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Docket No. 11901-U

In Re: Petition of MCImetro Access Transmission Services, LLC and MCI WorldCom Communications, Inc. for Arbitration of Certain Terms and Conditions of Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996.

ORDER

Appearances

On behalf of MCImetro Access Services, LLC and MCI WorldCom Communications, Inc.

David I. Adelman, Attorney  
Martha McMillin, Attorney  
Dulaney O'Roark, Attorney

On behalf of BellSouth Telecommunications, Inc.

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On behalf of the Commission Staff

Daniel Walsh, Attorney  
Thomas Bond, Attorney

On behalf of the Consumers' Utility Counsel

Kealin Culbreath, Attorney

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## **BY THE COMMISSION:**

On February 15, 2000, MCImetro Access Transmission Services, LLC and MCI WorldCom Communications, Inc. (collectively "MCIW") petitioned the Commission to arbitrate certain unresolved issues in the interconnection negotiations between MCIW and BellSouth Telecommunications, Inc. ("BellSouth or BST").

### **I. JURISDICTION AND PROCEEDINGS**

Under the Federal Telecommunications Act of 1996 (the Federal Act), State Commissions are authorized to decide the issues presented in a petition for arbitration of interconnection agreements. In addition to its jurisdiction of this matter pursuant to Sections 251 and 252 of the Federal Act, the Commission also has general authority and jurisdiction over the subject matter of this proceeding, conferred upon the Commission by Georgia's Telecommunications and Competition Development Act of 1995 (Georgia Act), O.C.G.A. §§ 46-5-160 *et seq.*, and generally O.C.G.A. §§ 46-1-1 *et seq.*, 46-2-20, 46-2-21 and 46-2-23.

The Commission approved the previous interconnection agreement between the parties for the two-year period beginning March 12, 1997. On June 30, 2000, the Hearing Officer entered a Consent Order scheduling testimony, hearings and briefs in this matter. Hearings were held before the Commission on September 11 and 12, 2000.

On October 20, 2000, the parties filed briefs on the unresolved issues. The Commission has before it the testimony, evidence, arguments of counsel and all appropriate matters of record enabling it to reach its decision.

### **II. FINDINGS AND CONCLUSIONS**

#### **1. Issue 1**

**Should BellSouth be allowed to impose a manual ordering charge when it fails to provide an electronic interface?**

The parties do not appear to dispute BellSouth's obligation under section 251(c)(3) of the Federal Act as it relates to the provision of nondiscriminatory access to requesting carriers. BellSouth, however, contends that parity is not the issue. BellSouth argues that it should be able to impose the manual ordering charge ordered by the Commission for this function in Docket No. 7061-U.

MCIW responds that BellSouth would violate section 251(c)(3) if it charged for manual ordering if it provides electronic access for itself. BellSouth states that MCIW's proposed language fails to distinguish for those instances in which neither BellSouth nor MCIW have electronic access. The Federal Act requires parity. If BellSouth provides electronic interfaces for its retail business, it must also provide the same electronic interfaces for CLECs. The Commission finds that for BellSouth to impose a manual ordering charge for those

circumstances in which BellSouth does not provide an electronic interface for MCIW, but does for itself would violate the Section 251(c)(3) of the Federal Act.

The evidence in the record was insufficient for the Commission to determine whether BellSouth's use of ROS for Ordering Complex Services is electronic. Therefore, BellSouth must only charge manual non-recurring ordering charges if it does not provide an electronic ordering process for its retail representatives. Also, the parties must work together in the Commission's Improvement Task Force ordered in Docket No. 7892-U to increase electronic ordering and flow-through for all orderable services.

**2. Issue 3**

**Should the resale discount apply to all telecommunication services BellSouth offers to end users regardless of the tariff in which the service is contained?**

The dispute between the parties on this issue relates to whether the resale discount should apply to services that BellSouth includes in its access tariffs. ILECs are required to "offer to any requesting telecommunications carrier any telecommunications service that the incumbent LEC offers on a retail basis to subscribers that are not telecommunications carriers for resale at wholesale rates." 47 C.F.R. § 51.605(a). The FCC has created an exception from this requirement specifically for exchange access services. The FCC has ruled that exchange access services are not subject to the resale requirements of section 251(c)(4). *First Report and Order, In re: Implementation of Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Red 15499, CC Docket No. 96-98 ¶ 873 (August 8, 1996).

BellSouth argues that the resale discount should not apply to such services. (BellSouth Post-Hearing Brief, p. 7). In making this argument, BellSouth relies upon the FCC's ruling and further notes that the FCC acknowledged that end users occasionally purchase access services in reaching its conclusion. *Id.* Accordingly, it is reasonable to conclude that the FCC intended for the exception for access charges to apply regardless of whether some end users purchase access services.

MCIW argues, however, that to provide BellSouth with a blanket exemption for access tariff services would allow BellSouth to shelter services from the resale discount by putting them in its access tariffs. (MCIW Post-Hearing Brief, p. 7). MCIW cites both policy and legal reasons against providing BellSouth with this ability. From a policy perspective, MCIW reasons that BellSouth would be able to avoid resale competition by placing retail services in its access tariffs to avoid having to provide the discount. *Id.* As an example, MCIW discusses BellSouth's SmartRing service, which is included in state and federal access tariffs. MCIW states that the SmartRing service included in BellSouth's access tariffs does not differ from the SmartRing service in its private line tariff in any way that would justify making one available for toll access and the other not available for toll access. *Id.*

MCIW's legal argument begins with the definition of "exchange access" in the Federal Act. "Exchange access" is defined as "the offering of access to telephone exchange services or

facilities for the purpose of the origination or termination of telephone toll services.” 47 U.S.C. § 153(40). MCIW argues that “when BellSouth includes in its access tariffs services that are available for use (or are in fact used) for purposes other than toll access, those services may be resold by CLECs at the resale discount.” *Id.* at p. 6.

The Commission finds that BellSouth shall not be allowed to manipulate the pricing of its services by placing services that belong in its private line tariffs in its access tariffs. The FCC’s ruling speaks to exchange access services, and the Federal Act provides a clear definition of “exchange access.” BellSouth is required to offer to MCIW at the resale discount all services that do not meet the definition of exchange access. Therefore, the Commission directs BellSouth to classify as a retail service, and offer to MCIW at the resale discount, all services that are not for the purpose of the origination or termination of telephone toll services.

### 3. Issue 5

#### **Should BellSouth be required to provide OS/DA as a UNE?**

ILECs are required to provide operator services and directory assistance (“OS/DA”) as an unbundled network element, unless they provide “customized routing or a compatible signaling protocol.” *In re: Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking (released January 14, 2000). At issue, is whether BellSouth provides customized routing or a compatible signaling protocol.

BellSouth contends that it provides various methods of customized routing, including a Line Class Code (“LCC”) and Advanced Intelligent Network (“AIN”) solution. (BellSouth Post-Hearing Brief, p. 8). MCIW claims that neither of these methods suffices to meet the FCC’s requirements because of inefficiencies related to each method. The LCC method would require MCIW to build or lease dedicated transport from every BellSouth end office serving its customers to the corresponding tandems. (MCIW Post-Hearing Brief, p. 9). A major problem with the AIN hubbing method is that if MCIW wishes to use its own OS/DA platform, then it must obtain dedicated trunking from the AIN hub to its platform. *Id.* at p. 10.

BellSouth responds to these complaints by stating that it is not required to accommodate MCIW’s preferred trunking arrangement. (BellSouth Post-Hearing Brief, p. 9). The Commission agrees with BellSouth that it has met the requirement for customized routing, and that therefore, it is not required to provide OS/DA services as UNEs. It is the Commission Staff’s understanding that BellSouth is moving towards implementation of Originating Line Number Screening (“OLNS”). BellSouth is required to file an implementation schedule for OLNS within fifteen (15) days of issuance of the Commission Order. The availability of OLNS at reasonable rates should reduce MCIW’s concerns relating to Issues 5, 15, 19, and 101.

4. **Issue 8**

**Should UNE specifications include non-industry standard, BellSouth proprietary specifications?**

Although industry standards provide useful guidance for the provision and maintenance of UNEs, not every UNE has an industry standard. In the absence of an industry standard, BellSouth proposes the inclusion of non-industry standard technical requirements. Technical Requirement 73600 (TR 73600) details the unbundled loops offered by BellSouth and explains the relationship to any existing industry standard.

MCIW argues that this specification is unnecessary and that it would impose additional requirements on MCIW. However, MCIW witness, Michael Messina testified that where no industry standard existed, "something should be available and referenced in the contract." (Tr. 161). Therefore, BellSouth and MCIW agree that the contract should not remain silent on those areas for which no industry standard exists. The Commission concludes that for UNEs without a national industry standard, the standard developed by BellSouth shall be included in the agreement.

5. **Issue 15**

**When an MCIW customer served via the UNE-platform makes a directory assistance or operator call, must the ANI-II digits be transmitted to MCIW via Feature Group D signaling from the point of origination?**

This issue relates to Issue 5 discussed above. The dispute is over whether BellSouth should be obligated to route OS/DA calls to MCIW via an ANI-II dip. BellSouth has agreed to provide Feature Group D signaling with customized routing to MCIW when MCIW acquires the unbundled network element platform ("UNE-P"); however, BellSouth maintains that the FCC does not require any particular trunking arrangement. (BellSouth Post-Hearing Brief, p. 11). MCIW has proposed that the Agreement provide that "Calls from Local Switching must pass the ANI-II digits unchanged." (MCIW Post-Hearing Brief, p. 14). ANI-II digits provide MCIW with the number of the calling party and any call restrictions on the line. MCIW argues that it is technically feasible for BellSouth to pass the ANI-II digits unchanged using its AIN hubbing method, with the caveat that for one switch type direct trunking to its OS/DA platform would be required. *Id.* at 14.

In order to be consistent with the conclusion reached on Issue 5, the Commission must again find that BellSouth is not required to provide a particular trunking arrangement. Accordingly, when an MCIW customer served via the UNE-P makes a directory assistance or operator call, BellSouth is not required to transmit the ANI-II digits to MCIW via Feature Group D signaling from the point of origination but BellSouth must, and has agreed to provide Feature Group D signaling with customized routing for transmitting the ANI-II digits.

6. Issue 18

**Is BellSouth required to provide all technically feasible unbundled dedicated transport between locations and equipment designated by MCIW so long as the facilities are used to provide telecommunications services, including interoffice transmission facilities to network nodes connected to MCIW switches and to the switches or wire centers of other requesting carriers?**

In its Post-Hearing Brief, MCIW states that “[t]he remaining areas of dispute concern (i) whether BellSouth must provide dedicated transport when more than one transport link is involved; and (ii) whether BellSouth must provide dedicated transport from a point on WorldCom’s network to the switch or other facilities of a third party carrier.” (MCIW Post-Hearing Brief, p. 16). BellSouth argues that both of these proposals by MCIW are contrary to decisions of the FCC and federal court.

The FCC has ordered that ILECs are not required “to construct new transport facilities to meet specific competitive LEC point-to-point demand requirements for facilities that the incumbent LEC has not deployed for its own use.” *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98 ¶324. BellSouth argues that MCIW is requesting that BellSouth construct electronic equipment for dedicated transport. It bases this argument on the most recent language proposed by MCIW on this issue. MCIW has proposed the following language:

Nothing herein shall be construed to require BellSouth to construct facilities to provide dedicated transport where such facilities do not currently exist, except BellSouth shall provide the electronic equipment necessary to provide dedicated transport. (Tr. 364).

BellSouth interprets the language to obligate BellSouth to provide the electronic equipment necessary to provide dedicated transport. However, BellSouth will have to modify its electronics whenever it provides dedicated transport to CLECs. Additionally, electronics are included in the cost of dedicated transport. Therefore, BellSouth is required to provide the electronics for dedicated transport if it currently exists in the network, but BellSouth is not required to construct facilities (including electronics) to provide dedicated transport where such facilities do not currently exist.

BellSouth also claims that MCIW’s argument is contrary to the United States Court of Appeals for the Eighth Circuit’s decision in *Iowa Utils. Bd. v. FCC*, 219 F.3d 744 (8<sup>th</sup> Cir. 2000). The Eighth Circuit vacated the FCC’s rules that obligated incumbents to combine previously uncombined network elements on behalf of a requesting carrier. 219 F.3d at 750. However, MCIW claims that it is not asking BellSouth to combine previously uncombined network elements. First, MCIW contests that each link segment constitutes a separate UNE. (MCIW Post-Hearing Brief, p. 16). In addition, MCIW argues that even if the link segments are determined to be UNEs, BellSouth ordinarily combines them in its network. Accordingly, MCIW argues that BellSouth must combine the segments for MCIW. *Id.* at 17.

BellSouth witness, Alphonso Varner, testified that for one of its MegaLink customers BellSouth would combine the loops needed by the customer with the dedicated transport. (Tr. 368-69). MCIW, therefore, is not asking BellSouth to combine previously uncombined network elements. In Docket No. 10692-U, the Commission stated:

To the extent that CLECs seek to obtain other combinations of UNEs that BellSouth ordinarily combines in its network which have not been specifically priced by the Commission when purchased in combined form, the Commission finds that the CLEC can purchase such UNE combinations at the sum of the stand-alone prices of the UNEs which make up the combination.<sup>1</sup>

The evidence supports that BellSouth ordinarily combines these elements in its network. BellSouth is obligated to combine these elements to MCIW upon request at the sum of the stand-alone prices of the elements.

**7. Issue 19**

**How should BellSouth be required to route OS/DA traffic to MCIW's operator services and directory assistance platforms?**

This issue is related to Issues 5 and 15 discussed above. BellSouth argues that it provides customized routing consistent with FCC rules and orders of the Commission. It also claims that it will provide MCI's OS/DA traffic with the same routing as it provides to its own traffic. MCIW has insisted that BellSouth provide shared transport for MCIW's OS/DA traffic over common transport trunk groups from BellSouth's end offices to its tandems. (MCIW Post-Hearing Brief, p. 19). BellSouth insists that operator services and directory assistance end office functions require dedicated trunk groups from BellSouth end offices to the TOPS Platform. (BellSouth Post-Hearing Brief, p. 14).

The Commission finds, consistent with its findings on Issues 5 and 15, that BellSouth is not required to provide shared transport for MCIW's OS/DA traffic. BellSouth meets the requirements set forth by the FCC and this Commission by providing MCIW's OS/DA traffic the same routing as it provides to its own traffic.

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<sup>1</sup> *Order regarding the Cost-based Rates as relates to BellSouth's Unbundled Network Elements*, (February 1, 2000, p. 22 of 23).

8. **Issue 22**

**Should the Interconnection Agreements contain MCIW's proposed terms addressing line sharing, including line sharing in the UNE-P and unbundled loop configurations?**

The Commission finds that this issue is generic in nature and that it would be most fair and efficient for it to be heard in the context of Docket No. 11900-U (Investigation of BellSouth Telecommunications, Inc.'s Provision of Unbundled Network Elements for xDSL Service Providers).

9. **Issue 23**

**Does MCIW's right to dedicated transport as an unbundled network element include SONET rings that exist on BellSouth's network?**

The parties agree that if a SONET ring exists, BellSouth will provide MCIW with dedicated transport over that ring. (BellSouth Post-Hearing Brief, p. 16). The parties also agree that BellSouth does not have the obligation to construct fiber facilities to provide a SONET ring where those facilities do not currently exist. (MCIW Post-Hearing Brief, p. 23). The parties dispute whether BellSouth must provide MCIW with access to an entire existing SONET ring as opposed to segments used for particular point-to-point dedicated transport. The parties also do not agree over whether BellSouth is obligated, upon request, to add SONET functionality to existing fiber transport facilities.

A SONET ring provides redundancy to protect against an interruption of service if a line is cut. (Tr. 386). If MCIW wants transport between two points on a SONET ring, BellSouth has agreed to provide the transport over the segment of the SONET ring. BellSouth claims that providing MCIW with capacity over the entire SONET ring would require BellSouth to re-engineer the ring, which it claims it is not required to do. (Tr. 387-88). MCIW argues that BellSouth is obligated to provide MCIW capacity over the entire ring because its unbundling obligation extends throughout its transport network. (MCIW Post-Hearing Brief, p. 23). The Commission agrees that BellSouth will have to modify its electronics anytime it provides dedicated transport to CLECs. Additionally, electronics are included in the cost of dedicated transport. Therefore, BellSouth is required to provide SONET Rings for dedicated transport if it currently exist in the network but BellSouth is not required to construct facilities (including electronics) to provide dedicated transport where such facilities do not currently exist.

Similarly, the second issue involves MCIW's request that BellSouth add SONET functionality when the fiber is in place but not used as a SONET Ring. The Commission finds that BellSouth is not required to construct the electronics on the fiber ring to give it SONET functionality because the functionality did not originally exist in the network.

10. Issue 28

**Should BellSouth provide the calling name database via electronic download, magnetic tape, or via similar convenient media?**

The calling name database ("CNAM") contains caller name information for BellSouth end users and any other carrier that stores names in BellSouth's database. (Tr. 388). In its December 28, 1999 Order in both Docket Nos. 10418-U and 10135-U, the Commission found that CNAM is a UNE and that it must be provided at a cost-based rate. (Order, p. 8 of 10)<sup>2</sup>. The dispute between the parties is over whether BellSouth should be obligated to MCIW the CNAM via electronic download or similar convenient media. BellSouth wants to provide MCIW access to the CNAM database on a "dip-by-dip" basis, which would require MCIW to request access each time it needs access. (Tr. 388).

MCIW explained that the "dip-by-dip" method of providing access results in delay in delivering the information to the called customer. (Tr. 42). MCIW further argues that it is technically feasible for BellSouth to provide the CNAM via electronic download. (MCIW Post-Hearing Brief, p. 25). Finally, MCIW agreed that it would compensate BellSouth for the costs related to the download. (Tr. 45).

BellSouth argues that it is not obligated to provide an electronic download of the CNAM for MCIW. (BellSouth Post-Hearing Brief, p. 18). BellSouth states that accommodating MCIW's request would require it to "develop new computer programs, address the issue of how to update the download, and perform whatever other work is necessary to make the data available to MCI." *Id.*

However, BellSouth does not claim that it would be technically infeasible to make the necessary changes. Also, the evidence supports the conclusion that MCIW would be able to provide better service if BellSouth provided CNAM via electronic download. (Tr. 44). Since BellSouth does not have to experience the delay that the "dip-by-dip" method would impose upon MCIW, the "dip-by-dip" method cannot be said to be nondiscriminatory. Accordingly, the Commission finds that BellSouth must provide to MCIW the CNAM database via electronic download or via similar convenient media, subject to the condition that MCIW compensates BellSouth for the costs related to providing the electronic download.

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<sup>2</sup> Docket No. 10418-U: *Interconnection Agreement Between MediaOne Telecommunications of Georgia, LLC and BellSouth Telecommunications, Inc.*; Docket No. 10135-U: *MediaOne Telecommunications of Georgia, LLC v. BellSouth Telecommunications, Inc.*

11. **Issue 29**

**Should calls from MCIW customers to BellSouth customers served via UniServe, Zipconnect, or any other similar service, be terminated by BellSouth from the point of interconnection in the same manner as other local traffic, without a requirement for special trunking?**

MCIW is not required to bring its own facilities, or lease facilities from BellSouth, to the TOPS Platform in order for MCIW customers to reach subscribers to BellSouth's ZIPConnect service. Because ZIPConnect service uses BellSouth's AIN Platform to perform specialized routing of calls to the 203 NXX code, these calls are delivered to the BellSouth Access Tandem. (BellSouth Post-Hearing Brief, p. 19). Since Uniserve service utilizes operator services switching functionality, MCIW must bring its own facilities, or lease facilities from BellSouth, to the TOPS platform in order for MCIW customers to reach UniServe service subscriber. This condition is consistent with what BellSouth and other telecommunications carriers are required to do. (BellSouth Post-Hearing Brief, p. 19). The Commission finds that in order for MCIW to reach UniServe service subscribers, it must bring its own facilities, or lease facilities from BellSouth, to the TOPS Platform.

12. **Issue 34**

**Is BellSouth obligated to provide and use two-way trunks that carry each party's traffic?**

The parties agree that BellSouth will provide two-way local interconnection trunks upon MCIW's request. The dispute is over whether BellSouth is then obligated to use the two-way trunks if it determines one-way trunks to be more efficient for the given circumstance. MCIW argues that BellSouth is obligated to provide and use two-way trunking upon request. (MCIW Post-Hearing Brief, p. 28). BellSouth responds that its obligation to use the two-way trunks is limited to those instances where traffic volumes are too low to justify one-way trunks. (BellSouth Post-Hearing Brief, p. 20).

Federal regulations require BellSouth to provide two-way trunking upon request if technically feasible. 47 C.F.R. § 51.305(f). BellSouth agrees that it is technically feasible to provide two-way trunking. (Tr. 391). BellSouth also agrees that any efficiencies of two-way trunking will be lost if BellSouth does not use the two-way trunks. (Tr. 393). Allowing BellSouth not to use the two-way trunking based on when it decides two-way trunking is not efficient would undermine the apparent intent of the federal regulation. The Commission finds that BellSouth is required to provide and use two-way trunking upon request.

**13. Issue 36**

**Does MCIW, as the requesting carrier, have the right pursuant to the Act, the FCC's Local Competition Order, and FCC regulations, to designate the network point (or points) of interconnection at any technically feasible point?**

BellSouth's position is that it should not be obligated to deliver BellSouth originated traffic to a point of interconnection designated by MCIW. (BellSouth Post-Hearing Brief, pp. 22-27). MCIW argues that BellSouth's position is contrary to both the law and sound public policy. (MCIW Post-Hearing Brief, pp. 30-38).

MCIW argues that BellSouth's proposal imposes on MCIW the financial burden of bringing BellSouth's traffic the rest of the way through BellSouth's network and into MCIW's network. In contrast, under MCIW's proposal, each party would be responsible for bringing its originating traffic to the Point of Interconnection and each party would be responsible for transporting and terminating the other party's traffic from the Point of Interconnection. (Tr. 35).

This issue has arisen in subsequent arbitration proceedings currently pending before the Commission. The Commission finds therefore that it is equitable and efficient for the Commission to address this issue along with Issue 46 in a generic proceeding (Docket No. 13542-U). The Commission will hold expedited hearings on these issues.

**14. Issue 37**

**Should BellSouth be permitted to require MCIW to fragment its traffic by traffic type so it can interconnect with BellSouth's network?**

BellSouth's main objection to MCIW's proposed language is that it would prohibit BellSouth from maintaining a separate trunk group for traffic. (BellSouth Post-Hearing Brief, p. 27). In Issue 34, the Commission determined that BellSouth is obligated to provide and use two-way trunks that carry each party's traffic. Therefore, that MCIW's proposed language would prohibit BellSouth from maintaining a separate trunk group for traffic is not a justification to reject the language. The Commission finds that BellSouth shall not be permitted to require MCIW to fragment its traffic by traffic type.

**15. Issue 39**

**How should Wireless Type I and Type 2A traffic be treated under the Interconnection Agreements?**

The difference between a Wireless Type 1 carrier and a Wireless Type 2A carrier is that a Wireless Type 1 carrier uses BellSouth's NXXs, whereas a Wireless Type 2A carrier has its own NXXs. (Tr. 402-03). Currently, BellSouth pays MCIW for traffic that it terminates and bills MCIW for traffic that transits BellSouth's network to the Wireless Type 1 or Type 2A carrier. MCIW's concern is that BellSouth does not pass on MCIW's reciprocal compensation payments

to the wireless carriers. (MCIW Post-Hearing Brief, p. 39). BellSouth's reasoning for not passing on these payments to wireless carriers is that until it has Meet Point Billing capabilities, BellSouth does not have any way of knowing how much to remit to the carriers. (Tr. 404).

BellSouth does not affect the amount of reciprocal compensation paid by MCIW when it does not pass on these payments. The assurance that MCIW seeks from BellSouth is that it will indemnify MCIW in the event that a wireless carrier makes a claim against MCIW for the payments not passed on by BellSouth. (Tr. 404-405). BellSouth witness, Mr. Varner, testified that MCIW should not have to make the same payments twice. (Tr. 405). The Commission agrees that such a result would be inequitable. Therefore, the Commission finds that BellSouth's proposed language should be modified to require BellSouth to either pass on reciprocal compensation payments to the wireless carriers, or to indemnify MCIW as to any claim the wireless carriers may raise concerning those reciprocal compensation payments.

#### 16. Issue 40

**What is the appropriate definition of internet protocol (IP) and how should outbound voice calls over IP Telephony be treated for purposes of reciprocal compensation?**

BellSouth argues that what matters is not the type of network used to transport the call, but rather that reciprocal compensation is not due for a long distance call. (BellSouth Post-Hearing Brief, p. 29). MCIW argues that the question of whether long-distance carriers should pay access charges when they use IP Telephony is beyond the scope of this arbitration proceeding. MCIW argues that the issue is within the FCC's jurisdiction, not the jurisdiction of the Commission.

BellSouth has proposed that "Switched Access Traffic" be defined as it is in BellSouth's Access Tariff. In addition BellSouth has proposed that IP Telephony traffic should be considered switched access traffic. (Attachment 4, Section 9.3.3). MCIW proposed alternative language, but maintains that its preference is for the Commission not to address this issue in this proceeding. (MCIW Post-Hearing Brief, p. 41).

This issue arose in the context of Docket No. 11644-U, *Petition of BellSouth Telecommunications, Inc. For Arbitration of an Interconnection Agreement With Intermedia Communications, Inc. Pursuant To Section 252(b) of the Telecommunications Act Of 1996*. In that proceeding, the Commission adopted the Commission Staff's recommendation.

However, Staff recommends that the Commission defer ruling on the issue of whether IP telephony is subject to access charges until it has had an opportunity to consider the issue further. While the FCC has not made any definitive rulings on the issue, it did suggest in its April 10, 1998 Report to Congress that some forms of IP Telephony might be telecommunications services rather than information services. The Commission adopts Staff's recommendation. (Docket No. 11644-U, Order, p. 14 of 17, footnote omitted).

Consistent with its decision in Docket No. 11644-U, the Commission will defer ruling on whether IP Telephony is subject to access charges or reciprocal compensation.

**17. Issue 42**

**Should MCIW be permitted to offer tandem services for switched access traffic?**

The parties characterize the central question behind this dispute vastly differently. BellSouth claims that the real issue is that MCIW must pay switched access charges. (BellSouth Post-Hearing Brief, p. 30). MCIW states that the real issue is whether it can provide exchange access using interconnection trunks from BellSouth. (MCIW Post-Hearing Brief, p.42).

BellSouth proposes that the Agreement contain the following language on this issue: "MCIW agrees not to deliver switched access trunks and facilities." Attachment 4, Section 2.3.8. MCIW objects to this language on the grounds that it would allow BellSouth to breach its obligation under 47 U.S.C. 251(c)(2)(A) to provide for the transmission and routing of telephone exchange service and exchange access. (MCIW Post-Hearing Brief, p. 43).

The Federal Act defines "exchange access" as "the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services." 47 U.S.C. § 153(40). The tandem services for switched access traffic falls within this definition. Therefore, the Commission finds that MCIW shall be permitted to offer tandem services for switched access traffic. In order to ensure that MCIW pays the switched access charges, MCIW shall provide the appropriate billing records for any trunk groups carrying access traffic that would enable BellSouth to bill for the switched access services it provides. The billing records for the trunk groups carrying switched access traffic shall be subject to audit by BellSouth.

**18. Issue 45**

**How should third party transit traffic be routed and billed by the parties?**

MCIW has proposed the following language for the routing and billing of local transit traffic.

9.7.1 For calls that transit BellSouth's network, whether they originate from MCIW and terminate to a third party LEC, CLEC or CMRS provider, or originate from that third party and terminate to MCIW, and transit BellSouth's network, MCIW may require BellSouth to make arrangements directly with that third party for any compensation owed in connection with such calls on MCIW's behalf, or deal directly with that third party, at MCIW's option.

10.71.1 If MCIW requires BellSouth to make arrangements directly with a third party LEC, CLEC or CMRS provider on MCIW's behalf, BellSouth shall

compensate MCIw for such calls terminating to MCIw using MCIw's rates as described herein, and such calls had terminated in BellSouth's network, using BellSouth's rates as described herein.

The intent behind this language is to streamline the billing process for local transit calls. (MCIW Post-Hearing Brief, p. 44). MCIW's proposed language would reduce the number of trunk groups, record exchange, and number of bills for all carriers. *Id.* at p. 45. BellSouth argues that MCIW is trying to skirt its obligation under section 251(b)(5) of the Federal Act to "establish reciprocal compensation arrangements for the transport and termination of telecommunications." (BellSouth Post-Hearing Brief, p. 32). However, under MCIW's proposal, the originating and terminating carriers would need to have an interconnection agreement. (MCIW Post-Hearing Brief, p. 45). In addition, MCIW does not dispute that BellSouth would be entitled to compensation for providing the service.

The Commission finds that the Agreement shall include the language proposed by MCIW, with the modification that the provision must state that the originating and terminating carriers must have an interconnection agreement, and that BellSouth would not have to render payment to the terminating carrier when the originating carrier failed to pay. Also, the language shall state that BellSouth is entitled to compensation for providing the service.

**19. Issue 46**

**Should BellSouth be permitted to impose restrictions on MCIW's ability to assign NPA/NXX codes to MCIW's end-users?**

This issue involves the provision of service to a customer physically located outside the rate center that the NPA/NXX for that customer is assigned. This type of service is called foreign exchange ("FX") service. The parties dispute whether this type of service should be considered local or long distance. BellSouth argues that MCIW should use its NPA/NXXs in such a way that BellSouth can distinguish local traffic from intraLATA toll traffic and interLATA toll traffic for BellSouth originated calls. BellSouth's concern is that MCIW is not entitled to reciprocal compensation for a long distance call. MCIW argues that FX service constitutes local traffic because of the NXX dialed and BellSouth should pay reciprocal compensation. (MCIW Post-Hearing Brief, p. 46).

As discussed as part of Issue 36, the Commission finds it prudent to address this issue as part of a generic proceeding (Docket No. 13542-U). The Commission will hold expedited hearings that will take up both Issues 36 and 46.

**20. Issue 47**

**Should reciprocal compensation payments be made for calls bound to ISPs?**

BellSouth argues that reciprocal compensation payments are not due because ISP-bound traffic is not local traffic. The Commission has found previously that ISP traffic is local in nature. See Docket Nos. 10854-U, 10767-U, 9281-U<sup>3</sup>. While reserving its right to seek judicial review from this Commission finding, BellSouth states that it will abide by the Commission's decision in Docket No. 10767-U. In Docket No. 10767-U, the Commission directed the parties to track reciprocal compensation payments, "subject to a true-up mechanism approved by the Commission as warranted by the outcome of the FCC's Rule-Making in CC Docket No. 99-68 on ISP-bound traffic." (Order, p. 4 of 11).

However, subsequent to the Commission's order in Docket No. 10767-U, the Commission addressed this issue in Docket No. 10854-U. In its order in Docket No. 10854-U, the Commission ordered BellSouth to pay reciprocal compensation for calls to ISPs without the payments being subject to a true-up mechanism. (Order p. 7 of 13). The Commission noted that District of Columbia Circuit Court of Appeals decision vacating the FCC's Declaratory Ruling for "want of reasoned decision-making" with regard to the FCC's use of the "end-to-end" analysis returned the status of the issue to an open question for the Commission to decide. Consistent with the Commission's decision in Docket No. 10854-U, the Commission finds that BellSouth must pay reciprocal compensation on ISP-bound traffic and that those payments are not subject to a true-up mechanism.

**21. Issue 51**

**Is BellSouth required to pay tandem charges when MCIW terminates BellSouth local traffic using a switch serving an area comparable to a BellSouth tandem?**

This issue concerns whether MCIW should receive reciprocal compensation at the tandem rate for traffic transported and terminated via its switch. The Commission has previously concluded that this question turns on whether the CLEC's switch serves a comparable geographic area and that it performs the same functionality. (See, Docket No. 10767-U, *In re: Petition by ICG Telecom Group, Inc. for Arbitration of an Interconnection Agreement with*

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<sup>3</sup> Docket No. 10854-U: *Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996*; Docket No. 10767-U: *Petition by ICG Telecom Group, Inc. for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*; Docket No. 9281-U *Complaint of e.spire Communications, Inc. Against BellSouth Telecommunications, Inc.*

*BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996.)*

The evidence supports that each of MCIW's switches in the Atlanta area serves an area comparable to the service area of any single BellSouth switch. (MCIW Post-Hearing Brief, p. 63). Although MCIW disputes that it is required to demonstrate functional equivalency, it asserts that its switch is functionally equivalent. *Id.* The Commission finds that MCIW's switch is functionally equivalent. Therefore, the Commission finds that BellSouth must pay MCIW at the tandem rate.

**22. Issue 52**

**Should BellSouth be required to pay access charges to MCIW for non-presubscribed intraLATA toll calls handled by BellSouth?**

BellSouth witness, Mr. Varner testified that BellSouth would agree to pay access charges to MCIW when BellSouth, as the intraLATA toll carrier, collects revenues for a non-presubscribed independent telephone company customer's call to a 10-10-XXX number. (Tr. 435-36). Mr. Varner asserts that the main issue is that MCIW wants BellSouth to use equal access signaling on those calls, which BellSouth does not have. The Commission finds that BellSouth is responsible for paying access charges in these instances. Additionally, the parties shall find an appropriate method for billing access charges for these calls.

**23. Issue 54**

**Should security charges be assessed for collocation in offices with existing card key systems, and how should security costs be allocated in central offices where new card key systems are being installed?**

MCIW proposes that security costs for collocation in central offices should be assessed on a pro rata per square foot basis from each carrier, including BellSouth. (MCIW Post-Hearing Brief p. 67). This proposal assigns a cost to each carrier that corresponds to the benefit received by the carrier from the enhanced security services. BellSouth argues that this proposal is unworkable. MCIW's proposal, BellSouth argues, would require constant reassessment of costs every time there is a change in the collocation square footage, and it ignores that certain space in any central office remains unoccupied. (BellSouth Post-Hearing Brief, p. 45).

The Florida Public Service Commission recently addressed this question and concluded that the cost of security arrangements that benefit both the ILEC and the CLECs should be allocated on a pro rata per square foot basis. *In re: Petition of Competitive Carriers for Commission Action to Support Local Competition in BellSouth Telecommunications, Inc., Service Territory*, Docket No. 981834-TP, *In re: Petition of ACI Cor d/b/a Accelerated Connections, Inc. etc.*, Docket No. 99-321-TP, Order No. PSC-00-0941-FOF-TP. While the Commission is not bound by this precedent, it agrees with the decision. Basing the cost of enhancements to security arrangements on a pro rata per square foot basis effectively ties the

costs of the improvements to the parties that stand to gain from them. In addition, the Commission holds that a recalculation is not necessary every time any change in the collocation arrangement takes place. A monthly recalculation is equitable and not overly burdensome.

**24. Issue 55**

**Should BellSouth be required to provide a response including a firm cost quote within 15 days of receiving a collocation application?**

The Average Response time intervals established by the Commission in Docket No. 7892-U, *Performance Measurements For Telecommunications Interconnection, Unbundling And Resale*, shall be incorporated in this Interconnection Agreement. The January 16, 2001, order in Docket No. 7892-U set forth two sets of intervals: the first beginning with the effective date of the order; the second becoming effective six months from the effective date of the order. For virtual collocation, the Average Response time interval is twenty calendar days initially, to be reduced to ten calendar days six months from the effective date of the order. For both physical and caged/cageless collocation, the Average Response time interval was set at thirty calendar days initially, to be reduced to twenty calendar days six months from the effective date of the order.

**25. Issue 56**

**Should BellSouth be required to provide DC power to adjacent collocation space?**

This issue concerns whether BellSouth can meet its obligations under the law by providing AC power to adjacent collocation arrangements, or whether BellSouth is required to provide DC power. BellSouth must provide power and physical collocation services and facilities to MCIW on a nondiscriminatory basis. 47 C.F.R. § 51.323(k)(3). BellSouth argues that 47 C.F.R. 51.323(k)(3) does not specify what type of power ILECs must provide to an adjacent arrangement. (BellSouth Post-Hearing Brief, p. 47). The costs, however, that CLECs will incur in converting AC power will result from having to collocate equipment outside of a BellSouth central office. This arrangement would provide BellSouth with inappropriate leverage to discriminate against CLECs. The Commission finds that BellSouth shall be required to provide DC power to adjacent collocation space at MCIW's request where technically feasible.

**26. Issue 59**

**Should collocation space be considered complete before BellSouth has provided MCIW with cable facility assignments ("CFAs")?**

BellSouth cannot bill MCIW until after the collocation space is considered complete. BellSouth argues that the collocation work should be deemed complete prior to the provisioning of CFAs because it cannot issue the CFAs until after MCIW informs BellSouth of the frame

locations and designations of MCIW's cables. Therefore, a delay by MCIW in providing BellSouth with this information would delay BellSouth's ability to bill MCIW.

MCIW does not dispute this point. However, MCIW argues that since it cannot make use of the collocation space for providing service through an unbundled loop or other unbundled network elements without CFAs, it should not be charged for merely occupying the space. (MCIW Post-Hearing Brief, p. 84). The Commission finds that if MCIW informs BellSouth of the frame locations and designation of MCIW cables prior to BellSouth's completion of the collocation space, BellSouth shall provide CFAs prior to collocation space completion. Therefore, in the instance described above, collocation space is not considered complete until BellSouth provides MCIW with CFAs. Conversely, if MCIW does not provide the frame locations and designation of MCIW tie cables, BellSouth cannot be held responsible for not providing CFAs, and accordingly, the collocation is considered complete when the vendor completes its work.

**27. Issue 60**

**Should BellSouth provide MCIW with specified collocation information at the joint planning meeting?**

MCIW argues that specified collocation information is necessary for a CLEC to complete collocation. (MCIW Post-Hearing Brief, p. 87-88). Further, MCIW states that this information is readily available to BellSouth. *Id.* at 88. Therefore, MCIW has proposed language that would obligate BellSouth to provide the exact cable type and cable termination requirements for MCIW provided POT bays that will be used at the joint planning meeting. If the information is not available at the joint planning meeting, MCIW asks that the Commission obligate BellSouth to provide the information within thirty days of the meeting. *Id.* at 85.

BellSouth states that it will provide MCIW with the exact cable location termination requirements either at the joint meeting, or if not available at that time, within thirty days of the meeting. (BellSouth Post-Hearing Brief, p. 48). However, BellSouth claims that MCIW is requesting additional information that is either not readily available or is not required for MCIW to begin its work. *Id.*

The Commission finds that adopting appropriate standards for the provisioning of specified collocation information can enhance the development of competition. Accordingly, BellSouth must provide all the available information requested to MCIW at the joint implementation meeting or within 30 days thereafter. For clarification, however, BellSouth shall only be responsible for providing MCIW with the demarcation point associated with the equipment reflected on the Bona Fide Firm Order. This obligation does not extend to all technically feasible demarcation points because such a request is beyond the scope of providing "certain collocation information."

**28. Issue 61**

**What rate should apply to the provision of DC power to MCIW's collocation space?**

This issue contains two questions. The first concerns what the applicable rate should be for the provision of DC power to MCIW's collocation space. The Commission ordered rates for DC power in Docket No. 7061-U. Those rates shall apply to the provision of DC power to MCIW's collocation space.

The second issue is whether the per amp charge should be applied to the fused capacity BellSouth is required to provide to MCIW, as BellSouth advocates, or if it should be applied only to the capacity used by MCIW, as MCIW advocates. The evidence supports that MCIW's proposal would place an undue burden on BellSouth. BellSouth would have to install a meter for MCIW as well as any other requesting CLEC. (Tr. 180-81). In addition, BellSouth would have to have read the meters. (Tr. 181). The Commission finds that the per amp charge shall be applied to the fused capacity BellSouth is required to provide MCIW.

**29. Issue 62**

**Should BellSouth be required to provision caged or cageless physical collocation space (including provision of the cage itself) within 90 days and virtual collocation within 45 days?**

BellSouth proposes provisioning intervals under ordinary condition of ninety (90) business days for caged and cageless collocation under ordinary conditions and fifty (50) business days for virtual collocation. MCIW proposes intervals of ninety (90) calendar days for caged and cageless physical collocation space and sixty (60) calendar days for virtual collocation.

The Average Response time intervals established by the Commission in Docket No. 7892-U shall be incorporated in this Interconnection Agreement. The intervals are as follows:

Virtual:	Physical/Caged:
50 Calendar Days (Ordinary)	90 Calendar Days
75 Calendar Days (Extraordinary)	

Cageless:  
60 Calendar Days (Ordinary)  
90 Calendar Days (Extraordinary)

**30. Issue 63**

**Is MCIW entitled to use any technically feasible entrance cable, including copper facilities?**

BellSouth concedes that a copper entrance facility is technically feasible. (Tr. 187-188). 47 C.F.R. § 51.323(d)(3) provides that “[w]hen an Incumbent LEC provides physical collocation, virtual collocation, or both the incumbent LEC shall: permit interconnection of copper or coaxial cable if such interconnection is first approved by the state commission.” Therefore the Commission finds that MCIW is entitled to use any technically feasible entrance cable, including copper facilities.

**31. Issue 64**

**Is MCIW entitled to verify BellSouth’s assertion, when made, that dual entrance facilities are not available? Should BellSouth maintain a waiting list for entrance space and notify MCIW when space becomes available?**

BellSouth is required to provide at least two interconnection points at a premises “at which there are at least two entry points for the incumbent LEC’s cable facilities, and at which space is available for new facilities in at least two of those entry points.” 47 C.F.R. § 51.323(d)(2). However, BellSouth has offered to provide documentation, upon request, and at MCIW’s expense, to demonstrate that space is not available for dual entry. (BellSouth Post-Hearing Brief, p. 51). The FCC has declared that a denial of space triggers a requirement that the ILEC permit an inspection. MCIW agrees that if a tour of entrance facilities is needed it should be limited to the entrance facility. (Tr. 191). The Commission agrees with this limitation and concludes that MCIW should be entitled to verify any assertion by BellSouth that dual entrance facilities are not available. The Commission also finds that BellSouth shall maintain a waiting list for entrance space and notify MCIW when space becomes available.

**32. Issue 65**

**What information must BellSouth provide to MCIW regarding vendor certification?**

BellSouth is permitted to approve vendors hired by MCIW to construct its collocation space, provided the criteria used is the same as used in approving vendors for its own purposes. 47 C.F.R. § 51.323(j). BellSouth maintains that as long as it meets this requirement that only it has the right to approve or reject vendors. (BellSouth Post-Hearing Brief, p. 52). MCIW argues that under BellSouth’s proposal it does not have adequate assurance that the same information used by BellSouth to certify its vendors will be provided to MCIW. (MCIW Post-Hearing Brief, p. 102).

BellSouth asserts that it provides MCIW with the same information that BellSouth provides its vendors concerning the vendor certification process (Tr. 893). The evidence reflects that MCIW is provided with adequate and equal information to determine whether a proposed vendor meets BellSouth's certification standards. (Tr. 893). Therefore, the Commission agrees with BellSouth on this issue.

**33. Issue 66**

**What industry guidelines or practices should govern collocation?**

BellSouth claims that MCIW's proposal requires it to comply with standards outside of its control. (BellSouth Post-Hearing Brief, p. 52). MCIW argues it is merely asking that BellSouth comply with industry standards with respect to matters within its responsibility or under its control. (MCIW Post-Hearing Brief, p. 104). In order for a standard to be meaningful, complying with the standard must be within the party's control. Accordingly, the Commission finds that collocation shall be governed by only those industry guidelines or practices within BellSouth's control.

**34. Issue 67**

**When MCIW has a license to use BellSouth rights-of-way, and BellSouth wishes convey the property to a third party, should BellSouth be required to convey the property subject to MCIW's license?**

BellSouth argues that the license granted to MCIW does not authorize MCIW to restrict BellSouth's sale or conveyance of its property. (BellSouth Post-Hearing Brief, p. 53). MCIW argues that BellSouth's position would allow BellSouth to engage in anti-competitive conduct because BellSouth could sell property subject to its facilities remaining on the property but not MCIW's facilities remaining on the property.

The Commission agrees with MCIW. BellSouth's position would provide it with unfair leverage against its competitor. MCIW shall not be required to forfeit its license rights, and possibly strand facilities. BellSouth shall be required to convey the property subject to MCIW's license.

**35. Issue 68**

**Should BellSouth require that payments for make-ready work be made in advance?**

BellSouth proposes that MCIW should be required to make payments for make-ready work in advance. MCIW alleges that this is a delay tactic without any justification in MCIW's payment history. (MCIW Post-Hearing Brief, p. 107). BellSouth states that its proposal includes completion of make-ready work in a non-discriminatory manner. (BellSouth Post-Hearing Brief,

p. 53). Also, BellSouth has proposed to schedule make-ready work within twenty days of receipt of payment from MCIW, unless the period is extended for good cause. *Id.*

The Commission finds that the conditions included in BellSouth's proposal will help avoid use of the advance payment requirement as a delay tactic. The Commission adopts BellSouth's position subject to one modification. As an additional safeguard against use of the advance payment requirement as a delay tactic, the Agreement shall provide that if BellSouth wishes to extend the twenty days after payment is received, it must provide MCIW with written notice and an explanation of the good cause.

**36. Issue 75**

**For end users served by INP, should the end user or the end user's local carrier be responsible for paying the terminating carrier for collect calls, third party billed calls or other operator assisted calls?**

The parties disagree over who should be billed for collect calls, third party billed calls or other operator assisted calls for end users served by interim number portability (INP). BellSouth argues that the local carrier that serves the end user should be responsible for paying for these calls. BellSouth asserts that its position is consistent with the manner in which collect calls and third-number calls are billed when an end user is served by a CLEC using resold facilities or unbundled network elements. (Tr. 749).

MCIW proposes that the end user should be responsible for payment both because it is consistent with industry standard and because BellSouth provides the service. (MCIW Post-Hearing Brief, p. 108). The evidence supports MCIW's claim that the industry practice is for the toll carrier to bill the end use customer directly. (Pre-filed Testimony of MCIW Witness, Don Price, p. 50). Accordingly, the Commission directs that the parties incorporate MCIW's proposed language into the Agreement.

**37. Issue 80**

**Should BellSouth be required to provide an application-to-application access service order inquiry process?**

MCIW believes Issue 80 involves two interrelated subjects: (i) whether BellSouth must permit MCIW submit orders using an ASR; and (ii) whether BellSouth must provide an application-to-application service order inquiry process. (MCIW Post--Hearing Brief p. 109). MCIW asserts that BellSouth should be required to permit it to use the ASR process for DS1 combos at least until BellSouth has made available a tested electronic LSR process for such orders. (MCIW Post-Hearing Brief, p. 109-110).

BellSouth asserts that MCIW is attempting to require BellSouth to maintain an IXC process to handle local service requests ("LSR"). (BellSouth Post-Hearing Brief p. 54).

BellSouth maintains that the national standard for ordering UNEs and resale services is through the submission of a LSR (BellSouth Post-Hearing Brief p. 55).

BellSouth and MCIW shall work together in the Commission's Improvement Task Force ordered in Docket No. 7892-U to increase electronic ordering and flow-through for complex and manually ordered services. Until BellSouth makes available a tested electronic LSR process, MCIW shall be entitled to order DS1 Combos using the electronic ASR process.

**38. Issue 81**

**Should BellSouth provide a service inquiry process for local services as a pre-ordering function?**

MCIW proposes the following language for this issue: "BellSouth shall perform service inquiry as a pre-ordering function as requested by MCIW." (Attachment 8, Section 2.2.1). This information would assist MCIW in managing its customers' expectations, and it would "enable its customers to make plans based on when they expect to receive the services they ordered." (MCIW Post-Hearing Brief p.110-111). BellSouth charges that MCIW is requesting a superior functionality than that provided by BellSouth retail units and explains that its current practice is to use the service inquiry process, which includes a facility check as part of the ordering process. (BellSouth Post-Hearing Brief p. 57).

The Commission finds that the bulk of the information that MCIW is asking for on a pre-order basis is currently available manually via a service order inquiry. Further, information that MCIW seeks is currently in the beta testing process in order to provide electronic pre-ordering functionality. MCIW also requests on a pre-order basis the availability of facilities and the location of the facilities. BellSouth agrees that currently a process does not exist to obtain the information sought by MCIW on a pre-order basis. (Tr. 702). The Commission finds that both CLEC and BellSouth customers would benefit from knowing whether facilities are available at the time an order is taken. The Commission finds that MCIW shall file this request immediately within the Change Management Process for implementation.

**39. Issue 94**

**Should BellSouth be permitted to disconnect service to MCIW for nonpayment?**

BellSouth's position is that it should be permitted to disconnect service to MCIW if it fails to pay billed charges for which there is no good faith dispute. BellSouth states that its concern is that if MCIW is not held to this condition, then other CLECs will opt into this provision. (BellSouth Post-Hearing Brief, p. 59). MCIW expressed the concern that BellSouth is the sole arbiter of whether a dispute over a bill is a good faith dispute. (MCIW Post-Hearing Brief, p. 112). MCIW argued that nonpayment should be resolved through dispute resolution, rather than through disconnect. *Id.* at 113.

The Commission finds that BellSouth should not be able to unilaterally determine that MCIW is not acting in good faith when it disputes a bill. Therefore, BellSouth's proposed language shall be modified to allow disconnect only in those instances in which MCIW does not dispute the bill, provided however, that MCIW must provide BellSouth with written documentation of the billing dispute which clearly shows the basis for MCIW's dispute of the charges. If the parties are still unable to resolve the dispute, then the parties may pursue all dispute resolution measures available under the Agreement.

In addition, MCIW expressed the concern through cross-examination that the language proposed by BellSouth would enable it to disconnect all of its services if MCIW failed to make payment for a given service. BellSouth's witness testified that the intent of the language was that BellSouth only be permitted to disconnect for the service for which MCIW had not made payment. (Tr. 442). The Commission determines that the language shall only allow BellSouth to disconnect for those services for which MCIW has not made payment.

**40. Issue 95**

**Should BellSouth be required to provide MCIW with billing records with all EMI standard fields?**

MCIW's position is that, consistent with the parties' current interconnection agreement, BellSouth should be required to provide MCIW with complete EMI billing records. (MCIW Post-Hearing Brief, p. 114). BellSouth proposes that it provide CLECs with usage records created using EMI guidelines. (BellSouth Post-Hearing Brief, p. 59).

The Commission finds that BellSouth did not show why the provision contained in the parties' current interconnection agreement is unreasonable. Nor did BellSouth adequately explain why an exception to the industry standard should be created. The Commission finds that BellSouth shall be required to provide MCIW with billing records with all EMI standard fields.

**41. Issue 96**

**Should BellSouth be required to give written notice when a central office conversion will take place before midnight or after 4 a.m.?**

BellSouth has agreed to attempt to schedule central office conversions between midnight and 4 a.m. (BellSouth Post-Hearing Brief, p. 60). The parties agree that some notice is appropriate in the event that a central office conversion will take place before midnight or after 4 a.m. However, BellSouth argues that written notice should not be required. Rather, BellSouth proposes that it post notice of its conversion on its website. *Id.* MCIW argues that written notice constitutes more effective notice, and that given the seriousness of a central office conversion, that written notice is more appropriate. (MCIW Post-Hearing Brief, p. 115).

The evidence shows that BellSouth plans for months in advance prior to a central office conversion outside of the hours of midnight through 4 a.m. (Tr. 936). This allows enough time for notice over BellSouth's website to be effective. Since it is also the more efficient form of notice, the Commission finds that it is adequate for BellSouth to post notice of the central office conversions in question on its website.

**42. Issue 100**

**Should BellSouth operators be required to ask MCIW customers for their carrier of choice when such customers request a rate quote or time and charges?**

BellSouth's position is that its practice is to quote only BellSouth's rates. Customers who inquire about long distance rates are advised they should seek that information from their long distance carrier. BellSouth states that its operator services platform does not have the capability to connect to a CLEC's directory assistance platform. (BellSouth Post-Hearing Brief, p. 60). MCIW argues that it merely wishes BellSouth operators to inquire of MCIW local customers for whom BellSouth provides operator services which carrier is their carrier of choice. (MCIW Brief, p. 117).

The Commission finds that if MCIW compensates BellSouth, then BellSouth operators shall be required to ask MCIW customers for their carrier of choice.

**43. Issue 101**

**Is BellSouth required to provide shared transport in connection with the provision of custom branding? Is MCIW required to purchase dedicated transport in connection with the provision of custom branding?**

This issue relates to Issues 5, 15 and 19. "Custom branding" involves BellSouth branding calls to its OS/DA platform in the name of the CLEC whose customer is calling. The question comes down to whether BellSouth's provisioning of selective call routing relieves it from the obligation to provide shared transport with the provision of custom branding.

Consistent with its determinations on the earlier related issues, the Commission finds that BellSouth is not required to provide shared transport in connection with the provision of custom branding. Further, the Commission finds that MCIW is required to purchase dedicated transport in connection with the provision of custom branding.

**44. Issue 107**

**Should the parties be liable in damages, without a liability cap, to one another for their failure to honor in one or more material respects any one or more of the material provisions of the Agreements?**

BellSouth's position is that the language proposed by MCIW regarding a liability cap is not appropriate for inclusion in the Interconnection Agreement. (BellSouth Post-Hearing Brief, p. 61). BellSouth proposes that the only language relating to a liability cap in the Agreement should be the language to which both parties have agreed. *Id.* MCIW argues that the liability cap should only apply to non-material breaches of the Agreement. (MCIW Post-Hearing Brief, p. 112).

The Commission finds that the parties are not required to adopt language regarding a liability cap beyond what they are willing to agree upon through negotiations.

**45. Issue 108**

**Should MCIW be able to obtain specific performance as a remedy for BellSouth's breach of contract?**

MCIW argues that services under the Agreement are unique, and that specific performance is an appropriate remedy for BellSouth's failure to perform. (MCIW Post-Hearing Brief, p. 120) BellSouth responds that specific performance is not a requirement under Section 252. In addition, BellSouth argues that specific performance is not an appropriate subject in this arbitration proceeding. BellSouth recommends that to the extent MCIW can show that it is entitled to obtain specific performance under Georgia law, MCIW can make this showing without such a provision being included in the Agreement. (BellSouth Post-Hearing Brief, p. 62).

The Commission finds that it is not necessary for the Agreement to include a provision entitling MCIW to obtain specific performance for BellSouth's breach of contract. If MCIW wishes to seek specific performance with respect to a particular alleged breach, it may request such relief in its complaint.

46. Issue 109

**Should BellSouth be required to permit MCIW to substitute more favorable terms and conditions obtained by a third party through negotiation or otherwise, effective as of the date of MCIW's request? Should BellSouth be required to post on its website all BellSouth's interconnection agreements with third parties within fifteen days of the filing of such agreements with the Georgia PSC?**

The parties do not dispute that the Federal Act obligates BellSouth to make available to MCIW upon request "any interconnection service, or network element provided under an agreement approved under this section to which it is a party." 47 U.S.C. 252(i). At issue, is whether BellSouth's obligation should begin upon MCIW's request or upon amendment to the agreement. BellSouth contends that the obligation does not begin until after the parties amend the Agreement. (BellSouth Post-Hearing Brief, p. 62). MCIW responds that such a provision would provide BellSouth with an inappropriate incentive to delay amendment. (MCIW Post-Hearing Brief, p. 122).

By obligating the local exchange carrier to allow the CLEC to "pick and choose," the Federal Act ensures that the agreement will be amended if the CLEC requests that its agreement include an interconnection service or network element provided in another interconnection agreement of the local exchange carrier. The amendment of the agreement necessarily follows this request. BellSouth should not have the ability to delay the inevitable to the detriment of MCIW. The Federal Act does not require amendment of the agreement prior to BellSouth providing the requested provision. The Commission finds that the more favorable terms and conditions obtained by a third party should be substituted effective as of the date of MCIW's request.

The second part of this issue involves whether the Agreement should obligate BellSouth to post interconnection agreements with third parties within fifteen days of the filing of such agreements with the Georgia PSC. The Commission finds that BellSouth shall be so obligated. Posting the agreements on its website will further the purposes set forth in the Federal Act.

47. Issue 110

**Should BellSouth be required to take all actions necessary to ensure that MCIW confidential information does not fall into the hands of BellSouth's retail operations, and should BellSouth bear the burden of proving that such disclosure falls within enumerated exceptions?**

The parties disagree as to whether the Agreement should require BellSouth to take all "reasonable" actions to protect MCIW's confidential information, as BellSouth proposes, or to take "all actions necessary" to protect the information, as MCIW proposes. The Commission finds that it is sufficient to require BellSouth to take all reasonable actions to protect MCIW's confidential information. A standard that BellSouth must take all actions necessary imposes an unreasonable burden on BellSouth. It is likely that in most situations no matter the level of

precaution taken by BellSouth, MCIW will be able to show that an additional action could have been taken. The Commission also finds that MCIW bears the burden of showing that the actions taken by BellSouth to protect the information were not reasonable.

**III. CONCLUSION AND ORDERING PARAGRAPHS**

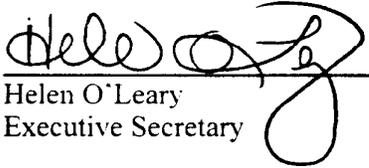
The Commission finds and concludes that the issues that the parties presented to the Commission for arbitration should be resolved in accord with the terms and conditions as discussed in the preceding sections of this Order, pursuant to Sections 251 and 252 of the Telecommunications Act of 1996 and Georgia's Telecommunications and Competition Development Act of 1995.

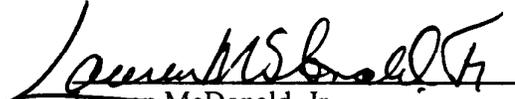
**WHEREFORE IT IS ORDERED**, that all findings, conclusions, statements, and directives made by the Commission and contained in the foregoing sections of this Order are hereby adopted as findings of fact, conclusions of law, statements of regulatory policy, and orders of this Commission.

**ORDERED FURTHER**, that a motion for reconsideration, rehearing, or oral argument or any other motion shall not stay the effective date of this Order, unless otherwise ordered by the Commission.

**ORDERED FURTHER**, that jurisdiction over these matters is expressly retained for the purpose of entering such further Order or Orders as this Commission may deem just and proper.

The above by action of the Commission in Administrative Session on the 6<sup>th</sup> day of February, 2001.

  
\_\_\_\_\_  
Helen O'Leary  
Executive Secretary

  
\_\_\_\_\_  
Lauren McDonald, Jr.  
Chairman

03/07/01  
Date

03-07-01  
Date