

HOPPING GREEN SAMS & SMITH

PROFESSIONAL ASSOCIATION

ATTORNEYS AND COUNSELORS

123 SOUTH CALHOUN STREET

POST OFFICE BOX 6526

TALLAHASSEE, FLORIDA 32314

(850) 222-7500

FAX (850) 224-8551

FAX (850) 425-3415

Writer's Direct Dial No.

(904) 425-2313

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JAMES S. ALVES
BRIAN H. BIBEAU
KATHLEEN BLIZZARD
RICHARD S. BRIGHTMAN
KEVIN B. COVINGTON
PETER C. CUNNINGHAM
RALPH A. DEMEO
THOMAS M. DEROSE
RANDOLPH M. GIDDINGS
WILLIAM H. GREEN
KIMBERLY A. GRIPPA
WADE L. HOPPING
GARY K. HUNTER, JR.
JONATHAN T. JOHNSON
ROBERT A. MANNING
FRANK E. MATTHEWS
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GABRIEL E. NIETO
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MICHAEL P. PETROVICH
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CAROLYN S. RAEPPE
DOUGLAS S. ROBERTS
GARY P. SAMS
TIMOTHY G. SCHOENWALDER
ROBERT P. SMITH
CHERYL G. STUART
W. STEVE SYKES
T. KENT WETHERELL, II
OF COUNSEL
ELIZABETH C. BOWMAN

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

Re: MCImetro Complaint -- Docket No. 980281-TP

Dear Ms. Bayó:

Enclosed for filing on behalf of MCImetro Access
Transmission Services, Inc. are the original and fifteen copies
of its post hearing brief.

By copy of this letter, this document is being furnished to
the parties on the attached service list.

Very truly yours,

Richard D. Melson

Richard D. Melson

- ACK _____
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RECORDS SECTION

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished to the following parties by U. S. Mail or Hand Delivery** this 26th day of August, 1998.

Catherine Bedell**
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Suite 370
Tallahassee, FL 32399-0850

Nancy White**
c/o Nancy Sims
BellSouth Telecommunications
150 South Monroe Street
Suite 400
Tallahassee, FL 32301

Phillip Carver
BellSouth Telecommunications
Suite 4300
675 West Peachtree Street. NE
Atlanta, Ga 30375

Richard M.

ATTORNEY

ORIGINAL

In re: Complaint of MCImetro Access)	
Transmission Services, Inc. against)	Docket No. 980281-TP
BellSouth Telecommunications, Inc.)	
For Breach of Approved)	Filed: August 26, 1998
Interconnection Agreement)	

**MCIMETRO ACCESS TRANSMISSION SERVICES, INC.'s
POST-HEARING BRIEF**

MCImetro Access Transmission Services, Inc. (MCImetro) hereby files its post-hearing brief.

EXECUTIVE SUMMARY

MCImetro has this action to address a number of instances in which BellSouth has failed to honor MCImetro's Interconnection Agreement (Agreement) and to comply with the Telecommunications Act of 1996 (Act). In particular, BellSouth has failed to provide Operations Support Systems (OSS) that have the same capability and functionality as BellSouth's own internal OSS systems (Issues 1-8); has failed to provide required information on network blockage and local tandem interconnection (Issues 9-10); has refused to provide flat-rate usage data (Issue 11); has excluded listings from the directory assistance database available to MCImetro (Issue 12); and has failed to provide its soft dial tone service in a competitively neutral manner (Issue 13). MCImetro has more than met its burden of proving that BellSouth has breached the applicable provisions of the Agreement and that BellSouth should be ordered to take the steps necessary

to bring itself into compliance. In addition, the Commission should consider what penalties or other sanctions are appropriate for BellSouth's conduct.

PARITY PROVISIONS OF CONTRACT

The General Terms and Conditions comprising Part A of the Interconnection Agreement include a number of provisions that are designed to ensure that BellSouth provides interconnection, unbundled network elements, access to Operations Support System (OSS) functions, and resale services at parity with BellSouth itself. (Martinez, Tr. I, 12-13, 48) These contractual provisions are relevant to several of the specific issues in this proceeding, where MCImetro complains of BellSouth's failure to provide MCImetro with parity in terms of OSS functionality.

To avoid duplicating the discussion of these contractual provisions, they will be set out one time in this section of the brief, and thereafter will simply be referred to as the "parity provisions" of the Agreement.¹

13.1 Except as otherwise provided herein, each party shall perform its obligations hereunder at a performance level no less than the level which it uses for its own operations, or those of its Affiliates, but in no event shall a party use less than reasonable care in the performance of its duties hereunder.

¹ The entire Agreement (RM-1) was part of Exhibit 1, as was a document containing relevant excerpts from the Agreement (RM-2). This brief will simply cite to the relevant sections of the Agreement, without further reference to the exhibit number.

13.3 BellSouth agrees that it will provide to MCIm on a nondiscriminatory basis unbundled Network Elements and ancillary services as set forth in this Agreement and the operations support systems as set forth in this Agreement. BellSouth further agrees that these services, or their functional components, will contain all the same features, functions and capabilities and be provided at a level of quality at least equal to the level which it provides to itself or its Affiliates.

* * *

13.8 BellSouth agrees that order entry, provisioning, installation, trouble resolution, maintenance, billing, and service quality with respect to Local Resale will be provided at least as expeditiously as BellSouth provides for itself or for its own retail local service or to others, or to its Affiliates, and that it will provide such services to MCIm in a competitively neutral fashion.

As Mr. Hendrix agrees, these provisions essentially establish a parity requirement with respect to OSS features, functions and capabilities. (Hendrix, Tr. III, 428)

In addition, specific provisions in Attachment VIII of the Agreement reinforce BellSouth's obligation to provide OSS systems at parity what it enjoys itself:

2.1 General Business Requirements

2.1.1 Ordering and Provisioning Parity

2.1.1.2 During the term of this Agreement, BellSouth shall provide necessary ordering and provisioning business process support as well as those technical and systems interfaces as may be required to enable MCIm to provide at least the same level and quality of service for all resale services, functions, features, capabilities, and

unbundled Network Elements as BellSouth provides itself, its Affiliates, or its own subscribers. BellSouth shall provide MCI with the same level of ordering and provisioning support as BellSouth provides itself in accordance with standards and performance measurements that are at least equal to the highest level of standards and/or performance measurements that BellSouth uses and/or which are required by law, regulatory agency, or by BellSouth's own internal procedures, whichever are the most rigorous. . . . BellSouth warrants that interim solutions shall provide MCI Customers with the same level of service available to BellSouth customers.

2.3 Systems Interfaces and Information Exchanges

2.3.1 General Requirements

2.3.1.3 BellSouth and MCI shall agree on and implement interim solutions for each interface within thirty (30) days after the Effective Date of this Agreement, unless otherwise specified in Exhibit A of this Attachment. **The interim interface(s) shall, at a minimum, provide MCI with the same functionality and level of service as is currently provided by the electronic interfaces used by BellSouth for its own systems, users, or subscribers.**

(Emphasis added.)

These provisions could not be clearer. BellSouth is obligated to provide MCI metro with operations support systems and interfaces that have the same functionality and capability as BellSouth's own internal OSS systems. Anything less is a breach of contract.

ISSUE-BY-ISSUE ANALYSIS

Issue 1: Has BellSouth provided MCImetro with information about BellSouth's OSS and related databases in compliance with the Telecommunications Act of 1996 and the parties' Interconnection Agreement? If no, what action, if any, should the Commission take?

**MCIm: No. BST has failed to provide MCImetro with the information about BST's internal OSS and related databases that is needed to judge whether the OSS provided to MCImetro is at parity with that used by BST. BellSouth should be required to provide the requested information within ten days from the date of the Commission's final order. **

BellSouth does not disclose to alternative local exchange carriers (ALECs) all the capabilities of its own internal OSS. (Stacy, Tr. III, 354) At demonstrations of BellSouth's internal OSS in Florida and other states, ALECs have learned that BellSouth's internal OSS is superior to that provided by BellSouth to ALECs. (Martinez, Tr. I, 15-16; Green, Tr. II, 153) As a result, MCImetro and other ALECs have asked for improved OSS functionality that would more closely resemble BellSouth's internal systems. (Martinez, Tr. I, 16; Stacy Tr. III, 354) Rather than continuing to learn about BellSouth's internal OSS in bits and pieces, MCImetro has sought more systematic disclosure. BellSouth, however, has refused to provide the requested information or any portion of it. (Martinez, Tr. I, 13-15, Exhs. RM-3 to RM-9; Green, Tr. II, 154, Exhs. BG-1 & BG-2)

The parity provisions of the Agreement require BellSouth to provide MCImetro with access to OSS on a nondiscriminatory basis

and to provide OSS with the same functionality and capability that BellSouth's internal OSS has. MCImetro cannot determine whether it is receiving nondiscriminatory access and the same functionality unless BellSouth discloses what capabilities it has. Although performance measurement data may provide a useful tool for ferreting out discrepancies in service, it cannot substitute for information about the OSS BellSouth uses to serve its own customers. Performance measurements do not address every aspect of OSS (particularly those about which ALECs have no knowledge), nor do they disclose the reason for disparities that are uncovered. Under the Agreement, therefore, BellSouth must be required to produce information about its internal OSS on a systematic basis.²

The information MCImetro has requested is reasonably suited to determining whether BellSouth is meeting its parity obligations under the Agreement. MCImetro first asks for a detailed listing of all OSS systems that BellSouth uses. Such a list easily could be provided and could be compared to a list of systems that BellSouth provides for MCImetro's use. MCImetro also has requested the technical specifications for the listed systems, which will enable it to assess what functions BellSouth performs for its own retail operations and compare those

² BellSouth asserts that only the Commission is entitled to the requested information. (Stacy, Tr. III, 353) This contention is a red herring. Certainly the Commission has the authority to review information on BellSouth's OSS to make an assessment of parity. But MCImetro also is entitled to the information so it can learn the capabilities to which it is entitled under the Agreement.

functions to those available to MCImetro.³ The database listing requested by MCImetro, like the systems listing, easily could be provided and would allow for ready comparison. Finally, the data base descriptions MCImetro requests would enable it to determine the kind of information included in each data base used by BellSouth's OSS. This information should be provided within ten days after the Commission's final order.

Issue 2: Has BellSouth provided MCImetro with the Street Address Guide (SAG) data in compliance with the Telecommunications Act of 1996 and the parties' Interconnection Agreement? If no, what action, if any, should the Commission take?

MCIIm: No. BST has refused to provide a download of the RSAG database. The provision of limited access to this database through LENS does not comply with BST's contractual obligations. BST should be ordered to provide a database download within ten days after the Commission's final order with daily updates thereafter.

The Regional Street Access Guide is the BellSouth database that contains the information necessary to validate street addresses and information on the availability of facilities to serve specific physical locations. (Martinez, Tr. I, 17; Exh. 10, Stacy Depo. at 67)

MCImetro has made repeated requests for BellSouth to download the RSAG database to MCImetro in electronic format as

³ MCImetro is willing to agree to appropriate restrictions on its use of the OSS information BellSouth provides to address concerns BellSouth may have about the disclosure of proprietary information. Further, in light of BellSouth's disclosures in this proceeding about the number of systems and databases involved, MCImetro would consider reviewing summaries describing the systems and databases before requesting more detailed information about particular systems and databases.

required by the Agreement. (Green, Tr. II, 164-165; Exh. 6 at BG-3 to BG-10) Such a download is needed to permit MCImetro to integrate the address validation function into its ordering and pre-ordering systems. By doing so, MCImetro can avoid the need for its representatives to re-enter information from the pre-ordering interface into the order for service and into MCImetro's own customer support systems, thereby minimizing the risk of error. (Green, Tr. II, 164)

Address validation is a critical function, since improper addresses are one of the leading causes for order rejection. (Green, Tr. II, 163) MCImetro negotiated for a download RGAG precisely to avoid the need to rely on BellSouth for performance of this critical function. (Martinez, Tr. I, 35) BellSouth nevertheless has refused to provide the required download, claiming that transaction-by-transaction access to the address validation function of LENS satisfies its contractual obligation. (Stacy, Tr. II, 286-287)

Contrary to its claim, BellSouth has a clear obligation under the Interconnection Agreement to provide MCImetro with an initial download of the RSAG database, followed by daily updates containing changes to the database. (Martinez, Tr. I, 17) The Agreement provides that:

Within thirty (30) days after the Effective Date of this Agreement, BellSouth shall provide MCI the SAG data, or its equivalent, in electronic form. All changes to the SAG shall be made available to MCI on the same day as the change to the data is made.

Attachment VIII, §2.1.3.1

Importantly, this contractual provision requires BellSouth to "provide...the SAG data" not merely "provide access to" the data. (Martinez, Tr. I, 80, 82-83) BellSouth does not meet its obligation simply by providing an address validation capability through LENS. In fact, such address validation capability is addressed by a separate provision of the contract (Att. VIII, §2.3.2.5), which gives MCImetro the "option" to obtain "the capability to validate addresses by access to BellSouth's Regional Street Address Guide (RSAG) via dial-up of LAN to WAN access." (Martinez, Tr. I, 18) The fact that this is a distinct obligation is underscored by the different implementation timeframes. BellSouth is obligated under Att. VIII, §2.1.3 to provide the SAG data within thirty days, whereas the provision of access to the address validation function under Att. VIII, §2.3.2.5 has an indefinite implementation timeframe to "be negotiated between the parties."

If the language of Att. VIII, §2.1.3 leaves any doubt about BellSouth's obligation to provide the RSAG data via a one-time download, that doubt is resolved by the chart that appears on page VIII-93 of the Agreement. That chart shows that "BellSouth provides all Street Address Guide Information (SAG)" via "electronic interface" at a "one-time only" frequency. Thereafter, BellSouth is required to "provide[] changes to Street Address Guide Information (SAG)" via "electronic interface" on

the "same day as changes occur." The chart specifically shows that this requirement does not contemplate real-time access to the data, which is what BellSouth offers through its LENS alternative. (Martinez, Tr. I, 18-19, 85-86)

Although BellSouth has refused to provide MCImetro with the required RSAG download, BellSouth unilaterally quoted MCImetro a price of \$538,030 for creating and providing a partial extract of the RSAG database. (Green, Tr. II, 167 & Exh. 6 at BG-11) This response is insufficient for two reasons. First, MCImetro is entitled to receive the entire RSAG database, not a mere extract. While MCImetro might be willing to negotiate to accept a subset of the RSAG data, any such limitation must be the product of negotiations, not a unilateral decision by BellSouth as to what information will and will not be made available. (See Green, Tr. II, 241-242) Second, under the Agreement, BellSouth is required to provide the RSAG download at no cost to MCImetro.⁴ (Green, Tr. II, 166) If BellSouth desires to withhold a portion of the RSAG data, and MCImetro agrees, the cost of preparing the extract must fall on BellSouth, which is contractually obligated to provide the entire database.

The Georgia Public Service Commission has recently ordered BellSouth to provide RSAG data to competitive local exchange carriers (CLECs) as the result of a generic proceeding on Operations Support Systems. (Georgia OSS Order, Exhibit 12;

⁴ This is the same basis on which the MSAG database was provided. (Stacy, Tr. III, 361)

Stacy, Tr. III, 355) BellSouth testified that it intends to make extracts of the RSAG database for the entire nine-state region available to MCImetro under the Georgia ruling.⁵ (Stacy, Tr. III, 333, 356) The Georgia PSC has left open, however, the question of compensation (if any) due to BellSouth for providing the RSAG data.

The Georgia OSS Order does not resolve the two contractual questions presented to this Commission -- MCImetro's contractual right to a download of the entire RSAG database, and MCImetro's contractual right to obtain the download and subsequent updates at no charge. (See Stacy, Tr. III, 355-358)

Based on the clear language of the Agreement, BellSouth should be ordered to provide MCImetro with a complete download of the RSAG database within ten days after the Commission's final order, and thereafter to provide daily downloads of the information necessary with update the database, all at no charge.

Issue 3: Has BellSouth provided MCImetro with the due date calculation for a service order request from a customer in compliance with the Telecommunications Act of 1996 and the parties' Interconnection Agreement? If no, what action, if any, should the Commission take?

MCIIm: No. BST has not provided MCImetro with parity in the calculation of due dates. BST should be ordered to provide MCImetro with the same capability to calculate due dates that BellSouth has for itself, through a system that can be integrated with MCImetro's ordering system, within thirty days of the Commission's order.

⁵ This approach is not consistent with the Georgia OSS Order, which adopted the Georgia staff's recommendation that "BST shall make download of RSAG available, and provide for periodic updates of information." (Exhibit 12, Appendix A, p. 1)

The determination of installation due dates is a pre-ordering function of an operation support system. As such, BellSouth is required by the parity provisions of the Agreement to provide MCImetro with the same capability to determine due dates as BellSouth provides for itself. (Martinez, Tr. I, 19)

Today, when a BellSouth representative uses RNS to perform the combined pre-ordering/ordering function for a BellSouth customer, the BellSouth system returns a calculated due date and highlights that date for the BellSouth representative. (Green, Tr. II, 168-169; Stacy, Tr. III, 371-372) In contrast, when an MCImetro representative uses a combination of LENS pre-ordering and EDI ordering to perform these same functions, the MCImetro representative sees either no due date information at all (for UNE orders) or sees several pieces of information -- including installation intervals for various services, days the particular end office is typically open to install services, and days that the office has been closed due to workload or other considerations -- from which the MCImetro representative must perform a manual due date calculation. (Green, Tr. II, 169-170; Stacy, Tr. III, 292, 371)

The Commission previously held in the BellSouth 271 proceeding that BellSouth had failed to provide parity in the due date calculation function (Order No. PSC-97-1459-FOF-TL at 81, 157-158) (271 Order). Although BellSouth now states that it is

planning to add a due date calculation function in a future release of the pre-ordering mode of LENS, Mr. Stacy admits that the due date capabilities of LENS have not yet changed from what was in place when the Commission made its earlier finding.⁶

(Stacy, Tr. 372) Since the Agreement unambiguously requires BellSouth to provide MCImetro with the same OSS functionality and level of service as BellSouth enjoys itself, this disparity in due date calculation constitutes a breach of contract.

The Commission should therefore order BellSouth to provide MCImetro, within thirty days from the date of the Commission's order, with the same due date calculation capability that BellSouth currently enjoys, through a system that can be integrated with MCImetro's ordering system. (Green, Tr. II, 172)

Issue 4: Has BellSouth provided MCImetro with access to telephone numbers and telephone number information in compliance with the Telecommunications Act of 1996 and the parties' Interconnection Agreement? If no, what action, if any, should the Commission take?

MCIIm: No. BST has not provided MCImetro with parity in the reservation of telephone numbers or in access to NXX information. BellSouth should be ordered to provide MCImetro with parity for these functions within thirty days of the date of the Commission's order.

BellSouth has the responsibility for assigning telephone numbers to MCImetro upon request. (Agreement, Att. VIII, §2.1.8) Under the parity provisions discussed above, BellSouth must provide MCImetro with telephone number reservations and access to

⁶ The provision of a due date calculation in the firm order mode of LENS does not satisfy BellSouth's contractual obligation, since BellSouth relies on EDI, not LENS, as the sole method for providing non-discriminatory access to

telephone number information on at least the same basis as BellSouth provides such functions and information to itself.

(Martinez, Tr. I, 20)

BellSouth's efforts fall short of parity in two important respects. First, BellSouth representatives using RNS or DOE can reserve up to twenty-five telephone numbers at a time.⁷ (Green, Tr. II, 172, 191; Stacy, Tr. III, 300) An MCImetro representative using LENS can reserve only six telephone numbers at a time, and must back-up and repeat several steps in the pre-ordering process if he or she desires to reserve additional telephone numbers for the same order. (Green, Tr. II, 191; Stacy, Tr. 300, 373) This disparity increases the time required for an MCImetro representative to perform the same function as a BellSouth representative. This both prolongs the customer contact and introduces inefficiency, and hence additional cost, into MCImetro's operations. (See generally Green, Tr. II, 210, 256)

Second, a BellSouth representative using RNS or DOE has ready access to information on the NXXs available to serve a particular customer location. Similar information is not provided through the number reservation screens in LENS. (Green, Tr. II, 173; Stacy, Tr. III, 374-375) An MCImetro representative

ordering functions.

⁷ During cross-examination, Mr. Stacy testified at one point that twenty-five numbers at a time can be reserved using RNS and ten numbers at a time can be reserved using DOE (Stacy, Tr. III, 372), and later that in RNS numbers are reserved in groups of ten. (Id. at 373-74) Whether BellSouth reserves the numbers in groups of ten or twenty-five, its capability is superior to that provided to MCImetro.

therefore must consult another source to obtain the same information that is readily available to a BellSouth representative. This, too, adds time and expense to MCImetro's pre-ordering and ordering operations.

This is another situation in which the Commission previously found in the 271 proceeding that the functionality provided by BellSouth to ALECs was inferior to the functionality it provided to its own representatives. (271 Order at 79-80, 155, 158) If BellSouth is not providing parity for 271 purposes, it cannot be providing parity for contractual purposes. This is the case since the Agreement requires BellSouth to provide service to MCImetro at a standards equal to what it enjoys itself or equal to any standard required by law, whichever is higher. (Agreement, Att. VIII, §2.1.1.2)

The Commission should therefore order BellSouth, within thirty days, to comply with the provisions of the Agreement that require it to provide telephone number reservation capability and NXX information to MCImetro at parity with what BellSouth provides for itself. (Green, Tr. II, 174)

Issue 5: Has BellSouth provided MCImetro with access to Universal Service Order Codes (USOCs) in compliance with the Telecommunications Act of 1996 and the parties' Interconnection Agreement? If no, what action, if any, should the Commission take?

**MCIIm: No. While BST has recently provided MCImetro with USOC information in a usable electronic format, BST has not provided such access to FID information. BST should be ordered to provide MCImetro a FID file with

descriptions, together with information on the states in which USOCs are valid, all within thirty days of the Commission's order.**

A Uniform Service Order Code (USOC) is an alpha-numeric code by which each service offered by BellSouth is identified in BellSouth's internal ordering and provisioning systems. A valid USOC is required to place an order for a BellSouth service. (Exh. 10, Stacy Depo. at 89) Invalid USOCs are one of the leading causes for rejection of CLEC orders. Not all USOCs are valid in every state, so information on state validity is important for placing valid orders. (Green, Tr. II, 174) A Field Identifier (FID) is additional information that is required to supplement or modify certain USOCs. The use of a proper FID is a prerequisite to the submission of a correct order for a service to which a FID applies. (Green, Tr. II, 174)

In order to achieve parity with BellSouth in the submission of valid orders for service, MCImetro must have the same ease of access to USOC, state validity, and FID information that BellSouth provides to its own customer service representatives. BellSouth for some time has been providing such information to MCImetro only in a paper format or in a nondatabase electronic format that makes it essentially unusable in the development of an integrated ordering and preordering system. (Green, Tr. II, 174-175) Because of limitations on access to information about BellSouth's internal OSS (see Issue 1, above), MCImetro is unable to determine the exact type of access that BellSouth

representatives have to USOC and FID information. MCImetro suspects, however, that BellSouth representatives have access to such information on an electronic basis. (Green, Tr. II, 175)

Subsequent to MCImetro's complaint in this docket, BellSouth began providing MCImetro with USOC information in a format that can be integrated into its pre-ordering systems. (Green, Tr. II, 193) To date, however, BellSouth has failed or refused to provide information on state validity or required FIDs in a similar electronic format.

BellSouth attempts to justify its refusal to provide such information by stating that the Agreement does not explicitly require it to provide MCImetro with USOC or FID information. (See Martinez, Tr. I, 91) This cavalier approach ignores the overall parity provisions of the contract -- BellSouth is required to provide MCImetro with the OSS functions and capabilities necessary to place and process orders as efficiently as BellSouth does itself. Without USOC and FID information in a usable format, such parity is unattainable.

The Commission should therefore order BellSouth to provide MCImetro with a list of states in which various USOCs are valid, together with all relevant FID information, in a usable database format within thirty days of its final order in this docket. (Green, Tr. II, 176)

Issue 6: Has BellSouth provided MCImetro with customer service record (CSR) information in compliance with the

Telecommunications Act of 1996 and the parties' Interconnection Agreement? If no, what action, if any, should the Commission take?

****MCIm:** No. BST has failed to provide MCImetro with access to all CSR data, including, for example, price information associated with a customer's services. BST should be ordered to provide MCImetro with access to complete CSR data within thirty days of Commission's order.**

BellSouth maintains customer service records (CSRs) that contain a variety of information on customers and the services they use. MCImetro is permitted to access this information through the LENS interface.

Under the Agreement, BellSouth has an obligation to provide complete customer record information to MCImetro, except where access to the information is restricted by the customer or by some applicable law, rule or regulation:

BellSouth shall provide MCIm with customer service records, including without limitation Customer Proprietary Network Information (CPNI), except such information as BellSouth is not authorized to release either by the customer or pursuant to applicable law, rule or regulation.

Att. VIII, §2.3.2.3

Because of the general parity provisions of the Agreement, MCImetro's access to the customer service record information must be as complete as that enjoyed by BellSouth itself, subject only to the specific limitations in §2.3.2.3. (Martinez, Tr. I, 21)

Despite this obligation, the CSR available through LENS contains only a subset of the information in the CSR available to a BellSouth representative. (Green, Tr. II, 176) BellSouth has

refused to provide MCImetro with the portions of the customer service record that show the prices for the services purchased by the customer and which contain a local service itemization (LSI) that summarizes all of the services purchased by the customer. (Green, Tr. II, 193) These limitations on the information available through LENS are the result of a business decision by BellSouth, not the result of any technical limitation in the LENS interface. In fact, the first release of LENS included the pricing information to which MCImetro is entitled. It was only later that BellSouth made the decision to strip this information off of the CSR screens that can be viewed by an ALEC. (Stacy, Tr. III, 377; Green, Tr. II, 176-177)

BellSouth testified that it has recently modified the LENS interface to begin providing the LSI summary. (Stacy, Tr. III, 379) In addition, the Georgia Commission recently has ordered BellSouth to provide pricing information to CLECs through the LENS interface. (Georgia OSS Order, Exh. 12 at 10-11) Mr. Stacy testified, however, that BellSouth intends to implement this feature only for the state of Georgia, and that BellSouth will continue to refuse to provide this information to MCImetro under the Florida Agreement unless and until it is ordered by the Commission. (Stacy, Tr. III, 378-79)

BellSouth's only justification for refusing to provide this information to MCImetro is that it regards this as proprietary "marketing" information rather than customer service record

information. (See, Stacy, Tr. III, 309-11) It is difficult to understand how this information can be regarded as proprietary, since the price information available in the CSR is available, in a different format, in BellSouth's tariffs. After further reflection, Mr. Stacy agreed that BellSouth did not really consider the information to be proprietary, rather BellSouth simply does not want to make the information readily available to CLECs on a customer-by-customer basis. (See Stacy, Tr. III, 342, 378) It appears that BellSouth's sole motivation for limiting access to this information in the CSR is to unnecessarily increase the costs of its competitors. (Green, Tr. II. 194-195)

If BellSouth wanted to limit access to this pricing information for competitive reasons, the time to do so was when the Agreement was being negotiated. Under the Agreement, BellSouth simply does not have the right unilaterally to determine what CSR information will or will not be provided to MCImetro. (Martinez, Tr. I, 36)

The Commission should therefore order BellSouth to provide MCImetro with access to all CSR data, except such data as BellSouth can prove that it is not authorized to release by its customers, or under applicable law, rule or regulation. (Green, Tr. II, 177) In particular, the Commission should order BellSouth to provide MCImetro with access to the pricing information contained in the CSR.

Issue 7: Has BellSouth provided MCImetro with service jeopardy notification in compliance with the Telecommunications Act of 1996 and the parties' Interconnection Agreement? If no, what action, if any, should the Commission take?

MCIIm: No. BST has failed to provide MCImetro with electronic notification for all service jeopardies. BST should be ordered to provide MCImetro with commercially functional EDI support for service jeopardy notification within thirty days of the Commission's order.

A jeopardy situation occurs when for some reason a customer order cannot be completed by its due date. (Green, Tr. II, 178) BellSouth has created two categories of jeopardies. Missed appointment jeopardies are situations in which the service is not installed because the customer is unavailable at the scheduled time. For services ordered by EDI, BellSouth has agreed to provide electronic notification of missed appointment jeopardies. (Green, Tr. II, 178)

The second category of jeopardies is referred to as service jeopardies. A service jeopardy occurs when BellSouth is unable to complete the installation on time due to such factors as workload or unavailability of facilities. In these situations, it is imperative that MCImetro be able to promptly communicate to its customer the fact that service will be delayed and as much information as possible about the cause of the jeopardy. (Green, Tr. II, 178) Today BellSouth provides notification of service jeopardies only by fax or telephone, and does not return such jeopardies electronically through the EDI ordering interface. (Green, Tr. II, 208-209)

The failure to provide real-time electronic notification of service jeopardies is a breach of the Agreement. Attachment VIII, Section 2.2.9.1 requires BellSouth to provide MCImetro with notification of any jeopardy situations prior to the committed due date. The chart at page 97 of Attachment VIII of the Agreement shows that BellSouth is obligated to "provide[] delay notification to MCIIm" via an "electronic interface" that provides "real-time access to data". (Exh. 17) A facsimile transmission does not meet this standard.

In addition, the failure to provide electronic notification of service jeopardies violates the parity provisions of the Agreement. (Martinez, Tr. I, 22) When a service jeopardy is recognized for a BellSouth customer, that information is relayed directly to the group charged with notifying the customer of the situation. In contrast, when a service jeopardy is recognized for an ALEC customer, that information relay has an additional step -- it is first relayed directly to the group charged with notifying the ALEC of the situation, then relayed again to the ALEC by facsimile. (See Green, Tr. II, 178-179, 195, 253-256) This is not parity in terms of the timeliness with which the information is provided.

MCImetro has requested that BellSouth modify its EDI interface to support notification of service jeopardies. (Green, Tr. II, 179; Exh. 6 at BG-8, BG-13 to BG-15) BellSouth has refused on the grounds that there is no industry standard for

this type of jeopardy notification message. The lack of an industry standard does not excuse BellSouth's refusal to comply with its contractual obligation. In fact, there is no industry standard for electronic notification of missed appointment jeopardies, yet BellSouth has worked with MCImetro to include that capability in its EDI system. (Green, Tr. II, 180, 209)

BellSouth also testified that the issue of electronic notification of service jeopardies is currently being considered and prioritized by a recently formed industry Change Control Committee. (Stacy, Tr. III, 349) BellSouth candidly admitted, however, that the existence of an issue before the Change Control Committee does not affect any contractual obligation BellSouth may have to provide a certain capability to a particular CLEC. (Stacy, Tr. III, 380)

Since BellSouth is required by the Agreement to provide jeopardy notifications on a real-time basis, and since BellSouth has adopted the industry standard EDI interface for ordering, the Commission should require BellSouth to provide commercially functional EDI support for service jeopardy notifications. (Green, Tr. II, 180)

Issue 8: Has BellSouth provided MCImetro with firm order confirmations (FOCs) in compliance with the Telecommunications Act of 1996 and the parties' Interconnection Agreement? If no, what action, if any, should the Commission take?

**MCI: No. BST has failed to provide MCImetro with firm order confirmations within the time frames specified in the parties' Interconnection Agreement. BST should be ordered to modify its OSS to provide FOCs within the

contractual timeframes within thirty days of the Commission's order.**

MCImetro today provides local service to business customers in Florida primarily through off-net T1s. The off net T-1s MCImetro uses for local service consist of two elements: a 4-wire DS-1 digital loop from the customer premises to the BellSouth wire center and 4-wire DS-1 transport from the wire center to the MCImetro switch. (Green, Tr. II, 215; Milner, Tr. IV, 487-88) MCImetro has sought to order this combination of elements under the Agreement, but BellSouth has refused to provide it unless MCImetro combines the elements itself at a collocation space. (Green, Tr. II, 197 & Exh. 6 at BG-23; Milner, Tr. IV, 488) As a result, MCImetro has been forced to order this combination from BellSouth's access tariff.

BellSouth's position that the firm order confirmation (FOC) performance standards of the Agreement do not apply to MCImetro's off-net T-1 orders lacks merit for two reasons. First, in the definition of ASR (access service request) in Part B of the Agreement, it is expressly provided that "[t]he ASR may be used to order trunking and facilities between MCIm and ILEC for Local Interconnection." The Agreement thus provides that local facilities, including off-net T-1s, may be ordered out of the access tariff. It is undisputed that the access tariff requires BellSouth to return FOCs, but does not provide a standard for how fast they must be returned. (Exh. 20, Milner Depo. at 26-27) This standard is supplied by the Agreement, which is the

instrument that authorizes MCImetro to order local trunking and facilities via ASRs.

The second reason that the FOC standard of the Agreement applies here is that BellSouth has improperly refused to accept orders from MCImetro for off-net T-1s under the Agreement. (Green, Tr. II, 197 & Exh. 6 at BG-23) BellSouth's refusal to accept orders under the Agreement constitutes a breach of the Agreement, and accordingly MCImetro's off-net T1 orders should be treated as if they were made under the Agreement.

BellSouth's contention that off-net T-1s recreate its Megalink service is deeply flawed. Megalink, according to BellSouth's Florida Private Line services tariff, is designed and provisioned as a customer-premises-to-customer-premises private line arrangement, or a customer-premises-to-BellSouth-serving-wire-center arrangement. See BellSouth Private Line Services Tariff, B.7.1.2(A). Megalink is not designed and provisioned as a serving arrangement for customers to connect to MCImetro or to terminate at the facilities of another carrier. In contrast, MCImetro uses off-net T-1s to connect the customer premises to MCImetro's switch, and thus provides dial tone to the customer as well as vertical features, operator services, directory assistance information, emergency 911 services and access to long distance networks. Plainly, MCImetro's off-net T-1 service does not recreate Megalink.

The Agreement requires that for electronic orders, FOCs must be provided within 4 hours 99% of the time and that for manual orders, FOCs must be returned within 24 hours 99% of the time. (Agreement, Attachment VIII, § 2.5.3.1; Milner, Tr. IV, 491) BellSouth does not challenge MCImetro's evidence that for the last seven months of 1997, it took BellSouth seven days on average to return FOCs for off-net T-1s, and that for the first quarter of 1998, it took BellSouth 5.48 days to return FOCs on such orders. (Green, Tr. II, 181 & Exh. 6 at BG-16; Milner, Tr. IV, 494) This performance fails to meet the FOC standard of the Agreement.⁸ BellSouth should be ordered to modify its OSS within thirty days of the Commission's final order to provide FOCs within the specified timeframes.

Issue 9: Has BellSouth provided MCImetro with network blockage measurement information in compliance with the Telecommunications Act of 1996 and the parties' Interconnection Agreement? If no, what action, if any, should the Commission take?

MCIIm: No. BST has provided MCImetro with only limited network blockage information. BellSouth should be ordered to provide the detailed network blockage information requested by MCImetro in its December 24 letter to BST within thirty days of the Commission's order.

BellSouth is required to provide interconnection to MCImetro

⁸ Even if BellSouth's position were accepted (which it should not be), BellSouth would fail to meet the applicable standard. BellSouth does not contradict MCImetro's evidence that the industry standard for returning FOCs for access orders is 48 hours (Green, Tr. II, 198 & Exhs. BG-24 & 25; Exh. 20,

that is at least equal in quality to what BellSouth provides to itself, in a competitively neutral fashion. Agreement, Part A, § 13.2. To be able to interconnect with BellSouth at a level of quality even approaching equality with BellSouth, MCImetro must have roughly comparable access to trunk blockage information, which MCImetro uses to determine needed trunking capacity. BellSouth and MCImetro have agreed to use a blockage standard of 1% for the average busy hour for most trunk groups, and a blockage standard of .5% for trunk groups carrying interLATA traffic. (Agreement, Attachment IV, § 4.2.1)

To help meet this standard, MCImetro obtains hourly printouts reflecting outgoing calls from its switches.

(Martinez, Tr. I, 122) But for other traffic, such as incoming calls to MCImetro's switches and traffic on common trunk groups used by ALECs, MCImetro must rely on reports from BellSouth.

(Martinez, Tr. I, 37, 117-18, 122) BellSouth provides CLECs with blockage information for trunk groups that experience certain levels of blockage (2% or 3% blockage during the "time consistent busy hour"), whereas BellSouth has information showing blockage below these maximum levels. (Martinez, Tr. I, 37; Stacy, Tr. III, 385) The result is that BellSouth has access to blockage information that can help it prevent situations in which blockage increases rapidly, while CLECs only are given information showing where emergencies already exist. (Martinez, Tr. I, 37)

BellSouth is capable of providing MCImetro with more

detailed network blockage information, as evidenced by the fact that a higher level of detail is provided to MCI Telecommunications for long distance access circuits. (Martinez, Tr. I, 144)

In short, BellSouth has not taken any steps to comply with the Commission's 271 Order. There, the Commission required BellSouth to "provide ALECs with more frequent and better data on their traffic over BellSouth's network"; "to demonstrate that any blockages experienced by ALECs are not excessive in comparison to the blockages experienced by BellSouth"; to work together with ALECs to improve intercompany communications; and to "provide data sufficient to show that blockage levels are comparable between BellSouth and ALEC traffic." 271 Order, p. 59. But the reports BellSouth currently provides are substantially the same as when the 271 Order was issued. (Martinez, Tr. I, 37-38)

BellSouth should be required to begin providing the requested blockage data on a monthly basis within thirty days of the Commission's final order in this docket.

Issue 10: Has BellSouth provided MCImetro with local tandem interconnection information in compliance with the Telecommunications Act of 1996 and the parties' Interconnection Agreement? If no, what action, if any, should the Commission take?

MCIIm: No. Although BST has provided some of the requested information in this proceeding, it is not clear that all necessary information has been provided. BST should be ordered to provide MCImetro with the requested information within thirty days from the Commission's order.

As described in the testimony of Ronald Martinez, MCImetro has been attempting for some time to obtain information from BellSouth sufficient to allow MCImetro to interconnect at BellSouth's local tandems, which provide a tandem function for BellSouth's local network. (See Martinez, Tr. I, 26-26, 38-41) MCImetro is entitled to this information because, as noted above, BellSouth is required to provide interconnection to MCImetro that is at least equal in quality to what BellSouth provides to itself, in a competitively neutral fashion. Agreement, Part A, § 13.2. In its testimony and discovery responses in this case, BellSouth has provided information on local tandem interconnection that MCImetro has been requesting for some time. At this stage, however, MCImetro cannot be sure that all necessary information has been disclosed. Accordingly, BellSouth simply should be ordered to produce any of the requested information that it has not yet provided.

Issue 11: Has BellSouth provided MCImetro with recorded usage data in compliance with the Telecommunications Act of 1996 and the parties' Interconnection Agreement? If no, what action, if any, should the Commission take?

MCIIm: No. BellSouth has refused to provide MCImetro with recorded usage data on local calls for customers on flat rate calling plans as required by the parties' Interconnection Agreement. BST should be ordered to begin providing MCImetro with such data upon its request within thirty days from the Commission's order.

Telephone switches record information about local and long distance calls, such as when each call is made and its duration.

(Martinez, Tr. I, 27.) During the contract negotiations, MCImetro sought the ability to obtain such usage data on flat-rate local calls. (Id. at 42-43, 130-31) Such information could be used to evaluate new local service products involving measured service rates that could provide cost savings to customers who limit their telephone usage and currently are being charged flat rates. (Id. at 27.)

Mr. Martinez was the only witness at the hearing who was present during the negotiations concerning flat-rate usage data. (Id. at 42.) He testified that the sticking point during the negotiations was whether BellSouth recorded flat-rate usage data on its switches: BellSouth contended that its switches did not record such data and Mr. Martinez contended that they did. The impasse was resolved by requiring BellSouth to provide flat-rate usage data to the extent it was recorded. (Id. at 42-43, 131)

The Agreement reflects these negotiations. The original version of Attachment VIII, Subsection 4.1.1.3 proposed by MCImetro would have required BellSouth to record all usage originating from MCImetro subscribers using services ordered by MCImetro. (Id. at 130) This requirement was modified, and MCImetro instead was given the right to request additional detail usage records, thus enabling MCImetro to request BellSouth to develop additional recording capability. (Id. at 131)

The Agreement makes clear, however, that BellSouth must provide flat-rate usage data that it does record. The Agreement

defines Recorded Usage Data to include a number of categories of information, including information concerning completed calls. Agreement, Attachment VIII, § 4.1.1.3. This definition does not place any limitation on the term "Completed Calls," so it includes all completed calls, whether local, intraLATA or long distance, whether billable or non-billable. The Agreement requires BellSouth to provide MCImetro with Recorded Usage Data in accordance with the provisions of Section 4 of Attachment VIII, Agreement, Attachment VIII, § 4.1.1.2, and further provides that "BellSouth shall provide to MCI metro Recorded Usage Data for MCI metro subscribers," Agreement, Attachment VIII, § 4.1.1.5. Thus, BellSouth is required to provide to MCI metro information on completed calls, whether or not they are billable.

BellSouth acknowledges in this proceeding that many of its switches record flat-rate usage data (Hendrix, Tr. III, 441-42) and has admitted elsewhere that most of its switches record such information (Martinez, Tr. I, 43). The Georgia Public Service Commission has held in its OSS proceeding that BellSouth must provide flat-rate usage data. (Georgia OSS Order, Exh. 12 at 12-15) Similarly, here BellSouth should be ordered to begin providing flat-rate usage data requested by MCI metro on completed flat-rate local calls within thirty days of the final order in this proceeding.

Issue 12: Has BellSouth provided MCI metro with access to directory listing information in compliance with the Telecommunications Act of 1996 and the parties' Interconnection

Agreement? If no, what action, if any, should the Commission take?

****MCIIm:** No. BST has failed to provide MCImetro with directory listing information for certain customers of other local telephone companies. BST should be ordered to provide MCImetro with such information within ten days from the Commission's order.**

MCImetro requires directory listing information so that it can provide its own directory assistance service. To be able to compete effectively, MCImetro must obtain listings not only for BellSouth's customers, but also for the customers of other ALECs. (Martinez, Tr. I, 29) MCImetro has sought to obtain directory listing information from ALECs directly, but several companies have refused to provide the listings. (Id. at 135; Milner, Tr. IV, 469) The end result is that BellSouth has a more complete directory assistance database than it provides to ALECs such as MCImetro.

BellSouth's advantage in directory assistance information derives from its market power. As the FCC stated earlier this year:

We agree with MCI that BellSouth obtained directory listings from other LECs for use in its directory assistance services solely because of its dominant position in the provision of local exchange services throughout its region. That position enables BellSouth to include listings of customers of other incumbent LECs and competitive LECs as well as its own customers within the databases it uses to provide reverse directory services. Because BellSouth has the vast majority of access lines within its region, it is to the advantage of independent LECs and competitive LECs to have the listings of their customers included in BellSouth's directory listing databases so that callers

throughout the region using BellSouth's lines can obtain the telephone numbers of non-BellSouth customers. In some instances at least, the other independent LEC or competitive LEC does not charge BellSouth for including these listings within those databases, presumably because it is economically beneficial for that independent or competitive LEC to have its customers' listings maintained in the BellSouth databases.

In the Matters of Bell Operating Companies Petitions for Forbearance from the Application of Section 272 of the Communications Act of 1934, as amended, to Certain Activities, CC Docket No. 96-149, Memorandum Opinion and Order (rel. February 6, 1998) ¶ 81 ("BOC Order").⁹

Whether or not BellSouth provides all directory listings in the directory assistance database under the BOC Order, it must do so under the Agreement and the Federal Act. The Agreement provides: "BellSouth shall provide to MCIm, to the extent authorized, the residential, business and government subscriber records used by BellSouth to create and maintain its Directory Assistance Data Base, in a non-discriminatory manner." Agreement, Attachment VIII, Subsection 6.1.6.1. The authority to provide directory listings of independent telephone companies is provided by the Act, which states that local exchange carriers have the duty to provide nondiscriminatory access to directory listing. 47 U.S.C. § 251(b)(3).

⁹ That case involved the question of whether BellSouth and other BOCs could provide reverse directory services, which provide a customer's name, address, or both, upon the input of the telephone subscriber's number, using the same data base that is used for directory assistance. See BOC Order ¶¶ 52, 55. The FCC ruled that it would not require BellSouth to use a separate affiliate to provide reverse directory services, but only if BellSouth makes available to CLECs "all directory listing information that it uses to provide

BellSouth attempts to justify its exclusion of directory listings on the ground that its contracts with the ALECs in question prohibit disclosure of the listings. At the hearing in this case, BellSouth failed to show that its contracts should be read to require exclusion of the listings. The AT&T agreement, for example, requires that BellSouth include AT&T's subscriber listings in BellSouth's directory assistance database, and merely states that requests by third parties for the listings shall be referred to AT&T. (Milner, Tr. IV, 498-500; Exh. 21) These provisions can best be read to permit BellSouth to disclose AT&T's listings as part of BellSouth's database, and to require BellSouth to refer to AT&T any request solely for the AT&T subscriber list.

In any event, whatever BellSouth's contracts provide, they do not override the Act's requirement of nondiscriminatory provision of directory listing information.¹⁰ Accordingly, BellSouth therefore should be required to provide the missing directory listing information within ten days of the final order in this docket.

Issue 13: Has BellSouth provided MCImetro with soft dial tone service in compliance with the Telecommunications Act of 1996 and the parties' Interconnection Agreement? If no, what action, if any, should the Commission take?

**MCIm: No. BellSouth provides soft dial tone in a discriminatory fashion that identifies only BST as the carrier to be contacted for installation of local

its interLATA reverse directory services." BOC Order ¶ 83.

¹⁰ In this connection it should be noted that the ALEC contracts almost certainly were entered into after the Act was passed.

service. BST should be required to change this to an unbranded notification message within thirty days from the Commission's order.**

BellSouth's soft dial tone service, known as QuickService, permits a customer whose telephone line has been disconnected to call 911. If the customer dials any other three digits, the following recording is played: "You can only dial '911' from this line. To reach BellSouth or another local service provider, you must call from another location." (Martinez, Tr. I, 30-31) This message cannot be squared with the Agreement, which provides: "Where BellSouth provides soft dial tone, it shall do so on a competitively-neutral basis." Agreement, Attachment III, Subsection 7.2.1.11.4. This provision plainly sought to neutralize the competitive advantage BellSouth would enjoy as the monopoly service provider if it were allowed to use its soft dial service to direct customers to itself. BellSouth's message, which refers customers to BellSouth by name and lumps all other local service providers into one generic category, offers BellSouth an obvious competitive advantage and breaches the Agreement.

BellSouth's reliance on In the Matter of Application of BellSouth Corporation Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in South Carolina, CC Docket No. 97-208, December 24, 1997, ¶ 233 (Dec. 24, 1997) is misplaced. In that case, the FCC held that BellSouth service representatives could

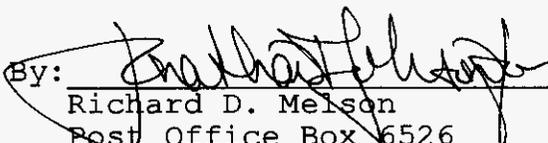
use a telemarketing script in which the representatives offered to read from a list of long distance providers, but also recommended BellSouth. If requested, the representatives were required to read the other long distance carriers from the list. The FCC balanced the nondiscrimination requirement of Section 251 with the right to jointly market services under Section 272 and held that the script was permissible. Here, the Agreement calls for no such balancing, but rather its competitive neutrality standard prohibits any preferential treatment that would give BellSouth a leg up on its competitors.¹¹

In summary, BellSouth should be found to have breached the Agreement and should be ordered to make its message competitively neutral, such as the following: "This telephone only may be used for emergency access to 911. To order service for this line, please call one of the local service providers in your area." Such a message would convey the necessary information without providing a competitive advantage to any local service provider.

¹¹ Likewise, BellSouth's argument that it has the right to market its services in connection with the provision of its own facilities (Milner, Tr. IV, 472) simply ignores the competitive neutrality requirement altogether.

RESPECTFULLY SUBMITTED this 26th day of August, 1998.

HOPPING GREEN SAMS & SMITH, P.A.

By: 
Richard D. Meison
Post Office Box 6526
123 South Calhoun Street
Tallahassee, FL 32314
850-425-2313

and

DULANEY L. O'ROARK III
MCI TELECOMMUNICATIONS CORPORATION
780 Johnson Ferry Road, Ste. 700
Atlanta, GA 30342