BELLSOUTH

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September 16, 2005

Mr. Charles Terreni
Chief Clerk of the Commission
Public Service Commission of South Carolina
Post Office Drawer 11649
Columbia, South Carolina 29211

Re: BellSouth Telecommunications, Inc. Transit Traffic Tariff 2005-50
Docket No. 2005-63-C

Dear Mr. Terreni:

Enclosed for filing are an original and ten copies of the Post-Hearing Brief of BellSouth Telecommunications, Inc. in the above-referenced matter. By copy of this letter, BellSouth is serving this Brief on all parties of record to this docket.

Sincerely,

Patrick Turner

Patrick W. Turner

PWT/sgm
Enclosure
cc: All Parties of Record
DM5 #601723

BEFORE THE

PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

DOCKET NO. 2005-63-C

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SC PUBLIC SERVICE COMMISSION

In Re:	)
	)
BellSouth Telecommunications, Inc.	)
Transit Traffic Service Tariff	)
	)

POST-HEARING BRIEF
OF BELLSOUTH TELECOMMUNICATIONS, INC.

In accordance with the Order of the Public Service Commission of South Carolina ("the Commission") dated September 8, 2005,[1] BellSouth Telecommunications, Inc. ("BellSouth") respectfully submits its Post-Hearing Brief. In this Brief, BellSouth:

1. Briefly describes its transit service and the transit tariff that is the subject of this proceeding;

2. Explains that the Intervenors[2] have the burden of overcoming the statutory presumption that BellSouth's tariff is valid and complies with applicable law; and

3. Explains that the Intervenors have not overcome the statutory presumption that BellSouth's tariff is valid and complies with applicable law.

In doing so, BellSouth specifically addresses and refutes the Intervenors' arguments that: the tariff is discriminatory; the tariff prices the service inappropriately; and the tariff cannot apply to traffic that is bound for an Internet Service Provider ("ISP").

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1 *See* Order Granting Extension of Time to File Briefs, Order No. 2005-486.

2 As noted during the hearing, BellSouth and the members of the South Carolina Telephone Coalition ("SCTC") have reached agreements in principle that will govern their use of BellSouth's transit service. ALLTEL South Carolina, Inc. ("ALLTEL"), therefore, is the only intervenor that presented a witness during the hearing. Other intervenors, however, expressed a desire to remain parties to this docket. (*See, e.g.,* Tr. at 14-15).

I. DESCRIPTION OF TRANSIT SERVICE AND BELLSOUTH'S TRANSIT TARIFF

Transit traffic is traffic that neither originates nor terminates on BellSouth's network, but that is delivered to BellSouth by the service provider that originated the traffic so that BellSouth can deliver the traffic to the service provider that will terminate the traffic.[3] Assume, for example, that ALLTEL's network is not directly interconnected with AT&T's network. When an ALLTEL end user calls an AT&T end user, ALLTEL may deliver the call to BellSouth which, in turn, will deliver the call to AT&T for further handling. The service BellSouth is providing in that scenario – taking the call originated by ALLTEL and handing it off to AT&T for further handling – is commonly called "transit service." [4]

In this scenario, ALLTEL could avoid using (and thus paying for) BellSouth's transit service by directly connecting its network with AT&T's network.[5] ALLTEL also could avoid using (and thus paying for) BellSouth's transit service if another service provider were willing to provide transit service to ALLTEL.[6] Alternatively, if the amount of traffic ALLTEL sends to AT&T does not warrant the expense of direct interconnection, and if ALLTEL is unable to find a service provider other than BellSouth that is willing to offer transit service, ALLTEL can choose to send the call to AT&T by way of BellSouth's network.[7]

The transit service BellSouth is willing to provide, therefore, is valuable and benefits not only service providers like ALLTEL, but also their end user customers.[8] If BellSouth or another service provider were not willing to offer this service, service providers with minimal traffic

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3 Tr. at 75. *See also* Tariff A.16.1.1.
4 *See, e.g.,* Tr. at 75-7, 85-87.
5 *See* Tr. at 87-88.
6 *See* Tr. at 88.
7 *See* Tr. at 77-78, 82-83, 90.
8 Tr. at 85-86, 89.

flowing between them might decide not to send calls to each other – which means their customers could not reach each other.[9] Recognizing the value of the service, many service providers have contractually agreed to pay BellSouth for the transit service BellSouth provides on calls that are originated by their end users.[10] BellSouth's transit tariff does not apply to those service providers.[11] Instead, BellSouth's transit tariff only applies when a service provider like ALLTEL, which has not contractually agreed to pay BellSouth for transit service, nevertheless decides to continue sending calls bound for other carriers through BellSouth's network.[12] In those situations, ALLTEL and similarly situated service providers pay the tariffed rate for the transit service they knowingly and intentionally use.[13]

Without the transit tariff, BellSouth would not be compensated when it provides valuable transit service to ALLTEL and other service providers who have not been willing to enter into contractual arrangements to pay BellSouth for this service.[14] In the ALLTEL-to-AT&T scenario described above, for example, BellSouth is not receiving compensation from ALLTEL's end user, because that end user is not a BellSouth customer.[15] Similarly, BellSouth is not receiving compensation from AT&T's end user, because that end user is not a BellSouth customer.[16] BellSouth, therefore, filed this tariff in order to be compensated for providing transit service under these circumstances.

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9 *See, e.g.,* Tr. at 88.

10 *See* Tr. at 83-84; Composite Hearing Exhibit 2. As explained below, the prices these service providers have voluntarily negotiated for BellSouth's transit service are comparable to BellSouth's tariffed price for transit service. Also, as noted during the hearing, BellSouth and the SCTC's members have reached agreements in principle that will govern their use of BellSouth's transit service.

11 *See Id.*; Tariff A16.1.2.B.

12 *See Id.*

13 Tr. at 89, 103.

14 *See* Tr. at 78, 86.

15 *See Id.*

It bears repeating that under the transit tariff, it is the service provider that originates the call (ALLTEL in the scenario above) that pays the transit charge.[17] The only time a service provider pays BellSouth under the transit tariff is when that provider has decided not to enter into a contractual arrangement addressing transit traffic and nevertheless decides to send this type of traffic to BellSouth.[18]

II. THE INTERVENORS HAVE THE BURDEN OF OVERCOMING THE STATUTORY PRESUMPTION THAT BELLSOUTH'S TARIFF IS VALID AND COMPLIES WITH APPLICABLE LAW.

BellSouth operates under the alternative form of regulation set forth in Section 58-9-576 of the South Carolina Code.[19] This statute provides that BellSouth's tariffs are "presumed valid and become effective seven days after filing for price decreases and fourteen days after filing for price increases and new services."[20] By order of this Commission, these time frames "shall not be affected by allegations of violations of the price-setting guidelines or complaints filed through the Commission's existing complaint process."[21]

BellSouth filed its transit tariff on February 2, 2005.[22] The filed copy of the tariff bears a Commission stamp indicating that the tariff is presumed valid as of February 16, 2005.[23] Accordingly, as a party challenging the tariff, ALLTEL (as well as any other Intervenor

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16 *See Id.*

17 *See* Tr. at 77; 80.

18 *See Id.*

19 *See generally* Letter of Election dated July 14, 1999 (Attachment A to this Brief is a copy of this Letter, which is on file with the Commission); Order Ruling on Guidelines, *In re: Proceeding to Review BellSouth Telecommunications, Inc.'s Guidelines for Alternate Form of Regulation*, Order No. 2000-676 in Docket No. 1999-469-C (September 26, 2000).

20 S.C. Code Ann. 58-9-576(B)(6); Order Ruling on Guidelines at p. 11, ¶9.

21 Order Ruling on Guidelines at p. 11, ¶9.

22 Attachment B to this Brief is a file-stamped copy of BellSouth's letter filing the transit tariff with the Commission.

23 Attachment C to this Brief is a copy of the tariff that is on file with the Commission.

challenging the tariff) bears the burden of overcoming this statutory presumption of validity[24] and, as explained below, the Intervenors have not met that burden.

III. THE INTERVENORS HAVE NOT OVERCOME THE STATUTORY PRESUMPTION THAT BELLSOUTH'S TARIFF IS VALID AND COMPLIES WITH APPLICABLE LAW.

The issue in this docket is not whether BellSouth should be compensated for the transit service it provides – the only Intervenor to submit testimony of record acknowledges that BellSouth should, in fact, be compensated for this service.[25] Instead, the issue is whether ALLTEL or other service providers can force BellSouth to provide the service and to accept a price that is lower than the price BellSouth is willing to accept for providing the service. As explained below, no legal authority allows ALLTEL or other service providers to force BellSouth to do so.

A. The Intervenors Have Not Overcome the Statutory Presumption That BellSouth's Transit Tariff Complies With Federal Law.

The transit service to which BellSouth's tariff applies is an intrastate service.[26] Accordingly, federal law addressing the rates, terms, and conditions of interstate services does not apply to the tariff. Moreover, as explained below, the interconnection provisions of Section

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[24] *Cf.* *Western Union Tel. Co. v. Call Pub. Co.*, 181 U.S. 92, 98 (1901)(The burden of proof is upon the plaintiff to show by a preponderance of the evidence the existence of the discrimination claimed by it; also that the differences in conditions shown are disproportionate to the difference in charges made, as well as all the other material allegations of its petition.).

[25] *See* Tr. at 33 (ALLTEL's witness testified that "ALLTEL does not object to BellSouth proposing, to the extent necessary, a tariff as the means to address the provision of transit traffic service and does not object to BellSouth being compensated for the service that it provides."). *Accord* Tr. at 46 ("ALLTEL is not saying that [BellSouth] is not due compensation for the use of its network . . . .").

[26] *See, e.g.,* Tr. at 66-67 (ALLTEL's witness acknowledges that ALLTEL hands transit traffic that is the subject of the tariff to BellSouth in the State of South Carolina, and BellSouth hands that traffic to another carrier within the State of South Carolina). ALLTEL's argument that the tariff should not apply to ISP-bound calls is addressed below in Section III.C of this Brief.

251 of the federal Telecommunications Act of 1996 ("the federal Act") do not require BellSouth to provide transit service, and they do not require BellSouth to charge TELRIC prices for transit service it voluntarily provides.

1. No federal statute, FCC ruling, or court decision explicitly requires BellSouth (or any other service provider) to provide transit service.

The FCC's Wireline Competition Bureau has declined to find that incumbent local exchange carriers ("ILECs") have an obligation to provide a transit function at TELRIC prices:

> We reject AT&T's proposal because it would require Verizon to provide transit service at TELRIC rates without limitation. While Verizon as an incumbent LEC is required to provide interconnection at forward-looking cost under the Commission's rules implementing section 251(c)(2), the Commission has not had occasion to determine whether incumbent LECs have a duty to provide transit service under this provision of the statute, nor do we find clear Commission precedent or rules declaring such duty. In the absence of such a precedent or rule, we decline, on delegated authority, to determine for the first time that Verizon has a section 251(c)(2) duty to provide transit service at TELRIC rates. Furthermore, any duty Verizon may have under section 251(a)(1) of the Act to provide transit service would not require that service to be priced at TELRIC.[27]

The Wireline Competition Bureau subsequently reaffirmed these principles in denying AT&T's request for reconsideration, stating that (1) it "did not find that Verizon had a legal obligation to provide transit service at TELRIC"; (2) it did "not agree with AT&T's assertion that the Virginia Commission would have been required to agree with AT&T that Verizon must provide transit service under the Act, nor do we agree that the Bureau was required to so conclude."[28]

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[27] Memorandum Opinion and Order, *In the Matter of Petition of Worldcom, Inc. Pursuant to Section 252(E)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, 17 FCC Rcd. 27,039 at ¶117 (July 17, 2002).

[28] Order on Reconsideration, *In the Matter of Petition of Worldcom, Inc. Pursuant to Section 252(E)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, 19 FCC Rcd. 8467 at ¶3 (May 14, 2004).

The Common Carrier Bureau's analysis was confirmed by the FCC itself in the *Triennial Review Order*. In that Order, the FCC clearly pronounced that "[t]o date, the [FCC]'s rules have not required incumbent LECs to provide transiting."[29] A necessary corollary to this pronouncement is that to date, the FCC's rules have not required incumbent LECs to provide transiting at TELRIC prices.

The FCC made this pronouncement for good reason – there simply is no federal statute that requires BellSouth to provide a transit service at all, and particularly not at TELRIC prices. As an ILEC as that term is defined in the federal Act, BellSouth is subject to all of the obligations placed upon all telecommunications carriers generally, as well as those placed upon ILECs specifically, in Section 251 of the Act. Pursuant to that section, BellSouth and other carriers have broad duties they are required to perform, particularly with regard to other telecommunications carriers:

> All carriers are required to "interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers...."[30]
>
> ILECs are required to interconnect with the facilities and equipment of any requesting telecommunications carrier at any technically feasible point within the ILEC's network, for the transmission and routing of telephone exchange service and exchange access service.[31]
>
> ILECs are required to provide "nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable and nondiscriminatory....";[32] and
>
> In addition to a number of other duties not relevant to the resolution of this issue, ILECs are required "to offer for resale at wholesale rates any telecommunications

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[29] Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers,* CC Docket Nos. 01-338 et al., FCC 03-36, 18 FCC Rcd 16978 at ¶ 534, n. 1640 (Aug. 21, 2003)

[30] 47 U.S.C. §251(a)(1).

[31] *Id.,* §251(c)(2).

[32] *Id.,* §251(c)(3).

service that the carrier provides at retail to subscribers who are not telecommunications carriers...."[33]

Neither these requirements, nor any other requirements of federal or state law, explicitly impose an obligation upon BellSouth or any other carrier to provide a transit service to other telecommunications carriers.

2. No federal statute, FCC ruling, or court decision implicitly requires BellSouth (or any other carrier) to provide transit service.

Since there is no explicit decision by the FCC or the courts on this issue, some carriers, in proceedings before other State commissions, have attempted to read a transiting obligation into the language of Section 251(a)(1) of the federal Act. This statute imposes a duty on every telecommunications carrier (including without limitation ALLTEL, rural LECs, and CLECs) to "interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers . . . ."[34] This section clearly does not require every telecommunications carrier in the country to provide a transiting function to any other carrier that asks for it.

Instead, Section 251(a)(1) deals with the requirement that telecommunications carriers interconnect their networks, which has nothing at all to do with any carriers' purported obligation to transport calls between two or more other carriers. In fact, although the decision was reached in another context, the FCC has already determined that the duty to interconnect imposed by Section 251(a)(1) does not include any obligation to transport traffic. Specifically, the FCC considered this issue in its decision in a case involving AT&T and two other carriers in Oklahoma.[35] One of the issues in that proceeding was whether AT&T could refuse to buy access

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[33] *Id,* §251(c)(4).

[34] Thus, to read a transit obligation into Section 251(a)(1) would be to impose that obligation on all telecommunications carriers and not just on ILECs such as BellSouth.

[35] *In the Matter of Total Telecommunications Services Inc. and Atlas Telephone Company, Inc. v. AT&T Corporation*, File No. E-97-003, *Memorandum Opinion and Order*, 16

services from Total Telecommunications Services, Inc. ("Total"). In its decision, the FCC described the situation as follows:

> During the period at issue here, when an AT&T subscriber placed a long distance call to Audiobridge in Big Cabin, Oklahoma, the call was initially handled by the subscriber's local telephone company. In this context, the local telephone company is known as the "originating access provider." The local telephone company transported the call to AT&T, which transported the call across AT&T's long distance network to an AT&T point of presence ("POP") located in an area of Oklahoma near Big Cabin served by Southwestern Bell Telephone Company ("Southwestern Bell"). From the AT&T POP, the call was transmitted through Southwestern Bell's facilities to a "meet point" with Atlas. Atlas carried the call over its facilities, switched the call through its access tandem switching equipment, and ultimately transported the call to a meet point with Total (the "terminating access provider"). Atlas charged AT&T a relatively modest fee for this tandem switching service pursuant to the NECA tariff. As the "terminating access provider," Total routed the call to its sole end user customer, Audiobridge. Total then separately billed AT&T for terminating access services.[36]

Evidently, Total's terminating access charges were significantly higher than Atlas' access charges. AT&T claimed that the arrangement was a sham and blocked the traffic that was sent to Total's customer.

Atlas and Total filed a number of complaints, ultimately ending up at the FCC. Among other things, Atlas and Total argued that Section 251(a)(1) "requires AT&T to purchase Total's terminating access services and refrain from blocking calls to Audiobridge."[37] More particularly, Atlas and Total argued that "a carrier's duty to 'interconnect' under section 251(a) encompasses a duty to transport and terminate all traffic bound for any other carrier with which it is physically linked."[38] In other words, Total and Atlas argued that section 251(a)(1) required AT&T to

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FCC Rcd 5726 (2001), *affm in part, remanded in part*, AT&T Corporation v. FCC, 317 F.3d 227 (D.C. Circuit 2003).

[36] *Id.* at ¶6

[37] *Id.* at ¶22.

[38] *Id.*

deliver all traffic "bound for any other carrier with which it is physically linked" (i.e., provide a transit function).

The FCC concluded that this was not what the law required. Instead, the FCC concluded that the term "interconnection," as it is used in Section 251 (a)(1), "cannot reasonably be interpreted to encompass a general requirement to transport and terminate traffic."[39] Clearly, although the FCC has not been faced with the precise issue presented in the case pending before this Commission, the FCC has concluded that Section 251(a)(1) does not require a carrier to "transport and terminate" calls to any carrier with which the transiting carrier is interconnected. This portion of the FCC's order has been affirmed by the United States Court of Appeals for the District of Columbia.[40] Consequently, Section 251(a)(1) does not require BellSouth to provide a transiting function to ALLTEL or any other carrier.

a. Transit service is not "indirect interconnection" that is required by Section 251(a)(1) of the Act.

When faced with this compelling authority, carriers in proceedings before other State Commissions have argued that a duty to provide a transiting function should be imposed on ILECs because absent such a duty, no telecommunications carrier could interconnect "indirectly" with other telecommunications carriers. They argue, therefore, that even if not expressly stated, such a requirement must exist by necessary implication, otherwise the requirement that carriers interconnect "directly or indirectly" would be rendered meaningless. That argument is clearly without merit. Even though a carrier cannot be forced to provide a transit function, it may elect to do so (as BellSouth has done) at prices and on terms and conditions that are set out in its

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39 *Id.* at ¶26.

40 *Id.*

tariffs or in contracts that it negotiates with other carriers that use its transit service. That is where Section 251(a)(1) comes into play.

Section 251(a)(1) requires that when Carrier 1 chooses to interconnect with Carrier 3 "indirectly" by using a transiting service that Carrier 2 is willing to provide, Carrier 3 cannot refuse the interconnection merely because it is not a "direct" connection between itself and Carrier 1. That is, if ALLTEL interconnected with BellSouth, and BellSouth interconnected with AT&T, ALLTEL could interconnect indirectly with AT&T via BellSouth's network (assuming BellSouth agreed), and AT&T could not refuse the traffic. Such an interpretation clearly harmonizes all of the diverse sections of the federal Act, without doing damage to any of them, which cannot be said of any argument that the federal Act requires ILECs and all other carriers to provide a transit function.

b. Transit service is not "transmission and routing of telephone exchange service and exchange access" that is required by Section 251(c)(2)(A) of the Act.

Carriers in other proceedings that have suggested that ILECs have a duty to provide transit service also have relied on the language of Section 251(c)(2)(A), which requires ILECs to interconnect with "the facilities and equipment of any requesting telecommunications carrier" for the "transmission and routing of telephone exchange service and exchange access . . . ." Their argument is that this section does not specifically limit the "transmission and routing of telephone exchange service and exchange access" only on the ILEC's network. They argue that in the absence of such a limitation, a transit service clearly falls within the ILEC's obligation to provide transmission and routing of the traffic to interconnecting carriers.

There are at least two problems with this interpretation of the law. First, in its *Local Competition Order*,[41] the FCC clearly stated:

> We conclude that the term "interconnection" under section 251(c)(2) refers only to the physical linking of two networks for the mutual exchange of traffic. Including the transport and termination of traffic within the meaning of section 251(c)(2) would result in reading out of the statute the duty of all LECs to establish "reciprocal compensation arrangements for the transport and termination of telecommunications," under section 251(b)(5).[42]

Therefore, the FCC has stated, clearly and without equivocation, that Section 251(c)(2) only relates to interconnection and does not implicate transport. Some carriers might try to argue that this section actually requires "transmission and routing" of calls, rather than merely requiring interconnection. The FCC, however, has said as clearly as possible that this section only relates to the physical linking of the networks and that any requirement of transporting or terminating traffic has to be found elsewhere.

Second, and equally as important, such an interpretation is illogical because while the federal Act provides a specific method that allows the ILEC to recover its costs for every other service or facility it provides to CLECs, it does not provide a specific method for the ILEC providing the transit service to recover its costs. That is, the federal Act clearly provides for the recovery by an ILEC of its costs for the "transport and termination of telecommunications."[43] The federal Act also clearly provides for the recovery of the ILEC's cost of interconnecting its network with that of another telecommunications carrier.[44] The federal Act likewise specifically provides for the ILEC to recover its costs for providing Unbundled Network Elements ("UNEs")

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[41] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996. Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 96-98, CC Docket No.95-185, *First Report and Order*, 11 FCC Rcd 15499 (1996).

[42] *Id.* at ¶176

[43] §251(b)(5).

and for the provision of services for resale by other telecommunications carriers.[45] However, there is no provision for the recovery of the cost of calls that "transit," but do not terminate on, the ILEC's network. Indeed, the FCC recognized this situation specifically in its *Local Competition Order*, saying:

> In addition, in setting the pricing standard for section 251(c)(2) interconnection, section 252(d)(1) states it applies when state commissions make determinations "of the just and reasonable rate for interconnection of *facilities and equipment* for purposes of subsection (c)(2) of section 251." Because section 251(d)(1) states that it only applies to the interconnection of "facilities and equipment," if we were to interpret section 251(c)(2) to refer to transport and termination of traffic as well as the physical linking of equipment and facilities, it would still be necessary to find a pricing standard for the transport and termination of traffic apart from section 252(d)(1).[46]

The logical reason for the absence of such a provision is that transiting was not contemplated by the federal Act. Instead, the federal Act contemplates that ILECs will interconnect with other telecommunications carriers, will accept local traffic at the interconnection point, and will then transport and terminate that traffic on the ILEC's network to the ILEC's subscribers. The federal Act makes provision for cost recovery for each of these steps.

If Congress had intended to also require the ILEC to provide a transit service, it would also have provided a cost recovery method. It did not. The only conclusion that can be reached from the absence of a cost recovery method for transiting is that Section 251(c)(2) cannot be fairly read to require transiting.

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44 §251(c)(2)(D).

45 §251(c)(3)&(4).

46 47 U.S.C. § 251(d)(1) (emphasis added).

B. The Intervenors Have Not Overcome the Statutory Presumption that BellSouth's Transit Tariff Complies With State Law.

By their own terms, the "interconnection" provisions of state law must be consistent with applicable federal law. These provisions, therefore, do not apply to transit service because (as explained in Section III.A of this Brief) the interconnection provisions of federal law do not apply to transit service. The provisions of state law that apply require BellSouth to price its transit service: (1) on a basis that does not unreasonably discriminate between similarly situated customers; and (2) above the total service long run incremental cost ("TSLRIC") of the service. As explained below, BellSouth's tariff complies with both of these statutory requirements.

1. The "interconnection" and "unbundling" provisions of state law do not apply to transit service.

Section 58-9-280(C)(3) authorizes the Commission to determine "requirements" that are "applicable to all local telephone service providers." This statute states that among other things, such requirements must "provide for the reasonable interconnection of facilities between all certificated local telephone service providers . . . ."[47] Significantly, the statute plainly states that any such requirements established by the Commission "shall be consistent with applicable federal law . . . ."[48] Moreover, the Commission has entered an Order stating that it will implement the unbundling provisions of section 58-9-280 "by concurring with the Federal Telecommunications Act of 1996."[49] Clearly, section 58-9-280 does not (and cannot) impose any transiting obligation that is not imposed by the federal Act.

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[47] S.C. Code Ann. §58-9-280(C)(1).

[48] S.C. Code Ann. §58-9-280(C).

[49] *See* Order Implementing Requirements, *In Re: Generic Proceeding to Address Local Competition in the Telecommunications Industry in South Carolina*, Order No. 96-545 in Docket No. 96-018-C at pp. 1-2 (August 9, 1996).

2. The applicable provisions of state law require that BellSouth price its transit service in a manner that does not unreasonably discriminate against similarly situated customers and that is above the TSLRIC of the service.

Several chapters of the South Carolina Code contain provisions that apply, in certain circumstances, to telephone utilities like BellSouth. Chapter 9, however, is the only one that establishes pricing standards that apply to services offered by telephone utilities. Accordingly, the pricing of intrastate telecommunications services in South Carolina is governed exclusively by Chapter 9 of Title 58 of the South Carolina Code. As explained below, the only pricing standard that applies to BellSouth's transit service is set forth in Section 58-9-576, and that standard allows BellSouth to price the service at any level that does not unreasonably discriminate between similarly situated customers and that exceeds the TSLRIC of the service.

ALLTEL's witness refers to the "just and reasonable" pricing standard.[50] This pricing standard appears in Section 58-9-210 of the Code, which provides that "[e]very rate made, demanded or received by any telephone utility or by any two or more telephone utilities jointly shall be just and reasonable." This pricing standard, however, does not apply to BellSouth, because BellSouth operates under the alternative regulation mechanism set out in Section 58-9-576. Subsection (B) of that statute provides:

> Notwithstanding any other provision of this chapter, . . . any LEC may elect to have its rates, terms, and conditions for its services determined pursuant to the plan described in this subsection, in lieu of other forms of regulation including, but not limited to, rate of return or rate base monitoring or regulation . . . .

Accordingly, no other pricing standard in Chapter 9 of the Code – including the "just and reasonable" standard in Section 58-9-210 – applies to BellSouth's services. Instead, the pricing standards set forth in Section 58-9-576 (and only those pricing standards) apply to the "rates . . . for [BellSouth's] services . . . ."

Section 58-9-576 sets forth two pricing standards. The first standard, which is set forth in Section 58-9-576(B)(3), applies to prices for "flat rated local exchange services for residential and single-line business customers." Because transit service does not fit this description, the pricing standard set forth in Section 58-9-576(B)(3) does not apply to transit service.

The second standard, which is set forth in Section 58-9-576(B)(5) and applies to "rates for all other services," obviously applies to transit service. This standard requires BellSouth to price transit service "on a basis that does not unreasonably discriminate between similarly situated customers . . . ."[51] It also provides that the price for transit service cannot constitute an "abuse of market position," and it expressly states that "[r]ates that exceed the [TSLRIC] of an offering . . . do not constitute an 'abuse of market position.'"[52] As explained below, the Intervenors have not overcome the statutory presumption that BellSouth's prices comply with these pricing standards.

a. The Intervenors have not overcome the statutory presumption that BellSouth's transit service is priced on a basis that does not unreasonably discriminate between similarly situated customers.

The prices for BellSouth's transit service "must not unreasonably discriminate between similarly situated customers. . . ."[53] Courts have long recognized that "absolute equality cannot in all cases be required" and that "in determining what would amount to unjust discrimination all the facts and circumstances must be taken into consideration."[54] This general law regarding discrimination applies with equal force to the discrimination statutes that apply to telephone utilities like BellSouth. The Commission, for instance, has interpreted the discrimination

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50 Tr. at 43; 46-47.

51 S.C. Code Ann. §58-9-576(B)(5).

52 *Id.* (as amended by 2005 South Carolina Laws Act 5 (H.B. 3080).

53 *See* S.C. Code Ann. §58-9-576(B)(5)(emphasis added).

provisions of Section 58-9-576(B)(5) to mean that "if a Company can state a good reason for a pricing differential on a service between similarly situated customers, then the different rates are reasonable."[55] When viewed through the prism of this precedent, the evidence before the Commission demonstrates that BellSouth's tariff does not unreasonably discriminate against similarly situated customers.

For instance, ALLTEL suggests that "the ICO's find themselves similarly situated to interexchange carriers transiting the BellSouth tandem for termination on a third party."[56] ALLTEL's witness, however, acknowledged that the ALLTEL entity that is a party to this docket never acts as an IXC in the state of South Carolina.[57] She also acknowledged that when the separate ALLTEL entity that does act as an IXC handles a call in the State, that entity pays BellSouth the same amounts that any other IXC that handled the same call would pay BellSouth.[58] Clearly, BellSouth treats ALLTEL's IXC entity similarly to the way it treats all other IXCs.[59]

ALLTEL also suggests that because the network elements used to provide transit service are similar to the ones used to provide certain access services to IXCs, the rates for transit should mirror the rates for access.[60] The gist of ALLTEL's position is that transit service is similar to

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[54] *See New York Tel. Co. v. Siegel-Cooper Co.*, 96 N.E. 109, 111 (Ct. App. N.Y. 1911).

[55] Order Granting in Part and Denying in Part Petition, *In Re: Southeastern Competitive Carriers Ass'n v. BellSouth*, Order No. 2002-2 in Docket No. 2000-378-C at 3 (December 9, 2002).

[56] Tr. at 34.

[57] Tr. at 50-51.

[58] Tr. at 51-52.

[59] Similarly, when ALLTEL acts as a local exchange company that uses BellSouth's transit service pursuant to the tariff, ALLTEL pays the same amounts that any other local exchange company without a transit agreement with BellSouth would pay on the same call. *See* Tr. at 103.

[60] Tr. At 42-43.

access service and, therefore, the price for transit service must be similar to the price for transit service.[61] That, however, is not what the law requires. The statute addresses similarly situated "customers," not similarly situated services.[62] In this case, BellSouth is treating similarly situated IXCs involved in handling toll calls alike, and it is treating similarly situated local exchange carriers involved in handling local calls alike. There simply is no pricing differential between similarly situated customers.

Moreover, as ALLTEL's witness acknowledges, the network elements used to provide residential services are similar (if not identical) to those used to provide business service, but business service is not priced the same as the comparable residential service.[63] Similarly, the network elements used to provide resold services are similar (if not identical) to those used to provide the former combination of unbundled network elements that was known as the UNE platform ("UNE-P"), but as the Commission is aware from its experience in various cost dockets, the price for resold service is significantly different than were the prices for the former UNE-P.[64]

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[61] Tr. at 52.

[62] *See* S.C. Code Ann. §58-9-576(B)(5)(BellSouth "shall set rates for all other services on a basis that does not unreasonably discriminate between similarly situated customers . . . ."). *Accord* Order Granting in Part and Denying in Part Petition, *In Re: Southeastern Competitive Carriers Ass'n v. BellSouth*, Order No. 2002-2 in Docket No. 2000-378-C at 3 (January 9, 2002)(under Section 58-9-756(B)(5), "if a Company can state a good reason for a pricing differential on a service between similarly situated customers, then the different rates are reasonable.").

[63] Tr. at 53-55. ALLTEL's witness acknowledges that she does not know the relative costs of ALLTEL's residential and business services. Tr. at 55.

[64] A CLEC purchasing a resold business line (1FB) from BellSouth in Columbia, for instance, would pay $36.42 for that resold line (the tariffed price of $42.75 less the 14.8% resale discount). *See* Order on Arbitration, *In Re: Petition of AT&T for Arbitration of an Interconnection Agreement with BellSouth*, Order No. 97-189 in Docket No. 96-358-C at 14 (March 10, 1997). The same CLEC purchasing the same facilities in Columbia under the former UNE-P arrangement would have paid approximately $21.30. *See,* Order on UNE Rates, *In Re: Generic Proceeding to Establish Prices for BellSouth's Interconnection Services, Unbundled Network Elements, and Other Related Services*, Order No. 2001-1089 in Docket No. 2001-65-C (November 30, 2001).

In other words, every day ALLTEL and other carriers charge different prices for similar services – as they have done for decades, and as is permitted by applicable law.

ALLTEL's witness further acknowledged that ALLTEL's discrimination concerns arise because BellSouth's transit service is not priced identically to what ALLTEL views as BellSouth's analogous access service. Significantly, ALLTEL's witness acknowledged that if BellSouth's access services were priced at the same $0.003 per minute rate as BellSouth's transit service, ALLTEL would have no discrimination concerns.[65] ALLTEL, however, overlooks the fact that BellSouth has reduced its intrastate access charges in South Carolina, often in conjunction with offsetting factors (one of which is the withdrawal of corresponding amounts from the State Universal Service Fund).[66] Thus, even to the extent that transit service is similar in some respects to access service, it is not reasonable for ALLTEL to suggest that the initial rates for transit service must be the same as the rates for allegedly corresponding access service when BellSouth will not receive any USF withdrawals or other offsets in association with its initial rates for transit service like it receives in association with its access services.

Finally, ALLTEL seems to suggest that it is unreasonably discriminatory for BellSouth not to offer ALLTEL the same transit contractual arrangements as BellSouth has offered the members of the South Carolina Telephone Coalition ("SCTC").[67] Section 58-9-285(B) of the South Carolina Code, however, refutes this suggestion. That statute provides that when

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[65] Tr. at 58.

[66] *See* Order on Universal Service Fund, *In Re: Proceeding to Establish Guidelines for an Intrastate Universal Service Fund*, Order No. 2001-419 in Docket No. 97-239-C (June 6, 2001). ALLTEL does not (and cannot) argue that these access reductions were required by any applicable pricing standards – like transit service, access is an "other service" under Section 58-9-576 and the only applicable pricing standards are the non-discrimination and price floor provisions of Section 58-9-576(B)(5).

[67] *See e.g.*, Tr. at 6-7; 47.

BellSouth,[68] in a contractual agreement memorialized in writing, "offers any tariffed product or service to any customer at rates, terms, or conditions that differ from those set forth in [its] tariffs,"[69] this commission "must not: (1) impose any requirements related to the terms, conditions, rates, or availability of [such a contractual offering] that a customer accepts after the effective date of this act; or (2) otherwise regulate any [such contractual] offering . . . that a customer accepts after the effective date of this act."[70] Neither the discrimination provisions nor any other provisions of Title 58, therefore, apply to the contractual arrangements between BellSouth and the SCTC members.[71]

b. The Intervenors have not overcome the statutory presumption that BellSouth's transit service is priced above the TSLRIC of the service.

ALLTEL suggests that BellSouth's pricing of its transit service constitutes an "abuse of market position."[72] As noted above, however, the General Assembly recently amended Section 58-9-576 to expressly state that "[r]ates that exceed the [TSLRIC] of an offering . . . do <u>not</u> constitute an abuse of market position."[73] In order to prevail on an "abuse of market position" claim, therefore, ALLTEL must prove that the prices for BellSouth's transit service are lower than the TSLRIC of the offering. ALLTEL has offered no evidence to this effect. In fact, ALLTEL's witness testified that she has not seen any cost studies related to BellSouth's transit

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[68] BellSouth is a "qualifying LEC" under this statute because it "has elected to have rates, terms, and conditions for its services determined pursuant to the plan described in Section 58-9-576(B)." S.C. Code Ann. §58-9-285(A)(4) (as enacted by 2005 South Carolina Laws Act 5 (H.B. 3080)).

[69] S.C. Code Ann. §58-9-285(A)(2) (as enacted by 2005 South Carolina Laws Act 5 (H.B. 3080)).

[70] S.C. Code Ann. §58-9-285(B) (as enacted by 2005 South Carolina Laws Act 5 (H.B. 3080)).

[71] By contrast, the transit tariff treats all carriers who have not entered into contractual transit agreements the same. *See* Tr. at 103.

[72] Tr. at 46.

service.[74] Even so, ALLTEL's witness candidly acknowledged that "I don't see how that [rate] could be below your cost."[75]

ALLTEL (and perhaps other parties) likely will attempt to deal with this failure of proof by worrying that BellSouth will price its transit service so high that no carrier will be willing or able to use the service.[76] The Commission should give no weight to any such worries for at least two reasons. First, the standard set forth in Section 58-9-576(B)(5) is the only statutory basis by which the Commission is authorized to adjust the price of transit service. No party can properly ask the Commission to disregard this controlling legal standard and revert back to the old "rate of return" standard that no longer applies to BellSouth.

Second, the evidence shows that any such worries are unwarranted. Far from suggesting that BellSouth's tariffed transit price is unreasonably high, the evidence shows that the price is comparable to rates that CLECs and CMRS providers have voluntarily negotiated with BellSouth.[77] ALLTEL's witness, for example, acknowledged that like approximately 50 other CLECs, ALLTEL's CLEC entity has voluntarily agreed to pay BellSouth transit charges of $0.0025 in addition to the prices for the component elements of the transit function.[78] The evidence also shows that like approximately 10 other wireless providers, ALLTEL's wireless entity has agreed to pay BellSouth a composite rate of $0.0025 for transit service.[79] ALLTEL presented no evidence to suggest that it somehow would be unreasonable for ALLTEL to pay a

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[73] S.C. Code Ann. §58-9-576(B)(5) (as amended by 2005 South Carolina Laws Act 5 (H.B. 3080)(emphasis added).

[74] Tr. at 48.

[75] Tr. at 49.

[76] *See* Tr. at 46.

[77] *See* Composite Hearing Exhibit 2 (Exhibits KRM-1 & KRM-2).

[78] *See* Tr. at 58, 83; Composite Hearing Exhibit 2 (KRM-1).

[79] *See* Tr. at 58-59; Composite Hearing Exhibit 2 (KRM-2).

comparable composite rate of $0.003 per minute under BellSouth's tariff if it is unwilling to negotiate a different contractual rate with BellSouth.

Finally, Alltel's witness also expressed concern over the fact that as of January 1, 2006, the tariffed price for transit service will increase to $0.006 per minute.[80] For all of the reasons explained above, this is an entirely appropriate provision that complies with all applicable law. However, in a good-faith effort to address Alltel's concerns (and in this particular proceeding only), BellSouth is willing voluntarily to amend the tariff to eliminate this automatic price increase. This would mean that providers like Alltel, who have not negotiated lower contractual prices for transit service, would pay $0.003 per minute for the transit service they use and that if BellSouth wanted to increase the tariffed transit rate in the future, it would have to file a revision to the tariff with the Commission in order to do so.

C. The Intervenors Have Not Met Their Burden of Proving that BellSouth's Tariff Should Not Apply to ISP-Bound Traffic.

ALLTEL's remaining argument against the tariff is that it should not apply to calls that are bound for Internet Service Providers ("ISP's") because that traffic is interstate in nature.[81] As demonstrated during the hearing, however, the fact that the FCC has deemed ISP-bound traffic to be interstate in nature does not mean that a state tariff cannot address any aspect of an ISP-bound call. The scenario discussed during the hearing – in which ALLTEL sends BellSouth transit traffic so that an ALLTEL end user can dial an ISP that is served by a CLEC – illustrates this point.

Although the FCC has deemed the call in that scenario to be interstate in nature, ALLTEL acknowledges that the service ALLTEL provides its end user who places that call is

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80 *See* Tr. at 41, 53.

81 *See* Tr. at 36; 44; 47; 60-61.

governed by state law, not federal law.[82] Similarly, the service the CLEC is providing to the ISP in that call is governed by state law, not federal law.[83] ALLTEL acknowledges that like ALLTEL itself and the CLEC, BellSouth is performing a service in transiting the call and BellSouth should be compensated for doing so.[84] ALLTEL, however, argues that unlike ALLTEL itself and the CLEC, BellSouth cannot receive compensation for the service it is providing under state law.[85] Instead, ALLTEL suggests that while it and the CLEC are paid for the services they provide in this call pursuant to state law, BellSouth must provide its services free of charge while waiting to see how the FCC may eventually address the issue.[86]

The Commission should not accept ALLTEL's suggestion. Like ALLTEL and the CLEC, BellSouth is entitled to be compensated for the services it provides in this call pursuant to state law. As ALLTEL acknowledged, BellSouth's role in the call is completely intrastate – ALLTEL is handing the traffic to BellSouth in the state of South Carolina, and BellSouth is handing the traffic to the CLEC in the State of South Carolina.[87] It is entirely appropriate,

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82 *See* Tr. at 63-64.

83 The FCC has long held that "enhanced service providers are treated as end users and thus may use local business lines for access for which they pay local business rates and subscriber line charges." *See* Order, *In the Matter of: Amendments to Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, CC Docket No. 87-215, 3 F.C.C. Rcd. 2631 at ¶20 n.53 (April 27, 1988)(emphasis added). As the Supreme Court of the United States recently explained, "[t]he definitions of the terms 'telecommunications service' and 'information service' established by the 1996 Act are similar to the *Computer II* basic-and enhanced-service classifications." *National Cable & Telecommunications Ass'n v. Brand X Internet Services*, 125 S.Ct. 2688, 2697 (2005). *See also, Id.* (referring to "information service" as "the analog to enhanced service"). Additionally, the Supreme Court has affirmed the FCC's determination that Internet access is an information service. *Id.* Accordingly, as a provider of Internet access, the ISP in this scenario is entitled to order "local business lines" from the CLEC.

84 Tr. at 66.

85 *Id.*

86 Tr. at 45. (ALLTEL's witness suggests that this Commission should "hold this proceeding in abeyance until the FCC decides what is appropriate.")

87 *See, e.g.,* Tr. at 66-67.

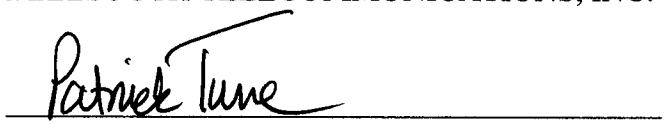
therefore, for BellSouth to be paid for its services pursuant to a state tariff, just as ALLTEL and the CLEC are being paid for their services pursuant to state law.[88]

CONCLUSION

For all of the reasons set forth above, BellSouth respectfully requests that the Commission enter an order denying all complaints against BellSouth's transit tariff.

Respectfully submitted, this 16th day of September 2005.

BELLSOUTH TELECOMMUNICATIONS, INC.



PATRICK W. TURNER
Suite 5200
1600 Williams Street
Columbia, South Carolina 29201
(803) 401-2900

600445

[88] The fact that BellSouth is compensated for its role in the call pursuant to state law does nothing to interfere with the FCC's rules addressing the compensation that the originating carrier owes the terminating carrier on ISP-bound calls. *See* Tr. at 79. Those rules simply do not contemplate a transit provider and, therefore, they do nothing to compensate BellSouth for the service it provides in the call.

ATTACHMENT A

Caroline N. Watson
General Counsel-South Carolina

S. C. PUBLIC SERVICE COMMISSION
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7-14-99
4:30 P.M.

Suite 821
1600 Hampton Street
Columbia, South Carolina 29201
803 748-8700
Fax 803 254-1731

July 14, 1999

The Honorable Gary E. Walsh
Executive Director
Public Service Commission of SC
Post Office Drawer 11649
Columbia, South Carolina 29211

Re: Notice of Election under S.C. Code Ann. § 58-9-576

Dear Mr. Walsh:

This letter is to provide the Public Service Commission of South Carolina (the "Commission") notification that BellSouth Telecommunications, Inc. ("BellSouth") intends to elect and does hereby elect to have rates, terms, and conditions for its services regulated under the alternative form of regulation set forth in S.C. Code Ann. § 58-9-576. Such alternative form of regulation will be effective thirty days after the filing of this notice, which is August 13, 1999.

BellSouth is qualified for such election since it has entered into local interconnection agreements with entities not affiliated with BellSouth and such agreements have been approved by this Commission.

BellSouth acknowledges that as a result of this election it will be governed by the plan provisions set forth in S.C. Code Ann. § 58-9-576, and BellSouth agrees to abide by all such provisions.

Sincerely,

CNWatson

Caroline N. Watson

ATTACHMENT B

February 2, 2005

Mr. Charles L. A. Terreni
Chief Clerk/Administrator
Public Service Commission of South Carolina
Columbia, South Carolina 29211

RECEIVED
2005 FEB -2 PM 1:35

Dear Mr. Terreni:

Attached for filing with the Commission are the following tariff pages:

General Subscriber Service Tariff

Section A16 Subject Index	- Thirteenth Revised Page 21
Section A16 TOC	- Seventh Revised Page 1
Section A16 Contents	- First Revised Page 1
Section A16	- First Revised Page 1
Section A16	- Original Page 2

The tariff filing establishes the rates, terms, and conditions for BellSouth's Transit Traffic Service in the General Subscriber Service Tariff. The issue date is February 2, 2005 with an effective date of February 16, 2005.

Yours very truly,

Cindy Cox

Vice President

CC: Joe Rogers, ORS

Attachments

ATTACHMENT C

2005-63-C

SUBJECT INDEX

T.

SUBJECT	SECTION
Telecommunications Service Priority (TSP) System	A13.50
Telephone Answering Service Facilities	A108
AUTOTAS® Answering System Concentrator	A108.4
Telephone Answering Service Listing	A6.7.20
Telephone Number Change Charge - See Line Change Charge	A4
Temporary Installation	A5.3.3
Temporary Service Requiring Construction	A5.1.9
Terminal Equipment Utilized by Disabled Persons	A30.
Termination Charges	A2.3.17
Termination of Service	A2.3.17
Tie Line Channels	A13.1.3
Time and Materials Charging - See Premises Work Charges	A4
Time Share Condominium PBX Service	A11.2.6
Titles and Suffixes	A6.7.22
Toll Restriction	
Central Office Battery Reversal	A14.2
Customized Code Restrictions	A13.20
Toll Terminals	A13.14
Totalphone Service	A113.9
TouchStar Service	A13
Touch-Tone Calling Service	A13.2
Trade Name	A6.2.3
Transfer of Service Between Subscribers	A2.3.7
Transit Traffic Service	A16
Transmitting Messages	A2.2.8
Trunk Lines	A11.2
Trunk Side Access Facility	A3.28
Two-Tier Payment Plan	A22.1
Two-Way Service	A3.10.4

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OF SOUTH CAROLINA

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A7. COIN TELEPHONE SERVICE
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A9. FOREIGN EXCHANGE SERVICE AND FOREIGN CENTRAL OFFICE SERVICE
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A35. INTERCONNECTION OF MOBILE SERVICES

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A16. TELECOMMUNICATIONS SERVICE PROVIDER SERVICES

CONTENTS

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A16. TELECOMMUNICATIONS SERVICE PROVIDER SERVICES

A16.1 Transit Traffic Service

A16.1.1 Terms and Definitions

A. Telecommunications Service Provider - a provider of local and/or access telecommunications service who is legally certified to provide service within the state of South Carolina, or is licensed by the Federal Communications Commission (FCC) to provide Commercial Mobile Radio Service (CMRS). For purposes of this tariff, this definition includes, but is not limited to, CMRS providers, Competitive Local Exchange Carriers (CLECs) and Independent Telephone Companies (ICOs).

B. Transit Traffic – Local Traffic originating on one Telecommunications Service Provider's network that is delivered by BellSouth to a different Telecommunications Service Provider's network for termination.

C. Transit Traffic Service – BellSouth's provision of the functions to allow a Telecommunications Service Provider to send and receive Transit Traffic.

D. Local Traffic – for purposes of this tariff;

1. For wireline-to-wireline traffic, Local Traffic is any intraLATA circuit switched call transiting BellSouth's network that originates from and terminates to carriers other than BellSouth, and for which BellSouth does not collect toll charges or access charges, either directly or indirectly, as the intraLATA toll provider for the end user. This traffic includes ICO-to-ICO traffic, CLEC-to-ICO traffic, ICO-to-CLEC traffic, and CLEC-to-CLEC traffic; or

2. For wireless-to-wireless traffic, wireline-to-wireless traffic, and wireless-to-wireline traffic, Local Traffic is any circuit switched call originating from and terminating to carriers other than BellSouth and transiting BellSouth's network that originates and terminates within the same Major Trading Area (MTA), subject to BellSouth's LATA restrictions. An MTA is the largest FCC-authorized wireless license territory which serves as the definition of local service area for CMRS traffic as defined in 47 C.F.R 24.202(a). This traffic includes, but is not limited to, CMRS-to-CMRS, CMRS-to-ICO, ICO-to-CMRS, CLEC-to-CMRS and CMRS-to-CLEC calls.

A16.1.2 Rules and Regulations

A. This tariff provides the rates, terms and conditions for BellSouth's provision of Transit Traffic Service.

B. If Transit Traffic is specifically addressed in a separate agreement between BellSouth and the originating Telecommunications Service Provider, then the rates, terms and conditions contained in that separate agreement will apply in lieu of this tariff. If such separate agreement is limited to certain types of traffic or carriers, then the separate agreement will apply to those traffic types or carriers, and this tariff will continue to apply to any traffic types and carriers not covered under the separate agreement.

C. BellSouth offers Transit Traffic Service only for Transit Traffic that is intended to terminate to a Telecommunications Service Provider whose network is directly interconnected with BellSouth's network. Where BellSouth accepts Transit Traffic from a Telecommunications Service Provider, BellSouth is not liable or responsible for payment to the terminating carrier. Such payment is the sole responsibility of the originating Telecommunications Service Provider. By utilizing BellSouth's Transit Traffic Service for the delivery of Transit Traffic, the originating Telecommunications Service Provider is committing to establishing a traffic exchange agreement or other appropriate agreement to address compensation between the originating Telecommunication Service Provider and the terminating carrier(s).

D. Notwithstanding anything in C. preceding to the contrary, in the event that the terminating Telecommunications Service Provider imposes on BellSouth any charges or costs for the delivery of Transit Traffic, the originating Telecommunications Service Provider utilizing BellSouth's Transit Traffic Services pursuant to this tariff shall reimburse BellSouth for such charges or costs.

E. BellSouth, as the tandem switching provider for Transit Traffic, will generate and deliver to the terminating Telecommunications Service Provider industry standard call detail records, where available, for its use in billing the originating Telecommunications Service Provider for the termination of Transit Traffic. Notwithstanding the foregoing, unavailability of such call detail records does not relieve the originating Telecommunications Service Provider of its obligation to pay the charges for Transit Traffic Service as specified in this tariff, nor does it create any liability to the terminating Telecommunications Service Provider on the part of BellSouth.

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A16. TELECOMMUNICATIONS SERVICE PROVIDER SERVICES

A16.1 Transit Traffic Service (Cont'd)

A16.1.2 Rules and Regulations (Cont'd)

F. Telecommunications Service Providers originating Transit Traffic may elect one of two options for measuring Transit Traffic minutes of use for which charges are due.

1. The originating Telecommunications Service Provider shall utilize its originating switch recordings to compensate BellSouth based upon actual Transit Traffic minutes of use ("Actual Measurements"). Telecommunications Service Providers electing to utilize Actual Measurements shall provide a monthly report to BellSouth reflecting actual Transit Traffic minutes of use, along with payment on a per minute of use basis at the applicable rate set forth in Section A16.1.3 below, within sixty days of the date of usage.
2. In lieu of Actual Measurements, the originating Telecommunications Service Provider shall provide to BellSouth a percent local usage factor (PLU) estimating the percentage of total minutes of use delivered to BellSouth that constitutes Transit Traffic ("Estimated Measurements"). The PLU must be provided to BellSouth in writing within 30 days of the effective date hereof, or within 30 days of delivering Transit Traffic to BellSouth. In the event the originating Telecommunications Service Provider fails to provide a PLU to BellSouth during this timeframe, BellSouth will assign a PLU to be used until a PLU is provided. To the extent a PLU is provided after the default PLU has taken effect, the PLU provided by the Telecommunications Service Provider shall be applied on a prospective basis only. The PLU shall be updated annually, or sooner in the event of a change in Local Traffic volume.

G. BellSouth reserves the right to contest the accuracy of both the Actual Measurements and Estimated Measurements provided by Telecommunications Service Providers and may conduct audits or internal studies for verification.

H. In the event a dispute arises regarding Actual Measurements or Estimated Measurements, BellSouth will continue to bill based upon information provided by the Telecommunications Service Provider or utilizing the assigned PLU until the dispute is resolved.

I. If BellSouth and the Telecommunications Service Provider are unable to successfully negotiate a resolution to the dispute within 30 days of notice of the existence of a dispute, the aggrieved Party shall seek dispute resolution with the appropriate governing regulatory body.

J. Once the dispute is resolved, the parties shall utilize the resulting Actual Measurements or Estimated Measurements on a going forward basis. The parties shall negotiate a true up of any billing inaccuracies occasioned by application of such Measurement on a retroactive basis.

K. Charges shall be billed to the originating Telecommunications Service Provider and shall be payable under the terms of A2.4 of the General Subscriber Services Tariff.

A16.1.3 Rates and Charges

		Charge	USOC
(a)	Transit Traffic Service, per MOU through 12/31/2005	$0.003	NA
(b)	Transit Traffic Service, per MOU on and after 1/1/2006	0.006	NA

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STATE OF SOUTH CAROLINA)
) CERTIFICATE OF SERVICE
COUNTY OF RICHLAND)

The undersigned, Nyla M. Laney, hereby certifies that she is employed by the Legal Department for BellSouth Telecommunications, Inc. ("BellSouth") and that she has caused the Post-Hearing Brief of BellSouth Telecommunications, Inc. in Docket No. 2005-63-C to be served upon the following this September 16, 2005:

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