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**VIA HAND DELIVERY**

Ms. Blanco Bayo, Director  
Division of Records and Reporting  
Room 110, Easley Building  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

*Re: Docket No. 990149-TP*

Dear Ms. Bayo:

Enclosed for filing on behalf of MediaOne Florida Telecommunications' in the above-referenced docket are the original and 15 copies of MediaOne's post-hearing brief. Our Microsoft Word disk containing the document is also enclosed.

Copies have been furnished to parties of record as indicated on the attached service list.

Respectfully submitted,

  
William B. Graham

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cc: Lee Fordham, Esq.  
J. Phillip Carver, Esq.

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RECORDS AND REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of )  
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

BRIEF OF MEDIAONE FLORIDA TELECOMMUNICATIONS

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## INTRODUCTION

MediaOne Florida Telecommunications, Inc. (MediaOne) is a facilities-based alternative local exchange carrier (ALEC) providing service in Jacksonville and Pompano Beach.

MediaOne serves primarily residential customers. Over the past several months, MediaOne has been in negotiations with BellSouth Telecommunications, Inc. (BellSouth) to enter into a new interconnection agreement, pursuant to the section 252 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996.

In this interconnection-arbitration proceeding, MediaOne and BellSouth present a relative handful of issues for resolution by the Florida Public Service Commission (the Commission). By dint of much hard work and compromise, the parties have resolved nearly all the issues between them. As one might expect, the three remaining issues are matters of great significance.

MediaOne must have access to BellSouth's network terminating wire (NTW) if it is to provide service to the residents of multiple dwelling units. BellSouth has agreed to provide that access, but only on terms MediaOne finds unacceptable. MediaOne has proposed its own terms, which would give all local providers equal and nondiscriminatory access to NTW, and we ask the Commission to incorporate them into the agreement.

Similarly, MediaOne must have access to BellSouth's calling name (CNAM) database in order to attach the name of the calling party to the information it provides to Caller ID customers. BellSouth has again agreed to provide that access, but at an unreasonably high price. MediaOne asks the Commission to require BellSouth to submit a cost study for the Commission's use in establishing a reasonable price for CNAM access; we propose an interim price until the Commission can complete that task.

Finally, the parties have not come to agreement on the matter of reciprocal compensation for ISP-bound traffic. MediaOne believes the Commission should treat such traffic as local for purposes of reciprocal compensation. 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.

### STATEMENT OF BASIC POSITION

The Communications Act of 1934 (the Act) imposes a number of obligations on incumbent local exchange carriers, such as BellSouth. Those obligations include a duty to provide unbundled access to network elements on reasonable and nondiscriminatory terms and conditions; network elements subject to this requirement are sometimes referred to as unbundled network elements, or UNEs. Two of the unresolved issues in this proceeding involve the interpretation of the provisions of the Act and the FCC's rules relating to UNEs.

Network terminating wire (NTW) connects a LEC's network distribution facilities to the inside wiring within the individual units of a multiple dwelling unit (MDU). BellSouth purports to provide network terminating wire as a UNE (unbundled NTW, or UNTW), but its proposed terms for the provision of UNTW do not meet the requirements of the Act or the FCC's rules for the provision of a UNE. BellSouth's proposal discriminates against MediaOne and other local competitors who might wish to use UNTW to provide service. BellSouth forces its competitors unnecessarily to undertake work and incur costs that BellSouth avoids. Bad as BellSouth's proposal is, BellSouth has suggested it might withdraw the offering of UNTW altogether.

For this reason, the Commission should determine that it will treat UNTW as a UNE under the Act. The Commission should then order the parties to incorporate MediaOne's UNTW

proposal into the interconnection agreement. That proposal would give all local providers, including BellSouth, the same access to NTW, eliminating all the discriminatory aspects of BellSouth's proposal, while posing no threat to the security and integrity of BellSouth's network or its services.

The second UNE issue relates to the Calling Name (CNAM) database, which associates a customer name with the number of a calling party, enabling the display of both name and number to Caller ID customers. Access to the CNAM database is essential to the delivery of the calling party's name.

Though BellSouth provides CNAM access pursuant to contract, it takes the position that CNAM access should not be treated as a UNE. BellSouth thus proposes to charge MediaOne a price for CNAM access that is many times its costs.

MediaOne believes CNAM access meets the definition of a network element and that it also meets the criteria for treatment as a UNE. MediaOne thus believes the Commission should determine that CNAM access is a UNE. If the Commission makes that determination, BellSouth's proposed CNAM price cannot stand, in that it does not meet the Act's requirements for pricing UNEs. Until BellSouth can present a cost study to enable the Commission to determine an appropriate rate, MediaOne proposes that the Commission permit BellSouth to charge no more than the maximum rate it charges for queries to its local number portability database, which is similar to the CNAM database and has similar costs.

The final issue raised in this proceeding involves the appropriate compensation for the termination of calls to Internet service providers. Because such calls look to MediaOne just like local exchange calls, utilize the same facilities as local exchange calls, and impose the same costs as local exchange calls, MediaOne believes the Commission should treat them the same as

local exchange calls for purposes of reciprocal compensation. As the Commission is aware, however, the FCC has underway a proceeding to consider the appropriate means of determining the compensation for this traffic. MediaOne would have no objection to the Commission's waiting to address this issue when the FCC issues a final order in that proceeding.

### STATEMENT OF ISSUES AND POSITIONS

Issue 1: Should the audit provisions in the parties' interconnection agreement include auditing of services other than billing?

**\*\*Position:** This issue has been resolved by the parties.\*\*

Issue 2: Should calls originated or terminated to Internet Service Providers (ISPs) be defined as local traffic for purposes of the MediaOne/BellSouth interconnection agreement?

**\*\*Position:** Dial-up calls to ISPs should be treated as local traffic for purposes of reciprocal compensation. A call to an ISP uses local network facilities just as any local call and it imposes the same costs on the terminating carrier.\*\*

Issue 3: Should calls that originate from or terminate to ISPs be included in the reciprocal compensation arrangement of the interconnection agreement?

**\*\*Position:** Dial-up calls to ISPs should be included in the reciprocal compensation arrangement. A call to an ISP uses local network facilities just as any local call and it imposes the same costs on the terminating carrier.\*\*

Issue 4: What is the appropriate price for calling name (CNAM) database queries?

**\*\*Position:** The Commission should determine that CNAM access is a UNE and thus subject to the Act's pricing requirements for UNEs. Pending submission of a cost study to determine an appropriate rate, the Commission should permit BellSouth to charge no more than its highest rate for access to its LNP database.\*\*

Issue 5: What is the appropriate manner for MediaOne to have access to network terminating wire (NTW) in multiple dwelling units (MDUs)?

**\*\*Position:** The Commission should determine that NTW is a UNE, which BellSouth must provide on a nondiscriminatory basis. The Commission should order BellSouth to terminate its NTW on a cross-connect facility; all LECs, including BellSouth, would then access NTW by connecting their network facilities to that facility by means of jumper wires.\*\*

Issue 6: What is the appropriate demarcation point for BellSouth's network facilities serving multiple dwelling units?

**\*\*Position:** MediaOne takes no position on this issue.\*\*

Issue 7: What, if anything, should BellSouth be permitted to charge MediaOne for access to NTW?

**\*\*Position**: The Commission should permit BellSouth to charge only cost-based rates consistent with the UNE pricing requirements under the Act.\*\*

Issue 8: How many call paths should BellSouth be required to provide to MediaOne, at no cost to MediaOne, for customers who are porting telephone numbers through interim number portability?

**\*\*Position**: This issue has been resolved by the parties.\*\*

Issue 9: What rate, if any, should BellSouth be allowed to charge for additional call paths provided to MediaOne for customers who are porting telephone numbers through interim number portability?

**\*\*Position**: This issue has been resolved by the parties.\*\*

Issue 10: In implementing Local Number Portability (“LNP”) should BellSouth and/or MediaOne be required to notify the Number Portability Administration Center (NPAC”) of the date upon which BellSouth will cut-over MediaOne customer numbers at the MediaOne requested time concurrent with BellSouth’s return of a Firm Order Commitment (“FOC”) to MediaOne?

**\*\*Position**: This issue has been resolved by the parties.\*\*

Issue 11: Should BellSouth be required to provide a point of contact to intervene in the execution of LNP orders when changes or supplements are necessary for customer-related reasons, and, if so, what charge, if any, should apply?

**\*\*MediaOne Position**: This issue has been resolved by the parties.\*\*

Issue 12: What, if any, performance measurements are appropriate with respect to the provision of stand-alone LNP for MediaOne?

**\*\*MediaOne Position**: This issue has been resolved by the parties.\*\*

Issue 13: Should the Florida Public Service Commission arbitrate performance incentive payments and/or liquidated damages for purposes of the MediaOne/BellSouth Interconnection Agreement? If so, what performance incentive payments and/or liquidated damage amounts are appropriate, and in what circumstances?

**\*\*MediaOne Position**: The Commission determined not to hear this issue.\*\*

## ANALYSIS OF UNRESOLVED ISSUES

Issue 5: What is the appropriate manner for MediaOne to have access to network terminating wire (NTW) in multiple dwelling units (MDUs)?

**\*\*Position**: The Commission should determine that NTW is a UNE, which BellSouth must provide on a nondiscriminatory basis. The Commission should order BellSouth to

terminate its NTW on a cross-connect facility; all LECs, including BellSouth, would then access NTW by connecting their network facilities to that facility by means of jumper wires.\*\*

Issue 7: What, if anything, should BellSouth be permitted to charge MediaOne for access to NTW?

**\*\*Position**: The Commission should permit BellSouth to charge only cost-based rates consistent with the UNE pricing requirements under the Act.\*\*

**THE COMMISSION SHOULD ADOPT MEDIA ONE'S PROPOSAL FOR THE PROVISION OF UNBUNDLED NETWORK TERMINATING WIRE.**

Network terminating wire (NTW) is the wiring that connects the individual units within a multiple dwelling unit (MDU) to the network distribution facilities of BellSouth. Those facilities connect to NTW at a wiring closet within the building or at a garden terminal located outside the building. BellSouth considers NTW to be part of its network loop facilities.

BellSouth typically provides multiple NTW pairs to each unit in an MDU. This enables the provision of multiple lines to each customer, and it provides backup capacity in the event an NTW pair becomes unusable. In most cases, this practice makes NTW pairs available for use by BellSouth's competitors, either when they displace BellSouth as an MDU resident's provider, or when they sell an additional line to such a resident.

As noted, NTW pairs connect to the inside wiring within each MDU unit. Inside wiring also will have multiple pairs, again to enable the customer to have multiple lines and to provide backup capability. BellSouth defines the "first" jack in the unit – the point at which NTW enters the unit – as the interface between NTW and the inside wire. There, the NTW pair serving the unit connects to line one on the inside wiring. If BellSouth (or another provider) subsequently begins to use a different NTW pair, the wiring at the jack must be rearranged so that the new NTW pair connects to line one of the inside wire.

Though it admits to no obligation to do so, BellSouth will provide NTW pairs on an unbundled (standalone) basis to the alternative local exchange carriers (ALECs) with whom it



competes. BellSouth refers to this offering as unbundled NTW (UNTW). The issue presented here is the terms and conditions by which BellSouth must provide UNTW and whether UNTW should be considered an unbundled network element (UNE) that BellSouth must provide pursuant to the provisions of the Communications Act.

**1. The Commission Should Declare that UNTW is an Unbundled Network Element.**

As amended by the Telecommunications Act of 1996, the Communications Act of 1934 (the Act), requires incumbent local exchange carriers (ILECs), such as BellSouth, to provide “nondiscriminatory access” to “network elements” (Act, §251(c)(3)). The Act defines a “network element” as “a facility or equipment used in the provision of a telecommunications service” (Act, §3(29)).

The Act expressly grants the FCC authority to determine what network elements are to be made available (Act, §251(d)(2)), but it also reserves to the states the right to establish the access obligations of all LECs (Act, §251(d)(3)). In its Local Competition Order,<sup>1</sup> the FCC delegated authority to the states to impose additional unbundling requirements consistent with the Act and the FCC's rules (Local Competition Order, para. 244).

In determining what network elements are to be unbundled network elements (UNEs), which the ILECs must provide to their competitors, the Act requires the FCC and state commissions to consider –

Whether . . . the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer. (Act, §251(d)(2)(B))<sup>2</sup>

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<sup>1</sup> Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 11 FCC Rcd. 15499 (1996) (Local Competition Order).

<sup>2</sup> Section 251(d)(2)(A) of the Act imposes a higher, “necessary” standard for access to network elements “as are proprietary in nature.” BellSouth has not claimed that NTW is “proprietary.”

Though the United States Supreme Court set aside the FCC's rules implementing this provision,<sup>3</sup> and the FCC has not yet promulgated a new rule,<sup>4</sup> UNTW meets any reasonable interpretation of the statutory standard.

No available technology gives MediaOne the practical ability to utilize its cable facilities within an MDU to provide telephone service (Lane, T. 24:23-25). If MediaOne were denied access to BellSouth's UNTW, it could then provide telephone service to MDU residents only by overbuilding BellSouth's NTW facilities, or by purchasing an entire unbundled local loop from BellSouth. Overbuilding would require the permission of the building owner – which would be difficult to obtain in many, perhaps most, cases – and would impose significant costs on MediaOne (Beveridge, T. 131:25-132:18). Purchasing an unbundled loop from BellSouth would require MediaOne to bypass its own local system and would render its service uneconomic (Beveridge, T. 92:6-8). Without question, a lack of access to UNTW would impair MediaOne's ability to provide telephone service to MDUs, which constitute approximately 40% of the homes passed by MediaOne's network in Florida (Lane, T. 24:20-21).

BellSouth has made clear its belief that the provision of UNTW is nothing more than an “accommodation” to MediaOne, one that it can take away at any time (Varner, T. 255:6-7). Indeed, BellSouth claims the right to “reconsider” whether it will offer UNTW at all in light of the FCC's resolution of the UNE Remand proceeding (Varner, T. 255:7-9). Given the competitive advantage BellSouth would obtain by denying its competitors access to UNTW, the outcome of that “reconsideration” is a foregone conclusion, unless the Commission declares UNTW a UNE.

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<sup>3</sup> AT&T Corp. v. Iowa Utilities Board, \_\_ U.S. \_\_, 119 S.Ct. 721, 734-36 (1999).

<sup>4</sup> The FCC issued a Notice of Proposed Rulemaking to consider, *inter alia*, the appropriate interpretation of the “necessary” and “impair” standards (Implementation of the Local Competition Provisions in the

Moreover, by treating UNTW as a UNE, the Commission can ensure that BellSouth's provision of UNTW is non-discriminatory. As discussed below, BellSouth's proposal for the provision of UNTW does not begin to meet the statutory requirements for a UNE. But if BellSouth can provide UNTW as a mere "accommodation" to its competitors, it can (at least arguably) do so on any terms it chooses. Because the terms BellSouth has proposed are unworkable and uneconomic, that is tantamount to denying access to UNTW altogether.

Thus the Commission can assure the non-discriminatory availability of UNTW to BellSouth's competitors only by declaring it a UNE subject to section 251(c)(3) of the Act. If the Commission does not take that essential step, MDU residents in Florida will be denied facilities-based competitive alternatives to BellSouth's service.

**2. The Commission Should Adopt MediaOne's Proposal for the Provision of UNTW.**

MediaOne presented a simple, reasonable proposal, one that would enable MediaOne (and other ALECs) to access UNTW on an efficient, economically-viable basis, without imperiling BellSouth's facilities or its service to its customers. Under that proposal, MediaOne would connect its network distribution facilities directly to a cross-connect block (the "Access CSX") on which BellSouth has terminated its NTW pairs; in many cases, BellSouth will already have that facility in place (Beveridge, T. 83:8-12). If BellSouth does not have such a facility within an MDU building (in a garden terminal installation, for example), MediaOne would pay BellSouth to install it.

All LECs (including BellSouth) serving that building would terminate their network distribution facilities on a cross-connect facility within the building (Ex. 12, Att. 4). To provide service to a unit within the building, a LEC would simply run a jumper wire from its cross-

connect facility to the appropriate termination on the Access CSX, thereby connecting its network distribution to the appropriate NTW pair. If that LEC is displacing another LEC for the customer's service, the new LEC would simply remove the existing jumper wires and connect its own (Beveridge, T. 83:19-84:5). As MediaOne witness Beveridge testified, and demonstrated at hearing, the process of removing one set of jumper wires and installing a second set is a simple matter for any competent telephone technician and can be accomplished in moments (Beveridge, T. 84:6-8; 57:23-58:22).

MediaOne's proposal would enable all LECs to utilize the same NTW pairs. That is, if MediaOne displaces BellSouth as the local provider, MediaOne would simply detach the jumper wires connecting BellSouth's distribution facilities to the NTW pair serving that customer and then attach new jumper wires connecting its own network distribution facilities to that same NTW pair. Thus MediaOne's proposal requires no work inside the individual units when one provider displaces another.<sup>5</sup> MediaOne's proposal also enables an ALEC to displace BellSouth as the service provider to a unit without having a BellSouth technician present. Indeed, under MediaOne's proposal, all LECs – including BellSouth – would undertake the identical operations to provide service to an MDU resident.

By contrast, BellSouth's proposal for the provision of UNTW to MediaOne would require the installation, at MediaOne's expense, of two superfluous items of equipment – an unnecessary “Access Terminal” and an equally unnecessary network interface device – and it would require MediaOne to pay to have a BellSouth technician perform unnecessary work.

First, BellSouth would require the installation of an “Access Terminal” (Ex. WKM-1) in addition to the terminal on which it terminates its NTW (the NTW CSX). MediaOne would

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(April 16, 1999) (UNE Remand)).

<sup>5</sup> Access to the unit would typically be required when a customer adds a line to existing service.

extend its network facilities to that Access Terminal. When MediaOne requested a UNTW pair, BellSouth would extend that pair to the Access Terminal by installing jumper wires or a tie cable between the Access Terminal and the NTW CSX (Beveridge, T. 73:16-74:3). Because BellSouth would allow only its technicians to make this connection, MediaOne would be required to schedule – and pay for – a BellSouth technician (Beveridge, T. 75:4-7). In provisioning its own service, BellSouth would seldom, if ever, need the presence of an ALEC technician (Beveridge, T. 75:7-9; Milner, T. 231:9-232:9). Indeed, because BellSouth would retain control of the “first” NTW pair<sup>6</sup> under most circumstances, it would have the ability to provision service without dispatching even its own technician in the majority of cases (Milner, T. 225:9-17).

BellSouth claims that MediaOne can obviate the need to dispatch a BellSouth technician by having BellSouth “pre-wire” UNTW pairs to each unit within an MDU (Milner, T. 154:6-8). To do that, MediaOne would have to pay substantial nonrecurring charges, along with a monthly recurring charge for each pre-wired pair, whether it has a customer for that pair, or not. BellSouth's pre-wiring option is thus simply a case of “pay me now or pay me later.” Either way, BellSouth's proposal imposes unnecessary costs on MediaOne.<sup>7</sup>

BellSouth's retention of the first NTW pair would create additional difficulties for MediaOne. The first NTW pair connects to line one of the customer's inside wire (Beveridge, T. 95:17-19). When MediaOne wins a BellSouth customer, BellSouth's proposal would allow

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<sup>6</sup> The “first” pair is simply the NTW pair that is wired to the first line of the inside wire within a unit (Beveridge, T. 95:17-23).

<sup>7</sup> BellSouth witness Milner testified that MediaOne seeks the lower prices associated with pre-wiring NTW pairs, but wants to pay only for activated pairs, which would “inappropriately shift the risk of using unbundled elements from MediaOne to BellSouth” (Milner, T. 165:10-16). That misstates MediaOne's proposal. MediaOne is not asking BellSouth to pre-wire NTW pairs, a step that would be relevant only under BellSouth's proposal. MediaOne seeks the ability to connect to NTW pairs as it needs them, but without having BellSouth perform the simple task of rearranging the jumper wires. Mr. Milner did not explain how this might “shift the risk of using unbundled elements,” and the answer is not at all self-evident.

MediaOne to use a different pair, one that is (obviously) *not* connected to line one. Single-line telephone sets are designed to connect to line one. Thus, in order for MediaOne's service to function properly, its UNTW pair must be connected to the inside wire so as to appear on line one. MediaOne could accomplish this in either of two ways, both of which would require access to the unit and thus would inconvenience MediaOne's customer. First, it can re-wire the first jack in the unit (the point at which the NTW enters the unit). Accomplishing this, however, requires the MediaOne technician to locate the first jack, a tedious, often time-consuming process (Beveridge, T. 77:1-16).<sup>8</sup> Second, if MediaOne's UNTW pair connects to line two of the inside wire, MediaOne can provide its customer with "splitter" jacks; these are devices that plug into a standard wall jack to present line two (on the standard jack) as line one (on the splitter jack) (Milner, T. 205:6-25).

Though the parties disagreed regarding the efficacy of these procedures, the undisputed fact is that they become totally unnecessary under MediaOne's proposal. Under that proposal, when MediaOne wins a BellSouth customer, it would have access to the first NTW pair. Because that pair is already connected to line one of the inside wire, there would be no need to rearrange the inside wiring within the unit or provide splitter jacks to the customer.

The Act requires ILECs to provide "nondiscriminatory" access to UNEs on "just, reasonable and nondiscriminatory" terms and conditions (Act, §251(c)(3)). The FCC's implementing regulations require an ILEC to provide access to a UNE "at least equal in quality to that which the incumbent LEC provides to itself" to the extent doing so is technically feasible (47 CFR §51.311(b)). BellSouth's proposed provision of UNTW plainly does not meet this

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<sup>8</sup> BellSouth witness Milner claimed that finding the first jack is not necessarily difficult, in part because NTW and inside wire are sometimes visibly distinguishable, though he could not say how frequently this is the case (Milner, T. 214:10-215:6).

requirement. That proposal would force MediaOne to pay for the installation of an unnecessary Access Terminal,<sup>9</sup> force it to pay BellSouth to make simple wiring rearrangements that MediaOne is fully capable of performing itself, and require MediaOne either to rearrange the inside wiring within the unit, or to supply splitter jacks to its customers. BellSouth imposes none of these requirements on itself. The access to UNTW that BellSouth would provide to MediaOne is nowhere near equal to the access BellSouth gives itself, and it does not meet the requirements of the Act or the FCC's rules.

BellSouth raises several objections to MediaOne's proposal in an attempt to demonstrate the technical infeasibility of that proposal (Milner, T. 150:13-17) and to justify the discrimination inherent in BellSouth's proposal. None of these arguments will withstand analysis.

First, BellSouth claims that MediaOne's technicians could "intentionally or unintentionally" disrupt BellSouth's service to its retail customers (Milner, T. 152: 9-11). Mr. Beveridge demonstrated the ease with which jumper wires can be rearranged as MediaOne proposes, and BellSouth obviously believes its own technicians capable of accomplishing this task. The record contains no evidence to support any contention that MediaOne's technicians are less capable than BellSouth's. Nor has BellSouth claimed that MediaOne's technicians are more likely to intentionally disrupt another LEC's service than are BellSouth's technicians. In any case, even under BellSouth's proposal, ALEC technicians would have access at least to the wiring closets in which BellSouth's network distribution facilities terminate, yet BellSouth does not explain why concerns of intentional disruption of its service do not arise under its proposal.

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<sup>9</sup> BellSouth's interconnection agreement with Comcast does not require an Access Terminal in Garden Terminal applications (Ex. 13, section 5(a)(2)). BellSouth cannot reasonably argue, at least as to those applications, that an Access Terminal (which provides the same functionality) is necessary.

In the Local Competition Order, the FCC stated that “legitimate” threats to network reliability and security should be a factor in considering the technical feasibility of access to UNEs (Local Competition Order, para. 203). The FCC further stated, however, that it is up to the ILEC to prove, by clear and convincing evidence, that these adverse effects *would* result (Id.). BellSouth's unsupported claims that MediaOne's technicians *could* disrupt BellSouth's service are not, as a matter of law, sufficient to justify a finding of technical infeasibility, and BellSouth has presented no evidence to support such a claim.

Similarly, BellSouth claims that MediaOne's proposal “strikes at the heart” of a supposed FCC requirement that BellSouth retain the ability to manage and control its network “in the provision of services to its end user customers” (Milner, T. 174:17-23). To begin, BellSouth has lifted a passage from the Local Competition Order out of context to conjure a nonexistent FCC “rule.” This becomes clear when one considers the sentence relied on by BellSouth in context with the immediately preceding and following sentences:

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. 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 impacts would result from the requested interconnection or access. (Local Competition Order, para. 203)

In context, BellSouth's “rule” becomes nothing more than a portion of the FCC's discussion of the effect of network reliability considerations on the issue of technical feasibility – an issue already disposed of above. Moreover, as Mr. Milner put it, BellSouth needs control of NTW for “the provision of services to its end user customers.” MediaOne’s proposal would not disturb that control while BellSouth is using an NTW pair to serve a BellSouth customer, and



once BellSouth is no longer using that pair to serve a customer, any “loss of control” over the NTW becomes irrelevant.<sup>10</sup>

BellSouth further claims that, if MediaOne's proposal were adopted, ALEC technicians would be unable, in many cases, to determine what NTW pair to disconnect and reconnect, which again *could* lead to service disruptions (Milner, T. 179:23-180:2). Yet, BellSouth witness Milner testified that BellSouth technicians utilize “notes” on the terminal blocks themselves to make these same determinations (Milner, T. 216:13-17); he did not explain why MediaOne's technicians could not utilize those same notes. If the notes are unavailable, BellSouth's technician will go to the unit and place a tone device on the NTW pair – just as a MediaOne technician would (Milner, T. 217:7-13). Whatever resources are available to BellSouth's technicians to locate the correct NTW pair are also available to MediaOne's technicians. Thus the activities of MediaOne's technicians in locating the appropriate NTW pair are no more likely to disrupt service than are BellSouth's.

In a similar vein, BellSouth claims that allowing MediaOne to perform the wiring rearrangements would give BellSouth no means of knowing how many UNTW pairs to charge for (Milner, T. 174:25-175:8). BellSouth has entered into an interconnection agreement with the Comcast telephony subsidiaries, in which the parties agree to develop a reporting and auditing arrangement to address this concern (Ex. 13, section 5(b)(2)). If BellSouth can establish such a process with Comcast, it can surely do so with MediaOne.

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<sup>10</sup> At hearing, BellSouth witness Milner, in summarizing his testimony, essentially repeated this allegation, adding the notion that MediaOne's proposal would destroy BellSouth's ability to manage and control its network “in providing portions of its network to other ALECs” (Milner, T. 188:7-13). The only portion of BellSouth's “network” affected by MediaOne's proposal is, of course, NTW. More important, the only controls BellSouth needs here are the ability to know what NTW pairs are in use by an ALEC and the ability to recapture unused NTW pairs when they are needed by another ALEC, or by BellSouth itself. Both issues can be addressed by appropriate contract language.

In cross-examining Mr. Beveridge, counsel for BellSouth attempted to raise the specter that MediaOne's proposal could give rise to hundreds of ALECs requesting the right to disconnect and reconnect NTW in the same manner, resulting in chaos in the wiring closet (Beveridge, T. 128:1-129:8). But only facilities-based ALECs have any reason to purchase UNTW; resellers and ALECs who purchase BellSouth's unbundled loops automatically receive an NTW pair and do not need UNTW (Milner, T. 227:15-22). Mr. Milner was aware of "eight or ten" facilities-based ALECs throughout all of Florida (Milner, T. 228:3-7).

Finally, Mr. Milner's testimony contains several vague references to BellSouth's carrier-of-last-resort (COLR) obligations (Milner, T. 165:18-22; 165:25-166:1); he mentioned only one semi-specific tie between COLR and NTW, the notion that, by retaining control of the first NTW pair, BellSouth could more easily fulfill its COLR obligations (Milner, T. 175:19-176:6). He admitted, however, that those obligations do not require BellSouth to retain control of the first NTW pair, to have a hard-wired loop available to provide service, or to have the capability of provisioning service without dispatching a technician (Milner, T. 218:5-219:15). Indeed, he admitted that retention of the first pair was nothing more than a matter of "operational efficiency" (Milner, T. 219:25-220:1).<sup>11</sup>

Operational efficiency is certainly a laudable objective. But nothing in the Act entitles BellSouth to obtain those efficiencies by imposing unnecessary *inefficiencies* on MediaOne, and BellSouth's COLR obligations – which all ILECs have – do not relieve it of its responsibility to provide UNEs on nondiscriminatory terms and conditions. COLR is a red herring, and it plays no legitimate role in the resolution of this issue.

The FCC's rules state that –

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<sup>11</sup> In response to a staff interrogatory, BellSouth stated that COLR obligations were not the basis of its objection to relinquishing the first pair (Ex. 2, FPSC Staff Interrogatory 41(f)).

Previous successful access to an unbundled element at a particular point in a network, using particular facilities, is substantial evidence that access is technically feasible at this point, or at substantially similar points, in networks employing substantially similar facilities. (47 CFR §51.311(d)).

Mr. Beveridge testified that U S WEST permits its competitors to interconnect with facilities that are “substantially similar” to NTW in the manner proposed by MediaOne (Beveridge, T. 89:22-90:20). That provides substantial evidence that access to UNTW in that fashion is technically feasible. Given the absence of any evidence to support BellSouth's claim of technical infeasibility, this fact alone compels a determination that MediaOne's proposal is technically feasible.

The second objectionable aspect to BellSouth's proposal is the requirement that MediaOne install a network interface device (NID) in units not already equipped with them, whenever MediaOne wins over a BellSouth customer, even though NIDs provide no benefit to MediaOne (Beveridge, T. 80:12-81:2). BellSouth proposes that MediaOne install a Siecor INI 200 device at the first jack location (Milner, T. 154:22-155:6). This device would enable the customer to connect a telephone set to either of two NTW pairs, but only at the location of the first jack; that is, the Siecor device has a jack on the front (which connects to the first NTW pair) and a second jack on the side (which connects to another pair). As noted above, however, only the first NTW pair connects to line one of the inside wiring. If the customer wished to obtain service from that other pair at a different jack within the unit, MediaOne would need to rewire that jack or (more likely) provide a splitter jack for it.

These steps provide no benefit to MediaOne. Given the need to locate the first jack anyway, MediaOne could simply rewire that jack so that line one of the inside wire connects to its UNTW pair, thereby enabling MediaOne to serve its customer throughout the unit without having to provide splitter jacks or the Siecor device. Having the Siecor device in the unit would,

however, benefit BellSouth, if and when it regains the customer. In that event, BellSouth would direct the customer to plug into the appropriate jack on the Siecor device and discard the splitter jacks provided by MediaOne. Given this, if BellSouth believes the Siecor device would provide customer benefits, it should feel free to install them at its expense. Under no circumstances, however, should the Commission permit BellSouth to force MediaOne to install these devices, which do nothing for MediaOne, other than to drive up its costs.

By imposing a NID requirement on MediaOne's access to UNTW, BellSouth again is not providing access that is equal to the access it provides itself, as required by the Act and the FCC's rules.

For the reasons stated, the Commission should approve MediaOne's proposal for access to UNTW and reject BellSouth's proposal.

Issue 4: What is the appropriate price for calling name (CNAM) database queries?  
**\*\*Position**: The Commission should determine that CNAM access is a UNE and thus subject to the Act's pricing requirements for UNEs. Pending submission of a cost study to determine an appropriate rate, the Commission should permit BellSouth to charge no more than its highest rate for access to its LNP database.\*\*

**THE COMMISSION SHOULD DECLARE THE CNAM DATABASE A UNE AND PRICE ACCESS TO IT ACCORDINGLY.**

The Calling Name (CNAM) database provides the customer name to associate with the telephone number of a calling party, so that a customer with Caller ID can receive the name of the calling party, as well as their telephone number (Varner, T. 252:7-20). While MediaOne can gain access to BellSouth's CNAM database through a variety of providers, BellSouth has the only database containing BellSouth data (Varner, T. 313:9-18), and MediaOne can obtain that data only by accessing BellSouth's database (Varner, T. 316:5-9).

BellSouth currently provides MediaOne access to its CNAM database pursuant to an agreement executed by the parties in March, 1997 (Ex. 15). Exhibit A to the CNAM agreement provides that BellSouth will charge MediaOne \$50.00 per 1,000 MediaOne access lines per month for CNAM access, which equates to approximately five cents per line. It further provides, however, that “[t]he recurring flat rate will convert to a per query usage rate once query usage measurement capability becomes available.”

In the current negotiations, BellSouth has proposed a rate of one cent per CNAM query to replace the current rate (Varner, T. 254:9). That rate would increase BellSouth's CNAM charges to MediaOne approximately 40 times (Maher, T. 353:11-13). Though MediaOne has no objection to paying a per-query charge for CNAM access (Maher, T. 352:12-14), it does object to the rate proposed by BellSouth (Maher, T. 352:15-20). That rate is not based on cost, but is a market price that attempts to simulate a make-buy decision on the part of the purchaser (Varner, T. 300:3-12).

BellSouth takes the position that it can price CNAM access above cost because CNAM is not a UNE and not subject to the provisions of section 251 or 252 of the Act (Varner, T. 251:1-9). BellSouth further claims that CNAM access cannot be a UNE because it “is not a necessary component for billing and collection, transmission, or routing of an end user’s call” (Varner, T. 253:23-254:4).

The FCC has never directly addressed whether CNAM access is subject to section 251(c)(3), and MediaOne is not aware that any state commission has considered the issue. Notwithstanding BellSouth’s claims, CNAM access meets the statutory definition of a network element, and it meets the criteria for a UNE. The Commission should determine that CNAM access is a UNE subject to section 251(c)(3).

The Act's definition of a "network element" "includes . . . databases . . . used in the transmission, routing, or other provision of a telecommunications service" (Act, §3(29)). Note that this provision does *not* allude to the "transmission, routing, or other provision of a *telephone call*," which is how BellSouth would have the Commission read it. If a database is used in the provision of any telecommunications service, it meets the definition, even if that telecommunications service is something other than a simple telephone call.

The FCC has squarely held that the delivery of a calling name to a Caller ID customer is an "adjunct-to-basic" service "because calling name delivery merely provides normal telephone company record information to help the called party customer identify the calling party before answering the call."<sup>12</sup> The FCC has further determined that such services "are treated as telecommunications services under the 1996 Act."<sup>13</sup> The 1996 Act, of course, added the provisions relating to network elements to the Communications Act.

Calling name delivery is thus itself a telecommunications service. Because the CNAM database is used in the provision of that service, the CNAM database meets the definition of a network element.

In determining whether to treat CNAM access as a UNE, the Commission must consider the requirements of section 251(d)(2). As noted, that provision establishes two standards, one for "proprietary" elements (the "necessary" standard), and the other for all other elements (the "impair" standard). BellSouth has not claimed that the CNAM database is proprietary, so the "impair" standard is the appropriate test for this purpose.

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<sup>12</sup> Rules and Policies Regarding Calling Number Identification Service – Caller ID, 10 FCC Rcd. 11700, 11747 (1995).

<sup>13</sup> Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, 11 FCC Rcd. 21905, 21958 (1996).

But no matter which standard the Commission applies, access to the CNAM database meets that standard. This is true for the simple reason that BellSouth has the only CNAM database containing information regarding its customers. To be sure, MediaOne may be able to access that database via any of several providers, but the database itself is available only from BellSouth. Access to BellSouth's CNAM database is thus necessary to MediaOne's provision of calling name delivery, and BellSouth's failure to provide access to its CNAM database would obviously impair MediaOne's ability to provide that service.

If the Commission determines, as MediaOne believes it should, that CNAM access is a UNE subject to section 251(c)(3) of the Act, BellSouth's pricing of CNAM access cannot stand. BellSouth freely admits that it has not based its proposed price for CNAM access on the cost of providing that access, as required by section 252(d)(1) of the Act. The Commission should, therefore, reject that price.

Because BellSouth has provided no information regarding the cost of providing CNAM access, the Commission cannot determine the appropriate rate. The Commission thus should order BellSouth promptly to prepare and submit an appropriate cost study; once it has that study, the Commission should set a rate for CNAM access meeting the requirements of the Act.

Pending that determination, the Commission must set an interim rate. Though we do not know BellSouth's costs of providing CNAM access, we do know what it charges for access to similar databases. Specifically, the maximum rate BellSouth charges for access to its local number portability (LNP) database is \$.0013 per query; that database is similar to the CNAM database and has similar costs (Maher, T. 357:23-358:3). That rate could serve as an appropriate

interim rate until BellSouth submits cost information (Maher, T. 358:8-10).<sup>14</sup> That would result in charges of approximately 30 cents per month, per line (Maher, T. 358:10-11), still six times what BellSouth collects today.

For the reasons stated, the Commission should determine that access to BellSouth's CNAM database is a UNE subject to section 251(c)(3), order BellSouth to prepare and submit an appropriate cost study for that access within specific time limits, and then determine an appropriate rate for that access in accordance with the Act's pricing principles. In the interim, the Commission should allow BellSouth to charge a rate not greater than \$.0013 per CNAM query.

Issue 2: Should calls originated or terminated to Internet Service Providers (ISPs) be defined as local traffic for purposes of the MediaOne/BellSouth interconnection agreement?

**\*\*Position:** Dial-up calls to ISPs should be treated as local traffic for purposes of reciprocal compensation. A call to an ISP uses local network facilities just as any local call and it imposes the same costs on the terminating carrier.\*\*

Issue 3: Should calls that originate from or terminate to ISPs be included in the reciprocal compensation arrangement of the interconnection agreement?

**\*\*Position:** Dial-up calls to ISPs should be included in the reciprocal compensation arrangement. A call to an ISP uses local network facilities just as any local call and it imposes the same costs on the terminating carrier.\*\*

**THE COMMISSION SHOULD TREAT CALLS TO INTERNET SERVICE PROVIDERS AS LOCAL CALLS FOR PURPOSES OF RECIPROCAL COMPENSATION.**

The Act requires all LECs to establish reciprocal compensation arrangements "for the transport and termination of telecommunications" (Act, §251(b)(5)). The FCC has determined that this provision applies only to local telecommunications services, in part because its

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<sup>14</sup> If anything, the LNP rate is much higher than BellSouth's CNAM costs would justify. In response to a staff interrogatory, BellSouth reported that the per-query cost of CNAM access is 27% of the per-query cost of the LNP database (Ex. 2, FPSC Staff Interrogatory 21(b)). That would suggest a rate of approximately \$.00035 per query.



established access charge mechanisms would remain in place to compensate LECs for originating and terminating long distance calls (Local Competition Order, para. 1034).

As the Commission is all too aware, this determination has given rise to a protracted battle between members of the LEC community regarding the appropriate treatment, for reciprocal compensation purposes, of calls placed to Internet service providers (ISPs). Most ALECs – MediaOne included – have taken the position that such calls are local calls subject to reciprocal compensation. The ILECs, on the other hand, take the position that such calls are interstate and should not be included in the calculation of reciprocal compensation.

Recently, the FCC issued an opinion determining that calls to ISPs are jurisdictionally interstate.<sup>15</sup> The FCC did not, however, preclude the states from ordering the payment of reciprocal compensation for such traffic under existing agreements, and it did not preclude the states from requiring such payments in newly-negotiated agreements (ISP Traffic Order, paras. 24-25). Indeed, the FCC is now considering proposals by which the state commissions would resolve the issue between interconnecting LECs (ISP-Traffic Order, paras. 28-36).

Thus nothing precludes the Commission from finding that the interconnection agreement under consideration should provide for reciprocal compensation for calls delivered to ISPs, and MediaOne believes the Commission should make that finding. Calls to an ISP are placed exactly as local calls; they utilize the same MediaOne facilities and impose the same costs (Lane, T. 27:11-15). Therefore, MediaOne believes the Commission should treat these calls as local for purposes of reciprocal compensation.

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<sup>15</sup> Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 14 FCC Rcd. 3689 (1999) (ISP-Traffic Order).

MediaOne understands, however, that the FCC's determination in its ongoing proceeding could impact any decision the Commission might make on this issue. Thus MediaOne would not object if the Commission were to determine to await an FCC order prior to resolving this issue.

### CONCLUSION

MediaOne has presented reasonable proposals to resolve the remaining issues in this proceeding. The Commission's adoption of those proposals will enhance MediaOne's ability to bring the benefits of competition to residence telephone customers in the areas it serves, without in any way endangering the security and integrity of BellSouth's network and services. BellSouth's proposals would stifle that competition and enable BellSouth to maintain its entrenched monopoly position in the residence telephone market. BellSouth's positions do not square with the Communications Act, and the Commission should reject them.

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July 29, 1999

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)     DOCKET NO. 990149-TP  
of the Telecommunications Act  
of 1996.                             DATED: July 29, 1999

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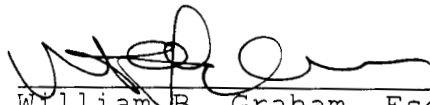
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Brief of  
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