IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

BELL COMMUNICATIONS RESEARCH, INC. :
(now Telcordia Technologies, Inc.), :
          :
     Plaintiff,   :
          : Civil Action No. 98-586 JJF
   v.   :
          :
FORE SYSTEMS, INC.   :
(now Marconi Communications, Inc.), :
          :
     Defendant.   :

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Attorneys for Defendant.

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MEMORANDUM OPINION

October 3, 2003
Wilmington, Delaware

FARNAN, District Judge

The parties are back before the Court seeking clarification of the Court's construction of the term "empty payload field." By an Order dated August 29, 2000, the Court construed the term "empty payload field" in Claim 1 of the '306 Patent to mean a payload field with "zero data in it." (D.I. 373). On appeal, the Court of Appeals for the Federal Circuit, <u>Bell Communications Research, Inc. v. FORE Sys., Inc.</u>, 62 Fed. Appx. 951 (Fed. Cir. 2003), declined to address the Court's construction of the phrase "empty payload field." The Federal Circuit remanded the case for further proceedings on infringement in light of FORE's representations at oral argument that the phrase "empty payload field" "encompassed various bit signals that might maintain the stated transmission rate of a bit stream, including 'placeholders' or 'garbage bits.'" <u>Id</u>. at 957. The Court has considered supplemental Markman briefs submitted by the parties and held oral argument on the issues.[1]

<div align="center">**DISCUSSION**</div>

I. The Meaning Of "Empty Payload Field"

By its August 29, 2000, Order (D.I. 373) the Court construed "empty payload field' to mean "that a frame's payload has zero data in it." (D.I. 373). In seeking clarification of the

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[1]In its prior decision, the Court set forth the technology of the '306 Patent and the relevant legal standards, and therefore, the Court will not do so again.

Court's construction of "empty payload field," Bell contends that "empty payload field" must permit the existence of some data in the payload field. Bell contends that FORE's prior interpretation of the term "empty payload field" – that the payload field could contain nothing – was illogical. Bell argues that this became evident at oral argument in the Federal Circuit when FORE conceded that "empty payload field" must have some data in it. Bell asks the Court to clarify its construction so that it is understood that the "empty payload field" contains data of some kind, but zero source data.

In response, FORE contends that "empty" should be given its ordinary meaning – i.e. nothing. FORE contends that "empty payload field" should mean zero data. While FORE agrees with Bell's assertion that an "empty payload field" must have a lack of source data, FORE contends that that alone is insufficient to satisfy the term "empty." Further, FORE contends that its admission at the Federal Circuit that an "empty payload field" does contain "garbage bits" is not inconsistent with FORE's prior arguments before the Court and its present position. FORE contends that any garbage bits present in the payload field are merely a minimal level of background noise or interference that are ignored by the system, and thus, do nothing but take up space.

The Court will clarify its construction to reflect the

Court's agreement with Bell's interpretation.

An appropriate order will be entered.

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                                 :
                Defendant. :

ORDER

For the reasons discussed in the Court's October 3, 2003, Memorandum Opinion, the Court construes the term "empty payload field" to mean empty of source data, but including bit signals of some kind.

NOW THEREFORE, IT IS HEREBY ORDERED that "empty payload field" means empty of source data, but including bit signals of some kind.

 October 3, 2003   JOSEPH J. FARNAN, JR.
         DATE   UNITED STATES DISTRICT JUDGE