

**BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION**

**REBUTTAL TESTIMONY OF  
RICHARD T. GUEPE**

**ON BEHALF OF  
TCG SOUTH FLORIDA AND TELEPORT COMMUNICATIONS GROUP  
DOCKET NO. 001810-TP  
MAY 18, 2001**

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FPSC-REGISTRATION/REGISTRATION

1       **Q.     PLEASE STATE YOUR NAME, ADDRESS AND EMPLOYMENT.**

2       A.     My name is Richard T. Guepe. I am employed by AT&T Corp. (“AT&T”)

3             as a District Manager in its Law & Government Affairs organization,

4             providing support for AT&T’s regulatory advocacy in the nine states that

5             make up AT&T’s Southern Region. My office is at 1200 Peachtree Street,

6             Suite 8100, Atlanta, Georgia 30309.

7       **Q.     DID YOU PREFILE DIRECT TESTIMONY ON APRIL 26, 2001 IN**

8             **THIS PROCEEDING?**

9       A.     Yes, I did.

10      **Q.     WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

11      A.     I will be responding to claims by BellSouth witness Elizabeth Shiroishi

12             concerning withheld compensation for minutes of use on TCG’s network and

13             the appropriate rates for such LSP minutes of use.

14      **Q.     BELLSOUTH’S WITNESS ELIZABETH SHIROISHI STATES ON P.**

15             **3 OF HER DIRECT TESTIMONY THAT TCG WAS ON NOTICE**

16             **THAT BELLSOUTH DISAGREED WITH PAYING RECIPROCAL**

17             **COMPENSATION FOR ISP-BOUND TRAFFIC? DO YOU AGREE?**

18      A.     No. Quite the contrary. Prior to TCG finalizing its “opt-in” to the AT&T-

19             BellSouth Agreement, BellSouth had the opportunity to negotiate and offer

20             new language for the contract that it believed ISP-bound traffic was to be

21             excluded from reciprocal compensation payments to TCG. BellSouth made

22             no offer to that effect. It is obvious that BellSouth had discussions and

1 negotiated separate and unique language with TCG as this new language was  
2 incorporated in to the jointly signed and filed “opt-in” agreement.<sup>1</sup>  
3

4 **Q. BELLSOUTH CLAIMS THAT TCG WAS ON NOTICE OF ITS**  
5 **INTENTION TO EXCLUDE ISP-BOUND TRAFFIC BECAUSE OF**  
6 **ITS WEBSITE NOTICE EFFECTIVE AUGUST 8, 1997 AND THE**  
7 **LETTER BELLSOUTH SENT TO ALECS DATED AUGUST 12, 1997.**  
8 **DO YOU AGREE THAT THIS WAS APPROPRIATE NOTICE AND**  
9 **JUSTIFICATION FOR BELLSOUTH TO EXCUSE ITSELF FROM**  
10 **PAYING RECIPROCAL COMPENSATION FOR ISP-BOUND**  
11 **TRAFFIC UNDER THE FIRST OR SECOND TCG-BELLSOUTH**  
12 **INTERCONNECTION AGREEMENT?**

13 A. No. First, BellSouth’s unilateral decision to place a website notice or send  
14 an industry letter stating that it is not going to pay reciprocal compensation  
15 for what it deems to be ISP-bound traffic does not nullify TCG’s  
16 interconnection agreement. I explained in my direct testimony that TCG’s  
17 contract language contains no exclusion for ISP-bound traffic and that the  
18 Florida Public Service Commission already interpreted that agreement in a  
19 previously filed dispute. In addition, I find it quite high-handed of BellSouth  
20 to assume that it can ignore the Florida Public Service Commission’s  
21 jurisdiction over the compensation for this traffic by unilaterally deciding not  
22 to pay and announcing its decision in a website notice and industry letter.  
23 BellSouth seems to mix together what was happening during the timeframe

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<sup>1</sup> See Complaint of TCG South Florida and Teleport Communications Group for Enforcement of Interconnection Agreement with BellSouth Telecommunications, Inc. Exhibit B. (Two specific provisions were changed in the filed agreement)

1 covered by this complaint with what the next era concerning reciprocal  
2 compensation will bring as a result of the recent FCC order concerning  
3 compensation for ISP-bound traffic.<sup>2</sup>

4 **Q. HOW DOES TCG RESPOND TO BELLSOUTH'S ASSUMPTION**  
5 **THAT THE APRIL 27, 2001 FCC ORDER GOVERNS THIS**  
6 **DISPUTE?**

7 A. The recent FCC Order concerning reciprocal compensation for ISP-bound  
8 traffic is not yet effective. Even when it becomes effective, that Order does  
9 not change the law that was in effect during the timeframe covered in this  
10 dispute. In fact, the FCC's Order expressly states that it does not preempt  
11 any state commission decision regarding compensation for ISP-bound traffic  
12 for the time period prior to the effective date of its order.<sup>3</sup> This contract and  
13 the previous Orders by the FPSC regarding ISP-bound traffic are NOT  
14 nullified by the recent FCC Order, and therefore, are not governed by the  
15 recent FCC Order in this respect.

16 **Q. WHAT DOES THE APRIL 27, 2001 FCC ORDER INDICATE WITH**  
17 **REGARD TO COMPENSATION FOR ISP TRAFFIC?**

18 A. While the FCC Order indicates the FCC may be leaning toward a "bill and  
19 keep" methodology for all intercarrier compensation, the Order clearly  
20 recognizes that ISP-bound traffic is currently part of reciprocal compensation,

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<sup>2</sup> In the Matter of Intercarrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68, Order on Remand and Report and Order, FCC 01-131 (released April 27, 2001). Although released, this order is not yet effective.

<sup>3</sup> Id. at ¶ 82 ("The interim compensation regime we establish here applies as carriers *renegotiate* expired or expiring interconnection agreements. It *does not* alter existing contractual obligations, except to the extent that parties are entitled to invoke contractual change-of-law provisions. This Order *does not* preempt *any state* commission decision regarding compensation for ISP-bound traffic for the period *prior* to the effective date of the interim regime we adopt here.") (emphasis added)

1 and the FCC is requiring a phase-down of the compensation for ISP-bound  
2 traffic. The FCC “adopts a gradually declining cap on the amount that  
3 carriers may recover from other carriers for the delivering ISP-bound  
4 traffic.”<sup>4</sup> The new compensation methodology is prospective from the  
5 effective date of the FCC Order and, as noted previously, does not impact  
6 prior interconnection agreements.

7 **Q. DOES THE RECENT FCC ORDER REQUIRE COMPENSATION**  
8 **FOR ISP-BOUND TRAFFIC?**

9 A. Yes. The Order specifically states that carriers incur costs in delivering ISP-  
10 bound traffic on their respective networks.<sup>5</sup> Therefore, compensation is due  
11 to a carrier for incurring costs on its networks. The Order outlined a rate cap  
12 that allowed carriers who deliver ISP-bound traffic to receive compensation  
13 for transporting this traffic. If BellSouth’s position were to prevail in this  
14 proceeding, TCG and other ALECs would receive absolutely zero  
15 compensation for delivering ISP-bound traffic. This is clearly not the intent  
16 of the Act, the rules and Orders of the FCC, and the Orders by this  
17 Commission interpreting the Act. Had the FCC required no compensation  
18 for this traffic, then TCG would accept that position, however, the FCC  
19 obviously proclaimed that compensation is due for this specific traffic in its  
20 recent Order.

21 **Q. WAS BELLSOUTH ON NOTICE FROM 1997 TO PRESENT THAT**  
22 **TCG INTENDED TO CONTINUE BILLING BELLSOUTH FOR ISP**

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<sup>4</sup> FCC 01-131 Order, ¶ 7.

<sup>5</sup> FCC 01-131 Order, ¶ 80

1           **TRAFFIC UNDER THE THEN CURRENT RECIPROCAL**  
2           **COMPENSATION RULES AND CONTRACT PROVISIONS?**

3           A.    Yes. As stated in the complaint and my direct testimony, TCG continued to  
4           bill BellSouth for reciprocal compensation and included all minutes  
5           regardless of whether or not those minutes were ISP-bound. Additionally,  
6           BellSouth KNEW its public notice was not satisfactory to any ALEC or this  
7           Commission to unilaterally stop paying because, after its public notice, it was  
8           ordered to pay for such traffic by this Commission. The Florida Public  
9           Service Commission never approved of any such withholding by BellSouth  
10          and has continued to rule against BellSouth on this matter. Public notice by  
11          BellSouth is absolutely irrelevant to this complaint and should have no  
12          bearing in this matter or any matter brought by any other ALEC that brings  
13          a similar complaint to this Commission.

14          **Q.    BELLSOUTH WITNESS SHIROISHI REPEATEDLY ASSERTS IN**  
15          **HER DIRECT TESTIMONY THAT AT&T HAS ADMITTED THAT**  
16          **ISP-BOUND TRAFFIC IS INTERSTATE TRAFFIC. DOES THAT**  
17          **RESOLVE THIS ISSUE?**

18          A.    No. While AT&T and TCG agree with the FCC's Declaratory Ruling that  
19          for jurisdictional purposes, calls to ISPs are considered interstate in nature,  
20          this Commission still retains jurisdiction to resolve the appropriate  
21          compensation methods for carrying this traffic originated by BellSouth. <sup>6</sup>  
22          What BellSouth's witness Shiroishi neglects to state in her direct testimony

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<sup>6</sup> Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68, In Re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Inter-Carrier Compensation for ISP-Bound Traffic, CC Docket Nos. 96-98 and 99-68, FCC 99-68, at 25 (February 26, 1999).

1 is the other half of the story. The FCC expressly stated that state  
2 commissions retained the jurisdiction to determine the appropriate  
3 compensation mechanism for ISP-bound traffic, and the FCC asserted no  
4 jurisdiction over the compensation for ISP-bound traffic during the time  
5 period covered in this complaint.

6 **Q. BELLSOUTH’S WITNESS ELIZABETH SHIROISHI STATES ON P.**  
7 **5 OF HER DIRECT TESTIMONY THAT TCG CANNOT HAVE**  
8 **MORE RIGHTS THAN AT&T HAD UNDER THE**  
9 **INTERCONNECTION AGREEMENT? DOES THAT LIMIT TCG’S**  
10 **CLAIM?**

11 A. No. That argument has no bearing on TCG’s claim. AT&T continues to  
12 reserve its right to assert a claim for reciprocal compensation under the  
13 interconnection agreement, and has chosen not to exercise that right at this  
14 time. AT&T has at no time indicated that its Interconnection Agreement with  
15 BellSouth does not include ISP bound traffic. Whether or not AT&T has  
16 filed a claim as of this date has no bearing on TCG’s claim and no bearing on  
17 TCG’s rights as to the money it is owed.

18 **Q. BELLSOUTH’S WITNESS ELIZABETH SHIROISHI STATES ON P.**  
19 **15 OF HER DIRECT TESTIMONY THAT THE APPROPRIATE**  
20 **RECIPROCAL COMPENSATION RATE IS THE DIRECT END**  
21 **OFFICE INTERCONNECTION RATE OF \$.002 PER MINUTE OF**  
22 **USE. DO YOU AGREE?**

23 A. No. TCG believes and argues that it is allowed to charge the tandem rate  
24 elements. BellSouth argues that in order for an ALEC to charge the tandem  
25 switching rate the ALEC must meet 2 requirements – first, that its switches

1 serve a comparable geographic area to that served by BellSouth's tandem  
2 switches and second, that the ALEC switched actually perform local tandem  
3 functions. BellSouth grossly misinterprets the FCC Rules on this matter.

4 **Q. WHAT IS THE PRESENT LAW PERTAINING TO COMPENSATION**  
5 **FOR TANDEM SWITCHING COMPONENTS BY ALECs?**

6 A. The law that was effective for the time period covered in this complaint is the  
7 same law that is effective today as clarified in the FCC's recent Notice of  
8 Proposed Rulemaking released on April 27, 2001.<sup>7</sup> The FCC regulations, 47  
9 C.F.R. § 51.711 (a)(3), provides: "Where the switch of a carrier other than an  
10 incumbent LEC serves a geographic area comparable to the area served by  
11 the incumbent LEC's tandem switch, the appropriate rate for the carrier other  
12 than an incumbent LEC is the ILEC's tandem interconnection rate." The  
13 plain language of the Order is that there is no requirement that ALEC  
14 networks actually have a tandem switch or perform an intermediate switching  
15 function to receive the tandem interconnection rate. Any other conclusion  
16 would be illogical. The FCC just recently affirmed TCG's and other ALECs'  
17 long standing position on the application of the tandem switching rate for  
18 reciprocal compensation. In its Notice of Proposed Rulemaking released on  
19 April 27, 2001 the FCC makes it very clear that BellSouth's position is not  
20 correct and there is no functionality test requirement<sup>8</sup>. The FCC states:

21 section 51.711(a)(3) of the Commission's rules requires only  
22 that the comparable geographic area test be met before carriers are  
23 entitled to the tandem interconnection rate for local call termination.  
24 Although there has been some confusion stemming from additional

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<sup>7</sup> In the Matter of Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-132.

<sup>8</sup> In the Matter of Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-132, ¶ 105.

1 language in the text of the Local Competition Order regarding  
2 functional equivalency, section *51.711(a)(3) is clear in requiring*  
3 *only a geographic area test. Therefore, we confirm that a carrier*  
4 *demonstrating that its switch serves “a geographic area comparable*  
5 *to that served by the incumbent LEC’s tandem switch”* is entitled to  
6 the tandem interconnection rate to terminate local  
7 telecommunications traffic on its network. (footnotes omitted)  
8 (emphasis added)

9 **Q. DO TCG SWITCHES MEET THE GEOGRAPHIC**  
10 **COMPARABILITY REQUIREMENT?**

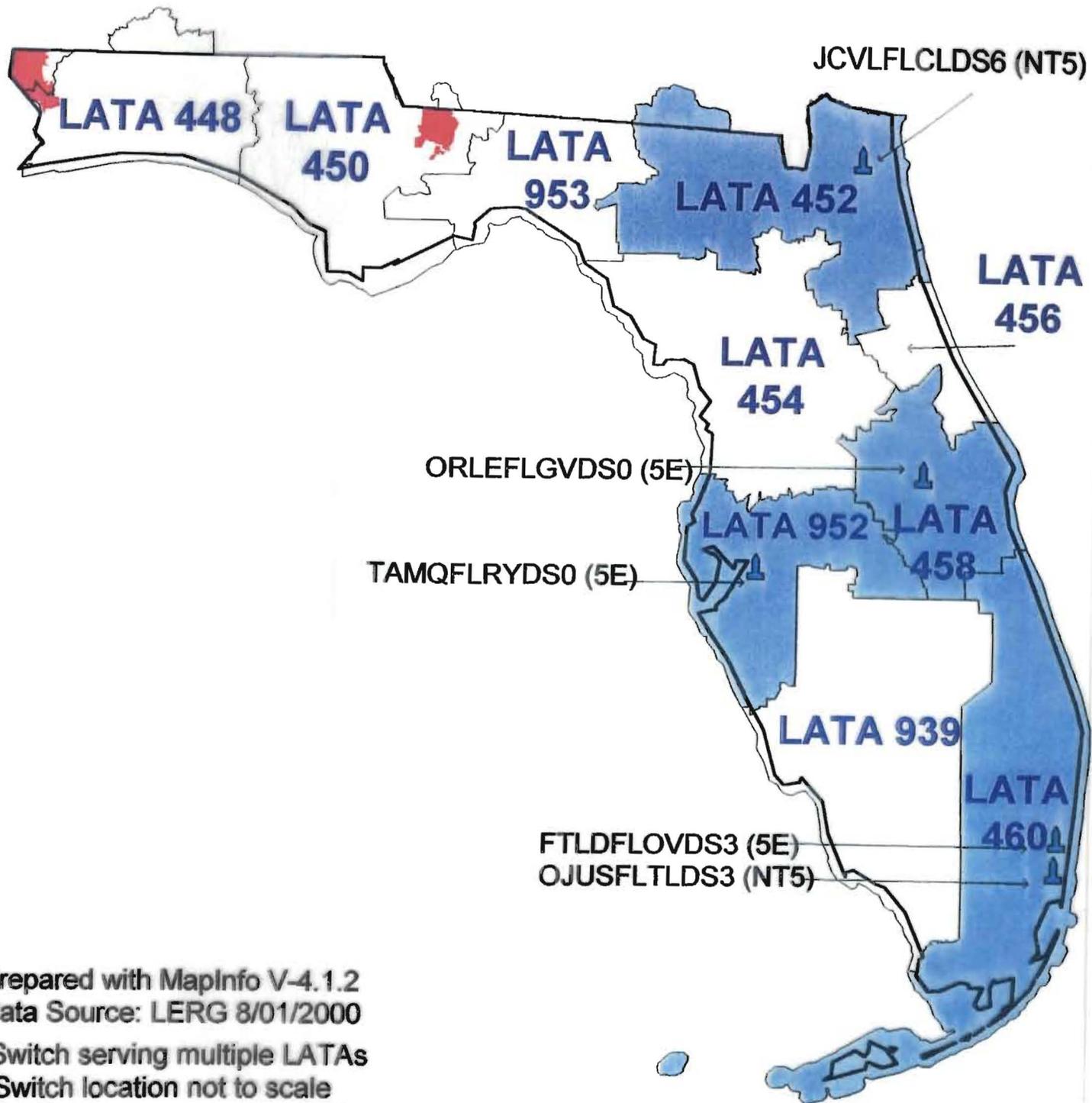
11 A. Yes. TCG provides local exchange services using Class 5 switches. TCG is  
12 able to connect virtually any customer in a LATA to the TCG switch serving  
13 that LATA either through (1) TCG’s own facilities built to the customer  
14 premises, (2) UNE loops provisioned through collocation in BellSouth end  
15 offices, or (3) using dedicated high-capacity facilities (in special access  
16 services or combinations of UNEs purchased from BellSouth).

17 I have prepared a series of maps that are marked as Exhibit \_\_\_\_  
18 (RTG-4) to demonstrate TCG’s compliance with this requirement. Exhibit  
19 \_\_\_\_ (RTG-4) contains both color transparency maps and color copies (of the  
20 same maps). The transparent maps are supplied so that the reader can  
21 “overlay” the maps and compare the geographic area served by TCG switches  
22 and BellSouth switches. Exhibit \_\_\_\_ (RTG-4), page 1 of 4, shows the  
23 number of switches TCG currently operates in Florida on a LATA by LATA  
24 basis. It is important to note that in some cases, the TCG switch serving a  
25 LATA is not physically located in the LATA. Exhibit \_\_\_\_ (RTG-4), page 2  
26 of 4, shows the number of tandem switches BellSouth currently operates in  
27 Florida on a LATA by LATA basis. When these maps are superimposed  
28 over each other, it is clear that TCG’s switches cover the same (or a  
29 comparable) geographic area as that covered by BellSouth’s tandem switches.

1       **Q.    DOES THIS CONCLUDE YOUR TESTIMONY?**

2       **A.    Yes.**

# TCG Switches Serving Florida

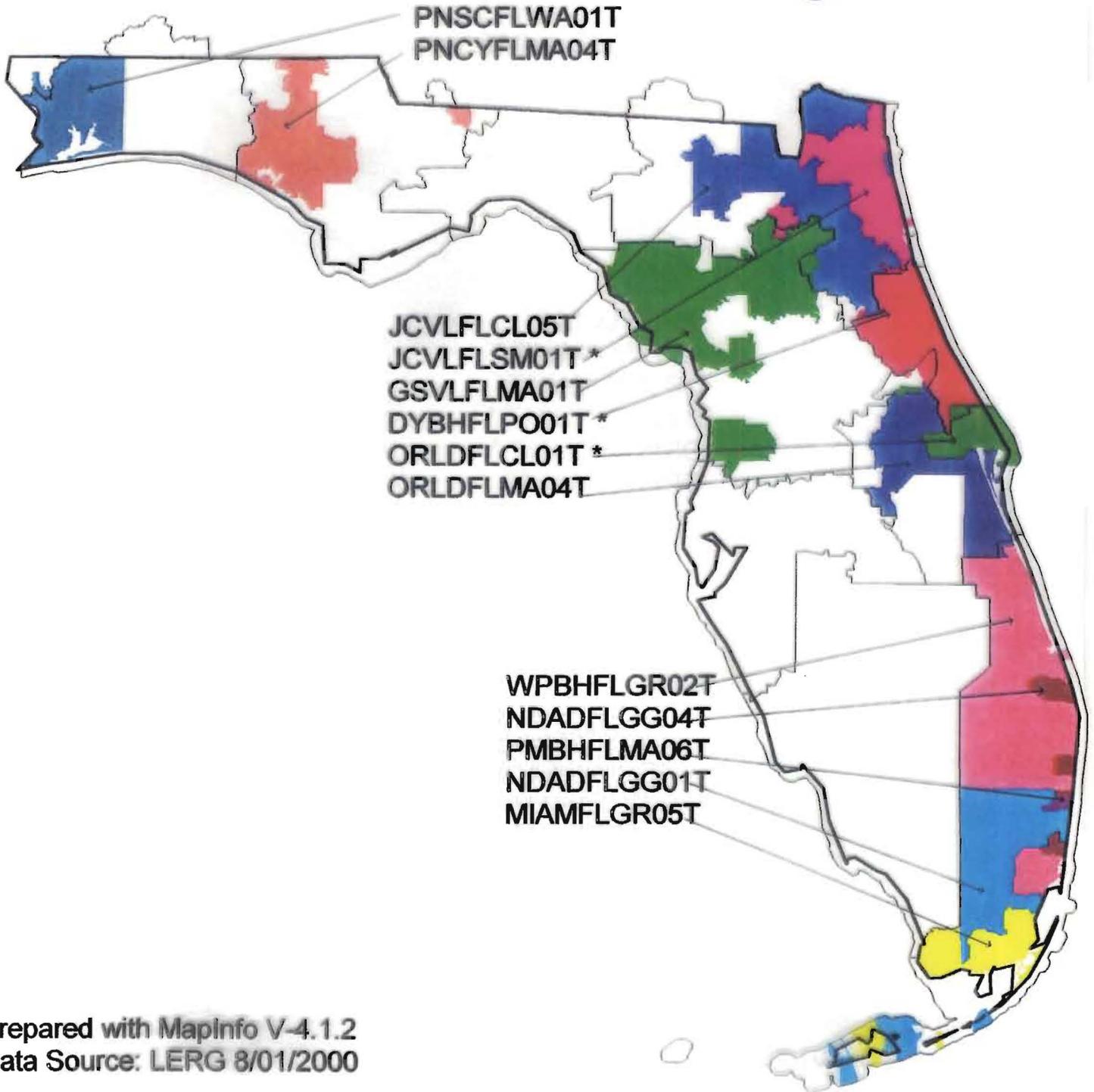


Prepared with MapInfo V-4.1.2  
 Data Source: LERG 8/01/2000

\* Switch serving multiple LATAs  
 # Switch location not to scale

■ Geographic Area's Served by TCG  
■ Geographic Area's NOT Authorized to provide Serviced by TCG

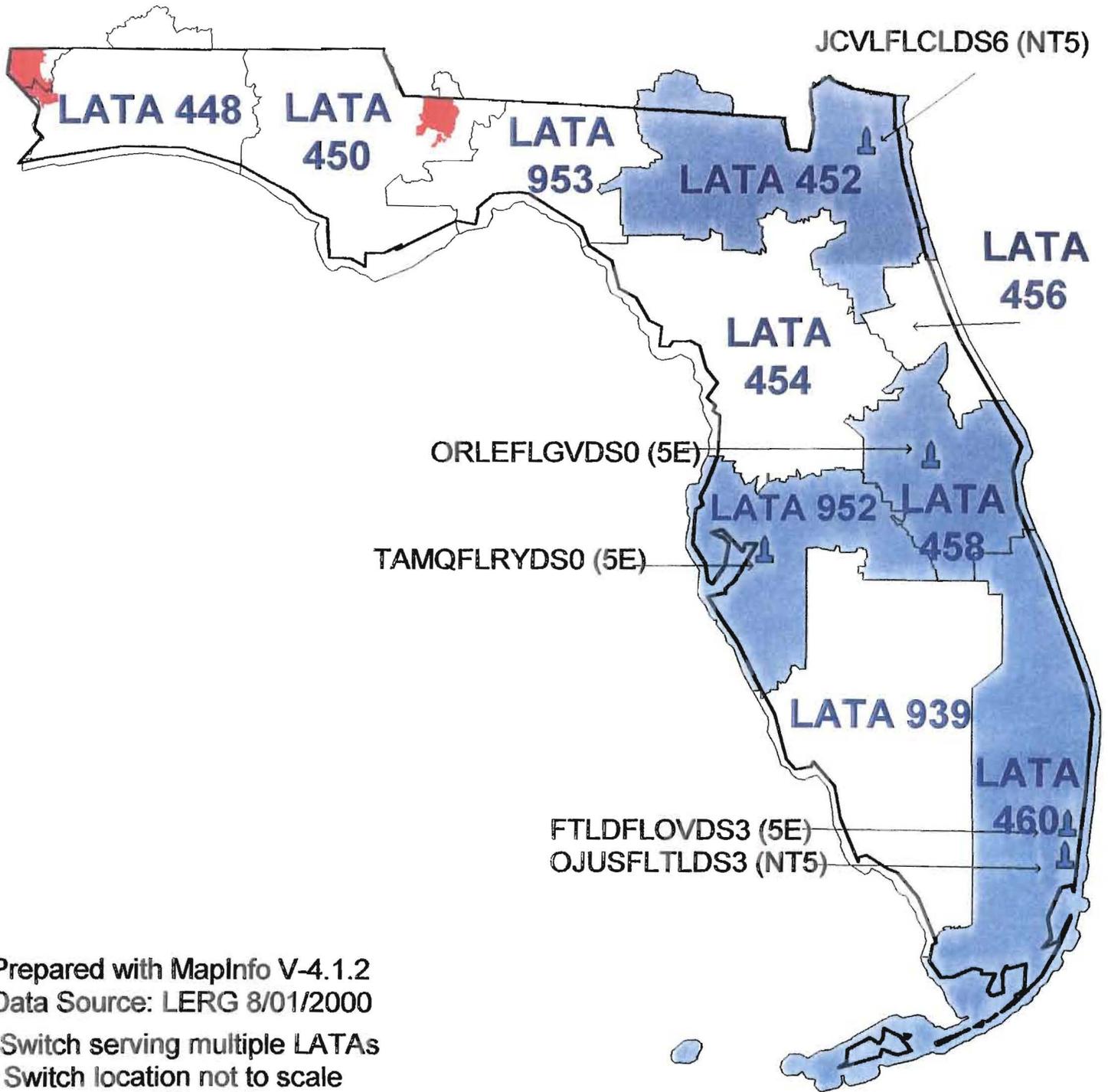
# BellSouth Tamdems Serving Florida



Prepared with MapInfo V-4.1.2  
Data Source: LERG 8/01/2000

\* Switch serving multiple LATAs  
# Switch location not to scale

# TCG Switches Serving Florida



Prepared with MapInfo V-4.1.2  
 Data Source: LERG 8/01/2000

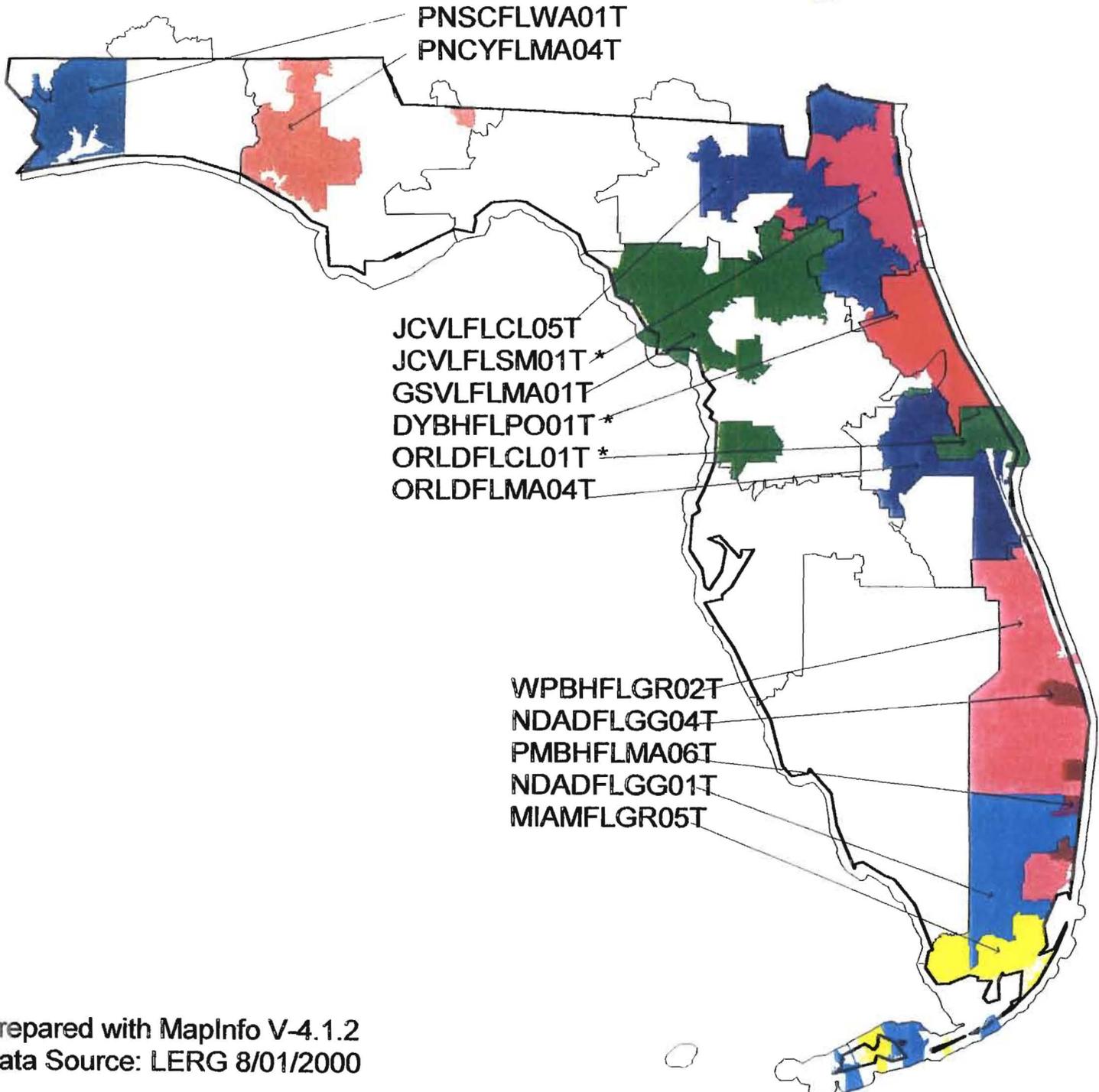
\* Switch serving multiple LATAs

# Switch location not to scale

■ Geographic Area's Served by TCG

■ Geographic Area's NOT Authorized to provide Serviced by TCG

# BellSouth Tamdems Serving Florida



Prepared with MapInfo V-4.1.2  
Data Source: LERG 8/01/2000

\* Switch serving multiple LATAs  
# Switch location not to scale