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July 29, 1999

Mrs. Blanca S. Bayó
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Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 990149-TP

Dear Ms. Bayó:

Enclosed are an original and 15 copies of BellSouth Telecommunications, Inc.'s Brief of the Evidence. Please file this document in the captioned matter.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me.

Sincerely,

J. Phillip Carver (KR)

J. Phillip Carver

Enclosures

cc: All parties of record
M. M. Criser, III
N. B. White
R. Douglas Lackey

CERTIFICATE OF SERVICE
Docket No. 990149-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via U.S. Mail this 29th day of July, 1999 to the following:

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J. Phillip Carver (KR)
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by MediaOne Florida Telecommunications, Inc. for Arbitration of an interconnection Agreement with BellSouth Telecommunications, Inc. pursuant to Section 252(b) of the Telecommunications Act of 1996	)	Docket No. 990149-TP
	)	Filed: July 29, 1999

BELLSOUTH TELECOMMUNICATIONS, INC.
BRIEF OF THE EVIDENCE

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STATEMENT OF THE CASE

The Telecommunications Act of 1996 ("Act") requires interconnection negotiations between local exchange companies and new entrants. Parties that cannot reach a satisfactory resolution of their negotiations are entitled to seek arbitration of the unresolved issues by the appropriate state commission. 47 U.S.C. § 252(b)(1). On December 1, 1995, the Florida Public Service Commission ("Commission") approved a stipulated agreement between BellSouth Telecommunications, Inc. ("BellSouth") and MediaOne Florida Telecommunications, Inc. ("MediaOne"). Negotiations between the parties for an Agreement to succeed the stipulated agreement upon its expiration failed. Consequently, on February 9, 1999, MediaOne filed a Petition for Arbitration pursuant to the Act.

At the Pre-Hearing Conference, held June 22, 1999, the Parties stipulated that Issues 1, 6, 8, 9, 10, 11, and 12 had been resolved. This stipulation is reflected in the Prehearing Order entered July 8, 1999 (Order No. PSC-99-1309-PHO-TP, p. 15). This Order also contains the ruling that "the Commission is without jurisdiction to arbitrate issues on damages" (Id, p. 15). Consequently, Issue 13, which concerned liquidated damages, was not arbitrated in this proceeding.

The hearing in this matter was held on July 9, 1999. At the hearing, BellSouth submitted the direct and rebuttal testimony of Alphonso J. Varner, Jerry Hendrix and W. Keith Milner, as well as the direct testimony of D. Daonne Caldwell. The hearing produced a transcript of 376 pages and 17 exhibits.

This Brief of the Evidence is submitted in accordance with the post-hearing procedures of Rule 25-22.056, Florida Administrative Code. A summary of BellSouth's position on each issue to be resolved in this docket is set forth in the following pages and marked with an

asterisk. In some instances, the discussion of BellSouth's positions on two related issues have been combined to avoid repetition. As stated above, a number of the identified issues in this docket were resolved by the parties prior to the time of hearing. In these cases, the resolution by the parties is indicated after the statement of the Issue.

STATEMENT OF BASIC POSITION

Each of the three issues in this docket that remain unresolved represent a specific dispute between BellSouth and MediaOne as to what should be included in the Interconnection Agreement between the parties. Two of these issues involves matter that are not properly within the scope of the Telecommunications Act and the jurisdiction of this Commission and should, therefore, not be part of an Arbitrated Agreement.

The first of these issues involves whether ISP traffic should be included within a reciprocal compensation clause relating to the termination of local traffic. This issue has been resolved by the FCC, which ruled that this traffic is interstate in jurisdiction. Therefore, this Commission should decline to enter an order that would treat interstate traffic as if it were local traffic. The second issue, CNAM database, involves an effort by MediaOne to, for the first time, have CNAM classified as a UNE in order to obtain a cost-based (and MediaOne hopes), lower rate than that which is available from BellSouth or any of the other competitors that provide this service. Since there are competitive alternatives, however, and for the other reasons set forth herein, CNAM is not a UNE and should not be included in the Interconnection Agreement.

Finally, the last unresolved issue relates to the provision of network terminating wire by BellSouth to MediaOne. The central dispute of this issue involves the fact that MediaOne

wishes to have its technicians connect its facilities into BellSouth's network in order to avoid the charges associated with having work within BellSouth's network done by BellSouth technicians. BellSouth believes that it is reasonable to charge MediaOne a fair price for the labor of its technicians, and that having this work done by its own technicians is necessary to preserve the safety and security of the network.

For the reasons set forth above, each of BellSouth's positions should be sustained by this Commission.

STATEMENT OF POSITIONS ON THE ISSUES

Issue 1: Should the audit provisions in the parties' Interconnection Agreement include auditing of services other than billing?

**Position: This issue has been resolved by the parties.

Issue 2: Should calls originated from or terminated to Internet Service Providers ("ISPs") be defined as "local traffic" for purposes of the MediaOne/BellSouth Interconnection Agreement?

**Position: No. ISP traffic represents the continuous transmission from the end-user to a distant internet site. The FCC has ruled that this traffic is jurisdictionally mixed and largely interstate in nature. Therefore, the FCC has also ruled that this traffic is subject to interstate jurisdiction.

Issue 3: Should calls that originate from or terminate to ISPs be included in the reciprocal compensation arrangements of the Interconnection Agreement?

**Position: No. As set forth in response to Issue 2, ISP traffic is interstate in nature. The ISPs are only intermediaries that handle a portion of the calls. Therefore, these calls should not be compensable under the provision in an interconnection agreement for the reciprocal compensation of local traffic.

The fundamental questions of whether ISP traffic is local, and whether it should be encompassed within contractual provisions in an interconnection agreement for the reciprocal compensation of local traffic have already been answered by the Federal Communications Commission ("FCC"). Specifically, the FCC has ruled that this traffic will be treated as interstate traffic, rather than local traffic. It follows from this conclusion that this non-local traffic should not be compensated in Interconnection Agreements as if it were local.

Before examining further the FCC's analysis, however, it is important to understand the nature of this traffic, especially in light of the way in which the issues in this proceeding have been framed. Specifically, Issue 2 references the treatment of calls "originated from or terminated to" Internet Service Providers ("ISPs"). However, as BellSouth's witness, Alphonso J. Varner testified, the traffic in question does not terminate to an ISP:

> Most individuals connect to the internet through an Internet Service Provider (ISP), such as American OnLine or AT&T Worldnet. When a BellSouth customer logs on to the internet, he generally uses a modem to dial a seven digit telephone number to connect his computer to the ISP's facilities located in the local telephone exchange.
>
> Crucially, however, the call does not terminate at the ISP. The recent FCC decision confirmed that the customer uses the ISP as a conduit—an intermediary—to receive and transmit information between end users and internet sites located all over the country and the world. See Declaratory Ruling and CC Docket Nos. 96-98 and 99-68, FCC 99-38 (rel. Feb. 26, 1999) ("Declaratory Ruling"). The ISP connects the customer to the internet site he

> wants to visit and routes information from that site all the way back to the customer.

(Tr. 242-43) (emphasis added).

In point of fact, in the Declaratory Ruling referred to in Mr. Varner's testimony, the FCC largely resolved the ISP issue in question based upon its conclusions regarding the nature of this traffic. Specifically, the FCC began its analysis by noting that it has traditionally "determined the jurisdictional nature of communications by the end points of the communication and consistently has rejected attempts to divide communications at any intermediate points of switching or exchanges between carriers." (Declaratory Ruling, Par. 10). The FCC went on to note a specific example of its application of this rule in the context of voice mail services that entail an interstate transmission of a call to a switch that then makes an intrastate transmission of the call to a voice mail apparatus. (Id.). The FCC also noted that it has reached the same conclusion when considering an 800 travel service that utilized the local network for a portion of the call. The Commission noted in that decision that "both courts and Commission decisions have considered the end-to-end nature of the communications more significant than the facilities used to complete such communications. According to these precedents, we regulate an interstate wire communications under the Communications Act from its inception to its completion." (Declaratory Ruling, Par. 11, quoting Teleconnect Co. v. Bell Telephone Co. of Penn., E-88-83, 10 FCC Rcd 1626, 1629 (1995). Based on this analysis, the Commission ruled as follows:

> Consistent with these precedents, we conclude, as explained further below, that the communications at issue here do not terminate at the ISP's local server, as CLECs and ISPs contend, but continue to the ultimate destination or destinations, specifically at a Internet website that is often located in another state.

(Id., paragraph 12).

Based on this conclusion, the Commission also concluded that ISP traffic, although intrastate in some instances, is at least substantially interstate. (Id., Paras. 18-20). Given this, the Commission concluded that ISP traffic is not subject to reciprocal compensation mechanisms that apply to local traffic:

> As noted, Section 251(b)(5) of the Act and our rules promulgated pursuant to that provision concern intercarrier compensation for interconnected local telecommunications traffic. We conclude in this Declaratory Ruling, however, that ISP-bound traffic is non-local interstate traffic. Thus, the reciprocal compensation requirements of Section 251(b)(5) of the Act and Section 51, Subpart H (Reciprocal Compensation for Transport and Termination of Local Telecommunications Traffic) of the Commission's rules do not govern inter-carrier compensation for this traffic. As discussed, supra, in the absence a federal rule, state commissions have the authority under Section 252 of the Act to determine inter-carrier compensation for ISP-bound traffic.

(Id., Footnote 87).

Thus, the FCC has made it clear that ISP traffic is not local telecommunications traffic, and should not be included in the mechanism designed to compensate for the termination of this traffic. At the same time, the portion of the FCC's Order quoted above, which provides that state commissions have the authority to determine compensation for this traffic in the absence of a federal rule, has created some confusion. Specifically, the FCC noted that if parties do not voluntarily agree on inter-carrier compensation for ISP-bound traffic, "state commissions nevertheless may determine in their arbitration proceedings at this point that reciprocal compensation should be paid for this traffic." (Id., paragraph 25) (emphasis added). The FCC also noted that in other contexts it has directed the states to treat this traffic as if it were local (Id., Footnote 88). Thus, the FCC concluded that "in the absence of governing federal law" state commissions are free at this juncture to impose reciprocal compensation obligations for

ISP traffic or to elect "not to require the payment of reciprocal compensation for this traffic." (Id., paragraph 26). The FCC noted, however, that this discretion by state commissions to determine that reciprocal compensation is (or is not) appropriate exists pending completion of the rulingmaking that was initiated in the Order. (Id., Para. 2).

The FCC's Order makes several things clear: 1) The FCC has ruled that for jurisdictional purposes, ISP traffic will be treated as interstate. 2) The FCC has also stated its clear intention to deal with an appropriate compensation mechanism for this traffic through a rulemaking that it will undertake. 3) The FCC has given states the latitude to deal with compensation for ISP traffic on a short-term basis. The difficulty with this alternative is that any state commission that chooses to set a compensation mechanism must accept the fact that if its decision ultimately conflicts with the prospective, as yet unknown, federal rules regarding this traffic, the decision will be pre-empted by the future FCC rules. As Mr. Varner testified on this point,

> The FCC apparently authorized state commissions to arbitrate compensation matters for ISP traffic for a temporary period. However, it's unclear whether the FCC could delegate this undertaking. Even if states could do this, the delegation is only valid until the FCC completes its rulemaking on the subject. If states actually arbitrate, the FCC could overturn any state ruling when the FCC's rulemaking is completed. Consequently, states don't appear to have any real authority to resolve this issue. They can simply issue interim rulings that may only be applicable until the FCC's rulemaking is complete.

(Tr. 250).

Given this, BellSouth submits that this Commission should not attempt to set a short-term compensation mechanism for ISP traffic.

As to possible, appropriate compensation mechanisms that this Commission might order short-term, the only proposal before the Commission on this point was contained in

the testimony of Mr. Varner. Specifically, Mr. Varner stated that "the services ISPs obtain for access to their subscribers are technically similar to the line side connections available under Feature Group A." (Tr. 268). Accordingly, an appropriate compensation mechanism should be consistent with the "long history and precedent regarding intercarrier compensation for interstate services." (Tr. 269). An appropriate intercarrier compensation mechanism should 1) recognize that ISP traffic is interstate; and 2) require the carriers to negotiate a compensation mechanism that is 3) based on revenue sharing between the primary carrier that provides dial tone to the ISP (and thereby obtains revenue from the ISP) and the secondary carrier (that incurs switching and trunking costs, but obtains no direct revenue from the customer). (Tr. 269).

The Commission could appropriately elect to take no further action and simply allow the FCC rulemaking to take its course. At the same time, the FCC has made it clear that its future rule, although obviously not well-defined at this point, will encourage negotiations between the parties (See Order, para. 28-32). Thus, this Commission could also order the parties to attempt to negotiate a proper compensation mechanism without running too great a risk of conflicting with the future FCC rule. What this Commission should not do, however, is treat ISP traffic as if it were local—and subject to a compensation mechanism designed for local traffic—when the FCC has plainly ruled otherwise. This action would unquestionably lead to conflict with the prospective FCC rule.

Issue 4: What is the appropriate price for Calling Name ("CNAM") data base queries?

**Position: Because CNAM is not governed by the requirements of the Act, the rates BellSouth charges for its CNAM database service cannot legally be arbitrated. However, the appropriate price for CNAM is one cent per query, the market-based rate that BellSouth offers to all customers who receive this service.

Many of the pertinent facts concerning the appropriate price to be charged for CNAM are uncontested. The service in question is utilized by MediaOne to provide the caller name portion of Caller ID (Tr. 360). In other words, when MediaOne is transmitting a call to one of its customers, a query is sent to BellSouth from the MediaOne switch. BellSouth's response to this query allows MediaOne to provide to its customers, who subscribe to Caller ID, the name of the person placing the call. This information is obtained by BellSouth from a database that includes the name of the person making the call. There is a contract in existence between BellSouth and MediaOne dated March 4, 1997, for the provision of this service. (Ex. 15, AJV-1). It is a "stand-alone" contract that was negotiated by the parties previously without any connection to the prior stipulated agreement between BellSouth and MediaOne (Tr. 359). This Agreement provides for an initial recurring flat rate for access to the BellSouth CNAM SCP (Service Control Point) (Ex. 15, p. 6). Under the terms of this agreement, "the recurring flat rate will convert to a per usage rate once query usage measurement capability becomes available." (Id.). Measurement is now available, and under the terms of the contract, a per query rate is now appropriate.

The only disputed aspect of this issue involves the appropriate per query price for CNAM. MediaOne contends that CNAM is an Unbundled Network Element (UNE). Therefore, according to MediaOne, the price for CNAM should be cost-based, as prescribed by

the Act. BellSouth believes that CNAM is clearly not a UNE. Therefore, the market-based rate proposed by BellSouth is the appropriate rate. Moreover, BellSouth believes that because CNAM is not an unbundled network element, its provision is not subject to the requirements of the Federal Telecommunications Act[1]. Therefore, this Commission lacks jurisdiction to arbitrate the rate for CNAM, just as it would lack jurisdiction to arbitrate any dispute involving matters not encompassed by the 1996 Act (and not within its jurisdiction otherwise). For this reason, this Commission should decline to set a CNAM rate.

Ultimately, the FCC will determine in a subsequent rulemaking what will be included on the list of UNEs that incumbent LECs must offer. At that time, the FCC will make a determination whether CNAM will be on this list. In some instances--such as network terminating wire, which will be discussed later—BellSouth had previously agreed to provide the functionality as a UNE. In these instances, BellSouth has dealt with these items as if they were UNEs for purposes of negotiations with MediaOne. CNAM is not such an item. Indeed, it is fairly clear that CNAM cannot pass the test to be categorized as a UNE that has been recently delineated by the United States Supreme Court. For this reason, BellSouth has treated it as a market-based offering rather than as a UNE, and believes that this Commission should reach the same conclusion.

The FCC has defined call related databases "as databases, other than operation support systems, that are used in signaling networks for billing and collection or the transmission, routing, or other provision of a telecommunications service." (Section 51.319(e)(2)(1)). As BellSouth's witness, Alphonso J. Varner, stated, "access to BellSouth's

[1] In fact, in his testimony, Mr. Varner noted that BellSouth has provided CNAM service well before the passage of the 1996 Act. (Tr. 253).

CNAM database is not a necessary component for billing and collection, transmission or routing of an end user's call. An end user's call will complete whether or not a query is made to a CNAM database." (Tr. 254). Mr. Maher, MediaOne's principal witness on this issue, admitted that CNAM is not necessary to call completion. (Tr. 360). In fact, Mr. Maher admitted that access to a CNAM database is used only to provide the "caller name portion of cellar ID, and that caller ID is a vertical service." (Tr. 360). Nevertheless, Mr. Maher argued in his prefiled rebuttal testimony that CNAM should be treated as a UNE because it is "adjunct" to basic local service. (Tr. 357). From a logical standpoint, an argument can be made that almost any service offered by an telecommunications carrier is, in some manner, "adjunct" to the more basic services offered by that carrier. There is nothing in the Act, however, to suggest that such an expansive definition of what constitutes a network element was intended by Congress. Moreover, the Supreme Court has specifically rejected an expansive approach to defining UNEs.

In its Order in AT&T Corp. v. Iowa Utilities Board, 142 L. Ed. 834 (1999), the Supreme Court rejected the FCC's original identification of the items that constitute network elements. In its analysis, the Supreme Court first noted that under Section 251(d)(2) of the Act, the FCC's decision as to what constitutes a UNE must, at a minimum consider 1) whether access to the element is "necessary", and 2) whether "the failure to provide access to such network elements would impair the ability of the telecommunications carriers seeking access to provide the services that it seeks to offer." (Section 251(d)(2), quoted, at L. Ed. 854). The Supreme Court ruled that the FCC had failed to apply this standard when it interpreted the requirements of the Act in a manner that the Court described as follows:

> In the general statement of its methodology set forth in the First Report and Order, the Commission announced that it would regard the 'necessary' standard as having been met regardless of whether 'requesting carriers can obtain the requested proprietary element from a source other than the incumbent, 'since '[r]equiring new entrants to duplicate unnecessarily even a part of the incumbent's network could generate delay and higher costs for new entrants, and thereby impede entry by competing local providers and delay competition, contrary to the goals of the 1996 Act.' First Report & Order, par. 283. And it announced that it would regard the 'impairment' standard as having been met if 'the failure of an incumbent to provide access to a network element would decrease the quality, or increase the financial or administrative cost of the service a requesting carrier seeks to offer, compared with providing that service over other unbundled elements in the incumbent LEC's network, ' id., par. 285 (emphasis added)—which means that comparison with self-provision, or with purchasing from another provider, is excluded. Since any entrant will request the most efficient network element that the incumbent has to offer, it is hard to imagine when the incumbent's failure to give access to the element would not constitute an 'impairment' under this standard.

(Id., at 855).

Thus, the Supreme Court concluded that the FCC standard was so broad that any refusal by a LEC to provide a network element would constitute an impairment. Accordingly, the Supreme Court ruled that the FCC had rendered the necessary and impair test virtually meaningless, with the result that every incumbent would be required to make every element in its network available to any new entrant. The Supreme Court rejected this approach:

> The Commission's assumption that any increase in cost (or decrease in quality) imposed by denial of a network element renders access to that element 'necessary', and causes the failure to provide that element to 'impair' the entrance ability to furnish its desired services is simply not in accord with the ordinary and fair meaning of those terms.

(Id.)

The Supreme Court found that the Commission's reading of this Section of the Act was simply wrong. Instead, the Supreme Court made the determination that,

> [The Act] . . . requires the Commission to determine on a rational basis which network elements must be made available, taking into account the objective of

> the Act and giving some substance to the 'necessary' and 'impair' requirements. The latter is not achieved by disregarding entirely the availability of elements outside the network, and by regarding any 'increased' costs or decreased service quality, as establishing a 'necessity' and 'impair[ment]' of the ability to provide services.

(Id. 857).

In this ruling, the Supreme Court strongly suggests that a particular item cannot be a UNE if there are competitive alternatives to obtaining it from the LEC's network. This is precisely the situation in our case.

There is really no question but that the CNAM service that MediaOne seeks is available from other sources. In his deposition, Mr. Maher stated that MediaOne obtains this service in its operations around the country from BellAtlantic, Ameritech, and a provider identified as Illuminet (Ex. 11, pp. 4, 10-11). Mr. Maher seemed somewhat confused on this issue, however, and, at the hearing three days later, he indicated that Illuminet was the only provider from whom MediaOne purchases access to databases around the country. (Tr. 261-62). At his deposition, Mr. Maher also stated that any one of the other providers of CNAM access could provide MediaOne with access to BellSouth's database, although MediaOne had not even attempted to inquire about this service provision specifically, or about the rate that would apply. (Ex. 11, pp. 10-11). During the three days between his deposition and the hearing, however, Mr. Maher had apparently undertaken for the first time to determine whether other companies could provide CNAM services (Tr. 364). This inquiry allowed Mr. Maher to confirm at the hearing that Illuminet would, in fact, provide this service to MediaOne, albeit at a higher price than the rate proposed by BellSouth. (Tr. 364-65). Under the clear pronouncement of the Supreme Court, the fact that the exact same service can be obtained from alternate sources is

enough to establish that the "necessary and impair" standard has not been met; thus, CNAM is not a UNE.

MediaOne has attempted to obscure this fact by arguing that, in the words of Mr. Maher, "BellSouth is the only provider of CNAM for BellSouth telephone numbers." (Tr. 352). To put the argument more accurately, MediaOne contends that although it may obtain access to BellSouth's database by way of many vendors, BellSouth is the only company that actually owns the BellSouth database. This point is essentially irrelevant, however, because what MediaOne requires to provide Caller ID is access to the appropriate database (Tr. 360). It is uncontroverted that this access can be obtained by vendors other than BellSouth. It makes no differences that the competitive services offered by multiple vendors are based on information derived from a single source. The product is still offered competitively.

Under MediaOne's theory to the contrary, much of the competition created by the Act would not be competition at all. The Act clearly contemplates three entry mechanisms: facilities-based competition, resale, and the use of unbundled network elements. In a resale scenario, a new entrant purchases at a discounted rate a service from an incumbent and then competes with that incumbent by reselling the service. Likewise, the provisions of the Act relating to UNEs authorizes new entrants to compete with incumbents by, in effect, leasing portions of the incumbent's network to combine with their own networks to create competitive offerings. Thus, of the three entry mechanisms, two of them--resale and the provision of service by the use of UNEs--allow new entrants to utilize the incumbent's network, or services provided via that network, to compete against the incumbent. In both these scenarios, the incumbent's network is the ultimate source of the product that the new entrant sells in order to compete. Under MediaOne's theory, two of the three competitive entry vehicles specifically

authorized by the Act would not constitute competition because they, in some fashion, utilize the services or network of the incumbent as the source of the competitive ALEC product. Obviously, this theory is untenable. It is equally untenable for MediaOne to argue that if it has a choice of purchasing access to BellSouth's database from a variety of vendors for a variety of prices and terms, the fact that it is ultimately accessing a single database somehow eradicates the obvious availability of competitive alternatives.

Further, MediaOne's argument seems to be based on a fundamental misunderstanding of the nature of the CNAM service. This service does not just provide access to BellSouth's database, but also to the databases of others. In his testimony, Mr. Varner described the CNAM service in detail as follows:

> With BellSouth's CNAM service, customers have access to a large volume of names—from the extensive BellSouth customer database plus sharing agreements with other large database owners. When an end user initiates a call to another end user subscribed to Calling Name Service (e.g. Caller ID Deluxe), call setup information is passed to the called party's switch. The called party's switch then queries the BellSouth Signal Transfer Point ("STP") for Calling Name Information. If necessary, this connectivity can be accomplished through a third party STP. The BellSouth STP then passes the query to the BellSouth CNAM Service Control Point ("SCP") for resolution. Calling Name Information is then passed back through the BellSouth STP to the called party's switch and the subscriber's Caller ID display unit. For out-of-region callers, the BellSouth STP passes the query to an out-of-region CNAM SCP for resolution. Calling Name Information is returned through the BellSouth STP to the called party's switch and display unit.

(Tr. 252) (emphasis added).

For the one cent per query rate BellSouth proposes to charge for CNAM, BellSouth not only provides access to its own database, when necessary, it also accesses the databases of other carriers, including those outside of its region. Thus, the service in question is not just access to BellSouth's database. It is access to a database anywhere in the country that corresponds to the

location of a person placing a call to a MediaOne customer. If, for example, a MediaOne customer residing in Florida receives a call from a customer of BellAtlantic in Maryland, BellSouth would obtain the information-- not from its database, but from the database of BellAtlantic--and pass that information on to MediaOne. As MediaOne witness, Mr. Maher admitted, MediaOne could obtain the same access from any of the other RBOCs in the country, or from Illuminet. (Ex. 11, pp. 10-11). Thus, MediaOne is clearly wrong in the contention that BellSouth is the only source for the CNAM data of issue.

During the course of the hearing, MediaOne expressed the apparent view that because other competitive carriers charge more for this service, this somehow renders CNAM a UNE. Although three days prior to the hearing, Mr. Maher had no idea what Illuminet would charge for CNAM service, he nevertheless contended at the time of the hearing that he had determined that Illuminet would obtain CNAM data from BellSouth, mark it up to include the cost of resale, and then sell it to MediaOne at a higher price. (Tr. 363). This seems implausible given the fact that, as both parties agree, the service in question is not priced based strictly on the cost of provision. Moreover, this ostensible practice of Illuminet is contrary to the practice of BellSouth. As stated in the above-quoted testimony of Mr. Varner, BellSouth will provide to MediaOne access to its database throughout its region, or access to any out-of-region database for precisely the same rate, one cent per query. (Tr. 252, 254).

The questionable credibility of MediaOne's assertion regarding Illuminet aside, MediaOne's argument still fails. MediaOne appears to have the view that because other providers charge more for this competitive service than BellSouth, this somehow renders it a UNE. As discussed above, however, the United States Supreme Court has expressly rejected the contention that the higher price of other alternatives to obtain the functionality in question is

enough to meet the necessary and impair standard of the Act. Thus, even if one accepts MediaOne's contention that it must pay more to obtain this competitive offering elsewhere, this does nothing to change its status as a competitive offering, or to render it a UNE.

Finally, an objective look at MediaOne's own behavior would appear to undercut rather dramatically the contention that CNAM is a UNE. Mr. Maher testified that the CNAM agreement between MediaOne and BellSouth is not a part of the prior agreement between the parties (Deposition of Maher, Ex. 11, p. 8). He also stated that to the best of his knowledge, CNAM has not been included in any interconnection agreement with any incumbent carrier in any area in which MediaOne does business. (Tr. 359, 367-370). Finally, he admitted that the relatively higher price that MediaOne pays for CNAM in other regions is the result of a voluntary decision by MediaOne (Tr. 371). It seems strange, to put it mildly, that MediaOne has labeled BellSouth's proposed price "exorbitant" in this proceeding (Tr. 352), yet it is voluntarily paying almost twice as much for the precise same service in other regions. An objective review of the facts prompts the conclusion that MediaOne has voluntarily agreed to contract for CNAM services outside of an Interconnection Agreement on numerous occasions because it knows full well that CNAM is not a UNE. MediaOne's attempt to argue in this proceeding that CNAM database access is a UNE, stands not only in dramatic contrast with its prior behavior, it also reflects an attempt to avoid paying a fair--and in fact comparatively favorable--rate for a service for which there are competitive alternatives. This effort should be rejected, and this Commission should rule that CNAM is not a UNE, and, therefore, not subject to arbitration.

Issue 5: What is the appropriate manner for MediaOne to have access to network terminating wire ("NTW") in multiple dwelling units ("MDU")?

**Position: Under BellSouth's reasonable, proposed method of access to NTW, the ALEC would install its own terminal in proximity to BellSouth's terminal, and a BellSouth technician would make the cross connect between the two terminals. The ALEC would also install its own NID within the apartment of the end user.

Issue 7: What, if anything, should BellSouth be permitted to charge MediaOne for access to NTW?

**Position: BellSouth should be permitted to charge MediaOne for access to Network Terminating Wire at the rates set forth in the testimony of BellSouth witnesses, Varner and Caldwell.

As with most of the disputed issues that remain in this proceeding, the central facts regarding the provision of NTW are essentially uncontested. The first, and perhaps most important, of these uncontested facts is that the Florida Commission's Demarcation Rule (25-4.035, F.A.C.), provides that the point of demarcation between BellSouth facilities and unregulated inside wire occurs in a multiple dwelling unit (MDU) at the individual premises of each customer. (Tr. 67). Thus, in a residential apartment building, the demarcation point, at which BellSouth's facilities end, is within the apartment of the individual customer. Two, MediaOne wishes to connect its distribution facilities into a BellSouth access cross connect terminal that, in a multiple dwelling unit ("MDU") would be either in a garden terminal (an enclosure outside the building) or in a wiring closet or other designated area such as the

basement of the apartment building. To do this, of course, would require the disconnection of BellSouth distribution facilities and the connection of the distribution facilities of MediaOne. (Tr. 126). Both of these possible cross connection locations are within the network of BellSouth (Tr. 68). Three, MediaOne wishes to utilize BellSouth's network terminating wire to go from the cross connect point in BellSouth's network to the individual premises (i.e., apartments in a residential MOU) of each customer that it serves. (Tr. 68-69).

MediaOne also appears to be willing to pay the recurring charge of .60 cents per month proposed by BellSouth for the use of BellSouth's network terminating wire. (Tr. 124). Rather the dispute comes down to the simple fact that BellSouth proposes that the connection into its network would be performed by its own technicians, and that MediaOne would be charged a reasonable non-recurring rate for this effort. The rate proposed by BellSouth is based on the standards under the Act for the pricing of unbundled network elements, as those standards have been applied by this Commission (Tr. 338-40)[2]. MediaOne, on the other hand, wishes to have its own technicians manipulate BellSouth's facilities in order to make a direct connection into BellSouth's network without BellSouth personnel being present. (Tr. 106, 124-25). Thus, in order to save itself a one time charge when it initiates service to a customer, MediaOne is effectively proposing that it (and as will be explained later, all other ALECs) have unfettered access to BellSouth's network in a way that entails a substantial risk to the safety and security of that network.

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[2] As stated previously in the discussion regarding CNAM, it is unknown whether the FCC will classify any given item as a UNE under the standard provided by the Supreme Court. However, since NTW is a loop sub-element, there is at least the possibility that it would pass a proper application of the "necessary and impair" test. Accordingly, for the purposes of this discussion, BellSouth has treated NTW as if it were a UNE, notwithstanding the uncertainty as to future FCC decisions.

One of the fundamental problems with MediaOne's approach is that MediaOne appears to believe that it is entitled to a cost to provide service that is precisely the same as BellSouth's, even when its use of BellSouth's facilities creates costs that would not otherwise exist. Thus, MediaOne's witness, Mr. Beveridge contends that that it is unfair for MediaOne to have to pay the cost involved in having a BellSouth technician wire MediaOne's facilities into the BellSouth network, because, he contends, no such cost would be incurred when BellSouth provides service to its customers with its facilities (Tr. 75-76). The point, however, is that if BellSouth is providing service to its customer with its own network, at some point, BellSouth incurred the cost to connect those facilities. If it is necessary for BellSouth to again come to the customer premises to connect MediaOne's distribution facilities to BellSouth's network, then it entails an additional cost, which is obviously necessitated by MediaOne. Under these circumstances, it is only fair for MediaOne to bear this cost. MediaOne, nonetheless, appears to believe that it is entitled to provide service through BellSouth's facilities without investing anything whatsoever in the provision of that service. As Mr. Milner testified, two themes to this effect run through the testimony of MediaOne's witnesses:

> First, MediaOne apparently believes it can provide service to its customers without incurring a certain level of risk. I believe all businesses take on a certain level of risk in determining the methods by which it will serve the market. However, MediaOne apparently wants the best of both worlds. For example, MediaOne wants the lower prices associated with the pre-wiring of network terminating wire (NTW) of multiple dwelling units (MDUs) (and thus avoiding additional dispatches of BellSouth technicians to provide additional pairs) but only wants to pay for the quantity of network terminating wire pairs actually being used to provide service. Thus MediaOne tries to inappropriately shift the risk of using unbundled network elements from MediaOne to BellSouth.
>
> Second, MediaOne appears to be concerned only with what it determines is best for MediaOne. BellSouth has obligations as a carrier of last resort (COLR). If no other service provider is willing to serve a given area or customer within the BellSouth franchise area, BellSouth is required to provide service upon request.

(Tr. 165).

Thus, MediaOne wants to use BellSouth's facilities without paying the additional costs generated by this use. Alternatively, MediaOne wishes to avoid the cost of having BellSouth conduct the necessary pre-wiring by doing the work itself. This approach, as discussed above, simply ignores the fact that there is more here at stake than MediaOne's self-interest, and creates a substantial risk to the network that BellSouth must use to satisfy its obligations as carrier of last resort (an obligation that MediaOne admittedly does not have) (Tr. 129).

In the scenario proposed by MediaOne, MediaOne would make the necessary cross connection without a BellSouth technician being present, and would, therefore, have the duty to inform BellSouth of this connection. (Tr. 127). Of course, if MediaOne failed to do so, BellSouth would have no way to know that MediaOne had disconnected BellSouth's facilities and reconnected its own, a fact that MediaOne's witness, Mr. Beveridge, admitted. (Tr. 127). Further, MediaOne takes the position that BellSouth should simply assume that the technicians of MediaOne are competent to deal with BellSouth's network without damaging it. (Tr. 128-29).

The fact remains, however, that mistakes do occur, and MediaOne wishes to effectively shift to BellSouth the risk of these mistakes. In other words, the network that would ultimately be damaged if damage occurs is BellSouth's, and only BellSouth has the COLR obligation that must be met through the use of this network. Likewise, if BellSouth's facilities are utilized by an ALEC that fails to report this use to BellSouth, then BellSouth is the entity that will be deprived of the funds that should be paid to BellSouth for the use of its facilities. MediaOne has blithely responded to these concerns with the pronouncements that its technicians

are competent and that it can be relied upon to self-report its use of BellSouth's network on the "honor system." (Tr. 89, 128; Ex. 9, p. 43). Even if MediaOne's casual dismissal of BellSouth's concerns were valid, however, MediaOne readily admits that it can give no assurances that damage will not be caused to BellSouth's network by other ALECs.

During cross-examination, MediaOne's witness, Mr. Beveridge, admitted that MediaOne cannot contend that the treatment it seeks should be given only to MediaOne. If MediaOne is entitled to manipulate BellSouth's network without the presence of a BellSouth technician, then every one of the other 275 ALECs in Florida would have the same entitlement (Tr. 127)[3]. Under MediaOne's proposal, every one of these ALECs would have the right, if they so choose, to have unfettered access to BellSouth's network, to disconnect BellSouth's facilities, and to, likewise, disconnect the facilities of one another. (Tr. 128). At the same time, Mr. Beveridge readily admitted upon cross-examination that MediaOne is not in the position to give BellSouth any assurance as to the competence or honesty of the personnel of other ALECs (Tr. 129). Mr. Beveridge also readily acknowledges that if BellSouth's network were damaged by an ALEC having unrestricted access to the Network, BellSouth would still have COLR obligations, and BellSouth would have to bear the financial burden of repairing its network to discharge these obligations (Tr. 129, 142). Put simply, if MediaOne's proposal is adopted, it will be difficult, if not impossible, for BellSouth to ensure that it can continue to meet the requirement to provide a network in its franchised service territory that will be safe, secure, and capable of being utilized to discharge BellSouth's COLR obligations.

[3] Certainly, not every one of the 275 ALECs in Florida are facilities-based, but many of them are, and one can only anticipate that as competition develops, there will be more facilities-based providers.

Further, adoption of MediaOne's approach is inconsistent with the FCC's ruling that access to a LEC's network must be accomplished in a way that is technically feasible under the Telecommunications Act. As the FCC stated:

> We also conclude . . . that legitimate threats to network reliability and security must be considered in evaluating the technical feasibility of interconnection or access to incumbent LEC networks. Negative network reliability effects are necessarily contrary to a finding of technical feasibility. Each carrier must be able to retain responsibility for the management, control, and performance of its network.

(First Report and Order, 96-325, par. 203).

As Mr. Milner testified on behalf of BellSouth, "one important aspect of the FCC's definition of 'technical feasibility' is the recognition that methods of interconnection or access that adversely affect network reliability are 'relevant evidence that interconnection or access at that particular point is technically infeasible'". (Tr. 151-152, a quoting First Report and Order, pars. 190, 203). Further, Mr. Milner testified that "MediaOne's proposal strikes at the heart of . . . [the] . . . FCC requirement and, if allowed, would render BellSouth incapable of managing and controlling its network in the provision of service to its end user customers." (Tr. 152).

MediaOne's proposal would make it impossible for BellSouth to ensure the safety and security of its network, and would make it equally impossible for BellSouth to maintain accurate records of the use being made of its network by other providers. MediaOne's contention to the contrary is premised on the implausible notion that every ALEC in the state of Florida should have access, if it wished, to BellSouth's facilities; that every ALEC could be counted upon to competently connect into BellSouth's network and to diligently track and honestly report its usage of BellSouth's network; and that none of these ALECs would err in their reporting of network use or cause damage (even inadvertently) to BellSouth's network.

Obviously, these assumptions, while expedient for MediaOne's purposes, are both unsupported and plainly implausible.

MediaOne's proposal for determining which network terminating wire to use at the customer's apartment is equally self serving. BellSouth's proposal is premised on the idea that, while MediaOne would be provided with the BellSouth NTW that it needs to reach customers, BellSouth would reserve the option to use of maintaining the "first pair," unless it would be used by MediaOne. This would require MediaOne to place a NID at the customer premise, or have BellSouth place the NID. (Tr. 153-54). MediaOne contends that this would be too difficult because it could perhaps take hours for its technicians to identify the first pair, and to test to make sure that the pairs it needed to use had not "gone bad." (i.e. between the cross connection point and the customer premise). (Ex. 9, p. 17). This contention, of course, begs the question of how MediaOne technicians that would have such difficulty with a relatively simply task can be "assumed" to be competent to disconnect BellSouth's facilities at the cross connect without damage to those facilities. This point aside, as Mr. Milner stated, if MediaOne wishes to have BellSouth install the NID, BellSouth will do so at a reasonable rate. (Tr. 154).

Instead, MediaOne wants to simply appropriate at the cross connection point any network terminating wire that it wishes to use. Again, the sole purpose underlying MediaOne's approach is to provide service while investing a minimal amount of time, effort and expense in doing so. In other words, rather than providing for network interface devices that would accommodate both BellSouth and MediaOne, MediaOne simply wishes to appropriate whatever NTW it wants because this is simplest, easiest, and cheapest. Once again, Mr. Milner's testimony that MediaOne seems to be concerned with nothing other than what it is good for itself rings true. The proposal of BellSouth that MediaOne be required to have a network

interface device of some sort in those instances in which it wishes to use BellSouth's network terminating wire is practical, eminently reasonable, and will place no undue burden on MediaOne. MediaOne's contention to the contrary, that it should simply be allowed to appropriate whatever wire it wishes to use without regard to coordination with BellSouth, should be rejected.

Issue 6: What is the appropriate demarcation point for BellSouth's network facilities serving multiple dwelling units?

**Position: This issue has been resolved by the parties.

Issue 8: How many call paths should BellSouth be required to provide to MediaOne, at no cost to MediaOne, for customers who are porting telephone numbers through interim number portability?

**Position: This issue has been resolved by the parties.

Issue 9: What rate, if any, should BellSouth be allowed to charge for additional call paths provided to MediaOne for customers who are porting telephone numbers through interim number portability?

**Position: This issue has been resolved by the parties.

Issue 10: In implementing Local Number Portability ("LNP"), should BellSouth and/or MediaOne be required to notify the Number Portability Administration Center ("NPAC") of the date upon which BellSouth will cut-over MediaOne

customer numbers at the MediaOne requested time concurrent with BellSouth's return of a Firm Order Commitment ("FOC") to MediaOne?

**Position: This issue has been resolved by the parties.

Issue 11: Should BellSouth be required to provide a point of contact to intervene in the execution of LNP orders when changes or supplements are necessary for customer-related reasons, and, if so, what charge, if any, should apply?

**Position: This issue has been resolved by the parties.

Issue 12: The appropriate measurements for inclusion in the MediaOne agreement should be BellSouth's Service Quality Measurements. There is adequate product level detail in the existing BellSouth SQM to insure BellSouth is providing service in compliance with the 1996 Telecom Act (Act).

**Position: This issue has been resolved by the parties.

Issue 13: Should the Florida Public Service Commission arbitrate performance incentive payments and/or liquidated damages for purposes of the MediaOne/BellSouth Interconnection Agreement? If so, what performance incentive payments and/or liquidated damage amounts are appropriate, and in what circumstances?

**Position: This issue was removed from the arbitration by a ruling set forth in order No. PSC-99-1309-PHO-TP.

CONCLUSION

All but three of the issues between MediaOne and BellSouth have been successfully negotiated and resolved. The first issue, whether ISP traffic should be subject to reciprocal compensation provisions that apply to local traffic, has been resolved by the FCC's decision that this traffic is not local. The second, CNAM database rates, is, for the reasons set forth above, not governed by the provisions of the Act, and should, therefore, not be the subject of arbitration. The final issue, the provision of network terminating wire, comes down to the central question of whether it is appropriate to allow MediaOne unrestricted access to BellSouth's network. BellSouth submits that, for the reasons set forth above, connections to BellSouth's network should be made by BellSouth technicians, and a reasonable charge should be accessed for this labor. Any other procedure, while perhaps serving the financial interests of MediaOne, would unnecessarily compromise the safety and security of BellSouth's network.

Accordingly, BellSouth requests the entry of an order sustaining its position on each of the disputed issues identified above.

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