BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Sprint Communications Company Limited Partnership for arbitration of certain unresolved terms and conditions of a proposed renewal of current interconnection agreement with BellSouth Telecommunications, Inc.	DOCKET NO. 000828-TP ORDER NO. PSC-01-1095-FOF-TP ISSUED: May 8, 2001

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR., Chairman
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APPEARANCES:

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On behalf of Sprint Communications Company Limited Partnership.

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On behalf of BellSouth Telecommunications, Inc.

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On behalf of the Commission Staff.

FINAL ORDER ON ARBITRATION

BY THE COMMISSION:

I. BACKGROUND

On July 10, 2000, Sprint Communications Company Limited Partnership (Sprint) filed a Petition for Arbitration pursuant to 47 U.S.C. Section 252(b) of the Telecommunications Act of 1996, seeking arbitration of certain unresolved issues in the interconnection negotiations between Sprint and BellSouth Telecommunications Incorporated (BellSouth). The petition enumerated 95 issues, but indicated that 68 of these issues remained under continued negotiations. On August 4, 2000, BellSouth timely filed its Response to the petition.

At the issue identification meeting, the parties identified 36 issues to be arbitrated. Prior to the administrative hearing, the parties resolved or agreed to stipulate to a significant number of those issues. The administrative hearing was held on January 10, 2001. This Order addresses the remaining issues that were arbitrated: 3, 4, 6, 7, 8, 9, 22, 28A, 28B, 29, and 32.

On February 21, 2001 and March 13, 2001, BellSouth filed a Motion to Supplement Post-hearing Brief and a Second Motion for leave to Supplement Post-Hearing Brief. The motions address BellSouth's arguments on the arbitrated Issues Nos. 22 and 9, respectively. Due to a misunderstanding between the parties, BellSouth believed that these issues had been settled and, therefore, did not address them in its post-hearing brief. Our decision on these motions is set forth in Section III.

II. JURISDICTION

Sprint states in it brief, that in Section 252(b) of the Act, Congress created an arbitration procedure for requesting telecommunications carriers and ILECs to obtain an interconnection agreement through "compulsory arbitration" by petitioning a "State commission to arbitrate any open issues" unresolved by negotiation under Section 252(a) of the Act. Sprint also states that Sections 252(c) and (e) of the Act set forth the time frames for Commission action and the criteria upon which the Commission's decision must be based.

BellSouth states that the Act requires interconnection negotiations between local exchange companies and new entrants.

BellSouth also states that parties that cannot reach a satisfactory resolution are entitled to seek arbitration of the unresolved issues by the appropriate state commission pursuant to Section 252(b) of the Act.

Pursuant to Section 252 (b) of the Act, an incumbent local exchange carrier or any other party to a negotiation under the Act after a prescribed period of time for voluntary negotiation, may petition a State Commission to arbitrate any open issues. Pursuant to Section 252 (b)(4) of the Act, the State Commission must limit its consideration to the issues set forth in the petition and the response. Under Section 252(c) of the Act, the State Commission shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions to implement the standards for arbitration set forth in Section 252(c) of the Act. Pursuant to Section 252 (c) of the Act, a State Commission in resolving any open issue and imposing conditions upon the parties to the agreement, shall ensure that the resolution and conditions meet the requirements of Section 251, including the regulations prescribed by the FCC; establish any rates for interconnection, services, or network elements according to Section 252(d) of the Act; and provide a schedule for implementation of the terms and conditions by the parties to the agreement. In addition, we have the authority to construe the requirements of the Act, subject to controlling FCC Rules, FCC Orders and controlling judicial precedent.

We note that Section 252(e) of the Act reserves the state's authority to impose additional conditions and terms in an arbitration that are not inconsistent with the Act and its interpretation by the FCC and the courts. Under Section 252(e) of the Act, we can impose additional conditions and terms in exercising our independent state law authority under Chapter 364, Florida Statutes, so long as those requirements are not inconsistent with the Act, FCC rules and orders, and controlling judicial precedent. However, we find it is appropriate to exercise our state authority with discretion. Furthermore, Section 120.80 (13)(d), Florida Statutes, allows us to implement processes and procedures necessary to implement the Act.

Based on the foregoing, we have jurisdiction pursuant to Section 252 of the Act to arbitrate interconnection agreements.

Section 252 states that a State Commission shall resolve each issue set forth in the petition and response, if any, by imposing the appropriate conditions as required. Further, while Section 252(e) of the Act reserves the state's authority to impose additional conditions and terms in an arbitration not inconsistent with the Act and its interpretation by the FCC and the courts, we find it appropriate to use discretion in the exercise of such authority.

III. MOTIONS TO SUPPLEMENT POST-HEARING BRIEF

On February 21, 2001, BellSouth filed a Motion to Supplement Post-Hearing Brief. On March 13, 2001, BellSouth filed a Second Motion for Leave to Supplement Post-Hearing Brief. BellSouth requests in its motion and second motion that it be permitted to supplement its post-hearing brief to address issues 22 and 9, respectively. BellSouth indicates that, due to a misunderstanding between the parties, it believed that these issues had been resolved and would, therefore, not have to be addressed in its brief. BellSouth's misunderstanding arose from the fact that these issues had been resolved by the parties in other state arbitrations. BellSouth indicates that Sprint does not oppose its motions.

Sprint did not file a response to BellSouth's motion. Sprint informed our counsel that it did not object to BellSouth's motions and concurred that there had been a misunderstanding. We do not find that BellSouth's supplements to its post-hearing brief have caused any prejudice in this proceeding. Based on the foregoing, we grant BellSouth's Motion to Supplement Post-Hearing Brief and Second Motion for Leave to Supplement Post-Hearing Brief.

IV. CUSTOM CALLING FEATURES

This is a complex issue which considers whether BellSouth is obligated to make available for resale its Custom Calling Services to Sprint on a "stand-alone" basis. Throughout this discussion, the phrase "stand-alone" refers to the offering of the BellSouth Custom Calling features without the requirement of an associated business or residential line.

a. Analysis

BellSouth witness Ruscilli believes that this issue hinges primarily on the interpretation of Section 251(c)(4)(A) of the Act, and Paragraph 877 of the Local Competition Order, FCC 96-325[1]. Section 251(c)(4)(A), in part, imposes upon local exchange carriers the following:

> The duty to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers . . . .

Paragraph 877 reads, in part:

> On the other hand, section 251(c)(4) does not impose on incumbent LECs the obligation to disaggregate a retail service into more discrete retail services. The 1996 Act merely requires that any retail services offered to customers be made available for resale.

FCC 96-325 at ¶877. The witness states that BellSouth does not offer its Custom Calling Services to its end-users (subscribers) on a stand-alone basis. The witness believes that "These services must be purchased in conjunction with basic telephone service. Consequently, there is no retail service to resell." Witness Ruscilli testifies that, for example, if a subscriber wanted call waiting, BellSouth cannot provision call waiting "if you were not a BellSouth customer." He continues:

> If you were a Sprint customer, I couldn't provide you with call waiting. If you were any other ALEC's customer, I couldn't provide that to you. The only way I could provide call waiting service to you is if you were a BellSouth customer.

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[1] First Report and Order, CC Docket No. 96-98, In the Matter of Implementation of Local Competition Provisions in the Telecommunications Act of 1996, Order No. FCC 96-325 (August 8, 1996),(Local Competition Order).

Witness Ruscilli states that BellSouth's Custom Calling Services are offered to Florida subscribers subject to Section A13.9.2(B) of its General Subscriber Services Tariff, which provides:

> Except where provided otherwise in this Tariff, Custom Calling Services are furnished only in conjunction with individual line residence and business main service. The features are not available in connection with Prestige Communications Services, Centrex-type Service or Access Line Service for Payphone Provider Telephones and SmartLine Service.

BellSouth argues that under the Act, BellSouth is only required to allow Sprint to resell the same services that BellSouth provides to BellSouth end-user customers - no more, no less. "The [BellSouth] end user must first purchase local service" states witness Ruscilli. The BellSouth witness states that "Sprint is not requesting a service that BellSouth offers at retail." He states that the company agrees to make available for resale any telecommunications service that BellSouth offers on a retail basis to subscribers that are not telecommunications carriers, but states that "Sprint is requesting BellSouth to create a new retail service (stand-alone custom calling services) and allow Sprint to resell it."

Witness Ruscilli is also concerned about the implications of provisioning the stand-alone features. The witness states:

> What happens in the case of a different ALEC requesting to resell the line (dial tone) of the BellSouth customer to whom Sprint is providing the stand-alone vertical services? An ALEC that resells a BellSouth customer's line is entitled also to resell vertical services to that customer.

He elaborates:

> Sprint's position on this issue raises the concern that if an ALEC other than Sprint requests to resell BellSouth's local service to the end user to whom Sprint has resold the vertical services, BellSouth would be

> forced to restrict that resale because it no longer controls the vertical features associated with that line.

The witness concedes, however, that "BellSouth is currently considering Sprint's request; however, it is a complex issue to address. Because of the questions involved, BellSouth would prefer this issue be handled via the BFR process rather than through this arbitration." He continues:

> If BellSouth determines that Sprint's request is feasible, Sprint must be willing to pay for the implementation. BellSouth would also need sufficient time to develop the methods and procedures and complete the actual implementation.

Under cross examination, however, witness Ruscilli states that it is his understanding that it is technically feasible for Custom Calling Services to be offered on a stand-alone basis.

The witness concludes his argument by stating that we should "deny Sprint's request to require BellSouth to make stand-alone Custom Calling Services, that are not available on a stand-alone basis to its end-users, available to Sprint for resale."

Sprint witness Felton agrees that Section 251(c)(4) is key to this issue, but he reaches an alternative interpretation. He explains that:

> Under Section 251(c) of the Act, BellSouth, as an ILEC, must 'offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers.' Sprint believes that Custom Calling Services are optional telecommunications services that simply provide additional functionality to basic telecommunications services.

Witness Felton offers that Congress did not make a distinction between "basic" and "optional" telecommunications services when promulgating the resale requirement of the Act. The witness states it is the same for the FCC, and therefore believes that BellSouth is under no less of an obligation to offer for resale "optional"

Custom Calling Services as it is to offer for resale "basic" local telephone service. In consideration of ¶877 of the Local Competition Order, witness Felton does not agree with BellSouth witness Ruscilli that Sprint is asking BellSouth to "disaggregate a retail service into more discrete retail services." Witness Felton believes that BellSouth's Custom Calling Services are already separate retail services, and no disaggregation is necessary, since the custom calling services are purchased in addition to the basic local service.

Witness Felton acknowledges that under BellSouth's tariff, Custom Calling Services may only be purchased in conjunction with another retail service. He testifies:

> Clearly, the product is the vertical feature and the purchase of local dial tone is the prerequisite condition which must be met before the customer can purchase the vertical feature. BellSouth's condition for purchase is distinct from the product itself.

The witness explains that, "When a customer purchases local dial tone from BellSouth today, they do not automatically get a custom calling service with that basic local service. They are required to purchase the custom calling service in addition to the basic local service." According to witness Felton "Some form of dial tone is needed to make Custom Calling Services work". However, he clarifies that ". . . there is no reason that the same carrier must be the provider of both dial tone and Custom Calling Services when they are sold today separately and are two separate services."

In regard to resale concerns, witness Felton offers that Sprint would be required to terminate the delivery of the vertical features if an ALEC purchased UNE switching for a customer which Sprint was reselling the BellSouth services. He states:

> The purchaser of UNE switching effectively becomes the "owner" of that network element and is, indeed, entitled to the exclusive use of all of the features and functions associated with it. If the customer continued to desire Sprint's service involving the vertical feature in question, Sprint would be required to negotiate with the

> switching "owner," the purchasing ALEC, for this purchase.

Sprint's proposal seeks to include language in the interconnection agreement that would allow it to purchase Custom Calling Services on a "stand-alone" basis for resale without the restriction of having to purchase the basic local service for resale. The witness concludes by offering that:

> The fact of the matter is that you [BellSouth] sell custom calling services or services to an end-user, and the condition upon that purchase is that they buy dial tone from you first. The service, the service itself is a custom calling service. Call forwarding, for example, is a retail telecommunications service. Now you, Mr. End User, can only purchase this custom calling service, call forwarding, after you have purchased dial tone from me. And I'm just saying that the restriction of the end user purchasing dial tone first should not apply to Sprint.

B. Decision

This case represents the first occasion that an issue of this type has been presented to us. As stated by each party, §251(c)(4) of the Act is pivotal in considering this issue. Section 251(c)(4)(A) reads in part:

> The duty to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers . . .

We agree that §251(c)(4) is crucial. Like Sprint, we also rely upon portions of ¶939 of the Local Competition Order, FCC 96-325, as well. Paragraph 939 provides, in part:

> We conclude that resale restrictions are presumptively unreasonable. Incumbent LECs can rebut this presumption, but only if the restrictions are narrowly tailored. Such resale restrictions are not limited to those found in the resale agreement. They include conditions and limitations contained in the incumbent LEC's underlying

> tariff . . . Recognizing that incumbent LECs possess market power, Congress prohibited unreasonable restrictions and conditions on resale . . . Given the probability that restrictions and conditions may have anticompetitive results, we conclude that it is consistent with the procompetitive goals of the 1996 Act to presume resale restrictions and conditions to be unreasonable and therefore in violation of section 251(c)(4) . . .

FCC 96-325 at ¶939. In addition, we believe that 47 C.F.R. §51.605 and §51.613 offer guidance as well. In 47 C.F.R. §51.605, we find that the relevant text is sub-section (b), which states:

> §51.605 Additional obligations of incumbent local exchange carriers.
>
> (b) Except as provided in §51.613, an incumbent LEC shall not impose restrictions on the resale by a requesting carrier of telecommunications services offered by the incumbent LEC.

47 C.F.R. §51.605(b). In 47 C.F.R. §51.613, we find that the relevant text is found in portions of sub-sections (a) and (b), which state:

> §51.613 Restrictions on resale.
>
> (a) Notwithstanding § 51.605(b), the following types of restrictions on resale may be imposed:
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> (1) Cross-class selling . . .
> (2) Short term promotions . . .
>
> (b) With respect to any restrictions on resale not permitted under paragraph (a), an incumbent LEC may impose a restriction only if it proves to the state commission that the restriction is reasonable and nondiscriminatory.

47 C.F.R. §51.613(a)and (b).

We find that BellSouth did not present an adequate argument to overcome the conclusion in ¶939 of the Local Competition Order, FCC 96-325, that resale restrictions are "presumptively unreasonable." We note that BellSouth's argument was predicated on whether or not the products were offered on a "stand-alone" basis, and we think that this argument is misguided. BellSouth did not demonstrate that its proposed resale restriction is "narrowly tailored," nor did it establish why it would not have "anticompetitive results" or otherwise be reasonable. We also believe that BellSouth did not make the necessary showing under §51.605. Accordingly, we conclude that BellSouth did not rebut the presumption set forth in ¶939 of the Local Competition Order.

We agree with witness Ruscilli's analysis that BellSouth's Custom Calling Services are "auxiliary features provided in addition to basic service." Custom Calling Services are marketed as enhancements to the functionality of basic local service.

We think that it is important to note that BellSouth's Custom Calling Services are offered to Florida subscribers subject to Section A13.9.2(B) of its General Subscriber Services Tariff. BellSouth's Custom Calling Services and basic service are tied together through the tariff conditions therein.

We agree with Sprint witness Felton, however, that BellSouth's reasoning for not offering its Custom Calling Services for resale on a stand-alone basis is flawed, because BellSouth's condition for purchase is distinct from the product itself.

Witness Ruscilli states that Paragraph 877 of the Local Competition Order is significant to this issue, but we disagree. Paragraph 877 reads in part:

> On the other hand, section 251(c)(4) does not impose on incumbent LECs the obligation to disaggregate a retail service into more discrete retail services. The 1996 Act merely requires that any retail services offered to customers be made available for resale.

FCC 96-325 at ¶877. We believe that BellSouth is not being asked "to disaggregate a retail service into more discrete retail

services," since the features themselves are the "service" at issue.

Under § 251(c)(4) of the Act, BellSouth is only required to allow Sprint to resell the same services that BellSouth provides to BellSouth end-user customers. We agree with Sprint witness Felton that the Act fails to make a distinction between "basic" and "optional" telecommunications services when describing the resale requirements. However, we recognize witness Ruscilli's concerns about the technical feasibility, and we acknowledge that it may not be technically feasible for BellSouth to provide stand-alone Custom Calling features to Sprint. If this is the case, BellSouth should file a petition with us requesting a waiver of this requirement and justifying how the resale restriction is reasonable under ¶939 of the Local Competition Order, FCC 96-325. We also have concerns about the implications in the context of further reselling. We believe that if the end-use customer wants custom calling features through a subsequent reseller, Sprint would have to relinquish its provision of these services.

Therefore, BellSouth shall be required to make its Custom Calling features available for resale to Sprint on a stand-alone basis. If BellSouth determines that it is not technically feasible to make its Custom Calling features available for resale on a stand-alone basis, BellSouth may seek a waiver of this requirement.

V. UNE COMBINATIONS

This issue addresses under what circumstances Sprint may obtain combinations of unbundled network elements ("UNEs") from BellSouth at total element long run incremental cost ("TELRIC") rates. Specifically, we must determine whether 47 C.F.R. §51.315(b) requires BellSouth to perform the functions necessary to combine UNEs that are typically combined in its network for Sprint. FCC Rule 51.315(b) states:

> Except upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines.

47 C.F.R. §51.315(b). The dispute revolves around the parties' differing interpretation of the phrase "currently combines" found

in FCC Rule 51.315(b). While BellSouth's definition of "currently combines" is limited to those combinations that currently exist in BellSouth's network to serve a particular customer at a particular location, Sprint's more expansive definition includes all of the UNE combinations typically found in BellSouth's network to provide service to its retail customers. Accordingly, Sprint believes that FCC Rule 51.315(b) requires an ILEC to provide any typical network combination, whether or not the specific UNEs have already been combined for the specific end-user customer in question at the time Sprint places the order. Sprint witness Hunsucker gives examples that represent a sampling of what carriers may request from an ILEC.

> UNE combinations can occur in many different forms. Some carriers may want to combine loop and transport (commonly referred to as enhanced extended loop or EELs), other carriers may want to combine loop and port while providing their own transport (either through self-provisioning or through a third party) while other carriers may want to combine loop, port and transport.

He states that ILECs utilize the loop, port and transport when provisioning basic local service to end user customers; therefore, an ILEC should be required to provide a UNE combination of loop, port and transport on a wholesale basis to requesting carriers.

BellSouth, on the other hand, contends that it is neither sound public policy nor an obligation of BellSouth under the Act or the FCC's Rules to combine UNEs. BellSouth witness Ruscilli argues that in the FCC's UNE Remand Order[2], the FCC confirmed that ILECs presently have no obligation to combine network elements for ALECs when those elements are not currently combined in the ILEC's network. He further argues that FCC Rules 51.315(c)-(f), that purported to require incumbent LECs to combine unbundled network elements, were vacated by the Eighth Circuit, and those rules were neither appealed nor reinstated by the Supreme Court. In addition,

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[2]Third Report and Order, CC Docket No. 96-98, In the Matter of Implementation of the Local Competition Provision of the Telecommunications Act of 1996, Order No. FCC 99-238 (November 5, 1999), (UNE Remand Order)

he continues that, on July 18, 2000, the Eighth Circuit reaffirmed its ruling that FCC Rules 51.315(c)-(f) are vacated. Consequently, BellSouth's position is that it will only provide combinations to Sprint at cost-based prices if the elements are, in fact, combined and providing service to a particular customer at a particular location.

Sprint maintains that, consistent with the FCC's rules, the provisioning of UNE combinations should be limited only by technical feasibility. Witness Hunsucker explains that adoption of BellSouth's "actually combined" definition will force Sprint and other ALECs to potentially enter the market via resale today, and convert the resold service to a UNE combination tomorrow to, ultimately, get to the same point. Witness Hunsucker further states:

> This "actually combined" definition requires that the ILEC must actually be providing service to the particular end user customer at the time that the ALEC requests a UNE combination. This means that the ILEC has the upper hand in a competitive sense in that the ILEC does not have to compete for new customers (i.e., customers without existing ILEC service) against an ALEC that enters the market via a UNE combination strategy. It forces the ALEC to initially provide service to the end user via resale, with the associated non-recurring charges. Nothing prevents the ALEC from placing a UNE combination order the next day to convert the resale services to a UNE combination. At this point, the ALEC will incur additional non-recurring charges and the ILEC will be required to incur wasteful costs to convert the service from resale to a UNE combination.

Witness Hunsucker argues that the impact of this method is to require BellSouth to perform work related to multiple service orders, one for resale and one for the UNE combination, and to likewise charge Sprint for the processing of these multiple service orders which imposes wasteful costs not only on Sprint but also on BellSouth. Ultimately, he continues, this scheme requires the end user to pay more as these wasteful costs become part of the cost recovery process embodied in end user rates. Witness Hunsucker suggests that we should employ a standard of comparability between

an ILEC retail product and the UNE combination requested by a particular carrier.

BellSouth admits that there are nonrecurring charges associated with both the request for resale and conversion of UNEs; however, witness Ruscilli states:

> . . .you have to remember if these elements are not combined somebody has to do the work to combine them. And Sprint apparently wants BellSouth to do that work for them at no charge. So if they take the resale method where they would order service to a customer where something was not, in fact, combined, they would be paying for the assembly of the wire and the port and the switching.

In response to witness Hunsucker's suggestion of a standard of comparability, witness Ruscilli responds that in the UNE Remand Order, the FCC declined to adopt a definition of "currently combines" that would include all elements "typically combined" in the incumbent's network, which Sprint is requesting. He states that the FCC made clear Rule 51.315(b) applies to elements that are "in fact" combined, stating that to the extent an unbundled loop is in fact connected to unbundled dedicated transport, the statute and our rule 51.315(b) require the incumbent to provide such elements to requesting carriers in combined form. In addition, witness Ruscilli refers to Section 251(c)(3) of the Act which requires ILECs to provide UNEs in a manner that allows requesting carriers to combine such telecommunications services, to further confirm that BellSouth has no obligation to combine UNEs. Notwithstanding that, he states that BellSouth is willing to negotiate with Sprint a separate contract to combine UNEs, but, not at TELRIC rates.

Further, witness Ruscilli disputes that an adoption of BellSouth's "actually combined" definition does not benefit customers. First, he states that requiring BellSouth to combine UNEs would unnecessarily reduce the overall degree of competition in the market. He explains that Congress has established several means to introduce competition, namely, resale, unbundling, and facilities constructed by new entrants. Moreover, in addition to the other means Sprint has to serve both new and existing customers (other than having BellSouth combine UNEs), witness Ruscilli

asserts that there are over 6 million BellSouth lines in service in Florida today, each consisting of existing combined facilities, that Sprint, or any ALEC, in fact, can purchase today from BellSouth at cost-based rates. Second, he states that requiring BellSouth to combine UNEs at cost-based rates, particularly TELRIC-based rates, reduces BellSouth's incentive to invest in new capabilities. Third, he maintains that requiring BellSouth to combine elements where such elements do not, in fact, exist is inconsistent with the Act's basic purpose, which is to introduce competition into the local market. He explains that the Act's intent was not to subsidize competitors where reasonable alternatives exist. He states that ALECs can combine the UNEs themselves in collocation spaces, use the assembly point option, or build their own facilities. In conclusion, witness Ruscilli maintains that expanding BellSouth's obligation to include combining UNEs does not benefit customers. Instead, he claims such action only provides an unwarranted subsidy to ALECs, reduces BellSouth's incentive to invest in its network, and discourages ALECs from building their own networks.

Sprint witness Hunsucker agrees that there are alternative methods, other than having BellSouth combine UNEs, to get combinations; however, he states that they require additional steps and cost. He explains that Sprint can ultimately get to the same point using the resale method, but by the time the combination is provisioned, Sprint will have had to process two service orders, and BellSouth would have had to handle two service orders. Witness Hunsucker further explains that while the price to every customer would be the same (irrespective of how the combination was provisioned), Sprint's overall cost structure would increase as a result of the duplicative ordering and the associated administrative costs of processing those orders, which would ultimately lead to some incremental flow-through to all end users.

B. Decision

As previously stated, the issue before us is to determine whether BellSouth is required to provide Sprint at TELRIC rates combinations of UNEs that BellSouth typically combines for its own retail customers, whether or not the specific UNEs have already

been combined for the specific end-user customer in question at the time Sprint places its order. The primary focus of this dispute between BellSouth and Sprint is the meaning or definition of "currently combines" as it is used in FCC Rule 51.315(b).

It is appropriate to discuss the pertinent FCC and Court Orders that govern FCC Rule 51.315(b) and provide the framework for the provisioning of unbundled network elements combinations. In August 1996, the FCC issued the Local Competition Order, FCC 96-325, in which it addressed the provisioning of UNE combinations and promulgated rules in Section 51.315. The following are the original rules:

> § 51.315 Combinations of unbundled network elements.
> (a) An incumbent LEC shall provide unbundled network elements in a manner that allows requesting telecommunications carriers to combine such network elements in order to provide a telecommunications service.
>
> (b) Except upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines.
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> (c) Upon request, an incumbent LEC shall perform the functions necessary to combine unbundled network elements in any manner, even if those elements are not ordinarily combined in the incumbent LEC's network, providing that such combination is:
>
> (1) Technically feasible; and
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> (2) Would not impair the ability of other carriers to obtain access to unbundled network elements or to interconnect with the incumbent LEC's network.
>
> (d) Upon request, an incumbent LEC shall perform the functions necessary to combine unbundled network elements with elements possessed by the requesting telecommunications carrier in any technically feasible manner.

> (e) An incumbent LEC that denies a request to combine elements pursuant to paragraph (c)(1) or paragraph (d) of this section must prove to the state commission that the requested combination is not technically feasible.
>
> (f) An incumbent LEC that denies a request to combine elements pursuant to paragraph (c)(2) of this section must prove to the state commission that the requested combination would impair the ability of other carriers to obtain access to unbundled network elements or to interconnect with the incumbent LEC's network.

Subsequently, in Iowa Utils. Bd. v. FCC[3], the Eighth Circuit Court of Appeals vacated 51.315(b)-(f) on the grounds that the rules were inconsistent with Section 251(c)(3) of the Telecommunications Act of 1996. Regarding 51.315(c)-(f), the Eighth Circuit Court stated:

> While the Act requires incumbent LECs to provide elements in a manner that enables the competing carrier to combine them, unlike the Commission, we do not believe that this language can be read to levy a duty on the incumbent LECs to do the actual combining of elements.

Id. at 813. Regarding 51.315(b), the Eight Circuit further stated:

> Accordingly, the Commission's rule, 47 C.F.R. §51.315(b), which prohibits an incumbent LEC from separating network elements that it may currently combine, is contrary to §251(c)(3) because the rule would permit the new entrant access to the incumbent LEC's network on a bundled rather than unbundled basis.

Supra. On January 25, 1999, the United States Supreme Court reversed the Eighth Circuit's opinion on Rule 51.315(b), stating that Rule 51.315(b) is a reasonable interpretation of Section 251(c)(3) of the Act, which establishes the duty to provide access to network elements on nondiscriminatory rates, terms, and

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[3]Iowa Utils. Bd. v. FCC, 120 F.3d 753, 813 (8th Cir. 1997)

conditions and in a manner that allows requesting carriers to combine such elements.[4] The Supreme Court stated:

> As the Commission explains, it is aimed at preventing incumbent LECs from "disconnecting previously connected elements, over the objection of the requesting carrier, not for any productive reason, but just to impose wasteful reconnection costs on new entrants." It is true that Rule 315(b) could allow entrants access to an entire preassembled network. In the absence of Rule 315(b), however, incumbents could impose wasteful costs on even those carriers who requested less than the whole network. It is well within the bounds of the reasonable for the Commission to opt in favor of ensuring against anticompetitive practice.

AT&T Corp. at 395. In the interim in its November 5, 1999 UNE Remand Order, the FCC declined to comment on what is specifically meant by its Rule 51.315(b). In paragraphs 479 and 480 of the UNE Remand Order, the FCC stated:

> A number of commenters argue that we should reaffirm the Commission's decision in the *Local Competition First Report and Order*. In that order the Commission concluded that the proper reading of "currently combines" in rule 51.315(b) means "ordinarily combined within their network, in a manner which they are typically combined." Incumbent LECs, on the other hand, argue that rule 51.315(b) only applies to unbundled network elements that are currently combined and not to elements that are "normally" combined. Again, because this matter is currently pending before the Eight Circuit, we decline to address these arguments at this time.

FCC 99-238 at ¶479. The FCC further stated:

> To the extent an unbundled loop is in fact connected to unbundled dedicated transport, the statute and our rule 51.315(b) require the incumbent to provide such elements

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[4]AT&T Corp. v. Iowa Utils. Bd., 525 U.S. 366 (1999).

> to requesting carriers in combined form. Thus although in this Order, we neither define the EEL as a separate unbundled network element nor interpret rule 51.315(b) as requiring incumbents to combine unbundled network elements that are "ordinarily combined," we note that in specific circumstances, the incumbent is presently obligated to provide access to the EEL. In particular, the incumbent LECs may not separate loop and transport elements that are currently combined and purchased through the special access tariffs. Moreover, requesting carriers are entitled to obtain such existing loop-transport combinations at unbundled network element prices.

FCC 99-238 at ¶480. Finally, in its July 18, 2000 ruling[5], the Eight Circuit Court reaffirmed its decision to vacate FCC Rules 47 C.F.R. §51.315(c)-(f). The Eighth Circuit Court stated:

> Unlike 51.315(b), subsections (c)-(f) pertain to the combination of network elements. Section 251(c)(3) specifically addresses the combination of network elements. It states, in part, "An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting telecommunication carriers to combine such elements in order to provide such telecommunication service." Here, Congress has directly spoken on the issue of who shall combine previously uncombined network elements. It is the requesting carriers who shall "combine such elements." It is not the duty of the ILECs to "perform the functions necessary to combine unbundled network elements in any manner" as required by the FCC's rule.

Id.

We think that the Eighth Circuit Court has made clear the meaning of FCC Rule 51.315(b) in its July 18, 2000 ruling despite the fact that it did not specifically define "currently combines." By vacating Rules 51.315(c)-(f), which required ILECs to perform

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[5]Iowa Utils. Bd. v. Federal Communications Commission, 219 F.3d 744, 759 (8th Cir. 2000).

the functions necessary to combine UNEs in any technically feasible manner, the Eighth Circuit Court relieved BellSouth of the duty to combine UNEs at TELRIC rates for requesting carriers. Thus, Rule 51.315(b) only obligates BellSouth to make available at TELRIC rates those combinations that are in fact already combined and physically connected at the time a requesting carrier places an order.

We note that although the FCC in the Local Competition Order originally concluded that the proper reading of "currently combines" in rule 51.315(b) means "ordinarily combined within their network, in a manner which they are typically combined." FCC 96-325 at ¶296. However, the FCC deferred affirmation of its prior definition, opting to wait for the Eighth Circuit Court's July 18, 2000 ruling. FCC 99-238 at ¶479. We further note that the Supreme Court in its ruling that reinstated Rule 51.315(b) provided no guidance on how "currently combines" should be interpreted, thereby leaving the decision in the hands of the Eighth Circuit Court. Accordingly, we conclude that adoption of a more expansive definition of "currently combines," as Sprint requests, would be inconsistent with the Eighth Circuit Court's July 18, 2000 decision. In addition, we note that in Docket 991854-TP (the Intermedia Arbitration), we found:

> . . .where combinations are in fact already combined and existing within BellSouth's network, we find, at a minimum, that BellSouth shall be required to make those combinations available to requesting telecommunications carriers in that combined form at UNE rates.

PSC-00-1519-FOF-TP at p.23.

In its Brief, Sprint states that it filed a Motion for Reconsideration of the UNE Remand Order, specifically to reconsider the definition of "currently combines," which could impact our decision on this issue. Sprint further states that this same issue is the subject of a U.S. Supreme Court appeal of the Eighth Circuit Court's July 18, 2000 ruling. However, Sprint indicated that the time frame for either ruling is unknown. We note that under Section 252(b)(4)(c) of the Act, we are required to arbitrate issues that come before us. Thus, we are obligated to rule consistent with the Eighth Circuit Court's July 18, 2000 decision.

Further, we agree with BellSouth that while combining UNEs for Sprint is most efficient, there are other ways in which Sprint can obtain UNE combinations. Specifically, Sprint can obtain UNEs via resale and conversion, combine the UNEs themselves in collocation spaces, use the assembly point option, build their own facilities, or convert special access services to combinations in accordance with the FCC Supplemental Order Clarification .[6] The Supplemental Order Clarification allows IXCs to convert special access services to combinations of unbundled loops and transport network elements if, and only if, they are providing a significant amount of local exchange service to a particular customer. In addition, we note that BellSouth is willing to negotiate a separate contract with Sprint to combine unbundled network elements, just not at TELRIC rates.

Based on the foregoing, we find that it is not the duty of BellSouth to "perform the functions necessary to combine unbundled network elements in any manner." Rule 51.315(b) only requires BellSouth to make available at TELRIC rates those combinations that are, in fact, already combined and physically connected in its network at the time a requesting carrier places an order. Accordingly, BellSouth shall not be required to provide combinations of unbundled network elements that it ordinarily or typically combines in its network for Sprint at TELRIC rates.

VI. ACCESS TO EELS

The issue before us is whether BellSouth is required to provide universal access to enhanced extended links ("EELs") that are typically combined in its network to Sprint at unbundled network element ("UNE") rates. As noted by Sprint witness Hunsucker:

> An EEL is defined as an enhanced extended link that allows ALECs to order loops from multiple ILEC wire centers, combine the loops with transport and deliver the loops from those multiple wire centers to a single

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[6] In the Matter of Implementation of Local Competition Provisions in the Telecommunications Act of 1996, FCC Order 00-183 (June 2, 2000)(Supplemental Order Clarification).

> collocation site. Simply, an EEL is one type of a UNE combination that results from the combining of loop and transport.

This issue is directly related to the issue discussed in the previous section, in that it addresses the circumstances under which Sprint may obtain a particular type of combination -- known as an EEL -- from BellSouth at UNE rates. This dispute revolves around whether BellSouth is obligated by FCC Rule 51.315(b) to combine UNEs for ALECs. We note that the parties presented very little testimony regarding this issue.

a. Analysis

Sprint believes that the UNE Remand Order, FCC 99-238, and FCC Rule 51.315(b) require BellSouth to universally provision EELs at UNE rates. Accordingly, Sprint witness Hunsucker states that if BellSouth uses EELs on a retail basis to provide service to its customers, then BellSouth should be obligated to provide EELs to Sprint at UNE rates, since EELs would then qualify as a combination of network elements that BellSouth "ordinarily" or "typically" combines. He clarifies:

> Our definition of ordinarily combines means that if an end user came to BellSouth and wanted the retail service, they [BellSouth], in fact, would combine that service, but it is not actually being provided to that particular end user that we are requesting it for today.

BellSouth disputes that the UNE Remand Order, FCC 99-238, and FCC Rule 51.315(b) obligate it to provide universal access to EELs. Consistent with its obligations under the Act and applicable FCC rules, BellSouth witness Ruscilli states that BellSouth is only required to provide combinations, including the EEL, at UNE rates, if the elements are, in fact, combined and providing service to a particular customer at a particular location. He continues that there is only one exception to BellSouth's position regarding the provision of UNE combinations to Sprint. He states:

> BellSouth has elected to be exempted from providing access to unbundled local switching to serve customers with four or more lines in Density Zone 1 of Miami,

> Orlando and Ft. Lauderdale MSAs. To avail itself of this exemption, the FCC requires BellSouth to combine loop and transport UNEs (also known as the "Enhanced Extended Links" or "EELs") in the geographic area where the exemption applies. The FCC also requires that such combinations be provided at cost-based rates.

Witness Ruscilli continues that BellSouth will provide combined loop and transport UNEs at TELRIC prices in accordance with the FCC's UNE Remand Order, in order to use the local switching exemption. However, he contends, beyond that limited exception, BellSouth is under no obligation to physically combine network elements, where such elements are not, in fact, combined.

b. Decision

As previously stated, we believe that FCC Rule 51.315(b) clearly imposes on the incumbent LEC the requirement to make available at TELRIC rates only those UNE combinations, of which EELs are a subset that are, in fact, already combined and physically connected within its network.

The FCC states:

> We note that in the *Local Competition First Report and Order*, and again in this proceeding, we identify the loop and dedicated transport as separate unbundled network elements. . . .To the extent an unbundled loop is in fact connected to unbundled dedicated transport, the statute and our rule 51.315(b) require the incumbent to provide such elements to requesting carriers in combined form. Thus although in this Order, we neither define the EEL as a separate unbundled network element nor interpret rule 51.315(b) as requiring incumbents to combine unbundled network elements that are "ordinarily combined," we note that in specific circumstances, the incumbent is presently obligated to provide access to the EEL. In particular, the incumbent LECs may not separate loop and transport elements that are currently combined and purchased through the special access tariffs. Moreover, requesting carriers are entitled to obtain such existing

> loop-transport combinations at unbundled network element prices.

FCC 99-238 at ¶480. Consistent with FCC Rule 51.315(b), the UNE Remand Order clearly outlines the terms and conditions under which an incumbent LEC must provide access to EELs. That is, an incumbent LEC is only required to provide access to EELs if the "unbundled loop is in fact connected to unbundled dedicated transport" and existing within the incumbent's network. The UNE Remand Order makes no reference to combining unbundled network elements in order to form an EEL for requesting telecommunications carriers as Sprint requests. We note that FCC Rule 51.315(b) only prohibits an incumbent LEC from "separating" combined elements. We further note that the single exception to this rule is outlined in the UNE Remand Order which requires BellSouth to combine EELs at cost-based rates in the geographic areas where BellSouth has elected to be exempted from providing access to unbundled local switching.

With regard to provisioning EELs at UNE rates, we further note, and BellSouth and Sprint agree, that the FCC has not defined the EEL as a distinct, stand-alone element, but rather a combination of elements. Accordingly, BellSouth is willing to negotiate with Sprint a separate contract to combine UNEs for Sprint, but not at UNE rates.

In addition, we have addressed the issue of EELs being made available as UNEs in Dockets Nos. 990691-TP, 990750-TP and 991854-TP. Subsequently, in Orders Nos. PSC-00-0128-FOF-TP, PSC-00-0537-FOF-TP and PSC-00-1519-FOF-TP, we found that, as a general matter, BellSouth was not required to provide EELs as UNEs. In his testimony, Sprint witness Hunsucker acknowledges our past decisions; however, he counters that Sprint is not asking BellSouth to provide EELs as stand alone UNEs, but rather Sprint is asking for EELs as combinations of separate and distinct unbundled elements.

The current state of the law does not impose a requirement on incumbent LECs to universally provide ALECs with EELs nor does it define the EEL as a separate network element. Therefore, based on the foregoing, BellSouth is not required to provide universal access to EELs that it ordinarily or typically combines in its

network at UNE rates. Pursuant to the UNE Remand Order, FCC 99-238, and FCC Rule 51.315(b), BellSouth shall be required to provide access at UNE rates only to EELs that are, in fact, already combined and physically connected in its network at the time a requesting carrier places an order. In addition, BellSouth is required to combine EELs at cost-based rates in the geographic areas where BellSouth has elected to be exempted from providing access to unbundled local switching.

VII. ADDITIONAL LINES IN METROPOLITAN STATISTICAL AREAS

This issue considers BellSouth's pricing of unbundled local switching when Sprint's end user grows from less than four lines to four or more lines in certain geographic areas. The issue revolves around the interpretation of portions of FCC Rule 51.319. Specifically, Rule 51.319(c)(2) provides:

> Notwithstanding the incumbent LEC's general duty to unbundle local circuit switching, an incumbent LEC shall not be required to unbundle local circuit switching for requesting telecommunications carriers when the requesting telecommunications carrier serves end-users with four or more voice grade (DS0) equivalents or lines, provided that the incumbent LEC provides non-discriminatory access to combinations of unbundled loops and transport (also known as the "Enhanced Extended Link") throughout Density Zone 1, and the incumbent LEC's local circuit switches are located in:
>
> (I) The top 50 Metropolitan Statistical Areas as set forth in Appendix B of the Third Report and Order and Fourth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, and
>
> (II) In Density Zone 1, as defined in §69.123 of this chapter on January 1, 1999.

47 C.F.R. §51.319(c)(2). An underlying assumption is that alternative switching providers are likely to be located in the Density Zone 1 areas, which in Florida include the Miami, Orlando, and Ft. Lauderdale Metropolitan Statistical Areas (MSAs).

a. Analysis

BellSouth witness Ruscilli states that this issue concerns the application of the FCC's rules regarding the exemption for unbundling local circuit switching. Witness Ruscilli believes that all of the Bell companies, including BellSouth, were granted the option, or exception, of not having to provide unbundled switching services beyond a specific number of lines in larger areas because the FCC determined that alternative providers for switching services were in these areas. Witness Ruscilli states that BellSouth is obligated to provide switching in Density Zone 1 areas, unless it avails itself of those exemptions. The witness believes the FCC's intent is to recognize that competition is out there and available for the switching in the Density Zone 1 areas. The witness contends:

> BellSouth has elected to be exempted from providing access to unbundled local switching to serve customers with four or more lines in Density Zone 1 of the Miami, Orlando, and Ft. Lauderdale MSAs. To avail itself of this exemption, the FCC requires BellSouth to combine loop and transport UNEs (also known as the "Enhanced Extended Links," or "EELS") in the geographic area where the exemption applies. The FCC also requires that such combinations be provided at cost-based rates. BellSouth will combine loop and transport UNEs at FCC mandated prices as required in the FCC's UNE remand Order in order to use the local circuit switching exemption.

The witness explains that the FCC used a four-line cut-off to distinguish between the mass market and the medium-to-large business market because ". . . the biggest part of the consumer market involves customers who have three or fewer lines." Furthermore, witness Ruscilli states that ¶294 from the UNE Remand Order demonstrates the FCC's logic:

> We recognize that a rule that removes unbundling obligations based on line count will be marginally overinclusive or underinclusive given individual factual circumstances. We find, however, that in our expert judgement, a rule that distinguishes customers with four lines or more from those with three lines or less

> reasonably captures the division between the mass market - where competition is nascent - and the medium and large business market - where competition is beginning to broaden.

FCC 99-238 at ¶294.

The witness testifies that " . . . [a]fter an exhaustive analysis, the FCC determined that an ALEC would not be impaired without access to unbundled local switching when serving a customer with four or more lines in Density Zone 1 in a top 50 MSA." Witness Ruscilli continues:

> No reading of the FCC's discussion on this issue, or of its rule, indicates that, for a customer with four or more lines, the ILEC must provide the ALEC with access to unbundled local switching for the first three lines . . . given the FCC's distinction between the mass market and the medium to large business market.

In summary, witness Ruscilli believes that ALECs, including Sprint, are not entitled to unbundled switching in the Density Zone 1 areas for any of the subscriber lines when the customer has four or more lines, as long as BellSouth provides EELs. BellSouth believes that the FCC's position is quite clear, as long as the other criteria for Rule 51.319(c)(2) are met. Witness Ruscilli characterizes Sprint's argument in this matter as an "attempt to rewrite the rules."

Sprint's witness Felton characterizes the dispute as a question of the appropriate rate for UNE switching for existing lines when Sprint serves a customer in Density Zone 1 of the top 50 MSAs who has three lines or less and the customer adds an additional line or lines, and now has four or more lines. Witnesses Felton and Ruscilli agree that the cities at issue here are Miami, Ft. Lauderdale, and Orlando.

Witness Felton's interpretation of Rule 51.319 and the UNE Remand Order is that when a customer moves beyond three lines, Sprint is still entitled to the unbundled local switching at TELRIC rates. The witness contends that in the scenario of a customer that meets or exceeds the four-line threshold, Sprint proposes that

the TELRIC rate should continue for the first three lines, while BellSouth's proposal would reprice all of the lines, including the first three lines. Witness Felton states:

> The result of the BellSouth proposal will be to arbitrarily increase costs to Florida ALECs, which will serve only to discourage the proliferation of competition and deny Florida consumers its benefits.

Witness Felton acknowledges, however, that although the FCC determined the four-line threshold of FCC Rule 51.319(c)(2) was the current law, Sprint does not agree with this particular threshold. He states:

> . . . [W]e still feel that four lines is probably not the best demarcation point between a small and medium-sized business, but we decided to take that issue to the FCC as opposed to this proceeding.

Sprint noted at hearing and in its brief that it filed a petition for reconsideration of the UNE Remand Order regarding the question of what is the appropriate number of lines for the demarcation point. Sprint believes that the appropriate number of lines should be 40. In its brief, however, Sprint notes that the number of lines is not an issue for arbitration in this docket. Sprint also notes that it has no indication when the FCC might act on its motion.

Witness Felton does, however, acknowledge that under the current state of the law, BellSouth is entitled to move to the market-based switching rate. Under cross examination, witness Felton was unable to identify any basis in the rule that would entitle an end user to a TELRIC-based unbundled switching rate, but he counters by offering:

> I also don't see where it says that the first three lines should be repriced when he grows beyond that. I believe the FCC just didn't contemplate that.

In summary, witness Felton believes that our decision on this matter will not only affect Sprint, but the entire ALEC marketplace. In its Brief, Sprint argues that in the absence of

express FCC guidance on this issue, its position should be adopted since this would promote competition by keeping the cost of the first three lines constant.

b. Decision

We agree with the BellSouth's witness that this issue concerns the application of the FCC's rules regarding the exception for unbundling local circuit switching. Additionally, we agree with the BellSouth's position that Sprint's argument appears to be an "attempt to rewrite the rules." Moreover we agree with BellSouth's belief that the FCC's position is quite clear, as long as the other criteria for Rule 51.319(c)(2) are met.

As the rule contemplates, the provision of EELs becomes central to the resolution of this matter. BellSouth witness Ruscilli explains:

> Basically, the thought is that if the incumbent LEC is willing to provide an EEL, the ALEC can haul the call anywhere in the area to the ALEC's switch. The FCC obviously concluded that, at least in the top 50 MSAs, switching is available from a number of sources. As long as the incumbent LEC allows the ALEC to have an EEL so that the end user could be connected to a ALEC's switch, it is not necessary for the incumbent LEC to unbundle local switching.

In reference to the provision of EELs, we believe that the record is clear that BellSouth is offering EELs in the cities at issue here, Miami, Ft. Lauderdale, and Orlando.

As Sprint witness Felton argues, this dispute concerns the "appropriate rate for UNE switching for existing lines when Sprint serves a customer in Density Zone 1 . . . of the top 50 MSAs who has three lines or less and the customer adds an additional line or lines." We agree in principle with the witness, but believe that the more pertinent matter to be determined is whether the provisions of the current rule or law are being followed. As BellSouth witness Ruscilli testified:

> No reading of the FCC's discussion on this issue, or of its rule, indicates that, for a customer with four or more lines, the ILEC must provide the ALEC with access to unbundled local switching for the first three lines . . . given the FCC's distinction between the mass market and the medium to large business market.

We agree with witness Ruscilli.

Sprint witness Felton acknowledges that the FCC determined that the four-line threshold of FCC Rule 51.319(c)(2) is the current law, although he states that his company does not agree with this particular threshold. In fact, the witness concedes that ". . . we still feel that four lines is probably not the best demarcation point between a small and medium-sized business, but we decided to take that issue to the FCC as opposed to this proceeding." As noted previously, Sprint has filed a motion for reconsideration on this point. We note, however, that Sprint's pending motion does not affect our authority to make a decision in this docket.

Regardless of the threshold number of lines, the issue of what rates are charged for the lines below the threshold remains the same. Therefore, in accordance with the current status of the applicable rule, in situations where an ALEC's end-user customer is served via unbundled switching and is located in density zone 1 in one of the top fifty MSAs and who currently has three lines or less, and adds additional lines, BellSouth shall be able to charge market-based rates for all of the customer's lines, provided the customer has four or more lines after the addition.

VIII. POINT OF INTERCONNECTION FOR LOCAL TRAFFIC

> The issue before us is whether BellSouth has the right to establish a point of interconnection (POI), which differs from the POI established by Sprint, for the delivery of BellSouth originated local traffic.

a. Analysis

Sprint witness Closz testifies that the FCC's Local Competition Order, FCC 96-325, establishes the competitive

carriers' right to designate network interconnection point(s) at paragraph 172, which reads:

> The interconnection obligation of section 251(c)(2), discussed in this section, allows competing carriers to choose the most efficient points at which to exchange traffic with incumbent LECs, thereby lowering the competing carriers cost of, among other things, transport and termination of traffic.

Further, she argues that according to the FCC:

> . . . requesting carriers have the right to select points of interconnection at which to exchange traffic with an incumbent LEC under section 251(c)(2).

FCC 96-325 at ¶ 220, footnote 464. Sprint witness Closz asserts that neither the Act or the FCC gives the ILEC the right to designate the POI.

BellSouth witness Ruscilli contends that BellSouth should have the ability to designate the POI for traffic BellSouth originates. Moreover, the witness states that BellSouth should be allowed to designate a Virtual Point of Interconnection in local calling areas where Sprint has a NPA/NXX assigned. He testifies that the real issue is not whether Sprint may establish a single point of interconnection for the delivery and collection of local traffic throughout the LATA, but who will be financially responsible for the difference in transport associated with the arrangement.

Sprint witness Closz asserts that although BellSouth addresses this issue and the issue to be discussed in Section XIII as if they were the same issue, the issues are distinct and separate. We note that the issue in Section XIII addresses whether BellSouth should be allowed to designate a virtual point of interconnection in a BellSouth local calling area to which Sprint has assigned a Sprint NPA/NXX.

b. Decision

The Local Competition Order, FCC 96-325, states that "the term 'interconnection' under section 251(c)(2) refers only to the

physical linking of two networks for the mutual exchange of traffic." We interpret the term "exchange of traffic" as not being limited to traffic originated by a single carrier, but including traffic originated from both of the interconnecting carriers' networks.

We note that BellSouth only argues the aspect of costs associated with delivering its traffic outside of the local calling area as support for its position that BellSouth should be able to designate POIs for the delivery of its originated traffic. Moreover, it appears that BellSouth has no objections to Sprint designating a single POI in the LATA for the delivery and collection of local traffic. We observe that BellSouth witness Ruscilli testifies:

> Importantly, BellSouth does not object to Sprint designating a single POI at a point in a LATA on one of BellSouth's "networks," for traffic that Sprint's end users originate. Further, BellSouth does not object to Sprint using the interconnecting facilities between BellSouth's "networks" to have local calls delivered or collected throughout the LATA. What BellSouth does want, and this is the real issue, is for Sprint to be financially responsible when it uses BellSouth's network in lieu of building its own network to deliver or collect these local calls.

We believe that the aspects of costs are beyond the scope of this issue. We note paragraph 209 of the Local Competition Order, which states:

> Section 251(c)(2) of the Act gives competing carriers the right to deliver traffic terminating on an incumbent LEC's network at any technically feasible point on that network, rather than obligating such carriers to transport traffic to less convenient or efficient interconnection points. Section 252(c)(2) lowers barriers to competitive entry for carriers that have not deployed ubiquitous networks by permitting them to select the points in an incumbent LEC's network at which they wish to deliver traffic. Moreover, because competing carriers must usually compensate incumbent LECs for the

> additional costs incurred by providing interconnection, competitors have an incentive to make economically efficient decisions about where to interconnect.

As the FCC suggests, the costs associated with interconnection should act as an incentive for ALECs to choose economically efficient POIs, as well as operationally efficient POIs. However, we observe that there is no language which precludes an ALEC from selecting a POI that is not economically efficient. We are persuaded that Sprint has the sole right to determine POIs. Therefore, we find that Sprint shall be allowed to designate the network point (or points) of interconnection for both the delivery and receipt of BellSouth's local traffic subject to technical feasibility.

IX. TRANSPORT OF MULTI-JURISDICTIONAL TRAFFIC

This issue pertains to combining multi-jurisdictional traffic on the same trunk group, including access trunk groups, and 00- calls destined to Sprint over access trunks. Specifically, we must determine whether the parties' agreement should contain language providing Sprint with the ability to transport multi-jurisdictional traffic over a single trunk group, including an access trunk group.

Sprint has requested from BellSouth the ability to combine multi-jurisdictional traffic consisting of interLATA, intraLATA and local traffic over any single trunk group that Sprint chooses, including access trunk groups, between the Sprint network and the BellSouth network switches. Sprint witness Oliver contends that Sprint's request is technically feasible and also an industry-wide practice. Further, she states that the parties' 1997 Interconnection Agreement in Florida allowed for the combining of multi-jurisdictional traffic on the same trunk group.

BellSouth witness Milner responds that the 1997 Interconnection Agreement was and is intended to allow for Sprint-the-ALEC's end users to complete traffic to IXCs, other ALECs, and BellSouth end users on a single trunk group. He continues that the traffic routing issues associated with Sprint's request are associated with traffic originating from BellSouth's switches and destined for Sprint's network.

BellSouth witness Ruscilli explains that BellSouth's understanding of Sprint's request is that, in lieu of establishing a reciprocal trunk group, Sprint is asking that BellSouth place local traffic that originates from a BellSouth end user who is pre-subscribed to Sprint onto Sprint-the-IXC's direct end office switched access Feature Group D trunks. Accordingly, in exploring Sprint's request, BellSouth has determined that the existing access service arrangements do not permit Sprint to receive the service it is requesting.

Nevertheless, BellSouth witness Milner agrees that Sprint's request is technically feasible and can be implemented by making modifications to the present access service arrangements. However, he states that provisioning Sprint's requested arrangement will generate additional costs to BellSouth, which would first need to be quantified and paid by Sprint before implementation of Sprint's request could begin. Witness Milner explains that from a network provisioning and operations perspective, the costs identified thus far for performing the manual call routing process necessary to allow for originating local interconnection traffic over switched access Feature Group D trunks fall into four main categories: (1) routing costs, (2) translation costs, (3) ordering costs and (4) billing costs. He further explains that while BellSouth acknowledges that cost is not a part of this issue, BellSouth's intention is to make Sprint and the Commission aware of the scope of the costs involved in developing and implementing Sprint's request.

Sprint realizes that there are costs associated with provisioning its requested arrangement and has agreed to pay for any "reasonable" costs that BellSouth incurs in implementing it. However, Sprint witness Oliver states that, in the event the parties are unable to work out the cost issue, Sprint requests the right to come back to the Commission to determine the reasonable costs. Accordingly, Sprint and BellSouth have agreed to work cooperatively to identify an accurate estimate of implementation costs.

Additionally, Sprint requests that BellSouth route all 00- calls destined to Sprint over switched access trunks and recognize that a portion of the traffic over those trunks may be local. Sprint witness Oliver believes that the type of trunking used to

transport traffic should not pre-determine the jurisdiction of a call. She states that the jurisdiction of a call can only be determined after the call is routed for completion by the Sprint integrated enhanced service platform. She testifies:

> If the call terminates back into the same local calling area, Sprint is proposing to pay BellSouth reciprocal compensation. If the call terminates in a distant location, access charges will apply.

BellSouth witness Ruscilli concurs that where a BellSouth end-user who is pre-subscribed to Sprint-the-IXC dials 00, and Sprint switches the call back into the same BellSouth local calling area, the call would be a local call. He also agrees that local calls are generally compensated by reciprocal compensation under an interconnection agreement.

B. Decision

The parties agree that combining multi-jurisdictional traffic on a single trunk group, including an access trunk group, is technically feasible. Because the cost to implement this arrangement is not yet before us, we believe the parties should continue to negotiate and develop a complete and accurate estimate of the reasonable costs associated with implementing Sprint's request. We note that, if after good-faith negotiations, the parties cannot agree on the appropriate cost, they may petition us to determine the appropriate costs and applicable rate.

The parties agree that some traffic routed over access trunks may be local traffic. Moreover, if a call using the 00- dialing platform originates and terminates in the same local calling area, the parties agree that the call is local, and subject to reciprocal compensation. With regard to access traffic, the parties agree that if a customer uses the 00- dialing platform to make a long distance call, then originating access charges apply. Accordingly, there appear to be no remaining dispute in the issue as presented for arbitration.

Upon consideration, we find that the parties' agreement shall contain language providing Sprint with the ability to transport multi-jurisdictional traffic over a single trunk group, including

an access trunk group. For 00- traffic routed over access trunks, the appropriate compensation scheme shall be preserved for each jurisdiction of traffic that is combined, i.e., local and intra/interLATA.

X. MAKE-READY WORK

This issue considers the payment arrangements between Sprint and BellSouth in regard to make-ready work projects.

A. Analysis

BellSouth's witness Milner states that "Sprint should be required to pay in advance for any such work Sprint requests BellSouth to perform as do other ALECs that have signed BellSouth's standard License Agreements for Rights of Way (ROW), Conduits, and Pole Attachments." He contends that contractors often require payments in advance. Witness Milner responds to Sprint's position as follows:

> Sprint's position is that a requirement for advance payment would deprive Sprint of its primary recourse in the event that the work is not performed in a satisfactory manner - a position with which I do not agree. . . . There is no harm to Sprint, given Sprint's offer to pay half the amount due in advance in any event and Sprint's position that it will pay BellSouth the remainder upon completion of the work to Sprint's satisfaction.

The witness fears that Sprint's proposal would invite baseless disputes over whether the work was performed in a satisfactory manner. He states:

> Sprint's position leads to the obvious question of who will determine whether the work is "satisfactory." BellSouth believes such a position, if embodied in Sprint's and other ALECs' interconnection agreements would inevitably lead to delayed payments based on meritless claims.

Witness Milner believes Sprint's concern over the possibility of unsatisfactory work from BellSouth is mistaken. "Poorly done work must be redone at further cost and without additional revenue," states the witness. He offers:

> BellSouth will complete its work in a satisfactory manner; therefore the issue of unsatisfactory completion will not arise. . . . For example, of fifty-six make-ready jobs undertaken thus far in Florida in 2000, all were completed satisfactorily and none resulted in a complaint. . . .

The witness also offers that in other states in the BellSouth region, specifically Georgia and Tennessee, make-ready jobs were provisioned by BellSouth without complaint. In Georgia, the number was 338 jobs; and in Tennessee, the number was 80, states witness Milner. Additionally, the witness claims:

> . . . I have been unable to find a case where an ALEC has requested that we do this work, has been unhappy with the result of that work, and has asked us to do something about it. So I think the balance is between what is the likelihood a complaint is going to arise with the administrative burden on each and every one of these hundreds of requests.

If there was a problem with any make-ready job, witness Milner gave assurances that BellSouth would be responsive. In addition, he claims that the imposition of the two-payment requirement would create an "administrative burden for 100 percent of the cases when to date we haven't even found one instance where we have had a problem."

The additional consideration that witness Milner discusses regarding Sprint's proposal is the administrative task of processing two payments. "I believe the practical impact from acceding to Sprint's request will be an increase in administrative costs for both companies," states witness Milner. He states that under Sprint's proposal there will always be two payments rather than one, separated only by the limited time required to schedule and complete the actual work required. Further, he adds:

> . . . [W]e don't think that changing the amount that they give us in advance really materially effects or doesn't address satisfactorily our concern, which is having to keep up with two payments instead of one.

Sprint witness Closz believes that Sprint should be allowed to pay half of the charges for make-ready work up front, with the remainder due and payable to BellSouth upon satisfactory completion of the make-ready task. Sprint believes this is "reasonable," since it allows BellSouth some initial funding while allowing Sprint to retain some degree of leverage to ensure that the job will be completed satisfactorily, according to witness Closz. Witness Closz offers:

> It is reasonable and customary in situations involving contracted work to provide a portion of payment in advance and the remainder of the payment upon satisfactory completion of the work. If Sprint is required to pay for all of the work in advance, Sprint will have no leverage with BellSouth to insure that the work being done is fully completed and is satisfactory. Indeed, BellSouth will already have been fully compensated and will have no financial incentive to complete the job in a timely and accurate fashion.

The witness states that Sprint's concern is over having a vehicle for financial recourse, and believes that a withheld payment of 50% would provide incentive for BellSouth to perform its make-ready jobs in a timely and satisfactory manner. She asserts:

> If such work is unsatisfactory, personal appeals to BellSouth management will be the only available course of action to remedy the situation. Such escalations require a lot of time and effort on the part of both BellSouth and the ALEC. In contrast, receipt by BellSouth of final payment upon work completion provides an effective incentive for timely and satisfactory completion of such work.

Witness Closz notes that BellSouth requires the 100 percent up-front payment arrangement for make-ready work projects because

this is the way that they have traditionally handled such matters, though she disagrees with BellSouth's rationale. She offers:

> This position is illogical. Surely BellSouth is not suggesting that all interconnection arrangements with requesting carriers must be uniform. If such were true, then negotiated local interconnection Agreements would be largely unnecessary, and there would be no reason whatsoever for the "Most Favored Nations" provision of §252(I) of the Act since each carrier would have the same, identical arrangements with BellSouth. . . . It is simply not constructive to suggest that Sprint should "fall in line" with what the other carriers have agreed to, for such reasoning would eliminate the need for the negotiated agreement, which is the cornerstone of the Act.

In cross-examination, witness Closz states that as the customer, Sprint should be the party to determine whether a job was completed satisfactorily. Sprint's position according to the witness is based on a its experience in dealing with contractors who perform work for them. She states that it is " . . . a very common arrangement to pay for part of the services up front, the remainder when the job has been satisfactorily completed." Witness Closz contends that Sprint is seeking a business arrangement akin to the one that Sprint has with its own contractors. In summary, Sprint urges us to adopt Sprint's proposed terms which provide for a 50/50 payment arrangement as described, in reference to make-ready jobs.

B. Decision

We find that Sprint may be required to pay the entire cost of make-ready work prior to BellSouth's satisfactory completion of the work. For informational purposes only, we note that the issue concerning payment for make-ready job projects was addressed in the recently-concluded WorldCom/BellSouth arbitration proceeding, Docket Number 000649-TP. We note that our decision in this proceeding is consistent with the decision rendered in Docket Number 000649-TP.

We agree with the BellSouth witness that in the context of make-ready jobs, it is not unusual for contractors to require payments in advance. Sprint's witness Closz is also in agreement on this point. She states that it is "a very common arrangement to pay for part of the services up front, the remainder when the job has been satisfactorily completed."

However, we have concerns about the "upon satisfactorily completed" phrase, and agree with the BellSouth witness that the potential exists for delayed payments. We believe that debate could ensue on the degree of "satisfaction," and that in our opinion, the debate would serve little purpose. As witness Milner testified:

> Sprint's position leads to the obvious question of who will determine whether the work is "satisfactory." BellSouth believes such a position, if embodied in Sprint's and other ALECs interconnection agreements would inevitably lead to delayed payments based on meritless claims.

While we acknowledge that a down-payment arrangement is common for contractual arrangements, we simply do not agree that a withheld payment is an effective remedy in the event there is "dissatisfaction." The BellSouth witness offers that BellSouth's managers are fully empowered to adjust billing, for any reason whatsoever, if a particular project is deemed "unsatisfactory." Furthermore, witness Milner states, and we agree:

> Sprint, and other ALECs, have effective means of recourse should they believe a work request was not completed in a satisfactory manner.

We note that the record is void of any specific evidence that Sprint can use to support its assertion that it needs "leverage" against BellSouth to assure itself of "satisfactory" performance. In fact, under cross examination, witness Closz allowed that -- to her knowledge -- Sprint did not request a single make-ready job request in the state of Florida last year. Additionally, we note the record that BellSouth presented regarding its provisioning of make-ready jobs, noting the results presented for Florida, Georgia, and Tennessee. We believe that this record for the year 2000 adequately demonstrates that BellSouth has met the expectations of

other ALEC customers when provisioning make-ready work projects. While we recognize that future performance is at issue, we are satisfied from witness Milner's testimony that BellSouth would modify its processes accordingly in the event that Sprint or any other ALEC had problems with a make-ready job provisioned by BellSouth. We also agree with the BellSouth witness that administrative costs would be greater under the two payment scenario. Therefore, we conclude that Sprint has failed to provide sufficient evidence to support a two payment plan for make-ready work.

Therefore, BellSouth may require Sprint to pay the entire cost of make-ready work prior to BellSouth's satisfactory completion of the work. However, we encourage BellSouth to be flexible in negotiating advanced payment for make-ready work. Furthermore, we note that this is an issue that we could revisit in the future, particularly if we receive complaints regarding work quality. The record in this Docket, however, indicates that BellSouth's work quality is satisfactory.

XI. TWO-WAY TRUNKS

This issue addresses whether BellSouth is obligated to provide two-way interconnection trunking to Sprint upon Sprint's request, or whether the provision of such trunking is predicated on the parties mutually agreeing to the use of such trunking arrangements. Specifically, we must determine whether FCC Rule 51.305(f) requires BellSouth to provide two-way trunks upon Sprint's request. Rule 51.305(f) states:

> If technically feasible, an incumbent LEC shall provide two-way trunking upon request.

47 C.F.R. §51.305(f).

A. Analysis

Sprint believes that BellSouth is required to provide two-way trunking upon Sprint's request, subject only to technical feasibility. Sprint witness Oliver states "there is nothing in the Rule to suggest that the ILEC and the ALEC must mutually agree to the use of two-way trunking as a condition of BellSouth making

such trunking available to Sprint." Accordingly, Sprint has proposed the following language:

> The Parties may interconnect using one-way, two-way or Supergroup interconnection trunking for the receipt and delivery of Local, IntraLATA and InterLATA Toll and Transit Traffic between the Parties as set forth herein.

Witness Oliver clarifies that the provision of two-way trunking should incorporate both "two-way" trunking and "SuperGroup" interconnection trunking as defined in Sprint's proposal.

BellSouth agrees that Rule 51.305(f) requires BellSouth to provision two-way trunks at Sprint's request. BellSouth witness Ruscilli states if Sprint requests two-way trunking, BellSouth will provide it, without any exception he can think of. He further states that BellSouth wants to do so. In response to witness Oliver's reference to SuperGroup interconnection, witness Ruscilli concurs that SuperGroup interconnection is a type of two-way trunking arrangement; however, he states that the SuperGroup arrangement is discussed in Attachment 3, Section 2.8.8.2.1, to the proposed interconnection agreement. He questions the relevance of the SuperGroup arrangement as it pertains to this issue.

Despite BellSouth's assurance, Sprint remains skeptical that BellSouth will fulfill its obligation to provide two-way trunks for two reasons. First, Sprint witness Oliver states:

> BellSouth's position on two-way trunks is inextricably linked to its position on designation of the network Points of Interconnection ("POI") as discussed in Melissa Closz' testimony. Since BellSouth believes that it has the right to designate the POI for its originated traffic, BellSouth also believes that mutual agreement is necessary on the location of the POI for two-way trunks. Under this arrangement, if BellSouth is unable to agree with Sprint on the location of the POI, then two-way trunks effectively become unavailable to Sprint.

Second, she explains that even if the mutual agreement that BellSouth believes is required on the location of the POI is

reached and the Parties, therefore, agree to use two-way trunks, BellSouth seeks to reserve the right to place any and all of its originated traffic on separate one-way trunks, thereby nullifying the benefits of two-way trunks. We note that Sprint's arguments are discussed in several other sections of this Order as well.

B. Decision

As stated previously, the issue is whether BellSouth is obligated to provide Sprint two-way trunks at Sprint's request. We note that Sprint and BellSouth in their testimony recognize BellSouth's obligation under FCC Rule 51.305(f) to provision two-way trunks at Sprint's request.

Additionally, we note that Sprint witness Oliver refers to a specific type of two way trunks called a "SuperGroup." We recognize that the "SuperGroup" is a two-way trunk capable of carrying multi-jurisdictional traffic. However, we find that a decision involving a specific type of trunk is beyond the scope of the issue as framed. Nevertheless, we encourage the parties to reach a negotiated resolution of this issue.

We conclude that the plain and unambiguous language of FCC Rule 51.305(f) makes it clear that BellSouth is required to provide two-way trunks, subject only to technical feasibility at Sprint's request. Therefore, in accordance with FCC Rule 51.305(f), BellSouth shall be required to provide Sprint two-way trunks at Sprint's request.

XII. BELLSOUTH'S USE OF TWO-WAY TRUNKS

This issue addresses whether BellSouth is required to "use" or put its originated traffic over the two-way trunks it provisions to Sprint at Sprint's request in accordance with FCC Rule 51.305(f) and Paragraph 219 of the Local Competition Order. Paragraph 219 of the Local Competition Order states:

> We conclude here, however, that where a carrier requesting interconnection pursuant to section 251(c)(2) does not carry a sufficient amount of local traffic to justify separate one-way trunks, an incumbent LEC must

> accommodate two-way trunking upon request where technically feasible. Refusing to provide two-way trunking would raise costs for new entrants and create a barrier to entry. Thus, we conclude that if two-way trunking is technically feasible, it would not be just, reasonable, and nondiscriminatory for the incumbent LEC to refuse to provide it.

FCC Order 96-325 at ¶219.

As discussed in Section XI of this Order, while both parties agree that BellSouth is obligated to "provide" two-way trunks upon Sprint's request where technically feasible, the parties dispute whether BellSouth is also obligated to "use" those two-way trunks.

A. Analysis

BellSouth's position is that paragraph 219 only obligates BellSouth to put its originating traffic over two-way local interconnection trunks where traffic volumes are too low to justify one-way trunks. BellSouth witness Ruscilli clarifies that, in all other instances, BellSouth is able to use one-way trunks for its traffic, if it so chooses. He adds, however, that BellSouth is not opposed to the use of two-way trunks where it makes sense and the provisioning arrangements can be mutually agreed upon. Hence, BellSouth's position is that it will only send its traffic over Sprint's two-way trunks when traffic volumes between BellSouth and Sprint are insufficient to justify one-way trunks.

While Sprint witness Oliver concurs with BellSouth that, under paragraph 219, in order for Sprint to be entitled to request two-way trunking, it must be carrying insufficient traffic to justify one-way trunking. Sprint believes that FCC Rule 51.305(f) and paragraph 219 collectively require BellSouth to provide and use two-way trunks for BellSouth-originated traffic at Sprint's request. Sprint witness Oliver argues that nothing in Rule 51.305(f) supports BellSouth's position to use one-way trunking for its traffic, where Sprint requests two-way trunking. She adds that if BellSouth refuses to use the two-way trunks, the trunks are not functioning as a two-way trunk. Witness Oliver further argues that witness Ruscilli has mischaracterized BellSouth's obligation under paragraph 219. She states:

> Paragraph 219 does not refer to BellSouth as the carrier lacking sufficient traffic volumes to justify one-way trunks. The quote from paragraph 219 refers to the instance "where a carrier requesting interconnection pursuant to section 251(c)(2)" (i.e., the ALEC - Sprint) does not have sufficient traffic volumes to warrant separate one-way trunks. To state it another way, Paragraph 219 permits the ALEC, not BellSouth, to use one-way trunks if the ALEC's traffic warrants one-way trunks. If the ALEC does not have the traffic volumes to justify separate one-way trunks, then BellSouth is obligated to provide two-way trunks upon request by the ALEC.

Moreover, she argues, if BellSouth refuses to use the two-way trunks it provides, then they will no longer be functioning as two-way trunks. She continues that, practically speaking, BellSouth's refusal will require Sprint to operate one-way trunks, thus eliminating the efficiencies that were intended and are inherent in two-way trunking arrangements. She explains:

> Trunks can be one-way or two-way. Generally, two-way trunking is more efficient than one-way trunking for traffic that flows in both directions. Two-way trunking is generally more efficient because fewer trunks are utilized to establish the interconnection that is needed when ILECs insist only on one-way trunking. Two-way trunking is also efficient in that it minimizes the number of trunk ports needed for interconnection.

Witness Oliver concludes that because of the efficiencies gained in switching ports and interconnecting facilities, Sprint views two-way trunking as the preferred trunking arrangement in many cases and particularly in the early stages of market entry. She explains that, early on, there just may not be enough traffic to justify setting up multiple one-way trunk groups for the exchange of traffic with BellSouth.

BellSouth witness Ruscilli responds that only under certain circumstances may two-way trunks be more efficient than one-way trunks. He states:

> Due to busy hour characteristics and balance of traffic, however, two-way trunks are not always the most efficient, as Sprint seems to suggest. For example, trunk groups are engineered based upon the amount of traffic that uses the trunk group during the busiest hour of the day. If the traffic on the trunk group in both directions occurs in the same or similar busy hour, there will be few, if any, savings obtained by using two-way trunks versus one-way trunks. The trunk termination costs will still have to be incurred on the total number of trunks required to accommodate the total two-way traffic in the busy hour. In addition, if the traffic is flowing in one direction, there will be little or no savings in two-way trunks over one-way trunks.

For these reasons, witness Ruscilli contends, if there are no efficiencies to be gained, BellSouth should be entitled to use one-way trunks for its traffic just as Sprint is entitled to use one-way trunks for its traffic. He continues, however, that BellSouth is willing to employ two-way trunks consistent with basic two-way trunking principles.

Regarding witness Ruscilli's arguments on one-way versus two-way trunking efficiencies, witness Oliver states that she is not suggesting that two-way trunking is always more efficient than one-way. She explains that whether it is more efficient to use one or two-way trunking is situational. She continues that Sprint is a very sound company that makes efficient business decisions and assures that Sprint would not implement any type of trunking arrangement that was unnecessary.

Despite Sprint's assurance, BellSouth maintains that it should have the flexibility to use one-way trunks for its originated traffic for many reasons. First, while BellSouth does not suggest that Sprint would make irrational decisions regarding the use of one-way versus two-way trunks, BellSouth is asking for a reasonable approach for the decision to use them. Second, BellSouth witness Ruscilli asserts that if the majority of traffic exchanged between the companies originates on BellSouth's network, then BellSouth must have the ability to establish direct trunk groups from its end offices to the point of interconnection, when traffic volumes dictate, in case Sprint is uncooperative in establishing direct end

office to end office trunks or in providing a sufficient number of two-way trunks. Third, he continues that because two-way trunks carry both companies' originated traffic, requiring two-way trunks raises an issue as to which carrier will determine the interconnection point for BellSouth originated traffic. Witness Ruscilli explains that allowing ALECs to designate the interconnection point for BellSouth originated traffic allows Sprint to inappropriately increase BellSouth's costs. Fourth, he contends that two-way trunks involve a variety of complex issues that must be resolved by the parties in order to make two-way trunks a viable arrangement. He states:

> For example, two-way trunk installation involves agreement on: 1) the number of trunks required; 2) when trunk augmentation is required; 3) whether to install direct end office to end office trunk groups or tandem trunk groups; 4) whose facilities will be used to transport two-way groups when both companies have available facilities; 5) where the Point of Interconnection will be located; 6) which company will order and install the trunk group and who will control testing and maintenance of the trunk group; and 7) the method of compensation between the parties for two-way trunks that carry multi-jurisdictional traffic.

B. Decision

As stated previously, the issue is whether BellSouth is required to put its originated traffic over two-way trunks it provisions for Sprint. In reviewing the testimony, we conclude that the parties basically agree on what is required by FCC Rule 51.305(f) and paragraph 219. However, it seems that BellSouth's primary contention is that the aforementioned rules do not consider BellSouth's economics and ultimately leave BellSouth with no say-so in the decision to use one or two-way trunks. In other words, BellSouth wants to have the right to determine whether it is in BellSouth's best interest to use one-way or two-way trunking.

Moreover, it appears that the crux of this issue is who is in control and has the right to determine the trunking configuration in the event there is a disagreement between the parties about what constitutes an insufficient amount of traffic to justify one-way

trunks. We note that there was some discussion in the testimony that the deciding party would inherit the ability to choose the POI. We note that while this issue is inter-related with POI, POI has been addressed in a previous section of this Order.

We do not believe BellSouth's position can be reconciled with the FCC's regulations. According to BellSouth's interpretation, BellSouth is only obligated to provide two-way trunks -- not use them -- at Sprint's request. This interpretation is neither logical nor efficient since only Sprint would be utilizing the trunk, thus making the trunk a "one-way, two-way trunk." If BellSouth is allowed to use one-way trunks for its own traffic when Sprint has requested two-way trunks, there would be no point in even provisioning two-way trunks since the two-way trunk will not be functioning as a two-way trunk. We reference FCC Rule 51.305(f), which reads:

> If technically feasible, an incumbent LEC shall provide two-way trunking upon request.

47 C.F.R. §51.305(f). We also reference ¶219 of the Local Competition Order, which reads:

> Refusing to provide two-way trunking would raise costs for new entrants and create a barrier to entry. Thus, we conclude that if two-way trunking is technically feasible, it would not be just, reasonable, and nondiscriminatory for the incumbent LEC to refuse to provide it.

FCC 96-325 at ¶219. Based upon Sprint's testimony that if only one party uses a two-way trunk, the trunk in effect, becomes a one-way trunk. We interpret the term "provide," as used in FCC Rule 51.305(f) and ¶219 of the Local Competition Order, to mean the "provisioning" and "usage" of two-way trunks. As discussed previously, a two-way trunk with one-way traffic is not a functioning two-way trunk.

Further, we are not persuaded by the argument on which BellSouth bases its position. Throughout its testimony, BellSouth points out instances where two-way trunking is not more efficient than one-way trunking. However, we note that BellSouth fails to

demonstrate instances where two-way trunking is less efficient than one-way trunking. Accordingly, based on both parties' testimony, it appears that each trunking type can be efficient, depending on the traffic characteristics. Furthermore, witness Oliver testifies that in some of the rare instances where two-way trunking is not more efficient than one-way trunking (i.e., when peak periods occur simultaneously), Sprint's engineers would not opt for two-way trunking. In addition, she states that there are instances where Sprint may choose to use a one-way trunk as opposed to a two-way, depending on the situation. We do not believe Sprint will change its practices to impede BellSouth's network efficiency. Sprint witness Oliver provides assurances that Sprint makes efficient business decisions and would not seek to implement any type of unnecessary trunking arrangement.

Finally, in regard to the underlying control issue, we believe that Sprint and BellSouth trunk engineers should work together on a case-by-case basis to decide if two-way trunking is mutually beneficial. In the event the parties cannot agree, we find that Sprint has the right to make the final decision. However, we recognize that the outcome may be that Sprint's network design and traffic volumes take precedent over BellSouth's. As a result, BellSouth's network economics may suffer, since Sprint's economics would control. We trust that sound engineering practices will determine the parties' decisions. For the reasons stated above, we find that BellSouth is obligated to use (put its originating traffic over) the two-way trunks it provisions for Sprint at Sprint's request.

XIII. DESIGNATION OF VIRTUAL POINT OF INTERCONNECTION: RECOVERY OF TRANSPORT COSTS ASSOCIATED WITH THE DELIVERY OF LOCAL TRAFFIC OUTSIDE THE LOCAL CALLING AREA

This issue before us is to determine under what terms and conditions should BellSouth be allowed to designate a virtual point of interconnection (VPOI). As previously stated, Sprint shall be allowed to designate a network point (or points) of interconnection for both the delivery and receipt of BellSouth's local traffic subject to technical feasibility. However, we did not address where the parties' cost responsibility begins and ends for traffic, when an ALEC chooses a point of interconnection (POI) for a local calling area, which is outside of the ILEC's local calling area.

BellSouth witness Ruscilli notes that "the VPOI is the Point of Interconnection specified by BellSouth for delivery of BellSouth originated traffic to Sprint."

A. Analysis

BellSouth witness Ruscilli presents Exhibit 6 which illustrates three typical examples of call flow configurations between BellSouth's and Sprint's network, where Sprint designates a single POI in the Jacksonville LATA. Witness Ruscilli points out that BellSouth has several local networks in the Jacksonville LATA; however, BellSouth witness Ruscilli focuses on the Lake City and Jacksonville local calling areas. BellSouth witness Ruscilli notes that BellSouth's local calling areas have been either "defined" or "approved" by us.

For ease of discussion, we insert a modified image of Exhibit 6, page 1. Our modifications to BellSouth's exhibit were only to remove the call direction arrows in the Lake City local calling area. We note that the three diagrams in Exhibit 6 utilize an identical image, while modifying the call flow direction arrows.

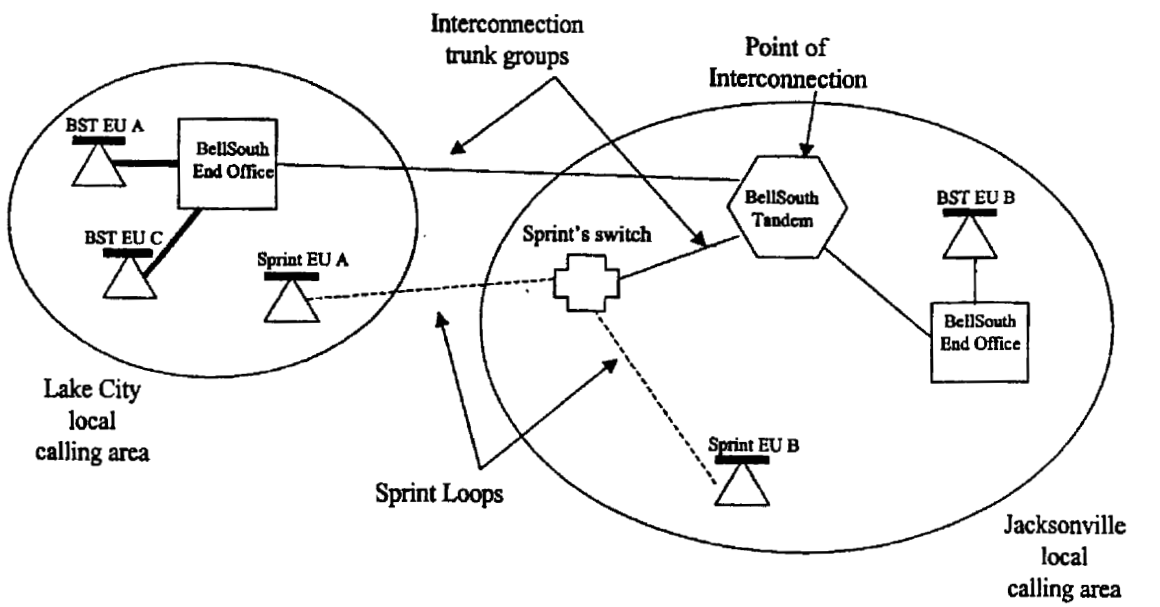

Diagram 29-1

In BellSouth witness Ruscilli's exhibit titled "Local Call from Lake City BST EU to Lake City BST EU," the diagram illustrates a call that originates from a BellSouth end-user in the Lake City local calling area, and terminates to a BellSouth end-user located in the Lake City local calling area. Witness Ruscilli explains that BellSouth would not transport the call outside of the Lake City calling area. Therefore, BellSouth only incurs end office switching costs.

In BellSouth witness Ruscilli's exhibit titled "Local Call from Jacksonville BST EU to Jacksonville Sprint EU," the diagram illustrates a call that originates from a BellSouth end-user in the Jacksonville local calling area, and terminates to a Sprint end-user in the Jacksonville local calling area, where Sprint's POI is located in the Jacksonville local calling area. Witness Ruscilli testifies that there is no dispute when Sprint interconnects in this manner.

In BellSouth witness Ruscilli's exhibit titled "Local Call from Lake City BST EU to Lake City Sprint EU," the diagram illustrates a call that originates from a BellSouth end-user in the Lake City local calling area, and terminates to a Sprint end-user located in the Lake City local calling area, where Sprint's POI is located in the Jacksonville local calling area. Witness Ruscilli asserts that a dispute arises as to who should pay for the facilities "used to haul the local calls back and forth between Sprint's Point of Interconnection in Jacksonville and the BellSouth Lake City local calling area." Witness Ruscilli states:

> . . . BellSouth does not object to Sprint using the interconnecting facilities between BellSouth's "networks" to have local calls delivered or collected throughout the LATA. What BellSouth does want, and this is the real issue, is for Sprint to be financially responsible when it uses BellSouth's network in lieu of building its own network to deliver or collect the local calls.

Witness Ruscilli believes that Sprint expects BellSouth to be financially responsible for transporting traffic from each of BellSouth's local calling areas within a LATA to Sprint's POI,

which likely would be located outside of the local calling area. This traffic is ultimately terminated to a Sprint end-user in the same local calling area as the BellSouth customer originating the call. BellSouth witness Ruscilli believes that BellSouth should not be responsible for the financial burden associated with the additional cost of transport that Sprint causes.

However, Sprint witness Closz disputes the fact that BellSouth incurs additional or incremental transport costs. She believes that the network facilities are in place. Regardless, the witness asserts that Sprint is responsible for transport on its side of the POI, while BellSouth would be responsible for transport on its side of the POI. She states that both parties would pay reciprocal compensation for the termination of traffic from its network. Moreover, Sprint witness Closz points out that both parties agreed to the following definition of "POI" to be included in Attachment Three of the agreement:

> A Point of Interconnection is the physical telecommunications interface between BellSouth and Sprint's interconnection functions. It establishes the technical interface and point of operational responsibility and defines the point at which call transport and termination reciprocal compensation responsibility begins. (*emphasis added in original*)

Sprint witness Closz reiterates that although BellSouth agrees that the POI "defines the point at which call transport and termination reciprocal compensation responsibility begins," BellSouth proposes that Sprint be responsible for the cost of transport between BellSouth's VPOI and Sprint's POI. She believes that BellSouth is attempting to shift its costs to Sprint. Further, witness Closz references FCC Rule 51.703(b) - which states that "A LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network."

BellSouth witness Ruscilli contends:

> The fact that Sprint is entitled to physically interconnect with BellSouth at a single point cannot overcome the fact that the single POI cannot, by

> itself, constitute interconnection with every single local area in the LATA.

Witness Ruscilli explains that theoretically BellSouth is compensated for delivering calls from one end-user in a local calling area to another end-user within the same calling area by the local exchange rates. However, witness Ruscilli asserts that local exchange rates do not cover the cost of calls from one local calling area to another calling area. He maintains that:

> Indeed, if Sprint is not required to pay for that extra transport which Sprint's network design decisions cause, who will pay for it? The BellSouth calling party is already paying for its local exchange service, and certainly will not agree to pay more, simply for Sprint's convenience. Who does that leave to cover this cost?

The BellSouth witness continues that these transport costs are not recovered in the reciprocal compensation charges. He cites ¶176 of the FCC's Local Competition Order, FCC 96-325, which states:

> We conclude that the term "interconnection" under section 251(c)(2) refers only to the physical linking of two networks for the mutual exchange of traffic. Including the transport and termination of traffic within the meaning of section 251(c)(2) would result in reading out of the statute the duty of all LECs to establish "reciprocal compensation arrangements for the transport and termination of telecommunications," under section 251(b)(5).

Witness Ruscilli asserts that ¶176 requires the costs of interconnection and reciprocal compensation to be recovered separately. Moreover, he believes that reciprocal compensation charges only apply to facilities used to transport and terminate local traffic. Therefore, additional transport costs incurred to effect interconnection should be recovered through interconnection charges.

Sprint witness Closz asserts that paragraphs 172, 220, and footnote 464 of the Local Competition Order, FCC 96-325, provide for ". . . competing carriers to choose the most efficient points at which to exchange traffic with incumbent LECs, thereby *lowering the competing carriers' cost* (emphasis added) of, among other things, transport and termination of traffic." She explains that competitive entry costs inhibit ALECs from establishing a ubiquitous network that would offer Sprint the cost reductions BellSouth enjoys. Sprint designs its network in a manner which is most cost efficient. Witness Closz adds:

> Now the question is does that result in some incrementally higher costs for the ILEC on their side of the point of interconnection. I don't know, it might. But the ILEC has the advantage of having a network that has been growing over 100 years time. And we are talking about carrying traffic that was probably also carried prior to that new entrant coming into the market. So, you know, there is nothing to suggest there that this is incremental traffic volumes or that it would require brand new facilities for brand new traffic.

BellSouth witness Ruscilli disputes Sprint's basis for determining efficiency. He testifies:

> Sprint seems to equate efficiency with what is cheapest for Sprint. Of course, that is not an appropriate measure of efficiency. Indeed, to measure efficiency, the cost to each carrier involved must be considered.

Witness Ruscilli states that the principal reason the arrangement is cheaper for Sprint is because Sprint is expecting BellSouth to bear the increased costs of transport. Moreover, if BellSouth is required to bear these costs, ultimately these costs will be passed on to BellSouth's customers. Witness Ruscilli asserts that "competition should reduce costs to customers, not increase them."

Further, witness Ruscilli cites ¶199 of the Local Competition Order, FCC 96-325, which reads:

> . . . a requesting carrier that wishes a "technically feasible" but expensive interconnection would, pursuant to section 252(d)(1), be required to bear the cost of that interconnection, including a reasonable profit.

Sprint witness Closz agrees that if BellSouth determines that Sprint's requested POI is inordinately expensive, BellSouth could charge Sprint for the costs of establishing facilities to the POI. However, witness Closz asserts that cost considerations are related to the establishment of the point of interconnection. She believes that the FCC's discussion related to the costs of establishing interconnection is intended to prevent an ALEC from choosing an inordinately expensive POI. She gives the following example of what the FCC intended to prevent:

> I want my point of interconnection 50 miles away from the ILEC central office. So, ILEC, I want you to build brand new facilities to come out and get me there. I'm out in the middle of a cornfield or something.

Witness Closz explains that this scenario requires new facilities, which is a different concept than the costs of transport once those facilities are in place.

Witness Closz also asserts that BellSouth's proposal gives BellSouth the discretion to designate the VPOI. She contends that BellSouth has no incentive to choose a VPOI which is cost-efficient to Sprint. She believes that although BellSouth claims that it would not designate a costly VPOI, "the right to do so is exactly what BellSouth is asking the Commission to authorize." The Sprint witness alleges that in BellSouth's VPOI plan, there is no provision as to where the VPOI would be located. BellSouth's proposal does not offer Sprint the ability to choose the VPOI. Moreover, BellSouth could establish the VPOI anywhere in BellSouth's local calling area, which could be the most expensive option for Sprint.

B. Decision

As stated previously in Section VIII of this Order, Sprint shall be allowed to designate a network point (or points) of interconnection for both the delivery and receipt of BellSouth's

local traffic subject to technical feasibility. Accordingly, we recognize that it would be a contradictory decision to allow BellSouth to designate a VPOI. We note that Sprint witness Closz admits that allowing Sprint to choose the VPOI would not change Sprint's position on this issue.

We note that the term "POI" refers to the place where BellSouth's and Sprint's network physically interface for the mutual exchange of traffic. We also note that the term "VPOI" refers to an implicit "POI" for billing purposes. The VPOI is not a physical interface; however, it refers to a physical point on BellSouth's network beyond which BellSouth would be entitled to recover costs for delivery of BellSouth-originated local traffic to Sprint's end-users within the same local calling area, where Sprint's POI is located outside of BellSouth's local calling area.

Based on the evidence of record, we rely on three areas for our decision. First, there are additional costs directly associated with BellSouth completing a local call to a Sprint end-user when Sprint's POI is located outside of the local calling area. BellSouth witness Ruscilli identifies additional transport mileage that is involved when BellSouth completes a local call to a Sprint end-user when Sprint's POI is located outside of BellSouth's local calling area. Sprint's witness Closz agrees that there may be additional transport required by BellSouth; however, she disputes that additional costs are incurred. She responds that BellSouth has the facilities already in place; therefore, it is unclear "exactly what incremental or additional costs that would cause." Nevertheless, witness Closz admits that a greater transport distance would increase costs. We are persuaded that BellSouth incurs additional transport costs in completing a local call when Sprint's POI is located outside of BellSouth's local calling area. We recognize that although facilities may be in place, there are costs associated with the use and maintenance of those facilities.

Second, in accordance with the FCC Rules and Orders, BellSouth is entitled to recover additional transport costs from Sprint. Both parties make specific references to the FCC's Local Competition Order and Rules to argue their position. We agree with BellSouth witness Ruscilli that ¶176 requires distinct

charges for interconnection and transport and termination. Further, we agree with BellSouth that reciprocal compensation charges only apply for the transport and termination of local traffic. Therefore, we are persuaded that the additional transport costs BellSouth encounters in completing a call to a POI outside of BellSouth's local calling area may not be covered by reciprocal compensation charges, because the call is being transported outside of the local calling area.

We considered FCC Rule 51.701(b)(1), which reads:

> (b) *Local telecommunications traffic.* For purposes of this subpart, local telecommunications traffic means:
>
> (1) Telecommunications traffic between a LEC and a telecommunications carrier other than a CMRS provider that originates and terminates within a local service area established by the state commission; . . . .

We note that BellSouth's local calling/service area(s) were established by us. The local service areas we established are not equivalent or comparable to LATA boundaries.

We also note that Sprint refers to FCC Rule 51.703(b), which precludes BellSouth from assessing "charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network." We interpret the FCC Rule to apply only where BellSouth is required to exchange traffic "within" the local service areas, as referenced in FCC Rule 51.703(b). We believe that where BellSouth is obligated to deliver traffic outside of a BellSouth local calling area, the traffic would not be considered "typical" local traffic, as defined by the FCC. We note that the final termination point of the traffic is within BellSouth's local calling area; however, BellSouth actually delivers the traffic outside of the local calling area. Sprint witness Closz admits that BellSouth could endure the same transport obligations for both local and intraLATA toll calls to Sprint end-users. Moreover, we observe that where Sprint designates a single POI in the LATA, the facilities BellSouth employs to complete local calls to Sprint end-users may be identical to the facilities used to complete

intraLATA toll calls to Sprint's end-users. Therefore, the costs involved may be identical, although the compensation received for call completion may differ significantly. We are not persuaded that FCC Rules 51.703(b) and 51.701(b)(1) preclude BellSouth from assessing Sprint charges for traffic BellSouth is required to terminate outside of BellSouth's local calling area.

We acknowledge Sprint witness Closz's testimony that the POI "defines the point at which call transport and termination reciprocal compensation responsibility begins." Hence, BellSouth has financial responsibility on its side of the POI. However, we note that BellSouth has "local networks, long distance networks, E911, etc," which are designed to provide particular services. We also note that BellSouth's local networks are typically interconnected with BellSouth's long distance network. We do not believe that interconnection at one of BellSouth's networks furnishes Sprint access to any of the other networks. Further, we believe that the term "local interconnection" implies that the exchange of traffic is for local traffic and occurs within BellSouth's local calling area where Sprint chooses to do business.

We agree with Sprint witness Closz that interconnection cost considerations pertain to the establishment of the POI. Therefore, we believe that where Sprint designates a POI outside of BellSouth's local calling area, Sprint should be required to bear the cost of facilities from that local calling area to Sprint's POI. We note that this is consistent with ¶199 of the Local Competition Order:

> Of course, a requesting carrier that wishes a "technically feasible" but expensive interconnection would, pursuant to section 252(d)(1), be required to bear the cost of that interconnection, including a reasonable profit.

We recognize that the Local Competition Order at ¶172, emphasizes "lowering" cost for competitive carriers. We also note that ¶172 obligates BellSouth to provide interconnection facilities to Sprint at unbundled network element (UNE) rates.

Third, we focus on what specific types of additional costs that BellSouth would incur in completing local calls to Sprint end-users, where Sprint designates a POI outside of BellSouth's local calling area, and how these costs should be recovered. BellSouth witness Ruscilli proposes the following:

> Sprint would pay BellSouth the TELRIC rates for Interoffice Dedicated Transport and associated multiplexing, as set forth in the Interconnection Agreement, for BellSouth to transport local traffic and Internet traffic over BellSouth facilities from the VPOI to the POI designated by Sprint. The Interoffice Dedicated Transport mileage will be the airline mileage between the Vertical and Horizontal (V&H) coordinates of the VPOI and the Sprint POI. In addition, Sprint will compensate BellSouth for all associated multiplexing.

We believe that where Sprint designates a VPOI at a central office, BellSouth's proposed charges would be appropriate. However, as suggested by the Local Competition Order, a carrier without facilities in BellSouth's local calling area, when required to designate a VPOI in the local calling areas, would likely choose the most cost efficient VPOI. We note Sprint witness Closz's testimony that the Local Competition Order emphasizes minimizing an ALEC's cost of entry. Therefore, we reference BellSouth's witness Ruscilli's call flow exhibit. We observe that Sprint's POI is located at BellSouth's tandem in the Jacksonville LATA. We note that there is no dispute with this arrangement, and BellSouth concedes financial responsibility for aggregating BellSouth-originated traffic destined to Sprint end-users, including associated end-office multiplexing and demultiplexing, from all of its central offices in BellSouth's local calling area, and delivery to Sprint's POI at the tandem. However, we believe that where Sprint designates a POI outside BellSouth's local calling area, BellSouth should be financially responsible for any "typical" activities associated with Sprint designating a POI within BellSouth's local calling area, i.e., multiplexing and interoffice local transport. We are persuaded that BellSouth witness Ruscilli's testimony and exhibit justify additional transport. However, we observe that the exhibit does not indicate whether additional multiplexing is involved, where

Sprint designates a POI outside of BellSouth's local calling area. Additionally, there was no evidence of record supporting additional multiplexing requirements by BellSouth. Although we suspect that there may be additional multiplexing and subsequent demultiplexing steps involved in terminating the traffic, it is unclear whether there is actually additional multiplexing, or a modification of the point at which the traffic is demultiplexed. We are not persuaded that BellSouth should be entitled to recover costs associated with multiplexing. Therefore, BellSouth may only require Sprint to pay TELRIC rates for Interoffice Dedicated Transport airline mileage between the V&H coordinates of Sprint's VPOI and Sprint's POI.

Additionally, we note that there are industry-wide guidelines which determine whether carriers are required to establish a POI where carriers have NPA/NXXs assigned/homed. We believe that the Central Office Code (NXX) Assignment Guidelines, Document No. INC 95-0407-008, issued January 10, 2000, outlines the procedure for activating NXX codes:

> Before a CO code (NXX) can become active, all code holders are responsible for providing the information shown in Part 2 of the CO Code (NXX) Assignment Request Form that includes routing information for entry into the RDBS [Routing Database System] and rating information into BRIDS [Bellcore Rating Input Database System].

We note that the Local Exchange Routing Guide (LERG) contains the routing information from RDBS, which reflects current network configurations and network changes for all carriers. We believe that the Vertical and Horizontal (V&H) coordinates used to determine call routing and rating would be inaccurate or skewed where a carrier has NPA/NXXs assigned to a local calling area, but has no virtual or physical presence. Further, we believe that these unique carrier configurations could adversely impact Local Number Portability (LNP), and the ability of other parties to uniformly review disputed call records. Therefore, for each exchange in which Sprint has a NPA/NXX "homed" and from which NPA/NXX it has assigned numbers, Sprint must designate at least one VPOI "within" a BellSouth local calling area that encompasses that exchange. We note that Sprint is not required to designate

multiple VPOIs "within" a local calling area, where Sprint has NPA/NXXs "homed" to multiple exchanges "within" a BellSouth local calling area.

In summary, BellSouth should not be allowed to designate a virtual point of interconnection. However, for each exchange in which Sprint has a NPA/NXX "homed" and from which NPA/NXX it has assigned numbers, Sprint must designate at least one VPOI "within" a BellSouth local calling area that encompasses that exchange. We note that Sprint is not required to designate multiple VPOIs "within" a local calling area, where Sprint has NPA/NXXs "homed" to multiple exchanges "within" a BellSouth local calling area. For rating purposes, BellSouth may require Sprint to pay TELRIC rates for Interoffice Dedicated Transport airline mileage between the Vertical and Horizontal (V&H) coordinates of Sprint's VPOI and Sprint's POI.

XIV. JUSTIFICATION OF SPACE DENIAL IN PHYSICAL COLLOCATION

This issue deals with the actions that BellSouth should take when denying a Sprint request for collocation space in a given BellSouth central office. The issue explores the justification that BellSouth would be obligated to provide to Sprint for central office floor space that BellSouth has identified as "reserved for future use" for its own purposes.

A. Analysis

BellSouth witness Milner believes that Sprint is seeking to bring forward an issue that we have previously addressed and ruled upon in another proceeding. The witness states:

> BellSouth believes that the solution to this issue has been determined by the Commission in its Order No. PSC-99-1744-PAA-TP issued September 7, 1999, in Docket Nos. 981834-TP and 990321-TP. Sprint was a party to those dockets and had every opportunity to bring forth its concerns in its filings in those dockets. Sprint's failure to do so, or to do so in a persuasive manner, is not sufficient cause for this Commission to rehear the matter.

In quoting the PAA Order at page 11, witness Milner cites the specific requirements of that Order:

> The ILEC shall file with the Commission a Petition for Waiver of the Collocation Requirements within 20 calendar days of filing its Notice of Intent to request a waiver. The Petition shall include the following information:
>
> 1) Central Office Language Identifier, where applicable.
>
> 2) Identity of the requesting ALEC(s), including the amount of space sought.
>
> 3) Total amount of space at the premises.
>
> 4) Floor plans, including measurements of the ILEC's premises showing:
>
> (a) Space housing ILEC network equipment, non-regulated services space, or administrative offices;
>
> (b) Space housing obsolete or unused equipment;
>
> (c) Space that does not currently house ILEC equipment or administrative offices but is reserved by the ILEC for future use, including the intended purpose of each area and the forecasted year of use.
>
> (d) Space occupied by collocators for the purpose of network interconnection or access to unbundled network elements.
>
> (e) Space, if any, occupied by third parties for other purposes, including identification of the uses of such space;
>
> (f) Remaining space, if any;

> (g) Identification of switch turnaround plans and other equipment removal plans and timelines, if any;
>
> (h) Central office rearrangement/expansion plans, if any; and
>
> (i) Description of other plans, if any, that may relieve space exhaustion.

5) Floor loading requirements.

Order No. PSC-99-1744-PAA-TP at p. 11. Witness Milner emphasizes the particular requirements of (4)(a) through 4(i) above, and notes that the same Order also provides for ALEC tours, PSC staff tours, and post-tour reports. "These measures ensure that any concerns about BellSouth's use of space for itself or its affiliates may be fully reviewed by the Commission during the waiver process," states witness Milner.

The witness believes that BellSouth should not have to produce demand and facilities forecast information to justify its reserved central office space. In its Brief, BellSouth argues that we already obtain and evaluate information necessary to determine the reasonableness of an ILEC's reserved space in an exhausted central office. The witness states that sensitive business information is embedded therein, and

> . . . it is that information that we think really doesn't have much to do with whether we have met our burden of explaining our case for a waiver or not. We want to give the Commission all the information it needs to make a proper decision, we don't want to give away our sensitive business information.

Witness Milner believes that even with confidentiality protections, such information could be used by Sprint in its internal marketing plans.

Regarding BellSouth's reserved space, witness Milner states:

> We provide the dimensions of the space that we reserved, that is, the number of square feet. We provide the use that we plan to put in that space, that is for switching equipment, for transmission equipment, or for whatever, and we also provide the year in which we will make that use. . . . We think that is sufficient for making an informed decision as to whether our request for reserved space is reasonable or not.

In summary, BellSouth witness Milner asserts that his company has complied and will continue to comply with the Commission's Order. He offers:

> BellSouth believes the information being provided to ALECs to be in compliance with the Commission's Order and to be sufficient for the ALECs and, if necessary, for the Commission to determine the reasonableness of BellSouth's denial of a physical collocation request.

Sprint witness Closz firmly asserts that in this issue Sprint is seeking a justification from BellSouth to evaluate its claim of space exhaustion in a given central office. The witness testifies that:

> Upon denial of a Sprint request for physical collocation, BellSouth should provide justification for the reserved space based on a demand and facility forecast which includes, but is not limited to, three to five years of historical data and forecasted growth, in twelve month increments, by functional type of equipment (e.g., switching, transmission, power, etc.).

Witness Closz states that "The purpose of this evaluation is to look at BellSouth's plans for future deployment to determine whether, in fact, that matches up with the amount of space BellSouth has reserved." The witness believes that without such forecasts, the ILEC may overstate its space reservation needs and, in effect, not make space available for collocators such as Sprint. The witness states that Sprint seeks to evaluate whether historical trends and the future use of a particular central office are consistent with BellSouth's forecast for reserved

space for its own purposes. Further, witness Closz asserts that Sprint has gained invaluable knowledge through its experience with physical collocations and evaluations of ILEC premises, and this experience along with its analysis of the forecasting information could lead to more space for all collocators.

She acknowledges that Order No. PSC-99-1744-PAA-TP requires that the ILEC provide to us and to the requesting carrier detailed floor plans of the premises where the collocation space was denied. The witness claims, however, that this information is simply not sufficient:

> The floor plan or diagram provides only a visual representation of the contents of the premises in question. It provides no basis to assess the reasonableness of BellSouth's space reservation designations. The only way to conduct such an evaluation is to review demand and facility forecasts . . . to extrapolate such forecasts to future years, and translate such calculations to the space and square footage that BellSouth claims it will need to accommodate its future requirements. With such tools, Sprint can conduct a meaningful walk-through of the premises in question and prepare a fact-based assessment of BellSouth's space exhaustion claim.

Witness Closz stresses the need for justification of reserved space, stating:

> While the Commission's Proposed Agency Action [Order No. PSC-99-1744-PAA-TP] . . . require[s] that BellSouth provide documentation regarding space reservation for future use, there is no requirement that BellSouth provide justification for the space that it has reserved. There is a significant difference. The documentation currently required only identifies the reserved space and there is a general requirement for a description of its intended use. Sprint is seeking justification for the space reservation. In other words, BellSouth has shown us what space it has reserved. Now, we need to know why BellSouth needs it,

> and how its demand and facility forecasts support that proposed use. (Emphasis added in original)

In its brief, Sprint outlined the entire process that ALECs follow when a request for collocation space is denied due to a lack of space. Witnesses from each company are in general agreement that the Commission's PAA Order serves as the template for this process, including the requirement of the ILEC to submit information on the premises, its floor plan, and space reservation information. Witness Closz believes that the purpose of the waiver process is to look at all aspects of why a given central office is now full, and why there is no more space available for collocators. Sprint believes that the forecasting information, in conjunction with the waiver process, would yield a "more complete picture." The witness advocates that the forecasting information Sprint seeks could be provided in a "parallel process" to coincide with our staff's analysis in the waiver process. The witness adds, however, that she is not presenting a case to critique the waiver process, but suggests that the process ". . . could be more sufficient."

The witness concedes, however, that what Sprint seeks goes above and beyond the requirements of the PAA Order, but argues that this exact issue was not considered in Docket Nos. 981834-TP or 990321-TP. Sprint believes that our PAA Order is silent regarding whether our staff or the ALEC who was denied space may request additional information from the ILEC to assist in evaluating the denial.

B. Decision

We find merit in each company's argument, but conclude that BellSouth should not be required to provide to Sprint any additional justifications regarding space reservation beyond those detailed in Order No. PSC-99-1744-PAA-TP.

In Order No. PSC-99-1744-PAA-TP, issued on September 7, 1999, in Docket Nos. 981834-TP and 990321-TP, we set forth the guidelines for denial of collocation space, and the subsequent actions required by the ILEC. However, in this instant issue, we note that the emphasis is on the "justification" considerations, and not solely on the guidelines themselves.

Witness Milner believes that BellSouth is "trying to strike a balance between what information is needed by the Commission to either grant or deny a waiver and for BellSouth's customer, in this case Sprint, to feel comfortable that we have . . . done due diligence and have come up with the right answer." As the BellSouth witness testified, Order No. PSC-99-1744-PAA-TP identified a list of specific requirements for which BellSouth can "justify" its claim of space exhaustion. To contrast, Sprint witness Closz concedes that the information it seeks in this issue does, in fact, go beyond the provisions of this Order. We agree.

BellSouth witness Milner believes that this matter was resolved in the earlier dockets. Witness Closz puts forth the argument that Sprint has gained valuable experience in the process of collocating in BellSouth central offices. Because of its experience, Sprint affirms in its brief that we should give consideration at this time to its request for the forecasting data, since a rulemaking procedure was not initiated at the time of the PAA's issuance, and that "the Commission recognized that it lacked sufficient knowledge and experience regarding collocations . . ." The Sprint witness acknowledges that Order No. PSC-99-1744-PAA-TP requires that the ILEC provide to us and to the requesting carrier detailed floor plans of the premises where the collocation space was denied. Witness Closz claims, however, that this information is simply not sufficient. Witness Closz states that Sprint's proposal seeks to evaluate whether historical trends and the future use of a particular central office are consistent with BellSouth's forecast for reserved space for its own purposes. Quite simply, we find that Sprint's proposed analysis of historical trends and their relationship to BellSouth's forecasting clearly go beyond the requirements of Order No. PSC-99-1744-PAA-TP.

We do not agree with Sprint witness Closz that we left open the possibility of revisiting the space reservation issue, especially in the context of an arbitration. We find that our intention is for the ILEC to "justify" its space reservation to us, and not to the ALEC requesting collocation. While we recognize that Sprint has gained experience in collocations and may desire additional information, we do not believe it merits consideration of additional reporting obligations for the ILEC.

In fact, should we decide to revisit the space reservation issue, we would do so in the context of a generic docket, not in an arbitration.

Therefore, BellSouth shall not be required to provide to Sprint any additional justifications regarding space reservation beyond those detailed in Order No. PSC-99-1744-PAA-TP. While Sprint's arguments have some merit, we do not find that Sprint has sufficiently demonstrated why BellSouth should be required to provide information beyond that required by Order No. PSC-99-1744-PAA-TP.

XV. CONCLUSION

We have conducted these proceedings pursuant to the directives and criteria of Sections 251 and 252 of the Act. We believe that our decisions are consistent with the terms of Section 251, the provisions of FCC rules, applicable court orders and the provisions of Chapter 364, Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the specific findings set forth in this Order are approved in every respect. It is further

ORDERED that the issues for arbitration identified in this docket are resolved as set forth with the body of this Order. It is further

ORDERED that the parties shall submit a signed agreement that complies with our decisions in this Order for approval within 30 days of issuance of this Order. It is further

ORDERED that this docket shall remain open pending our approval of the final arbitration agreement in accordance with Section 252 of the Telecommunications Act of 1996.

By ORDER of the Florida Public Service Commission this 8th day of May, 2001.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review in Federal district court pursuant to the Federal Telecommunications Act of 1996, 47 U.S.C. § 252(e)(6).