kenneth A. Hoffman, Esq. (+)
Martin P. McDonnell (+)
Marsha E. Rule
Rutledge, Ecenia, Purnell & Hoffman
Post Office Box 551
Tallahassee, FL 32302-0551
Tel.: (850) 681-6788
Fax: (850) 681-6515
Represents US LEC
Represents Level 3
Represents TCG
Represents MediaOne
Ken@Reuphlaw.com
martin@reuphlaw.com
marsha@reuphlaw.com

Morton Posner, Esq.
Regulatory Counsel
Allegiance Telecom
1150 Connecticut Avenue, N.W.
Suite 205
Washington, DC 20036
morton.posner@algx.com

Charles J. Rehwinkel
Susan Masterton (+)
Sprint-Florida, Inc.
Post Office Box 2214
MS: FLTLHO0107
Tallahassee, FL 32316-2214
Tel. No. (850) 599-1560
Fax: (850) 878-0777
susan.masterton@mail.sprint.com

Peter M. Dunbar
Karen M. Camechis
Pennington, Moore, Wilkinson,
Bell & Dunbar, P.A.
Post Office Box (32302)
215 South Monroe Street, 2nd Floor
Tallahassee, FL 32301
Tel. No. (850) 222-3533
Fax. No. (850) 222-2126
pete@penningtonlawfirm.com
karen@penningtonlawfirm.com
Represents Time Warner

Brian Chaiken
Legal Counsel
Supra Telecom
2620 S.W. 27th Ave.
Miami, FL 33133-3001
Tel. No. (305) 476-4248
Fax. No. (305) 443-1078
bchaiken@stis.com

Wanda Montano
US LEC of Florida, Inc.
6801 Morrison Blvd.
Charlotte, NC 28211-3599
Tel. No. (704) 319-1074
Fax. No. (704) 602-1074
wmontano@uslec.com

Patrick Wiggins
Charles J. Pellegrini
Katz, Kutter Law Firm
106 E. College Avenue
12th Floor
Tallahassee, FL 32301
Tel. No. (850) 224-9634
Fax. No. (850) 222-0103
Represents Focal and Intermedia
pkwiggins@katzlaw.com

Norman H. Horton, Jr.
Messer, Caparello & Self, P.A.
215 South Monroe Street
Suite 701
Tallahassee, FL 32301-1876
Tel. No. (850) 222-0720
Fax. No. (850) 224-4359
nhorton@lawfla.com

James C. Falvey, Esq.
e.spire Communications, Inc.
131 National Business Parkway
Suite 100
Annapolis Junction, Maryland 20701
Tel. No. (301) 361-4298
Fax. No. (301) 361-4277
jim.falvey@espire.net

Donna Canzano McNulty
MCI WorldCom, Inc.
325 John Knox Road
The Atrium, Suite 105
Tallahassee, FL 32303
Tel. No. (850) 422-1254
Fax. No. (850) 422-2586
donna.mcnulty@wcom.com

Brian Sulmonetti
MCI WorldCom, Inc.
6 Concourse Parkway, Suite 3200
Atlanta, GA 30328
Tel. No.: (770) 284-5493
Fax. No.: (770) 284-5488
Brian.Sulmonetti@wcom.com

Kimberly Caswell
GTE Florida Incorporated
P.O. Box 110, FLTC0007
Tampa, FL 33601-0110
Tel. No. (813) 483-2617
Fax. No. (813) 204-8870
kimberly.caswell@verizon.com

AT&T
Virginia C. Tate
Senior Attorney
1200 Peachtree Street
Suite 8100
Atlanta, GA 30309
Tel. No. (404) 810-4922
vtate@att.com

Jon C. Moyle, Esq.
Cathy M. Sellers, Esq.
Moyle, Flanigan, Katz, Kolins,
Raymond & Sheehan, P.A.
The Perkins House
118 North Gadsden Street
Tallahassee, Florida 32301
jmoylejr@moylelaw.com
Represents Global NAPs

Mr. Herb Bornack
Orlando Telephone Company
4558 S.W. 35th Street
Suite 100
Orlando, FL 32811
Fax. No. (407) 996-8901

Robert Scheffel Wright
Landers & Parsons, P.A.
310 West College Avenue (32301)
Post Office Box 271
Tallahassee, FL 32302
Tel. No. (850) 681-0311
Fax. No. (850) 224-5595
Represents Cox Communications

Jill N. Butler
Vice President of Regulatory Affairs
Cox Communications
4585 Village Avenue
Norfolk, VA 23502
jillbutler@cox.com

Paul Rebey
Focal Communications Corporation
200 North LaSalle Street
Suite 1100
Chicago, Illinois 60601-1914
Tel. No. (312) 895-8491
Fax. No. (312) 895-8403
prebey@focal.com

Joseph McGlothlin
Vicki Gordon Kaufman
McWhirter Reeves McGlothlin
Davidson Decker Kaufman, et al.
117 South Gadsden Street
Tallahassee, Florida 32301
Tel. No. (850) 222-2525
Fax. No. (850) 222-5606
Represents KMC & FCCA
Represents XO Communications
vkaufman@mac-law.com
jmclglothlin@mac-law.com

John McLaughlin
KMC Telecom, Inc.
1755 North Brown Road
Lawrenceville, Georgia 30043
Tel. No. (678) 985-6262
Fax. No. (678) 985-6213
johnmclaughlin@kmctelecom.com

Michael R. Romano, Esq.
Level 3 Communications, LLC
1025 Eldorado Boulevard
Broomfield, CO 80021
Tel. No. (720) 888-7015
Fax. No. (720) 888-5134

Dana Shaffer
Vice President
XO Communications, Inc.
105 Molly Street, Suite 300
Nashville, Tennessee 37201-2315
Tel. No. (615) 777-7700
Fax. No. (615) 345-1564
dana.shaffer@xo.com

Richard D. Melson
Hopping Green Sams & Smith, P.A.
P.O. Box 6526
Tallahassee, FL 32314
Represents MCI WorldCom
Represents MediaOne
Tel. No. (850) 222-7500
Fax. No. (850) 224-8551
rmelson@hgss.com

Matthew Feil
Florida Digital Network, Inc.
390 North Orange Avenue
Suite 2000
Orlando, FL 32801
Tel. No. (407) 835-0460
mfeil@floridadigital.net

Stephen T. Refsell and
Bettye Willis
ALLTEL Corp. Svcs., Inc.
One Allied Drive
Little Rock, AR 72203-2177
bettye.j.willis@alltel.com

J. Jeffry Wahlen
Ausley & McMullen
P.O. Box 391
Tallahassee, FL 32302
Tel. No. (850) 425-5471
Atty. for ALLTEL
jwahlen@ausley.com

Claudia E. Davant
AT&T
State President Legislative and
Regulatory Affairs
101 N. Monroe Street
Suite 700
Tallahassee, FL 32301
Tel. No. (850) 425-6360
Fax. No. (850) 425-6361
cdavant@att.com


James Meza III (IA)

Intermedia Communications, Inc.
Scott Sapperstein (+)
Sr. Policy Counsel
One Intermedia Way
MCFLT-HQ3
Tampa, FL 33647
Tel. No. (813) 829-4093
Fax. No. (813) 829-4923
SA_Sapperstein@intermedia.com

(+) Signed Protective Agreement

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into Appropriate)
Methods to Compensate Carriers)
for Exchange of Traffic Subject to)
Section 251 of the Telecommunications)
Act of 1996.)

Docket No.: 000075-TP (Phase IIA)

Filed: June 10, 2002

**BELLSOUTH TELECOMMUNICATIONS, INC.'S
BRIEF OF THE EVIDENCE**

NANCY B. WHITE
JAMES MEZA III
150 West Flagler Street
Suite 1910
Miami, Florida 33130
(305) 347-5558

R. DOUGLAS LACKEY
E. EARL EDENFIELD JR.
675 West Peachtree Street
Suite 4300
Atlanta, Georgia 30375
(404) 335-0763

ATTORNEYS FOR BELLSOUTH
TELECOMMUNICATIONS, INC.

TABLE OF CONTENTS

<u>STATEMENT OF POSITION ON THE ISSUES</u>	3
<u>Issue 13:</u> How should a "local calling area" be defined, for purposes of Determining the applicability of reciprocal compensation?	3
a) What is the Commission's Jurisdiction in this matter?.....	3
b) Should the Commission establish a default definition of local calling area for the purpose of intercarrier compensation, to apply in the even parties cannot reach a negotiated agreement?.....	5
c) If so, should the default definition of local calling area for purposes of intercarrier compensation be: 1) LATA-wide local calling. 2) based upon the originating carrier's retain local calling area, or 3) some other default definition/mechanism?.....	6
<u>Issue 17:</u> Should the Commission establish compensation mechanism governing the transport and delivery or termination of traffic subject to Section 251 of the Act to be used in the absence of the parties reaching an agreement or negotiating a compensating mechanism? Is so, what should be the mechanism?	13
a) Does the Commission have jurisdiction to establish bill and keep?.....	14
b) What is the potential financial impact, if any, on ILECs and ALECs of bill and keep arrangements?.....	15
c) If the Commission imposes bill and keep as a default mechanism, will the Commission need to define generically "roughly balanced?" If so, how should the Commission define "roughly balanced?".....	15
d) What potential advantages or disadvantages would result from the imposition of bill and keep arrangements as a default mechanism, particularly in comparison to other mechanisms already presented in Phase II of this docket?.....	16
<u>CONCLUSION</u>	17

STATEMENT OF POSITION ON THE ISSUES

ISSUE 13: How should a "local calling area" be defined, for purposes of determining the applicability of reciprocal compensation?

- a) What is the Commission's jurisdiction in this matter?
- b) Should the Commission establish a default definition of local calling area for the purpose of intercarrier compensation, to apply in the event parties cannot reach a negotiated agreement?
- c) If so, should the default definition of local calling area for purposes of intercarrier compensation be: 1) LATA-wide local calling, 2) based upon the originating carrier's retail local calling area, or 3) some other default definition/mechanism?

Positions:

- a) *****The Commission has jurisdiction under the FCC's Local Competition First Report and to determine geographic areas for reciprocal compensation purposes. However, whatever geographic area the Commission establishes must not conflict with Florida Law.*****

The FCC's Local Competition First Report and Order, issued on August 8, 1996, provides state commissions with the authority to establish the geographic areas in a specific state that are to be considered local calling areas for reciprocal compensation purposes. See Implementation of the Local Competition Provisions in the Telecom. Act of 1996, First Report and Order, 11 FCC Rcd 15499 at ¶ 1035 (1996). Specifically, paragraph 1035 provides:

With the exception of traffic to or from a CMRS network, state commission have the authority to determine what geographic areas should be considered "local areas" for the purpose of applying reciprocal compensation obligations under section 351(b)(5), consistent with the state commissions' historical practice of defining local service areas for wireline LECs.

Accordingly, the Commission has the authority to determine the default local calling area for reciprocal compensation purposes, but the FCC requires that it must do so consistent with its historical practice of defining local services areas for wireline LECs.

In addition, whatever definition the Commission establishes, cannot conflict with Florida law. Specifically, the Commission's default local calling area definition cannot conflict with Section 364.16(3)(a), Florida Statutes. This statute provides that "[n]o local exchange telecommunications company or alternative local exchange telecommunications company shall knowingly deliver traffic, for which terminating access service charges would otherwise apply, through a local interconnection arrangement without paying the appropriate charges for such terminating access service." This Legislative mandate was upheld and applied by the Commission in the Telenet Order, Order No. PSC-97-0462, wherein the Commission ruled that an ALEC may have a retail local calling area that differs from the ILEC, but that, pursuant to Section 364.16(3)(a), the ALEC is required to pay access charged based on the ILEC's local calling area.

We agree that an ALEC has full statewide authority when it receives certification from this Commission, and that it has the authority to designate its local calling area in whatever way it chooses. Section 364.16(3)(a), Florida Statutes, nonetheless, does not allow an ALEC to knowingly deliver traffic where terminating access charges would otherwise apply. Therefore, while an ALEC may have a different local calling area than an incumbent LEC, it is required by statute to pay the applicable access charges.

In re: Petition for Arbitration of Dispute with BellSouth Telecommunications, Inc. Regarding Call Forwarding, by Telenet of South Florida, Inc., Order No. PSC-97-0462, issued Apr. 23, 1997.

Similarly, the Commission's default definition cannot implicitly reduce or otherwise alter the access rates that the Legislature capped in Section 364.163, Florida Statutes. In other words, the Commission cannot define a default local calling area in such a way as to implicitly reduce the access rates established by the Legislature. The ALECs may argue that adopting an expansive local calling area definition, which in turn has the affect of lowering the access charges that IXCs and ALECs pay by limiting the number of calls that are subject to those charges, does not violate Section 364.163 because the access rates would not change in that situation. This argument, however, must be rejected because although the actual rates may not change by expanding the definition of a local calling area, the associated revenue expected from those rates would. In fact, by reducing the number of calls that would be subject to access charges, the Commission would be effectively reducing the revenue a LEC receives from access, thereby implicitly reducing access rates. As evidenced by the industry's widely publicized attempt to reduce access rates and increase local calling rates this past legislative session, the Legislature is the appropriate forum in which to alter access rates, not the Commission.

- b) *****No. Based on BellSouth's experience, a default definition of local calling area for the purposes of reciprocal compensation is not necessary because this issue has not been highly contested or arbitrated.*****

Based on BellSouth's experience in negotiating and arbitrating interconnection agreements, BellSouth does not believe that a default definition of local calling area is necessary. (Tr. 21). As stated by witness Shiroishi:

While many other issues surrounding intercarrier compensation (e.g. whether or not reciprocal compensation is owed for ISP-bound traffic, payment for transport when

calls are transported outside of the local calling area, how virtual NXX traffic should be compensated, etc.) have been highly contested and arbitrated, this specific issue has not.

(Tr. 21). Witness Shiroishi's belief is shared by the overwhelming majority of the parties who "concur that negotiations should continue to guide the development of intercompany reciprocal compensation agreements." (Tr. 118). Accordingly, BellSouth submits that the Commission need not define a default definition at this time.

- c) *****The Commission should adopt as the default definition the originating party's local calling area, if it finds that such a proposal is administratively manageable. If the Commission determines that the originating party's local calling area is not manageable, then the default definition should be the ILEC's local calling area.*****

As stated above, BellSouth does not believe that a default local calling area definition is necessary at this time. However, in the event the Commission is inclined to adopt such a definition, the default local calling area should be defined as the ILEC's local calling area. Such a definition has previously been selected by several state commission in establishing the definition of local calling area for reciprocal compensation purposes. For instance, the Texas Commission, in Docket No. 16189, Petition of MFS Comm. Co., Inc. for Arbitration of Unbundled Loops Agreement Between MFS Comm. Co., Inc. and Southwestern Bell Tel. Co., Docket No. 16189, Nov. 8, 1996, ordered that the reciprocal compensation rates adopted by the Commission applied to "calls that originate and terminate within the mandatory single-or multi-exchange local calling area of [Southwestern Bell], including the mandatory Extended Area Service (EAS served by [Southwestern Bell])." Subsequently, in Docket No. 21982, the Texas Commission reached the same conclusion, finding that "local traffic" was to be defined as:

[a call that (i) originates from and terminates to such end-users in the same [Southwestern Bell] exchange area; or (ii) originates from and terminates to such end-users within different [Southwestern Bell] exchanges, or within a [Southwestern Bell] exchange and in independent ILEC exchange, that share a common mandatory local calling area, e.g., mandatory extended area service (EAS), mandatory local calling service (ELCS), or other types of mandatory expanded local calling scopes.

See Proceeding to Examine Reciprocal Compensation Pursuant to Section 252 of the Federal Telecommunications Act of 1996, Docket No. 21982 (Aug. 31, 2000).

The Nevada Public Utilities Commission reached an identical conclusion in Docket No. 98-10015, which was an arbitration between Pac-West Telecomm, Inc. and Nevada Bell, and in Docket No. 99-1007, which was an arbitration between Advanced Telecom Group, Inc. and Nevada Bell. In the revised Arbitration Decision in those dockets, paragraph 69, the Nevada Commission held that “reciprocal compensation obligations should apply to traffic that originates and terminates within state-defined local calling areas.” See Order Adopting Revised Arbitration Decision, Dockets. No. 98-10015, 99-1007, Apr. 12, 1999). Further, in paragraph 77, the Commission clarified that reciprocal compensation between Nevada Bell and Pac-West or ATG would be determined on the basis of whether “customers are located within the same Nevada Bell local calling area.” Id.

Likewise, the Ohio Commission, in its Local Service Guidelines, has held that “[a]s NECs [new entrant carrier] establish operations within individual ILEC service areas, the perimeter of ILEC local calling area, as revised to reflect EAS, shall constitute the demarcation for differentiating local and toll call types for the purpose of traffic termination compensation.” (Tr. 177).

Moreover, establishing the default definition as the ILEC's local calling area will not require ALECs' calling areas to mirror the ILECs' local calling areas. (Tr. 24). As recognized by the Commission in the Telenet Order, ALECs have the authority to "designate its local calling area in whatever way it chooses." See Order No. PSC-97-0462-FOF-TP. Further, as recognized by ALLTELL witness Busbee, ALECs may offer toll free calling to its end users without regard to the geographic confines of the local/access intercarrier compensation between the interconnection carriers. (Tr. 207).

If the Commission, however, rejects the ILEC's local calling area, then the Commission should adopt the originating party's local calling area as the default definition. (Tr. 022). BellSouth uses such a definition in many of its interconnection agreements and is able to implement such an arrangement through the use of billing factors, which allows the originating carrier to report to the terminating carrier the percentage of usage that is interstate, intrastate, and local. Id.

However, in no event, should the Commission adopt LATA-wide local as the default definition, as proposed by the ALECs. Under the LATA-wide approach, all intraLATA calls handled jointly by ALECs and ILECs would be termed "local" and subject to reciprocal compensation. (Tr. 91). This Commission must reject this proposed default definition for the following reasons.

First, LATA-wide local would obliterate the local/toll distinction. (Tr. 89). Specifically, with this approach, BellSouth's originating access revenue will be replaced with an obligation to pay reciprocal compensation when an IXC or ALEC hauls and/or terminates an IntraLATA toll call. (Tr. 25-26). Not only is this result inequitable and a dramatic change from the current intercarrier compensation arrangement, it also results

in ILECs receiving reduced revenue that they use to support other services, including USF, and to keep local rates at their current rate. As stated by witness Shiroishi:

If this Commission were to decide that all calls within the LATA are local, obviously then any current switched access that a LEC receives from intraLATA calls would go away. All of that revenue would then become basically null and void for that type of transaction. That in and of itself is a revenue stream that potentially today, and I can't speak, for other LECs, but for BellSouth is used to fund things through the USF implicit service to keep local rates and other services like local rates at an affordable level. If that revenue stream goes away, then BellSouth obviously has to look at the ways in which to recover those costs. One of those ways may be through the raising of local rates.

(Tr. 48-49). Thus, to adopt the LATA-wide definition would potentially result in BellSouth having to increase its rates. (Tr. 47).

While BellSouth recognizes that there are mechanisms in place that would allow it to increase rates if it finds that it can no longer implicitly fund USF, BellSouth submits that this fact does not alleviate the problem. In fact, it begs the question of why would the Commission go down a path that (1) would dramatically change the current landscape of intercarrier compensation; and (2) has the potential of increasing local rates, when the only result of the adoption of the LATA-wide definition would be to benefit ALECs by allowing them to avoid paying access charges. BellSouth submits that such a reason is insufficient to adopt the LATA-wide local definition.

Second, a LATA-wide definition results in arbitrage opportunities when an ALEC is also an IXC. As stated by witness Shiroishi, "if we go to LATA-wide local definition which has no delineation, you have an opportunity for IXCs to try to masquerade that true interexchange traffic as local through the use of in some instances, even perhaps stripping off ANI or CPN and terminating to the ILEC or any other LEC as though it were

local.” (Tr. 45). In other words, LATA-wide local would provide incentive to IXCs/ALECs to misrepresent the nature of the call to reduce the switched access revenue that they would otherwise pay BellSouth. (Tr. 49-50). Unfortunately, as evidenced by the many recent PIU complaints BellSouth has initiated with this Commission, some IXCs/ALECs, upon information and belief, have already evidenced a pattern of mischaracterizing the nature of calls in order to avoid the payment of access charges. See Thrifty Call PIU Complaint, Docket No. 000475-TP; VarTec PIU Complaint, Docket No. 011374-TP; Global Crossing PIU Complaint, Docket No. 011378-TP; WorldCom PIU Complaint, Docket No. 020420-TP. Thus, this concern is not hypothetical but based on current perceived IXC/ALEC behavior. BellSouth submits that adoption of a LATA-wide local definition will result in the next arbitrage opportunity for ALECs and thus should be rejected.

Third, Section 364.16(3), Florida Statutes, prohibits the Commission from adopting the LATA-wide local definition. This is so because Section 364.16(3) expressly prohibits carriers from avoiding their obligations to pay terminating access charges. As stated above, Section 364.16(3) provides that “[n]o local exchange telecommunications company or alternative local exchange telecommunications company shall knowingly deliver traffic, for which terminating access service charges would otherwise apply, through a local interconnection arrangement without paying the appropriate charges for such terminating access service.” Accordingly, this statute prohibits the Commission from determining that all calls within the LATA are local, and thus afford ALECs the opportunity to knowingly deliver traffic where terminating access charges would otherwise apply. (Tr. 40).

Furthermore, the ALECs' LATA-wide local definition is an attempt by the ALECs to impermissibly implement access reform with the Commission, which is prohibited. (Tr. 131). Namely, adoption of a LATA-wide local calling area would effectively violate Section 364.163, Florida Statutes, as it would alter the existing access regime. This is so because LATA-wide local will reduce access revenue, thereby implicitly reducing the access charges that the Legislature has approved and capped. As stated by Verizon witness Trimble, "make no mistake about this fact. If [the Commission] approves LATA-wide reciprocal compensation . . . access charges will no longer apply to calls that are subject to them today." (Tr. 121). Therefore, the Commission should reject the ALECs' LATA-wide local proposal because the Legislature and not the Commission is the appropriate body to modify access rates.

Fourth, contrary to AT&T's and FDN's description of BellSouth's interconnection agreements, BellSouth has not adopted LATA-wide local in its agreements. (Tr. 33). While BellSouth has entered into agreements that expand what is considered local traffic for reciprocal compensation purposes, switched access is specifically exempt from definition of local traffic. Id. Thus, BellSouth does not have any current agreements that implement the LATA-wide local definition that the ALECs are proposing in this docket.

Fifth, AT&T's proposal that the NPA-NXX of the calling and called parties be used to determine whether a call is subject to LATA-wide local must be rejected because it directly conflicts with the Commission's previous decision. Specifically, AT&T is suggesting that reciprocal compensation, rather than access charges, be paid on all calls – even those beyond LATA boundaries—that appear to be local calls based

on their NPA-NXX. (Tr. 122). The Commission has already rejected this approach in its December 5, 2002 vote in Phase II of this proceeding, wherein it approved Staff's recommendation that "virtual NXX calls that terminate outside of the local calling area associated with the rate center to which the NPA/NXX is homed are not local calls." (Tr. 122). Accordingly, the Commission's decision on this issue precludes it from approving AT&T's proposal regarding LATA-wide local.

Sixth, contrary to AT&T's assertions, LATA-wide local would not enhance administrative ease in the calculation of reciprocal compensation obligations. "Jurisdictionalizing traffic for access and reciprocal compensation purposes has been done for years by the ILECs, IXCs, and ALECs, and there is no administrative drawback in simply retaining the existing system." (Tr. 133). Indeed, as pointed out by FCTA witness Barta, most ALECs have already invested in sophisticated billing systems to track and bill for actual minutes of use. Id. Moreover, AT&T's argument fails because it incorrectly presumes that all market participants will provide toll-free LATA-wide retail offerings if the Commission orders LATA-wide local. (Tr. 132). This is not a reasonable assumption because, instead of passing on any access savings to their customers, ALECs could pocket the money and continue to assess toll charges on their end users. (Tr. 133).

Seventh, as recognized by Sprint witness Ward, adoption of a LATA-wide local default definition would stifle the parties' usual success in negotiating this issue, because ALECs would have no incentive to negotiate anything different. Consequently, the LATA "would essentially become the presumptive local calling area for intercarrier compensation." (Tr. 175).

Eighth, it should be noted that no party originally requested LATA-wide local calling in Phase II of this proceeding. It was not until Staff itself raised the issue in its recommendation that the ALECs first supported this position. This fact indicates that the ALECs' intent in promoting LATA-wide local is to improperly implement access reform.

In sum, for the foregoing reasons, if the Commission is inclined to adopt a default definition of local calling area for reciprocal compensation purposes, the Commission should adopt the ILEC's local calling area as the definition. Such a definition has been approved and adopted by other state commission and is in compliance with the current access regime. If the Commission rejects the ILEC's local calling area, then the Commission should adopt the originating party's local calling area as the definition. In no event, however, should the Commission adopt LATA-wide local as the default definition. Such a definition is nothing but a veiled attempt to implement access reform and is prohibited by Florida law.

ISSUE 17: Should the Commission establish compensation mechanisms governing the transport and delivery or termination of traffic subject to Section 251 of the Act to be used in the absence of the parties reaching agreement or negotiating a compensating mechanism? Is so, what should be the mechanism?

- a) **Does the Commission have jurisdiction to establish bill and keep?**
- b) **What is the potential financial impact, if any, on ILECs and ALECs of bill and keep arrangements?**
- c) **If the Commission imposes bill and keep as a default mechanism, will the Commission need to define generically "roughly balanced?" If so, how should the Commission define "roughly balanced?"**
- d) **What potential advantages or disadvantages would result from the imposition of bill and keep arrangements as a default**

mechanism, particularly in comparison to other mechanisms already presented in Phase II of this docket?

Positions:

- a) ***Yes. Under the FCC rules, the Commission has the authority to establish bill and keep arrangements.*****

Under the Telecommunications Act of 1996 and the Code of Federal Regulations, the Commission has the authority to implement bill-and-keep. Section 252(d)(2) of the Act gives each state commission the jurisdiction to set rates for the transport and termination of traffic subject to Section 251(b)(5). Section 251(b)(5) specifically states that the authority to set rates for the transport and termination of traffic subject to 251(b)(4) "shall not be construed to preclude arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangement that waive mutual recovery (such as bill-and-keep arrangements)." Rule 51.713 of the Code of Federal Regulations provides further detail as to when bill-and-keep arrangements may be established by a state commission. Specifically, under Rule 51.713(b), the Commission can establish bill-and-keep if it "determines that the amount of local telecommunications traffic from one network to the other is roughly balanced with the amount of local telecommunications traffic flowing in the opposite direction, and is expected to remain so."

While the Commission has the authority to implement bill-and-keep, the FCC recently issued a Notice of Proposed Rulemaking ("NPRM") in Docket No. 01-92, released April 27, 2002, which will look into the applicability of bill-and-keep for all billing. While this NPRM seeks comments beyond the scope of this issue -- bill-and-keep for local usage-- the outcome may have some impact on this issue. (Tr. 28).

Nevertheless, at this time, the Commission has the authority to implement bill-and-keep. In fact, BellSouth currently has in place several bill-and-keep contracts for local traffic. (Tr. 30).

- b) *****Bill-and-keep will allow carriers to recover their costs from end users rather than through subsidiaries received from other carriers.*****

Under bill-and-keep, each carrier interconnects its facilities to those of other carriers and traffic flows between and among networks according to the carrier's interconnection agreements. (Tr. 109). The parties do not bill each other for termination of traffic, but are instead expected to recover their respective costs from their end users. Id. As a result, bill-and-keep will allow carriers to recover their costs for local usage from end users rather than through subsidies received from other carriers. In addition, while BellSouth will still probably monitor traffic in a bill-and-keep regime and has yet to conduct a detailed cost analysis, as recognized by Verizon witness Trimble, adoption of bill-and-keep will have an immediate cost savings effect in that carriers would incur less intercarrier billing costs because they would be rendering less bills to each other. (Tr. 115).

- c) *****Not necessarily. The Commission could presume that traffic is roughly balanced, subject to a carrier rebutting such a presumption.*****

As stated above, Rule 51.713(b) allows the Commission to establish bill-and-keep if the Commission determines that traffic between carriers is "roughly balanced." This requirement does not mean that the Commission must make an affirmative finding that traffic is "roughly balanced." Under Rule 51.713(c), the Commission can presume that traffic is roughly balanced, subject to a carrier rebutting such presumption.

In accordance with the FCC's Order on Remand and Report and Order in Docket 99-68, released April 27, 2001 ("ISP Order on Remand"), wherein the FCC determined that traffic above a 3:1 ratio of originating to terminating traffic would be considered ISP-bound traffic (in other words, out of balance), the Commission should find that traffic below a 3:1 ratio of originating to terminating traffic is "roughly balanced." (Tr. 29).¹

d) *****There are several potential advantages that may result from the adoption of bill-and-keep for local usage.*****

There are several potential advantages that may result from the adoption of bill-and-keep. One benefit would be that it would resolve the highly contentious issue of whether an ALEC is entitled to be compensated at the ILEC's tandem interconnection rate. (Tr. 30). Further, as recognized by Verizon witness Trimble, adoption of bill-and-keep as a default mechanism would presumably minimize the need for regulatory intervention. (Tr. 115). Even with bill and keep, however, there could still be repeated disputes over the jurisdiction of traffic, whether or not traffic is roughly balanced, and other tangential issues, that would require regulatory intervention. (Tr. 30).

Nevertheless, BellSouth requests that the Commission find that traffic subject to Section 251(b)(5) be presumed to be roughly balanced if it is below a 3:1 ratio of originating to terminating traffic. Based on this presumption, BellSouth requests that the Commission set as the default mechanism that calls that originate from one party and terminate to another party in the ILEC's geographic calling scope (as defined by the ILEC's tariff) shall be bill-and-keep for usage-based elements. (Tr. 31). Access traffic, which is not subject to Section 251(b)(5), would fall outside the scope of bill-and-keep, as would non-usage based elements. Id. Furthermore, the Commission should not at

¹ Although the DC Circuit recently remanded the ISP Order on Remand to the FCC, the court did not

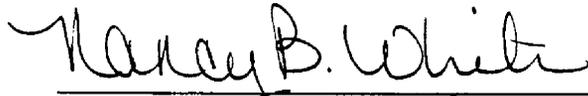
this time find that all billing is subject to bill and keep, just traffic subject to Section 251(b)(5).

CONCLUSION

The Commission's goal in this generic proceeding is to resolve each issue consistent with the requirements of the Act, federal law, and state law. The Commission should adopt BellSouth's positions on the issues in dispute, as they are reasonable and consistent with the 1996 Act, federal law, and the laws of the State of Florida.

Respectfully submitted this 10th day of June, 2002.

BELLSOUTH TELECOMMUNICATIONS, INC.



NANCY B. WHITE (LA)
JAMES MEZA III
c/o Nancy Sims
150 South Monroe Street, #400
Tallahassee, Florida 32301
(305) 347-5558



R. DOUGLAS LACKEY (LA)
E. EARL EDENFIELD JR.
675 West Peachtree Street, #4300
Atlanta, Georgia 30375
(404) 335-0763

449435

vacate the FCC's finding. Thus, the FCC's 3:1 ratio is still applicable.