

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  
ORDER NO. PSC-01-0422-PHO-TP  
ISSUED: February 22, 2001

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on February 14, 2001, in Tallahassee, Florida. The content of this Prehearing Order is based on Commissioner Lila A. Jaber, as Prehearing Officer, having read the Prehearing Statements of the Parties and Staff, the pending motions and the transcript of the Prehearing Conference.

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Communications, LLC, MediaOne Florida Telecommunications,  
Inc., TCG of South Florida and US LEC of Florida, Inc.

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On behalf of Intermedia Communications, Inc.

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Florida Public Service Commission, 2540 Shumard Oak  
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On behalf of the Commission Staff.

#### PREHEARING ORDER

##### I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

##### II. CASE BACKGROUND

On January 21, 2000, this docket was established to investigate the appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Telecommunications Act of 1996. On November 22, 2000, Order No. PSC-00-2229-PCO-TP, establishing procedure, was issued and the

controlling dates set. On December 7, 2000, Order No. PSC-00-2350-PCO-TP, was issued to adopt, incorporate and supplement Order No. PSC-00-2229-PCO-TP. On December 11, 2000, Florida Competitive Carriers Association, AT&T Communications of the Southern States, Inc., Intermedia Communications, Inc., WorldCom, Inc., XO Communications, Inc., Time Warner Telecom of Florida, L.P., e.spire Communications, Inc., Florida Cable Telecommunications Association, Allegiance Telecom of Florida, Inc., Global Naps, Inc., US LEC of Florida, Inc., and Cox Florida Telecom, L.P. (collectively "ALECs") filed a Joint Motion to Extend Filing Dates, Bifurcate, and Request for Issue Identification/Status Conference. On December 15, 2000, Verizon Florida, Inc., BellSouth Telecommunications, Inc., and Sprint-Florida Incorporated filed a joint response to the motion filed by the ALECs.

On December 20, 2000, Order No. PSC-00-2452-PCO-TP, was issued granting the Joint Motion in part and denying in part. Pursuant to that Order, Issues 1-9 will be addressed in the March 7-9, 2001, hearing and Issues 10-17 will be addressed in the July 5 and 6, 2001, hearing. Further, the requests to extend filing dates and set up an issue identification/status conference were denied.

Opening statements, if any, shall not exceed 30 minutes per side (ILECs and ALECs).

### III. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 364.183, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

1. Any party intending to utilize confidential documents at hearing for which no ruling has been made, must be prepared to present their justifications at hearing, so that a ruling can be made at hearing.

2. In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- a) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- b) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- c) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.

- d) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- e) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Records and Reporting's confidential files.

#### IV. POST-HEARING PROCEDURES

Each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages, and shall be filed at the same time.

#### V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties (and Staff) has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she

takes the stand. Summaries of testimony shall be limited to five minutes. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VI. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct*</u>		
James C. Falvey	e.spire	1-9
Lee L. Selwyn**	ALECS	1-9
Michael R. Hunsucker	Sprint	1-9
Edward C. Beauvais***	Verizon	4-8
Howard Lee Jones	Verizon	6,7
Elizabeth Shiroishi	BellSouth	1(a), 1(b), 2-9
David Scollard	BellSouth	8
Greg Fogleman	Staff	3,4,6,8
<u>Rebuttal*</u>		
James C. Falvey	e.spire	1-9
Lee L. Selwyn**	ALECS	1-9
Michael R. Hunsucker	Sprint	1-9

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
Edward C. Beauvais***	Verizon	4-8
Howard Lee Jones	Verizon	6,7
Elizabeth Shiroishi	BellSouth	1(a), 1(b), 2-9
David Scollard	BellSouth	8
Dr. William Taylor	BellSouth	2,3,4,5,6

\* Direct and Rebuttal testimony will be taken up together.

\*\* ALECs includes Allegiance, AT&T, Florida Cable Association, Florida Competitive Carriers Association, Global NAPs, MediaOne, TCG, and Time Warner.

\*\*\* Mr. Beauvais' testimony may also touch on Issues 1-3 and 9, but these are primarily legal issues that will be addressed in the posthearing brief.

## VII. BASIC POSITIONS

### BELLSOUTH:

The Commission's goal in this generic proceeding is to resolve each issue set forth below consistent with the requirements of Section 251 of the Telecommunications Act of 1996 ("1996 Act"), including the regulations prescribed by the Federal Communications Commission ("FCC"). BellSouth's positions on the individually numbered issues in this docket are reasonable and consistent with the Act and the pertinent rulings of the FCC. Thus, the Commission should adopt BellSouth's positions on each of the issues in dispute.

### E.SPIRE:

The Commission should determine that calls placed to internet service providers should continue to be subject to reciprocal compensation as a dial up call to an ISP is telecommunications as defined in the Telecommunications Act and subject to reciprocal compensation. e.spire terminates calls originated by other carriers and should be compensated for providing that service. The determination that calls to ISPs should be subject to reciprocal compensation would be consistent with



the Telecommunications Act and the FCC as well as the existing agreements between e.spire and other carriers.

**ALECS<sup>1</sup>:**

First, existing compensation arrangements, applicable to traditional telecommunications traffic (sent-paid), are also equally applicable to ISP-bound traffic. That is, the cost of terminating the call is paid in full by the call originator. When two interconnecting carriers jointly complete a local call, the originating carrier is responsible for remitting a portion of the sent-paid revenue to the carrier that terminates the call. Reciprocal compensation is just the payment made by the originating carrier to the terminating carrier for completing the call. This traditional framework is applicable to ISP-bound traffic.

Second, the ILECs' argument that reciprocal compensation arrangements should make a distinction between traffic terminated at a conventional voice telephone line and traffic terminated to an ISP must be rejected. There is absolutely no difference in the way these types of traffic are handled on the ILECs' networks and thus no basis to treat them differently. Any effort to create a distinction between "ordinary" and ISP-bound traffic is without economic or technical basis and should be rejected. Neither the "access" framework nor the "bill and keep" framework, which some ILECs have suggested, are appropriate for ISP-bound traffic.

Finally, the appropriate inter-carrier compensation for the termination and transport of ISP-bound calls is a symmetric rate based on the ILECs' prevailing TELRIC costs. This will create incentives for continued reduction in the costs of call termination services and bring benefit to Florida's end users by allowing innovative and economical services.

**SPRINT:**

The Commission should treat ISP-bound calls as though they were local calls for purposes of inter-carrier compensation

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<sup>1</sup> Alecs denotes FCCA, AT&T, TCG, Global Naps, Time Warner, Intermedia, Allegiance, FCTA, MCI, KMC, Level 3 and US LEC.

arrangements. Whatever compensation arrangements apply to purely local calls should apply to these calls as well. Sprint believes that a reciprocal compensation rate should ideally reflect the overall costs and mix of traffic. The correct solution is to bifurcate the switching charge into a call setup charge and a call duration charge.

**VERIZON:**

Under FCC decisions, the internet service provider-bound (ISP-bound) traffic at issue in this docket is primarily jurisdictionally interstate. Therefore, this Commission lacks the authority to establish a generic reciprocal compensation mechanism for this traffic. While the FCC has purported to allow states interim authority to devise intercarrier compensation mechanisms, they can only do so in the context of construing or arbitrating interconnection agreements, and only until the FCC can complete its proceeding. As such, the best course for this Commission would be to await the FCC's decision, rather than proceed with this docket and risk having its decisions overturned by federal action.

If the Commission does move forward, it must carefully consider how to structure compensation between carriers for quantities of usage that have not been previously observed in the history of telecommunications. Ideally, any intercompany compensation structure should match the end user's rate structure. However, this outcome may not be viable in the short term in Florida, given the statutory constraints on the Commission's ability to revise end user rate structures. As such, the best alternative at this time is a bill-and-keep plan. Carriers must remain free, however, to negotiate alternative forms of intercarrier compensation.

**XO:** Both the Telecommunications Act of 1996 and prior decisions of this Commission provide for the reciprocal compensation of ISP-bound traffic. In this docket, the Commission should order that reciprocal compensation is appropriate for ISP-bound traffic on a generic basis. In that way, all parties will be on notice of the Commission's policy as to compensation for ISP-bound traffic and will be better able to plan for and continue competitive entry.

**STAFF:**

Staff's positions are preliminary and based on materials filed by the parties, staff's witness, and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

VIII. ISSUES AND POSITIONS

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

(b) If so, does the Commission have the jurisdiction to adopt such an intercarrier compensation mechanism through a generic proceeding?

**POSITIONS**

**BELLSOUTH:**

No. ISP-bound traffic is an interstate access service that is predominantly interstate in nature and, therefore, within the exclusive jurisdiction of the FCC. The determination of the appropriate inter-carrier compensation for ISP-bound traffic is an issue to be decided (and will ultimately be decided by the FCC) as it is the subject of a pending rulemaking by the FCC. However, if the Commission determines that it has jurisdiction to adopt an inter-carrier compensation mechanism for the delivery of ISP-bound traffic, which it does not, then a generic proceeding is the proper forum to address the issue.

**E.SPIRE:**

(a) Yes. The FCC has recognized that states have the authority to interpret the contractual language in existing agreements and several states have already determined that reciprocal compensation should apply to ISP bound traffic.

(b) Yes. Although the Commission has disposed of disputes between carriers regarding reciprocal compensation for ISP-bound traffic, it is not inappropriate for the Commission to

consider the appropriate compensation mechanism in a generic proceeding.

**ALECS:**

(a) Yes, because ISP-bound traffic is properly viewed as "local" traffic for purposes of the FCC's rules regarding intercarrier compensation under Section 251(b)(5) of the federal Act. The FCC's one ruling suggesting the contrary was vacated by the courts "for want of reasoned decisionmaking." Even in that ruling, however, the FCC acknowledged that state commissions should continue to address the question of compensation for ISP-bound traffic. Moreover, the DC Circuit decision vacating the FCC's ruling clearly supports a finding that ISP-bound traffic should be treated no differently than other "local" traffic. The Commission's jurisdiction to act only comes into question if the FCC determines that ISP-bound traffic is not compensable.

(b) Yes. The Commission may adopt an intercarrier compensation mechanism for ISP-bound traffic in a generic proceeding that would apply in cases where parties to an interconnection negotiation cannot agree. Under Section 252(a)(1) of the Act, however, the parties have the right to agree to arrangements for intercarrier compensation "without regard to" the formal requirements of the Act, so parties should remain free to agree upon compensation mechanisms that differ from whatever mechanism the Commission establishes.

**SPRINT:**

The FPSC's authority to determine inter-carrier compensation for ISP traffic was addressed in the FCC's Declaratory Ruling in CC Docket No. 96-98, adopted February 25, 1999. In that ruling, the FCC determined that Internet Traffic was largely interstate but that the Commission has no rule governing inter-carrier compensation for ISP-bound traffic. Pending the outcome of its rulemaking proceeding, the FCC explicitly permitted state commissions to determine the appropriate compensation for this traffic.

Although individual ILECs and ALECs are free to negotiate whatever inter-carrier compensation arrangements are appropriate for their circumstances, it would be more

efficient and benefit both ILECs and ALECs to resolve this issue through a generic proceeding to determine the appropriate inter-carrier compensation for ISP-bound traffic.

**VERIZON:**

(a) No. The ISP-bound traffic at issue is primarily jurisdictionally interstate, so the Commission does not have the authority to establish an intercarrier compensation mechanism for this traffic.

(b) As noted, the Commission does not have the jurisdiction to adopt a reciprocal compensation mechanism for ISP-bound traffic. Even if it did, establishment of such a mechanism through a generic docket would be impermissible; the Telecommunications Act of 1996 contemplates negotiation and then, if negotiations fail, Commission intervention through arbitration.

**XO:** (a) Yes. Both the Telecommunications Act of 1996, state law and this Commission's prior decisions provide it with ample authority to adopt an intercarrier compensation mechanism.

(b) Yes, the Commission has jurisdiction to adopt an intercarrier mechanism through a generic proceeding. In the past, the Commission has attempted to resolve this issue through individual arbitrations. Such an approach is duplicative and expensive and may result in only one carrier influencing a result that has wide-ranging application. A generic approach allows each carrier to put forth its views and fully develop the record for the Commission.

**STAFF:**

(a) Yes. Staff preliminarily takes the same position espoused by the Commission in comments to the FCC in which the Commission has supported that ISP-bound traffic is local traffic and has endorsed what has become more commonly known as the "two-call theory." This same rationale has been used by the Commission in its challenge of the FCC's Declaratory Ruling. Even if the Commission were to conclude in this proceeding that primary jurisdiction over this traffic lies elsewhere, staff believes that the Commission can still make decisions regarding the treatment of this traffic based upon

the FCC's statement in ¶ 28 of its Declaratory Ruling that "until adoption of a final rule, state commissions will continue to determine whether reciprocal compensation is due for this traffic."

(b) Yes.

**ISSUE 2: Is delivery of ISP-bound traffic subject to compensation under Section 251 of the Telecommunications Act of 1996?**

**POSITIONS**

**BELLSOUTH:**

No. Section 251 of the Act, as interpreted by the FCC, requires the payment of reciprocal compensation only for the exchange of local traffic. ISP-bound traffic is an interstate access service, which is clearly not local traffic. Payment of reciprocal compensation for ISP-bound traffic is inconsistent with the law and is not sound public policy.

**E. SPIRE:**

Yes. Section 251 of the Act requires reciprocal compensation arrangements for the transportation and termination of telecommunications. ILECs and ALECs perform these transactions for traffic from the other and it is appropriate to be compensated for performing this function.

**ALECS:**

Yes. Section 251(b)(5) requires reciprocal compensation arrangements when carriers exchange "telecommunications." The FCC has interpreted that section to relate only to "local" traffic. ISP-bound traffic is "local" traffic for these purposes, so it is subject to compensation under Section 251(b)(5).

**SPRINT:**

While the FCC has yet to make a final determination regarding the appropriate compensation arrangement or methodology that carriers should employ to compensate each other for completing dial-up Internet calls, the FCC has clearly stated that

reciprocal compensation is an acceptable option for the interim period.

**VERIZON:**

No. The FCC has held that Section 251 of the Act provides for reciprocal compensation only for the transport and termination of local traffic. As noted above, ISP-bound traffic is not local in nature.

**XO:** Yes. Pursuant both to rulings of this Commission and the FCC, ISP-bound calls are local and therefore must be treated that way for purposes of intercarrier compensation.

**STAFF:**

Yes. Under the "two-call theory," when an end-user calls an ISP to connect to the Internet, there are two separate services that are being provided. The first service is an intrastate telecommunications service, provided by one or more LECs, that allows the end user to call an ISP. The second service is an information service provided by an ISP which enables customers to access Internet content and services. The intrastate telecommunications service would be subject to compensation.

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

**POSITIONS**

**BELLSOUTH:**

It is not appropriate for the Commission to take any action on this issue because inter-carrier compensation for ISP-bound traffic is not an obligation under Section 251 of the Act. At a minimum, the Commission should wait until the FCC issues an order before spending resources developing a plan that may be rendered moot by ultimate FCC decision or which may be overturned by a court on jurisdictional grounds.

**E.SPIRE:**

The Commission should conclude that ISP bound traffic should continue to be subject to reciprocal compensation as local traffic and the compensation should be the local call transport and termination rates.

**ALECS:**

The Commission should determine, affirming its earlier rulings on the subject, that ISP-bound traffic qualifies for reciprocal compensation under Sections 251 and 252 of the Telecommunications Act, and apply the ILECs' cost-based rate for transport and termination of local traffic to the transport and termination of ISP-bound traffic on ILEC and ALEC networks. This ruling should apply to existing and future interconnection agreements. Although the U.S. Court of Appeals for the D.C. Circuit has vacated and remanded the FCC's earlier ruling that ISP-bound traffic does not come within the coverage of section 251(b)(5), it is unknown when the FCC will release a decision on remand. In the event a future FCC ruling may conflict with the Commission's ruling in this case, the Commission may reconsider that matter at a later date.

**SPRINT:**

The absence of a federal rule specifying the treatment of ISP-bound traffic for purposes of reciprocal compensation has created significant financial and marketplace uncertainty for ILECs and ALECs. As previously discussed, the Commission does have the authority, albeit on an interim basis, to resolve this issue. Sprint urges the Commission to do so through a generic determination for the industry as a whole.

**VERIZON:**

Given the pending decision by the FCC in its rulemaking to devise a reciprocal compensation mechanism, this Commission should await the FCC's action. This is the only sure way for the Commission to avoid the frustration of conducting a hearing proceeding only to have its decisions later reversed by federal rulings.

**XO:** The Commission should move forward and establish an appropriate compensation mechanism for ISP-bound traffic in



this docket. If subsequent activities in other jurisdictions require the Commission to take additional action or modify its decision, it may do so at that time. This Commission needs to put forth a cohesive policy on reciprocal compensation so that carriers can move forward in the competitive market with certainty.

**STAFF:**

The Commission should move forward to develop appropriate compensation mechanisms for ISP-bound traffic.

**ISSUE 4:** What policy considerations should inform the Commission's decision in this docket?

**POSITIONS**

**BELLSOUTH:**

The Commission should consider how this decision will affect competitive entry decisions by ALECs, cost recovery and the economics of the cost causation, the impact on residential customers, and the continued development of competition.

**E.SPIRE:**

The Commission should recognize that the transaction being performed by e.spire is the same as that performed by an ILEC, i.e., terminating traffic originated from another carrier and that there is a cost associated with this. ALECs should not be expected to perform this function at no compensation.

**ALECS:**

The decision that the Commission makes in this docket should serve the policies of equity, non-discrimination, and the promotion of fair competition and innovation. If it adheres to these policies in the development and implementation of the appropriate carrier compensation mechanism, the Commission will simultaneously safeguard affordable access to the Internet by Florida's citizens.

Equity demands an explicit compensation mechanism. The Commission should reject a "bill and keep" arrangement for ISP-bound traffic. The premise of "bill and keep" is that

there is no need for payments between carriers because the traffic delivered by one for termination will offset that delivered by the other. However, traffic flows between two interconnected carriers may be severely imbalanced. The "bill and keep" approach almost invariably will lead to an inequitable result in which one carrier or the other incurs costs for which it is not compensated. An explicit compensation mechanism that bases the payment one carrier receives on the volume of calls the carrier terminates for the other is needed to ensure an equitable arrangement.

The mechanism should not discriminate on the basis of the content of the local call. An ISP is a user of telecommunications services, not a provider of telecommunications services. Because an ISP-bound call terminates at the ISP's POP, the call is as local in nature as any other. In fact, ILECs regard and treat their own ISP customers as local. For these reasons, the access charge regime through which IXCs pay explicit subsidies to ILECs is inapplicable--whether directly or by analogy-- to ISP-bound traffic. The processes of production (i.e. switching, transport) for ISP-bound traffic are identical to those used to produce other local calls. To apply a compensation methodology to ISP-bound traffic that differs from that applied to other local calls would be to discriminate unfairly against ISP-bound traffic on the basis of the content of the call. The Commission should require ILECs to apply to ISP-bound traffic the same mechanism and rate that they apply to other local traffic.

A symmetrical rate based on the ILEC's TELRIC cost is needed to ensure and promote fair competition. Carriers should be free to compete for terminating services, originating services, or both. To the extent that an ILEC misjudges a market or fails to compete, it may experience an economic loss. To adopt a compensation mechanism designed to protect an ILEC from its mistakes or failures would be to intervene artificially in the operation of competitive markets. Similarly, an ILEC should not be able to "game" the system by strategically overstating or understating its termination cost. To promote fair competition, the Commission should require a symmetrical rate derived from the ILEC's TELRIC

cost. This rate will render the ILEC indifferent, economically, as to whether it or an ALEC terminates a call. It will also encourage all providers to lower their costs, thereby stimulating competition and innovation.

**SPRINT:**

Sprint urges the Commission to treat ISP-bound calls as though they were local calls for purposes of inter-carrier compensation arrangements. Thus, whatever compensation arrangements apply to purely local calls would apply to these calls as well. ISP-bound traffic is functionally the same as other local voice traffic and it is administratively cumbersome and/or expensive to distinguish between the two types of traffic. Longer holding times, for example, are characteristic of other users in addition to ISP.

**VERIZON:**

Verizon's witness Beauvais discusses a number of policy considerations that should inform this Commission's decision, should it choose to act at this point. Foremost among these is the question of how any reciprocal compensation mechanism will affect competition. In no event should carriers be forced to maintain a usage-based intercarrier compensation structure in the presence of flat local rates for end users. This approach will continue to create aberrant incentives for carriers and undermine efficient competition, to the ultimate detriment of consumers.

**XO:**

The decision that the Commission makes in this docket should serve the policies of equity, non-discrimination, and the promotion of fair competition and innovation. If the Commission adheres to these policies in the development and implementation of the appropriate carrier compensation mechanism, the Commission will simultaneously safeguard affordable access to the Internet by Florida's citizens.

**STAFF:**

The Commission should consider cost recovery and causation, longer holding times, and the imbalance of traffic.

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

**POSITIONS**

**BELLSOUTH:**

No. As ISP-bound traffic is interstate traffic, not local traffic, the obligation imposed upon the Commission under Section 251 of the Act to establish cost-based rates does not extend to ISP-bound traffic. However, if the Commission ultimately determines that it has jurisdiction to establish an inter-carrier compensation mechanism for ISP-bound traffic, which it does not, then the Commission should implement a bill-and-keep mechanism. In the event that the Commission establishes a compensation mechanism for ISP-bound traffic other than bill and keep, it should be cost-based and premised on the cost actually incurred for the delivery of ISP-bound traffic, not on the cost of terminating a local call.

**E.SPIRE:**

Yes. Section 252(d)(2) requires the mutual reciprocal recovery by each carrier of the costs associated with transport and termination of calls originating on another carriers network.

**ALECS:**

Yes, as required by Section 252(d)(2) of the Act. The appropriate intercarrier compensation for the termination and transport of ISP-bound local calls, as well as other forms of local traffic, is a symmetric rate based upon the ILEC's prevailing TELRIC cost level, which creates incentives for continual reductions in the costs of call termination services and harms neither ILECs nor end users.

**SPRINT:**

Under Section 251 and 252 of the Act, ILECs are required to file cost-based rates for all traffic, including ISP-bound traffic. Since rates already exist, Sprint believes that using these rates for ISP as well as local traffic is the best policy to follow in order to send economically efficient pricing signals to the marketplace, although the local switching rates do need to be structured into a two-part rate

structure that recognizes the two distinctly different cost components - call set-up and call usage.

**VERIZON:**

If it moves forward with a reciprocal compensation mechanism, the Commission must remain aware of cost considerations and, particularly, cost differences as between incumbent and alternative local exchange carriers' networks.

**XO:** Yes. The FCC has determined that rates for reciprocal compensation must be symmetrical and based upon the ILEC's costs. Further, the basis for such costs must be forward-looking.

**STAFF:**

Staff takes no position at this time.

**ISSUE 6:** What factors should the Commission consider in setting the compensation mechanisms for delivery of ISP-bound traffic?

**POSITIONS**

**BELLSOUTH:**

If the Commission ultimately determines that it has jurisdiction to establish an inter-carrier compensation mechanism for ISP-bound traffic, which it does not, then the Commission should implement a bill-and-keep mechanism. In the event that the Commission establishes a compensation mechanism for ISP-bound traffic other than bill and keep, it should first explore what costs are not recovered in an ISP-bound call. At a minimum, the Commission should consider the characteristics of ISP-bound calls as distinguished from local calls, including call length and the cost of network equipment.

**E.SPIRE:**

The Commission should consider a compensation mechanism that is consistent with cost causation; composed of rates based on

forward looking cost principles that reflect the carriers costs and that are symmetrical.

**ALECS:**

The Commission should consider the following factors in setting the compensation mechanisms for delivery of ISP-bound traffic:

(a) A "sent-paid" compensation arrangement has traditionally been applied to local traffic.

The almost universal practice in Florida, as well as generally throughout the United States, is for the customer who originates the calls to pay his or her local carrier to get the local call from the point of origin all the way to its intended destination. . When two interconnecting carriers jointly complete a call, the originating carrier is responsible for remitting a portion of the sent-paid revenue to the carrier that terminates the call. Reciprocal compensation is simply the payments made by the first (originating) carrier to the second (terminating) carrier for its work in completing the calls.

Under this "sent-paid" framework, when the exchange of traffic between two carriers is roughly equal, carriers may elect a "bill and keep" system, thereby eliminating the need for explicit inter-carrier payments. However, explicit reciprocal compensation payments must be made for call termination when inter-carrier traffic flows are significantly out of balance, in order to ensure that each carrier is properly compensated for the termination work that it performs.

The proposals of BellSouth and Verizon to replace reciprocal compensation for ISP-bound calls with a "bill-and-keep" arrangement entirely ignore the fact that a bill-and-keep system is only appropriate when inter-carrier traffic flows are roughly in balance, so that explicit payments for call termination would generally net out. To the extent that the ISP-bound traffic exchanged between two carriers is strongly one-directional, a bill-and-keep system would fail to compensate the carrier that terminated the bulk of the exchanged traffic.

**(b) There is no technical difference in the manner by which traffic is terminated at a conventional voice telephone line and traffic that is terminated to an ISP.**

There is no technical difference in the manner by which these two types of traffic are handled in the ILEC's network. The ILECs' costs to transport calls from their point of origin to the hand-off point is not affected in any manner by the nature of the call (the voice vs. data, ISP-bound vs. ordinary local calling) or by its content (Internet data vs. ordinary voice conversation). By suggesting otherwise, ILECs are attempting to introduce a market-driven price discrimination based upon the use to which local telephone service is put rather than upon the processes by which it is produced or the costs incurred in its production.

**(c) There is no practical means for reliably differentiating between ordinary calls and those that are terminated to ISPs.**

Even if a discriminatory pricing regime were to be considered, which it should not, it is a sheer impossibility for ILECs to accurately identify ISP-bound calls.

**(d) Differences between ALEC and ILEC networks lead some ALECs to seek economies of specialization in order to compete.**

Because they are necessarily forced to operate at a far smaller scale, ALEC networks may exhibit higher average costs than ILEC networks. The effects of these scale and scope economics are further compounded by the fact that ILECs are able to purchase switching, transport, and other network components at a far more favorable price than their much smaller ALEC rivals. Moreover, ALECs are more likely to experience higher capital-related costs in the absence of the volume discounts available to large ILECs, and an ALEC's capital-related costs will also tend to exceed the corresponding ILEC item, due to the substantially greater level of risk that investors reasonably ascribe to ALECs. These higher average costs may be offset in some cases if the ALEC is able to achieve economies of specialization. ALECs that have concentrated their marketing efforts thus far on customers that receive calls, may be attempting to achieve

economies of specialization, precisely to offset the cost disadvantages associated with relatively small scale and limited scope.

Based on these factors, the appropriate inter-carrier compensation for the termination and transport of ISP-bound local calls, as well as other forms of local traffic, is a symmetric rate based upon the ILEC's prevailing TELRIC cost level, which creates incentives for continual reductions in the costs of call termination services and harms neither ILECs nor end-users.

**SPRINT:**

Sprint believes that a reciprocal compensation rate should ideally reflect the overall costs and mix of traffic. Specifically, Internet calls have much longer "holding times" than the average voice call. It is essential that this critical difference be recognized in the development of reciprocal compensation rates for Internet traffic.

**VERIZON:**

As discussed above, the Commission should first consider the legal question of whether it has the authority to establish a generic intercarrier compensation mechanism. If, contrary to Verizon's view, the Commission concludes that it does, there are a number of considerations that should factor into its decision. Some of the most important of these include the characteristics of ISP-bound traffic; the differing incumbent and alternative local exchange carrier network infrastructures and costs; the nature of end user rate structures; and the economic and competitive consequences of any proposed compensation mechanism.

**XO:** The Commission ensure that the mechanism it adopts is fair, non-discriminatory and promotes fair competition and innovation.

**STAFF:**

The Commission should factor longer holding times and establish a setup and minute of use pricing structure that more accurately reflects costs.



**ISSUE 7:** Should intercarrier compensation for delivery of ISP-bound traffic be limited to carrier and ISP arrangements involving circuit-switched technologies?

**POSITIONS**

**BELLSOUTH:**

Yes. Inter-carrier compensation for delivery of ISP-bound traffic should be limited to carrier and ISP arrangements involving circuit-switched technologies. Non-circuit-switched connections are generally not disputed with respect to reciprocal compensation standpoint since no switching costs are incurred and, thus there is no switching compensation at issue.

**E. SPIRE:**

No. The costs incurred for delivering traffic to the internet backbone are the same as those for traffic involving circuit-switched networks. To not provide for compensation for this traffic would unfairly penalize competitive carriers for providing innovative services and adversely affects consumers.

**ALECS:**

No. The Commission should not limit intercarrier compensation for delivery of ISP-bound traffic to cases involving only circuit-switched technologies. FCC rules define termination as "the switching of local telecommunications traffic at the terminating carrier's end office switch, or equivalent facility, and delivery of such traffic to the called party's premises." 47 C.F.R. § 51.701(d). Distinguishing between technologies for purposes of compensation will introduce artificial incentives and potentially deter the deployment of emerging technologies, which may be more efficient than legacy circuit-switched technologies. Rather than treating one technology in a different manner from others, pending further consideration as such technologies emerge and develop, the Commission should continue to treat all technologies in the same manner for intercarrier compensation purposes.

**SPRINT:**

To limit inter-carrier compensation for ISP-bound traffic to only circuit-switched traffic is both unwarranted and provides uneconomic incentives for ILECs and ALECs not to implement more advanced, and more efficient, technologies.

**VERIZON:**

Yes. The switching functions that have been the foundation for reciprocal compensation are not present in a non-circuit-switched environment, and there is no cost basis for assessing reciprocal compensation for delivery of non-circuit-switched traffic. Awarding reciprocal compensation to carriers using non-circuit switched technologies would be tantamount to giving them an unwarranted subsidy.

**XO:** At this time, the Commission should defer consideration of this issue.

**STAFF:**

Staff has no position at this time.

**ISSUE 8:** Should ISP-bound traffic be separated from non-ISP bound traffic for purposes of assessing any reciprocal compensation payments? If so, how?

**POSITIONS**

**BELLSOUTH:**

Yes. To the extent the Commission establishes a compensation mechanism for the delivery of ISP-bound traffic, then ISP-bound traffic should be separated from non-ISP-bound traffic. To accomplish *this*, each LEC receiving a bill containing usage charges for traffic exchanged with another local provider would need information sufficient to independently verify that the billing LEC applied the appropriate rate elements to the correct number of minutes. In the case of ISP traffic, the billed LEC would need to be able to determine that the billing LEC accurately identified the total ISP minutes from other minutes. BellSouth's position is that the most effective way to accomplish this is for the billing LEC to provide the billed LEC a list of the ISP numbers that was used in

calculating the charges contained on the bill. In that way, the billed company would be able to use its own switch records to verify that the appropriate charges have been calculated.

**E. SPIRE:**

No. Such an arrangement incorrectly assumes there are differences in the underlying costs for handling traffic.

**ALECS:**

No. The cost characteristics of local traffic are identical whether the traffic is ISP-bound or non-ISP bound. Routing a call from an originating end user to an ISP's incoming modem line is technically identical to routing a call from the same end user to any local telephone number served by the incumbent or other LEC. Because ISP-bound traffic is technically indistinguishable from and triggers the same network costs as other data and voice local traffic, there is no justification for subjecting ISP-bound traffic to discriminatory treatment with respect to carrier reciprocal compensation responsibilities.

Additionally, technological means do not exist today which can reliably and accurately distinguish ISP-bound calls from other local traffic. Some ILECs have attempted to apply indirect methods to identify ISP-bound traffic such as: billing records, analysis of call holding times, and other means, but these approaches inject an unacceptably high degree of speculation and uncertainty into any results they produce.

**SPRINT:**

At this time, there is no need to create a separate class of service for dial-up Internet traffic for several reasons. First, it appears that all carriers do not have the technology sufficient to separate out dial-up Internet traffic from other types of local traffic and it is extremely administratively burdensome to do so. Second, there are other types of traffic, besides Internet traffic, that tend to generate a disproportionately larger amount of terminating traffic than originating. It is far from clear that Internet traffic should be singled out as some type of arbitrage culprit without looking at all types of traffic and traffic flows.

**VERIZON:**

While it is possible to measure dial-up traffic, ideally there would be no need to do so. The preferable long-term approach is to align the relative prices for intercompany compensation and end user traffic, thus obviating the need to separate ISP-bound traffic from other traffic. As this rate alignment may not be possible in the short run, Verizon has recommended a bill-and-keep approach for all traffic, so that no traffic separation will be necessary.

**XO:** ISP-bound traffic cannot be separated from non-ISP bound traffic. Any mechanism based on such a premise should be rejected.

**STAFF:**

The Commission should not attempt to separate ISP-bound traffic from non-ISP bound traffic.

**ISSUE 9:** Should the Commission establish compensation mechanisms for delivery of ISP-bound traffic to be used in the absence of the parties reaching an agreement or negotiating a compensation mechanism? If so, what should be the mechanism?

**POSITIONS**

**BELLSOUTH:**

The Commission should not establish a compensation mechanism for ISP-bound traffic as ISP-bound traffic is access service for which the appropriate inter-carrier compensation will be decided by the FCC. However, if the Commission decides to establish a compensation mechanism for delivery of ISP-bound traffic, which BellSouth contends should be bill-and-keep, said mechanism should only be applicable in the absence of the parties reaching an agreement or negotiating compensation arrangement mechanism.

**E.SPIRE:**

Yes. The establishment of a default mechanism will ensure continued growth and development of advanced

telecommunications services and at the same time give consumers competitive alternatives.

**ALECS:**

Yes. ISP-bound traffic should be subject to the same reciprocal compensation obligations that apply to all other forms of local rated traffic. Therefore, a system of explicit cost based reciprocal compensation payments, based on the ILECs' forward looking economic costs, should be established as a default mechanism whenever LECs fail to establish a mechanism via negotiation.

A "bill and keep" methodology should be rejected by the Commission. Bill and keep arrangements are fundamentally incompatible with any fair inter-carrier compensation system, unless there is a proportionate balance of originating and terminating traffic between the two carriers. If either carrier, for whatever reason, initiates or terminates a large majority, or a disproportionate amount of calls, a "bill and keep system" causes financial inequities and would prohibit cost recovery for the carrier transporting and terminating the disproportionate number of calls.

**SPRINT:**

The Commission should treat ISP-bound calls as though they were local calls for purposes of inter-carrier compensation arrangements. Whatever compensation arrangements apply to purely local calls should apply to these calls as well. The basic switching components used for voice and Internet-bound traffic are the same. There is nothing unique about Internet calls that causes the per message and per MOU unit cost components to change. Only the call duration changes. The correct solution is to bifurcate the switching charge into a call setup charge and a call duration charge.

**VERIZON:**

No. As explained above, Verizon does not believe the Commission has the authority to establish an intercarrier compensation mechanism for interstate, ISP-bound traffic. If the Commission does establish a reciprocal compensation mechanism, however, it cannot supplant the parties' right to

negotiate reciprocal compensation arrangements that differ from any the Commission may establish.

**XO:** Yes, the Commission should establish a compensation mechanism if the parties cannot reach agreement. That mechanism should be reciprocal compensation for such traffic.

**STAFF:**

Staff has no position at this time.

**IX. EXHIBIT LIST**

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
James C. Falvey	e.spire	_____ (JCF-1)	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
Lee L. Selwyn	ALECs	_____ (LLS-1)	Statement of Qualifications
		_____ LLS-2)	Summary of BellSouth and Verizon's Basic Local Exchange Offering in Florida
		_____ (LLS-3)	Verizon Online

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Edward C. Beauvais	Verizon	_____	Dr. Beauvis' resume
		(ECB-1)	
		_____	F C C O P P Working Paper entitled "Bill and Keep at the Central Office as the Efficient Interconnection Regime"
		(ECB-2)	
		_____	F C C O P P Working Paper entitled "A Competitively Neutral Approach to Network Interconnection"
		(ECB-3)	
Howard Lee Jones	Verizon	_____	CLEC PRI Model
		(HLJ-1)	
		_____	SS7 Model
		(HLJ-2)	
Elizabeth Shiroishi	BellSouth	_____	N e t w o r k Diagrams
		(ERAS-1)	
		_____	N e t w o r k Diagrams
		(ERAS-2)	
Dr. William Taylor	BellSouth	_____	C u r r i c u l u m Vitae of Dr. Taylor
		(WET-1)	

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PROPOSED STIPULATIONS

There are no proposed stipulations at this time.

XI. PENDING MOTIONS

On February 13, Media One filed a Motion to Intervene in this proceeding. Since the time to respond to the Motion has not run, no ruling will be made at this time. MediaOne's Motion to Intervene will be ruled on in a separate order.

XII. PENDING CONFIDENTIALITY MATTERS

There are no pending confidentiality matters at this time.

XIII. RULINGS

Broadband Office Communications, Inc. (Broadband), Focal Communications Corporation of Florida (Focal), XO Florida, Inc. and KMC Telecom, Inc. requested that they be excused from the prehearing and hearing dates in this proceeding. Noting no objection, Broadband, Focal, XO, and KMC's requests for leave to be excused are granted.

It is therefore,

ORDERED by Commissioner Lila A. Jaber, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.



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By ORDER of Commissioner Lila A. Jaber, as Prehearing Officer,  
this 22nd day of February, 2001.



LILA A. JABER  
Commissioner and Prehearing Officer

( S E A L )

FRB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric,

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gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.