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November 12, 1997

BY HAND DELIVERY

Ms. Blanca Bayo, Director
Division of Records and Reporting
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

971478-TL

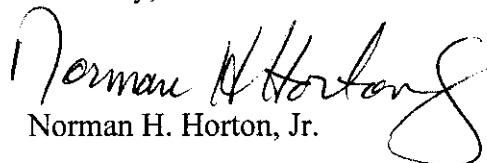
Dear Ms. Bayo:

Enclosed for filing on behalf of WorldCom Technologies, Inc. are an original and fifteen copies of the Complaint of WorldCom Technologies, Inc. Against BellSouth Telecommunications, Inc., and Request for Relief.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely,


Norman H. Horton, Jr.

NHH:amb
Enclosures
cc: Mr. Brian Sulmonetti

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of WorldCom Technologies,)
Inc. Against BellSouth Telecommunications, Inc.,)
and Request for Relief)
_____)

Docket No. 971478-TP
Filed: November 12, 1997

COMPLAINT OF
WORLDCOM TECHNOLOGIES, INC.

WorldCom Technologies, Inc. ("WTI"),^{1/} through undersigned counsel, pursuant to Sections 364.01 and 364.03, Florida Statutes, and Rule 25-22.036(5), Florida Administrative Code, hereby files this complaint against BellSouth Telecommunications Company ("BellSouth") for breach of the terms of the Florida Partial Interconnection Agreement Under Sections 251 and 252 of the Telecommunications Act of 1996, dated August 26, 1996, as amended,^{2/} by and between BellSouth and MFS Communications Company, Inc. ("Agreement"), and approved by this Commission in Order No. PSC-96-1508-FOF-TP and Order No. PSC-97-235-FOF-TI. In short, BellSouth has breached the Agreement by failing to pay MFS reciprocal compensation for the transport and termination of telephone exchange service local traffic that is handed off by BellSouth to MFS for termination with telephone exchange service end users that are Internet Service Providers or Enhanced Service Providers (collectively "ISPs").

^{1/} WTI, formerly known as MFS Intelenet of Florida, Inc. ("MFSI"), is the operating authority in Florida on behalf of its corporate parent MFS Communications Company, Inc. ("MFSC") and MFS's parent, WorldCom, Inc. ("WorldCom"). This corporate reorganization was approved in Order No. PSC-97-1135-FOF-TI. For ease of reference, "MFS" will be used to collectively refer to WTI, MFSC, WorldCom, and MFSI throughout this Complaint.

^{2/} The August 26, 1996 Agreement was amended by one amendment dated January 17, 1997, which was filed with the Commission on the same date.

I. JURISDICTION

1. The complete name and address of the complainant is:

WorldCom Technologies, Inc.
1515 South Federal Highway, Suite 400
Boca Raton, Florida 33432
Tel: (561) 750-2940
Fax: (561) 750-2629

2. All notices, orders, pleadings, discovery and other correspondence regarding this

Complaint should be sent to MFS's attorneys as follows:

Floyd R. Self, Esq.
Messer, Caparello & Self, P.A.
215 S. Monroe Street, Suite 701
Tallahassee, Florida 32301-1876
Tel: 850-222-0720
Fax: 850-224-4359

Richard M. Rindler
Alexandre B. Bouton
Swidler & Berlin, Chtd.
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
Tel: (202) 424-7500
Fax: (202) 424-7645

3. The complete name and address of the respondent to this Complaint is:

BellSouth Telecommunications, Inc.
675 West Peachtree Street
Atlanta, Georgia 30375

4. Both MFS and BellSouth are authorized to provide local exchange services in Florida.

5. Pursuant to Section 252 of the Telecommunications Act of 1996 (the "Act"), MFS and BellSouth negotiated the Agreement and filed it with the Florida Public Service Commission

("Commission") on September 6, 1996. Acting under authority granted in Section 252(e) of the Act, the Commission approved the Agreement on December 12, 1996.^{3/}

6. The United States Court of Appeals for the Eighth Circuit recently confirmed that state commissions, like this one, "are vested with the power to enforce the terms of the agreements they approve." *Iowa Utilities Board v. FCC*, Case Nos. 96-3321, et al., 1997 WL 403401, *15 (8th Cir. July 18, 1997). Thus, the Commission has jurisdiction to enforce the terms of the Agreement that BellSouth has breached as alleged herein.

7. The Commission also has jurisdiction to consider this Complaint pursuant to Sections 364.01 and 364.03, Florida Statutes, Rule 25-22.036(5), Florida Administrative Code, and Order No. PSC-96-1508-FOF-TP.

8. MFS' interest in this proceeding, as also stated elsewhere in this Complaint, is in the enforcement of the Interconnection Agreement between MFS and BellSouth with respect to the provision of local exchange services throughout the state of Florida. The known disputed issue of material fact is BellSouth's refusal to pay reciprocal compensation on all local traffic to MFS pursuant to the Agreement approved by this Commission in Order No. PSC-96-1508-FOF-TP.

9. MFS hereby requests that the Commission initiate a formal proceeding in this matter and find that BellSouth is required to pay reciprocal compensation on all local traffic including traffic that terminates on a local dialed basis to ISPs.

^{3/} *In Re: Request for Approval of Interconnection Agreement between BellSouth Telecommunications, Inc., and Metropolitan Fiber Systems of Florida, Inc. Under the Telecommunications Act of 1996*, Order Approving Interconnection Agreement, Docket No. 961053-TP, (Fla. P.S.C. Dec. 12, 1996).

II. BELLSOUTH HAS BREACHED THE AGREEMENT BY FAILING TO PAY RECIPROCAL COMPENSATION OWED TO MFS

10. Section 251(a) of the Act obligates all telecommunications carriers to “interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.”

11. Pursuant to the terms of the Agreement, MFS and BellSouth have interconnected their networks, so that an end user subscribing to MFS’s local exchange service can place calls to end users subscribing to BellSouth’s local exchange service and vice versa.

12. Section 251(b)(5) of the Act obligates BellSouth and MFS, as local exchange carriers, “to establish reciprocal compensation arrangements for the transport and termination of telecommunications.”

13. Accordingly, Section 5.8 of the Agreement requires BellSouth and MFS to pay reciprocal compensation to each other for all telephone exchange traffic that originates on one company’s network and terminates on the other’s network.

14. Both MFS and BellSouth provide tariffed local exchange services over their respective networks to end user customers, including some business customers operating as ISPs. As their name suggests, ISPs provide information obtained from numerous sources, including sources accessed through the Internet. Typically, the end users connect to an ISP with a local phone call using telephone exchange service. Pursuant to the Agreement, subscribers to MFS’s local exchange service can place calls to ISPs served by BellSouth, and subscribers to BellSouth’s local exchange service can place calls to ISPs served by MFS.

15. MFS received a letter from Ernest L. Bush of BellSouth, informing MFS that BellSouth has determined that it is not subject to the reciprocal compensation obligations of the 1996

Act and the FCC's Rules, and threatening to withhold payment of reciprocal compensation for these calls. A copy of the Letter of Mr. E. L. Bush of BellSouth (dated August 12, 1997) is attached hereto as Exhibit A.

16. MFS responded to the BellSouth letter by letter dated August 28, 1997, demanding immediate payment of all reciprocal compensation owed to MFS by BellSouth for local exchange traffic that was originated by BellSouth's end users and terminated with MFS's end users, including MFS' ISP end users. A copy of the MFS' August 28, 1997 letter is attached as Exhibit B.

17. In response to MFS' August 28, 1997 letter, BellSouth sent a letter to MFS dated September 11, 1997 in which BellSouth reiterated its erroneous position and intention to withhold compensation owed to MFS for terminating ISP local traffic. A copy of the BellSouth September 11, 1997 letter is attached as Exhibit C.

18. On September 29, 1997, BellSouth wrote another letter to MFS informing MFS that BellSouth had determined that 94 percent of the BellSouth originated traffic terminated by MFS was to ISPs. In that letter, BellSouth also stated its intention to pay only 10 percent of the invoices billed by MFS for terminating local traffic. To date, MFS has billed BellSouth over \$125,000 for such traffic. A copy of BellSouth's September 29, 1997 letter is attached as Exhibit D.

19. On November 5, 1997, MFS contacted BellSouth by telephone to confirm that, on basis of the previous correspondence, further discussions between the parties in an effort to resolve their differences would be fruitless. BellSouth's representative confirmed that BellSouth would not change its position. The impasse between the parties is reflected in the November 5, 1997 letter of Alex J. Harris to Ernest L. Bush, attached hereto as Exhibit E.

20. BellSouth's refusal to provide Reciprocal Compensation for the ISP calls of its customers that terminate on MFS's network constitutes a material and willful breach of the terms of the Agreement. BellSouth's attempt to withhold reciprocal compensation payments for ISP traffic also violates Section 251(b)(5) of the Act, which sets forth the obligation of all LECs to provide reciprocal compensation, and is wholly inconsistent with the FCC's orders. Moreover, this attempt defies a number of state regulatory decisions which have directly addressed the issue.

21. Section 1.40 of the Agreement defines "Local Traffic" as:

calls between two or more Telephone Exchange service users where both Telephone Exchange Services bear NPA-NXX designations associated with the same local calling area of the incumbent LEC or other authorized area (e.g., Extended Area Service Zones in adjacent local calling areas). Local Traffic includes traffic types that have been traditionally referred to as "local calling" and as "extended area service (EAS.)" All other traffic that originates and terminates between end users within the LATA is toll traffic. In no event shall the Local Traffic area for purposes of local call termination billing between the parties be decreased.

22. The Reciprocal Compensation provision in Section 5.8.1 of the Agreement states:

Reciprocal Compensation applies for transport and termination of Local Traffic (including EAS and EAS-like traffic) billable by BST or MFS which a Telephone Exchange Service Customer originates on BST's or MFS' network for termination on the other Party's network.

23. Section 5.8.2 of the Agreement states:

The Parties shall compensate each other for such transport and termination of Local Traffic (local call termination) at a single identical, reciprocal, and equal rate provided in Exhibit 7.0.

24. The parties thus owe each other reciprocal compensation for any "Local Traffic" terminated on the other's network.

25. A call placed over the public switched telecommunications network is considered to be "terminated" when it is delivered to the telephone exchange service bearing the called telephone number.^{4/} Nothing in the Agreement or applicable law or regulations create a distinction pertaining to calls placed to telephone exchange service end users which happen to be ISPs. All calls that terminate within a local calling area, regardless of the identity of the end user, are local calls under Section 1.40 of the Agreement, and reciprocal compensation is due for such calls. This includes telephone exchange service calls placed by BellSouth's customers to MFS's ISP customers.

26. BellSouth treats calls to ISPs as local traffic in all contexts. BellSouth charges its own ISP customers local business line rates for local telephone exchange service that enable customers of BellSouth's ISP customers to connect to their ISP by making a local phone call. When a BellSouth telephone exchange service customer places a call to an ISP within the caller's local calling area, BellSouth rates and bills such customer for a local call pursuant to the terms of BellSouth's local tariffs regardless of whether the ISP is served by BellSouth or by MFS.

27. BellSouth treats the revenues associated with local exchange traffic to its ISP customers to be local for purposes of interstate separations and ARMIS reports.

^{4/} Feature Group A service is *not* an exception to this convention. Feature Group A is an Exchange Access service, which is legally distinguishable from Telephone Exchange Services. ISPs, unlike interexchange carriers, are as a matter of law specifically allowed to employ Telephone Exchange Services.

III. FLORIDA, THE FCC AND NUMEROUS OTHER STATE REGULATORY AUTHORITIES NATIONWIDE HAVE DETERMINED THIS TRAFFIC TO BE LOCAL TRAFFIC, AND BELLSOUTH'S POSITION VIOLATES THE LAW AND PUBLIC POLICY

28. In Order No. 21815, issued September 5, 1989 in Docket No. 880423-TP this Commission completed an investigation into access to the local network for providing information services by concluding, among other items, that end user access to the ISP is by local service. This decision was reached after hearing testimony and argument from a variety of parties, including BellSouth (then Southern Bell). In fact, in reaching its conclusion that access is local, the Commission relied in part on testimony from BellSouth's witnesses. In its order, the Commission cited BellSouth testimony that "calls to a VAN (value added network) which use the local exchange lines for access are considered local even though communications take place with data bases or terminals in other states" and "such calls should continue to be viewed as local exchange traffic." Order No. 21815, p. 24 (emphasis added). Further, the Commission in rejecting an argument regarding the definition of intrastate access advanced by United Telephone (now Sprint) again quoted the BellSouth witness who testified that

connections to the local exchange network for the purpose of providing an information service should be treated like any other local exchange service.

Order 21815, p. 25. Also, based on the testimony in the docket, the Commission defined intrastate access as

switched or dedicated connectivity which originates from within the state to an information service provider's point of presence (ISP's POP) within the same state.

Order No. 21815, p. 25. This is virtually identical to the definition urged by BellSouth. Although two other local carriers sought to have this definition clarified on reconsideration, BellSouth did not and the Commission declined to revise its definition on reconsideration. Order No. 23183, issued July 13, 1990. Thus, with the support of testimony from BellSouth, this Commission has a longstanding order predating the MFS-BellSouth Agreement wherein local dialed access to ISPs has been determined to be local calling.

29. The position taken by Florida in Docket No. 880423-TP is entirely consistent with decisions of the FCC and other jurisdictions. Under current FCC rules, the FCC treats traffic to ISPs as local traffic. The FCC has repeatedly affirmed the rights of ISPs to employ local exchange services, under *intrastate* tariffs, to connect to the public switched telecommunications network.⁵¹ The mere fact that an ISP may enable a caller to access the Internet does not alter the legal status of the connection between the customer and the ISP as being a local call. The local call to the Telephone Exchange Service of an ISP is a separate and distinguishable transmission from any subsequent Internet connection enabled by the ISP.

30. The FCC's recent Report and Order on Universal Service and First Report and Order on Access Charge Reform affirm this fact.⁵² In the *Universal Service Order*, the FCC determined

⁵¹ *Amendments to Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, 3 FCC Rcd 2631, para. 2 n.8 (1988). In its First Report and Order regarding Access Charge Reform, the Commission reaffirmed this position explicitly and declined to impose access charges on ISPs. *In the Matter of Access Charge Reform*, First Report and Order, CC Docket No. 96-262 (rel. May 17, 1997), ¶¶344-348.

⁵² *In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45 (rel. May 8, 1997) ("*Universal Service Order*"). *In the Matter of Access Charge Reform*, First Report and Order, CC Docket No. 96-262 (rel. May 17, 1997) ("*Access Charge Reform Order*").

that Internet access consists of severable components: the connection to the Internet service provider via voice grade access to the public switched network, and the information service subsequently provided by the ISP.⁷ In other words, the first component is a simple local exchange telephone call. Such a call is eligible for reciprocal compensation under the Agreement. In addition, while all providers of interstate telecommunications services must contribute to the Universal Service Fund, the FCC explicitly excludes ISPs from the obligation.⁸

31. In the *Access Charge Reform Order*, the FCC declined to allow LECs to assess interstate access charges on ISPs.⁹ Indeed, the FCC unambiguously characterized the connection from the end user to the ISP as local traffic: “To maximize the number of subscribers that can reach them *through a local call*, most ISPs have deployed points of presence.”¹⁰

32. In the FCC’s *Non-Accounting Safeguards Order*, the Commission determined that the local call placed to an Information Service Provider was separate from the subsequent information service provided.¹¹ The severability of these components was key to the Commission’s conclusion that if each was provided, purchased, or priced separately, the combined transmissions did not constitute a single interLATA transmission.¹² There can be no doubt that at this time the

⁷ *Universal Service Order*, paras. 83, 788-789.

⁸ *Universal Service Order*, paras. 787-788.

⁹ *Access Charge Reform Order*, paras. 344-348.

¹⁰ *Access Charge Reform Order*, n.502 (emphasis added).

¹¹ *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, As Amended*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-149 (rel. Dec. 24, 1996), para. 120.

¹² *Id.*

FCC does not consider the local exchange call to an ISP to be an interstate or international communication.

33. The FCC is currently examining the issue of the use of the public switched network by Internet service providers, but has not altered the existing rules.^{13/}

34. The position asserted by BellSouth has been soundly rejected by at least nine other state regulatory agencies. When US West asserted a similar argument that traffic originated by or terminated to enhanced service providers should be exempted from reciprocal compensation arrangements under Interconnection Agreements, the states of Arizona,^{14/} Colorado,^{15/} Minnesota,^{16/}

^{13/} *Notice of Inquiry, Usage of the Public Switched Network by Information Service and Internet Access Providers*, F.C.C., CC Docket 96-263 (released Dec. 24, 1996) ("NOI Proceeding"); see also *In the Matter of Request by ALTS for Clarification for Clarification of the Commission's Rules Regarding Reciprocal Compensation for Information Service Provider Traffic*, F.C.C., CCB/CPD 97-30 (F.C.C.) ("ALTS Proceeding") (decision pending).

^{14/} *Petition of MFS Communications Company, Inc., for Arbitration of Interconnection Rates, Terms, and Conditions with US WEST Communications, Inc., Pursuant to 47 U.S.C. § 252(b) of the Telecommunications Act of 1996*, Opinion and Order, Decision No. 59872, Docket No. U-2752-96-362 et al. (Arizona Corp. Comm. Oct. 29, 1996) at 7.

^{15/} *Petition of MFS Communications Company, Inc., for Arbitration Pursuant to 47 U.S.C. § 252(b) of Interconnection Rates, Terms, and Conditions with US WEST Communications, Inc.*, Decision Regarding Petition for Arbitration, Docket No. 96A-287T, at 30 (Col. PUC Nov. 5, 1996). The Colorado Public Utilities Commission has since affirmed its rejection of US West's efforts to exclude ISP traffic from reciprocal compensation by rejecting such a provision in a proposed US West tariff. *The Investigation and Suspension of Tariff Sheets Filed by U S West Communications, Inc. With Advice Letter No. 2617, Regarding Tariffs for Interconnection, Local Termination, Unbundling and Resale of Services*, Docket No. 96A-331T, Commission Order, at 8 (Colo. P.U.C. July 16, 1997).

^{16/} *Consolidated Petitions of AT&T Communications of the Midwest, Inc., MCI Metro Access Transmission Services, Inc., and MFS Communications Company for Arbitration with US WEST Communications, Inc., Pursuant to Section 252(b) of the Federal Telecommunications Act of 1996*, Order Resolving Arbitration Issues, Docket Nos. P-442, 421/M-96-855, P-5321, 421/M-96-909, P-3167, 421/M-96-729 (Minn. PUC Dec. 2, 1996) at 75-76.

Oregon,^{17/} and Washington^{18/} all declined to treat traffic to enhanced service providers, including ISPs, any differently than other local traffic.

35. When New York Telephone unilaterally withheld payment of reciprocal compensation for local exchange traffic delivered to ISPs served by MFS Intelenet of New York, Inc. ("MFS-NY") and MFS-NY filed a complaint with the New York Public Service Commission ("NYPSC"), the NYPSC ordered New York Telephone to continue to pay reciprocal compensation for such traffic.^{19/}

36. Following the filing of a similar complaint by an MFS affiliate, the Maryland Public Service Commission ruled that local exchange traffic to ISPs is local in nature and eligible for reciprocal compensation and ordered Bell Atlantic-Maryland, Inc. to pay MFS reciprocal compensation previously withheld.^{20/}

^{17/} *Petition of MFS Communications Company, Inc., for Arbitration of Interconnection Rates, Terms, and Conditions Pursuant to 47 U.S.C. Sec. 252(b) of the Telecommunications Act of 1996*, Commission Decision, Order No. 96-324 (Ore. PUC Dec. 9, 1996) at 13.

^{18/} *Petition for Arbitration of an Interconnection Agreement Between MFS Communications Company, Inc. and US WEST Communications, Inc., Pursuant to 47 USC § 252*, Arbitrator's Report and Decision, Docket No. UT-960323 (Wash. Utils. and Transp. Comm. Nov. 8, 1996) at 26.

^{19/} *Proceeding on Motion of the Commission to Investigate Reciprocal Compensation Related to Internet Traffic*, Case 97-C-1275, Order Denying Petition and Instituting Proceeding (N.Y.P.S.C. July 17, 1997). The Order also instituted a proceeding to consider issues related to Internet access traffic. Comments and Reply Comments have been filed. A copy of the Order is attached as Exhibit F.

^{20/} Letter dated September 11, 1997 from Daniel P. Gahagan, Executive Secretary, Maryland Public Service Commission, to David K. Hall, Esq., Bell Atlantic-Maryland, Inc. A copy of the Letter is attached as Exhibit G. On October 1, 1997, the Commission confirmed that decision rejecting a BA-MD Petition for Reconsideration. A copy of the Maryland Commission's October 1, 1997 letter is attached as Exhibit H.

37. Likewise, in response to a petition by Southern New England Telephone Company, the Connecticut Department of Public Utility Control issued a Decision holding that local exchange traffic to ISPs is local in nature and eligible for reciprocal compensation.^{21/}

38. The Virginia State Corporation Commission, in response to a petition filed by Cox Virginia Telecom, Inc., determined that calls to ISPs are local and the presence of ALECs does not change that.^{22/}

39. The State of Michigan also considers local exchange traffic to ISPs to be local in nature, and has instructed the Commission to “make a recommendation to the legislature as to the steps needed to allow all local exchange customers to access an internet provider by making a local call.” M.C.L. § 484.2202(g). It is the stated public policy in Michigan that access to ISPs by local exchange customers shall be accomplished by completing a local call.

40. The totally untenable nature of BellSouth’s position is underscored by the fact that if such traffic were deemed interstate rather than local, BellSouth would violate Section 271 of the Federal Act prohibiting the provision of interLATA service by an RBOC every time a BellSouth customer connected with BellSouth’s own Internet service provider. Undoubtedly, BellSouth cannot intend for this result to occur.

^{21/} *Petition of the Southern New England Telephone Company for a Declaratory Ruling Concerning Internet Services Provider Traffic*, Docket No. 97-05-22, Decision (Conn. D.P.U.C. Sept. 17, 1997). A copy of the Decision is attached as Exhibit I.

^{22/} *Petition of Cox Virginia Telecom, Inc. for Enforcement of Interconnection Agreement with Bell Atlantic-Virginia, Inc. and Arbitration Award for Reciprocal Compensation for Termination of Local Calls to Internet Service Providers*, Case No. PUC970069 (Va. State Corp. Comm’n Oct. 27, 1997). A copy of the decision is attached as Exhibit J.

41. BellSouth's position would also have severe anticompetitive implications. Any carrier terminating calls to an ISP incurs costs in terminating such calls (which are the same costs incurred in terminating calls to any other end user). Since BellSouth controls most of the originating traffic within its territory, its newly announced position would force MFS and other new entrants to terminate these calls without compensation. The inevitable result would be that no competitive or alternative local exchange carrier ("ALEC") would be seeking to furnish service to an ISP, since providing that service would result in uncompensated termination costs. This would leave BellSouth with a *de facto* monopoly over ISP end users, a state of affairs that was clearly not intended by Section 271 and other provisions of the 1996 Act.

42. Recent filings by ISPs in the ALTS Proceeding at the FCC underscore the anticompetitive impact of BellSouth's action on ALECs serving ISPs. Simply stated, ISPs believe that they will be unable to obtain service from ALECs if BellSouth succeeds in withholding Reciprocal Compensation for calls to ISPs. As a participant in that proceeding, BellSouth is well aware of this position.

43. Further aggravating this anticompetitive effect, BellSouth, through BellSouth.Net, is now offering its own Internet access service to consumers. By gaining monopoly power over local exchange service to ISPs and increasing their costs for network access, BellSouth will be in a position to drive competing ISPs out of the local market, thereby leaving BellSouth with a *de facto* monopoly over access to the Internet as well.

44. When the FCC recently rejected Ameritech's application to provide in-region interLATA service for the state of Michigan pursuant to Section 271 of the Act, it made numerous findings which are applicable here.

45. First, the FCC declared unambiguously that, in order for an RBOC's application under Section 271 to be granted, new entrants and BOCs must each be compensated for the use of the other's network for the transport and termination of traffic.^{23/} The position taken by BellSouth in Florida would violate this requirement, thereby precluding BellSouth from obtaining Section 271 authority while that policy is in effect.

46. Second, the FCC has stated that, in its "public interest" review of an RBOC's Section 271 application, it would consider whether the RBOC has engaged in discriminatory or other anticompetitive conduct, or failed to comply with state and federal telecommunications regulations.^{24/} Because an RBOC's good faith compliance with its obligations is essential to the development of local competition, anticompetitive conduct by an RBOC would greatly diminish the likelihood of obtaining Section 271 authority. BellSouth plainly is negating its ability to obtain Section 271 authority by taking the unlawful and anticompetitive position it has adopted regarding reciprocal compensation for local exchange traffic to end users who happen to be ISPs.

VI. REQUEST FOR RELIEF

WHEREFORE, MFS requests that: (1) the Commission provide immediate relief by issuing an Order compelling BellSouth to cease and desist from taking actions it has threatened; (2) the Commission rule that all telephone calls placed within the same local calling area from a BellSouth provided telephone exchange service end user to an MFS provided telephone exchange service end

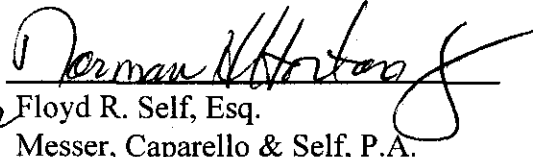
^{23/} *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-region InterLATA Services in Michigan*, CC Docket No. 97-137, Memorandum Opinion and Order, ¶ 293 (F.C.C. released Aug. 19, 1997).

^{24/} *Id.* at ¶ 397.

user qualify as local traffic within the meaning of Section 1.40 of the Agreement; (3) the Commission order BellSouth to compensate MFS for terminating its ISP customers' local traffic originated by BellSouth customers pursuant to Sections 1.40 and 5.8 of the Agreement; and (4) such other relief the Commission deems appropriate.

Respectfully submitted,

Brian K. Sulmonetti
Director, Regulatory Affairs
WorldCom, Inc.
1515 South Federal Highway, Suite 400
Boca Raton, Florida 33432
Tel: 561-392-2244
Fax: 561-750-2629

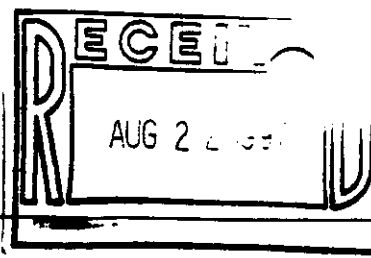
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Counsel for MFS Intelenet of Florida, Inc.

Dated: November 12, 1997

EXHIBIT A



BELLSOUTH

BellSouth Telecommunications, Inc. 404 927-7150
Room 4428 Fax 404 420-8291
675 West Peachtree Street, N.E. Internet: Ernest.L.Bush
Atlanta, Georgia 30375 @bridge.bellsouth.com

Ernest L. Bush
Assistant Vice President -
Regulatory Policy & Planning

SN91081223

August 12, 1997

To: All Competitive Local Exchange Carriers
Subject: Enhanced Service Providers (ESPs) Traffic

The purpose of this letter is to call to your attention that our interconnection agreement applies only to local traffic. Although enhanced service providers (ESPs) have been exempted from paying interstate access charges, the traffic to and from ESPs remains jurisdictionally interstate. As a result, BellSouth will neither pay, nor bill, local interconnection charges for traffic terminated to an ESP. Every reasonable effort will be made to insure that ESP traffic does not appear on our bills and such traffic should not appear on your bills to us. We will work with you on a going forward basis to improve the accuracy of our reciprocal billing processes. The ESP category includes a variety of service providers such as information service providers (ISPs) and internet service providers, among others.

On December 24, 1996, the Federal Communications Commission (FCC) released a Notice of Proposed Rule Making (NPRM) on interstate access charge reform and a Notice of Inquiry (NOI) on the treatment of interstate information service providers and the Internet, Docket Nos. 96-262 and 96-263. Among other matters, the NPRM and NOI addressed the information service provider's exemption from paying access charges and the usage of the public switched network by information service providers and internet access providers.

Traffic originated by and terminated to information service providers and internet access providers enjoys a unique status, especially call termination. Information service providers and internet access providers have historically been subject to an access charge exemption by the FCC which permits the use of basic local exchange telecommunications services as a substitute for switched access service. The FCC will address this exemption in the above-captioned proceedings. Until any such reform affecting information service providers and internet access providers is accomplished, traffic originated to and terminated by information service providers and internet access providers is exempt from access charges. This fact, however, does not make this interstate traffic "local", or subject it to reciprocal compensation agreements.

Please contact your Account Manager or Marc Cathey (205-977-3311) should you wish to discuss this issue further. For a name or address change to the distribution of this letter, contact Ethyllyn Pugh at 205-977-1124.

Sincerely,

EXHIBIT A
PAGE 1 OF 1

EXHIBIT B



MFS Communications Company, Inc.
 Regulatory Group
 20 Westwood Street, 19th Floor
 New York, New York 10024
 TEL (212) 848-3900
 FAX (212) 843-3900

SUPPLEMENTAL RESPONSE TO STAFF INTERROGATORY
 NO. 109 TO WORLDCOM. Page 1 of 2.

August 28, 1997

Via Facsimile and Mail

Mr. Ernest L. Bush
 Assistant Vice President
 Regulatory Policy and Planning
 BellSouth Telecommunications Inc.
 875 West Peachtree Street, N.E.
 Atlanta, GA 30375

Re: Local Terminating Compensation for delivery of Enhanced Service Provider Traffic

Dear Mr. Bush:

I am in receipt of your letter dated August 12, 1997 regarding Enhanced Service Provider (ESP) Traffic. Be advised that MFS completely disputes your characterization that traffic terminated to Telephone Exchange Services purchased by ESPs, including Internet Service Providers, falls outside the category of "local traffic" subject to reciprocal compensation pursuant to the terms of our interconnection agreements and the Telecommunications Act of 1996.

As a matter of law and fact, a telephone call is "terminated" when it is delivered to the Telephone Exchange Service to which the called telephone number is assigned. When the called telephone number is associated with a Rate Center within the local calling area of the calling party number, that call is considered "local". There is no relevant law or regulation allowing for a deviation from this basic principle in those instances where the called telephone number happens to be assigned to a Telephone Exchange Service purchased by an ESP.

Through your August 12th letter, BellSouth appears to be unilaterally attempting to redefine not only the applicable law relative to ESP traffic, but also the terms of the interconnection agreements that BellSouth voluntarily entered into with MFS in both Florida and Georgia. Section 1.4 of each agreement defines local traffic as follows:

"LOCAL TRAFFIC" refers to calls between two or more Telephone Exchange Service users where both Telephone Exchange Services bear NPA-NXX designations associated with the same local calling area of the incumbent LEC or other authorized areas."


Section 6.8 of each agreement provides that BellSouth and MFS will provide reciprocal compensation to each other for all local traffic. Calls from a BellSouth end user to an ESP utilizing the Telephone Exchange Services of MFS indisputably meet the definition of local traffic as agreed to by BellSouth as long as the NPA NXX of both users are associated with the same local calling area. There is absolutely nothing in the agreements that supports BellSouth's new and self-serving interpretation that certain local calls (those to ESPs) can be treated differently, nor does the agreed-to definition of local traffic provide any exemption for ESP traffic.

SUPPLEMENTAL RESPONSE TO STAFF INTERROGATORY
NO. 109 TO WORLDCOM. Page 2 of 2.

2

Any attempt by BellSouth to withhold any payments of billed reciprocal compensation charges in prior, current or future periods, on the basis stated in your letter, will be considered by MFS as a direct violation of the letter and spirit of our interconnection Agreements and the Act. Such actions would cause severe and irreparable harms to MFS, its customers and to the development of local competition in BellSouth's territory. For these reasons, MFS insists that BellSouth immediately retract and not act upon your letter of August 12, lest MFS be forced to seek relief through regulatory or legal channels.

Sincerely,

Alex Harris 

Alex J. Harris
Vice President, Regulatory Affairs

- cc R. Heitman
- G. Bell
- B. Sulmonetti
- K. Dundon

EXHIBIT C

09/18/97 13:58

Morris R. Anthony
General Attorney

BellSouth Telecommunications, Inc.
Legal Department - Suite 4300
675 West Peachtree Street, N.E.
Atlanta, Georgia 30375-0001
Telephone: 404-335-0789
Facsimile: 404-614-4054

September 11, 1997

Mr. Alex J. ^{eris}Hans
Vice President, Regulatory Affairs
MFS Communications Company, Inc.
33 Whitehall Street, 15th Floor
New York, New York 10004

Re: Reciprocal Compensation For ISP Traffic

Dear Mr. Hans:

This is in response to your August 28, 1997 to Mr. Ernest Bush regarding reciprocal compensation for local traffic pursuant to the interconnection agreement between MFS and BellSouth. In your letter, you express MFS's belief that ISP traffic is local and subject to reciprocal compensation. As discussed below, MFS's belief is predicated on several flawed assumptions and a misunderstanding of the relevant law concerning the jurisdiction of telecommunications traffic.

In the first instance, MFS presumes that any call dialed to a telephone number that is associated with a rate center within the local calling area is by definition a local call. The dialing pattern of a call is not determinative of the jurisdiction of the call. For example, an interstate Feature Group A call originated by an end user will have the same dialing pattern as a local call, but in fact it is the access arrangement for an interstate, interexchange call. Hence, the fact that a dial-up arrangement that has a "local" number is used to collect communication traffic is not determinative of the nature of the communication.

It is well established that whether a communication is interstate and, thus, within the exclusive jurisdiction of the FCC depends on the end-to-end nature of the communication itself. Contrary to MFS's apparent belief, ISP traffic does not terminate on MFS's local facilities. Rather, the traffic traverses these facilities as well as those of the ISP and the internet transport provider(s) to establish a communications path to distant internet destination(s). The communication terminates at these distant internet site. Internet end-to-end communication paths are typically interstate in nature because they not only cross state boundaries but often national boundaries as well. Even in the instances where the distant internet site is within the same state as the originating end of the communication, the dynamic aspects of internet communications make such communications inseverable from the interstate traffic. Under existing case law, such traffic must also be considered interstate.

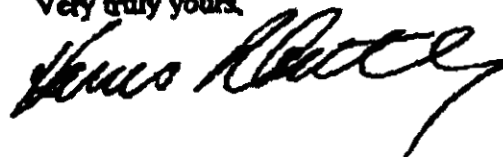
Mr. Alex Harns
September 11, 1997
Page 2

Further, the FCC has already exercised its jurisdiction over internet traffic. The Commission's grant of an exemption from the payment of interstate access charges to enhanced service providers must necessarily be based upon fact that by definition such traffic was interstate in the first instance. Otherwise, the Commission would not have had the jurisdiction to grant an exemption. A fact often lost is that the access charge exemption affects the rate an incumbent LEC may charge an ISP, not the jurisdictional nature of the ISP traffic. The access charge exemption is a transitional mechanism that was prescribed by the Commission to avoid significant economic dislocation in the then nascent enhanced services market. Nothing in the creation of the access charge exemption altered the jurisdictional nature of the end-to-end communications. The traffic remains jurisdictionally interstate. Be advised, however, that the FCC's access charge exemption for ISPs extends only to incumbent LECs. MFS, as a competitive local exchange carrier, is free to charge appropriate access rates in order to compensate it fully for any services it provides to ISPs.

In its Local Interconnection Order, the FCC made it abundantly clear that reciprocal compensation rules only apply to traffic that originates and terminates within a local area. The rules do not apply to non-local traffic, such as ISP or other interstate interexchange traffic, none of which terminates in the local area. The interconnection agreement between BellSouth and MFS parallels the FCC's determination.

Both the facts and the law make clear that ISP traffic is not local, but rather it is interstate in nature. Accordingly, BellSouth has no obligation under the Communications Act or its interconnection agreements to pay reciprocal compensation for such traffic, and MFS can have no legitimate expectation that it will receive compensation for such traffic.

Very truly yours,



cc: Ernest Bush

bcc: Doug Lackey
William Ellenberg
Allan Price
Steve Inman
Ann Haymons

EXHIBIT D

Post-Net brand fax transmittal no. 1571		# of pages 2
To: Brian Salmon		Andria
cc: GEN Bell		
Dept: Alex Harris	Phone 1	
Fax: 205 750 2629	Fax 2	



BellSouth Access Customer Sales
 Suite 350
 One Class Corporate Drive
 Birmingham, Alabama 35244

205 988-7622

Van Cooper
 Sales Director

September 29, 1997

Ms. Loy Mendis
 1632 East Parkham Road
 #5
 Richmond, Virginia 23228

Dear Loy:

In regard to our previous conversations and Mr. Earnest Bush's letter of August 12, 1997 outlining BellSouth's position concerning the payment of ISP traffic, the following will detail BellSouth's payment plan.

In good faith BellSouth agrees to pay 10% of the amount on the invoices WorldCom has billed. BellSouth's decision is based partially on a study performed in Georgia, for usage originated by BellSouth customers and terminated by BellSouth to WorldCom. We found that 94% was Information Services Providers' (ISP) traffic.

A check will be issued to WorldCom and mailed to the address on the bill. BellSouth retains the right to dispute any charges at a future date should we deem appropriate.

If you need further information, please contact me at 205-988-7622 or Norma Reif, Customer Billing Services, at 205-321-2549.

Sincerely,

Van Cooper

EXHIBIT E



MFS Communications Company, Inc.
33 Whitehall Street, 15th Floor
New York, New York 10004
TEL (212) 843-3051
FAX (212) 843-3060

Alex J. Harris
Vice President, Regulatory Affairs

November 5, 1997

Via Facsimile and Mail

Mr. Ernest L. Bush
Assistant Vice President
Regulatory Policy & Planning
BellSouth Telecommunications, Inc.
Room 4428
876 West Peachtree Street, NE
Atlanta, GA 30375

Re: Local Terminating Compensation for delivery of Enhanced Service Provider Traffic

Dear Mr. Bush:

The purpose of this letter is to recap the events surrounding the above-referenced issue and to confirm our discussions of a few minutes ago. In a letter dated August 12, 1997, addressed to all competitive local exchange carriers ("CLEC"), including MFS Intelenet, Inc., you advised that BellSouth will not pay reciprocal compensation charges billed by CLECs for traffic from BellSouth endusers to CLEC endusers, in cases where such CLEC endusers are Enhanced Service Providers ("ESP"). I responded to you by letter dated August 28, 1997, that MFS considered this position to be in violation of our agreement and applicable laws and regulation, and requested immediate reversal of BellSouth's position. Subsequently, in a letter dated September 11, 1997, Mr. Harris Anthony, General Attorney for BellSouth, challenged my conclusions and reiterated BellSouth's position that it will not pay billed reciprocal compensation charges for BellSouth enduser traffic to CLEC endusers which happen to be ESPs.

As I stated when I called you today, MFS wished to learn if, in light of the rejection of BellSouth's 271 application by the Florida Public Service Commission, BellSouth had materially modified its position on the ESP traffic matter. You stated that you were aware of no change in the positions stated in your letter and Mr. Anthony's letter. I inquired as to whether I should contact someone else within BellSouth to confirm that there has been no change. You advised that you were the correct person, but offered to double check with BellSouth's legal department. I accepted your offer. A few minutes later you called back and confirmed that BellSouth's legal department concurred with your response that there has been no change in BellSouth's position. We agreed that our positions are incompatible and that further discussions will not resolve our disagreement on this issue.

I trust that this record of our conversation is consistent with your own. If not, please contact me at the numbers above. Thank you.

Sincerely,

EXHIBIT F

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on June 10, 1997

COMMISSIONERS PRESENT:

John F. O'Mara, Chairman
Eugene W. Zeltmann
Thomas J. Dunleavy
Maureen O. Helmer

- CASE 97-C-1275 - Proceeding on Motion of the Commission to Investigate Reciprocal Compensation Related to Internet Traffic.
- CASE 93-C-0033 - Petition of Rochester Telephone Corp. for Approval of a New Multiyear Rate Stability Agreement.
- CASE 93-C-0103 - Petition of Rochester Telephone Corp. for Approval of a Proposed Restructuring Plan.
- CASE 97-C-0895 - Complaint of MFS Intelenet of New York, Inc. Against New York Telephone Company Concerning Alleged Breach of Interconnection Terms.
- CASE 97-C-0918 - Complaint of ACC National Telecom Corp. Against New York Telephone Company Concerning Alleged Breach of the Terms of its P.S.C. Tariff No. 914.
- CASE 97-C-0979 - Complaint of Cablevision Lightpath, Inc. Against New York Telephone Company Concerning Alleged Intention to Deny Reciprocal Compensation Payments for Certain Local Traffic.

ORDER DENYING PETITION AND INSTITUTING PROCEEDING

(Issued and Effective July 17, 1997)

BY THE COMMISSION:

In May 1997, Rochester Telephone Corp. (RTC) filed a petition to exclude internet traffic from the reciprocal compensation arrangement contained in RTC's Open Market Plan (OMP) until the Commission concludes its examination of

intrastate access charges in Cases 94-C-0095 and 28425¹ (the access charge proceeding) and sets rates for network elements in Case 95-C-0657² (the network elements proceeding). Under the terms of the OMP, competing local exchange providers in the Rochester market pay each other \$.0221 per minute for terminating local traffic. RTC petitioned to set the rate at zero for local traffic routed to internet providers pending completion of these cases. In support of its petition, RTC alleges that this structure creates a perverse revenue incentive for new market entrants to attract large volumes of inbound local traffic originating from the incumbent carrier rather than generating revenue by providing an array of services to customers. RTC further alleges that this situation has caused network blockage and required RTC to incur significant costs to upgrade its network to avert further blockages.

In addition, New York Telephone Company (NYT) recently took unilateral action to attempt to exclude internet traffic from the reciprocal compensation arrangements contained in its tariff(s) and in its interconnection agreements with other competitive local exchange companies. In April 1997, NYT sent letters to all of the competitive local exchange carriers with whom it exchanges traffic, notifying the carriers that it would not pay terminating access for traffic delivered to internet service providers retroactive to February 1997. NYT's justification for the exclusion of internet traffic was that such traffic was interstate in nature, and therefore not eligible for reciprocal compensation.

¹Cases 94-C-0095 and 28425 - Access Charges and Universal Service.

²Cases 95-C-0657, 94-C-0095, and 91-C-1174 - Network Elements and Resale Service.

Several parties subsequently filed complaints or sent letters¹ alleging that NYT's action was a breach of the terms of NYT's P.S.C. No. 914 tariff and/or individual interconnection agreements. By a letter from the Acting Director of the Communications Division, NYT was advised that its unilateral action regarding internet traffic had not been approved by the Commission and that NYT should cease its attempts to avoid payment for such traffic.

RTC believes the issue is best addressed in either the access charge or network elements proceeding. However, although RTC recently filed limited testimony in the access charges proceeding (proposing that access charges be levied on internet service providers directly for calls terminated to them), no other party filed testimony on the issue, and no internet service providers have participated in that proceeding. Consequently, it does not appear that the issue will be fully developed in the current phase of the access charge proceeding. Nor is the issue currently under review in the network elements proceeding.

In order to consider these issues expeditiously, we will institute a proceeding to examine the issues raised by NYT's actions and by the RTC petition. Initially, written comments will be solicited on these issues, including:

- 1) The specific characteristics of internet calling and the unique costs associated with originating and terminating such traffic;
- 2) Whether and why calls placed to a local number of an internet service provider should be treated differently from local calls placed to other numbers generally; and
- 3) What basis exists to support the contentions of network congestion peculiar to internet services.

¹All letters previously received by the Commission since April 1997 regarding this matter will be considered in this proceeding. There is no need to resubmit such communication as a formal complaint.

In the interim, RTC's petition to modify the Open Market Plan is denied at this time. Both NYT and RTC shall not attempt to change or deviate from the existing reciprocal compensation structures contained in their respective tariffs, interconnection agreements, and incentive plans without prior Commission approval.

ADMINISTRATIVE CHANGE

In addition to the RTC Petition for Modification, several parties filed complaints or sent letters opposing NYT's action. For administrative purposes, the previously filed complaints and letters will be incorporated into this newly instituted proceeding.

The Commission orders:

1. A proceeding is hereby instituted to investigate the issues described herein.
2. Until the Commission makes a determination to change the treatment of internet traffic, both New York Telephone Company and Rochester Telephone Corp. shall continue to pay other local exchange carriers for the exchange of such traffic based upon the approved reciprocal compensation structures contained in their respective tariffs and interconnection agreements, and incentive plans.
3. Rochester Telephone Corp.'s petition for a modification of Section III.E. of the Open Market Plan is denied.
4. Interested parties shall notify the Secretary to the Commission, within ten days of the date of this order, if they intend to participate in this proceeding and wish to receive copies of comments and responses in this proceeding. Parties can fax their letter to (518) 473-2929. A list of active parties will be compiled and distributed accordingly.
5. Interested parties shall file with the Secretary to the Commission 15 copies of comments on the issues listed herein,

CASES 97-C-1275, 93-C-0033, 93-C-0103, 97-C-0895,
97-C-03, and 97-C-0979

clearly identified by topic, and serve a copy to each party on the active parties list within 30 days of the date of this order.

6. Responding parties shall file with the Secretary to the Commission 15 copies of reply comments, clearly identified by topic, and serve a copy to each party on the active parties list within 15 days of service.

7. The substance of Rochester Telephone Corp.'s Petition for Modification of the Open Market Plan Contained in Opinion 94-25, and Cases 97-C-0895, Complaint of MFS Intelenet of New York, Inc. Against New York Telephone Company Concerning Alleged Breach of Interconnection Terms; 97-C-0918, Complaint of ACC National Telecom Corp. Against New York Telephone Company Concerning Alleged Breach of the Terms of its P.S.C. Tariff No. 914; and 97-C-0979, Complaint of Cablevision Lightpath, Inc. Against New York Telephone Company Concerning Alleged Intention to Deny Reciprocal Compensation Payments for Certain Local Traffic, are consolidated in this proceeding and the three individual complaint cases are closed.

8. Cases 93-C-0033, 93-C-0103 and 97-C-1275 are continued.

By the Commission,

(SIGNED)

JOHN C. CRARY
Secretary

EXHIBIT G

COMMISSIONERS

H. RUSSELL FRISBY, JR.
CHAIRMAN
CLAUDE M. LIGON
E. MASON HENDRICKSON
SUSANNE BROGAN
GERALD L. THORPE



BRYAN G. MOORHOUSE
GENERAL COUNSEL
DANIEL P. GAHAGAN
EXECUTIVE SECRETARY
GREGORY V. CARMEAN
EXECUTIVE DIRECTOR

PUBLIC SERVICE COMMISSION

WILLIAM DONALD SCHAEFER TOWER
6 ST. PAUL STREET
BALTIMORE, MARYLAND 21202-6806
(410) 767-8000
FAX NUMBER (410) 333-6495

September 11, 1997

David K. Hall, Esquire
Vice President and General Counsel
Bell Atlantic - Maryland, Inc.
Constellation Place
1 East Pratt Street, 8E
Baltimore, MD 21202-1038

Andrew D. Lipman, Esquire
Richard M. Rindler, Esquire
Robin Cohn, Esquire
Swidler & Berlin, Chtd.
3000 K Street, NW, Suite 300
Washington, D.C. 20007

Dear Messrs. Hall, Lipman, Rindler, and Ms. Cohn:

This is to advise you that the Commission has reviewed the Complaint against Bell Atlantic-Maryland, Inc. ("BA-MD") for Breach of Interconnection Terms, and Request for Immediate Relief filed on May 22, 1997 by MFS Intelenet of Maryland, Inc. ("MFS"). The Complaint concerns the termination rate for calls to an Internet Service Provider ("ISP").

The Commission has reviewed and considered the written comments and the arguments presented at the August 13, 1997 Administrative Meeting. The Commission is of the opinion that the primary issue presented is resolvable pursuant to the terms of the BA-MD/MFS Interconnection Agreement. Further, the Commission finds that MFS is entitled to compensation for termination of the telephone calls in question.

The Commission recognizes that there is a question as to whether these communications are "jurisdictionally interstate communications." See In the Matter of MTS and WATS Market Structure, 97 F.C.C. 2d 682, paragraphs 82-83 (1983). However, it does not believe that this question affects the result herein because of the Federal Communications Commission's ("FCC") requirement that although ISPs use incumbent LEC facilities to originate and terminate interstate calls, these services should be purchased "under the same intrastate tariffs available to end users." In the Matter of Access Charges Reform, FCC 92-158, paragraphs 341-342 (1997). Moreover, we note that this issue is currently being considered by the FCC and may ultimately be resolved by it. In the Matter of Request by ALTS for Clarification of the Commission's Rules Regarding Reciprocal Compensation for Information Service Provider Traffic, CCB/CPD 97-30. In the event that the FCC issues a decision that requires revision to the directives announced herein, the Commission expects that the parties will so advise it.

David K. Hall, Esq.
Andrew D. Lipman, Esq.
Richard M. Rindler, Esq.
Robin Cohn Esq.
September 11, 1997
Page 2

Accordingly, based on the terms of the Agreement, the Commission hereby directs BA-MD to timely forward all future interconnection payments owed MFS for telephone calls placed to an ISP. Additionally, BA-MD shall forward all payments that have been withheld over this dispute to MFS within 15 days of receipt of this letter.

By Direction of the Commission,



Daniel P. Gahagan
Executive Secretary

jrb

cc: Russell M. Blau, Esq., MFS Intelenet of Maryland, Inc.
Paul Kouroupas, Esq., Teleport Communications Group
Michael J. Travieso, Esq., Maryland People's Counsel
Andrew S. Katz, Esq., Staff Counsel
Cherie R. Kiser, Esq. and Yaron Dori, Esq. (on behalf of America Online, Inc.)

EXHIBIT H

STATE OF MARYLAND



COMMISSIONERS

H. RUSSELL FRISBY, JR.
Chairman
CLAUDE M. LIGON
E. MASON HENDRICKSON
SUSANNE BROGAN
GERALD L. THORPE

BRYAN G. MOORHOUSE
GENERAL COUNSEL
DANIEL P. GAHAGAN
EXECUTIVE SECRETARY
GREGORY V. CARMEAN
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(410) 787-8000
FAX NUMBER (410) 333-8486

ML#58622

October 1, 1997

RECEIVED

David K. Hall, Esq.
Vice President and General Counsel
Bell Atlantic - Maryland, Inc.
1 East Pratt Street, 8E
Baltimore, Maryland 21202-1038

OCT 3 1997

STAFF COUNSEL
DIVISION

Dear Mr. Hall:

This is to advise you that the Commission has reviewed the Petition for Reconsideration that was filed on September 23, 1997 by Bell Atlantic - Maryland, Inc. (BA-MD). BA-MD requests reconsideration of the Commission's September 11, 1997 decision regarding local termination compensation for calls to an Internet Service Provider (ISP) on the network of MFS Intelenet of Maryland, Inc. (MFS).¹

The Commission hereby denies the request for reconsideration. Accordingly, BA-MD shall timely forward all future interconnection payments owed MFS for telephone calls placed to an ISP. Additionally, BA-MD shall forward all payments that have been withheld over this dispute to MFS within 5 business days of receipt of this letter.

By Direction of the Commission,

Daniel P. Gahagan
Executive Secretary

jrb

- cc: Andrew D. Lipmann and Russell M. Blau, MFS Intelenet of Maryland, Inc.
- Paul Kouroupas and Michael A. McRae, Teleport Communications Group
- Michael J. Travieso, Maryland People's Counsel
- Andrew S. Katz, Staff Counsel
- Cherie R. Kiser and Yaron Dori, America Online, Inc.

¹ BA-MD also requested a stay of the Commission's decision. By letter dated September 26, 1997, the Commission stayed its order pending a decision on the request for reconsideration.

EXHIBIT I



STATE OF CONNECTICUT

**DEPARTMENT OF PUBLIC UTILITY CONTROL
TEN FRANKLIN SQUARE
NEW BRITAIN, CT 06051**

**DOCKET NO. 97-06-22 PETITION OF THE SOUTHERN NEW ENGLAND
TELEPHONE COMPANY FOR A DECLARATORY RULING
CONCERNING INTERNET SERVICES PROVIDER
TRAFFIC**

September 17, 1997

By the following Commissioners:

Jack R. Goldberg
Glenn Arthur
John W. Betkoski, III

DECISION

EXHIBIT I
PAGE 1 OF 14

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DECISION

I. INTRODUCTION

A. SUMMARY

The Southern New England Telephone Company (SNET) petitioned the Department of Public Utility Control (Department) requesting that the Department issue a Declaratory Ruling to the effect that the mutual compensation scheme developed in Docket No. 94-10-02 DPUC Investigation into the Unbundling of the Southern New England Telephone Company's Local Telecommunications Network - Reopened, does not apply to Internet Service Providers (ISP). SNET argues, inter alia that mutual compensation should not apply to ISP providers because to do so would give an unfair advantage to Competitive Local Exchange Carriers (CLECs), and that ISP traffic is not local in nature and should not be subject to local mutual compensation.

The Department solicited comments from interested parties. All those filing comments disagreed with SNET's arguments and conclude that ISP traffic should be subject to mutual compensation.

After consideration of the comments filed, the petition and the Decision in Docket No. 94-10-02, the Department has determined that ISP traffic should be subject to mutual compensation. Accordingly, SNET's petition is denied.

B. BACKGROUND OF THE PROCEEDING

By petition (Petition) dated May 27, 1997, the Southern New England Telephone Company (SNET or Company) requested that the Department of Public Utility Control (Department) issue a Declaratory Ruling that the January 16, 1997 Decision in Docket No. 94-10-02, DPUC Investigation into the Unbundling of the Southern New England Telephone Company's Local Telecommunications Network - Reopened, governing mutual or reciprocal compensation, does not apply to Internet Service Provider (ISP) traffic.

C. CONDUCT OF PROCEEDING

By Notice of Request for Written Comments (Request) dated June 13, 1997, all interested persons were given the opportunity to file with the Department written comments addressing the following issues:

1. Whether the Docket No. 94-10-02 Decision governing mutual compensation applies to Internet Service Provider (ISP) traffic.
2. Whether ISP traffic should be considered intrastate or interstate in nature.
3. Whether the costs for terminating ISP traffic would already be recovered prior to imposition of mutual compensation.

4. Whether ISP traffic is terminating traffic only.
5. Whether any particular group or individual is provided a competitive advantage by allowing mutual compensation for ISP traffic.
6. Other pertinent issues directly related to this Petition.¹

The Department issued a draft Decision in this docket on August X, 1997. All participants were provided an opportunity to submit written exceptions to and oral arguments on the draft Decision.

II. SNET PETITION

SNET argues that ISP traffic is terminating only and does not fall within the traditional services mutual compensation was to address. SNET claims that the main assumption of mutual compensation is that originating and terminating usage would balance out between the carriers with any imbalance or difference in that traffic being periodically settled by a payment from one carrier to the other. According to SNET, since ISP traffic is terminating only, the competitive local exchange carrier (CLEC) serving that ISP would never have to compensate SNET. SNET maintains that telephone calls to ISPs do not terminate in the local access and transport area (LATA) where the ISP's facilities and data bases are located because these calls are carried across LATA boundaries over the Internet to locations beyond Connecticut. SNET concludes that ISP traffic, therefore, is not local, but is inherently interstate, interexchange traffic. Petition, pp. 4-6.

SNET also maintains that the Federal Communications Commission (FCC) has consistently viewed ISP traffic to be interstate in nature. While noting that mutual compensation is designed to compensate a terminating carrier for its costs in completing the calls, the Company states that, in the case of ISP traffic, Internet service providers compensate CLECs for serving the ISP through the rates charged the subscriber, or SNET subsidizes the CLEC's costs in providing service to the ISP, or both. SNET argues that allowing a carrier to be compensated through mutual compensation for the costs it is already recovering would be an unintended use of the Department's mutual compensation policy and would grant those carriers serving ISPs an unwarranted competitive advantage.

Additionally, SNET argues that subjecting ISP traffic to mutual compensation would require SNET to purchase additional interconnect trunks to the CLECs' switches. In this case, the Company claims that it would also be required to pay the CLEC for the termination of those ISP calls originated from a SNET local customer. SNET asserts that since this traffic is originating only, it would potentially be liable to pay compensation to those CLECs. Other significant costs include network investment for trunks, switch

¹ In response to the Request, the Department received comments from the following: America Online, Inc. (AOL); AT&T Communications of New England, Inc. (AT&T); Cablevision Lightpath (Lightpath); Cox Connecticut Telecom, LLC (Cox); MCI Telecommunications Corporation (MCI); MFS Internet of Connecticut, Inc. (MFSI); and Teleport Communications Group, Inc. (TCG, collectively, the Participants).

modules and facilities to route the ISP calls from SNET's originating end offices to its tandem that is interconnected to the CLEC.

The Company further states that ISP traffic, whether terminating to an ISP on SNET's network or on a CLEC's network, does not fall within the definition of the traditional services mutual compensation was to address. According to SNET, subjecting ISP traffic to the mutual compensation plan (Plan) adopted in the January 17, 1997 Decision in Docket No. 94-10-02, would allow terminating carriers serving ISPs to avail themselves of a loophole constituting a free ride.

In the event the Department determines that mutual compensation applies to ISP traffic, SNET states that the Decision in Docket No. 94-10-02 requires the Department to reconsider its mutual compensation policy because it provides the CLECs with an unfair advantage. SNET contends that if ISP traffic were included for mutual compensation purposes, it would be required to compensate the CLEC for the termination of that traffic. SNET also contends that since ISPs do not originate traffic, the CLEC would never have to compensate the Company with all compensation flowing in only one direction. The above comments can be found in the Petition, pp. 6-8.

III. PARTICIPANTS' POSITIONS

A. AOL

The Participants generally oppose SNET's Petition and recommend that the Department reject SNET's claims and deny its request for Declaratory Ruling. AOL Comments, p. 1; Cox Comments pp. 1, 3; MFSI Comments, p. 2; TCG Comments, p. 1. AOL states that the Department should deny the Petition and reaffirm that its mutual compensation rules apply to all traffic including ISP traffic. AOL Comments, p. 1. AOL opines that the Petition undermines the State's procompetitive policy and the mandates of the Telecommunications Act of 1996 (1996 Telecom Act) and is evidence of SNET's refusal to accept that it must transition from the "protected monopoly" environment to the new telecommunications era. In particular, SNET is attempting to undermine the CLEC's ability to save ISPs by attacking the Department and the 1996 Telecom Act's mutual compensation regime. According to AOL, if the Petition is adopted, CLECs would be denied compensation for local traffic terminated on their networks based upon the identity of the end user being called. Denial of compensation to CLECs for traffic terminating on their networks to ISP end users may result in discriminatory treatment of CLECs in comparison with adjacent ILECs.² AOL concludes that under this scenario, CLECs would be discouraged from marketing their services to ISP end users and all ISP traffic would be driven back to the ILEC because, without compensation, there is no incentive for CLECs

² SNET claims that its proposal to exempt ISP traffic from mutual compensation is not discriminatory because ISP traffic is not similar to any other type of traffic. In support of that argument, SNET maintains that ISP traffic is not local traffic, but is interstate in nature. SNET also maintains that ISP traffic is characterized by unusually long holding times, is not voice, but involves the transmission of data. Accordingly, SNET suggests that a Department finding that ISP traffic is not subject to mutual compensation would not discriminate against any particular segment of CLECs' end users. SNET Reply Comments, pp. 9 and 10.

to furnish service to ISPs. This would return SNET to the position of having a monopoly over ISP end users.

Lastly, AOL argues that SNET's attempt to persuade the Department not to apply its mutual compensation rules to the transport and termination of ISP traffic violates the prohibition in §202(a) of the 1996 Telecom Act and Conn. Gen. Stat. §16-247 against unjust and unreasonable discrimination towards ISPs and all other end users purchasing local service. AOL concludes that since numerous other businesses purchase the same type of service and use the network in the same manner as ISPs, the imposition of different pricing standards for ISP traffic would amount to unjust and unreasonable discrimination. Accordingly, AOL recommends that the Department reject SNET's Petition. The above positions can be found in AOL Comments, pp. 3-6.

B. AT&T

AT&T argues that ISPs exhibit many of the characteristics of other classes of local business customers and, therefore, ISP traffic should be treated as local traffic. According to AT&T, this traffic should be included in calculations of reciprocal compensation, allowing all LECs serving ISPs to take advantage of available market opportunities, which, in turn, would place downward pressure on ILEC access rates. AT&T contends that ISP traffic must be treated as intrastate traffic and ISP end users should be permitted to purchase local services as do other local business customers. AT&T states that for the Department to decide otherwise would be irrational and contrary to the FCC's rulings. AT&T Comments, pp. 1 and 2.

C. Cox

Cox asserts that the Petition is premised on factual errors requiring that SNET's claims be rejected.³ In particular, Cox opines that SNET has assumed that ISPs will never use the Company to terminate their traffic. Cox disagrees with this assumption and notes that unless SNET has unilaterally chosen not to serve ISPs in violation of its public service responsibilities, there is no reason to believe the claimed imbalance will not change this environment. Cox also notes that nowhere has SNET claimed that it is not currently terminating ISP traffic itself or has it indicated the amount of this traffic. Cox also disagrees with SNET's claim that no party to Docket No. 94-10-02 envisioned application of mutual compensation to large volumes of Internet traffic. Cox states that SNET itself argued that Bill and Keep⁴ was not appropriate given the likelihood of traffic imbalance. Additionally, Cox disagrees with SNET's claim that terminating carriers serving ISPs are availing themselves of a loophole that constitutes a free ride. According to Cox, the terminating carriers incur certain costs to terminate traffic that must be recovered from the carrier originating the traffic. Cox Comments, pp. 1 and 2.

Cox contends that there is no legal or technical basis under state or federal laws or regulations to indicate that ISP traffic is anything other than local traffic. Accordingly, Cox maintains that ISP traffic qualifies as local telecommunications traffic under mutual

³ Lightpath concurs with Cox's comments. Lightpath 6/27/97 Letter to the Department, p. 1.

⁴ A bill and keep arrangement, in its most simplistic form, means that traffic is exchanged between networks without any compensation among providers.

compensation agreements and the Department must reject the Petition and affirm that ISP traffic is subject to mutual compensation. Cox Comments, p. 3.

Moreover, Cox provides two reasons why local calls to ISPs cannot be classified as anything other than local traffic. First, an ISP is not a telecommunications carrier, but is a customer purchasing telephone service from a LEC or CLEC like any other customer. Secondly, Cox argues that a call is considered as being terminated or completed to a customer, irrespective of what that customer does with the call on its own network. Therefore, Cox asserts that the fact that an ISP may route the customer traffic to the source of the information for which the customer is paying the ISP is no basis for claiming that the traffic that originated as local and locally terminated at an end user (ISP) is anything other than local traffic. Cox Comments, pp. 5 and 6.

Lastly, Cox disagrees with SNET's claim that ISP traffic is only terminating traffic. Cox states that when a SNET customer originates a call to an ISP who is a customer of another LEC or CLEC, and that second carrier completes the call, the traffic that flows is both upstream (from the SNET customer) and downstream (to the SNET customer). Cox opines that the traffic is not only terminating to the ISP but also flows from the ISP to SNET's customers. Cox Comments, p. 7.

D. MCI

MCI maintains that ISP traffic should be considered intrastate in nature and the January 17, 1996 Decision in Docket No. 94-10-02 governing mutual compensation applies to ISP traffic. MCI asserts that no where in §251(b)(5) of the 1996 Telcom Act did Congress or in the FCC's First Report and Order, CC Docket No. 96-98 In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (First Report and Order), was the application of reciprocal compensation obligations removed from any specific traffic that originates and terminates within a local area based upon the identity or usage characteristics of the individual end user. MCI argues that mutual compensation requirements imposed on all LECs are not eliminated by the fact that they charge their end user customers for local services provided to their customers. According to MCI, a call placed over the public switch network (PSN) is considered to be terminated when it is delivered to the telephone exchange service bearing the called telephone number. MCI states that as a communications service, a call is completed at that point, regardless of the identity or status of the called party. Therefore, a call to an ISP is terminated at the point it is delivered to the telephone exchange service purchased by the ISP. MCI Comments, pp. 2-7.

MCI also argues that ISP traffic is not terminating only traffic, because ISPs have outbound usage. MCI contends that the relevant treatment of ISP traffic for purposes of intercarrier mutual compensation obligations does not depend on independent individual end users or their calling patterns because it is carrier traffic in the aggregate that determines mutual compensation. Additionally, MCI claims that no particular group or individual is provided a competitive advantage by allowing mutual compensation to ISP traffic. Lastly, MCI contends that the Petition is contrary to the January 10, 1997 Decision in Docket No. 96-09-09, Application of MCI Telecommunications Corporation for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996, in which

the Department adopted the December 24, 1996 Final Arbitration Award, for an "Agreement for Network Interconnection and Resale between SNET and MCI (Agreement)." MCI asserts that no where in the Agreement is it provided that SNET may refuse to compensate it for terminating local traffic that originates on SNET's network by singling out specific recipients of local calls for exclusion from its mutual compensation obligations. According to MCI, SNET has improperly refused to treat ISP traffic as part of its mutual compensation arrangements with MCI.

MCI also claims that SNET will not pay compensation for the termination of ISP traffic over MCI's facilities based on the January 17, 1996 Decision in Docket No. 94-10-02. MCI states that SNET's position is factually and legally incorrect because the service in question is a type of service that would be included in the Plan. MCI also states that SNET's position is incorrect because the Plan does not provide for, or contemplate that, carriers can pick and choose which end users it wants to include under mutual compensation arrangements and which it would exclude. MCI argues that under the Plan, all types of local service customers of all interconnecting carriers are blended together, without exception. Moreover, MCI argues that SNET improperly assumes that MCI is overcompensated on the basis of one customer, without considering all payments taking into account network investment and total customer base. Further, MCI argues that SNET is legally incorrect in its claim that it is an inappropriate and unintended use of the Plan to include all local service customers in the determination of mutual compensation. According to MCI, the Plan expressly requires that all local service traffic be included under mutual compensation arrangements, making no distinctions among or between types of end users nor omitting any from the mutual compensation mix.

Lastly, MCI asserts that SNET's claim of network burdens due to ISP traffic are irrelevant and without merit. MCI opines that any such burdens may also be self-inflicted by SNET's own aggressive Internet access business and the increased use of second lines actively promoted by SNET. Accordingly, MCI requests that the Department direct SNET to include ISP traffic under mutual compensation arrangements pending the final resolution of this issue. The above positions can be found in MCI Comments, pp. 10-14.

E. MFSI

MFSI argues that the January 16, 1997 Decision in Docket No. 94-10-02 applies to all local exchange traffic passed between SNET and CLECs.⁵ MFSI also argues that calls to ISPs are simple local calls and fall within the category of local exchange traffic governed by Docket No. 94-10-02. Similar to the other participants, MFSI asserts that the FCC has repeatedly affirmed ISP rights to employ local exchange services to connect to the PSN. According to MFSI, the local call to an ISP local exchange service provider is a separate and distinguishable transmission from any subsequent Internet connection enabled by the ISP in which the FCC has considered to be the interstate portion of an ISP's business. MFSI Comments, pp. 3 and 4.

Citing the recent FCC orders in CC Docket No. 96-262, in the Matter of Access Charge Reform, released on May 16, 1997 (Access Charge Order) and CC Docket No. 96-45 in the Matter of Federal-State Joint Board on Universal Service, released on May 8, 1997 (Universal Service Order), MFSI claims that the FCC affirms these conclusions. In particular, the FCC has declined to allow LECs to assess interstate access charges on ISPs (Access Charge Order) and has also determined that Internet access consists of severable components: the connection to the ISP via access to the PSN and the information service subsequently provided by the ISP (Universal Service Order). MFSI further asserts that the fact that SNET charges its own customers local rates for traffic to ISPs and classifies that traffic as local for purposes of interstate separations is strong evidence that SNET considers such traffic to be local and eligible for reciprocal compensation. MFSI posits that the untenable nature of SNET's position is underscored by the fact that if such traffic were deemed interstate instead of local, SNET could not carry it. MFSI Comments, pp. 6 and 7.

Additionally, MFSI notes that SNET's position has been rejected by six other state regulatory agencies.⁶ MFSI concludes that calls to ISPs are not interstate traffic and therefore fall within the scope of the Department's resolution of reciprocal compensation arrangements in Docket No. 94-10-02. MFSI Comments, p. 8.

Lastly, MFSI argues that since SNET controls most of the originating traffic within its territory, exempting calls to ISPs from the reciprocal compensation arrangements would force MFSI and other new entrants to terminate these calls without compensation. MFSI claims that if this were to occur, it would be financial suicide for CLECs to furnish service to an ISP, since providing that service would result in uncompensated termination costs. MFSI also claims that in the end, SNET would have a de facto monopoly over ISP end users, something that was not intended by §251(b)(5) of the 1996 Telecom Act or by §§16-247a-g of the Conn. Gen. Stat. MFSI Comments, p. 12.

F. TCG

⁵ SNET disagrees. According to SNET, ISP traffic is not simple local traffic. SNET argues that telephone calls to ISPs do not terminate in the LATA where the ISP's facilities and data bases are located. Rather, these calls are carried over the Internet across LATA and state boundaries and, therefore, are interstate in nature. SNET Reply Comments, p. 2.

⁶ The states of Arizona, Colorado, Minnesota, New York, Oregon and Washington all have declined to treat ISP traffic any differently than other local traffic.

TCG states that this issue was already addressed by several state commissions and they have all concluded that local calls to ISPs are subject to reciprocal compensation arrangements. TCG claims that some states - Oregon, Washington, Minnesota and Arizona - have concluded in arbitration proceedings before their respective commissions that CLEC/LEC interconnection agreements must treat local calls to ISPs like any other local traffic subject to mutual compensation. TCG Comments, pp. 2 and 3.

TCG argues that the mutual compensation arrangements adopted by the Department in Docket No. 94-10-02 apply to ISP traffic. Similar to MFSI, TCG maintains that for purposes of reciprocal compensation, ISP traffic is local in nature because it originates and terminates between two end users, the LEC end user (an ISP customer) and the ISP itself within a local calling area. Additionally, TCG cites the Access Charge and Universal Service Orders, wherein the FCC has indicated that intrastate local rates are applied to Internet calls regardless of whether or how the information is enhanced or transmitted by the ISP. TCG also maintains that the nature of the ISP's provision of enhanced service does not affect and is not relevant to the jurisdictional nature of the local call carried by the LEC to the CLEC to the ISP. According to TCG, because this traffic is local, then it should be subject to reciprocal compensation arrangements.

TCG also argues that the local caller pays charges to the originating carrier and the originating carrier must compensate the terminating carrier for completing the call. TCG asserts that SNET seeks to evade this requirement under the 1996 Telcom Act and that the relationship between itself and SNET in completing calls placed to an ISP fits the circumstances under which reciprocal compensation must apply. TCG contends that irrespective of whether a CLEC or SNET provides the local service to the ISP: 1) the ISP's customer still dials a conventional local number to reach the ISP; 2) the call is then routed to the ISP's premises by means of SNET or CLEC local service; and 3) the call is rated by SNET. TCG also contends that, pursuant to §251 of the 1996 Telcom Act and the FCC's First Report and Order, it is entitled to reciprocal compensation for terminating such traffic. The above can be found in TCG Comments, pp. 8, 10-13.

Finally, TCG claims that it has established prices for the trunking arrangements purchased by ISPs that are intended to recover TCG's cost to provide the service. TCG also claims that it incurs additional costs associated with the receipt of traffic from SNET and with processing these calls placed by SNET's customers. TCG states that these costs are primarily associated with the trunking arrangements and switch ports TCG must utilize to receive this traffic. TCG concludes that it is appropriate to require SNET to compensate TCG for the trunking and port costs associated with transport and termination of calls from SNET's customers and that the existing reciprocal compensation framework is adequate to do that task. TCG Comments, p. 13.

IV. DEPARTMENT ANALYSIS

SNET has requested that the Department issue a Declaratory Ruling that its Decision in Docket No. 94-10-02 governing mutual compensation does not apply to ISP traffic. Mutual compensation refers to the charges paid to one facilities provider by another for the completion or termination of local calls on the provider's network that did not originate the call. Mutual compensation has been further defined as the means of allowing each network participant to be compensated fairly for the use of its network to complete a local call originating on another provider's network. January 17, 1996 Decision in Docket No. 94-10-02, p. 57. In the January 17, 1996 Decision, the Department also limited the application of mutual compensation to the termination of local traffic and did not permit the incumbent provider to dictate the definition of "local service" for these purposes. *Id.*, p. 71.

While SNET may not be dictating the definition of local service, the Company appears to be attempting to dictate the terms and conditions under which mutual compensation would apply beyond those provided for in the January 17, 1996 Decision in Docket No. 94-10-02. However, as evidenced by the comments submitted by the other participants in this proceeding, the overwhelming opinion is that local calls to ISPs should be subject to mutual compensation. The Department concurs.

ISPs are business local exchange customers that purchase service from SNET, use the network in a similar manner to the Company's other end users and, therefore, should not be treated any differently than other business local exchange customers. Overall, ISP traffic consists of both originating and terminating traffic similar to other end user customers. The basic operating basis of an ISP is the exchange of information between itself and its own customers. In that respect, local traffic will flow in both directions between the SNET end user and the actual Internet service provider supplying the information. The Department considers calls originating and terminating between these customers (ISPs and other SNET customers) within the same local calling area to be local, and, therefore, should be subject to the mutual compensation arrangements adopted in the Plan. This is consistent with the FCC's position that ISPs may pay business line rates and the appropriate subscriber line charge, rather than interstate access rates, even for calls that appear to traverse state boundaries. Access Charge Order ¶342.

The Department also concurs with the FCC in that Internet access is composed of various components including the local voice grade connection to the PSN to which an ISP subscribes and the information service actually provided to the end user by the ISP. In its Access Charge Order, the FCC indicated that Internet access includes the network transmission component (the connection over an LEC network from a subscriber to an ISP) and the underlying information service. In its Access Charge Order, the FCC also stated that voice grade access to the PSN enabled customer access to an ISP and, ultimately, the Internet. Access Charge Order ¶83. In the opinion of the Department, it is the local connection component and the traffic carried over it that should be subject to mutual compensation. Subscription of a local voice grade connection to the PSN by ISPs, as well as its use of these connections, is no different than those subscribed to and utilized by other SNET business and residential customers. The Department finds that any traffic originating and terminating in the local calling area carried over these connections should

be subject to compensation as outlined in the Plan. Not applying the Plan's mutual compensation arrangements to this traffic would discriminate against these users and violate the 1996 Telcom Act and Conn. Gen. Stat. §16-247a. The fact that the Plan requires that compensation be paid for all local traffic carried over the LEC and CLEC networks does not, and should not, depend on the usage characteristics of a specific end user. Therefore, ISP traffic should be subject to mutual compensation.

Additionally, the Department is not persuaded by SNET's claim that it will be required to purchase additional interconnect trunks to the CLEC switches to accommodate the ISP traffic and be required to pay additional compensation resulting from the terminating traffic that would be carried. SNET's common carrier duties require it to install trunking facilities as needed. These facilities will more than likely be used by SNET for its own Internet business as well as the installation and increased use of second lines by its own end user customers. SNET has not substantiated its claim that purchase of additional trunking is required due to its carriage of ISP traffic.

The Department also looks to the experience of other states in addressing the issue of reciprocal compensation for local ISP traffic. The record indicates that Arizona, Colorado, Minnesota, New York, Oregon and Washington have all declined to treat ISP traffic any differently than other local traffic. MFSI Comments, p. 8; TCG Comments, pp. 2 and 3. As indicated above, these states have separately reviewed LEC proposals to deny compensation for ISP traffic. The Department believes its requirement that ISP traffic be subject to the Plan is consistent with these states' decisions.

Lastly, SNET has requested that in the event it is determined that ISP traffic should be subject to the Plan that the Department reconsider its January 17, 1996 Decision in Docket No. 94-10-02 because it would provide CLECs with an unfair competitive advantage. SNET Reply Comments, pp. 7,10. In that Decision, the Department stated that:

... the Department has similarly concluded that any such compensation method approved for adoption by the Department cannot knowingly provide any individual party or group of participants a competitive advantage by unwarranted use of the mutual compensation plan's terms and conditions. If any party subsequently can show harm that has been directly imposed by misuse, abuse or other intended use of the plan to preclude effective competition, the Department will be prepared to formally reconsider its mutual compensation policy.

January 17, 1996 Decision in Docket No. 94-10-02, p. 68.

Local competition and the carriage of traffic by CLECs continues to develop. Through the development of local competition, the exchange of traffic between SNET and CLECs will remain fluid, eventually approaching an equilibrium. The Department does not believe that SNET has satisfactorily demonstrated that it has experienced sufficient harm or that effective competition has been hindered due to the implementation of the Plan. Accordingly, reconsideration of the Plan at this time is not warranted and SNET's request for such is hereby denied. In the event SNET formally requests the Department to

reconsider the Plan at some point in the future, the Company should be prepared to provide detailed evidence that effective competition has been precluded and/or it is experiencing excessive or unjust or irreparable harm as a direct result of the mutual compensation policy.

IV. CONCLUSION

There is no difference between an ISP and SNET's other local exchange customers. Traffic carried between SNET's end user customers and ISPs within the same local calling area is local in nature and, therefore, subject to the mutual compensation arrangements outlined in the Department's January 17, 1997 Decision in Docket No. 94-10-02. Neither SNET nor any other telecommunications service provider has presented sufficient evidence of irreparable harm or that effective competition has been hindered due to the Department's mutual compensation policies. Accordingly, SNET's request is hereby denied.

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**DOCKET NO. 97-06-22 PETITION OF THE SOUTHERN NEW ENGLAND
TELEPHONE COMPANY FOR A DECLARATORY
RULING CONCERNING INTERNET SERVICES
PROVIDER TRAFFIC**

This Decision is adopted by the following Commissioners:

Jack R. Goldberg

Glenn Arthur

John W. Betkoski, III

CERTIFICATE OF SERVICE

The foregoing is a true and correct copy of the Decision issued by the Department of Public Utility Control, State of Connecticut, and was forwarded by Certified Mail to all parties of record in this proceeding on the date indicated.

Robert J. Murphy
Executive Secretary
Department of Public Utility Control

Date

EXHIBIT J

STATE CORPORATION COMMISSION

AT RICHMOND, OCTOBER 24, 1997

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PETITION OF

COX VIRGINIA TELCOM, Inc.

CASE NO. PUC970069

For enforcement of interconnection agreement with Bell Atlantic-Virginia, Inc. and arbitration award for reciprocal compensation for the termination of local calls to Internet service providers

FINAL ORDER

On June 13, 1997, Cox Virginia Telcom, Inc. ("Cox") filed a petition for enforcement of its interconnection agreement with Bell Atlantic-Virginia, Inc. ("BA-VA") and for an arbitration award for reciprocal compensation for the termination of local calls to Internet service providers. Cox requested that the Commission enter an order declaring that local calls to Internet service providers ("ISPs") constitute local traffic under the terms of its agreement and that Cox and BA-VA are entitled to reciprocal compensation for the completion of this type of call.

By Order of August 14, 1997, the Commission directed that a response from BA-VA be filed on or before August 29, 1997, and that a reply be filed by Cox on or before September 15, 1997.