

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by MediaOne Florida Telecommunications, Inc. for arbitration of an interconnection agreement with BellSouth Telecommunications, Inc. pursuant to Section 252(b) of the Telecommunications Act of 1996.

DOCKET NO. 990149-TP
ORDER NO. PSC-99-2009-FOF-TP
ISSUED: October 14, 1999

The following Commissioners participated in the disposition of this matter:

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FINAL ORDER ON ARBITRATION

BY THE COMMISSION:

I. CASE BACKGROUND

On December 1, 1995, this Commission approved a stipulated agreement between MediaOne Florida Telecommunications, Inc., and BellSouth Telecommunications, Inc., providing for interconnection services between the two companies. That agreement expired on January 1, 1998, but the parties mutually agreed to extend the contract pending finalization of a successor agreement. Negotiations for a successor agreement failed, and on February 9, 1999, MediaOne filed a Petition for Arbitration, seeking the assistance of the Florida Public Service Commission in resolving the remaining issues.

The matters addressed herein concern originating and terminating traffic from Internet service providers (ISPs). Specifically, we have been asked to determine whether calls that originate from or terminate to ISPs should be defined as "local traffic" for purposes of the MediaOne/BellSouth Interconnection Agreement. The parties were also unable to reach agreement on reciprocal compensation arrangements. We note that this case represents the first time we have addressed these types of ISP issues outside the four corners of an existing interconnection agreement.

The parties have also asked us to determine the appropriate price MediaOne should pay BellSouth for Calling Name ("CNAM") data base queries. In addition, we have considered the appropriate manner for MediaOne to have access to BellSouth's network terminating wire (NTW) in multiple dwelling units (MDUs), and what BellSouth should be permitted to charge MediaOne for access to NTW.

II. ISP ISSUES

The FCC's treatment of ISP-bound traffic appears to be at the root of the problem in determining whether traffic is local, and

whether reciprocal compensation is due. The FCC has treated ISP-bound traffic as though it were local traffic and has exempted ISPs from paying access charges. In its February, 1999 Declaratory Ruling the FCC stated:

Although the Commission has recognized that enhanced service providers (ESPs), including ISPs, use interstate access services, since 1983 it has exempted ESPs from the payment of certain interstate access charges. (FCC 99-38, ¶5)

The FCC explains that the exemption was adopted at the inception of the interstate access charge regime to protect certain users of access services, such as ESPs, from the rate shock that would result from immediate imposition of carrier access charges. (FCC 99-38, ¶5 footnote 10) The FCC continues to allow ESPs to purchase their links to the public switched telephone network (PSTN) through intrastate business tariffs, rather than through interstate access tariffs. In addition, incumbent LEC expenses and revenues associated with ISP-bound traffic traditionally have been characterized as intrastate for separations purposes.

The FCC has acknowledged that its treatment of this traffic has been somewhat problematic. In a Declaratory Ruling issued February 25, 1999, it stated:

Until now, however, it has been unclear whether or how the access charge regime or reciprocal compensation applies when two interconnecting carriers deliver traffic to an ISP. . . . As a result, and because the Commission had not addressed inter-carrier compensation under these circumstances, parties negotiating interconnection agreements and the state commissions charged with interpreting them, were left to determine, as a matter of first impression, how interconnecting carriers should be compensated for delivering traffic to ISPs, leading to the present dispute. (FCC 99-38, ¶9)

Although the FCC issued a Declaratory Ruling concluding that ISP-bound traffic is jurisdictionally mixed, and appears to be largely interstate, the FCC added that adopting a rule governing inter-carrier compensation for ISP bound traffic to govern prospective compensation would serve the public interest. (FCC 99-38, ¶28) To this end, the FCC has issued a Notice of Proposed Rulemaking seeking comments on two proposals for a rule. Until such a rule is developed and implemented, the FCC has left it to state commissions to determine whether reciprocal compensation is due for this traffic.

BellSouth witness Varner does not believe that state commissions have the statutory authority under Section 252 of the 1996 Act to arbitrate this issue because inter-carrier compensation for interstate access is not governed by Section 251 of the Act. Witness Varner also does not believe that the FCC has the authority to "rewrite the Communications Act and vest the state commissions with the power to regulate matters relating to interstate communications that, under the Act, are specifically reserved to the FCC." Witness Varner sums it up by stating:

The FCC clearly asserted that they have jurisdiction over this traffic and they've exercised that jurisdiction. This is really an FCC issue. And as a result of that, any ruling that this Commission does make on this issue is really going to be temporary until the FCC issues their rules. The FCC was very clear about that in their order. That in saying at this point state commissions may apply or deal with this in 252-type arbitrations. However, at some point the FCC will issue their rules and whatever comes out of the rules is what will have to apply.

We agree that the FCC has claimed jurisdiction over this traffic and will ultimately adopt a final rule on this matter. We note that the FCC stated:

We emphasize that the Commission's decision to treat ISPs as end users for access charge purposes and, hence, to treat ISP-bound

traffic as local, does not affect the Commission's ability to exercise jurisdiction over such traffic. (FCC 99-38, ¶16)

Further, as previously discussed, the FCC does intend to adopt a final rule to govern inter-carrier compensation for ISP-bound traffic. Therefore, any decision we make will only be an interim decision. Accordingly, we hereby direct the parties to continue to operate under the terms of their current contract until the FCC issues its final ruling on whether ISP-bound traffic should be defined as local or whether reciprocal compensation is due for this traffic. MediaOne appears to agree with this approach. MediaOne stated in its brief:

Because, however, the FCC has under consideration proposals for the resolution of this issue, MediaOne would not object to the Commission's choosing to defer the issue pending the outcome of the FCC proceeding.

Upon consideration, we direct the parties to continue to operate under the terms of their current contract until the FCC issues its final ruling on whether ISP-bound traffic should be defined as local or whether reciprocal compensation is due for this traffic. The FCC has also determined that a rule concerning prospective inter-carrier compensation for this traffic would be in the public interest. To this end, it has issued a Notice of Proposed Rulemaking seeking comments on two proposals for such a rule.

III. CNAM PRICING

A Calling Name (CNAM) database provides the name of the calling party to a customer with caller ID number and name service. BellSouth witness Varner describes BellSouth's CNAM database service, how it works, and how it handles calls placed from outside the BellSouth region as follows:

BellSouth's CNAM Database Storage service allows ALECs, independent companies, wireless providers and paging companies to store and access name and number information in the BellSouth Calling Name

Database. With BellSouth's CNAM service, customers have access to a large volume of names from the extensive BellSouth customer database plus sharing agreements with other large database owners. When an end user initiates a call to another end user subscribed to Calling Name Service (e.g., Caller ID Deluxe), call setup information is passed to the called party's switch. The called party's switch then queries the BellSouth Signal Transfer Point ("STP") for Calling Name Information. If necessary, this connectivity can be accomplished through a third party STP. The BellSouth STP then passes the query to the BellSouth CNAM Service Control Point ("SCP") for resolution. Calling Name Information is then passed back through the BellSouth STP to the called party's switch and the subscriber's Caller ID display unit. For out-of-region callers, the BellSouth STP passes the query to an out-of-region CNAM SCP for resolution. Calling Name Information is returned through the BellSouth STP to the called party's switch and display unit.

On March 4, 1997, BellSouth and MediaOne signed an agreement, which they call an "Annex." This agreement provides the terms and conditions under which BellSouth is to provide MediaOne with CNAM. Both parties agree that this agreement is not part of BellSouth's and MediaOne's interconnection agreement. Exhibit A to the Annex states that \$50.00 per 1,000 access lines per month is the recurring flat rate charge for access to BellSouth's CNAM Service Control Point. Exhibit A further states that "The recurring flat rate will convert to a per query usage rate once query usage measurement capability becomes available." What the "per query usage rate" will be, and how it will be determined, however, is left unsaid.

According to BellSouth witness Varner, the rate BellSouth "intends to charge MediaOne" is \$0.01 per query. There seems to be some confusion within MediaOne, however, as to what BellSouth's proposed price is. MediaOne referred to \$0.016 in its Prehearing position; however, during the hearing MediaOne witness Maher asserted that a price of \$0.01 is a "40 fold increase over the

existing price." Since MediaOne witness Lane stated during the hearing that witness Maher "will discuss this issue [the CNAM price] in greater detail," it appears that MediaOne is aware that BellSouth's intended price is \$0.01 per query.

BellSouth witness Varner asserts that "the CNAM agreement is not governed by the requirements of Section 251 or Section 252 of the Act, the rates BellSouth charges for its CNAM database service is [sic] not an issue appropriate for arbitration." He maintains that this is true because:

MediaOne witness Maher asserts that for "this proceeding, the Commission should determine [that] the CNAM database is an unbundled network element. . . ." He states that, "I am not aware that any regulatory commission, including the FCC, has ruled one way or the other on this issue." Citing the FCC's rule 319 definition, he argues that:

Mr. Varner contends that CNAM cannot be a network element because it plays no role in the completion of a call. His argument overlooks the fact that the FCC has ruled that Calling Name Delivery is "adjunct-to-basic" (CC Docket No. 91-281, 10 FCC Rcd. 11700, para. 131) and thus itself a telecommunications service (see, CC Docket No. 96-149, 11 FCC Rcd 21905, para. 107). Because BST's CNAM service is essential to MediaOne's delivery of calling name to its Caller ID customers, the Public Service Commission can and should determine that it is an unbundled network element.

Witness Maher testified at the hearing that he did not know whether CNAM is available as a UNE in other jurisdictions. He did state that, "I would say that the pricing that we've seen would suggest that it's not -- if a UNE dictates a pricing level, it's definitely not an [sic] UNE based on the pricing that's out there in the market today."

BellSouth witness Varner states that "Access to BellSouth's CNAM database is not a necessary component for billing and collection, transmission, or routing of an end user's call." Witness Varner, however, leaves out an important part of Rule

51.319's definition -- namely, what follows the word "routing": "or other provision of a telecommunications service." MediaOne witness Maher does not address witness Varner's omission of "other"; instead, he refers to other FCC orders that deal with calling name.

Whether or not CNAM is a UNE determines the pricing of CNAM. If CNAM is a UNE as MediaOne asserts, then its rate must be based on a TELRIC cost standard. If it is not a UNE, as BellSouth asserts, then its pricing is BellSouth's prerogative.

On January 25, 1999, the United States Supreme Court vacated the FCC's rule 51.319, which listed the UNEs that an incumbent local exchange carrier must provide. The Supreme Court vacated Rule 51.319, "[B]ecause the Commission [FCC] has not interpreted the terms of the statute in a reasonable fashion. . . ." (AT&T Corp. v. Iowa Utilities Bd., 119 S. Ct. 721 (1999, slip opinion at 25) As of this writing, the FCC has not issued a new list of UNEs.

The Supreme Court opinion also stated in part:

The Commission [FCC] cannot, consistent with the statute, blind itself to the availability of elements outside the incumbent's network. That failing alone would require the Commission's rule to be set aside. In addition, however, the Commission's assumption that any [emphasis in original] increase in cost (or decrease in quality) imposed by denial of a network element renders access to that element "necessary," and causes the failure to provide that element to "impair" the entrant's ability to furnish its desired services is simply not in accord with the ordinary and fair meaning of those terms. (AT&T Corp v. Iowa Utilities Bd., 119 S. Ct. 721 (1999), slip opinion at 22)

With Rule 51.319 vacated, we must turn to the Supreme Court's decision for guidance. When asked through discovery whether BellSouth was aware of other CNAM database providers, BellSouth responded that it was aware of "comparable" service offered by Illuminet, Sprint United, US West, Bell Atlantic, and GTE.

In his rebuttal testimony, MediaOne witness Maher asserts that no other supplier can "provide MediaOne with access to BST's CNAM data." Witness Maher also states that:

Each ILEC's CNAM database includes only its subscribers and the subscribers of other LECs who store their subscribers' names and telephone numbers there. We can get CNAM access from, say, Bell Atlantic in Massachusetts and Virginia, but not in Florida or Georgia. BST is our only option here.

During the hearing, however, witness Maher stated that MediaOne uses Illuminet for its Massachusetts and Virginia operations because it does not have a contract with Bell Atlantic, since Bell Atlantic "does not have the capacity at this point to store our data [in Massachusetts]. In his deposition, witness Maher maintained that MediaOne had not "pursued" other options for CNAM in Florida, even though MediaOne uses Illuminet in other states. Witness Maher stated that MediaOne did not pursue using alternative providers because "our assumption is that if we go through another provider to get to BellSouth data, it will just be that much more expensive than getting the data or having the query made directly to BellSouth." MediaOne's assumption is "based on us thinking that BellSouth would charge the same per query rate to anyone retrieving that data," according to witness Maher. He further testified that this proceeding is MediaOne's "first real opportunity to arbitrate the CNAM rate."

Witness Maher testified that it was not until after his deposition that MediaOne attempted to obtain prices from alternative providers. MediaOne obtained a price per query of \$0.018 from Illuminet, the same price that MediaOne pays Illuminet to query the PacTel and Bell Atlantic databases. Witness Maher stated that Illuminet's "language is that basically they will charge the query rate plus a transport charge." He also stated that another source has proposed to provide MediaOne with CNAM data, but that the price is "much more expensive because they charge a higher price than BellSouth, plus a transport charge."

Without the certainty of an FCC rule on UNEs, we must rely on the Supreme Court decision for guidance. It is clear from the record in this proceeding that there are alternative providers to

BellSouth; in fact, MediaOne is using one of the alternative providers. The record shows that, not until three days before the hearing, after a deposition, did MediaOne try to obtain price quotes from other vendors. The record also shows that BellSouth did, however, provide MediaOne with the names of several alternative vendors prior to the deposition. MediaOne received price quotes from only two of the vendors, both of which had higher prices than proposed by BellSouth.

We find MediaOne's overall testimony on this issue to be inconsistent and insufficient. For example, according to MediaOne, BellSouth is MediaOne's only option in Florida. After questioning by BellSouth, MediaOne explains that it can use Illuminet in Florida, as it does in California and in Bell Atlantic's territory, albeit at a higher price. MediaOne states that CNAM was not part of its interconnection agreement in Massachusetts, so MediaOne did not arbitrate it. MediaOne's former agreement with BellSouth for CNAM in Florida, however, is also outside of the interconnection agreement. With regards to alternative providers, it is clear that MediaOne has made little or no effort to ascertain if there are better prices than BellSouth's price. There is no record evidence that MediaOne made any serious attempt to obtain the best price possible for CNAM.

Based on the record evidence, we do not believe that CNAM would pass the "necessary" and "impair" test described by the Supreme Court. Without substantive evidence, it is simply impossible to conclude that CNAM must be a UNE.

In its Prehearing position, BellSouth states that "MediaOne already has an agreement with BellSouth for this service and is inappropriately seeking to be relieved of its contractual obligations." It appears as if BellSouth bases this claim on its belief that because CNAM is not a UNE, MediaOne's efforts to arbitrate the rate for CNAM mean that MediaOne is "inappropriately seeking to be relieved of its contractual obligations."

Witness Varner agreed that it is not "reasonable" for MediaOne to agree to "any price that BellSouth came up with" after BellSouth had the measurement capability. MediaOne witness Maher stated that MediaOne "intends to honor its existing calling name delivery contract with BellSouth and migrate to a per query usage rate."

According to witness Maher, "MediaOne has not agreed to pay whatever rate BST might wish to charge."

We believe that BellSouth's allegation that MediaOne is "inappropriately seeking to be relieved of its contractual obligations" does not speak to the issue of what the CNAM price should be. The real issue is what the price should be for CNAM. That price is a function of whether or not CNAM is a UNE. There is insufficient evidence in the record to conclude that CNAM is a UNE. Thus, CNAM's price is not required to be priced according to the FCC's TELRIC standards. Accordingly, we find that BellSouth is free to propose what it considers to be a market-based price. In addition, BellSouth's price for a CNAM query is the lowest of the comparable options entered in this record; therefore, we find no basis for concluding that it is unreasonable.

IV. NTW IN MDUs

In order to market and provide its local exchange services to residents in multi-dwelling units (MDUs), MediaOne is seeking access to network terminating wire (NTW) owned and controlled by BellSouth. BellSouth believes it has offered MediaOne a reasonable method of access to its NTW.

BellSouth's Proposal to Provide MediaOne Access to NTW

BellSouth witness Milner describes NTW as another part of BellSouth's loop facilities, referred to as the sub-loop element loop distribution. In multi-story buildings, NTW is connected to the riser cable and fans-out the cable pairs to individual customer suites or rooms on a given floor within the building. Where riser cable is not used, NTW is attached directly to BellSouth's loop distribution cables. BellSouth witness Milner states that riser cable is a part of that sub-loop element referred to as loop distribution, and is located on the network side of the demarcation point. Witness Milner provides that NTW is the last part of the loop on the network side of the demarcation point. A network interface device (NID) establishes the demarcation point between BellSouth's network and the inside wire at the customer's premises.

Witness Milner states that each ALEC will provide its own terminal in proximity to the BellSouth garden terminal or connector block within the wiring closet. Witness Milner provides that BellSouth will install an access terminal that contains a cross-

connect panel on which BellSouth will extend the ALEC-requested NTW pairs for the ALEC's use. According to BellSouth witness Milner, the ALEC would then extend a tie cable from its own terminal to the access terminal, which BellSouth provides, to access the NTW pairs that were requested by the ALEC.

MediaOne's Proposal to Access BellSouth's NTW

MediaOne witness Lane provides that there is no practical solution for MediaOne to deliver telephone service to MDU residents utilizing its cable facilities. For that reason, MediaOne requires reasonable access to BellSouth's NTW.

Referring to Hearing Exhibit 13, witness Beveridge explains that BellSouth provisions service by connecting two cross-connect blocks with short jumper wires. Witness Beveridge testified that the two terminal blocks, one labeled MDU Riser Cable or NTW, and the other labeled ILEC Outside Plant Termination, represent existing facilities owned by BellSouth. Witness Beveridge also explained that the terminal blocks labeled MDU Riser Cable or NTW and ILEC Outside Plant Termination would be located inside a wiring closet. Based on this testimony, it appears that the term BST CSX, discussed in the preceding paragraph, represents BellSouth's wiring closet.

MediaOne witness Beveridge further testified that MediaOne would separate the cross-connects that constitute BST CSX, or BellSouth's wiring closet, in BellSouth's proposal. Witness Beveridge concluded that, depending on the physical configuration of the cross-connects, rearrangement may not be required in some cases. Witness Beveridge added that because the cross-connect on which BellSouth's NTW terminates is now physically separate, it functionally becomes the ACCESS CSX. We note that, according to Exhibit 13, BST CSX would no longer represent BellSouth's wiring closet as it is traditionally configured. Witness Beveridge emphasizes that because all local exchange companies have equal access to the ACCESS CSX, all of the companies can provision service quickly, easily, and on equal footing.

MediaOne witness Beveridge's testimony provides an illustration of how MediaOne's proposal would work. MediaOne witness Beveridge testified that if a given CLEC wins a customer from BellSouth, that CLEC's technician would simply disconnect BellSouth's jumper from BellSouth's BST CSX and ACCESS CSX. The

CLEC technician would then connect the CLEC's jumper between their CSX and ACCESS CSX, thereby connecting its distribution facilities to the first NTW pair. To identify ownership of ACCESS CSX, we look to MediaOne witness Beveridge's testimony offered at the hearing. MediaOne witness Beveridge testified that the terminal block, labeled MDU Riser Cable or NTW, on Hearing Exhibit 13, is BellSouth's facility. We believe that this testimony demonstrates that ACCESS CSX is BellSouth's property.

Classification of NTW as an UNE

BellSouth witness Milner testifies that neither the 1996 Act nor the FCC specified that NTW is an unbundled network element, but at a minimum, a technically feasible form of access must be identified. Expanding on this point, BellSouth witness Varner testified that the specific list of network elements that BellSouth must provide will not be known until the FCC completes its proceeding on remand of Rule 51.319. Witness Varner stated that BellSouth will provide MediaOne with NTW capability before the FCC completes its proceedings. Witness Varner also testified that BellSouth reserves the right to reconsider whether it will continue to offer NTW upon completion of the FCC's proceedings.

In addition, MediaOne witness Beveridge testified that, as long as BellSouth claims NTW as part of its network, we should categorize NTW as a UNE. Witness Beveridge asserts that BellSouth will likely refuse to provide NTW to its competitors unless it is required to do so. He testified that if MediaOne is required to purchase an entire unbundled loop from BellSouth, MediaOne's service will be uneconomic.

We note that the Unbundled Network Terminating Wire MediaOne Information Package, provided by BellSouth to MediaOne, indicates that BellSouth will provide access to NTW in states where BellSouth is required to offer "sub-loop unbundling." These states are Florida, Georgia, Kentucky and Tennessee. Therefore, we need not make a ruling regarding whether or not BellSouth's NTW is a UNE.

Appropriate Method for Connecting to BellSouth's Terminal Blocks

BellSouth's witness Milner testified:

In its First Report and Order (CC Docket No. 96-98, released August 8, 1996) at paragraph 198, the FCC included the following statement:

'Specific, significant, and demonstrable network reliability concerns associated with providing interconnection or access at particular point, however, will be regarded as relevant evidence that interconnection or access at that point is technically infeasible.'

BellSouth witness Milner further stated:

The FCC elaborated further on this point at paragraph 203 of that same order by stating:

'We also conclude, however, that legitimate threats to network reliability and security must be considered in evaluating the technical feasibility of interconnection or access to incumbent LEC networks. Negative network reliability effects are necessarily contrary to a finding of technical feasibility. *Each carrier must be able to retain responsibility for the management, control, and performance of its own network.*' (emphasis added)

BellSouth witness Milner asserted that the access to NTW sought by MediaOne is not technically feasible. Witness Milner testified that MediaOne's proposal would render BellSouth incapable of managing and controlling its network in the provision of service to its end users, or in providing portions of its network to other ALECs for their use in providing services to their end users. Witness Milner emphasized that MediaOne's proposal raises the question of how BellSouth would know if an ALEC had used BellSouth's NTW, thus effectively denying BellSouth control of its own property.

BellSouth witness Milner testified that closer examination of MediaOne's proposal immediately reveals that MediaOne's technicians could, either intentionally or unintentionally, disrupt the services provided by BellSouth to its end user customers. Witness Milner provided that BellSouth's garden terminal is a relatively

small device and it has no means of protecting against the intentional or unintentional disruption once access to the interior of the garden terminal has been made. Witness Milner asserted that BellSouth's proposal to provide MediaOne access to NTW retains network reliability, integrity, and security for both BellSouth's network and the ALEC's network. Witness Milner stated that under BellSouth's proposal, MediaOne could put some sort of cover over its terminal block and its network terminating wire pairs and thereby protect them from tampering by a third party.

BellSouth witness Milner stated that BellSouth makes NTW available to any ALEC through BellSouth's established process. He also provided that other local service providers are using BellSouth's NTW to compete with BellSouth. BellSouth witness Milner testified that there was only one ALEC in Florida that obtains access to BellSouth's NTW in the manner as that being offered MediaOne, although ALECs in other states use BellSouth's NTW in the same manner.

MediaOne's witness Lane claimed that 40% of the homes included in MediaOne's network are MDUs and that BellSouth's proposal to provide NTW greatly impedes MediaOne's ability to provide service to MDU residents.

MediaOne witness Beveridge testified that MediaOne's proposal requires the separation of BellSouth's cross-connect for NTW from BellSouth's cross-connect for BellSouth's distribution facilities. Beveridge stated that, depending on the physical configuration, in some instances actual rearrangement of BellSouth's cross-connects may not be necessary. He also stated that in the majority of cases, no new hardware or rearrangement would be necessary because BellSouth's existing hardware could be used. Witness Beveridge stated that if new hardware were required, it could be provided by BellSouth, interested ALECs, or an agreed-upon third party on a cost sharing basis since both BellSouth and other ALECs benefit. For MDUs where BellSouth already has NTW installed, we do not agree with MediaOne's position that BellSouth should bear any responsibility for cost if MediaOne's approach prevails. In such MDUs BellSouth would have already born the cost of provisioning, and any additional costs should be born by the CLEC being accommodated.

In addition, MediaOne witness Beveridge stated:

Mr. Milner quotes a portion of paragraph 203 of the FCC's First Report and Order in CC Docket No. 96-98 (August 8, 1996) for the proposition that network reliability and security are legitimate factors in assessing technical feasibility. He omitted the following that appears in the same paragraph.

Thus, with regard to network reliability and security, to justify a refusal to provide interconnection or access at a point requested by another carrier, incumbent LECs must prove to the state commission, with clear and convincing evidence, that specific and significant adverse impact would result from the requested interconnection or access.
(emphasis added)

MediaOne witness Beveridge testified that witness Milner has not claimed that providing MediaOne access to NTW at BellSouth's terminals would produce specific and significant adverse impacts to BellSouth's service. He asserted that Milner has provided no evidence to support claims of network reliability, integrity, and security problems. We agree, however, with BellSouth's argument that network reliability, integrity, and security could be impaired by giving competitors open access to BellSouth's terminals and wiring.

MediaOne witnesses Lane and Beveridge also take issue with BellSouth's proposed method of access to NTW because it requires the presence of a BellSouth technician. A BellSouth technician must be present during the initial installation of BellSouth's proposed access terminal, and during the follow-on provisioning of the NTW pairs requested by MediaOne, unless MediaOne requests provisioning of NTW pairs during the initial site set-up. In addition to coordination problems, MediaOne claims that the price it must pay for a BellSouth technician to perform work serving no useful purpose creates a competitive disadvantage for MediaOne by substantially increasing the cost of provisioning service. MediaOne points out that this negatively impacts other competing ALECs as well.

MediaOne witnesses Lane and Beveridge testified that the coordination of an installation between itself, a customer, and BellSouth will create an unnecessary inconvenience for the

customer, cause MediaOne's product to be less desirable, and virtually preclude MediaOne from serving MDU residents, denying consumers an alternative to BellSouth.

The record does not contain evidence of any case which would support a proposal where one party is seeking to use its own personnel to, in effect, modify the configuration of another party's network without the owning party being present. We find that MediaOne's proposal to physically separate BellSouth's NTW cross-connect facility from BellSouth's outside distribution cross-connect facilities is an unrealistic approach for meeting its objectives. Therefore, BellSouth is perfectly within its rights to not allow MediaOne technicians to modify BellSouth's network.

The parties have stipulated that the reclassification of Florida's demarcation point for MDUs to the minimum point of entry (MPOE), is not an issue. It appears, however, that MediaOne's proposal effectively attempts to achieve that objective. Based on the evidence presented at the hearing, we believe that it is in the best interests of the parties that the physical interconnection of MediaOne's network be achieved as proposed by BellSouth.

We find from the record that at least one other ALEC in Florida and an unknown number of ALECs in other states have been able to provide service based on BellSouth's NTW proposal. Thus, we believe that MediaOne should be able to provide service using BellSouth's NTW proposal. It appears that MediaOne's key issue is price. We also conclude that the BellSouth-installed access terminal should be reserved for exclusive use by MediaOne. If other ALECs are permitted access to the terminal installed for MediaOne, MediaOne would be subject to the same network security and control problems that BellSouth uses in its arguments. In addition, because MediaOne is required to pay BellSouth for the access terminal and the labor to install it, we believe it would be inappropriate for BellSouth to offer other ALECs a sharing arrangement on this terminal, without MediaOne's approval.

First Pair of NTW and NID

MediaOne witness Beveridge testified that MediaOne does not have access to all of BellSouth's NTW pairs because BellSouth reserves the first pair for its own use. As a result, witness Beveridge notes that MediaOne's technician could be subjected to a time consuming task of locating the first jack within a customer premise to connect inside wiring to the NTW pair provided by

BellSouth. Witness Beveridge proposed that MediaOne should be given access to BellSouth's first NTW pair any time it is available. MediaOne witness Beveridge stated that BellSouth does not offer a NID in its proposal to furnish MediaOne NTW; thus, MediaOne's technician would be required to locate the first jack within the residential unit being served. Because BellSouth requires MediaOne to install a NID, MediaOne would be subjected to additional costs, which could be avoided in many instances if BellSouth would allow MediaOne access to the first pair of NTW. MediaOne witness Beveridge testified that the requirement to install a NID is unnecessary, placing MediaOne at a competitive disadvantage through increased costs. Witness Beveridge also testified that requiring the installation of a NID would inconvenience the customer.

BellSouth witness Milner stated that MediaOne would not necessarily have to rewire the NID, and alternatives such as a simple splitter jack could be used by MediaOne to gain access to the second pair of NTW that is installed in most existing MDUs. Witness Milner also testified that BellSouth will relinquish the first pair in certain cases, typically when no spare pairs are available other than the first NTW pair. BellSouth witness Milner testified that BellSouth retains the first NTW pair for operational efficiency.

Based on the testimony, we believe that BellSouth's retention policy regarding the first pair of NTW is unreasonable for servicing facilities-based ALECs. Customers would ultimately suffer the burden of inconvenience at the hands of BellSouth's policy. Therefore, we believe that BellSouth should be required to relinquish the first NTW pair and make it available to MediaOne, unless BellSouth is using the first pair of NTW to concurrently service the same MDU. We also believe that most, if not all, of MediaOne's concerns related to the NID will then be resolved.

Therefore, the appropriate manner for MediaOne to have access to network terminating wire (NTW) in multiple dwelling units is BellSouth's proposal. However, we hereby modify it in two respects; (1) MediaOne shall have access to the first pair of NTW, and (2) BellSouth will not permit other ALECs access to the special access terminal installed by BellSouth for MediaOne, without MediaOne's approval.

V. NTW ACCESS CHARGES

MediaOne asserts that if we order BellSouth to move the demarcation point to the minimum point of entry (MPOE), NTW would become inside wire. As such, MediaOne believes it would no longer be obligated to pay BellSouth anything for access to NTW. While MediaOne's petition for arbitration asked the Commission to determine the appropriate demarcation point for BellSouth's network facilities serving MDUs, the parties agreed that, for purposes of this proceeding, the appropriate demarcation point is set forth in Rule 25-4.0345(1)(b), Florida Administrative Code¹.

As for price, MediaOne's apparent position is more accurately represented by MediaOne witness Beveridge's statement that we should require BellSouth to provide network terminating wire as an unbundled network element, priced at TELRIC.

During the hearing, MediaOne witness Beveridge noted that BellSouth proposes a charge of \$171 for first-time site preparation and connection of up to 25 NTW pairs, \$40.47 for every subsequent site visit, and \$0.60 per month for each NTW pair provided. When questioned, witness Beveridge agreed that under MediaOne's proposal, MediaOne would connect at BellSouth's access terminal and use BellSouth's network to connect to the customer's premises. When asked if MediaOne had an objection to the recurring charge of \$0.60 per pair per month, MediaOne witness Beveridge stated it did not. When asked if he was aware of a cost study for NTW filed by BellSouth witness Caldwell on April 1, 1999, MediaOne witness Beveridge also stated that he was not aware.

BellSouth witness Caldwell testified that the purpose of her testimony is to present the cost study results for NTW. In her testimony, witness Caldwell stated:

The cost study is based on the cost study methodology accepted by this Commission in Order No. PSC-98-0604-FOF-TP in Docket Nos. 960757-TP, 960833-TP and 960846-TP dated April 29, 1998. This Order established rates for

¹ Rule 25-4.0345(1)(b), Florida Administrative Code, states in pertinent part, that the demarcation point is "the point of physical interconnection (connecting block, terminal strip, jack, protector, optical network interface, or remote isolation device) between the telephone network and the customer's premisses wiring.

numerous network capabilities, ranging from 2-Wire Analog Loop Distribution to Physical Collocation. On page 12 of the Order, the Commission ordered rates that "cover BellSouth's Total System (Service) Long-run Incremental Costs (TSLRIC) and provide some contribution toward joint and common costs.

Referring to Order No. PSC-98-0604-FOF-TP, issued April 29, 1998, in Docket Nos. 960757-TP, 960833, and 960846, BellSouth witness Caldwell testified that we have already recognized that consideration must be given to an appropriate level of shared and common costs, and that the order identifies the appropriate modeling technique and set of basic inputs that should be used. Witness Caldwell further testified that BellSouth has incorporated the Commission's comments into the NTW cost study that was submitted. In describing these major categories, BellSouth witness Caldwell stated:

First of all, for the cost of capital we used a 9.9%. For taxes we used Florida-specific. For the shared cost, we excluded them from the TELRIC labor rate as had been ordered, and we also reduced the network operating expense by the amount ordered. The common cost equaled [sic] 5.12% and, in fact, what we did was used the shared and common model that the Florida Staff made changes to and submitted back to BellSouth as a result of the docket on unbundled network elements. So it is the exact same model.

The Commission also determined that ordering costs should be established in a separate and future docket. Thus it was recommended that the local carrier service center, or the LCSC, cost should be eliminated from the cost study. This is one area where BellSouth has deviated slightly from the Commission's order and it's based on our interpretation of that order.

During cross-examination, BellSouth witness Caldwell was asked if the Service Inquiry category includes the account team, installation and maintenance, and the LCSC. The witness indicated that it did. Witness Caldwell was also asked if the Service

Inquiry category LCSC was the only function listed. She indicated that it was. Then, witness Caldwell was asked if the service order category was included in the activities for the service visit charge, and if service order includes the work management center and the installation and maintenance. She testified that it does.

When asked why BellSouth's cost study included charges for Service Inquiry and Service Order, an apparent contradiction to the Commission Order on which BellSouth's cost study was based, BellSouth witness Caldwell explained that BellSouth's interpretation "is in terms of firm order." She also explained that for the site survey per MDU/MTU, BellSouth simply surveyed the particular site where the NTW would be ordered. At the time, however, BellSouth did not have a service order. Witness Caldwell further explained that BellSouth's interpretation was that this was a specific type of activity that would be handled by the LCSC but was not the result of a service order. In response to a statement that the Commission Order required the elimination of that category, BellSouth witness Caldwell testified that it was a matter of interpretation, and that it could be done.

BellSouth witness Caldwell provided testimony that the services BellSouth's workers perform under the Service Inquiry and Service Order functions were not related to a firm order. We note, however, that BellSouth witness Caldwell's cost study shows under the Service Inquiry activity that the Account Team takes the CLEC request for site visit, records information on Service Inquiry (SI) form, and passes firm order SI to Installation and Maintenance (I&M), among other tasks. Based on indications in BellSouth's cost study that a firm order is passed from SI to I&M, we conclude that the guidance provided in our Order No. PSC-98-0604-FOF-TP, issued April 29, 1998, is useful in this instance. Therefore, BellSouth shall be allowed to charge MediaOne the prices for access to network terminating wire shown in Appendix A to this Order, Approved Prices for NTW.

Those prices were determined by eliminating the non-recurring direct costs for all functions identified as either Service Inquiry or Service Order in Hearing Exhibit 17. We also applied the Gross Receipts Tax Factor and the Common Cost Factor to the revised direct costs in the same fashion as defined in that exhibit.

VI. CONCLUSION

We have conducted these proceedings pursuant to the directives and criteria of Sections 251 and 252 of the Act. We believe that our decisions are consistent with the terms of Section 251, the provisions of the FCC's implementing Rules that have not been

vacated, and the applicable provisions of Chapter 364, Florida Statutes.

Based on the foregoing, it is therefore

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

ORDERED that for ISP-bound traffic the parties continue to operate under the terms of their current contract until the FCC issues its final ruling on whether ISP-bound traffic should be defined as local or whether reciprocal compensation is due for such traffic. It is further

ORDERED that the price at which CNAM database service is offered may be market-based. It is further

ORDERED that the cost to MediaOne for BellSouth network terminating wire shall be that reflected in the chart attached to this Order and incorporated herein as Appendix A. It is further

ORDERED that the parties shall submit written agreements memorializing and implementing our decisions herein within 30 days of the issuance of this Order. It is further

ORDERED that the agreements shall be submitted for approval in accordance with Section 252(e)(2)(b) of the Telecommunications Act of 1996. It is further

ORDERED that this docket shall remain open pending approval of the agreements submitted in compliance with this Order.

By ORDER of the Florida Public Service Commission this 14th day of October, 1999.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

CLF

ORDER NO. PSC-99-2009-FOF-TP
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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

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

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

APPENDIX A

C o s t Ref. #	Rate Element	Recur.	Nonrecurring	
			First	Add.
A.15	<i>Unbundled Network Terminating Wire</i>			
A.15.1	Unbundled NTW	.6011		
A.15.2	NTW Site Visit - Survey, per MDU/MTU Complex		120.10	
A.15.3	NTW Site Visit - Setup, per terminal		39.43	36.42
A.15.4	NTW Access Terminal Provisioning including first 25 pair panel, per terminal		101.09	100.25
A.15.5	NTW Existing Access Terminal Provisioning, second 25 pair panel, per terminal		29.75	28.90
A.15.6	NTW Pair Provisioning, per pair		4.48	3.64
A.15.7	NTW Service Visit, Per Request, per MDU/MTU Complex		21.18	

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RECORDS AND
REPORTING

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (FORDHAM) *CLF*

RE: DOCKET NO. 990149-TP - PETITION BY MEDIAONE FLORIDA TELECOMMUNICATIONS, INC. FOR ARBITRATION OF AN INTERCONNECTION AGREEMENT WITH BELLSOUTH TELECOMMUNICATIONS, INC. PURSUANT TO SECTION 252(B) OF THE TELECOMMUNICATIONS ACT OF 1996.

FOF-2009

Attached is a FINAL ORDER ON ARBITRATION, to be issued in the above-referenced docket. (Number of pages in order - 24)

CLF/anc
Attachment
cc: Division of Communications
I: 990149fo.clf

*5 mailed
RAR*

*pg 14
22, 19*