

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

IN RE: DOCKET NO. 020919-TP - Request for arbitration  
concerning complaint of AT&T Communications of  
the Southern States, LLC, Teleport  
Communications Group, Inc., and TCG South  
Florida for enforcement of interconnection  
Agreements with BellSouth Telecommunications,  
Inc.

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BEFORE: COMMISSIONER J. TERRY DEASON  
COMMISSIONER RUDOLPH BRADLEY  
COMMISSIONER CHARLES M. DAVIDSON

PROCEEDINGS: AGENDA CONFERENCE

**COPY**

ITEM NUMBER: 22

DATE: Tuesday, September 16, 2003

PLACE: 4075 Esplanade Way, Room 148  
Tallahassee, Florida

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**PARTICIPANTS:**

PATRICIA CHRISTENSEN and ANNE MARSH, FPSC Staff.

**STAFF RECOMMENDATION**

ISSUE A: What is the Commission's jurisdiction in this matter?

RECOMMENDATION: Based on BellSouth Telecommunications, Inc. et al. vs. MCIMetro Access Transmission Services, Inc., et al., 317 F.3d 1270 (11th Cir. January 2003) and Section 252(c)(1), the Commission has the authority to review a complaint based on an interconnection agreement approved by the Commission. Further, pursuant to Sections 364.01 and 364.162, Florida Statutes, the Commission has state authority to review a complaint regarding an interconnection agreement approved by the Commission.

ISSUE 2: Does is the term "Local Traffic" as used in the Second Interconnection Agreement identified in AT&T's complaint include all LATAwide calls, including all calls originated or terminated through switched access arrangements as established by the State Commission or FCC?

RECOMMENDATION: Yes, in part. For purposes of this contract, all calls that have been traditionally treated as intraLATA toll traffic, that are originated or terminated over switched access facilities, should be excluded from the definition of LATAwide local traffic. All calls that have been traditionally treated as intraLATA toll traffic, that are originated or terminated over local interconnection facilities, should be compensated as local calls. Further, all calls that have been traditionally treated as local should be so treated under this contract, regardless of the facilities used.

ISSUE 3: Under the terms of the Second Interconnection Agreement, do reciprocal compensation rates and terms apply to calls originated or terminated through switched access arrangements as established by the State Commission or FCC?

RECOMMENDATION: Yes, in part. Calls that have been traditionally treated as intraLATA toll traffic that are originated or terminated through switched access arrangements should be excluded from reciprocal

compensation. All calls that have been traditionally treated as local should continue to be treated as local, regardless of the facilities used; therefore, reciprocal compensation should apply. Additionally, all calls that have been traditionally treated as intraLATA toll traffic that are originated or terminated through local interconnection facilities should be subject to reciprocal compensation.

ISSUE 4: If the answer to Issue 3 is yes, has BellSouth breached the Second Interconnection Agreement?

RECOMMENDATION: Yes. To the extent that BellSouth has treated local traffic that is originated or terminated over switched access facilities as switched access traffic, BellSouth has breached the Second Interconnection Agreement. AT&T should continue to provide BellSouth with PLU factors for separation of local traffic from switched access traffic.

ISSUE 5: If the answer to Issue 4 is yes, what remedies are appropriate?

RECOMMENDATION: The remedies outlined in the Second Interconnection Agreement are appropriate to the extent that BellSouth has treated traffic that has traditionally been treated as local as switched access traffic and failed to make appropriate payments for reciprocal compensation to AT&T. AT&T should develop a PLU factor to separate out local traffic from intraLATA and other traffic that does not qualify for local treatment and submit to it BellSouth. If the parties are unable to agree on the revised traffic figures, they should file with this Commission the figures in dispute and the methodology used to calculate them, along with any supporting documentation, within 30 days of the issuance of the order.

ISSUE 6: Should this docket be closed?

RECOMMENDATION: Yes. Upon the expiration of the appellate period, if no filings are received from the parties within 30 days of the issuance of the order, this docket should be closed.

## PROCEEDINGS

COMMISSIONER DEASON: Okay. We're on Item 22.

MS. MARSH: Commissioners, Item 22 is the complaint of AT&T and request for enforcement of its interconnection agreement with BellSouth. The focus of this complaint is the meaning of certain language dealing with the LATAwide local concept and its accompanying exception language.

It's staff's recommendation that the LATAwide local concept apply to all traffic carried over local interconnection trunks and that other local traffic, regardless of where it's carried, also be treated as local.

Staff is prepared to proceed issue by issue or answer your questions, as you may wish.

COMMISSIONER DEASON: Commissioners, what's your desire? You want to take it issue by issue then? I guess we can begin with Issue A. Questions?

COMMISSIONER DAVIDSON: I can move Issue A unless there are questions.

COMMISSIONER BRADLEY: Second.

COMMISSIONER DEASON: Moved and seconded. All in favor say aye.

1 (Simultaneous affirmative responses.)

2 COMMISSIONER DEASON: Show that Issue A is  
3 approved.

4 Issue 2.

5 MS. MARSH: Commissioners, Issue 2 deals  
6 with the meaning of the term "local traffic" as  
7 used in the agreement between the parties.

8 It's staff's recommendation, as previously  
9 stated, that we treat all traffic that is  
10 traditionally local as local traffic for  
11 purposes of compensation, and that all traffic,  
12 including that which has been traditionally  
13 treated as intraLATA toll traffic, if it's  
14 carried over local interconnection trunks,  
15 should also be compensated as local traffic.

16 COMMISSIONER DEASON: Questions,  
17 Commissioners?

18 COMMISSIONER BRADLEY: Just a minute.  
19 Okay.

20 COMMISSIONER DAVIDSON: If there are no  
21 comments or questions, I can move staff on Issue  
22 2.

23 COMMISSIONER DEASON: Let me just say up  
24 front that I'm going to disagree with staff's  
25 position. This is a very difficult issue, but I

1 just find myself, in reviewing the  
2 recommendation and the record, that I'm just  
3 more convinced by AT&T's position as to what the  
4 intent of the parties were at the time that this  
5 matter was negotiated. And I know that's a  
6 difficult position for us to be in, but we find  
7 ourselves from time to time in that position.

8 I'm just more convinced that the language  
9 to me means that it was an attempt, and I think  
10 it was AT&T's earnest desire, and I think that  
11 they thought that they had negotiated language  
12 which would simplify the situation and would  
13 result in all calls being considered local on an  
14 intraLATA basis. I think that was the intent,  
15 and I think that was the bargain that they were  
16 trying to agree to.

17 I understand BellSouth's position. It  
18 certainly has merit. It comes to a situation of  
19 how you view the language in the agreement. The  
20 particular phrase that gives me concern is when  
21 we're talking about the exception is the  
22 terminology "as determined by this Commission or  
23 the FCC." I just don't see where that  
24 terminology is needed. That terminology I think  
25 is supportive of AT&T's position that this was

1 kind of an "out" clause, if you will, if there  
2 was some determination by a regulatory  
3 agency contrary to the general rule, that being  
4 that all intraLATA traffic was to be considered  
5 local.

6 I'm willing to discuss it. I certainly  
7 respect your motion, and --

8 COMMISSIONER DAVIDSON: well, I'm willing  
9 -- I jumped in because I didn't know that there  
10 were any comments. I mean, I have the same  
11 concerns about that language. So I'll withdraw  
12 the motion for now, and I think we should  
13 discuss this issue.

14 I'll tell you from my standpoint, I agree  
15 with the statement you just made, Chairman  
16 Deason. And in my view, there is a conflict  
17 here between what appears to be the parties'  
18 intent and discussions that were had and then  
19 the clear language of the agreement.

20 And what I would like to do is just ask  
21 staff a question now as to how you all worked  
22 through this issue and really what went into  
23 your recommendation. It's clear a lot of work  
24 did go into it, but you all probably struggled  
25 with the same type of issue, the plain language

1 of the agreement versus evidence of the parties'  
2 intent in negotiations. And if you could give  
3 me your thought process, it may help me with  
4 this issue.

5 MS. MARSH: Certainly. The key to it, from  
6 my way of thinking, was the meaning of the words  
7 "switched access arrangement." And the parties  
8 clearly agreed that that was a facility. How we  
9 determined whether it was a switched access  
10 facility or a local facility we have some  
11 disagreement on, but there was no doubt that  
12 they were talking about facilities.

13 In my trying to understand the language, I  
14 substituted in each different interpretation of  
15 that language to see if the language held  
16 together. And to me, AT&T's position that the  
17 term "switched access arrangement" meant  
18 interLATA toll traffic simply didn't hold up.  
19 Regardless of the portion that refers to the FCC  
20 or this Commission, there's no reason to except  
21 interLATA toll traffic from intraLATA traffic.  
22 It simply isn't there to begin with.

23 So that was the key to it to me, was that I  
24 couldn't quite fit BellSouth's language in it  
25 either. Once it was down to being facilities,



1 it was traffic that flowed across those  
2 facilities, but there's also what does that  
3 refer to. And it's referring to the concept  
4 that traditionally intraLATA toll traffic would  
5 be included as local.

6 That was basically how I looked at it, how  
7 does the language hold up when you put the  
8 various interpretations in it. And I couldn't  
9 come to either side's interpretation, because to  
10 me, the language describing the exception refers  
11 to intraLATA toll traffic, and it's saying that  
12 except for traffic flowing across intraLATA --  
13 or switched access facilities, rather, except  
14 for that traffic, intraLATA toll would be  
15 treated as local.

16 COMMISSIONER DEASON: What's the relevance  
17 of "as determined by a regulatory body"? I  
18 mean, it's a factual situation. Either it flows  
19 through a switched access facility or it does  
20 not. That's a factual situation. That doesn't  
21 mean that it's subject to a regulatory agency  
22 determination.

23 MS. MARSH: I think that speaks to witness  
24 Shiroishi's testimony that what determines  
25 whether it's a switched access facility or not

1 is based on whether it comes out of a tariff or  
2 whether it comes out of an interconnection  
3 agreement. She testified at some length to  
4 that. So if it's a switched access facility,  
5 it's coming out of the tariff, it's being  
6 purchased out of their switched access tariff,  
7 and if it's local interconnection, it's coming  
8 out of the local interconnection agreement. So  
9 that's how I interpreted that.

10 COMMISSIONER DEASON: And what's the  
11 policy ramifications of that interpretation?  
12 Would that interpretation -- is the incentive  
13 for AT&T then not to try to be efficient in the  
14 way it collects and transmits its traffic, it's  
15 going to have a separate trunk for every  
16 different type of traffic, and they're no longer  
17 going to be using PLU factors and things of that  
18 sort?

19 MS. MARSH: I think from an efficiency  
20 standpoint, perhaps the way, you know, AT&T  
21 wanted to do it would be more efficient, but we  
22 don't know that. Maybe it isn't. Maybe the way  
23 they're handing off the traffic when it comes  
24 across switched access trunks is not efficient,  
25 the most efficient way to do it, it's just the

1 most expedient because that's what they have.  
2 And there was testimony to that extent, that  
3 AT&T has long distance trunks, so that's what  
4 they want to use.

5 If this had come up for arbitration, I  
6 think that it then would have been the decision  
7 to decide what's the right way to do it, what's  
8 the most efficient way to do it. But what we  
9 have before us is a complaint where we're trying  
10 to interpret what the language said. And I  
11 interpreted it as I put it there in my  
12 recommendation.

13 COMMISSIONER BRADLEY: I've got a question.

14 COMMISSIONER DEASON: Commissioner Bradley.

15 COMMISSIONER BRADLEY: Yes. Help me  
16 understand what the clear distinction would be  
17 between a local call and an intraLATA toll call.

18 MS. MARSH: As far as the --

19 COMMISSIONER BRADLEY: An intraLATA toll  
20 call is never going to be a long distance call;  
21 right?

22 MS. MARSH: IntraLATA toll would be usually  
23 a 1+ or maybe a 0+ call that is dialed within  
24 the LATA.

25 COMMISSIONER BRADLEY: Okay.

1 MS. MARSH: So as far as initiating it,  
2 it's the dialing pattern. When you're talking  
3 about facilities or the switched access  
4 arrangement, we're talking about how your  
5 network is arranged and planned to carry the  
6 various traffic. And more and more, apparently,  
7 parties are carrying different kinds of traffic  
8 over those facilities, either for expediency or  
9 efficiency or for whatever reason. We don't  
10 know that. But as far as whether it's local or  
11 toll, I believe it's a matter of how they dialed  
12 it.

13 COMMISSIONER BRADLEY: And how do we define  
14 a local call in this instance?

15 MS. MARSH: How do we define it?

16 COMMISSIONER BRADLEY: I'm just trying to  
17 differentiate between the two. I think I  
18 understand it.

19 MS. MARSH: I'm not quite sure how to  
20 answer your question.

21 COMMISSIONER BRADLEY: Well, describe a  
22 local interconnection then.

23 MS. MARSH: A local interconnection trunk?

24 COMMISSIONER BRADLEY: Yes.

25 MS. MARSH: According to the record, that

1 would be a trunk that had been purchased as a  
2 local interconnection trunk through the  
3 interconnection agreement. And as far as the  
4 network engineering concept, we really don't  
5 have any record on that, but you plan your  
6 network according to, you know, how you're going  
7 to route your traffic and how you're going to  
8 use the various equipment involved.

9 COMMISSIONER BRADLEY: Is there a  
10 difference between the type of compensation  
11 that's involved?

12 MS. MARSH: Yes, there is. Local traffic  
13 is compensated at reciprocal compensation, which  
14 is much lower than switched access. So  
15 basically what AT&T would gain if they were to  
16 prevail in this matter is that all traffic that  
17 would have been compensated as switched access  
18 traffic at a higher rate, they could simply  
19 compensate BellSouth at the lower reciprocal  
20 comp rate. So there is a difference there.

21 COMMISSIONER DEASON: Does staff have any  
22 concern that under your -- and I know it's  
23 interpretation. It's not making policy. Maybe  
24 if we were in arbitration, it may be different.  
25 But is there any concern that under your

1 interpretation of this language, we're  
2 determining -- we're classifying traffic no  
3 longer based upon the end points, but based upon  
4 what type of facility it traverses?

5 MS. MARSH: I think because we're strictly  
6 interpreting the contract, we're dealing with  
7 the language as we find it. And I don't believe  
8 we're making a policy statement there that  
9 that's what it should be. I think we're saying  
10 that's what the language appears to say to us,  
11 is that that's what the parties signed off on,  
12 whether they --

13 COMMISSIONER DEASON: And it's your  
14 position that both parties were aware and  
15 cognizant of that and that it was a change in  
16 the way they do business to classify traffic for  
17 compensation purposes based upon the facilities  
18 it traverses as opposed to end points?

19 MS. MARSH: I think that AT&T knew before  
20 they signed the contract that that's what  
21 BellSouth intended, because it's clear in the  
22 record that they knew during the time of the  
23 arbitration that they had a disagreement on it,  
24 but it was not tabled for arbitration.

25 I think as far as policy, this is something

1 that other parties can adopt if it gets them  
2 somewhere they want to go or not, but it's just  
3 one contract. I don't think we're trying to say  
4 here that's the way it should be done. We're  
5 just dealing with the language, and it's  
6 imperfect language. If it wasn't, we wouldn't  
7 be trying to interpret it. But I think we're  
8 just strictly trying to determine how this --  
9 for this purpose, for this contract, we should  
10 interpret what the parties signed off on.

11 COMMISSIONER DEASON: Well, under your  
12 interpretation, how do the parties go about  
13 determining the volume of traffic that traverses  
14 a switched access facility and the volume of  
15 traffic that does not so that they can implement  
16 your interpretation?

17 MS. MARSH: They would just do a PLU in the  
18 same manner as they always have. They would  
19 study the traffic and determine what the factor  
20 was to apply it. I really don't see a problem  
21 with that.

22 COMMISSIONER DEASON: But don't you think  
23 that that was part of the purpose of the parties  
24 negotiating this language to start with, is to  
25 obviate the need for a PLU, it's just -- if it's

1 intraLATA, it's going to be at the reciprocal  
2 comp rates?

3 MS. MARSH: That's AT&T's interpretation.  
4 BellSouth's interpretation is that if it's on  
5 the intraLATA trunk, you don't need a PLU, and  
6 if it's on the local trunk, you don't need a  
7 PLU. So if you go either way, you might be able  
8 to eliminate the PLU. But are you going to make  
9 it all intraLATA toll or all local? I mean,  
10 which are you going to do?

11 COMMISSIONER DEASON: But under your  
12 interpretation, there's going to be a necessity  
13 for PLU factors.

14 MS. MARSH: There will on the switched  
15 access trunks, yes. And there is considerable  
16 testimony that there is a PLU provided for in  
17 the contract.

18 COMMISSIONER DEASON: Commissioner Bradley.

19 COMMISSIONER BRADLEY: Briefly explain to  
20 me what the plain language of the contract is.  
21 What's the contractual language?

22 MS. MARSH: Okay. If you want to look at  
23 the bottom of page 7, "The parties agree to  
24 apply a LATAwide local concept to this  
25 Attachment 3," and they're just referring to a



1 specific part of the contract there, "meaning  
2 that traffic that has traditionally been treated  
3 as intraLATA toll traffic will now be treated as  
4 local for intercarrier compensation purposes."

5 So what it appears there is that they're  
6 saying all the traffic in the LATA will be  
7 treated as local now for compensation. In other  
8 words, it will be compensated at the lower  
9 reciprocal compensation rate even if it formerly  
10 had been treated as toll traffic.

11 And then you have the exception prong,  
12 except for those calls that are originated or  
13 terminated through switched access arrangement.  
14 And the parties have agreed arrangement means  
15 facility. They don't necessarily agree on how  
16 you determine what the arrangement is, but they  
17 agree that a switched access arrangement is a  
18 facility. So to me it says that all the traffic  
19 within the LATA will be treated as local,  
20 including intraLATA toll traffic, unless it's  
21 originated or terminated over a switched access  
22 facility.

23 COMMISSIONER DEASON: As established by the  
24 State Commission or FCC.

25 MS. MARSH: That's correct. And this last

1 piece is the piece that Commissioner Deason has  
2 the problem with. And to me, that means that if  
3 a switched access arrangement is what they  
4 purchased out of the tariff or out of -- if it's  
5 a local interconnection agreement, it's going to  
6 be out of something else, out of their  
7 agreement.

8 COMMISSIONER DEASON: well, under your  
9 interpretation, what did this language  
10 accomplish as compared to the status quo?

11 MS. MARSH: As compared to the statute, did  
12 you say?

13 COMMISSIONER DEASON: As compared to the  
14 status quo.

15 MS. MARSH: Oh, the status quo.

16 COMMISSIONER DEASON: Apparently this was a  
17 change from previous agreements.

18 COMMISSIONER DAVIDSON: And that was my  
19 question, Commissioner Deason. And if you  
20 could, if this is all right with the Chairman,  
21 go through each part of that language. "The  
22 parties agree to apply a LATAwide local concept  
23 to this Attachment 3, meaning that traffic that  
24 has traditionally been treated as intraLATA toll  
25 traffic will now be treated as local for

1           intercarrier compensation purposes," how does  
2           your -- how does staff's rec give meaning to  
3           that provision? Then if we can go to the next  
4           point of the question, "except for those calls  
5           that are originated or terminated through  
6           switched access," how does staff give meaning to  
7           that? "As established by the State Commission  
8           or FCC," that's the third part. And really the  
9           scenario is the status quo and now.

10           COMMISSIONER DEASON: That would be very  
11           helpful.

12           MS. MARSH: Okay. I'm not sure I can quite  
13           do it the way you're asking. Let me try this  
14           and see if it gets us there, and if not, I'll be  
15           glad to try again.

16           COMMISSIONER DAVIDSON: well, if you could,  
17           really break it down, because each of those  
18           components I think need to be given meaning,  
19           because the parties did intend to apply a  
20           LATAwide concept. What does that mean? How are  
21           we giving effect to that. "Except for those  
22           calls," how is that narrowing what you  
23           previously said, and then "as established by the  
24           State Commission or FCC"? And that goes to the  
25           more general question of what's different now,

1           somehow the status quo being changed.

2           MS. MARSH: Okay. Let me see. I don't  
3           have a problem with the second part. Let me see  
4           if I can get the first part of your question  
5           down here.

6           "The parties agree to apply a LATAwide  
7           local concept to this Attachment 3." Okay. By  
8           itself, that would appear that all the traffic  
9           in the LATA would be treated as local.

10          COMMISSIONER DEASON: Based upon end point  
11          to end point.

12          MS. MARSH: Yes.

13          COMMISSIONER DEASON: That would be the  
14          general case.

15          MS. MARSH: That would be the general  
16          case. Okay. The next piece is also a part of  
17          that, "meaning that traffic that has  
18          traditionally been treated as intraLATA toll  
19          traffic will now be treated as local for  
20          intercarrier compensation purposes." Again,  
21          that is the LATAwide local concept, and it would  
22          appear still at this point that you're still  
23          treating all traffic within the LATA as local  
24          and compensating it accordingly.

25          It's the next piece, "except for those

1 calls that are originated or terminated through  
2 switched access arrangements," that tells you  
3 that something within that first part isn't  
4 quite as obvious as it first appeared. There's  
5 something else that's going to be left out of  
6 that local concept.

7 And then the "as established by the State  
8 Commission or FCC" is describing those switched  
9 access arrangements. And so we have to  
10 determine how the phrase "as established by the  
11 State Commission or FCC," what that has to do  
12 with switched access arrangements.

13 And I believe the way the recommendation  
14 accomplishes the interpretation of all that is  
15 just as I have laid out here. The first piece  
16 establishes a LATAwide local concept, so you  
17 start with all the intraLATA toll and all the  
18 intraLATA local traffic. If it's local, it's  
19 going to be within the LATA. You start with all  
20 that traffic.

21 Then you have to determine what you're  
22 taking out with the exception. And it was my  
23 substitution of the word "facilities" for the  
24 word "arrangements" that tells me that this has  
25 something to do with calls that were terminated

1 or originated over a switched access facility.

2 And then the "as established by the State  
3 Commission or FCC," I relied there on the  
4 testimony of witness Shiroishi that that means  
5 basically that you're determining -- where  
6 you're getting your arrangement from or your  
7 facility from is subject to where you purchase  
8 it from. You purchase switched access  
9 arrangements from the tariff. It's not just  
10 that they're purchased from the tariff, but you  
11 obtain that facility or that arrangement for the  
12 purpose of routing toll traffic, and that's why  
13 you got it out of there. And the same with the  
14 local interconnection.

15 Does that help any? I don't know if I've  
16 answered your question.

17 COMMISSIONER DAVIDSON: It does. Chairman,  
18 follow-up?

19 COMMISSIONER DEASON: Yes.

20 COMMISSIONER DAVIDSON: Part 1, "The  
21 parties agree to a LATAwide local concept in  
22 this Attachment 3," I think we can all agree  
23 that that sets the parameters of the universe of  
24 calls that we're talking about. Part 2,  
25 "meaning that traffic that has traditionally

1           been defined as intraLATA toll will now be  
2           treated as local for intercarrier compensation,"  
3           that modifies that first sentence. Again, we've  
4           set the category. The language at issue is the  
5           underlying language, "except for those calls  
6           that are originated or terminated through  
7           switched access arrangements as established by  
8           the State Commission or FCC."

9           Are there different credible ways to give  
10          meaning to that "except for those calls that are  
11          originated or terminated through switched access  
12          arrangements"? Are there different meanings  
13          that can be attributed to that, in staff's view,  
14          other than the switched access arrangements  
15          means the equivalent of switched access  
16          facilities?

17          MS. MARSH: We have such extensive  
18          testimony on the facilities and the fact that  
19          that's what that means that I would have a  
20          problem interpreting it that way.

21          COMMISSIONER DAVIDSON: Who testified, if  
22          you can recall -- I recall that testimony  
23          generally at the hearing, but I don't recall  
24          specifically as I sit here the witness who --  
25          the witnesses who testified to that point.

1 MS. MARSH: Both Shiroishi and King do. I  
2 want to point particularly to witness King's  
3 testimony. And this is actually on cross. He  
4 says, "I want to make very clear that I do not  
5 have a dispute as to what a switched access  
6 arrangement is. It is indeed a facility that  
7 supports the delivery of switched access  
8 traffic."

9 What he goes on to say after that is that  
10 he believes that what constitutes a switched  
11 access arrangement is determined by the kind of  
12 traffic you flow over it, so if you're flowing  
13 switched access traffic over it, it's a switched  
14 access facility, and if you're flowing local  
15 traffic over it, it's a local facility.

16 And I don't agree with him on that. You  
17 don't apply a billing factor to your facility to  
18 determine what kind of facility you have. You  
19 plan your network and engineer your network to  
20 carry traffic in a certain way. And the fact  
21 that it may work for you to flow other kinds of  
22 traffic over that, it still was originally  
23 planned and designed to be a particular type of  
24 trunk.

25 So he's saying it there, and I don't recall



1 exactly where witness Shiroishi said it, but I  
2 know that if she didn't do it in testimony, I  
3 know for sure I have it in discovery that that's  
4 what a facility -- that that's what it means, is  
5 a facility.

6 COMMISSIONER DEASON: Commissioner Bradley.

7 COMMISSIONER BRADLEY: Yes. Let me see if  
8 I understand this now. Okay. There are three  
9 types of calls here, local calls, intraLATA toll  
10 calls that go over the local interconnection  
11 equipment, and intraLATA toll calls that require  
12 the switched access network. Is that true?

13 MS. MARSH: Yes.

14 COMMISSIONER BRADLEY: And the staff's  
15 interpretation is that -- or staff recommends  
16 that both local calls and intraLATA calls that  
17 go over the local interconnection equipment be  
18 deemed local traffic for reciprocal compensation  
19 purposes under the agreement.

20 MS. MARSH: Yes.

21 COMMISSIONER BRADLEY: But that intraLATA  
22 calls that require switched access are not  
23 included in local traffic under the agreement.

24 MS. MARSH: That's correct.

25 COMMISSIONER BRADLEY: Okay. And this

1 derives from the plain --

2 MS. MARSH: Yes, sir, that's what I  
3 believe. I'm not saying that I think that's  
4 right or wrong or that that's the way to do it.  
5 I'm saying that that's the way that I interpret  
6 the language.

7 COMMISSIONER BRADLEY: Okay. So the  
8 agreement is -- the parties don't agree to  
9 staff's interpretation of the language. Is  
10 that --

11 MS. MARSH: They're both opposite, and I'm  
12 somewhere in the middle.

13 MS. CHRISTENSEN: And maybe this might  
14 clarify. I think earlier it was asked, well,  
15 what do they get now that they didn't have  
16 before. They can now route that intraLATA toll  
17 traffic over a local trunk, and that would be  
18 subject to the LATAwide concept. If you read  
19 the plain language of the statute, that allows  
20 them to get the benefit of the LATAwide concept,  
21 depending on how they decide -- what trunking  
22 facilities they decide to route the traffic  
23 over.

24 COMMISSIONER DEASON: And if they can do  
25 that, why don't they do that? And if they can

1 do that, why does this language even matter?  
2 The end result is they're going to do what's  
3 cheapest for them, and the checks that get  
4 written to each other are going to be the same.

5 Do you understand? My question is, if  
6 that's your interpretation and that was what was  
7 envisioned, then what prevents AT&T from simply  
8 rerouting all of the traffic, assuming they can  
9 do it engineeringwise and there's not a big  
10 price tag associated with doing it, just  
11 engineer -- just transport all of their traffic  
12 on local facilities so they can get the recip  
13 comp rate.

14 COMMISSIONER DAVIDSON: Chairman, I think I  
15 recall, one of us asked that question during the  
16 hearing, and if I recall correctly -- I may be  
17 off here. I recall that AT&T wanted the ability  
18 to use switched access facilities to transport  
19 local calls and be billed at reciprocal comp  
20 rates and not at switched access rates. Is that  
21 incorrect?

22 MS. MARSH: That's correct. That's the  
23 whole reason that --

24 COMMISSIONER DAVIDSON: They didn't want to  
25 reroute because, as one of the witnesses

1 testified, it would involve some type of expense  
2 and burden, so they wanted to use existing  
3 trunking, the switched access as opposed to  
4 local trunking.

5 MS. MARSH: That's exactly right. And  
6 AT&T, traditionally that's what they had, was  
7 switched access trunks. If this was a new CLEC  
8 who didn't have trunks, maybe it wouldn't be an  
9 issue.

10 COMMISSIONER DEASON: That begs the  
11 question. Why would -- if that's what AT&T  
12 wanted and felt they were bargaining for, why  
13 would they agree to this language?

14 MS. MARSH: They didn't get what they  
15 wanted.

16 COMMISSIONER DEASON: They just weren't  
17 clever enough negotiators.

18 MS. MARSH: They should have brought it up  
19 for arbitration.

20 COMMISSIONER DAVIDSON: Chairman, I'm there  
21 with you in terms of what AT&T wanted. I think  
22 that's clearly what they wanted. We've heard  
23 that. The trouble I have is from a legal  
24 standpoint, the plain language of the contract,  
25 and trying to give meaning to -- we agree on the

1 set of calls. We've got this language, "except  
2 for calls that are originated or terminated  
3 through switched access arrangements," which  
4 both parties have agreed in the record is the  
5 equivalent of facilities. That's the trouble I  
6 have. I don't know how to give effect to the  
7 intent and not ignore that language. And my  
8 concern is, if we ignore language that seems  
9 clear, what type of precedent are we setting?  
10 But I'm with you in terms of I believe that is  
11 clearly what AT&T intended.

12 COMMISSIONER DEASON: And I certainly  
13 respect your position as well. It's certainly  
14 not a clear-cut, easy determination. If it had  
15 been easy, we wouldn't have had a day-long  
16 hearing, and we wouldn't have been discussing  
17 this for as long as we have.

18 COMMISSIONER BRADLEY: Yes, it's somewhat  
19 tricky here.

20 COMMISSIONER DEASON: Do you wish to -- I  
21 know you withdrew your motion. Do you wish to  
22 make it again?

23 COMMISSIONER DAVIDSON: I will move staff's  
24 recommendation again, Chairman, on Issue 2. Is  
25 it Issue 2 or Issue 1?

1 MS. MARSH: We're on 2.

2 COMMISSIONER DEASON: Issue 2.

3 COMMISSIONER DAVIDSON: Issue 2. I'll move  
4 staff on Issue 2 and move the discussion we have  
5 had today.

6 COMMISSIONER DEASON: There has been a  
7 motion to approve staff on Issue 2. Is there a  
8 second?

9 COMMISSIONER BRADLEY: Well, this is a  
10 tricky issue, but I'll second the motion.

11 COMMISSIONER DEASON: Okay. There has been  
12 a motion and a second. All in favor say aye.

13 COMMISSIONER BRADLEY: Aye.

14 COMMISSIONER DAVIDSON: Aye.

15 COMMISSIONER DEASON: All opposed, nay.  
16 I'm going to have to vote nay. I certainly  
17 appreciate the position that you're taking and  
18 certainly respect the majority's decision. It's  
19 not an easy call. I'm just more comfortable  
20 with the AT&T position on this particular  
21 issue.

22 But anyway, Issue 2 has been decided. We  
23 can move now to Issue 3.

24 MS. MARSH: Issue 3, under the terms of the  
25 Second Interconnection Agreement, do reciprocal

1 compensation rates and terms apply to calls  
2 originated or terminated through switched access  
3 arrangements as established by the State  
4 Commission or FCC. Staff is recommending that  
5 in part. The calls that are carried over  
6 switched access arrangements will be compensated  
7 through reciprocal comp to the extent that they  
8 have traditionally been local calls.

9 COMMISSIONER DEASON: I need a little bit  
10 of guidance. Given that we've already addressed  
11 Issue 2, even though I dissented on that, since  
12 that's the majority decision, your position on  
13 Issue 3 would be consistent with the majority  
14 decision?

15 MS. MARSH: That's correct, sir.

16 COMMISSIONER DEASON: And so if I vote in  
17 support of your position on Issue 3, it doesn't  
18 mean that I'm disagreeing with Issue 2. It's  
19 just that given that interpretation of the  
20 agreement, this is the appropriate resolution of  
21 Issue 3; correct?

22 MS. MARSH: I believe that's correct, sir.

23 COMMISSIONER DEASON: Okay. I just don't  
24 want to be inconsistent. I can be accused of a  
25 lot of things, but hopefully not inconsistency.

1 COMMISSIONER BRADLEY: Well, I will move  
2 staff's recommendation as it relates to Issue 3.

3 COMMISSIONER DAVIDSON: Second.

4 COMMISSIONER DEASON: Moved and seconded.  
5 All in favor say aye.

6 (Simultaneous affirmative responses.)

7 COMMISSIONER DEASON: Show that Issue 3 is  
8 approved. Issue 4.

9 MS. MARSH: If the answer to Issue 3 is  
10 yes, has BellSouth breached the Second  
11 Interconnection Agreement? And staff's  
12 recommendation is that it has done so to the  
13 extent that local traffic originated or  
14 terminated over switched access facilities has  
15 been treated as switched access traffic rather  
16 than being treated as reciprocal compensation  
17 traffic. Again, that would be consistent with  
18 the vote in Issue 2.

19 COMMISSIONER DEASON: Is there a motion?

20 COMMISSIONER DAVIDSON: Move staff on  
21 Issue 4.

22 COMMISSIONER BRADLEY: Second.

23 COMMISSIONER DEASON: Moved and seconded.  
24 All in favor say aye.

25 (Simultaneous affirmative responses.)



1 COMMISSIONER DEASON: Issue 5.

2 MS. MARSH: If the answer to Issue 4 is  
3 yes, what remedies are appropriate? The  
4 agreement outlines the remedies, which I believe  
5 includes some increase. So to the extent that  
6 BellSouth has breached the contract, it's staffs  
7 recommendation that those remedies be applied.

8 COMMISSIONER BRADLEY: This is Issue 5;  
9 right?

10 MS. MARSH: It's Issue 5.

11 COMMISSIONER BRADLEY: Okay.

12 COMMISSIONER DEASON: Let me ask a question  
13 on Issue 5. This is contingent upon a PLU  
14 factor being developed, correct, to implement  
15 your recommendation on Issue 5? Explain that to  
16 me.

17 MS. MARSH: They will need to develop a PLU  
18 factor to divide the traffic. It's going to be  
19 divided in a different way than AT&T used in  
20 calculating the amount, the dollar amount that  
21 it contained in its testimony, so they will have  
22 to revise their PLU to change that. There's  
23 nothing in the testimony or in the case that led  
24 us to believe they have any difficulty in  
25 determining how to divide the traffic. They

1 just didn't know what rate to apply. So I did  
2 not believe they needed any further assistance,  
3 and we don't have a record to do that. But they  
4 will need to redevelop their PLU to accomplish  
5 this.

6 COMMISSIONER BRADLEY: Well, the issue here  
7 is that AT&T needs to break their numbers out;  
8 is that correct?

9 MS. MARSH: That's correct.

10 COMMISSIONER BRADLEY: And then the  
11 interconnection agreement spells out what the  
12 payments should be?

13 MS. MARSH: Right. That's correct.  
14 They'll have a lesser amount than -- I think it  
15 was somewhere around \$7 million once they divide  
16 the traffic. And then for the future, they'll  
17 have to use the new PLU for the future to divide  
18 the traffic unless they route over their local  
19 trunks.

20 COMMISSIONER DEASON: Further questions or  
21 a motion?

22 COMMISSIONER DAVIDSON: Before a motion on  
23 that -- and I hope I'm not revisiting a prior  
24 issue. I just want to be clear as to what we're  
25 doing here. Calls traditionally treated as a

1 local call will still be treated as local even  
2 if made over a switched access facility?

3 MS. MARSH: That's right.

4 COMMISSIONER DAVIDSON: Calls treated as  
5 intraLATA toll will be treated as local if made  
6 over a local trunk.

7 MS. MARSH: That's right.

8 COMMISSIONER DAVIDSON: And will be charged  
9 at switched access rates if made over switched  
10 access facilities.

11 MS. MARSH: Uh-huh.

12 COMMISSIONER DAVIDSON: We're doing nothing  
13 to affect interLATA toll calls. This doesn't --

14 MS. MARSH: That's correct.

15 COMMISSIONER DAVIDSON: -- pertain to that  
16 issue.

17 MS. MARSH: That's correct. It has nothing  
18 to do with that. They're simply going to have  
19 to divide the intraLATA toll from the local  
20 traffic on those switched access trunks by  
21 applying their PLU.

22 COMMISSIONER DAVIDSON: Thanks. I can now  
23 move staff recommendation on Issue 5.

24 COMMISSIONER BRADLEY: Second.

25 COMMISSIONER DEASON: Moved and seconded.

1 All in favor say aye.

2 (Simultaneous affirmative responses.)

3 COMMISSIONER DEASON: Show that Issue 5 is  
4 approved. And then that brings us to Issue 6.

5 MS. MARSH: Should the docket be closed.  
6 It's our recommendation that it be closed.

7 COMMISSIONER DEASON: Do we have a motion?

8 COMMISSIONER BRADLEY: I'll move staff on  
9 Issue 6.

10 COMMISSIONER DAVIDSON: Second.

11 COMMISSIONER DEASON: Moved and seconded.  
12 All in favor say aye.

13 (Simultaneous affirmative responses.)

14 COMMISSIONER DEASON: Show that Issue 6 is  
15 approved. I think that concludes today's  
16 agenda.

17 (Conclusion of consideration of Item 22.)  
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## CERTIFICATE OF TRANSCRIBER


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COUNTY OF LEON:

I, MARY ALLEN NEEL, do hereby certify that the foregoing was transcribed by me from an audiotape, and that the foregoing pages numbered 1 through 37 are a true and correct transcription of the aforesaid proceedings to the best of my ability.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor relative or employee of such attorney or counsel, or financially interested in the foregoing matter.

DATED THIS 22nd day of September, 2003.

  
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