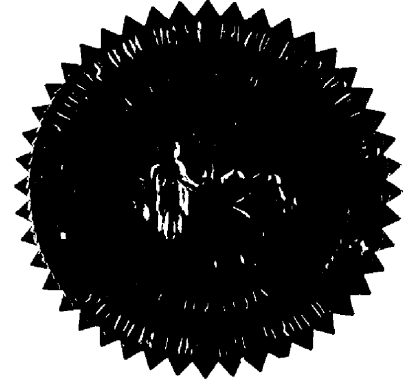


**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

DOCKET NO. 000075-TP

In the Matter of

**INVESTIGATION INTO APPROPRIATE
METHODS TO COMPENSATE
CARRIERS FOR EXCHANGE OF
TRAFFIC SUBJECT TO SECTION
251 OF THE TELECOMMUNI-
CATIONS ACT OF 1996.**



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AND DO NOT INCLUDE PREFILED TESTIMONY.**

**VOLUME 2
PAGES 200 THROUGH 353**

PROCEEDINGS: HEARING

**BEFORE: CHAIRMAN E. LEON JACOBS, JR.
COMMISSIONER . TERRY DEASON
COMMISSIONER LILA A. JABER
COMMISSIONER BRAULIO L. BAEZ
COMMISSIONER MICHAEL A. PALECKI**

DATE: Wednesday, March 7, 2001

TIME: Commenced at 9:35 a.m.

**PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida**

**REPORTED BY: TRICIA DeMARTE
Official FPSC Reporter**

APPEARANCES: (As Heretofore Noted)

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EXHIBITS

NUMBER:		ID.	ADMTD.
20	JCF-1	220	350
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1 PROCEEDINGS

2 (Transcript follows in sequence from
3 Volume 1.)

4 CHAIRMAN JACOBS: I'm dangerous up here. Go
5 right ahead. Wait --

6 MS. CASWELL: I'm sorry?

7 CHAIRMAN JACOBS: Go right ahead.

8 MS. CASWELL: The competitive provision of local
9 exchange service means that carriers need to collaborate
10 to complete a call from one LEC's customer to another
11 LEC's customer. The Telecommunications Act of
12 1996 requires local carriers to establish arrangements to
13 compensate each other for the transport and termination of
14 these calls.

15 The FCC has ruled that this reciprocal
16 compensation obligation applies only to local
17 telecommunications. The FCC has also ruled that calls to
18 Internet service providers, or ISPs, are generally not
19 local telecommunications, and therefore, as we've heard,
20 the FCC intends to establish a reciprocal compensation
21 mechanism for these ISP-bound calls. And I believe that
22 most of the parties would agree that the FCC's eventual
23 ruling will take precedence over any state ruling that is
24 inconsistent with the federal ruling.

25 Given the FCC proceeding, Verizon believes, like

1 **BellSouth, that the best approach is for this Commission**
2 **to hold off making any decisions until the FCC rules.**
3 **Although we understand that that may be frustrating, we**
4 **believe it may be even more frustrating to put in place**
5 **policies that may need to be reversed in the near future.**

6 **The legal issues concerning jurisdiction and the**
7 **like will be thoroughly briefed in our prehearing -- our**
8 **posthearing statement, but I would like to respond to one**
9 **of Mr. Hoffman's statements, and that was that the D.C.**
10 **Circuit rejected the FCC's end-to-end analysis for**
11 **determining jurisdiction. That's not my reading of the**
12 **opinion.**

13 **What the D.C. Circuit did was that the -- said**
14 **that the FCC had not adequately explained its application**
15 **of that analysis to ISP-bound traffic, but the**
16 **jurisdictional analysis that's based on end-to-end -- the**
17 **end-to-end concept remains alive. And, indeed, the FCC is**
18 **expected to affirm that concept in its remand order.**

19 **I would also point out that there has been no**
20 **challenge to the FCC's decision on both Verizon's and**
21 **BellSouth's ADSL tariffs in the federal jurisdiction. And**
22 **in those decisions, the FCC affirmed again ISP-bound**
23 **traffic was jurisdictionally interstate. Again, those**
24 **decisions are not up on appeal, and they're still good**
25 **law. It's the same kind of traffic we're talking about**

1 here except that in this case it's dial-up and the xDSL
2 situation it's not.

3 If the Commission chooses to move forward with a
4 reciprocal compensation scheme, it will need to define the
5 policy objectives it's pursuing. If the Commission wants
6 to achieve a fair, efficient and pro-competitive solution,
7 and Verizon believes it does, then the reciprocal
8 compensation scheme prevailing in Florida cannot be
9 continued.

10 Under this scheme, ILECs compensate ALECs on a
11 minute of use basis for ISP calls which are typically much
12 longer than voice calls. As Staff Witness Fogleman
13 indicates, this results in overrecovery of costs by the
14 ALECs. What this approach has done is prompt ALECs to
15 target ISPs as customers for the expressed purpose of
16 obtaining reciprocal compensation. And the ALECs freely
17 admit that they have deliberately pursued what they call
18 the market for call termination services. This means that
19 ILECs are obliged to make multimillion dollar payments to
20 ALECs each year in those cases where the Commission has
21 determined that that's appropriate.

22 Because there's no little -- because there is
23 little or no traffic flowing back to Verizon, there is
24 nothing reciprocal about this compensation method. Of
25 course, it makes perfect sense for the ALECs to do what

1 they have done, and of course, they want to keep this
2 gravy train running. The ALECs will tell you that that's
3 the right thing to do regardless of whether they are
4 making much more than it costs them to terminate the calls
5 and regardless of whether the ILECs can set their end user
6 rates to cover reciprocal compensation payments to the
7 ALECs.

8 But you should ask yourselves why you should
9 maintain the existing system. Is it in the public
10 interest? Will it foster local competition? The answer
11 to these questions is no, as more and more commissions are
12 beginning to realize. In an arbitration between AT&T and
13 BellSouth, for instance, the South Carolina Commission
14 very recently concluded that the payment of reciprocal
15 compensation is not in the public interest and, in fact,
16 creates disincentives for CLECs to offer residential or
17 advanced services themselves.

18 The South Carolina decision drew on the logic of
19 other commissions, including Colorado, New Jersey, and
20 Massachusetts. The Massachusetts Commission's reasoning
21 is particularly compelling, and I'd like to read a passage
22 from that opinion.

23 The Commission said, the unqualified payment of
24 reciprocal compensation for ISP-bound traffic implicit in
25 our October orders construing of the 1996 Act does not

1 promote real competition in telecommunications. Rather,
2 it enriches competitive local exchange carriers, Internet
3 service providers, and Internet users at the expense of
4 telephone customers and shareholders. This is done under
5 the guise of what purports to be competition but is really
6 just an unintended arbitrage opportunity derived from
7 regulations that were designed to promote real
8 competition, a loophole in a word. But regulatory policy
9 ought not to create such loopholes or once having
10 recognized their effects ought not to leave them open.
11 Real competition is more than just shifting dollars from
12 one person's pocket to another's.

13 The same logic applies in this case where the
14 Commission is faced with the same issue. The only way the
15 existing usage-based system of compensation the Commission
16 has ordered in various arbitrations might be acceptable is
17 if the ILECs could freely set their end user rates to be
18 consistent with the reciprocal compensation rates. That
19 is, if reciprocal compensation is to be paid on a measured
20 basis, then the ILECs should be able to charge its end
21 user on a measured basis rather than on a flat rate basis.
22 Or the ILECs should be permitted to charge a flat rate
23 that recovers its reciprocal compensation payments.

24 All of the ALECs in this proceeding apparently
25 believe that the ILECs should recover these payments from

1 their end users. On this, Verizon and the ILECs --
2 Verizon and the ALECs can agree, but the ALECs ignore the
3 fact that Verizon and other price capped ILECs must offer
4 flat rate local service by statute and cannot raise their
5 rates at will.

6 So in the absence of legislative changes that
7 would allow the ILECs to match up the end user rate with
8 the intercarrier compensation structure, the best approach
9 at least in the short term is a bill-and-keep method of
10 compensation. Then both the end user rates and
11 intercarrier compensation rates will be
12 nontraffic-sensitive, and the Commission will avoid the
13 anticompetitive results the Massachusetts Commission wrote
14 about. Thank you.

15 CHAIRMAN JACOBS: Ms. Caswell.

16 MS. CASWELL: Yes.

17 CHAIRMAN JACOBS: I guess one could conclude
18 from your comments that there are costs being incurred on
19 both sides of this transaction.

20 MS. CASWELL: Yes.

21 CHAIRMAN JACOBS: Okay. An so you would agree
22 that those costs in some manner should be compensated --
23 should be recovered? I'm sorry.

24 MS. CASWELL: Well, they can be recovered from
25 the respective LEC's end users on a bill-and-keep basis.

1 **CHAIRMAN JACOBS: If there is a great imbalance**
2 **in the flow of traffic, is that likely to happen? That**
3 **there will be a commensurate recovery of costs.**

4 **MS. CASWELL: Well, I would observe, first of**
5 **all, that we don't consider the ISP-bound traffic to be**
6 **local. Aside from that, though, I would make the**
7 **observation that the traffic, even if we consider it to be**
8 **local, is in such an imbalance today because of this,**
9 **quote, regulatory loophole. The ALECs have sought out**
10 **these customers with high volumes of inward calling only**
11 **to receive reciprocal compensation. So to ask the**
12 **question is kind of like the tail wagging the dog. I**
13 **don't think that that current circumstance should**
14 **necessarily drive your decision about what compensation**
15 **method is correct for all local traffic, not just for ISP**
16 **traffic.**

17 **And again, Verizon's recommendation is to apply**
18 **the bill-and-keep method to all local traffic so that, you**
19 **know, we'll have significant originating and terminating**
20 **costs just as the ILECs might. And it's fair, as other**
21 **commissions have decided it's fair, for each of the**
22 **parties to recover those costs from their own end users.**
23 **So the circumstance we're talking about, the imbalance**
24 **might not exist or might not continue to exist if a more**
25 **rational compensation method is implemented.**

1 **CHAIRMAN JACOBS:** Thank you.

2 **COMMISSIONER JABER:** Ms. Caswell, do you -- I
3 don't know if it was Mr. Hoffman or Mr. McGlothlin who
4 said that the only way a state commission could implement
5 bill-and-keep is after a determination that the traffic
6 was roughly balanced. Do you agree with that?

7 **MS. CASWELL:** I don't have the rule in front of
8 me, but as I recall, it applies only to local traffic.
9 And again, our position would be that this traffic is not
10 local, so that that rule -- we would have no problem
11 applying that rule under our recommendation.

12 **COMMISSIONER JABER:** You would have no
13 problem --

14 **MS. CASWELL:** Because we don't consider the
15 traffic to be local. And again, I don't have the rule in
16 front of me, so I can analyze that in more detail in the
17 brief, but my understanding is that it applies only to
18 local traffic.

19 **COMMISSIONER JABER:** Okay. Well, let's say we
20 did have to make a finding, preliminary finding, that the
21 traffic was roughly balanced. Is that information readily
22 available, or did I need -- I probably need to ask a
23 witness that; right?

24 **MS. CASWELL:** Yeah, you could ask the witness.
25 I don't know that we have any firm statistics, but

1 obviously, you know, I think the ALECs are terminating
2 many more calls than they are originating with this kind
3 of traffic.

4 **COMMISSIONER DEASON:** Let me ask this question.
5 Assume for the moment that you are correct in your
6 argument that the current pricing mechanism in the
7 reciprocal compensation arrangement that we have in place
8 has resulted in there being an inappropriate price signal
9 being given in the market, and the market has responded
10 such that there has been an incentive for ALECs to target
11 certain types of customers, those that have an imbalance,
12 i.e., they receive much more traffic than they generate,
13 if that's the result, then it's going to be extremely
14 difficult to show that there is a balance of traffic.

15 **MS. CASWELL:** To show that there is a balance of
16 traffic?

17 **COMMISSIONER DEASON:** That there is a balance of
18 traffic. If the market has responded in the way that you
19 say such that there has been one class of customer which
20 has been targeted, then --

21 **MS. CASWELL:** Yeah, and that's --

22 **COMMISSIONER DEASON:** -- it wouldn't be
23 impossible to show that there is a balance, is it not?

24 **MS. CASWELL:** That's probably true. But again,
25 I'm not admitting that that rule would apply in this

1 situation. But I think you're right, we wouldn't be here
2 today if there weren't an imbalance of traffic.

3 **COMMISSIONER DEASON:** There's a gentleman in the
4 back shaking his head. So maybe we'll have an
5 opportunity --

6 **MS. CASWELL:** It might be my witness, so I
7 should let him address this question.

8 **COMMISSIONER DEASON:** Well, I'll wait and
9 address the question.

10 **MS. CASWELL:** Okay.

11 **CHAIRMAN JACOBS:** Very well. Any further
12 questions? We cut you off. Were you done?

13 **MS. CASWELL:** No, I'm done. Thank you.

14 **CHAIRMAN JACOBS:** Okay. That takes care of
15 opening statements.

16 **MS. MASTERTON:** No.

17 **CHAIRMAN JACOBS:** I'm sorry.

18 **MS. MASTERTON:** Sprint has an opening statement
19 as well.

20 **CHAIRMAN JACOBS:** I'll get it straight in a
21 minute. Go right ahead.

22 **MS. MASTERTON:** That's okay. First, I wanted to
23 emphasize that Sprint is participating in this hearing as
24 both an ALEC and an ILEC.

25 **CHAIRMAN JACOBS:** Before you get started, we're

1 going to have to give the court reporter a break, so I
2 think it would probably be best now. So why don't we take
3 a ten-minute break and come back?

4 MS. MASTERTON: Okay.

5 (Brief recess.)

6 CHAIRMAN JACOBS: You may proceed,
7 Ms. Masterton.

8 MS. MASTERTON: Thank you, Mr. Chairman,
9 Commissioners. In the interest of time, I've tried to cut
10 down on my prepared remarks, so if they sound disjointed,
11 hopefully they will still make sense. As I had begun to
12 say, Sprint is participating in this hearing both as an
13 ILEC and an ALEC. As such, Sprint's -- we believe that
14 Sprint's positions uniquely balance considerations of how
15 the Commission's decision in this docket will affect the
16 operations and the economic viability of both sides of its
17 business.

18 First, I wanted to address the Commission's
19 jurisdiction to adopt a compensation mechanism for
20 ISP-bound traffic in the context of this generic
21 proceeding. And by "jurisdiction," I mean the
22 Commission's authority to adopt the mechanism, not the
23 jurisdictional nature of the traffic.

24 It's Sprint's position that the Commission does
25 indeed have jurisdiction to adopt a mechanism for

1 compensation for ISP-bound traffic that will serve as a
2 default should the parties to negotiations in
3 interconnection agreements fail to agree. Sprint believes
4 that the Commission's jurisdiction is founded in the FCC's
5 declaratory ruling that was previously discussed by other
6 parties in the docket.

7 In that ruling, the FCC conceded that it has no
8 rule governing intercarrier compensation for ISP-bound
9 traffic. In the absence of such a rule and pending the
10 outcome of a rulemaking proceeding to establish federal
11 rules, the FCC explicitly permitted state commissions to
12 determine the appropriate compensation for this traffic.
13 In fact, this Commission has already recognized its
14 jurisdiction to adopt such a mechanism in its
15 Global NAPS/BellSouth interconnection agreement decision
16 in September 2000.

17 Sprint believes that the Commission should
18 exercise its jurisdiction again in this docket and adopts
19 Sprint's proposal for a reciprocal compensation rate for
20 all local traffic that takes into account the differences
21 in call duration of different types of traffic.

22 In response to the concerns that have been
23 expressed regarding the necessity for State action when
24 the FCC has a pending rulemaking proceeding that Sprint
25 concedes may ultimately supercede whatever policies the

1 **State adopts, Sprint urges the Commission not to defer**
2 **action pending completion of the federal rulemaking**
3 **because the timing of the federal rule is uncertain,**
4 **particularly with the recent changes in administration at**
5 **the FCC.**

6 **In order to resolve and prevent ongoing disputes**
7 **between ALECs and ILECs regarding the proper compensation**
8 **for ISP-bound traffic, Sprint believes the Commission**
9 **should act to resolve these issues now. If necessary, the**
10 **Commission's policies can be revisited and amended if**
11 **subsequent federal action necessitates that course of**
12 **action.**

13 **Sprint urges the Commission to treat ISP-bound**
14 **calls as though they are local calls for the purposes of**
15 **reciprocal compensation. And by this, Sprint means that**
16 **whatever compensation arrangements apply to purely local**
17 **voice calls should apply to ISP-bound calls as well. And**
18 **Sprint takes this position for two reasons primarily:**
19 **First, ISP-bound traffic is functionally the same as other**
20 **local voice traffic, and second, it would be**
21 **administratively cumbersome, subject to dispute and**
22 **difficult and expensive to distinguish between the two**
23 **types of traffic.**

24 **Sprint believes that a reciprocal compensation**
25 **rate should ideally reflect the overall costs and mix of**

1 traffic regardless of the variation of calling patterns of
2 different users. Specifically, the record is replete with
3 evidence that demonstrates that Internet calls have much
4 longer holding times than the average voice call. In
5 fact, no witness disagrees on that point. This critical
6 difference between Internet-bound calls and traditional
7 voice calls must be recognized in the development of
8 reciprocal compensation rates for local traffic.

9 Sprint has recommended that the Commission adopt
10 a reciprocal compensation rate structure that takes into
11 account the two distinct components of the costs of
12 switching a telephone call. As Sprint's witness
13 Mr. Hunsucker explains, and will more fully explain in his
14 summary -- will also address in his summary, Sprint's
15 proposed methodology separates these distinct components
16 of the switching costs in a manner that more appropriately
17 reflects the costs of terminating traffic.

18 Sprint's recommended rate structure is
19 practical, and that the switching cost model widely
20 employed by the industry can reliably separate switching
21 costs between call setup and per minutes of use. In
22 addition, this same type of bifurcated rate mechanism has
23 previously been adopted by at least two state commissions,
24 that is, Texas and Wisconsin, as the appropriate
25 reciprocal compensation rate for all traffic.

1 **In conclusion, Sprint believes that the**
2 **Commission has jurisdiction to determine through this**
3 **generic proceeding the appropriate reciprocal compensation**
4 **mechanism for ISP-bound traffic. Sprint recommends that**
5 **an exercise in this jurisdiction the Commission should not**
6 **segregate ISP-bound traffic from other local traffic for**
7 **the purposes of reciprocal compensation, but that the**
8 **Commission should adopt a mechanism for reciprocal**
9 **compensation for all local traffic, including ISP-bound**
10 **traffic. And this mechanism should recognize the**
11 **differences in call holding times between ISP-bound calls**
12 **and traditional voice calls by bifurcating the switching**
13 **cost component into a call setup and a per minutes of use**
14 **call duration component. Such a rate structure will more**
15 **appropriately reflect the costs incurred for terminating**
16 **local traffic and is consistent with the federal**
17 **telecommunications act and the FCC orders and rulings**
18 **implementing the Act. Thank you very much.**

19 **CHAIRMAN JACOBS: Very well. That takes care of**
20 **opening statements? Good. I finally got it right.**
21 **Staff, I assume you didn't have one.**

22 **MS. BANKS: No, Mr. Chairman.**

23 **CHAIRMAN JACOBS: Great. We're prepared to go**
24 **with the first witness.**

25 **MR. HORTON: I believe e.spire would call**

1 **Mr. Falvey. Mr. Chairman, while Mr. Falvey is getting**
2 **settled, his testimony addresses many of the questions**
3 **that were asked this morning, and certainly he's ready to**
4 **respond to them and provide additional information that**
5 **the Commissioners see fit.**

6 **CHAIRMAN JACOBS: Very well.**

7 **MR. HORTON: And he was in the room and sworn.**

8 **CHAIRMAN JACOBS: Great.**

9 **JAMES C. FALVEY**

10 **was called as a witness on behalf of e.spire Communications,**
11 **Inc., and, having been duly sworn, testified as follows:**

12 **DIRECT EXAMINATION**

13 **BY MR. HORTON:**

14 **Q Would you please state your name and address for**
15 **the record.**

16 **A James C. Falvey.**

17 **Q The green light should be on.**

18 **A It should be -- is that good?**

19 **Q Yes.**

20 **A There we go. I just wasn't close enough.**

21 **James C. Falvey.**

22 **Q And by whom are you employed?**

23 **A E.spire Communications, Inc.**

24 **Q And, Mr. Falvey, did you prepare and prefile in**
25 **the docket direct testimony consisting of 15 pages?**

1 **A** **Yes, I did.**

2 **Q** **Do you have any corrections or changes to make**
3 **to the testimony at this time?**

4 **A** **No, I don't.**

5 **Q** **Mr. Falvey, if I were to ask you the questions**
6 **contained in that direct testimony today, would your**
7 **answers be the same?**

8 **A** **Yes, they would.**

9 **MR. HORTON: Mr. Chairman, I would request that**
10 **the prefiled direct testimony be inserted in the record as**
11 **though read.**

12 **CHAIRMAN JACOBS: Without objection, show the**
13 **prefiled testimony of Mr. Falvey entered into the record**
14 **as though read.**

15 **BY MR. HORTON:**

16 **Q** **Mr. Falvey, did you also prepare and prefile in**
17 **this docket rebuttal testimony consisting of 22 pages?**

18 **A** **Yes, I did.**

19 **Q** **And do you have any changes or corrections to**
20 **make to that testimony?**

21 **A** **No.**

22 **Q** **If I were to ask you the questions contained in**
23 **the rebuttal testimony, would your answers be the same?**

24 **A** **Yes.**

25 **MR. HORTON: Mr. Chairman, I would request that**

1 the prefiled rebuttal testimony be inserted in the record
2 as though read.

3 **CHAIRMAN JACOBS: Without objection, show the**
4 **rebuttal testimony of Mr. Falvey entered into the record**
5 **as though read.**

6 **BY MR. HORTON:**

7 **Q Mr. Falvey, attached to your rebuttal testimony**
8 **was a one-page exhibit which has been marked as JCF-1.**
9 **Could you explain that exhibit real quickly?**

10 **A The one-page exhibit, if I'm not mistaken, is a**
11 **letter from Guy Hicks of BellSouth.**

12 **Q Do you know where that letter was filed?**

13 **A With the Tennessee Regulatory Authority.**

14 **MR. HORTON: Mr. Chairman, could we mark exhibit**
15 **as Exhibit 20, I believe?**

16 **CHAIRMAN JACOBS: Show Exhibit JCF-1 marked as**
17 **Exhibit 20.**

18 **(Exhibit 20 marked for identification.)**

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1 **Q. PLEASE STATE YOUR NAME, TITLE AND BUSINESS ADDRESS**
2 **FOR THE RECORD.**

3 A. My name is James C. Falvey. I am Senior Vice President – Regulatory
4 Affairs for e.spire Communications, Inc. (“e.spire”), which formerly was
5 known as American Communications Services, Inc. or “ACSI”. My
6 business address is 131 National Business Parkway, Suite 100, Annapolis
7 Junction, Maryland 20701.

8 **Q. PLEASE DESCRIBE YOUR PROFESSIONAL EXPERIENCE AND**
9 **BACKGROUND.**

10 A. Prior to joining e.spire as Vice President – Regulatory Affairs in 1996, I
11 practiced law as an associate with the Washington, D.C. law firm of
12 Swidler and Berlin for two and a half years. In the course of my practice,
13 I represented competitive local exchange providers (“CLECs”),
14 competitive access providers, cable operators and other common carriers
15 before state and federal regulatory authorities. Prior to my employment at
16 Swidler and Berlin, I was an associate in the Washington, D.C. office of
17 Johnson & Gibbs, where I practiced antitrust litigation for three years. I
18 graduated from Cornell University in 1985 with honors and received my
19 law degree from the University of Virginia School of Law in 1990. I am
20 admitted to practice law in the District of Columbia and Virginia.

21 **Q. HAVE YOU TESTIFIED PREVIOUSLY ON MATTERS RELATED**
22 **TO THOSE TO WHICH YOU WILL TESTIFY TO TODAY?**

1 A. Yes, I have. I have testified before the state regulatory commissions in
2 Alabama, Georgia, Kansas, Kentucky, Louisiana, Mississippi, New York,
3 Pennsylvania, South Carolina, Tennessee, Texas, and before this
4 Commission, on various local interconnection and competition issues,
5 including the issue of whether reciprocal compensation is due for the
6 transport and termination of local calls placed to Internet Service
7 Providers (“ISPs”). I also have testified on the reciprocal compensation
8 issue before two separate American Arbitration Association panels.

9 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS**
10 **PROCEEDING?**

11 A. I am testifying on behalf of e.spire and its local operating subsidiaries in
12 the state of Florida. e.spire is a facilities-based CLEC that, through its
13 operating subsidiaries, provides a full range of local and long distance
14 telecommunications services in more than 30 markets throughout the
15 northeastern, southeastern and southwestern United States. In Florida,
16 e.spire competes with BellSouth and Verizon, (formerly known as GTE),
17 the incumbent local exchange carriers (“ILECs”), in major metropolitan
18 areas within Florida.

19 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

20 A. The purpose of my testimony in this proceeding is to explain why this
21 Commission should find that calls placed to Internet Service Providers
22 (“ISPs”) should continue to be subject to the reciprocal compensation

1 provisions of BellSouth's and Verizon interconnection agreements with
2 CLECs.

3 **Q. DOES THE COMMISSION HAVE THE JURISDICTION TO**
4 **ADOPT AN INTERCARRIER COMPENSATION MECHANISM**
5 **FOR THE DELIVERY OF ISP-BOUND TRAFFIC?**

6 A. Yes. In March of this year, the District of Columbia Circuit Court of
7 Appeals vacated a ruling of the FCC that left intact the ability of state
8 commissions to determine how local traffic should be compensated. As
9 you are aware, in February 1999, the FCC issued an order in which it
10 determined that despite the fact that it has required states to treat ISP-
11 bound traffic t as local traffic, "at least a substantial portion of dial-up ISP-
12 bound traffic is interstate[.]" (*See Implementation of the Local*
13 *Competition Provisions in the Telecommunications Act of 1996, Inter-*
14 *Carrier Compensation for ISP-Bound Traffic*, 14 FCC Rcd 3689 at ¶ 20
15 (1999).) Thus, the FCC reasoned that ISP-bound traffic is not governed by
16 the reciprocal compensation obligation in Section 251(b)(5) of the
17 Telecommunications Act of 1996 ("Telecommunications Act" or "Act").
18 Recognizing the potential void created by its assertion of jurisdiction over
19 ISP-bound traffic, the FCC noted that given its longstanding history of
20 treating ISP-bound traffic as local, parties to pre-existing interconnection
21 agreements likely agreed to treat ISP-bound traffic as local traffic. In
22 addition, the FCC opened a new rule making in which it intended to adopt

1 a new prospective compensation mechanism for ISP-bound traffic. In the
2 interim, the FCC advised states that they were free to interpret the
3 contractual obligations contained in existing interconnection agreements
4 and to require the payment of reciprocal compensation for ISP-bound
5 traffic in new agreements.

6 The FCC also indicated that the states were free to adopt some
7 other compensation mechanism, if they chose not to require reciprocal
8 compensation for the payment of ISP-bound traffic. Cognizant of this
9 FCC decision, at least eleven state commissions, including several that
10 affect Verizon and its affiliated companies (Texas, California, Illinois and
11 Ohio) already have determined that reciprocal compensation should apply
12 to ISP-bound traffic, at least until the FCC establishes an alternate
13 compensation mechanism.

14 **Q. DOES THE COMMISSION HAVE THE JURISDICTION TO**
15 **ADOPT SUCH AN INTERCARRIER COMPENSATION**
16 **MECHANISM THROUGH A GENERIC PROCEEDING?**

17 A. Yes. The Commission need not await a particular dispute between carriers
18 to address the issue of intercarrier compensation. The FCC and the D.C.
19 Court of Appeals agreed that in the interim period during which the FCC
20 will consider a new compensation mechanism for ISP-bound traffic, states
21 are free to require the payment of reciprocal compensation for ISP-bound
22 traffic in new agreements. As I mentioned above, the FCC already

1 indicated that states were also free to adopt another compensation
2 mechanism, if they chose not to require reciprocal compensation for the
3 payment of ISP-bound traffic.

4 **Q. IS DELIVERY OF ISP-BOUND TRAFFIC SUBJECT TO**
5 **COMPENSATION UNDER SECTION 251 OF THE**
6 **TELECOMMUNICATIONS ACT OF 1996?**

7 A. Yes. Section 251(b)(5) of the Act requires that carriers establish
8 reciprocal compensation arrangements “for the transport and termination
9 of telecommunications.” A caller’s dial-up call to an ISP is
10 “telecommunications” as defined in the Act (*See* 47 U.S.C. §153(43)) and
11 is therefore subject to reciprocal compensation. In interpreting the
12 reciprocal compensation obligations specified in section 251, the FCC
13 preserved its existing access charge regime. Thus, in its First Report and
14 Order in CC Docket 96-98, the FCC appeared to limit the obligation to
15 pay reciprocal compensation to “local” traffic not encompassed by the
16 access charge regime.

17 Generally speaking, there are two established means of recovering
18 costs associated with completing traffic directed to one carrier by another.
19 Those means are (1) access charges and (2) reciprocal compensation.
20 Access charges are assessed to carriers by the terminating local exchange
21 carrier for the completion of the originating carrier’s toll calls.
22 Traditionally, access charges have allowed carriers to recover more than

1 their costs and have served as a mechanism to support Universal Service
2 and to subsidize residential rates for local exchange service. In 1983, the
3 FCC determined that ISPs were exempt from access charges and were
4 entitled to purchase their connections to the public switched telephone
5 network as end users, as opposed to carriers.

6 Reciprocal compensation, on the other hand, is a concept based in
7 the Telecommunications Act of 1996 (“Telecommunications Act” or
8 “Act”). Section 251 of the Act requires local exchange carriers (“LECs”)
9 such as BellSouth or Verizon and e.spire to interconnect their networks so
10 that customers of each carrier can place calls to customers of the other
11 carrier. As a result, today, customers of e.spire can place calls to
12 customers of BellSouth, and vice versa. To make this happen, BellSouth
13 and e.spire must exchange traffic between their networks. Thus, when a
14 BellSouth customer makes a call to an e.spire customer, BellSouth directs
15 and hands-off the call to e.spire and e.spire then connects the call to its
16 customer. This call completion function performed by e.spire (or
17 BellSouth, depending on whose customer is being called by a customer of
18 the other carrier) is known as “transport and termination”. Notably, the
19 functionality provided does not differ based on whether or not the end user
20 of one LEC called by an end user of another LEC is a pizza parlor or an
21 ISP. In both cases, the terminating carrier must accept hand-off of the call
22 originated on the other carrier’s network, and must deliver the call to its

1 destination. The equipment used is the same on both the originating and
2 terminating sides, and the costs of originating and terminating the calls are
3 the same. Since this transaction requires use of the terminating carrier's
4 resources, it is appropriate to compensate that carrier for its efforts.
5 Otherwise, this service is being provided to the originating carrier for free,
6 something that does not make economic sense whether the originating
7 carrier is BellSouth or e.spire.

8 **Q. WHAT ACTIONS SHOULD THE COMMISSION TAKE, IF ANY,**
9 **WITH RESPECT TO ESTABLISHING AN APPROPRIATE**
10 **COMPENSATION MECHANISM FOR ISP-BOUND TRAFFIC IN**
11 **LIGHT OF CURRENT DECISIONS AND ACTIVITIES OF THE**
12 **COURTS AND THE FCC?**

13 A. As you are aware, the FCC is currently considering the best manner in
14 which to address the issue of intercarrier compensation. In the wake of the
15 FCC's February 1999 Order, in March of this year, the United States
16 Court of Appeals for the District of Columbia Circuit vacated the FCC's
17 February 26, 1999 decision (that found that dial-up calls to ISPs are
18 substantially interstate in character) and remanded the matter back to the
19 FCC for lack of reasoned decision making. *Bell Atlantic v. FCC*, 206 F.3d
20 1 (D.C. Cir. 2000). Significantly, the Court called into question the FCC's
21 application of its "end-to-end" jurisdictional analysis for the purpose of
22 determining whether ISP-bound traffic is local and rejected the FCC's

1 conclusion that such traffic was not local and therefore not encompassed
2 by the reciprocal compensation obligations of the Act. In rejecting the
3 FCC's analysis, the Court noted that *under the FCC's own definition*, a
4 call from an end user to an ISP "terminates" at an ISP. The Court also
5 found that the FCC failed to explain adequately its conclusion that ISP-
6 bound traffic is "exchange access" rather than "telephone exchange
7 service" under the Communications Act.

8 In response to this turn of events, e.spire believes this Commission
9 should move forward as many other state commissions already have done,
10 by finding in this proceeding that ISP-bound traffic should continue to be
11 subject to reciprocal compensation at the cost-based local call transport
12 and termination rates approved by the Commission. This preserves a
13 tried-and-true mechanism that allows carriers to be compensated for
14 resources they devote to delivering calls originated on other carriers'
15 networks while avoiding "jumping the gun" pending adoption of a
16 definitive federal rule. Since, as noted above, the basic transaction is
17 functionally the same whether the call is delivered to a pizza parlor or an
18 ISP, it would make sense to treat the transaction the same from an
19 economic standpoint, unless and until the FCC rules otherwise.

20 **Q. WHAT POLICY CONSIDERATION SHOULD INFORM THE**
21 **COMMISSION'S DECISION IN THIS DOCKET?**

1 A. The Commission should consider the effect reciprocal compensation for
2 ISP traffic has on e.spire and other new facilities-based competitors in the
3 Florida market. e.spire and other carriers need to be assured of a means of
4 recovering costs incurred in delivering ISP-bound calls originated and
5 directed to them by BellSouth, Verizon and other local carriers. As I
6 stated above, when a Verizon end user places a local call to an end user
7 served by e.spire, e.spire terminates the call originated by Verizon and
8 provides the same functionality to Verizon, regardless of whether the
9 Verizon end user dials an ISP or any other e.spire local services end user.
10 Thus, the compensation mechanism – reciprocal compensation at
11 Commission-approved cost-based rates – for the transport and termination
12 of local traffic, should be the same. Both calls use the same path and the
13 same equipment to reach their ultimate destination. Most importantly,
14 from the point of view of the terminating carrier, the costs to deliver the
15 calls made to the customer and the ISP customer are the same. There is no
16 logical justification to single out the call delivered to the ISP and suggest
17 that *no compensation* (or significantly reduced compensation) should be
18 paid to the carrier that delivers the call, while a different (presumably cost-
19 based) rate is applied to other calls with identical technical and cost
20 characteristics. For this reason, the rates associated with recovering those
21 costs should also be the same.

1 Costs recovered through reciprocal compensation generate revenue
2 critical to the ability of new entrants such as e.spire to implement network
3 construction and develop product offerings necessary to compete
4 effectively with incumbents such as Verizon and BellSouth. Eliminating
5 the ability of a CLEC to recover the costs associated with delivering traffic
6 to ISPs can be expected to adversely affect e.spire's cost of doing business
7 and is likely to distort an increasingly competitive local exchange market.
8 Without Commission action, Verizon and BellSouth will not agree to any
9 compensation mechanism for the mutual recovery of costs associated with
10 completing ISP-bound traffic and e.spire will be forced to file a separate
11 petition for arbitration that further increases costs and delays competitive
12 market entry.

13 **Q. IS THE COMMISSION REQUIRED TO SET A COST-BASED**
14 **MECHANISM FOR DELIVERY OF ISP-BOUND TRAFFIC?**

15 A. Yes. Section 252(d)(2) of the Act provides that a state commission shall
16 not consider the terms and conditions for reciprocal compensation to be
17 just and reasonable unless the terms and conditions provide for the mutual
18 reciprocal recovery by each carrier of costs associated with transport and
19 termination of calls that originate on another carrier's network. Section
20 252(d)(2) states further that the terms and conditions for reciprocal
21 compensation are just and reasonable if those terms and conditions

1 determine such costs on the basis of a reasonable approximation of the
2 additional costs or terminating such calls.

3 **Q. WHAT FACTORS SHOULD THE COMMISSION CONSIDER IN**
4 **SETTING THE COMPENSATION MECHANISMS FOR**
5 **DELIVERY OF ISP-BOUND TRAFFIC?**

6 A. e.spire advises the Commission to consider factors that are in accord with
7 the governing FCC rules regarding intercarrier compensation. Thus, the
8 Commission should consider a compensation mechanism that is (i)
9 consistent with cost causation; (ii) composed of rates based on forward-
10 looking cost principles; (iii) composed of rates that reflect the ILEC's
11 costs; and (iv) symmetrical. The consideration of cost causation as a
12 factor is eminently logical. If the end user customer of a carrier causes a
13 second carrier to incur – by receiving and delivering the call to the
14 destination of the calling party's choosing – a cost, then it follows that
15 compensation is due to the second carrier. e.spire urges the Commission
16 further to consider already approved forward-looking cost rates to
17 establish reciprocal compensation rates for ISP-bound traffic.

18 **Q. SHOULD INTERCARRIER COMPENSATION FOR DELIVERY**
19 **OF ISP-BOUND TRAFFIC BE LIMITED TO CARRIER AND ISP**
20 **ARRANGEMENTS INVOLVING CIRCUIT-SWITCHED**
21 **TECHNOLOGIES?**

1 A. No. To the degree that ISP-bound traffic includes non-circuit-switched
2 technologies, such as voice-over-IP, the costs incurred by competitive
3 carriers for delivering traffic directed toward the internet backbone are the
4 same as those for traffic transported over circuit-switched networks. For
5 consumers to receive the potential benefits promised by non-circuit-
6 switched technologies, they are still required, initially, to utilize the
7 circuit-switched network. The equipment that competitive and incumbent
8 carriers utilize to transport and terminate traffic over a circuit-switched
9 network is the same equipment carriers use to provide the initial phases of
10 non-circuit-switched service offerings. Competitive carriers still incur a
11 cost in completing transport and termination of this traffic and should be
12 compensated for the use of their resources in doing so. It would therefore
13 be unfair to penalize competitive carriers for providing innovative,
14 advanced services to the marketplace. If the Commission were to exclude
15 non-circuit switched technologies from compensation, it is likely that
16 competitive carriers would have little or no financial incentive to provide
17 such services. Ultimately, Florida consumers would be the losers, because
18 their menu of service options and pricing arrangements would be
19 truncated.

20 **Q. SHOULD ISP-BOUND TRAFFIC BE SEPARATED FROM NON-**
21 **ISP-BOUND TRAFFIC FOR PURPOSES OF ASSESSING ANY**
22 **RECIPROCAL COMPENSATION PAYMENTS? IF SO, HOW?**

1 A. No. The creation of separate compensation schemes for ISP-bound traffic
2 is unjustified because such an arrangement incorrectly assumes that there
3 are differences in the underlying costs for handling the traffic. ILECs use
4 the same equipment to originate, transport, and terminate ISP-bound
5 traffic as they do for traditional voice-grade traffic, often to similarly-
6 situated customers. Moreover, voice-grade calls to high volume users and
7 business customers are terminated using the identical facilities that CLECs
8 may use to terminate ISP-bound traffic. Therefore, the Commission
9 should not attempt to separate ISP-bound traffic from voice traffic because
10 the underlying costs of carrying each type of traffic are the same.

11 Furthermore, equal treatment of ISP-bound and non-ISP-bound
12 traffic generates the appropriate set of economic incentives for the ILEC
13 and the competitive carrier to cooperate in an efficient manner. The
14 Commission can help to encourage incumbents to operate their networks
15 efficiently and adopt newer technologies while at the same time allowing
16 competitive carriers to realize the benefits of establishing equally efficient
17 networks. The separation of ISP-bound traffic for reciprocal
18 compensation payments is likely to lead to a reduction of compensation
19 for this class of traffic, and therefore will result in the failure to encourage
20 efficient communications networks.

21 **Q. SHOULD THE COMMISSION ESTABLISH COMPENSATION**
22 **MECHANISMS FOR DELIVERY OF ISP-BOUND TRAFFIC TO**

1 **BE USED IN THE ABSENCE OF THE PARTIES REACHING AN**
2 **AGREEMENT OR NEGOTIATING A COMPENSATION**
3 **MECHANISM? IF SO, WHAT SHOULD BE THE MECHANISM?**

4 A. Yes. e.spire believes that in the interests of ensuring the development of
5 competition for local exchange services and the continued deployment of
6 advanced telecommunications services in the state of Florida, the
7 Commission should establish a default compensation mechanism. The
8 establishment of a default compensation mechanism will ensure that ISPs
9 will continue to have competitive alternatives for local exchange service
10 due to the continued growth of competitive carriers. Furthermore,
11 competitive carriers will be more willing to compete vigorously for end
12 user customers because they are assured of just compensation for
13 termination of all local calls on their network. Conversely, if no default
14 compensation mechanism is established, carriers will have few if any
15 benchmarks to agree on a reasonable level compensation. This will create
16 uncertainty in the market and will encourage incumbent carriers to attempt
17 to force competitive carriers to accept unfavorable terms in
18 interconnection agreements. Such unfavorable terms would discourage
19 competitive carriers from transporting and terminating ISP-bound traffic,
20 resulting in fewer competitive alternatives for ISPs and other end users. If
21 carriers cannot reach agreement, they are also more likely to seek
22 arbitration of the issue before the Commission, resulting in a never-ending

1 flow of same-subject proceedings. This could be avoided if a default
2 standard is set.

3 e.spire believes that the most appropriate default mechanism is to
4 employ the reciprocal compensation rate for non-ISP-bound local calls as
5 a proxy – on a symmetrical basis – unless and until the FCC rules
6 otherwise. This is appropriate, as I have stated before, because the
7 resources utilized by the originating and terminating carriers to deliver the
8 call to the ISP are the same as the resources used to deliver the call to a
9 pizza parlor, or for that matter, any local end-user. The costs are the same,
10 and the compensation should logically be the same, unless and until
11 federal law requires otherwise.

12 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

13 **A.** Yes, it does. Thank you.

1 **Q. PLEASE STATE YOUR NAME, TITLE AND BUSINESS ADDRESS.**

2 A. My name is James C. Falvey. I am Senior Vice President – Regulatory Affairs
3 for e.spire Communications, Inc. (“e.spire”), which formerly was known as
4 American Communications Services, Inc. or “ACSI”. My business address is 133
5 National Business Parkway, Suite 200, Annapolis Junction, Maryland 20701.

6

7 **Q. ARE YOU THE SAME JAMES C. FALVEY THAT FILED DIRECT**
8 **TESTIMONY IN THIS PROCEEDING ON DECEMBER 1, 2000?**

9 A. Yes. My background information is a matter of record in this proceeding.

10

11 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY IN THIS**
12 **PROCEEDING?**

13 A. My rebuttal testimony responds to some of the issues raised by other witnesses in
14 this proceeding and clarifies e.spire’s positions with respect to those issues. My
15 testimony is intended to defend e.spire’s stated position, *i.e.*, that this Commission
16 should find that incumbent local exchange carriers (“ILECs”) and alternative local
17 exchange carriers (“ALECs”) should continue to compensate each other for calls
18 placed to Internet Service Providers (“ISPs”) pursuant to the reciprocal
19 compensation provisions of their interconnection agreements.

20

21

1 **Q. HOW IS YOUR REBUTTAL TESTIMONY ORGANIZED?**

2 A. It's a little difficult to tackle all of the issues raised by the different witnesses in
3 an organized fashion.. In the interest of economy I will limit my rebuttal
4 testimony to what I consider the principal points made by other witnesses. Based
5 on my examination of the direct testimony presented by the participants, I will
6 focus principally on the points made by Ms. Shiroishi, BellSouth's witness.

7

8 *Issue 1(a) Does the Commission have the jurisdiction to adopt an intercarrier*
9 *compensation mechanism for the delivery of ISP-bound traffic?*
10

11 *Issue 1(b) Does the Commission have the jurisdiction to adopt such an intercarrier*
12 *compensation mechanism through a generic proceeding?*
13

14 **Q. IN BELLSOUTH'S DIRECT TESTIMONY, WITNESS BETH SHIROISHI**
15 **CONTENDS ON PAGES 2-3 THAT, SINCE ISP-BOUND TRAFFIC IS**
16 **INTERSTATE ACCESS IN THE EXCLUSIVE JURISDICTION OF THE**
17 **FCC, THE EFFECT OF VACATING THE FEBRUARY 26, 1999 ORDER**
18 **WAS TO DEPRIVE THE STATES OF JURISDICTION TO SELECT AN**
19 **INTERIM MECHANISM. DO YOU HAVE ANY COMMENTS ON HER**
20 **CONTENTION?**

21 A. Yes. First of all, when Ms. Shiroishi asserts that ISP-bound traffic is interstate
22 access, she is incorrect: as noted in my direct testimony and in the direct
23 testimony of the other competitive carriers in this proceeding, ISP-bound traffic is

1 a type of local traffic, and in fact is virtually indistinguishable from other types of
2 local calls. The FCC did attempt for the first time in its February 26, 1999
3 Declaratory Ruling to characterize ISP-bound traffic as largely interstate in
4 nature, based on the so-called "end-to-end" theory of calling. However, this FCC
5 ruling was decisively vacated by the DC Circuit Court of Appeals, and the
6 applicability of the "end-to-end" calling theory as applied to ISP-bound calls was
7 severely called into question. ISPs are not correctly analogous to interexchange
8 carriers that access the local exchange in order to offer a telecommunications
9 service. Rather, ISPs are end-users that use telecommunications in order to
10 provide an information service. So Ms. Shiroishi is incorrect in her bald assertion
11 that ISP-bound traffic is interstate access: in fact, nearly every jurisdiction,
12 including Florida, has traditionally treated these calls as local for purposes of
13 compensation.

14
15 Second, Ms. Shiroishi's novel assertion that, since ISP-bound traffic is interstate
16 in character, the states do not have jurisdiction over it unless expressly conferred
17 by the FCC is simply a conclusion based on her initial faulty premise, and cannot
18 be accorded much credulity. In her version of the way things work, the February
19 26, 1999 Declaratory ruling for the first time conferred the jurisdiction on the
20 states to establish interim mechanisms for compensation of ISP-bound traffic, and
21 when that order was vacated by the D.C. Circuit, the conferral of jurisdiction was

1 also withdrawn, leaving states powerless to act. This is a faulty reading of both
2 the FCC's Declaratory Ruling and of the D.C. Circuit's opinion, and one that
3 would deprive this Commission of its core jurisdiction. As pointed out in the
4 testimony of Gregory D. Fogleman for the Commission Staff (at page 9), it is
5 clear that the FCC did not *confer* initial jurisdiction to the states in its February
6 26, 1999 order, but rather acknowledged that, in the absence of an express federal
7 ruling, "carriers are bound by their existing interconnection agreements, as
8 interpreted by state commissions, and thus are subject to reciprocal compensation
9 obligations to the extent provided by such agreements or as interpreted and
10 enforced by state commissions."

11

12 The vacation of the FCC's Declaratory ruling did not change this part of the
13 picture, although it decisively rejected the FCC's end-to-end call theory (and
14 thereby the characterization of ISP-bound calls as interstate based on that theory).
15 In fact, the D.C. Circuit took pains to indicate that it did not reach the ILEC
16 contention that Section 251 (b)(b) of the Telecommunications Act "preempts state
17 commissions from compelling payments to competitor LECs."¹

18

¹ *Bell Atlantic Telephone Companies v. Federal Communications Commission*,
2000 U.S. App. LEXIS 4685 (D.C. Cir. March 24, 2000) at 26-27.

1 In sum, contrary to Ms. Shiroishi's assertion, the FCC's Declaratory Ruling did
2 not confer, and the D.C.Circuit's vacation of that ruling did not take away, the
3 state commission's inherent right to establish compensation mechanisms for ISP-
4 bound traffic pending an express federal ruling.

5
6 **Q. MS. SHIROISHI POINTS OUT ON PAGE 11 OF HER TESTIMONY**
7 **THAT THE CHIEF OF THE FCC'S COMMON CARRIER BUREAU HAS**
8 **"STATED PUBLICLY" AT THE TIME THE DECLARATORY RULING**
9 **WAS VACATED THAT HE BELIEVED THAT THE FCC "CAN AND**
10 **WILL" PROVIDE CLARIFICATION AND REACH THE SAME**
11 **CONCLUSION AS THE VACATED RULING. SHOULD THIS**
12 **INFLUENCE THE DECISION IN THIS PROCEEDING?**

13 **A.** No. A great deal of time has passed since that statement was made, but the FCC
14 has not been able to justify its position. Florida can't base its way forward on the
15 unrealized wishes of any FCC official. There is a great deal of uncertainty on this
16 question at the federal level, and the change of administrations may make it even
17 more difficult to reach a clear decision. In the meantime, ILECs and competitive
18 carriers across the country are doing business every day, and they need guidance
19 from state commissions on how to treat, and compensate, ISP-bound calls. The
20 FCC may ultimately act, but in the interim, Florida and other states should act.

21

1 Q. BUT WHAT ABOUT THE ARGUMENT MADE BY VERIZON'S
2 WITNESS EDWARD BEAUVAIS THAT THE DECLARATORY RULING
3 GRANTED STATES THE INTERIM AUTHORITY ONLY WHEN
4 CONSTRUING INTERCONNECTION AGREEMENTS OR
5 ARBITRATING INTERCONNECTION AGREEMENTS?

6 A. Dr. Beauvais wisely admits that he is not an attorney before he states this
7 conclusion. His analysis of the case is faulty, based more on wishful thinking
8 than on the text of the case. As I state above, in my opinion, the FCC did not for
9 the first time *confer* authority on the states in the FCC Declaratory Ruling – it
10 merely pointed out that, absent a federal ruling, the states are free to proceed to
11 establish their own reasonable mechanisms. The Declaratory Ruling was not an
12 attempt by the FCC to curtail the rights of the states, but in fact an
13 acknowledgement that they may act on the issue of reciprocal compensation
14 pending a federal rule. This is consistent with the recent observation of the D.C.
15 Circuit Court in its March 2000 decision vacating the FCC's ruling:

16
17 [The FCC] observed that [pending adoption of a federal rule]
18 parties may voluntarily include reciprocal compensation provisions
19 in their interconnection agreements, and that state commissions,
20 which have authority to arbitrate disputes over such agreements,
21 can construe the agreements as requiring such compensation;
22 *indeed, even when the agreements of interconnecting LECs include*
23 *no linguistic hook for such a requirement, the commissions can*
24 *find that reciprocal compensation is appropriate.*²

² *Bell Atlantic Telephone Companies v. Federal Communications Commission*,
2000 U.S. App. LEXIS 4685 (D.C. Cir. March 24, 2000) (emphasis supplied).

1 Q. MS. SHIROISHI GOES ON TO CLAIM ON PAGE 4 OF HER
2 TESTIMONY THAT THE FCC HAS FOR MANY YEARS ASSERTED
3 THAT ISP-BOUND TRAFFIC IS INTERSTATE IN CHARACTER. DO
4 YOU HAVE ANY COMMENT ON THIS CONTENTION?

5 A. Yes. In fact, Ms. Shiroishi is again interpreting the FCC's past decisions in a way
6 most generous to her position. Simply because the FCC provided for exemptions
7 for information service providers from access charges in past orders does not
8 necessarily entail that ISP-bound traffic is interstate in character. In fact, what it
9 does do is the opposite: it establishes a treatment for ISP-bound traffic that is
10 akin to that afforded local calls. By ensuring that ISPs and other information
11 providers are not charged access charges, the FCC also indirectly placed its
12 imprimatur on the historically prevalent way of compensating ISP-bound traffic:
13 reciprocal compensation as a local call. In fact, as pointed out by the D.C. Circuit
14 Court in its March, 2000 decision, the FCC has as recently as 1998 characterized
15 calls to ISPs as "local," and only very recently flip-flopped on the subject. When
16 accused of inconsistency, the FCC trotted out the same argument that Ms.
17 Shiroishi attempts to float here, viz., that the FCC's exemption of ISPs from
18 access service charges proves that ISPs are exchange access users. This
19 convoluted argument was directly rejected by the D.C. Circuit Court in its March
20 2000 order as "not very compelling."

21

1 Despite Ms. Shiroishi's attempts to establish the contrary, it is well known that
2 the only FCC ruling that sought to establish the character of ISP-bound traffic as
3 largely interstate was the February 26, 1999 Declaratory Ruling. But not only
4 was that ruling promptly vacated by the D.C. Circuit Court for failure to show a
5 reasoned basis, but (as noted by Mr. Fogleman for the Commission Staff on page
6 9 of his testimony) the ruling itself allowed that its conclusion regarding the
7 nature of ISP-bound traffic "does not in itself determine whether reciprocal
8 compensation is due in any particular instance."
9

10 **Q. MS. SHIROISHI POINTS OUT ON PAGE 6 OF HER TESTIMONY THAT**
11 **BELLSOUTH'S ADSL OFFERING WAS FILED AND APPROVED BY**
12 **THE FCC IN ITS FEDERAL TARIFF FCC NO. 1. DOES THIS CHANGE**
13 **YOUR OPINION AS THE CHARACTER OF ISP-BOUND TRAFFIC?**

14 A. Not at all. For one thing, BellSouth determines how to structure its tariffs, and
15 what jurisdiction to file them in. BellSouth can't "bootstrap" a regulatory
16 classification simply by filing a tariff that claims a certain offering is in the FCC's
17 jurisdiction. Indeed, in the absence of an express federal ruling, BellSouth can
18 take whatever position it wants in its federal tariff, but this does not determine the
19 question for our purposes here. Moreover, this again only deals with the ADSL
20 service offering, and not with dial-up ISP-bound traffic, the main theme of this
21 proceeding. It is entirely possible that BellSouth could structure an offering of

1 ADSL so that it is presumptively federal in character, for example, by defining it
2 as a service that must cross exchange boundaries. So the fact of BellSouth's tariff
3 filing is essentially immaterial – the fact that this particular ADSL service
4 offering was not challenged by the FCC on the filing of BellSouth's tariff does
5 not impinge upon the work we have to do in this proceeding.

6
7 *Issue 2 Is delivery of ISP-bound traffic subject to compensation under Section 251 of*
8 *the Telecommunications Act of 1996?*
9

10 **Q. MS. SHIROISHI'S ASSERTS ON PAGES 7-11 OF HER TESTIMONY**
11 **THAT A RECENT, UNAPPEALED DECISION OF THE FCC**
12 **ESTABLISHES THAT XDSL SERVICES ARE "ORDINARILY"**
13 **EXCHANGE ACCESS. SHOULD THIS INFLUENCE THE**
14 **COMMISSION'S DECISION?**

15 A. No. The December 23, 1999 Order on Remand is at best of limited applicability
16 here. First, and most importantly, this case was mentioned specifically at the end
17 of the D.C. Circuit's opinion, and it is clear that the basis underlying the decision,
18 viz., that ISPs make use of exchange access service, has been essentially gutted by
19 the Circuit Court's analysis. The Circuit Court clarified that the FCC's
20 characterization does not rest on a solid foundation (and indeed is directly in
21 conflict with the FCC's prior decisions³). Thus, the rationale underlying the

³ See, e.g., *In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, 11 FCC (continued...)

1 December 23, 1999 Order on Remand is probably no longer valid in the wake of
2 the Circuit Court's decision. Second, at any rate the principal focus of that case
3 was xDSL services, not dial-up services. Ms. Shiroishi is trying to stretch a very
4 limited (and probably no longer valid) ruling to cover the entire subject matter of
5 this proceeding, and it isn't proper. The question of how to treat ISP-bound
6 traffic is, at least until the FCC rules expressly, squarely on the plate of the State
7 commissions, and those commissions have the requisite authority to establish
8 compensation mechanisms.

9
10 **Q. MS. SHIROISHI CLAIMS ON PAGE 13 OF HER TESTIMONY THAT, IF**
11 **THE COMMISSION DETERMINES THAT ISP-BOUND TRAFFIC**
12 **TERMINATES AT THE ISP SERVER, THE COMMISSION "MUST**
13 **CONSIDER THE ISSUE OF ISP SERVERS LOCATED OUTSIDE THE**
14 **CALLING AREA BUT SERVED BY A LOCALLY DIALED NUMBER.**
15 **DO YOU HAVE ANY COMMENT ON THIS?**

16 A. Yes. This issue has been addressed by BellSouth in arbitrations in a number of
17 states. But the Commission should keep in mind two things on this issue: (i) that
18 BellSouth's tariffed Foreign Exchange Service presently allows BellSouth to, as

(...continued)

Rcd 21905, 22023 (p 248) (1996), in which the Commission clearly stated that "ISPs do not use exchange access." As the D.C. Circuit pointed out in its decision, the FCC only overruled this decision *after* its oral argument before the D.C. Circuit (perhaps in an attempt to bolster its faltering position).

1 she terms it, “assign NPA/NXXs to locations outside of the rate center to which
2 that NPA/NXX is assigned” – in fact that is the *entire purpose* of the Foreign
3 Exchange Service, which has been in place for many years; and (ii) that BellSouth
4 representatives have admitted in at least one arbitration that BellSouth currently
5 collects reciprocal compensation for calls made by an ALEC’s customers to
6 BellSouth Foreign Exchange customers.⁴ The fact is that, from a user’s point of
7 view, a call to a “local” NPA/NXX is just the same whether the actual location of
8 the recipient of the call is in that rate center or outside it. The only difference is
9 that the LEC must make arrangements to haul that traffic, at its own expense,
10 from the “virtual” location to the actual physical location of its customer. In the
11 case of the Foreign Exchange Service, the Foreign Exchange customer pays
12 something extra to have a “local” number in a rate center far from its physical
13 location.

14
15 When BellSouth raises this issue, it is because BellSouth wants to reserve to itself
16 something that it wants to deny to competitive carriers – essentially to assign its
17 numbers as it sees fit. Competitive carriers need to be able to design their local
18 calling areas as they see fit, and assign NPA/NXXs anywhere within them – just
19 as BellSouth does with its Foreign Exchange Service. In reality, the assignment

⁴ See October 4, 2000 Letter from Guy M. Hicks, Esq. on behalf of BellSouth to David Waddell, Executive Secretary of the Tennessee Regulatory Authority in Docket No. 99-00948 (attached as “Exhibit 1”).

1 by a ALEC of an NPA/NXX in this manner his does not discomfit BellSouth one
2 iota, because whether the actual physical location of the ALEC customer is in the
3 local rate center or outside it, BellSouth performs exactly the same function: it
4 hands the call off to the ALEC locally, and BellSouth's duties end right there. If
5 in fact the recipient of the call is outside the rate center, the ALEC must make
6 arrangements to haul the call to the actual location, just as BellSouth does for its
7 Foreign Exchange customers. These calls are indistinguishable from local calls,
8 and do not add any burden to the LEC that hands them off – in addition, they
9 provide a much-desired service for many businesses that would not be able to
10 engage in commerce as satisfactorily if their targeted customers needed to pay for
11 a long-distance call to contact them.

12
13 In sum, there is no compelling reason why the Commission would have to
14 rescrumble the current treatment of NPA/NXX assignment if it determines that
15 ISP-bound traffic terminates at the ISP. Both BellSouth and competitive carriers
16 have been rating calls based on their NPA/NXXs for years, and this practice is the
17 simplest method and should be continued.

18
19
20

1 Q. MS. SHIROISHI CLAIMS THAT CONGRESS DID NOT INTEND TO
2 CREATE A “COMPETITIVE WINDFALL” FOR ALECS IN ALLOWING
3 ISP-BOUND TRAFFIC TO RECEIVE RECIPROCAL COMPENSATION.
4 HOW DO YOU RESPOND?

5 A. This is a typical ILEC argument, but it holds no water. As a threshold matter,
6 where there are cost-based rates there can be no windfall. As pointed out by
7 AT&T’s witness Lee Selwyn in his direct testimony (at p. 7), reciprocal
8 compensation flows both ways, based on the work performed by each carrier. If a
9 large amount of reciprocal compensation flows in the ALEC’s direction, it simply
10 means that the ALEC is doing a disproportionate amount of work in terminating
11 more ILEC calls than the ILEC terminates for the ALEC customers. If these calls
12 are to be compensated at all, this principle must be applied. In cases where the
13 ILEC terminates more calls than the ALEC, the ILEC will come out ahead. This
14 “windfall” argument overlooks the fact that actual work is being done by both
15 parties, and it is compensated in proportion to the volume of work done. A true
16 “windfall” would be winning the Irish Lottery with a ticket bought by a deceased
17 relative – some huge bonus that was both unearned and unexpected. Reciprocal
18 compensation payments for work performed cannot correctly be characterized as
19 a “windfall” simply because it is a large amount of money that the ILEC would
20 prefer not to pay. Indeed, the ILEC wants to avoid its responsibility to pay for
21 services rendered by ALECs in terminating these calls at cost-based rates – to

1 allow the ILECs to evade these payment would be a true injustice and a
2 “windfall” for the ILECs, because they would get “something for nothing.”

3

4 **Q. MS. SHIROISHI CLAIMS THAT THERE ARE “NO NEW REVENUES**
5 **OR COST REDUCTIONS FOR BELL SOUTH TO FUND THESE**
6 **EXCESSIVE PAYMENTS OF RECIPROCAL COMPENSATION THAT**
7 **ALECS ARE CLAIMING.” DO YOU AGREE?**

8 A. No. This is a red herring. It is not necessary for BellSouth to find any “new”
9 revenues or cost reductions to fund the compensation of an ALEC for terminating
10 a local call. BellSouth receives monthly payments from its subscribers that
11 include the amounts necessary to terminate all local calls, including those
12 terminated at ISPs. Ms. Shiroishi claims on page 18 of her testimony that
13 “Internet-bound traffic characteristics were never considered when local rates
14 were established.” But if BellSouth feels that its rates to its subscribers do not
15 adequately cover the costs directly incurred by the subscribers (*e.g.*, dialing up
16 ISPs on a ALEC’s network), BellSouth should reexamine these costs and attempt
17 to obtain a rate increase for its subscribers. e.spire does not in fact agree that
18 BellSouth’s local rates are insufficient to fund the costs incurred by BellSouth’s
19 subscribers – but if they were, the proper action is not to “stiff” a connecting
20 carrier by refusing payment for work done, but rather to turn to the cost-causer –
21 the rate payer, and seek an increase there.

1 *Issue 3 What actions should the Commission take, if any, with respect to establishing*
2 *an appropriate compensation mechanism for ISP-bound traffic in light of*
3 *current decisions and activities of the courts and the FCC?*
4
5

6 Q. MS. SHIROISHI STATES THAT, IF THE COMMISSION TAKES ANY
7 ACTION ON THE ISSUE OF RECIPROCAL COMPENSATION FOR ISP-
8 BOUND TRAFFIC, IT SHOULD INSTITUTE A "BILL AND KEEP"
9 SYSTEM FOR RECIPROCAL COMPENSATION. DO YOU HAVE ANY
10 COMMENT ON THIS?

11 A. Yes. e.spire disagrees with this. First of all, such a system would presume that it
12 is reasonably possible to segregate ISP-bound traffic from other types of local
13 calls that appear to be similar, for example, relatively long-duration calls between
14 two teenagers. As other witnesses in this proceeding have recognized, attempts to
15 segregate such traffic accurately are "problematic at best."⁵ And if such a system
16 were practicable, which it is not, it would result in disparate treatment for
17 compensation purposes for the same type of transaction. From e.spire's point of
18 view, and in fact from BellSouth's point of view, a call to an ISP is not
19 technically different from a call to a pizza parlor, except that it may or may not
20 have a longer duration on average.⁶ And from a duration point of view, it

⁵ See, e.g., Direct Testimony of Gregory D. Fogleman, Commission Staff, at 19.

⁶ See, e.g., Direct Testimony of Michael R. Hunsucker, on behalf of Sprint (at 14):
The basic switching components used for voice and Internet-bound
traffic are the same. There is nothing unique about Internet calls
(continued...)

1 certainly is indistinguishable from local calls to telephone company business
2 offices, as anyone who has tried to straighten out errors on his or her monthly bill
3 can attest. There simply is no adequate justification to compensate the
4 terminating carrier for one type of call, and not for another, when the same work
5 is involved.

6
7 Secondly, bill and keep for ISP-bound traffic would require a carrier serving an
8 ISP – and both ALECs and ILECs serve ISPs – to provide termination services for
9 free if there is an imbalance in traffic. It would greatly favor the cost causer – the
10 originator of the call – over the carrier that must terminate traffic on behalf of that
11 cost causer. So bill and keep is not a valid approach in this context unless traffic is
12 generally very balanced between carriers. Failing to recognize the terminating
13 carrier's costs by applying bill and keep in an imbalanced situation would be an
14 inequitable windfall to the originating carrier. This is also the position taken by
15 Mr. Fogleman of the Commission Staff in his comments at page 18.

16
17 *Issue 4 What policy considerations should inform the Commission's decision in this*
18 *docket?*

19
20 **Q. VERIZON'S WITNESS BEAUVAIS CLAIMS ON PAGES 11 AND 22**
21 **THAT RECIPROCAL COMPENSATION SHOULD NOT BE MEASURED**

(...continued)

that causes the per message and per MOU unit cost components to change. Only the call duration changes.

1 Second, the fact that Verizon may offer, and its subscribers may prefer, flat rated
2 plans in Florida is entirely unrelated to the question of how, for example, e.spire
3 should be compensated for completing a local call, whether to a pizza parlor or to
4 an ISP. If Verizon must raise its flat rate to cover its cost, that is Verizon's
5 concern, and Verizon should take this up in a cost proceeding with the
6 Commission. But the suggestion that Verizon's methodology of charging its
7 customers should determine the nature and extent of its compensation of a
8 terminating carrier is simply wrong-headed, because the terminating carrier's cost
9 of terminating the call is independent from the way in which Verizon chooses to
10 charge its customers. I don't think Dr. Beauvais' point, although interesting,
11 should be persuasive in the inquiry at hand.

12

13 *Issue 5 Is the Commission required to set a cost-based mechanism for delivery of ISP-*
14 *bound traffic?*

15

16

17 **Q. MS. SHIROISHI CLAIMS THAT, IF A COST-BASED MECHANISM**
18 **WERE SET BY THE COMMISSION FOR THE DELIVERY OF ISP-**
19 **BOUND TRAFFIC, THIS SHOULD BE THE "ACTUAL COST**
20 **INCURRED FOR THE DELIVERY OF ISP-BOUND TRAFFIC," AND**
21 **NOT THE COST OF TERMINATING A LOCAL CALL. DO YOU**
22 **AGREE?**

1 A. No. ISP-bound calls are handled the same way by the ILEC and by the ALEC as
2 any other local call, and they are virtually indistinguishable. Although Ms.
3 Shiroishi tries to argue that the calls are generally of a longer duration, there are
4 many other types of call that are of long duration that are not ISP-bound calls. To
5 segregate out ISP-bound calls from other types of local calls requires institution of
6 systems that aren't really in place yet, greatly adding to the expense and
7 complexity of the transactions. Ms. Shiroishi's implication that ALECs are
8 instituting more efficient and capable equipment that can result in cost savings for
9 termination of such calls is just speculation. Even if it were true, the presumption
10 under the FCC's rules is that competitive carriers are entitled to symmetrical
11 compensation – giving both the ILEC and the ALEC the incentive to make their
12 systems more efficient – and this benefits the public.

13
14 Ideally, e.spire does not dispute the notion that carriers should be entitled to
15 compensation based on the cost for the work they perform. But apart from
16 general speculations, neither BellSouth nor Verizon has presented any
17 information in this proceeding that would justify bifurcated treatment for ISP-
18 bound and other local types of calls. And, looking at the testimony of BellSouth's
19 witness David Scollard only underscores the impracticality of attempting to
20 segregate ISP-bound calls from other types of calls. Mr. Scollard himself admits
21 at the end of his testimony (page 5) that, for lack of the ability to obtain ISP

1 numbers used by ALECs in generating bills to BellSouth, BellSouth has
2 attempted to segregate the calls based on duration alone. So BellSouth wants to
3 “guess” as a method for distinguishing these calls. But what about the teenager’s
4 call to his girlfriend, or other local calls that have durations similar to those of a
5 typical ISP-bound call? BellSouth is so anxious to catch the tuna that it turns a
6 blind eye to the dolphins in the net. As pointed out by Sprint witness Michael R.
7 Hunsucker (at 9):

8
9 ISP-bound traffic is functionally the same as other local voice
10 traffic and it is administratively cumbersome and/or expensive to
11 distinguish between the two types of traffic. Longer holding times,
12 for example, are characteristic of other users in addition to ISP.
13

14 The Commission should also take into account that what we are talking about
15 here is an interim mechanism. If carriers resort to very expensive cost studies and
16 extensive and complex technical methods to address these issues, the FCC’s
17 ruling might ultimately reject such an approach. In such circumstances, it will
18 have been a waste of time and money for everyone. Therefore, it makes sense to
19 continue on the simplest and most straightforward course -- treatment of ISP-
20 bound calls as local calls for reciprocal compensation purposes.

21
22 *Issue 6 What factors should the Commission consider in setting the compensation*
23 *mechanisms for delivery of ISP-bound traffic?*

24
25 *Issue 7 Should intercarrier compensation for delivery of ISP-bound traffic be limited*
26 *to carrier and ISP arrangements involving circuit-switched technologies?*
27

1 Q. WITNESSES SHIROISHI FOR BELLSOUTH AND BEAUVAIS FOR
2 VERIZON TAKE THE POSITION THAT RECIPROCAL
3 COMPENSATION FOR ISP-BOUND TRAFFIC SHOULD, IF IT IS
4 ALLOWED AT ALL, BE LIMITED TO ARRANGEMENTS INVOLVING
5 CIRCUIT-SWITCHED TECHNOLOGY. DO YOU AGREE?

6
7 A. No. As I mentioned in my Direct Testimony, this would be a mistake in my
8 opinion because it would fail to recognize ALEC costs in terminating calls made
9 over non-circuit switched technologies, and it would discourage innovation, short-
10 changing the Florida consumer. I think Michael Hunsucker, Sprint's witness,
11 stated it very well when he observed on page 18 of his Direct Testimony:

12
13 To limit inter-carrier compensation for ISP-bound traffic to only
14 circuit-switched traffic is both unwarranted and provides economic
15 incentives for LECs not to implement more advanced, and more
16 efficient, technologies.
17

18
19 *Issue 8 Should ISP-bound traffic be separated from non-ISP-bound traffic for the*
20 *purposes of assessing any reciprocal compensation payments? If so, how?*

21
22 *[This issue is addressed above]*

23
24 *Issue 9 Should the Commission establish compensation mechanisms for delivery of*
25 *ISP-bound traffic to be used in the absence of the parties reaching an*
26 *agreement or negotiating a compensation mechanism? If so, what should be*
27 *the mechanism*
28
29
30

1 Q. SPRINT'S WITNESS HUNSUCKER FAVORS THE ADOPTION OF A
2 BIFURCATED RATE STRUCTURE FOR LOCAL SWITCHING, TO BE
3 APPLIED TO ALL RECIPROCAL COMPENSATION TRAFFIC. DO
4 YOU AGREE?

5
6 A. This is a complex question that would require a lot of study, and I am not
7 prepared to take a firm position on this issue, except to say that the blended
8 switching rate is in my view simpler, and will not require a wholesale re-thinking
9 of the way in which carriers compensate each other in Florida. It seems to me
10 that a blended switch rate can satisfactorily account for the differences in call
11 durations if it takes into account all relevant data concerning the way calls are
12 presently made. So instead of the radical departure of a bifurcated switching rate
13 applicable to all reciprocal compensation, I think it would be simpler to stay with
14 the existing blended approach and adjust it if the data warrant such an action. If
15 the Sprint proposal is adopted, it should also apply to access charges and UNE-P
16 rates.

17

18 Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

19 A. Yes, thank you, it does.

20

1 **BY MR. HORTON:**

2 **Q Mr. Falvey, do you have a summary of your**
3 **testimony?**

4 **A Yes, I do.**

5 **Q Would you go ahead and present that, please.**

6 **A Good morning. Based on the guarantee of open**
7 **markets provided by the Telecom Act, e.spire has raised**
8 **over \$1.6 billion and invested heavily in fiberoptic**
9 **networks and other facilities around the country. E.spire**
10 **and other CLECs were able to do so because certain basic**
11 **interconnection, unbundling, and compensation arrangements**
12 **were provided for nationwide in the Telecom Act. E.spire**
13 **has 28 Lucent 5-ESS switches, three in Florida, and**
14 **networks in 38 markets nationwide, as well as a data**
15 **network that provides access to over 400 points of**
16 **presence nationwide. Our network construction company has**
17 **done over \$300 million in contracts. In Florida, we have**
18 **networks and switches in Jacksonville, Fort Lauderdale,**
19 **and Tampa. We have also constructed significant network**
20 **in south Florida.**

21 **One of the Telecom Act guarantees that e.spire**
22 **relied upon in making these investments was mutual and**
23 **reciprocal compensation for local traffic. E.spire has**
24 **undergone significant financial distress as reciprocal**
25 **compensation payments have been withheld by ILECs.**

1 Further disruption in the area of reciprocal compensation
2 would result if the reciprocal compensation rules are
3 changed in the middle of the game.

4 CLECs, like e.spire, that have invested billions
5 of dollars should be able to rely upon the simple baseline
6 rules of the Telecom Act. While the ILECs are here asking
7 for still lower rates, somehow claiming financial
8 hardship, I would urge the Commission not to forget that
9 it is the CLECs that are struggling to survive and the
10 ILECs that are experiencing strong and steady growth.

11 Despite the fact that negotiated rates for
12 ISP-bound traffic have dropped precipitously to less than
13 a third the rate of switched access as between e.spire and
14 BellSouth, this docket is considering driving rates still
15 lower.

16 I'd like to just make a few threshold points
17 that are in my testimony, and just as a baseline, I'd like
18 to clarify that it's e.spire's position and the orders
19 reflect that the FCC does have jurisdiction over this
20 trafficking question. The D.C. Circuit didn't disagree
21 with the jurisdictional aspect of the FCC's February
22 order. The D.C. Circuit said, yes, it's okay. You do
23 have jurisdiction. What they didn't agree with was the
24 second part of the FCC's order where the FCC said that
25 they didn't think ISP calls were local under the Telecom

1 Act, and that they somehow were not subject to 251 and
2 252.

3 As a result of this current legal background,
4 it's critical that the FCC rules pertaining to reciprocal
5 compensation are in effect today. Whatever may happen
6 next week or the week after, whatever has happened with
7 the previous orders, those rules are in effect.

8 With that background, e.spire, in order to
9 continue to compete, needs to be able to rely upon a few
10 basic tenets from the Telecom Act that have been
11 translated into those FCC rules.

12 First, as the Florida Commission has repeatedly
13 recognized that ISP-bound traffic continue to be treated
14 like all other local traffic as it has in every proceeding
15 before the Commission so far. ISP traffic uses the same
16 network as any other type of local traffic, and treating
17 it differently is discriminatory to CLECs, to ISP end
18 users, and to Internet customers. In fact, changing the
19 treatment of ISP traffic would raise Internet access rates
20 substantially.

21 Second, that, like all other local traffic,
22 rates be based on ILEC TELRIC costs. This ensures that
23 ILECs will have incentives to build new efficiencies into
24 their networks to keep costs down.

25 Third, that rates are mutual and reciprocal so

1 that e.spire charges and is charged the same rate. This
2 was a big issue three or four years ago when we first did
3 our interconnection agreements before the Florida
4 Commission. It's one that is overlooked. If you don't
5 call this local traffic, the rates don't have to be mutual
6 and reciprocal anymore. They can charge more than I can
7 charge them.

8 **Fourth, that rates not be based below cost such**
9 **as bill-and-keep rates. It's clear that when traffic is**
10 **out of balance FCC rules preclude bill-and-keep**
11 **arrangements, but more importantly, this would be to**
12 **repeat the same mistake twice. Higher negotiated rates in**
13 **the past few years has created traffic flows toward the**
14 **CLECs, but below cost bill-and-keep rates would merely**
15 **create new incentives for CLECs to sign up customers that**
16 **would pour traffic onto the ILEC networks for free. So**
17 **the only rational solution here is cost-based rates. If**
18 **they're above cost, that doesn't work. If they're below**
19 **cost at bill-and-keep rates, well, heck, we just pour**
20 **traffic the other way. So let's not do the -- go right**
21 **back down the same road we did and set the rates at other**
22 **than cost-based rates. Only cost-based rates will provide**
23 **fair compensation for carriers terminating calls.**

24 **Fifth, any new approaches, like the call setup**
25 **and duration rates proposed by Sprint, should not be**

1 applied in isolation to reciprocal compensation. If call
2 setup and duration is an effective approach, an accurate
3 means of costing out this type of traffic, local traffic,
4 it ought to be applied to access traffic. A longer
5 long-distance call would also be subject to call setup and
6 duration. It ought to be applied when a company buys
7 UNE-P. When a UNE-P customer makes a very long call, the
8 price of the switching element in the UNE-P ought to come
9 way down. That's why the FCC has suggested that they're
10 going to look at all forms of intercarrier compensation.
11 So critically, anything new in terms of the costing
12 methodologies ought to be applied across the board.

13 Sixth, until the FCC acts, e.spire believes that
14 it's critical that the Commission keep a steady hand on
15 the tiller. Keep the rules the way they are so that
16 start-up CLECs, like e.spire, can continue to plan their
17 businesses with some certainty. Shifting the rules and
18 rates to new interim rates that will then be superceded by
19 still newer FCC rates is a recipe for disaster.

20 Seventh, the nonpayment of reciprocal
21 compensation by ILECs has left many ILECs -- many CLECs
22 reeling. A sudden departure from the Telecom Act in the
23 area of reciprocal compensation at this time would have a
24 further disruptive impact on CLECs and could seriously
25 undermine the development of local competition in Florida.

1 Q Does that conclude your summary?

2 A Yes, it does.

3 MR. HORTON: Mr. Falvey is available for
4 questions.

5 CHAIRMAN JACOBS: Very well. Mr. Edenfield, are
6 you going to go first?

7 MR. EDENFIELD: Yes, sir, that will be fine.

8 CHAIRMAN JACOBS: I'll leave it at your
9 pleasure. We're going to need to take a break at about
10 12:15. Would you like to go ahead and take that break now
11 before you start? And then we'll come back at, like, 1:15
12 and start again.

13 MR. EDENFIELD: I truly think we may be able to
14 blow through this thing in 15 minutes at the risk of --

15 CHAIRMAN JACOBS: That's wonderful news.

16 MR. EDENFIELD: You know, let me put it to you
17 this way. I've learned from example that I may have less
18 than 15 minutes' worth of questions, but I don't know if
19 we'll have less than 15 minutes' worth of answers, but
20 I'll go ahead because I may be able to get done.

21 CHAIRMAN JACOBS: Great.

22 CROSS EXAMINATION

23 BY MR. EDENFIELD:

24 Q Mr. Falvey, good morning.

25 A Good morning or good afternoon.

1 **Q** **And for the record, I did speak to you this**
2 **morning, when I first saw you, without hesitation; right?**

3 **A** **That's correct.**

4 **Q** **Okay. As I understand e.spire's position, the**
5 **reciprocal compensation cost that BellSouth is being asked**
6 **to pay, you believe those are covered in the basic local**
7 **exchange rate paid to BellSouth by BellSouth subscribers?**

8 **A** **I haven't reviewed those cost studies recently,**
9 **but there is evidence in this record, for instance, in**
10 **Mr. Selwyn's testimony, that you certainly are recovering**
11 **your costs. If you're not, then, you know, by all means**
12 **bring on a rate case.**

13 **Q** **Okay. And that was my next point. As I**
14 **understand your testimony, you're saying that to the**
15 **extent that the current local basic exchange rates or**
16 **basic local exchange rates don't cover these reciprocal**
17 **compensation obligations, that the Commission should raise**
18 **those rates or at least we have the right to petition to**
19 **raise those rates?**

20 **A** **You have the right to petition. Whether or not**
21 **you're losing money hand over fist on all of these**
22 **Internet customers is very much an open question. For a**
23 **company that's selling so much service below cost, you**
24 **guys are doing awfully well, and for a company that's**
25 **reaping huge subsidies, we're doing awfully poorly.**

1 **Q** **Okay. I'll do a hypothetical with you real**
2 **quick. Assume that e.spire is considering entering the**
3 **local market in whatever state, a residential local**
4 **market, and the basic local exchange rate in that market**
5 **is \$7.41. Further, assume for me that the \$7.41 that**
6 **e.spire expects to receive from its end user customer is**
7 **below e.spire's cost of providing that service to the end**
8 **user. Are you with me so far?**

9 **A** **That what is below our cost?**

10 **Q** **That the \$7.41 you're going to charge to your**
11 **end user for basic local exchange service is below your**
12 **cost in providing that service.**

13 **A** **Okay.**

14 **Q** **Further, assume that the same customer, who**
15 **you're going to receive \$7.41 per month, is going to**
16 **generate a reciprocal compensation liability of \$4.87**
17 **based on 1,500 minutes of use per month of Internet time.**
18 **Are you with me so far?**

19 **A** **Yes.**

20 **Q** **Under those facts, would you enter the**
21 **residential market?**

22 **A** **Well, obviously, I'd question your assumptions.**
23 **Our company was not real thrilled with the \$17 loop rates**
24 **here in Florida. That -- from a company that buys**
25 **unbundled loops, there was a Massachusetts study that was**

1 done in the '95-'96 time frame that showed a \$5 loop cost.
2 Okay? So I think -- I'm going to make this fairly brief,
3 given the upcoming lunch break. If you ask around, there
4 isn't a CLEC in Florida or any other state in the country
5 that is afraid to go into the residential market because
6 of reciprocal compensation. We can't get in because the
7 loop rates are up here, because UNE-P is up here and
8 doesn't work and is limited to four lines, and it has
9 absolutely nothing to do with recip comp.

10 I would love to capture every single one of your
11 Internet residential customers. You yourself have filed
12 an ex parte at the FCC that said that that was a wonderful
13 target market. It was a lucrative target market because
14 they buy vertical services; they bring in a lot of
15 switched access; they buy second lines. So by all means,
16 despite the fact that the basic rate might be \$7 and even
17 if my cost was \$8, if I had to tack on another \$4, there's
18 an awful lot of money to be made off of that residential
19 customer. And I think your 10K put up against my 10K
20 gives everyone a very clear indication as to who's making
21 money.

22 Q Okay. Now, that's great. Now, answer my
23 question. Under that hypothetical --

24 A Yes. The answer was yes.

25 Q You would enter the market --

1 **A** That as long -- if I can get UNE-P for customers
2 with more than a few lines, if I can get an unbundled loop
3 rate that's set at a reasonable rate, those are the
4 reasons that would preclude me, not a measly \$4.87. Heck,
5 I can get that customer as an Internet access customer and
6 charge them, you know, 20 bucks. There's so many add-ons
7 that BellSouth reaps that I would love to be able to reap
8 if I could get past these other barriers into the
9 residential market.

10 **Q** Okay. Mr. Falvey, take the hypothetical as I've
11 given it. Okay?

12 **A** To where --

13 **Q** The hypothetical is -- I mean, I understand your
14 concerns about loop rates, and you may not feel like the
15 Commission set the right rate, and this, that, and the
16 other, but it is what it is. So my question to you is,
17 that \$7.41, assuming that \$7.41 is below cost plus you're
18 going to have to pay \$4.87 of that in recip comp, would
19 you think it a prudent business decision for e.spire to
20 enter the local market under those circumstances?

21 **A** Absolutely. Let's assume that I make -- you
22 know, and I'll make up numbers -- I can make up numbers as
23 well as you can, I guess. Let's say I'm making \$6 a month
24 off of switched access. Let's say for 50 percent of those
25 customers I can do what AT&T is advertising all over the

1 TV right now and say, hey, I got Internet access for you
2 too. So there's six bucks on switched access. Let's say
3 I get 20 bucks on Internet access.

4 Let's assume that if I'm taking those \$4.87
5 customers that are generating a lot of usage that
6 50 percent of them are going to buy a second residential
7 line, and let's assume that that's the basic rate you said
8 is 7.41. Maybe I can charge a premium for a second line,
9 or just give me another 7.50 there; right? I haven't even
10 gotten to call waiting and conferencing and all those
11 wonderful things that you tack on. Believe me, reciprocal
12 compensation has nothing to do with the fact that we're
13 not in the residential market.

14 Q So we can expect e.spire to enter the
15 residential market in Florida when?

16 A As soon as UNE-P becomes available and as soon
17 as I get -- if you go back and look at the MFS cost
18 studies that I put on here in January of 1996 as the
19 attorney for MFS, go look and see what we proposed for an
20 unbundled loop back then. And look, to be honest, we've
21 moved on. We're doing T-1 services to businesses, and
22 there's probably other carriers in this room, WorldCom and
23 AT&T, that are going to make a very serious run at that
24 residential market, already have.

25 So, you know, I'm not really here to ask you to

1 change the loop rate today. My point is that there are
2 companies that are moving rapidly into the residential
3 market, and it's the -- BellSouth is advocating that you
4 can only sell UNE-P to a customer with four lines or less.
5 That makes it very difficult to establish UNE-P throughout
6 the State.

7 Look, we don't even have enough money to get
8 through the month of March, and you want me to go into a
9 whole new market? We're not the company that's going to
10 do it.

11 Q Well, then why are you here, if you are not
12 going to be in business beyond March? I mean, what --

13 A I didn't say we're not going to be in business
14 beyond March. You should be so lucky. We will be around
15 for a long time, and we're working on financing.

16 Q Now, you know I enjoy seeing you at these
17 proceedings. Don't go down that road.

18 A It's mutual.

19 Q Now, I want you to assume -- forget the vertical
20 services for a minute. Assume these folks are all sitting
21 at Century Village out in Boca. They don't like vertical
22 services. They don't want call waiting. They don't want
23 to be on the Internet. They don't want any of these
24 little services that you're talking about where you could
25 make the extra money, and they don't like calling their

1 **grandchildren. They like their grandchildren to call**
2 **them. Assume that the \$7.41 is all the revenue you are**
3 **going to get from that customer. Under this hypothetical**
4 **I laid out, would you enter the local market?**

5 **A Yes. The reason is -- well, I mean, what you**
6 **started out with was that the \$7.41 is below my cost to**
7 **provide service.**

8 **Q But I want you to make that same assumption.**

9 **A Can we assume that it costs me \$7 to provide the**
10 **service, and that I can -- if I get 7.41? Otherwise, your**
11 **question answers itself; right?**

12 **Assume that you can't get more money out of this**
13 **customer to cover your costs, enough money to cover your**
14 **costs. Would you serve them? Well, that's a no-brainer.**
15 **But what you also said -- let's assume I can cover my**
16 **costs, like the 7.41. Would I take the customer? You**
17 **said they don't use the Internet. You said they don't use**
18 **the Internet. So the \$4.87 is gone. These people that do**
19 **use the Internet and use it heavily are not -- are the**
20 **same people that do buy the vertical services, that do get**
21 **on and talk to their parents and their sisters all over**
22 **the country for long periods of time and run up switched**
23 **access bills. So your hypothetical kind of caves in on**
24 **itself one way or another.**

25 **Q In your testimony -- let me ask you this: Are**

1 you a proponent that e.spire would be entitled to recover
2 the tandem switching rate for reciprocal compensation?

3 A Yes.

4 Q What is the tandem switching rate in Florida?

5 A I believe it's .00325. And to be clear, Kip,
6 since you're familiar with this, we don't ask to recover
7 it from you. We have an interconnection agreement with
8 lower rates. Where companies have been willing to pay us
9 past due amounts, we have agreed to lower rates. With the
10 Verizons and so on, we are billing the .00325 because they
11 won't pay us what they owe us.

12 Q All right. You talk about network functionality
13 and --

14 COMMISSIONER DEASON: I'm sorry. Let me
15 interrupt just a second. Verizon won't pay you?

16 THE WITNESS: Yes.

17 COMMISSIONER DEASON: Okay. Why won't they pay
18 you?

19 THE WITNESS: Believe it or not, it's still the
20 ISP issue. We have had multiple contracts with them. One
21 ran through July 31st of '99. So we filed for commercial
22 arbitration, and we recovered every penny on the ISP
23 issue, and we won hands down 1.9 million, interest
24 included.

25 When that agreement ran out, we opted into an

1 **AT&T agreement. Well, despite the fact that you guys have**
2 **said -- I should say that the Commission, pardon the "you**
3 **guys," but that the Commission has said over and over and**
4 **over and over again that here in Florida ISP traffic is**
5 **local and is to be compensated. They are still saying, in**
6 **a commercial arbitration -- we're forced to go to**
7 **commercial arbitration -- they are still saying that ISP**
8 **traffic is not local. And this is going on all over the**
9 **country. Every time you get a new contract, you've got to**
10 **go back over the same darn issue even in those states,**
11 **like Florida, where you've made it immanently clear that**
12 **ISP traffic --**

13 **COMMISSIONER DEASON: Let me qualify my**
14 **question. Are you not being paid for services provided in**
15 **Florida?**

16 **THE WITNESS: Yes, absolutely.**

17 **COMMISSIONER DEASON: Okay. Is Verizon in**
18 **violation of a Commission order?**

19 **THE WITNESS: Yes. They -- well, let's talk**
20 **about that. I have an interconnection agreement that has**
21 **a commercial arbitration provision. It requires me to**
22 **take my issues to the commercial arbitrator. Now, that's**
23 **not to say that you couldn't condition any relief in this**
24 **docket and make relief in this docket only available to**
25 **those carriers that pay attention to the way your orders**

1 read.

2 **COMMISSIONER DEASON: So you've gone to an**
3 **arbitration outside of this Commission?**

4 **THE WITNESS: Yeah. We've just recently filed**
5 **it.**

6 **COMMISSIONER DEASON: So then how is it then**
7 **that Verizon is violating a Commission order?**

8 **THE WITNESS: Well, they're a carrier in**
9 **Florida. They are not paying for services. They are**
10 **making an argument that this Commission has rejected not**
11 **once but I think three or four times. And while you may**
12 **not have jurisdiction over that complaint proceeding, we**
13 **have the same carrier coming in here and saying, the rates**
14 **are too high. I can't afford to pay these bills.**

15 **Well, let the record reflect that they are not**
16 **paying their bills, and that they are not vis-a-vis**
17 **e.spire incurring any costs until they pay those bills.**
18 **And I guess what I would recommend is, here, in this**
19 **proceeding where you do have jurisdiction -- and this does**
20 **not go to BellSouth. This came up during BellSouth's --**
21 **to their credit, although they did withhold \$25 million**
22 **for some time. They are paid up. But I don't see why you**
23 **can't say, if you do take -- set lower rates of any kind**
24 **in this proceeding, that they are only available to**
25 **carriers that pay their bills.**

1 **COMMISSIONER JABER: What's a commercial**
2 **arbitrator?**

3 **THE WITNESS: Commercial arbitrator is usually**
4 **run by the AAA, American Arbitration Association. There**
5 **is a couple of other associations. GTE likes to have**
6 **these commercial arbitration provisions in their**
7 **agreements. And if you'll -- you'll note that a lot of**
8 **GTE agreements have commercial arbitration provisions.**
9 **They are attorneys, for the most part, sometimes former**
10 **judges. Judge Sessions did our last case against GTE.**
11 **He's a famous Texas judge. And they are impaneled to act**
12 **like a court.**

13 **COMMISSIONER JABER: Okay. So by agreement and**
14 **on your own free will, you waived your right to bring a**
15 **complaint before this Commission on the ISP issue.**

16 **THE WITNESS: On that particular contract. Now,**
17 **that's not to say that GTE, a telecom carrier in Florida,**
18 **is not engaging in sham litigation by raising an issue**
19 **over and over and over just for the sake of depriving us**
20 **of cash that we obviously need.**

21 **CHAIRMAN JACOBS: You are not making Ms. Caswell**
22 **happy, I have to tell you.**

23 **MS. CASWELL: I'd like to testify a little bit**
24 **myself.**

25 **THE WITNESS: Well, you could take the stand,**

1 and we'll cross you.

2 MR. EDENFIELD: Chairman Jacobs, I know we have
3 a 12:15. We're trying to break. I'm not done, but if you
4 want to break, I'm -- I did my best.

5 MS. CASWELL: And I'd be happy to clarify some
6 of the things Mr. Falvey has said with regard to the
7 private arbitration.

8 CHAIRMAN JACOBS: Why don't we do this: You're
9 going to cross, Ms. Caswell; right?

10 MS. CASWELL: I do have about five or maybe ten
11 minutes for Mr. Falvey, not anything significant.

12 CHAIRMAN JACOBS: Why don't we leave that moment
13 for -- within the context of his testimony, you can cross
14 on that point. Anything else, you have to do in briefs.

15 MS. CASWELL: Yes, sir.

16 CHAIRMAN JACOBS: Why don't we go ahead and
17 break, and come back at 1:30? And we'll continue from
18 there. Thank you.

19 (Lunch recess.)

20 CHAIRMAN JACOBS: We'll go back on the record,
21 and I believe we were about to continue cross.

22 MR. EDENFIELD: Thank you, Chairman Jacobs.

23 BY MR. EDENFIELD:

24 Q Just before the break, Mr. Falvey -- welcome
25 back, by the way. Just before the break, did I hear you

1 say that it's e.spire's position that this Commission has
2 definitively ruled that the ISP traffic is local, or did
3 you say that the Commission has treated ISP traffic as
4 local?

5 A Well, we'd have to read the record back to see
6 what I actually said, but --

7 Q Well, why don't we fix it? If it's something
8 different than that or --

9 A Yeah. It's my understanding that in every
10 interconnection dispute case that I've seen before this
11 Commission that I've read -- I've read, I think, all of
12 them -- the Commission has said that it's local.

13 Q Let me read a passage to you. I don't want to
14 take the time to hand this out. This is from
15 Mr. Fogleman's testimony, on Page 7 of his testimony. And
16 he's citing to the recent Global NAPS/BellSouth
17 arbitration decision. And he quotes the Commission as
18 stating, and here's the quote: We emphasize that in
19 rendering this decision, we stop short of determining that
20 ISP-bound traffic is, in fact, local traffic. Herein, we
21 find only that this traffic shall be treated like local
22 traffic for purposes of compensation.

23 Will you agree with me, subject to check, that
24 that is what the Commission ruled in the Global
25 NAPS/BellSouth arbitration?

1 **A** I'll agree, subject to check, that that's what
2 that order says. And just to be fair, complete the
3 record, what I was referring to were the three or four
4 interconnection disputes that the Commission has taken on
5 under individual parties' interconnection agreements where
6 they said that it was local under those agreements. I
7 think they said -- they said, let's wait and see what the
8 FCC does with this, and then we got into this proceeding
9 to say, hey, maybe we should do something before then.

10 **Q** Okay. In your testimony, you talk about the
11 network functions needed for call transport and
12 termination. And as I understand your testimony, it's
13 your position that the network functions needed to
14 complete ISP calls are the same network functions needed
15 to complete, you know, local traffic. Is that your
16 testimony?

17 **A** Other local traffic, yes.

18 **Q** Other local traffic.

19 **A** And it would be helpful if you are going to go
20 into it further to give me a page cite. That is generally
21 what my testimony says.

22 **Q** Okay. Will you agree with me that from a -- the
23 functions from the network that are needed to transport
24 and terminate calls, that interstate calls also utilize
25 the same network functions of switching and transport?

1 **A** **Yes. And I think we all have to wonder why**
2 **switched access rates are at .7 cents, but the local**
3 **termination rates are at .325 cents and dropping. I would**
4 **agree.**

5 **Q** **And then since interstate traffic utilizes many**
6 **or if not all of the same network functions for local**
7 **traffic, will you agree with me that there is a different**
8 **compensation mechanism for access traffic than there is**
9 **for local traffic?**

10 **A** **I would agree that there is. I would not agree**
11 **that there should be. I think that if you had to put your**
12 **money where your mouth is and say, and I don't mean that**
13 **rudely or anything, but that if you had to apply the same**
14 **costing standards and methodologies to that switched**
15 **access revenue that you receive that you want to apply to**
16 **the local termination that you're paying out, well, maybe**
17 **you wouldn't be so interested in bill-and-keep or cost**
18 **setup and duration, all these new ideas.**

19 **So I think that's where the FCC may well be**
20 **moving intercarrier compensation proceedings, and I think**
21 **that anything we do from here on out should apply to your**
22 **switched access, and then we'll see whether you really**
23 **want to change the costing methodology.**

24 **Q** **But at least as we sit here today, even though**
25 **you've got traffic that may require the same network**

1 functions to complete the call, there are two different
2 pricing mechanisms in place today?

3 A Yes. Now, I would say that there are a whole
4 multitude -- a whole series of differences between access
5 traffic, and you'll agree with me, I'm sure, and ISP/local
6 traffic.

7 ISP local are routed over the same trunks.
8 Anyone -- if you ask my -- I think you could ask my
9 eight-year-old daughter. She'd say, well, it's a local
10 call. Anyone in the street will tell you that's a local
11 call to get to an ISP. I don't have to pay for it. It
12 comes out of your tariff. It's billed as local and so on.
13 You guys -- the Commission has heard this ten times over,
14 that it really is a local call in every respect.

15 Q Do you know whether e.spire provides services to
16 its ISP customers via a primary rate ISDN lines?

17 A Yes. More often than not, that's what we do.

18 Q Do you have any idea what the average primary
19 rate ISDN charge is in Florida from e.spire?

20 A I don't know off the top of my head. I mean,
21 it's several hundred dollars. I don't want to throw a
22 number out because it's not based on fact.

23 Q Sure.

24 A But it's the same rate we charge to any other
25 end user.

1 **Q** **Does e.spire have a tariff for that service in**
2 **Florida? Do you know?**

3 **A** **I have to check. We are only required to file**
4 **price lists. We may well not because that's not what the**
5 **tariffing requirement requires. But we do offer**
6 **nondiscriminatory pricing. We offer volume and term**
7 **pricing to all end users.**

8 **Q** **When you purchase, you being an ISP, purchases a**
9 **primary rate ISDN line from e.spire, do you know exactly**
10 **what services they are getting? What does that encompass?**

11 **A** **Well, it would give you local connectivity, and**
12 **it would give you high volume service. I'm not a**
13 **technical expert as to how ISDN differs from other**
14 **T-1 services, so I hope you're not asking me that.**

15 **Q** **Believe me, I wouldn't know enough to ask you**
16 **questions. All right. And I think you said earlier that**
17 **you did not file a cost study in this proceeding?**

18 **A** **I don't know that I said that, but we did not.**

19 **Q** **And if I understand your testimony in your**
20 **rebuttal, that you did not file a cost study. At least**
21 **one of the reasons for that was because the FCC might**
22 **ultimately reject the cost study, and it will have ended**
23 **up being a waste of time and effort for e.spire to have**
24 **filed such a study?**

25 **A** **Well, I don't know if you're reading out of my**

1 testimony. Again, I guess I'd ask for a reference, but I
2 can tell you why we wouldn't.

3 Q Page 20 of your rebuttal.

4 A Okay. The answer is that the FCC rules don't
5 allow this Commission to look at cost studies unless a
6 CLEC comes in and says -- wants to show that their costs
7 are higher than the ILECs. So given that I'm not coming
8 in with that assertion to make out that case, then my
9 costs are not at issue in this proceeding.

10 Q Okay. I was more concerned with the -- if you
11 look on Lines 14 through 18 on Page 20 of your rebuttal
12 testimony.

13 A Okay.

14 Q Just take a second and read that, and I'll tell
15 you what my -- my concern is in a little bit different
16 area than that.

17 A Yes.

18 Q I got the impression, and maybe I just got the
19 wrong impression from reading it, but I got the impression
20 that the reason you didn't file a cost study wasn't so
21 much because you didn't have to, but because you were
22 concerned that it would have ended up being a monumental
23 waste of time and effort if the FCC went a different way,
24 and the decision the Commission makes here is probably
25 only an interim mechanism. Am I reading that wrong?

1 **A** Well, that's what that says. If you read -- you
2 know, I know there is a lot of paper in this docket, but
3 the Staff asked a question that was even more on point in
4 this area. And they said -- they asked about our costs.
5 And our answer was, we don't believe our costs are
6 relevant under this -- to this proceeding under the FCC's
7 rules.

8 Now, the Commission could say, jeez, we don't
9 care what the FCC rules say, and we think that the FCC is
10 going to say something different in a couple of weeks, so
11 let's get a lot of CLEC cost studies into this docket.
12 All right. And so I would add that there really are two
13 things going on here. One, the FCC rules don't allow for
14 CLEC cost studies unless I'm proving up higher costs, and
15 two, if we were going to have some kind of an open-ended
16 discussion about what CLEC costs are, it is a very odd
17 time to be doing it because chances are we're going to
18 have to start all over in a month or so.

19 **Q** Is that what you were talking about?

20 **A** I think, yeah, that that's what this portion is
21 as opposed to my interrogatory answers to the Staff's
22 questions.

23 **Q** Do you have any inside scoop on when the FCC
24 might issue an order?

25 **A** I just --

1 **Q** Are you willing to go out on a limb and --

2 **A** No. I think, you know, any discussion is ranked
3 speculation and hearsay, but I guess it hasn't stopped us
4 before; right? But what we're hearing is that, you know,
5 if you don't get it in to talk to the FCC this week, then
6 you may have lost your chance, that there is something
7 coming out in the next couple of weeks, and they want to
8 put it away once and for all.

9 **Whether they will succeed in doing that is -- I**
10 **mean, I can't agree with your characterization that, well,**
11 **they just have to issue the order again. The order that**
12 **they issued -- that the District Court said -- that all**
13 **these cases that you've cited to, you know, they kind of**
14 **emptied their barrel -- said this whole line of reasoning**
15 **does not work here. So it's been almost a full year since**
16 **the D.C. Circuit ruled, and the lawyers over there haven't**
17 **really figured out a way to skin this cat. So I'll be**
18 **real interested to see how they do it.**

19 **Q** I'll agree with you that the order will have to
20 be clear for it to be dispositive, and we'll just leave it
21 at that. I have no more questions, Mr. Falvey. Thank
22 you.

23 **A** Sure.

24 **CHAIRMAN JACOBS: Ms. Caswell, I think you had**
25 **some questions.**

1 MS. CASWELL: Yes.

2 CROSS EXAMINATION

3 BY MS. CASWELL:

4 Q Good afternoon, Mr. Falvey.

5 A Good afternoon.

6 Q I think we established this earlier, but
7 wouldn't you agree that e.spire agreed to private
8 arbitration in its interconnection contract with Verizon?

9 A We have a signed interconnection agreement that
10 requires commercial arbitration. As you know, it was
11 largely an opt in to provisions that GTE had already
12 agreed with, and CLECs make choices all the time. I
13 think -- what if I had brought to the Commission and said,
14 I have one issue, Commissioners; we want to arbitrate what
15 our arbitration provisions should be? I'm not sure the
16 Commission would have looked real kindly on that
17 arbitration, but make no mistake about it, our contract
18 requires commercial arbitration, and we signed that
19 contract.

20 Q Do you know if you have an existing
21 interconnection contract with Verizon in Florida?

22 A Yes.

23 Q You believe you do?

24 A We do. We have one that -- where the date has
25 terminated, but there's an evergreen provision that says

1 that the parties will continue to operate under this
2 agreement.

3 Q Has this Commission ever directed Verizon to pay
4 e.spire reciprocal compensation for ISP traffic under the
5 terms of any agreement with e.spire?

6 A No. Our prior \$1.9 million award was from a
7 commercial arbitrator, again, through a commercial
8 arbitration. And I don't have any problem with you
9 resorting to your commercial arbitration provision. It's
10 the continual raising of the same losing cost -- of the
11 same issue that you keep losing on, and then you keep
12 bringing it back up and putting us off to the tune of
13 \$5.7 million in the meantime. So there is a process to go
14 after it, but it's this abstinency that, well, we're going
15 to -- maybe we'll win on the ISP issue this time, and by
16 the way, e.spire has got to wait for their money. That's
17 what I'm complaining about.

18 Q Has the Commission ever issued any kind of
19 generic order finding that reciprocal compensation must be
20 paid for ISP-bound traffic under all interconnection
21 agreements in this State?

22 A No.

23 Q And haven't its orders in arbitration
24 proceedings been limited to the specific language of the
25 contracts before the Commission in those proceedings?

1 **A** **Yes. Now, but that does not mean that the tenth**
2 **agreement that you arbitrate isn't sham litigation, and**
3 **that this Commission can't rule in this proceeding that**
4 **you come with unclean hands to say that this recip comp is**
5 **killing you, that's there's this revenue drain, because**
6 **there is no revenue drain. The revenue drain is on me.**
7 **You owe me 5.7 million, 12 million regionwide, and we**
8 **don't have any money left.**

9 **Q** **Okay. Mr. Falvey, I'd like to direct you to**
10 **your rebuttal testimony at Page 19 where you state at**
11 **Lines 7 through 9 -- you're referring to a BellSouth**
12 **witness.**

13 **A** **Page 18?**

14 **Q** **Yeah, Page 19.**

15 **A** **Nineteen, thanks.**

16 **Q** **Line 7. You're referring to a BellSouth**
17 **witness, and you're stating, "Ms. Shiroishi's implication**
18 **that ALECs are instituting more efficient and capable**
19 **equipment that can result in cost savings for termination**
20 **of such calls" -- and you're referring to ISP-bound**
21 **calls -- "is just speculation."**

22 **I'd like to hand you a press release from the**
23 **Global NAPS Web site, if I could, or someone will hand it**
24 **to you, anyway. Can you just take a moment to look at**
25 **that while Irene passes out the of rest of them?**

1 **A Yes.**

2 **Q Can you read the first sentence in that release,**
3 **please.**

4 **A The headline?**

5 **Q No, the first sentence in the article.**

6 **A Abandoning?**

7 **Q Correct.**

8 **A "Abandoning traditional circuit switch equipment**
9 **for a next-generation packet-based network that delivers**
10 **four times the capacity, in one-tenth the space, at**
11 **one-tenth the cost, Quincy, Massachusetts-based Global**
12 **NAPS in January became the world's first local exchange**
13 **carrier to fully transition to an all-packet broadband**
14 **network."**

15 **Q And would you agree that most ILECs today use**
16 **what is referred to here as traditional circuit switch**
17 **equipment?**

18 **A Yes. I mean, I have to say I've never seen this**
19 **before. I don't know what Web site it came off of.**

20 **Q Right.**

21 **A I don't know that Global NAPS issued it. But**
22 **that's the problem, is that you have these CLECs**
23 **introducing new technologies, but the ILECs as long as**
24 **they're allowed to are going to sit back on their hands**
25 **and use the old stuff. So that's where the beauty of the**

1 FCC rules comes in and says, you don't get the benefit of
2 these new hot shot CLEC technologies until you get up and
3 start doing some of this new technology yourself. It's a
4 nice rule, and I think we should follow it.

5 Q Okay. So if the Global NAPS release is true,
6 then isn't this proof that at least this ALEC has
7 instituted more efficient and capable equipment than the
8 ILEC for these types of calls?

9 A Yes, but I have to say it doesn't make my
10 statement any less true that -- because e.spire hasn't
11 used these switches.

12 Q You said ALECs. The implication that ALECs were
13 doing that is just speculation.

14 A Well, that's right, and that's all it is. And
15 this isn't all that much more. It's one CLEC, Global
16 NAPS.

17 Q Okay.

18 A I can tell you I've been -- I know that e.spire
19 doesn't use them. I've been on calls, and I know that
20 Time Warner doesn't use them. I know that Focal doesn't
21 use them. The vast majority -- I'll tell you, if you want
22 to know the facts, the vast majority of ALECs don't use
23 them.

24 Q Have you submitted any evidence of that regard
25 in this proceeding?

1 **A** **I think I just did.**

2 **Q** **Okay.**

3 **A** **Well, to give you a serious answer to that. I**
4 **don't think we've undertaken that kind of cost study in**
5 **this proceeding because that's not what the FCC rules say.**
6 **Global NAPS hasn't asked for a higher rate than the ILEC;**
7 **e.spire hasn't asked for a higher rate than an ILEC. So**
8 **the day I want to make that showing, then I've got to come**
9 **in. And if I did come in, you'd see I didn't have any**
10 **softswitches.**

11 **Q** **Okay. Again, let's assume that this press**
12 **release is true at least for Global NAPS' network, and**
13 **that that network is, in fact, ten times as efficient in**
14 **terms of cost as the ALECs' networks. Then wouldn't this**
15 **more efficient equipment likely produce cost savings for**
16 **termination of ISP-bound calls?**

17 **A** **Yes. But under the FCC rules, that wouldn't**
18 **change the reciprocal compensation rates.**

19 **Q** **And you're asking the Commission to set**
20 **reciprocal compensation rates based on the ILECs' costs as**
21 **proxy for the CLECs'; is that right?**

22 **A** **Exactly --**

23 **Q** **Okay.**

24 **A** **-- to give you the incentive to issue your press**
25 **release that says Verizon is the first nationwide ILEC to**

1 complete the transition.

2 COMMISSIONER JABER: Ms. Caswell?

3 MS. CASWELL: Yes.

4 COMMISSIONER JABER: May I interrupt you for
5 just a minute? Which FCC rule are you talking about, and
6 what does it say?

7 THE WITNESS: If you look, there's kind of a
8 whole series of rules on reciprocal compensation. And I'm
9 just flipping back for a cite. I don't have the whole set
10 of rules in front of me, but 51.711, 51.712, 51.713, if
11 you look through those rules, they go into -- they're
12 really interesting because they cover a lot of these
13 issues.

14 COMMISSIONER JABER: Let me just tell you that
15 when I go back and read the record, I would like to know
16 which rule you're referring to. And in response to
17 Ms. Caswell's questions, I want to understand your
18 responses in relation to the rules. So I hate to hold
19 everyone up, but if you'll just take a couple of seconds
20 and be specific about which rule you're referring to.

21 THE WITNESS: I would appreciate a copy of the
22 rules. That would be great.

23 Okay. It's Section 51.711(b). "A state
24 commission may establish asymmetrical rates for transport
25 and termination of local telecommunications traffic only

1 if the carrier other than the incumbent LEC (or the
2 smaller of two incumbent LECs) proves to the state
3 commission on the basis of a cost study using the
4 forward-looking economic cost based pricing methodology
5 described in 51.505 and 51.511, that the forward-looking
6 costs for a network efficiently configured and operated by
7 the carrier other than the incumbent LEC (or the smaller
8 of two incumbent LECs), exceed the costs incurred by the
9 incumbent LEC (or the larger incumbent LEC)" --

10 CHAIRMAN JACOBS: Mr. Falvey, we may need you to
11 just slow down a bit.

12 THE WITNESS: I'm sorry. I guess I was working
13 under the assumption that everyone's got them, and
14 obviously we don't.

15 CHAIRMAN JACOBS: Okay. Did you need him to
16 repeat any of that?

17 THE WITNESS: Well, I can paraphrase it. It
18 says that the rates have to be exactly the same unless the
19 smaller CLEC or the smaller of two ILECs wants to come in
20 and show that their costs are higher. Okay. It doesn't
21 say come in and make any showing. It always has to be
22 that their costs are higher.

23 BY MS. CASWELL:

24 Q So do you think this Commission is precluded
25 from considering any evidence that ILECs -- ALECs costs

1 might be lower in considering what kind of reciprocal
2 compensation mechanism to implement?

3 A Yes.

4 Q They may not consider that fact at all?

5 A Only because no ALEC came in and asked for a
6 higher rate. In Texas, there was a company called
7 Taylor that did just that. They came in with a cost study
8 and tried to prove up higher rates.

9 Q And I understand that no one is asking for a
10 higher rate, but don't -- do you think the Commission is
11 precluded from considering any evidence that the ALECs'
12 costs may be lower?

13 A Yes, I think that they are so precluded.

14 Q Okay. And where would the authority for that
15 assumption come from?

16 A That would be 51.711(b).

17 Q That's the rule you just read?

18 A The same one.

19 Q You think that's what the rule says?

20 A Yeah. And in fact, if you go back and read the
21 First Report and Order as it supports these rules, it goes
22 into a discussion of much of what we've been talking about
23 here, that we want to give the ILECs some incentive to
24 upgrade their networks. You know, we don't have to do
25 alt reg cases anymore and demand improvements. We'll just

1 have these recip comp rules, among other incentives.

2 Q Okay. Mr. Falvey, since you mentioned the
3 First Report and Order, I've given you a copy of that
4 report and order, and I'd like you to look at
5 Paragraph 1092.

6 A Okay.

7 Q Do you see the part I have underlined?

8 A Yes.

9 Q Can you read that to us?

10 A It's about paging companies. "Using incumbent
11 LEC's costs for termination of traffic as a proxy for
12 paging providers' costs, when the LECs' costs are likely
13 higher than paging providers' costs, might create
14 uneconomic incentives for paging providers to generate
15 traffic simply in order to receive termination
16 compensation."

17 Q Now, I understand that applies specifically to
18 paging providers, but doesn't that indicate that the FCC
19 agrees that significant differences in providers' costs
20 might warrant departure from the use of the ILECs' costs
21 as proxies?

22 A Definitely not. I mean, I'd like to be able to
23 make new law. I'd like to be -- to write the Fifth Report
24 and Order, whichever one we're on, but I'll also read
25 Paragraph 1089. "In that case, we direct state

1 commissions, when arbitrating interconnection
2 arrangements, to depart from symmetrical rates only if
3 they find that the costs of efficiently configured and
4 operated systems are not symmetrical and justify a
5 different compensation rate."

6 Q And in this --

7 A And it goes on to say, the basis of the rule
8 that I just read, that you only look at the CLEC costs in
9 the event that the CLEC costs are higher than the ILEC
10 costs for local traffic, not for paging.

11 Q And I don't have my copy in front of me because
12 you do, but didn't the FCC also anticipate that ILECs
13 would be terminating most calls, so they weren't that
14 worried about the differences in the proxy and the actual
15 costs?

16 A I don't know what the -- actually, I think the
17 FCC anticipated all sorts of scenarios. They said that
18 bill-and-keep would be appropriate when traffic was in
19 balance, and they said that it would not be appropriate
20 when it was not in balance.

21 Q And did they specifically address ISP traffic
22 anywhere in that order?

23 A They talked about local traffic. And until the
24 '97 time frame, when you started getting reciprocal
25 compensation bills, the ILECs themselves said ISP-bound

1 traffic was local. You go back to the 1989 filing before
2 this Commission.

3 Q And the FCC, again, does not consider that
4 traffic to be local; correct? So the FCC would not have
5 been talking about the --

6 A Well, there is no order from the FCC that has
7 not been vacated and that has been supported by any case
8 law that has successfully declared that this traffic is
9 not local and has successfully declared that this traffic
10 should not be governed by the Telecom Act.

11 Q Are you aware of the FCC orders approving Bell
12 Atlantic's and Verizon's ADSL tariffs?

13 A That's DSL, that's not -- I'm talking about
14 dial-up traffic, which is the subject matter of this
15 proceeding.

16 Q And how would the fact that it's dial-up traffic
17 affect the jurisdictional end-to-end analysis of the FCC,
18 the same analysis that it --

19 A The jurisdictional analysis of the FCC was
20 upheld by the D.C. Circuit. This is important.

21 Q Okay. I agree with you.

22 A So even as the dial-up traffic that the FCC
23 clearly has jurisdiction, it's whether it applies --
24 whether the Telecom Act applies whether it's local
25 traffic. That's the issue that the FCC -- the

1 humpty-dumpty that they haven't been able to put back
2 together again.

3 Q And given the FCC's statement with regard at
4 least to paging providers, you don't believe the FCC would
5 sanction that CLECs generating traffic just in order to
6 receive termination compensation, do you? Why would they
7 feel any differently about CLECs?

8 A I'm not sure that anyone has put any evidence
9 into this proceeding that any CLEC has done that. We've
10 certainly never done that.

11 Q Did you read Mr. Selwyn's testimony?

12 A I read most of it, if you really want an honest
13 answer. It's very long.

14 Q Did you read his statement saying that CLECs
15 were pursuing the, quote, call termination market?

16 A Point it to me, and put it in context.

17 Q Okay.

18 A I mean, what you said -- you were talking about
19 fraud, I believe.

20 Q No, I'm not talking --

21 A Someone who's generating calls just for the sake
22 of generating calls. And what I said was that there's no
23 evidence in this proceeding that any Florida ALEC has
24 participated in that kind of fraudulent call generation.

25 Q Okay. And just so we're clear on your belief

1 with regard to potential cost differences between the
2 ILEC's and ALEC's network, even assuming a CLEC's network
3 is ten times more efficient than an ILEC's and that it
4 could achieve significant cost savings in call
5 termination, because of that efficiency, do you still
6 believe it's still appropriate to use the ILEC's costs as
7 a proxy for the CLEC's costs no matter how much lower
8 those ALEC's costs might be?

9 A Yes.

10 Q Okay.

11 A And to explain, in some ways it doesn't matter
12 what I believe because it's what the FCC's rules say that
13 matter. And the way the FCC justify this -- and in some
14 ways, there's a little bit of genius in various parts of
15 the First Report and Order and the Telecom Act.

16 They are saying that you're going to pay higher
17 costs as long as you run an inefficient network. Since
18 you're a monopolist and we're not sure that you have the
19 proper economic incentives to drive efficiency through
20 your monopoly network, we're going to start looking around
21 at what these new competitive entities are doing to gain
22 efficiencies. And you're going to pay at your rates until
23 you drive efficiency through your network.

24 Q Are you aware that Verizon must offer flat rate
25 local service in Florida?

1 **A No.**

2 **Q Are you aware that most of Verizon's --**

3 **A The -- can I -- the reason I say no is that**
4 **what's been overlooked -- you people keep falling back to**
5 **this. Your business customers pay usage rates, and you**
6 **are doing millions and millions, probably billions, of**
7 **minutes in Florida from business customers who you do get**
8 **usage-based rates from. All the discussion has revolved**
9 **around residential.**

10 **Q Do you know what proportion of Verizon's**
11 **customers take the flat rate option in Florida?**

12 **A I don't.**

13 **Q Do you know that Verizon's annual basic rate**
14 **increases are strictly controlled by the statute?**

15 **A I do. And the statute -- you know, you have to**
16 **come into the Commission under that statute and make your**
17 **case. If I'm not mistaken, I know for a fact that Verizon**
18 **and BellSouth supported the adoption of that statute. So**
19 **I can't really say whether you were right to do that, but**
20 **that's my understanding.**

21 **Q Okay. As I understand your testimony, you**
22 **believe that reciprocal compensation should apply for even**
23 **noncircuit-switched technologies; is that right?**

24 **A Yes.**

25 **Q And do you think the Commission should apply the**

1 same rates for that type of reciprocal compensation as it
2 does for circuit-switched technologies?

3 A You're talking about the dial-up portion of the
4 call is not circuit-switched; right?

5 Q Yeah. Typically, that's referred to as a
6 noncircuit-switched technology.

7 A Right.

8 Q And in fact, that's the way the issue has been
9 defined here.

10 A There just was some confusion from my testimony
11 where I was talking about the dial-up portion, so I just
12 wanted to clarify. The question was, did you think that
13 the --

14 Q Would you use the same rates for that kind of
15 traffic for call termination or that scenario as you
16 would --

17 A I would as long as -- I would look to your
18 rates. As long as you're still using circuit-switched, as
19 long as you haven't driven new efficiencies into your
20 network, I would look to newer rates. There obviously is
21 a way for you to lower rates, and that's to drive
22 efficiency through your network and to adopt these
23 alternative technologies.

24 Q But don't the call termination rates for circuit
25 switching at least include costs that cover circuit

1 switching?

2 A Well, yes. They're based on your cost studies.

3 Q Right. And you want to use those as proxies for
4 your costs; correct?

5 A No. The FCC has demanded it. It doesn't matter
6 what I want. The FCC has required that that's how we do
7 this.

8 Q At least in your opinion.

9 A I don't know if that was testimony --

10 Q Okay.

11 A -- or if I should ask you a question, cross
12 examine you now or --

13 Q So why does a carrier deserve compensation for
14 switching when it's not doing any switching?

15 A Everyone here is doing switching.

16 Q Noncircuit switching.

17 A Virtually everyone every minute switched to
18 circuit-switched.

19 Q Okay. So are the costs the same as
20 traditional --

21 A I mean, if it's a hypothetical --

22 CHAIRMAN JACOBS: Excuse me. I'm going to have
23 to make sure you let her ask the question, and then your
24 answer, and then vice versa.

25 THE WITNESS: Fair enough.

1 **CHAIRMAN JACOBS:** Thank you.

2 **BY MS. CASWELL:**

3 **Q** So are you saying the costs for delivering
4 nonswitched traffic are exactly the same as for
5 delivering circuit-switched traffic?

6 **A** No. I don't know what the respective costs are.
7 I don't think we have ever put those cost studies before
8 this Commission, but I do know what the rules say. We
9 look to your current costs.

10 **Q** No state anywhere has required reciprocal
11 compensation for nonswitched traffic, have they?
12 Nonswitched.

13 **A** Not that I'm aware of. Not that I'm aware of.

14 **MS. CASWELL:** Okay. Thank you. That's all I
15 have.

16 **COMMISSIONER DEASON:** Ms. Caswell, could you
17 give me some examples of nonswitched traffic?

18 **MS. CASWELL:** I think that would be the kind of
19 packet-based network. And I'm --

20 **COMMISSIONER DEASON:** The new technology, you're
21 talking about; is that correct?

22 **MS. CASWELL:** Yeah, it's new. They call them
23 sort of next generation networks. I think that's the
24 direction that Global NAPS is going in. And, you know,
25 maybe my witness could address this better, but I

1 understand that there are cost differences and technology
2 differences between traditional circuit switching and
3 these new types of noncircuit-switched equipment or
4 packet-based networks which are much more efficient as the
5 Global NAPS release indicates.

6 COMMISSIONER DEASON: I'll pursue it with your
7 witness.

8 CHAIRMAN JACOBS: Which witness was that?

9 MS. CASWELL: I'm sorry?

10 CHAIRMAN JACOBS: Was that Mr. Jones?

11 MS. CASWELL: Yeah, Mr. Jones will be up and
12 Mr. Beauvais as well. I think they can both address that
13 subject.

14 CHAIRMAN JACOBS: Thank you. Ms. Masterton.

15 MS. MASTERTON: No questions.

16 CHAIRMAN JACOBS: Staff.

17 MS. BANKS: Yes, Mr. Chairman.

18 CHAIRMAN JACOBS: I'm sorry. I have to remember
19 we have other parties on this side who may have cross
20 examination. Let me go down this -- do you have cross?

21 MR. HOFFMAN: Just a few questions.

22 CROSS EXAMINATION

23 BY MR. HOFFMAN:

24 Q Mr. Falvey, just a couple of questions.

25 MR. EDENFIELD: Before Mr. Hoffman gets started,

1 Chairman Jacobs, I'm not sure that the Commission has ever
2 allowed what I would term "friendly cross examination"
3 from the ALEC community. Since they are all taking a like
4 position, I'm not sure that it's appropriate for them to
5 be asking cross examination questions of what's basically
6 their own witnesses. Historically, the Commission has
7 never allowed that.

8 CHAIRMAN JACOBS: We were just discussing that.
9 I think we've allowed it, but we've allowed it before you
10 did your cross. And that was probably my error that if
11 they were going to do cross, they probably should have
12 done it --

13 MS. CASWELL: Well, I'm not even sure it's
14 typically been allowed in that scenario either, and I
15 would agree with Mr. Edenfield, it is unusual.

16 MR. EDENFIELD: I mean, this is tantamount to
17 cross examining your own witness after he's already filed
18 testimony. Anyway, I have an objection to make. I think
19 this is improper. I don't think it's ever been allowed by
20 the Commission, and I don't think it's proper in this case
21 either for the ALECs to cross examine basically their own
22 witnesses.

23 COMMISSIONER DEASON: Let me offer something,
24 Mr. Chairman. I think in the past we've allowed
25 questions, but normally, I agree with the Chairman,

1 normally we allow the order to be that if their positions
2 are more closely aligned, that those cross questions are
3 asked first. And if it is not truly cross, you have the
4 ability to object at that point that it is improper cross.
5 And what that does is prevent the parties that are more
6 closely aligned from rehabilitating a witness through
7 saying it's cross when it's really after you have done
8 your cross. I think that's the way we've normally done it
9 in the past. And I think Staff is shaking their head yes.

10 MR. EDENFIELD: I think that is correct. I
11 guess the point of this is, I'm not sure that the
12 companies represented by Mr. Hoffman have filed any
13 testimony that would be contrary that would give rise to
14 anything that would be proper cross examination. But I
15 guess we'll have to wait to hear the question.

16 CHAIRMAN JACOBS: For this line of questioning,
17 I'm going to allow. And because it was not in the proper
18 order, I would ask if you would be very sensitive to the
19 questioning that you give. And then after this witness, I
20 think what I'd like to do is, go ahead and follow the
21 procedure that was just outlined; i.e., allow that
22 questioning that will be aligned with the interest of the
23 witness -- of the party that is sponsoring the witness to
24 go in advance of your cross. And you have the ability to
25 object to that cross if you think it is improper, and then

1 your cross. Okay.

2 MR. HOFFMAN: Thank you, Mr. Chairman. Let me
3 just say for the record, my recollection is consistent
4 with that of Commissioner Deason's in terms of how the
5 Commission has treated this issue in the past. I just
6 have a couple of questions for purposes of clarification.

7 BY MR. HOFFMAN:

8 Q Mr. Falvey, what specific reciprocal
9 compensation rates are you recommending for the transport
10 and termination of ISP traffic?

11 A We would recommend the rates from the existing
12 cost dockets, which would include the three elements: The
13 end office switching, tandem switching, and tandem switch
14 transport. You combine those three elements and the
15 current -- I believe under the current cost dockets, it
16 comes to -- I always like to use cents because there's not
17 so many zeros -- .325 cents or .00325 dollars, if I'm not
18 mistaken.

19 Q When you say the "current cost dockets," what
20 dockets are you talking about?

21 A I mean those that have been closed, the book is
22 closed on those cost dockets. So they're prior -- I say
23 current. I mean currently in place.

24 Q In other words, you're talking about rates that
25 have been previously established by the Commission for the

1 incumbents?

2 A Yes.

3 MR. EDENFIELD: Objection. Not only is it
4 leading, certainly Mr. Falvey has not testified to
5 anything in this proceeding that is contrary to what the
6 ALECs are proposing in theirs; therefore, it's improper
7 cross as well.

8 MR. HOFFMAN: Well, Mr. Falvey has made a
9 recommendation in his testimony in terms of the rate
10 structure that this Commission should implement as an
11 intercarrier compensation mechanism. My basic question to
12 him is, what specific rates are you recommending for the
13 Commission to implement?

14 MR. EDENFIELD: And my point is that the exact
15 same rates that Mr. Falvey is putting forth in this is the
16 exact same rates that Mr. Selwyn, who was Mr. Hoffman's
17 witness's testimony, is presenting itself. I mean,
18 there's nothing different here.

19 CHAIRMAN JACOBS: Okay. I understand. I'll
20 allow the objection. I think the point can be covered
21 even through Mr. Selwyn's testimony or through the other
22 line of questioning that you had already. So I'll allow
23 the objection.

24 MR. HOFFMAN: Let me be clear, Mr. Chairman.
25 Dr. Selwyn's testimony talks about the rate structure that

1 he recommends to the Commission. What I am talking about
2 are specific numbers, the rates.

3 CHAIRMAN JACOBS: Right. As understood it, your
4 representation is that that's not included in Mr. Falvey's
5 testimony, though, is it?

6 MR. HOFFMAN: My understanding is that
7 Mr. Falvey has not been specific on that, and the purpose
8 of my question was simply for clarification, as I stated
9 before, for the Commission, so they'll know exactly what
10 it is he's recommending.

11 CHAIRMAN JACOBS: Right. And the objection is
12 that he didn't -- that was not a part of his testimony,
13 and therefore, it would be, in my mind, improper on your
14 cross for him to bring that out. So I granted it as to
15 that.

16 BY MR. HOFFMAN:

17 Q Let me ask you this, Mr. Falvey: You
18 characterize in your rebuttal testimony the compensation
19 mechanism as being a potential interim mechanism. Is that
20 a fair characterization of what you're saying?

21 A Yes.

22 Q Okay. Under what circumstances would the
23 mechanism that you recommend not be interim?

24 A Well, if the FCC came out in a week or two weeks
25 and said, we love our rules just the way they are, and so,

1 you know, then following the existing rules would be
2 permanent.

3 Q Okay. Let me ask you just a couple of follow-up
4 questions about the Bell Atlantic case. And first, let me
5 ask you, you are or have been a practicing attorney; is
6 that correct?

7 A I am a practicing --

8 MR. EDENFIELD: Chairman Deason -- Jacobs, I'm
9 sorry. Again, this is him laying foundation questions for
10 Mr. Falvey. It's completely improper. There's nothing
11 that he's asking Mr. Falvey that is in any way contrary to
12 the position taken by his witness, and again, I object to
13 this as being improper cross examination.

14 CHAIRMAN JACOBS: That line of questioning, he
15 was only asking his background.

16 MR. HOFFMAN: I haven't asked him anything yet,
17 so I'm not sure what he's objecting to.

18 CHAIRMAN JACOBS: Okay. Why don't we let him
19 get to his next question? That I think is consistent with
20 his testimony, what his background is.

21 MR. EDENFIELD: Okay.

22 BY MR. HOFFMAN:

23 Q There were some questions to you regarding the
24 Bell Atlantic case. Do you know if there was a stay of
25 the FCC declaratory ruling while the Bell Atlantic case

1 was decided?

2 A There was not.

3 Q Okay. The Bell Atlantic case has been decided.

4 It has been -- the FCC declaratory ruling was vacated and
5 sent back to the FCC. There's been some testimony on your
6 part about the FCC will at some point, perhaps soon, enter
7 another order; is that correct?

8 A That's correct.

9 Q Okay. If that order were appealed, would that
10 order be stayed, or would a party have to come in and seek
11 a stay?

12 A A party would have to seek a stay.

13 MR. HOFFMAN: Okay. That's all I have. Thank
14 you.

15 CHAIRMAN JACOBS: Any cross?

16 MR. McGLOTHLIN: No questions.

17 CHAIRMAN JACOBS: Mr. Moyle. Staff.

18 MS. BANKS: Yes.

19 MR. MOYLE: I have a couple, Mr. Chairman.

20 CHAIRMAN JACOBS: I'm sorry. I didn't mean to
21 cut you out. Go ahead.

22 CROSS EXAMINATION

23 BY MR. MOYLE:

24 Q During your direct testimony, you talked a
25 little bit about bill-and-keep. Is it your testimony that

1 you believe bill-and-keep is not a suitable method of
2 compensation?

3 MS. CASWELL: I'm sorry. I'm going to have to
4 object because I don't think this relates to any of the
5 cross examination any of us did. So it's not proper
6 redirect.

7 CHAIRMAN JACOBS: He's not redirecting.

8 MS. CASWELL: Oh, I'm sorry. Wrong lawyer. I
9 apologize.

10 MR. EDENFIELD: Well, that's basically what's
11 going on here, is it's redirect. Again, it's improper
12 cross examination for now Global NAPS' lawyer to get up
13 and start cross examining e.spire's witness about things
14 that are not contrary to the testimony that was filed by
15 the Global NAPS witness.

16 MR. MOYLE: Well, I respectfully disagree.

17 CHAIRMAN JACOBS: Well, we've already covered
18 this ground. I understand your objection. We're going to
19 move on.

20 MR. MOYLE: He's free to answer the question?

21 CHAIRMAN JACOBS: Yes.

22 A Traffic -- the traffic is not in balance. Our
23 traffic is certainly not in balance with either the major
24 ILECs in Florida. And so since bill-and-keep is only
25 appropriate where traffic is in balance, then

1 **bill-and-keep is not appropriate for that traffic. That's**
2 **between us and those carriers.**

3 **COMMISSIONER DEASON: Let me ask a question.**
4 **Why is your traffic not in balance?**

5 **THE WITNESS: Our traffic is not in balance**
6 **because we have had success in winning Internet service**
7 **provider customers.**

8 **COMMISSIONER DEASON: And why did you go after**
9 **those specific customers?**

10 **THE WITNESS: We didn't target those customers**
11 **exclusively. We have thousands of customers in Florida.**
12 **In fact, we're one of the most active CLECs. We have**
13 **three switches here, and we serve all sorts of mom-and-pop**
14 **customers, you name it, top to bottom. So there's no**
15 **question. If an ISP came to us -- ISPs are**
16 **telecommunications intensive. So if a call center comes**
17 **to us, if an ISP, if anyone like that comes to us, we sign**
18 **them up.**

19 **I've got to tell you, there is a long history of**
20 **ISPs not getting along real well with the incumbents**
21 **because they were too telecommunications intensive, and**
22 **they were a burden on their network, and they didn't like**
23 **them. So when we came along, we said, well, we'll take**
24 **you. Come on over. And we offered to do things that the**
25 **ILECs have never offered to do.**

1 **For example, we collocate their equipment right**
2 **next to our switch. We let them come on in, put your**
3 **equipment in here. The ILEC, by contrast, forces them to**
4 **keep their equipment out at a remote site, and then they**
5 **say, well, you've got to get service from us out to your**
6 **remote site, so we'll sell you 5, 10, 15 miles of special**
7 **access. It's a nice business.**

8 **BY MR. MOYLE:**

9 **Q You had testified a little bit, I think, about**
10 **nonpayment. And I have a question with respect to the**
11 **nonpayment by the ILECs for reciprocal compensation. How**
12 **has that affected e.spire's ability to compete, if at all?**

13 **A Well, it's had a fairly dramatic adverse effect.**
14 **Until recently, we had over 60 million in unreceived**
15 **payables. And this is a company that makes 240 million in**
16 **'99, 340 million this year. So 60 million, that would be**
17 **like a \$15 billion receivable for some of these ILECs.**
18 **Enormous burden.**

19 **Really, to get to the crux of it, instead of**
20 **having that money to invest and to use to create and to**
21 **gen our business, the money is sitting there out of our**
22 **reach. When we do collect it, we maybe get 10 percent**
23 **interest. The law is what it is. You know, we can only**
24 **get so much. We expend attorney's fees and so on to get**
25 **it. We get it five years later. I've got over 30 million**

1 right now sitting out there out of reach. And if I had
2 that, then I'd have enough money to get probably well into
3 May or June.

4 Q I asked you that question because Global NAPS
5 has a similar concern with respect to payment of moneys
6 for which compensation has been ordered, but it leads me
7 to the press release, I guess, that --

8 COMMISSIONER DEASON: Mr. Moyle, I think you
9 just admitted that you're asking improper cross if you're
10 saying that you still have that the same concern, and you
11 wanted to highlight it on the record.

12 MR. MOYLE: Well, what I'm doing,
13 Commissioner Deason, is with respect to this press release
14 that I've never seen before. All of a sudden it's shown
15 up. Whether it's accurate or not, I simply was going to
16 ask him with respect to -- you know, this press release
17 talks about the ability to expand and whatnot. It
18 dovetailed into this question. I want to ask him with
19 respect to the press release whether he has any
20 independent knowledge of anything contained in the press
21 release.

22 CHAIRMAN JACOBS: I think we can cut real close
23 to that. If I recall, when he got this press release, he
24 said he'd never seen it before; is that correct?

25 THE WITNESS: That's correct.

1 **MR. MOYLE:** And the follow-up is whether he has
2 any independent knowledge of anything contained in the
3 press release.

4 **THE WITNESS:** I haven't read every word of it,
5 so -- and there might be something that says your
6 headquarters -- or, you know, you have a presence in New
7 Jersey or something, and I know you do that. But for the
8 most part, no. I mean, in terms of what your new next
9 generation switching looks like, I don't know very much
10 about that at all.

11 **MR. MOYLE:** Thank you. I have nothing further.

12 **CHAIRMAN JACOBS:** Very well. Staff.

13 **MS. BANKS:** Yes, Mr. Chairman, Staff does have
14 questions.

15 **CROSS EXAMINATION**

16 **BY MS. BANKS:**

17 **Q** **Good afternoon, Mr. Falvey.**

18 **A** **Good afternoon.**

19 **Q** **I wanted to talk a little bit -- earlier in your**
20 **cross examination by BellSouth, you stated that a**
21 **requirement to pay reciprocal compensation was not the**
22 **primary reason ALECs are not entering the residential**
23 **market, that there are other factors that impede entry; is**
24 **that correct?**

25 **A** **That is correct.**

1 **Q** You also stated these factors include the
2 availability of the UNE-P and loop costs; is that correct?

3 **A** That's correct.

4 **Q** If this Commission in some proceeding or this
5 one -- other than this one made the UNE-P available and
6 lowered the loop cost, isn't it true that there are still
7 factors that determine if a company can enter the
8 residential market?

9 **A** Yes. I mean, like I said, there are companies
10 that have probably a strategic advantage. Someone like
11 Time Warner has cable to every home. AT&T and WorldCom
12 have -- are already -- have a relationship and are billing
13 those residential customers, but I'd like to think that
14 once we establish ourselves, that as long as there's a
15 means of getting out to those customers, eventually we
16 will get there.

17 **A** lot of companies are serving multitenant
18 units, you know, apartment buildings, what I always call
19 them, but you see an awful lot about multitenant dwelling
20 service. And there's a case where you just go in and,
21 boom, you can get to a whole bunch of customers all at
22 once. So this thing is going to happen very gradually.
23 And there is universal service, by the way, in place such
24 that if there's any burden from the residential base
25 today, then we're all chipping in.

1 **Q** **Assuming that these UNE-Ps are available and**
2 **loop costs were acceptable and e.spire determined that**
3 **residential entry was a viable alternative, how many of**
4 **these companies do you think the residential market could**
5 **support?**

6 **A** **Gosh, I mean, that's such a tough question that**
7 **I guess, you know, there's no natural limit to it. I**
8 **mean, I guess there's -- I don't know. I mean, there's**
9 **certainly 10 or 15 pretty good car companies in America,**
10 **and I don't see why you wouldn't have 10 or 15 -- and**
11 **there's no natural limit that Daewoo, or whoever the**
12 **newest one is, Hyundai, can't come in and make a better**
13 **car and market it better. So there's no limit. There's**
14 **no natural limit.**

15 **Q** **Okay. Assuming e.spire had a good business**
16 **plan, sufficient capital, and decided to enter the local**
17 **market, the incumbent company would probably adjust their**
18 **business plan to compete more effectively with e.spire;**
19 **isn't that true?**

20 **A** **That's correct. I mean, they are competing**
21 **today.**

22 **Q** **And all in all, if the UNE-P was available and**
23 **the loop costs were lower, that alone would not determine**
24 **the success in a residential market. Is that a true**
25 **statement?**

1 **A** **I don't know. I can't say that much lower loop**
2 **costs or -- yeah, I mean, different entrants would have**
3 **different levels of success, but what we're talking about**
4 **now is market preclusion. You can't go into the**
5 **residential market using unbundled loops. You can't go**
6 **into the residential market, except in, what is it, the**
7 **top 50 MFAs four lines or less. So there would be an**
8 **opportunity, and then the companies that did it best would**
9 **be able to take advantage of that opportunity.**

10 **Q** **Okay. I want to change gears just a little bit,**
11 **Mr. Falvey, regarding some of the services that e.spire**
12 **offers. Does e.spire offer DSL services?**

13 **A** **We do a very limited amount. There was**
14 **discussion in one of the pieces of testimony. We do a**
15 **very limited amount. We resell Covad DSL, and it's really**
16 **offered for the customer that wants it. It's not our**
17 **primary business, and it's only in limited markets.**

18 **Q** **Okay. Is a DSL subject to reciprocal**
19 **compensation?**

20 **A** **It's my understanding that it's not. Only**
21 **dial-up Internet traffic is subject to reciprocal**
22 **compensation.**

23 **Q** **Okay. If a service is not subject to reciprocal**
24 **compensation, is that a factor in e.spire's decision**
25 **whether to offer that service?**

1 **A** **Definitely not. If you look at what we do, we**
2 **offer Internet service. We construct networks for other**
3 **carriers, and we have data service and DSL and local, long**
4 **distance, you name it. I guess of all those I just**
5 **mentioned, local is the only one that has recip comp in**
6 **it.**

7 **Q** **Okay. I'm assuming that you are familiar with**
8 **the testimony filed by Witness Shiroishi in this**
9 **proceeding.**

10 **A** **That I've reviewed it?**

11 **Q** **Yes, sir.**

12 **A** **I've reviewed it briefly.**

13 **Q** **Okay. In her testimony, Ms. Shiroishi indicates**
14 **that since the declaratory ruling has been vacated, the**
15 **states have no authority to establish a mechanism for**
16 **ISP-bound traffic. Would you say that is true?**

17 **A** **No, that's not correct. They had the authority**
18 **before and before that order ever came along. Witness the**
19 **'89 proceeding in which BellSouth came in and said, this**
20 **is local traffic and should be treated as such. So they**
21 **had it before, and they had it while that order was in**
22 **effect, and they had it after it was vacated.**

23 **Q** **Okay. I'm going to be referring to the D.C.**
24 **Circuit decision. I think the Commissioners have a copy**
25 **of the D.C. Circuit, and someone is going to provide you**

1 with a copy, Mr. Falvey. I don't know if you have a copy
2 or not.

3 A I think someone might be able to provide me with
4 one.

5 Q I'm looking at the last page of the decision,
6 actually the last paragraph which begins with the words,
7 "We do not reach."

8 A Yes.

9 Q Okay. When Ms. Shiroishi quoted the D.C.
10 Circuit as saying the incumbents are free to seek relief
11 from state-authorized compensation that they believe to be
12 wrongfully imposed, that was not everything the Court
13 said, was it not?

14 A No, the Court went further than that.

15 Q Can you just read the statement, the last
16 sentence beginning, "We do not reach"?

17 A It says, "We do not reach the objections of the
18 incumbent LECs -- that Section 251(b)(5) preempts state
19 commission authority to compel payments to the competitor
20 LECs; at present we have no adequately explained
21 classification of these communications, and in the interim
22 our vacatur of the Commission's ruling leaves the
23 incumbents free to seek relief from state-authorized
24 compensation that they believe to be wrongfully imposed."

25 Q So then is it your opinion that Section

1 **251(b)(5) is the reciprocal compensation provision of the**
2 **1996 Telecom Act?**

3 **A It's one of the provisions that discusses**
4 **reciprocal compensation.**

5 **Q And what the order says, if I may paraphrase, is**
6 **that state commissions may continue to require BellSouth**
7 **to pay reciprocal compensation to its competitors, and**
8 **that BellSouth is free to continue to seek relief from**
9 **that requirement as it has been doing prior to the D.C.**
10 **Circuit ruling; is that correct?**

11 **A That's correct.**

12 **Q Okay. Changing gears just a little bit; still**
13 **referring to the testimony filed by Witness Shiroishi.**
14 **She testifies that since there's no switching involved**
15 **with -- reciprocal compensation does not apply. Is that**
16 **you're understanding of her testimony?**

17 **A It would help me if I could read something. I**
18 **think I do have her testimony.**

19 **Q I'm referring to her testimony, direct testimony**
20 **by Shiroishi on Page 25.**

21 **A It's Page 25 of the direct?**

22 **Q Yes, sir.**

23 **A And this is where she says that it should be**
24 **limited to circuit-switched technologies?**

25 **Q Yes, sir, beginning at Line 11.**

1 **A Okay.**

2 **Q If you would, just read that beginning with**
3 **"non-circuit" --**

4 **A It says, "Noncircuit-switched connections are**
5 **generally not disputed with respect to reciprocal**
6 **compensation standpoint since no switching costs are**
7 **incurred and, thus there is no switching compensation at**
8 **issue."**

9 **Q Okay. From earlier you gave the appearance or**
10 **the impression that you didn't agree with this statement.**

11 **A Well, it's just that you could have a**
12 **noncircuit-switching switch as Global NAPS is rolling out,**
13 **and it's not at all clear to me that we wouldn't incur**
14 **costs. All you're doing is using a different technology,**
15 **and so you're still incurring costs in that scenario, and**
16 **you should still collect reciprocal compensation.**

17 **Q Okay. The whole purpose of reciprocal**
18 **compensation is to recover costs involved with the**
19 **transport and termination of traffic; is that correct?**

20 **A Yes. I think that those transport and**
21 **termination elements were pretty seriously**
22 **mischaracterized in the introductory slides, but basically**
23 **you're talking about transport and termination.**

24 **Q And isn't it your position that carriers use the**
25 **same equipment to transport as well as terminate traffic**

1 over a circuit-switched network as they do provide the
2 final initial phases of noncircuit-switched traffic?

3 A They use the same elements, different switches.
4 So in other words, you would have -- it might help if we
5 look at that slide. It lays out all the different pieces
6 of it. There's an end office switching component, then
7 there's a tandem switching component, and then you have
8 the transport between the two which is the tandem switch
9 transport. If you drop in a different switch, you still
10 have the same elements, you just have a different
11 technology on the switch.

12 Q And are those the elements that you're referring
13 to, the end use -- what elements are you referring to when
14 you say there are other elements involved?

15 A Could we refer to that slide? Because it has a
16 nice diagram that shows end office transport tandem.

17 Q Well, you could just list them for purposes of
18 this information.

19 A Okay. End office switching, tandem switch
20 transport, and tandem switching. Those are all elements
21 that have been costed out by the Commission.

22 Q And so what do you mean by "initial phases"?

23 A Refer to -- I'm sorry. Where --

24 Q Of the noncircuit-switched traffic where you
25 talk about the initial faces. There seems to be no

1 difference.

2 A Where does it say "initial phases"?

3 Q I'm looking at rebuttal.

4 A My rebuttal?

5 Q Yes, sir.

6 A And what page?

7 Q Page 12 beginning at Line 7.

8 A I'm sorry, I'm asking all these questions. I'm

9 just trying to have something in front of me for each

10 question. And what was the line?

11 Q Page 12 beginning at Line 7.

12 A Of my rebuttal?

13 Q Yes, sir.

14 A Page 12, Line 7. It talks about FX. I'm

15 looking at my rebuttal, Page 12, Line 7. Could you read

16 back what you're -- I'm having trouble finding it.

17 Q I'm sorry. I think I have an incorrect cite.

18 Give me one moment.

19 A That's okay.

20 Q I'm sorry. It's your direct testimony.

21 A My direct. Okay. Same, Page 12, Line 7?

22 Q Yes, sir.

23 A I see.

24 Q If you could just --

25 A This passage has been the subject of a lot of

1 confusion, so I'd love to be able to clear this up. This
2 was really talking about -- if you have an IP protocol on
3 the long haul, what this Q and A is about is, it says,
4 whether the long haul is AT&T circuit-switched or IP
5 telephony from Level 3, in many cases you are going to use
6 a circuit-switched to do the dial-up that takes care of
7 the front end of the call. Okay? So this isn't talking
8 about Global NAPS bringing in next generation local
9 switching. It's just saying that whether the long haul is
10 IP telephony or circuit-switched AT&T/WorldCom traffic,
11 there's going to be -- there may well be a
12 circuit-switched local piece in both cases.

13 Q Okay. Are the costs of facilities that are used
14 by both circuit-switched and noncircuit-switched
15 technologies the same costs upon which reciprocal
16 compensation is based?

17 A Okay. They are in the sense that we look to the
18 ILEC cost studies under the current FCC rules. I said
19 earlier, I don't know whether circuit switching or Global
20 NAPS' next generation would be more efficient, lower cost.
21 I mean, I've got to concede. The chances are that the
22 next generation is more efficient. That's why people are
23 moving towards it. And so that would probably be lower
24 cost, but that wouldn't affect reciprocal compensation
25 rates until the ILEC adopts the next generation

1 technology.

2 Q Okay. Thank you. Changing gears just a little
3 bit, Mr. Falvey. I want to discuss reciprocal
4 compensation as it relates to transport and termination of
5 traffic. Is it fair to say that you believe an ISP call
6 terminates in the sense of the FCC rules?

7 A In the sense of the FCC rules. The FCC has said
8 so much that I don't agree with in the last --

9 Q Okay.

10 A In the sense of the rules, not in the sense of
11 the declaratory ruling --

12 Q Okay.

13 A -- of February.

14 Q When I say "in the sense of rules," I'm
15 referring to the Code of Federal Regulations. Do you have
16 a copy of 47 Section 51 --

17 A Yes, I do.

18 Q -- .701?

19 A What is it, 701?

20 Q Yes, sir.

21 A Okay.

22 Q Subsection D is actually what I'm referring to.

23 A B as in boy, or D as D?

24 Q D as in David.

25 A D as in David. Okay. Yes.

1 Q And if you would, just read that statement.

2 A Sure. "Termination for purposes of this
3 subpart, termination is the switching of local
4 telecommunications traffic at the terminating carrier's
5 end office switch or equivalent facility and delivery of
6 such traffic to the called party premises."

7 Q Do you know what that rule means by an
8 equivalent facility?

9 A I can say what I think it means, which is that
10 my Lucent 5-E switch is both a tandem and an end office.
11 It accesses both a tandem and an end office. So even
12 though it has dual functions, you know, you wouldn't
13 characterize it as just an end office switch. It's an end
14 office and a tandem.

15 Q Okay.

16 A So I think that's what they are getting at.

17 Q Okay. Give me one moment. That concludes
18 Staff's cross, Mr. Falvey.

19 CHAIRMAN JACOBS: Do you have a question,
20 Commissioner Jaber?

21 COMMISSIONER JABER: Yes. Mr. Falvey, on Page
22 3 and 4 of your direct testimony, you testify that the FCC
23 has given the states authority to determine the
24 appropriate treatment for compensation of ISP-bound
25 traffic.

1 **THE WITNESS: Yes.**

2 **COMMISSIONER JABER: What authority can you**
3 **cite?**

4 **THE WITNESS: The FCC consistent with the**
5 **Telecom Act has rules applying to arbitrations. And what**
6 **we're talking about here is coming up with a rate for**
7 **reciprocal compensation for local traffic Under 251, 252.**

8 **COMMISSIONER JABER: Okay. So other than**
9 **Section 251 and 252, you don't have any other authority**
10 **you can direct us to for the proposition that we could**
11 **move forward on the determination of compensation for**
12 **traffic for ISP calls?**

13 **THE WITNESS: Under the current law, that's the**
14 **current federal authority. You know, my first proceeding**
15 **here was in January of '96, a month before the Telecom**
16 **Act, and we were talking about local competition. So**
17 **there's probably a very good argument that I know Staff**
18 **has already raised that you have the authority under**
19 **Florida law as well. And so -- I'm not an expert in that**
20 **Florida law, but that's another place that I would look.**
21 **I think it was in '95 that you had the statute here in**
22 **Florida.**

23 **COMMISSIONER JABER: Okay. But you don't know**
24 **of any specific Florida provision you could --**

25 **THE WITNESS: No, I wouldn't be the best person**

1 to ask.

2 **COMMISSIONER JABER: All right. On Page 15 of**
3 **your testimony, you want us to consider a default**
4 **mechanism for reciprocal compensation rate, and if I**
5 **understood your testimony correctly, what you're trying to**
6 **say is that the same -- the costs should be the same --**
7 **let me start over.**

8 **You think the compensation mechanism should be**
9 **the same as justified for a local call because the same**
10 **resources are used for an ISP call. How much weight**
11 **should we afford to the argument that the ISP calls are**
12 **longer than the traditional local call?**

13 **THE WITNESS: I would say that you should afford**
14 **weight to that to the extent -- but you shouldn't isolate**
15 **this ISP-bound issue. This is the one area where the**
16 **ILECs are making payments to CLECs. So they have honed in**
17 **on it real quickly. It's amazing. It took AT&T, which is**
18 **a big company, 15 years to start to bring access charges**
19 **down to where they are today. These guys have honed in on**
20 **this real quickly, and they have made this the issue of**
21 **the day that there is a problem with the costing of**
22 **reciprocal compensation rates, the one area that I receive**
23 **sometimes payment on.**

24 **They haven't applied the same approaches to**
25 **their own switched access charges. When you make a long**

1 long-distance call, 30 minutes, 45 minutes, the same
2 analysis applies. And so all I would say is, if you
3 really think that longer calls should be treated
4 differently than shorter calls, don't focus just on the
5 areas where you're paying out. Let's look at the ones
6 where you're receiving payment, like access, but another
7 real critical one is UNE-P. UNE-P has a local switching
8 component.

9 So if I have a local switched -- UNE-P customer,
10 right, and someone gets on the line for 30 minutes, my
11 switching element should be -- if you're going to do some
12 kind of call setup and duration, it should apply in the
13 UNE-P context too. Again, that's a situation where I, as
14 the UNE-P carrier, am going to be paying Verizon or
15 BellSouth for every minute of traffic.

16 So I guess all I would ask for, particularly if
17 you step back, as I said in my opening, and look at the
18 big picture, CLECs are having a real tough time; ILECs
19 seems to be kind of rolling along. If you are going to
20 change the rules on recip comp, let's do it across the
21 board, and then let's see if they still want call setup
22 and duration for access charges, call setup and duration
23 for UNE-P. Maybe they will, but maybe they'll say, you
24 know, let's see if we can come up with -- maybe the rates
25 are okay just the way they are.

1 **COMMISSIONER JABER:** I'm not being very
2 articulate with my question. Let me try again.

3 **THE WITNESS:** Okay. Sure.

4 **COMMISSIONER JABER:** You testified previously
5 that the purpose of reciprocal compensation, in your
6 opinion, in response to Staff's question was that it was a
7 cost recovery mechanism; is that correct?

8 **THE WITNESS:** That's right, TELRIC rates.

9 **COMMISSIONER JABER:** And in your prefiled
10 testimony, you state that we should base the cost on the
11 notion that the same resources are used to deliver an ISP
12 call as used to deliver a local call.

13 **THE WITNESS:** Correct.

14 **COMMISSIONER JABER:** If that's the case, then
15 what difference does the length of the call make?

16 **THE WITNESS:** Arguably longer calls -- some
17 people -- and I haven't put this testimony in. Sprint
18 might tell you that a longer call is cheaper because the
19 gist of what -- they can disagree with me, I guess, when
20 they come up here, but the gist of it is that a lot of the
21 cost is in the call setup. So let's get a call setup
22 element, and then keeping that call up and running is not
23 as expensive. And so you have a lower element for each
24 additional minute thereafter.

25 Okay. So there is this argument that longer

1 calls are cheaper to carry. And all I'm saying is, if you
2 really believe that, let's apply that in the access charge
3 regime, and certainly you have to apply it in UNE-P if you
4 are going to have any element of fairness and parity of
5 treatment as between ILECs and CLECs.

6 **COMMISSIONER JABER:** All right. In response to,
7 I think, one of the Commissioner's questions, I'm not sure
8 where this question came from, you said that traffic was
9 not balanced, and therefore, we should again base the rate
10 on actual cost as opposed to a bill-and-keep methodology?

11 **THE WITNESS:** That's correct.

12 **COMMISSIONER JABER:** If we don't make a finding
13 that traffic to ISPs is local, would you agree that
14 there's nothing to prevent the state commission from
15 relying on a bill-and-keep methodology.

16 **THE WITNESS:** There's no legal reason not to do
17 it. I think, as I said in my opening, you know, the
18 first thing I would look at is, what's the impact on the
19 few CLECs that are out there in Florida that are just
20 barely keeping their head above water? That's the
21 first impact. And then the second one is, you know, we
22 really have been down this road before. Initially, I
23 can't -- you know, a lot of the carriers -- MFS came to
24 this Commission and said, I want bill-and-keep, and the
25 ILEC said, no, we've got to have a rate.

1 **They negotiated rates in some cases. We**
2 **negotiated rates with BellSouth. They were very high.**
3 **That gave us an incentive to have the traffic run towards**
4 **us. Bill-and-keep is very low. That means that I can**
5 **send as much traffic as I want over onto their network,**
6 **and it's not going to cost me a penny. They have to**
7 **terminate it for free. So they're sort of stuck with**
8 **their existing customer base. They are a huge company,**
9 **and they can't change their marketing plans.**

10 **But the CLECs -- and it may be me, it may be the**
11 **next CLEC to come along -- will come and say, jeez, the**
12 **target market now, the incentive that's been set up by**
13 **these below cost rates, is to get customers who do tons of**
14 **outbound calling and pour traffic out onto the ILEC**
15 **network. I don't want that change in the rules of the**
16 **road because I'm looking for some certainty, I'm looking**
17 **for rules that stay in place for some period of time. But**
18 **that, in my mind, would be the result. If there are any**
19 **CLECs left, they will -- or new CLECs will turn traffic**
20 **the other way.**

21 **COMMISSIONER DEASON: Let me follow-up. But**
22 **isn't there a cost to set up the call? And you're saying**
23 **that you would go out -- if we went to a bill-and-keep,**
24 **that then there would be an incentive to just switch**
25 **what's happening now; that is, to go and target customers**

1 who have a lot of outbound traffic.

2 THE WITNESS: Right.

3 COMMISSIONER DEASON: But wouldn't you as the
4 provider of service to that customer who has lots of
5 outbound traffic incur lots of cost for setting up those
6 calls?

7 THE WITNESS: Well, I can bill my own customer
8 for the portion of -- that I provide. Okay? And I'll
9 tell you that if we could go back through that diagram,
10 I'll show you the elements that I bill my customer for.
11 BellSouth totally mischaracterized the elements that they
12 bill the ISP for in their diagrams. But I can still bill
13 them what I want for the cost that I incur.

14 COMMISSIONER DEASON: Bill whom?

15 THE WITNESS: I can bill my customer.

16 COMMISSIONER DEASON: You're going to go out
17 and --

18 THE WITNESS: I can bill them for -- yeah, for
19 my switching. Okay?

20 COMMISSIONER DEASON: Let me interrupt just a
21 second.

22 THE WITNESS: Okay. Go ahead. Go ahead.

23 COMMISSIONER DEASON: Let's place it in the real
24 world environment. You're trying to compete against
25 incumbents which have flat rates for customers regardless

1 of the number of calls they make, and you're going to go
2 out and try to compete against that and recruit customers
3 who have a lot of outbound traffic and tell them, oh, by
4 the way, I'm going to charge you for every minute of call
5 that you make.

6 **THE WITNESS: Business customers --**

7 **COMMISSIONER DEASON: Business customers.**

8 **THE WITNESS: -- don't have flat rates. And**
9 **look, believe me, our company isn't, like, out there**
10 **looking for the next arbitrage opportunity to come along.**
11 **My point is, that's the incentive that you're going to**
12 **create. I get to -- see, when you bill your end user**
13 **customer, you bill them for the full call, for the**
14 **completion of a full call. Okay? In the competitive**
15 **world, you provide the first half, and then you have to**
16 **pay the other carrier for the second half. That's**
17 **reciprocal compensation.**

18 **But if now I'm in a scenario where I bill my**
19 **customer for a full call but I only have to incur the cost**
20 **of the first half of the call because the second half is**
21 **free, well, then I want to have those customers that are**
22 **making those outbound calls.**

23 **COMMISSIONER JABER: Okay. But why isn't that**
24 **an incentive to promote competition?**

25 **THE WITNESS: It's competition for a subclass of**

1 customers, for outbound calling customers. What you want
2 is -- see, you want to get the cost right so that you're
3 indifferent whether your caller makes a lot of outbound
4 calls or inbound calls. You're completely indifferent as
5 to what the traffic balance is. Because whenever you send
6 calls over to someone else, you've got to pay for it. And
7 when they send them to you, you're going to get paid for
8 it, but the payment is set at the right level.

9 I think the payment is approaching the right
10 level. It used to be a penny a minute. I have an
11 agreement with Kip's company, with BellSouth, where this
12 year it's .175 cents and next it's .15 cents a minute. So
13 we've come way down, and again a third of what they
14 collect when they do switched access for long-distance
15 calls. So I think we're in the right environment now, and
16 we were too high before. I think everyone recognizes
17 that, but we'll be way too low tomorrow if you go to
18 bill-and-keep.

19 MS. BANKS: Excuse me, Mr. Chairman. Staff
20 would like to request that we just be allowed to ask just
21 three additional questions for clarification purposes if
22 no one objection.

23 CHAIRMAN JACOBS: Well, we hadn't gotten to
24 redirect yet, so I think that's fine.

25 FURTHER CROSS EXAMINATION

1 **BY MS. BANKS:**

2 **Q Okay. Mr. Falvey, I'm referring to your direct**
3 **testimony on Page 10 beginning at Lines 1 through 4. And**
4 **if you would, just read those lines once you locate it.**

5 **A Yes, yes.**

6 **Q If you would, read it out loud.**

7 **A Oh, I'm sorry.**

8 **Q I'm sorry. I didn't clarify. I forget you're a**
9 **lawyer, so I need to be very definitive in what I describe**
10 **to you.**

11 **A That's okay.**

12 **Q If you would, read that out loud for the record.**

13 **A I have small children, so I'm used to reading**
14 **out loud. "Costs recovered through reciprocal**
15 **compensation generate revenue critical to the ability" --**

16 **CHAIRMAN JACOBS: Mr. Falvey, slower. Thank**
17 **you.**

18 **THE WITNESS: What's --**

19 **CHAIRMAN JACOBS: A bit slower. Thank you.**

20 **THE WITNESS: What's that?**

21 **CHAIRMAN JACOBS: A bit slower.**

22 **THE WITNESS: Thank you. I will.**

23 **A "Costs recovered through reciprocal compensation**
24 **generate revenue critical to the ability of new entrants**
25 **such as e.spire to implement network construction and**

1 develop product offerings necessary to compete effectively
2 with incumbents such as Verizon and BellSouth."

3 Q Isn't it true that if you're generating enough
4 revenue to build a network, you're actually recovering
5 more than just your cost of terminating traffic through
6 reciprocal compensation?

7 A No. I mean, as I said earlier, we're clearly
8 not generating enough revenue at e.spire. But what I'm
9 talking about was what I was talking about a little bit
10 earlier that -- you know, you generate -- you get these
11 payments, and you take the money, and you go and you
12 invest it in your network. It's not like we've built our
13 whole network for free. If that were true, we would be
14 the most successful company in the country. All I'm
15 saying is that we take the money, and we're able to go and
16 continue to operate our company using that revenue.

17 Q Does e.spire get a profit from reciprocal
18 compensation received from other carriers?

19 A I think that under the early rates, you know,
20 which were agreed upon by the parties, we had agreements
21 with Southwestern Bell where they said, yeah, a penny a
22 minute, that sounds about right, and they signed -- just
23 like we agreed to commercial arbitration with GTE. There
24 was probably some profit at a penny a minute. But now
25 we're down to .175 cents, and I don't think there's much

1 profit at all, if any.

2 Q So then is it your opinion that e.spire does not
3 regard reciprocal compensation as a revenue source or a
4 profit generator?

5 A Well, revenues -- see, it goes to the word
6 "revenue." When I report my revenues to Wall Street, it's
7 not -- I didn't say it was profit. This doesn't say
8 generate profit. Revenue --

9 Q If I may clarify. I'm saying revenue over and
10 above cost.

11 A Okay. Not where there are cost-based rates, and
12 we believe that the Commission's cost-based rates -- the
13 Commission's Florida cost-based rates are appropriate and
14 based on costs today. So I would say no profit based on
15 those rates.

16 MS. BANKS: Okay. Thank you.

17 MS. CASWELL: Chairman Jacobs, may I ask one
18 question that's a follow-up to Ms. Jaber's question? It's
19 a clarifying question for Mr. Falvey.

20 CHAIRMAN JACOBS: Don't get me in trouble. Go
21 right ahead.

22 FURTHER CROSS EXAMINATION

23 BY MS. CASWELL:

24 Q I just wanted -- I thought I heard that
25 Mr. Falvey said that all ILEC business customers had only

1 measured rate service. Did I hear that correctly?

2 A I think many of them do, certainly, yes. I
3 thought all of them did, but you may have some flat rate
4 plans. I don't know.

5 Q Do you know that we're required to offer
6 businesses flat rate service under the statute?

7 A Like I said, there may be some -- what
8 percentage -- I wonder what percentage of your customers
9 have flat rate service. I know there's quite a bit of
10 usage-based service out there.

11 MS. CASWELL: Okay. Thank you.

12 COMMISSIONER DEASON: Let me ask -- are we going
13 to have someone that can answer that question --

14 CHAIRMAN JACOBS: I was just going to ask that.

15 COMMISSIONER DEASON: -- from incumbent
16 companies?

17 MS. CASWELL: Yes, we can answer that question
18 through one of our witnesses.

19 COMMISSIONER DEASON: One other question. You
20 mentioned the number, was it .175 or .115? What was the
21 number?

22 THE WITNESS: It's .175 cents.

23 COMMISSIONER DEASON: .175 cents. Now, that is
24 the rate that you have entered into with whom?

25 THE WITNESS: With BellSouth as part of a

1 settlement in which they paid us -- I bet it's
2 confidential. I don't know if it is confidential because
3 they were public orders -- over \$25 million in back
4 payments. Okay. I'm not giving the exact number. They
5 paid us what they owed us, and in exchange for that, we
6 agreed to lower rates going forward. Where a company like
7 Verizon has not agreed to lower rates, we will not
8 agree -- rather, where they have not paid us, we will not
9 agree to lower rates.

10 And in fact, if you force us into lower rates
11 before they pay us, we lose leverage, the leverage I've
12 always had, which is to say, I'm going to continue to bill
13 you at higher rates until you pay me what I've already
14 billed you. But I would do that deal tomorrow. What we
15 did with BellSouth, I'd do that tomorrow with Verizon.

16 **COMMISSIONER DEASON:** And this is -- you were
17 here when Mr. Edenfield did his opening statement.

18 **THE WITNESS:** Yes.

19 **COMMISSIONER DEASON:** And you saw his .00325.
20 So in your case, it would -- this is dollars, .325 cents.

21 **THE WITNESS:** Yes.

22 **COMMISSIONER DEASON:** In your case, it would be
23 .175.

24 **THE WITNESS:** Yes, that's correct.

25 **CHAIRMAN JACOBS:** I think you've answered my

1 question. It goes back to the idea that nonswitched
2 traffic is so different that it should not be subject to a
3 compensation mechanism whether it be reciprocal or
4 otherwise. In your testimony, your rebuttal testimony,
5 you dispute the notion, but you also indicate that your
6 dispute is based on the idea that no one has given any
7 support for a different cost structure. You don't dispute
8 the idea that there may be differing cost structures, I
9 take it.

10 **THE WITNESS:** That's right, that those newer
11 switches might be more efficient, but like I said, I like
12 the little bit of genius in the FCC's rules that said --
13 see, if we all just go out and put in these really cheap
14 switches, then they are going to be getting their
15 termination for less, but we're still going to be paying a
16 higher rate; right?

17 **If you had a rule that said we are going to look**
18 **at everybody's costs, then I have got to pay them for old**
19 **circuit-switched termination, right, at a penny a minute,**
20 **hypothetically, but they only have to pay me a tenth of a**
21 **penny because I've gone out and invested in my network.**
22 **So the FCC said, well, that's not fair. Let's figure out**
23 **a way to keep them symmetrical no matter what happens.**

24 **CHAIRMAN JACOBS:** Okay. And that's an
25 interesting idea that I won't question or talk about right

1 now. Redirect.

2 MR. EDENFIELD: Chairman Jacobs, before you do
3 that, may I do just one question to follow-up to something
4 Commissioner Deason asked on the agreement, on the
5 BellSouth/e.spire interconnection agreement that did not
6 come up before then? One question.

7 CHAIRMAN JACOBS: A very narrow question.

8 MR. EDENFIELD: It will be very specific and
9 very short.

10 FURTHER CROSS EXAMINATION

11 BY MR. EDENFIELD:

12 Q Mr. Falvey, will you agree with me that the
13 settlement agreement, which has been incorporated into the
14 interconnection agreement between BellSouth and e.spire,
15 references this compensation as intercarrier compensation?
16 I have the agreement, if you want to see it.

17 A Let me say just this, if this helps: What we
18 said is, we're not going to fight over whether ISP is
19 local or not, and we're not going to agree on that. We're
20 just going to have this mechanism for the traffic flowing
21 over those local trunk groups which will include ISP, and
22 you agreed to continue to pay at these rates, and God
23 bless them, they paid us almost every penny for the last,
24 what is it, two years now. And -- but you agreed, and we
25 set this lower rate structure.

1 **Q** **And it's referred to as intercarrier**
2 **compensation?**

3 **A** **Subject to check, that makes sense.**

4 **MR. EDENFIELD: Thank you.**

5 **CHAIRMAN JACOBS: Very well. Redirect,**
6 **Mr. Horton?**

7 **MR. HORTON: Yes.**

8 **REDIRECT EXAMINATION**

9 **BY MR. HORTON:**

10 **Q** **First of all, Mr. Falvey, Ms. Caswell had you**
11 **read something out of the -- I think it was the**
12 **First Report and Order, Paragraph 1092. Do you still have**
13 **her book there?**

14 **A** **Yes.**

15 **Q** **As I recall, you pointed out that what she had**
16 **you read applied to paging traffic. Have you found that**
17 **paragraph?**

18 **A** **Yes.**

19 **Q** **Would you go down to the seventh line? And**
20 **there's a sentence that says, "Paging is typically."**

21 **A** **Yes.**

22 **Q** **Do you see that sentence?**

23 **A** **Yes.**

24 **Q** **Would you read that, please.**

25 **A** **"Paging is typically a significantly different**

1 service than wire line or wireless voice service and uses
2 different types and amounts of equipment and facilities."

3 Q Okay. In response to a question -- I think it
4 was from one of the Commissioners -- you said that
5 BellSouth totally misrepresented what they bill in the
6 diagram that they showed this morning. How was billing
7 misrepresented in that diagram?

8 A Well, what that diagram showed was that it
9 suggested that the company who has the ISP end user bills
10 that ISP end user for all sorts of end office and tandem
11 switching, but that's not at all the case. And, see, the
12 way this plays out is, you say, okay, I've been billing
13 the ISP end user for all of this end office and tandem
14 switching.

15 Now e.spire comes in and takes over that ISP end
16 user, and now they're billing them for this end office and
17 tandem switching, and they are still getting reciprocal
18 compensation. So we're somehow double-recovering.

19 But there's a real serious fallacy in that
20 chart, which is that when I have an ISP end user, I don't
21 bill the ISP end user terminating the call for the end
22 office switching, the tandem switching that comes along
23 that pathway, and the tandem switch transport between the
24 end office and the tandem. All I bill the ISP end user of
25 is the little local loop that runs from my switch to their

1 location. Well, who I am billing that tandem switching
2 and end office switching to? I'm billing it to the cost
3 causer. You read a lot about cost causers, the guy that
4 picks up the phone and decides to log on for half an hour;
5 right? It would be a little bit easier to have the chart
6 in front of us.

7 But the point is, if you mischaracterize what
8 you are billing the ISP to, then you make it look like I'm
9 double-recovering when I take over the ISP. No. When I
10 take over the ISP, all I sell to the ISP is a little local
11 loop. Okay?

12 And when their customer calls and uses my
13 switch, I've got to bill them for the reciprocal
14 compensation because I'm not getting -- see, I never was,
15 and I never will be, getting end office switching or
16 tandem switching recovery from my ISP end user. That's
17 the fallacy. I'm just selling him a little local loop.
18 I've got to get my switching recovery from the carrier
19 that originated the call, and that's reciprocal
20 compensation. I can show you the lines on the chart that
21 don't make sense.

22 COMMISSIONER JABER: Mr. Falvey, you're
23 BellSouth for purposes of this example. You're BellSouth.
24 I'm the ALEC. Commissioner Baez is the customer. What
25 are we forgetting? Someplace in between there's an ISP?

1 **THE WITNESS:** Yeah. Well, the best thing --

2 **COMMISSIONER JABER:** Walk me through that.

3 **THE WITNESS:** It helps if it's linear. Okay?

4 So if you were the Internet user, the customer that dials
5 up the Internet, and then -- you're the end user; right?

6 And then Commissioner Deason is, let's say he's a tandem
7 switch --

8 **COMMISSIONER DEASON:** I want to be the company
9 that makes the most money.

10 **THE WITNESS:** You want to be BellSouth then.

11 Let's do it this way. There's a lot of end offices and
12 tandems here. Okay? There is couple of end offices.

13 There's Commissioner Jacobs, which is the end office
14 closer to you dialing the phone; right?

15 **COMMISSIONER JABER:** I was trying to give him
16 the chance to be that.

17 **THE WITNESS:** No, this is helpful. This is
18 helpful. And then Commissioner Deason is the tandem, and
19 then Commissioner Baez is another end office closer to me,
20 and I'm the Internet service provider. And no offense
21 that I made Commissioner Deason a tandem and you guys just
22 little end offices. So here's what happens now --

23 **CHAIRMAN JACOBS:** He made the most noise, so we
24 understand.

25 **THE WITNESS:** When BellSouth has an ISP as their

1 customer, they sell them a local loop to get from
2 Commissioner Baez to me, just a little local loop. Okay?
3 And if it's on-net and you're a BellSouth customer, you're
4 providing everything. There's no transfer of payments
5 within BellSouth. But ultimately what's going on is, you
6 pick up the phone and BellSouth charges you, okay, the end
7 user, for Commissioner Jacobs' end office switching close
8 to you for this tandem switching, still part of the
9 transport of the call, and they also charge you for this
10 end office switching. All of this is built into your
11 local rates, this other local.

12 The only thing that BellSouth charges the ISP
13 for is the local loop to get from me to Commissioner Baez.
14 Okay? Now we bring e.spire into the picture, and I
15 capture the ISP customer. Okay? Now, the way that his
16 diagram had it was, when I capture the ISP customer, I get
17 revenue for Commissioner Jacobs' end office switching and
18 Commissioner Deason's tandem switching. No, no,no, I
19 don't get that. That's still something that's
20 attributable to you as the end user. All I sell -- and I
21 just have a tandem switch, okay, so there's no end office.
22 All I sell is a local loop -- you're now the e.spire
23 tandem switch, Commissioner Deason. Okay? And I'm just
24 going to sell a local loop to get from e.spire out to
25 here. Okay?

1 **But when you, the BellSouth customer, the cost**
2 **causing party picks up the phone and gets on for a half an**
3 **hour, you're going to tie up my tandem switch for half an**
4 **hour, okay, that switching function, all right, and**
5 **possibly there may be some transport, also, may ride on my**
6 **network to get out there. That is something that you, the**
7 **BellSouth customer, are causing e.spire to incur. Okay?**

8 **So now I have to recover that from BellSouth. I**
9 **have to get that back from BellSouth because that's**
10 **something that you're causing and that is built into your**
11 **local rate. This switching is built into your local rate,**
12 **and I'm taking over that function. And by the way, the**
13 **BellSouth tandem switch that used to be very active when**
14 **you were making calls, it's sitting dormant, and it can be**
15 **used for other things. Okay? I just opened up some -- I**
16 **just took some cost off of the BellSouth switch. And they**
17 **can go do -- sell other services off that switch. So**
18 **there's a savings there for BellSouth as well.**

19 **COMMISSIONER JABER: In that diagram, I think**
20 **there's a line there that said that whereas in the old**
21 **scenario where BellSouth was providing that connection to**
22 **the ISP, they were getting compensated for that but that**
23 **revenue is lost. And what you're saying is that the costs**
24 **that are associated with that, are they all going away, or**
25 **just most of it going away or what --**

1 **THE WITNESS:** Some of their costs, the
2 completion of half of the call.

3 **CHAIRMAN JACOBS:** Okay.

4 **THE WITNESS:** The big fallacy on that diagram is
5 that it had this line that ran from the ISP all the way
6 back to you, deep into the network, suggesting that they
7 bill that end office switching and the tandem switching
8 and this end office switching to the ISP. Huh-uh. All
9 that switching is built into your local rates. Okay?

10 **So when I came in and took over the ISP**
11 **customer, I'm not recovering from the ISP for reciprocal**
12 **compensation. I need to get that from BellSouth who owns**
13 **the customer on the other end who's picking up the phone**
14 **and causing all that to happen. It will help if you go**
15 **back and look at that diagram. There's a line underneath,**
16 **and it runs way too long from the ISP all the way back up,**
17 **and suggests that reciprocal compensation can be recovered**
18 **from -- switching costs can be recovered from the Internet**
19 **service provider. But we all know that due to the access**
20 **charge exemption, those switching costs cannot be**
21 **recovered from the ISP; right? Switching costs, that**
22 **would be charging access to the ISP. I hope that**
23 **clarified.**

24 **CHAIRMAN JACOBS:** Mr. Horton, back to you.

25 **MR. HORTON:** No further redirect.

1 **CHAIRMAN JACOBS: Great. Exhibits.**

2 **MR. HORTON: I move Exhibit 20.**

3 **CHAIRMAN JACOBS: Without objection, show**
4 **Exhibit 20 --**

5 **(Exhibit 20 admitted into the record.)**

6 **CHAIRMAN JACOBS: Ms. Caswell.**

7 **MS. CASWELL: Yeah, Mr. Chairman, I'd also like**
8 **to move into evidence the Global NAPS release that I used.**

9 **CHAIRMAN JACOBS: We'll show that marked as**
10 **Exhibit 21. And without objection, show that admitted**
11 **into the record --**

12 **(Exhibit 21 marked for identification.)**

13 **MR. MOYLE: Mr. Chairman, we would object on the**
14 **grounds this is hearsay. It's akin to a newspaper story.**
15 **You know, coming into evidence, there's nobody to**
16 **substantiate, and he testified he has no independent**
17 **knowledge of --**

18 **MS. CASWELL: Mr. Chairman, maybe I can -- I'm**
19 **sorry. Maybe I can make things easier. A different**
20 **version, an earlier version of this release or at least a**
21 **summary version is already included in the evidence that**
22 **Staff introduced. Staff asked for this in response to one**
23 **of their document requests. So there is a version of it**
24 **in the record, but there is no home page. This just makes**
25 **it clear what exactly it is. But we produced the Web site**

1 address, and we also produced a version of this. It's as
2 Bates stamp Page 178 of Exhibit Number 4.

3 I feel that this is a little more clear. It
4 would provide the Commission with more complete
5 information. I believe it's entirety appropriate. We
6 have such kinds of documents admitted into evidence all
7 the time, and there are several of them in the Staff
8 exhibits. So if this is hearsay, then all of those
9 documents have to be excluded as well. This is customary
10 Commission procedure.

11 CHAIRMAN JACOBS: Let's take this approach. If
12 the article itself is already in the record --

13 MS. CASWELL: I'm fine with relying on the
14 Staff's exhibit.

15 CHAIRMAN JACOBS: Okay. We can rely on that.
16 You're excused, Mr. Falvey.

17 MR. HORTON: May Mr. Falvey be excused?

18 CHAIRMAN JACOBS: Yes.

19 (Witness excused.)

20 CHAIRMAN JACOBS: Next witness. We moved
21 Mr. Selwyn's exhibits in, didn't we?

22 MR. HOFFMAN: Yes, sir. Those were Composite
23 19.

24 CHAIRMAN JACOBS: Correct. Since we're about to
25 get started, why don't we take ten minutes and come back?

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(Brief recess.)

(Transcript continues in sequence in Volume 3.)

1 STATE OF FLORIDA)

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON)

4

5 I, TRICIA DeMARTE, Official Commission Reporter,
6 do hereby certify that the Hearing in Docket No. 000075-TP was
heard by the Florida Public Service Commission at the time and
place herein stated.

7

8 IT IS FURTHER CERTIFIED that I stenographically
reported the said proceedings; that the same has been transcribed
9 under my direct supervision; and that this transcript, consisting
of 154 pages, Volume 2 constitutes a true transcription of my
notes of said proceedings.

10

11 I FURTHER CERTIFY that I am not a relative, employee,
attorney or counsel of any of the parties, nor am I a relative or
employee of any of the parties' attorneys or counsel connected
with the action, nor am I financially interested in the action.

12

DATED THIS 21st DAY OF MARCH, 2001.

13

14

Tricia DeMarte

15

TRICIA DeMARTE
FPSC Official Commission Reporter
(850) 413-6736

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