

ORIGINAL

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June 21, 2001

Mrs. Blanca S. Bayó  
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Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

**Re: 000075-TP (Generic ISP) (Phase II)**

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Supplemental Post-Hearing Brief, which we ask that you file in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

*E. Earl Edenfield, Jr.*  
E. Earl Edenfield, Jr. (KA)

Enclosures

APP	_____	cc: All Parties of Record
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CMP	_____	R. Douglas Lackey
COM	5	Nancy B. White
CTR	_____	
ECR	_____	
LEG	I	
OPC	_____	
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**CERTIFICATE OF SERVICE**  
**Docket No. 000075-TP (Phase II)**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via

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**(+) Signed Protective Agreement**

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Investigation into Appropriate )  
Methods to Compensate Carriers )  
for Exchange of Traffic Subject to )  
Section 251 of the Telecommunications )  
Act of 1996. )

Docket No.: 000075-TP

Filed: June 21, 2001

**BELLSOUTH TELECOMMUNICATIONS, INC.'S  
SUPPLEMENTAL POST-HEARING BRIEF**

In accordance with the Florida Public Service Commission's ("Commission") May 8, 2001, Order Granting Motion for Extension of Time to File Supplemental Brief and Modifying Order Requiring Additional Briefing (Phase I), BellSouth Telecommunications, Inc. ("BellSouth") files this supplement to BellSouth's Brief of the Evidence dated April 18, 2001.

On April 27, 2001, the Federal Communications Commission ("FCC") issued its Order on Remand and Report and Order ("Remand Order") addressing a number of issues related to traffic bound for the Internet through Internet Service Providers ("ISP-bound traffic"). The Remand Order is relevant to, and in some instances dispositive of, a number of issues currently under consideration by the Commission in this docket. BellSouth addresses the FCC's findings regarding the nature and jurisdiction of ISP-bound traffic.

**DISCUSSION**

In its Remand Order, the FCC sets forth a detailed analysis of the interplay between the various provisions of §251 of the Telecommunication Act of 1996 ("1996 Act") and their effect on compensation for ISP-bound traffic. The FCC concluded that:

Central to our modified analysis is the recognition that 251(g) is properly viewed as a limitation on the scope of section 251(b)(5) and that ISP-bound traffic falls under one or more of the categories set forth in section 251(g). For that reason, we conclude that ISP-bound traffic is not subject to the reciprocal compensation

provisions of section 251(b)(5). We reach that conclusion regardless of the compensation mechanism that may be in place for such traffic under the ESP exemption.

Remand Order, at ¶35. Further, the FCC determined that it retained its “Pre-Act authority” over the categories of traffic enumerated in section 251(g), which include “exchange access, information access, and exchange services for such access.” (*Id.*, at ¶36) As noted above, the FCC ruled that ISP-bound traffic “falls within at least one of the three enumerated categories in subsection (g).” (*Id.*) Thus, while ISP-traffic is subject to compensation under section 251 of the 1996 Act, it is under section 251(g) and within the exclusive jurisdiction of the FCC.

Consistent with this analysis, the FCC considered the issue of state commission jurisdiction and determined that, “[b]ecause we now exercise our authority under section 201 to determine the appropriate intercarrier compensation for ISP-bound traffic, however, state commissions will no longer have authority to address this issue.” (Remand Order, at ¶82) Clearly, the Commission is now preempted from making any decision in this proceeding and should take no further action towards establishing a compensation mechanism for ISP-bound traffic. To the extent, however, that the Commission wants to consider alternative compensation mechanisms for 251(b)(5) traffic (such as bill-and-keep), the Commission should consider that issue in Phase 2 of this docket.

The Commission does retain jurisdiction, however, to resolve disputes issues related to the rebuttable presumption that traffic exceeding a 3:1 ratio of terminating to originating is ISP-bound traffic. As noted by the FCC:

A carrier may rebut the presumption, for example, by demonstrating to the appropriate state commission that traffic above the 3:1 ratio is in fact local traffic delivered to non-ISP customers. In that case, the state commission will order payment of state-approved or state-arbitrated reciprocal compensation rates for that traffic. Conversely, if a carrier can demonstrate to the state commission that traffic it delivers to another carrier is ISP-bound traffic, even though it does not

exceed the 3:1 ratio, the state commission will relieve the originating carrier of reciprocal compensation payments for that traffic, which is subject instead to the compensation regime set forth in this Order.

Remand Order, at ¶79.

The FCC also made a number of findings concerning the pitfalls of applying a calling-party's-network-pays ("CPNP") compensation regime to ISP-bound traffic. While this discussion can be found in ¶¶66-76 of the Remand Order, BellSouth highlights below a few of the more critical factual findings:

The record is replete with evidence that reciprocal compensation provides enormous incentive for CLECs to target ISP customers. The four largest ILECs indicate that CLECs, on average, terminate eighteen times more traffic than they originate, resulting in annual CLEC reciprocal compensation billings of approximately two billion dollars, ninety percent of which is for ISP-bound traffic. ... Indeed, some ISPs even seek to become CLECs in order to share in the reciprocal compensation windfall, and, for a small number of entities, this revenue stream provided an inducement to fraudulent schemes to generate dial-up minutes.

\* \* \*

We believe that a bill and keep regime for ISP-bound traffic may eliminate these incentives and concomitant opportunity for regulatory arbitrage by forcing carriers to look only to their ISP customers, rather than to other carriers, for cost recovery.

\* \* \*

We are convinced, however, that intercarrier payments for ISP-bound traffic have created severe market distortions.

Remand Order, at ¶¶70, 74 and 76.

BellSouth contends that these findings, both as the nature of the traffic as well as the jurisdictional analysis, should shape any future decisions made by the Commission concerning the payment of compensation for ISP-bound traffic.

Respectfully submitted this 21<sup>st</sup> day of June 2001.

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