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ORIGINAL

RUTLEDGE, ECENIA, UNDERWOOD, PURNELL & HOFFMAN

PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

STEPHEN A. ECENIA
KENNETH A. HOFFMAN
THOMAS W. KONRAD
MICHAEL G. MAIDA
J. STEPHEN MENTON
R. DAVID PRESCOTT
HAROLD F. X. PURNELL
GARY R. RUTLEDGE
R. MICHAEL UNDERWOOD
WILLIAM B. WILLINGHAM

POST OFFICE BOX 551, 32302-0551
215 SOUTH MONROE STREET, SUITE 420
TALLAHASSEE, FLORIDA 32301-1841

OF COUNSEL:
CHARLES F. DUDLEY

TELEPHONE (850) 681-6788
TELECOPIER (850) 681-6515

GOVERNMENTAL CONSULTANTS:
PATRICK R. MALOY
AMY J. YOUNG

February 4, 1998

980184-TP

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center
Room 110
Tallahassee, Florida 32399-0850

HAND DELIVERY

Re: Complaint of Teleport Communications Group Inc./TCG South Florida for Enforcement of Section IV.C of its Interconnection Agreement with BellSouth Telecommunications, Inc., and Request for Relief

Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of Teleport Communications Group, Inc./TCG South Florida ("TCG") are the following documents:

1. Original and fifteen copies of the Complaint of Teleport Communications Group Inc./TCG South Florida for Enforcement of Section IV.C of its Interconnection Agreement with BellSouth Telecommunications, Inc., and Request for Relief; and

2. A disk in Word Perfect 6.0 containing a copy of the document.

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,

Kenneth A. Hoffman

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Enclosures

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Teleport Communications)
Group Inc./TCG South Florida for Enforcement)
of Section IV.C of its Interconnection Agreement)
with BellSouth Telecommunications, Inc., and)
Request for Relief.)
_____)

Docket No. _____
Filed: February 4, 1998

**COMPLAINT OF
TELEPORT COMMUNICATIONS GROUP INC./
TCG SOUTH FLORIDA FOR ENFORCEMENT OF
SECTION IV.C OF ITS INTERCONNECTION AGREEMENT
WITH BELLSOUTH TELECOMMUNICATIONS, INC.**

Teleport Communications Group Inc. and its affiliate TCG South Florida (hereinafter referred to collectively as "TCG"), by and through undersigned counsel and pursuant to Sections 364.01, 364.03 and 364.05, Florida Statutes, and Rule 25-22.036(5), Florida Administrative Code, hereby file this Complaint against BellSouth Telecommunications, Inc. ("BellSouth") for breach of the terms of the Interconnection Agreement by and between BellSouth and TCG (the "Agreement") approved by the Commission on October 29, 1996 pursuant to Order No. PSC-96-1313-FOF-TP. BellSouth has breached the Agreement since August 12, 1997 by failing to pay TCG reciprocal compensation for the transport and termination of telephone exchange service local traffic that BellSouth sends to TCG for termination with telephone exchange service end-users that are Internet Service Providers ("ISPs"). TCG requests that the Commission: (1) determine that BellSouth has breached the Agreement by failing to pay TCG reciprocal compensation for the transport and termination of telephone exchange service local traffic originated by BellSouth's end-user customers and sent to TCG for termination with ISPs that are TCG's end-user customers; (2) enforce the Interconnection Agreement by ordering BellSouth to pay TCG for terminating such local traffic

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under the reciprocal compensation provisions of the Agreement dating back to August 12, 1997; (3) make a specific finding that BellSouth's unilateral action in withholding this reciprocal compensation is an anticompetitive and unlawful abuse of BellSouth's monopoly power; and (4) grant such other relief as the Commission deems appropriate.

I. JURISDICTION

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

Teleport Communications Group Inc.	TCG South Florida
2 Lafayette Centre	1 East Broward Boulevard
1133 Twenty-First Street, N.W.	Suite 910
Suite 400	Fort Lauderdale, FL 33301
Washington, DC 20036	(954) 453-4200 (telephone)
(202) 739-0030 (telephone)	(954) 453-4444 (telecopier)
(202) 739-0044 (telecopier)	

2. All notices, orders, pleadings, discovery and correspondence regarding this Complaint should be provided to the following on behalf of TCG:

Kenneth A. Hoffman, Esq.	Michael McRae, Esq.
John R. Ellis, Esq.	Paul Kouroupas
Rutledge, Ecenia, Underwood,	Teleport Communications Group Inc.
Purnell & Hoffman, P.A.	2 Lafayette Centre
P. O. Box 551	1133 Twenty-First Street, N.W.
Tallahassee, FL 32301	Suite 400
(850) 681-6788 (telephone)	Washington, DC 20036
(850) 681-6515 (telecopier)	(202) 739-0032 (telephone)
	(202) 739-0044 (telecopier)

3. The complete name and principal place of business of the respondent to this Complaint is:

BellSouth Telecommunications, Inc.
150 West Flagler Street
Suite 1910
Miami, Florida 33130

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

5. Pursuant to Section 252 of the Telecommunications Act of 1996 (the "Act"), TCG and BellSouth negotiated the Agreement and filed same with this Commission on July 26, 1996. Under Section III.A of the Agreement, the Agreement has a three year term beginning July 15, 1996. Under Section III.B of the Agreement, negotiations toward a new interconnection agreement are to begin no later than December 1, 1998. In accordance with Section 252(e) of the Act, the Commission approved the Agreement on October 29, 1996.¹¹ BellSouth has failed to comply with specific provisions in the Agreement as specifically outlined in this Complaint.

6. The Commission has jurisdiction to enforce the terms of the Agreement that BellSouth has breached as alleged herein. The United States Court of Appeals for the Eighth Circuit recently confirmed that pursuant to Section 252 of the Act, state commissions, like this one, "are vested with the power to enforce the terms of the agreements they approve."¹² The Commission also has jurisdiction to consider this Complaint pursuant to Sections 364.01, 364.03 and 364.05, Florida Statutes, Rule 25-22.036(5), Florida Administrative Code, and Order No. PSC-96-1313-FOF-TP. Moreover, Section XXV of the Agreement requires the parties to petition this Commission for a resolution of any disputes that arise as to the interpretation of the Agreement.

¹¹ *In Re: Request for Approval of interconnection agreement between BellSouth Telecommunications, Inc. and Teleport Communications Group, pursuant to Sections 251, 252, and 271 of the Telecommunications Act of 1996, Final Order Approving Negotiated Interconnection Agreement, Docket No. 960862-TP, issued October 29, 1996; see 96 F.P.S.C. 10:370 (1996).*

¹² *Iowa Utilities Board v. FCC*, 120 F.3d 753 (8th Cir. 1997).

II. STATEMENT OF FACTS GIVING RISE TO CONTROVERSY

7. TCG and BellSouth provide local exchange services over their respective networks to end-user customers pursuant to the terms of the Agreement. Some of TCG's (and BellSouth's) end-user customers are business customers operating as ISPs. Typically, end-users connect to an ISP through a toll free seven-digit telephone call using local exchange service. TCG has administered reciprocal compensation arrangements since December 1995, with BellSouth. Moreover, to the best of TCG's knowledge and belief BellSouth included ISP traffic in reciprocal compensation bills submitted to TCG, and TCG paid those bills without objection.

8. On or about August 12, 1997, TCG received a letter from Ernest L. Bush of BellSouth informing TCG that BellSouth would no longer pay reciprocal compensation on local exchange traffic to and from ISPs. In accordance with the letter from Mr. Bush, BellSouth now refuses to pay reciprocal compensation for these BellSouth end-user calls terminated by TCG as required by the Agreement. A copy of Mr. Bush's letter is attached hereto as Exhibit "A".

9. BellSouth's refusal to provide reciprocal compensation for local ISP traffic originated by its end-users that terminates on TCG's network is inconsistent with BellSouth's prior payment of reciprocal compensation under the Agreement and constitutes a material and willful breach of the terms of the Agreement. BellSouth's action also violates Section 251(b)(5) of the Act which sets forth the obligation of all local exchange companies ("LEC") to provide reciprocal compensation. Moreover, BellSouth's action is inconsistent with a number of FCC and state regulatory decisions which have directly addressed this issue.

III. THE EXPRESS TERMS OF THE AGREEMENT SUPPORT THE CONCLUSION THAT CALLS TO ISPS ARE "LOCAL TRAFFIC" SUBJECT TO RECIPROCAL COMPENSATION UNDER SECTION IV OF THE AGREEMENT

10. TCG submits that pursuant to the terms of the Commission-approved Agreement, traffic from BellSouth's end-user customers to TCG's end-user customers that are ISPs is "Local Traffic" subject to reciprocal compensation arrangements. Section 1.D of the Agreement defines "Local Traffic" as:

any telephone call that originates and terminates in the same LATA and is **billed by the originating party as a local call**, including any call terminating in an exchange outside of BellSouth's service area with respect to which BellSouth has a local interconnection arrangement with an independent LEC, with which TCG is not directly interconnected. (emphasis added).

The traffic at issue originates and terminates in the same LATA. BellSouth bills its originating end-user customers local business rates when BellSouth's customer dials an ISP, whether the ISP is served by BellSouth, TCG or another provider. Therefore, TCG submits that calls to ISPs fit well within the definition of "Local Traffic" under the Agreement.

11. It is equally clear that as Local Traffic, calls to ISPs are subject to reciprocal compensation arrangements under the Agreement. Sections IV.B and IV.C of the Agreement require BellSouth and TCG to pay reciprocal compensation to each other for all local telephone exchange traffic that originates on one company's network and terminates on the other's network in accordance with the rates set forth in Attachment B-1 of the Agreement. The Reciprocal Compensation provision in Section IV.C of the Agreement states, in pertinent part:

Each party will pay the other for terminating its local traffic on the other's network the local interconnection rates as set forth in Attachment B-1, incorporated herein by this reference.

Section IV.B of the Agreement states:

The delivery of local traffic between the parties shall be reciprocal and compensation will be mutual according to the provisions of this Agreement.

The ISP traffic at issue is originated by a BellSouth end-user, delivered to TCG, and terminated on TCG's network. Pursuant to the Agreement, calls from BellSouth's end-user customers to TCG's end-user customers that are ISPs are subject to reciprocal compensation.

12. Nothing in the Agreement or applicable law or regulations creates a distinction pertaining to calls placed to telephone exchange service end-users which happen to be ISPs. All calls that terminate within the same LATA, regardless of the identity of the end-user, are local calls under Section 1.D of the Agreement, and reciprocal compensation is due for such calls. This includes telephone exchange service calls placed by BellSouth's customers to TCG's ISP customers.

13. BellSouth and TCG crafted a contractual definition of Local Traffic which delineated expressly what is and what is not "Local Traffic" in order to eliminate uncertainty over what type of traffic might be encompassed by the definition. If BellSouth had intended **at the time of the Agreement** to exclude what was universally viewed as local traffic calls terminated to ISP customers of TCG, it could have, and should have, sought to modify the contractual definitions. BellSouth did not.

14. Significantly, the Agreement utilizes accounting or tracking factors for percentage local usage^{3/} and percentage interstate usage^{4/} traffic, where it is necessary to differentiate and account for these differently rated traffic types. No similar accounting or tracking provision was

^{3/} Section I.G of the Agreement (Percentage of Local Usage factor).

^{4/} Section I.F of the Agreement (Percentage of Interstate Usage factor).

placed in the Agreement for a "Percentage Internet Usage" factor for traffic terminated to an ISP. If BST truly intended to treat ISP traffic as non-local, it undoubtedly would have insisted on such a factor. BellSouth does not reconcile its alleged earlier intention with the absence of a "Percentage Internet Usage" factor necessary to carry out such a treatment of ISP traffic. As an ISP itself and a sophisticated global telecommunications corporation, BellSouth knows the indistinguishable nature of ISP traffic compared to other Local Traffic. The only explanation for the absence of such an essential factor is that **neither** of the parties expected or intended to treat ISP traffic any differently from other Local Traffic.

15. It is telling that BellSouth's new interpretation of the Agreement is inconsistent with its own practices. BellSouth charges its own ISP customers local business line rates for local telephone exchange service that enables 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 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 TCG. BellSouth also treats the revenues associated with local exchange traffic to its ISP customers as local for purposes of interstate separations and ARMIS reports.

16. Like any contract, the BellSouth/TCG Agreement was a product of negotiations. Concessions by each party were necessary to reach the Agreement. If BellSouth is now unhappy with the negotiated contractual definition of Local Traffic in the Agreement, it has the opportunity to address this issue in future negotiations with TCG which must begin no later than December 1, 1998.

IV. INDUSTRY STANDARDS AND PRACTICES SUPPORT TCG'S POSITION

1. The Communications Industry's Definition of the Term "Terminate" Supports TCG's Position

17. TCG maintains that calls originated by BellSouth end users to an ISP that are terminated by TCG on TCG's network, within the same LATA, clearly fall within the contractual definition of "Local Traffic" under Section I.D of the Agreement. However, to the extent the Commission believes there to be any ambiguity raised by the use of the word "terminates" in said definition, TCG submits that the definition of "service termination point" found in the Communications Standard Dictionary supports TCG's position.

18. Under Florida law, technical words in a contract are to be interpreted consistent with the understanding and practices in the industry to which they relate. Fla.Jur.2d., Contracts, §§ 159-160. A standard definition of "service termination point" is:

1. Proceeding from a network toward a user terminal, the last point of service rendered by a commercial **carrier** under applicable **tariffs**. Note 1: The service termination point usually is on the customer premises. Note 2: The customer is responsible for equipment and operation from the service termination point to end user instruments. 2. In a switched communications system, the point at which **common carrier service** ends and user-provided service begins, i.e., the interface point between the communications systems equipment and the user terminal equipment, under applicable tariffs.^{5/}

This is a telecommunications industry definition of "termination." The definition contemplates a last point of tariffed service provided by a "commercial carrier." The last point of tariffed service is provided by a *commercial carrier* (like TCG) to an ISP. An ISP is not a "carrier," nor does an ISP

^{5/} Martin H. Weik, *Communications Standard Dictionary* (3d. ed. 1996), at 893 (emphasis added).

provide a tariffed service. The common carrier service ends and user-provided service begins when the call is delivered to the ISP and the ISP answers the call.

19. This communications industry definition is consistent with TCG's and the industry's understanding that the local telephone call to the ISP is distinguishable from the subsequent connection from the ISP into and through the Internet. This first segment represents the basic service leg of the Internet connection. Enhanced services are provided on the second segment. The local call -- the first connection, which is the basic service call at issue here -- is terminated at the ISP end-user premises. Both the origination and termination occur within the local calling area. In other words, the local call is completed when the ISP modem bearing the number called by the originating party "answers" the call. This local call completion is distinguishable from a long distance call, which is never *answered* at the interexchange carrier's point of presence, but only when it is forwarded through another LEC end office and the called party "answers" the call.

2. Industry Practice

20. In addition to the industry understanding, the Commission can look to industry practice. As a general principle of law, common industry usage is incorporated into the parties' understanding of the technical terms in their contracts. Fla. Jur.2d, Contracts, §160. When the Agreement was negotiated, the phenomenon of Internet traffic was well known to the parties. Common industry practice was to treat those calls as local calls.

21. For example, it is significant to note that Incumbent Local Exchange Companies ("ILECs") like BellSouth have handled ISP traffic for many years -- after all, the first FCC orders relating to the fact that ISP traffic is to be treated as local are nearly fifteen years old. During that period undoubtedly many of those ISP calls involved the use of multiple ILEC networks. For

example, when a BellSouth customer called an ISP served by another ILEC in the same local calling area, this would have presented the same "reciprocal compensation" issue raised by BellSouth in connection with traffic to TCG's end-users. TCG believes, however, that ILECs have, for many years, treated such ILEC to ILEC ISP calls as Local Traffic subject to the same reciprocal compensation type arrangements as would be applied to any other Local Traffic. If BellSouth has not had in place a long-standing and systematic practice of treating these ILEC to ILEC ISP calls as other than Local Traffic, this would provide further evidence that common industry practice has been to treat these calls as Local Traffic. It was only when BellSouth faced the prospect of paying reciprocal compensation to a direct competitor rather than a "fellow ILEC" in an adjacent service territory that it decided to unilaterally adopt a different treatment of ISP traffic. In this case, BellSouth raised no objection to the treatment of ISP traffic as local traffic subject to reciprocal compensation under the Agreement until August 12, 1997, some 13 months after the Agreement had been in effect.

22. TCG submits that industry practice -- but for the recent and self-serving change of position by BellSouth and other ILECs -- supports the interpretation that calls to ISPs are Local Traffic subject to reciprocal compensation terms. Perhaps the most persuasive argument to support this point is that in all the proceedings throughout the country on this issue, the majority of the interested non-ILEC parties generally share a common general view that calls to ISPs are eligible for reciprocal compensation. And the ILECs' 180 degree change in position resulted only after they came to realize that it was in their financial interest -- and to their competitors' financial detriment -- to make this unilateral change.

V. 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

23. This Commission, the FCC and other state commissions have consistently determined that the traffic at issue is local in nature.

A. Florida

24. 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 things, that end-user access to an ISP is 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 ISP traffic 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."^{6/} The Order also 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."^{7/}

^{6/} Order No. 21815, at 24 (emphasis added); 89 F.P.S.C. 9:30.

^{7/} Order 21815, at 25; 89 F.P.S.C. 9:31.

B. The FCC

25. This Commission's determination in Docket No. 880423-TP is consistent with decisions of the FCC. Under current FCC rules, traffic to an ISP is 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.^{8/} The mere fact that an ISP may enable a caller to access the Internet does not alter the legal status of a local connection between the customer and the ISP. 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.

26. The FCC's recent Report and Order on Universal Service and First Report and Order on Access Charge Reform affirm this fact.^{9/} In the *Universal Service Order*, the FCC determined that Internet access consists of severable components: the connection to the ISP via voice grade access to the public switched network and the information service subsequently provided by the ISP.^{10/} In other words, the first component is a simple local exchange telephone call. Such a call is eligible for reciprocal compensation under the Agreement.

^{8/} *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) ("Access Charge Reform Order"), ¶¶344-348.

^{9/} *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*").

^{10/} *Universal Service Order*, paras. 83, 788-789.

27. In the *Access Charge Reform Order*, the FCC declined to allow LECs to assess interstate access charges on ISPs.^{11/} 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.”^{12/}

28. In the FCC’s *Non-Accounting Safeguards Order*, the Commission determined that the local call placed to an ISP was separate from the subsequent information service provided.^{13/} The severability of these components was key to the FCC’s conclusion that if each was provided, purchased, or priced separately, the combined transmissions did not constitute a single interLATA transmission.^{14/} There can be no doubt that at this time the FCC does not consider the local exchange call to an ISP to be an interstate or international communication - - to the contrary, the FCC views such a call to be an intrastate call for jurisdictional purposes.

^{11/} *Access Charge Reform Order*, paras. 344-348.

^{12/} *Id.*, at n. 502 (emphasis added).

^{13/} *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.

^{14/} *Id.*

29. Although the FCC currently is examining the issue of the use of the public switched network by ISPs, it has not altered the existing rules.^{15/} Moreover, any alteration at this time by the FCC would not affect the terms of TCG's Interconnection Agreement with BellSouth.^{16/}

C. Other State Commissions

30. Several state commissions which have addressed this issue have reached the conclusion that calls from an end-user to an ISP are local traffic subject to reciprocal compensation.

31. The Virginia State Corporation Commission, in response to a petition filed by Cox Virginia Telecom, Inc., determined that calls to ISPs are local and that the presence of an Alternative Local Exchange Carrier ("ALEC") does not change the local nature of the call.^{17/} When New York Telephone ("NYT") unilaterally withheld payment of reciprocal compensation for local exchange

^{15/} *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).

^{16/} In the ALTS proceeding, the Association for Local Telecommunication Services ("ALTS") advocates treating ISP traffic as interstate. However, even if the FCC were to find in the ALTS Proceeding that ISP traffic should be treated as interstate, that decision would have no bearing on this Complaint. This Commission previously has held that it will not modify a negotiated, Commission-approved interconnection agreement based on a post-agreement change in law which potentially impacts a provision in the agreement. In Re: Request for approval of interconnection agreement between Metropolitan Fiber Systems of Florida, Inc. and United Telephone Company of Florida, pursuant to the Federal Telecommunications Act of 1996, 97 F.P.S.C. 2:721 (Order No. PSC-97-0240-FOF-TP issued February 28, 1997). Thus, even if the FCC were to respond to the ALTS petition by determining that calls directed to ISPs are not local traffic, such a ruling would have no bearing on the fact that BellSouth and TCG negotiated a definition of Local Traffic in this Agreement which includes such calls.

^{17/} *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). Bell Atlantic has appealed this decision to the Virginia Supreme Court.

traffic delivered to ISPs, the New York Public Service Commission ordered NYT to continue to pay reciprocal compensation for such traffic.^{18/} Following the filing of a similar complaint the Maryland Public Service Commission ruled that local exchange traffic to an ISP is local in nature and eligible for reciprocal compensation and ordered Bell Atlantic-Maryland, Inc. to pay reciprocal compensation previously withheld.^{19/} 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.^{20/} 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

^{18/} *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.

^{19/} Letter dated September 11, 1997 from Daniel P. Gahagan, Executive Secretary, Maryland Public Service Commission, to David K. Hall, Esq., Bell Atlantic-Maryland, Inc. On October 1, 1997, the Commission confirmed that decision rejecting a BA-MD Petition for Reconsideration. Bell Atlantic has appealed this decision to the Circuit Court of Montgomery County, Maryland.

^{20/} *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).*

Agreements) the states of Arizona,^{21/} Colorado,^{22/} Minnesota,^{23/} Oregon,^{24/} and Washington^{25/} all declined to treat traffic to ISPs any differently than other local traffic.

32. TCG submits that the persuasive authority of the above-referenced state commissions is consistent with this Commission's historic treatment of services provided to ISPs. The consistency in these holdings supports the conclusion that the term Local Traffic, as used in the Agreement and as understood by those practicing within the industry and by those regulatory bodies

^{21/} *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.

^{22/} *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).

^{23/} *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.

^{24/} *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.

^{25/} *In the Matter of 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.

overseeing the industry at the time the Agreement was entered into, includes calls from end-users to ISPs.

VI. BELLSOUTH'S POSITION IS ANTICOMPETITIVE AND IS INCONSISTENT WITH ITS RECENT APPLICATION TO PROVIDE INTERLATA SERVICES IN FLORIDA

33. The totally untenable nature of BellSouth's change of position is underscored by the fact that if such traffic were deemed interstate rather than local, BellSouth's provision of interLATA service to a BellSouth customer connected with BellSouth's own ISP would be a violation of Section 271 of the Act, which presently prevents BellSouth from providing interLATA service in Florida.^{26/} Undoubtedly, BellSouth does not intend for this result to occur.

34. BellSouth's position also demonstrates anticompetitive behavior. 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 TCG and other new entrants to terminate these calls without compensation. The inevitable result would be that no ALEC would seek 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 not intended by Section 271 and other provisions of the Act.

35. Recent filings by ISPs in the ALTS Proceeding underscore the anticompetitive impact of BellSouth's action on ALECs that serve ISPs. Simply stated, ISPs believe that they will be unable

^{26/} *In re: Consideration of BellSouth Telecommunications, Inc.'s entry into interLATA services pursuant to Section 271 of the Federal Telecommunications Act of 1996, Order No. PSC-97-1459-FOF-TL issued November 19, 1997 in Docket No. 960786-TL.*

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.

36. 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.

37. 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 findings which are applicable to this Complaint. One such finding is that in order for a Bell Operating Company's ("BOC") application under Section 271 to be granted, "... there must be just and reasonable reciprocal compensation for the transport and termination of calls between an incumbent and a new entrant's network."^{27/} The change in position taken by BellSouth with regard to ISP traffic under the Agreement is neither just nor reasonable, and would support a decision to preclude BellSouth from obtaining Section 271 authority.

38. Further, in its "public interest" review of Ameritech's Section 271 application, the FCC stated that in such cases it will consider whether the BOC has engaged in discriminatory or other anticompetitive conduct or has failed to comply with state and federal telecommunications regulations.^{28/} A BOC's good faith compliance with its obligations under the Act is essential to the

^{27/} *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).

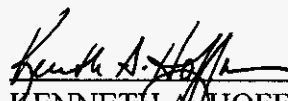
^{28/} *Id.* at ¶ 397.

development of local competition, and 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.

VII. REQUEST FOR RELIEF

WHEREFORE, TCG requests that the Commission: (1) determine that BellSouth has breached the Agreement by failing to pay TCG reciprocal compensation for the transport and termination of telephone exchange service local traffic originated by BellSouth's end-user customers and sent to TCG for termination with ISPs that were TCG's end-user customers; (2) enforce the Interconnection Agreement by ordering BellSouth to pay TCG for terminating such local traffic under the reciprocal compensation provisions of the Agreement dating back to August 12, 1997; (3) make a specific finding that BellSouth's unilateral action in withholding this reciprocal compensation is an anticompetitive and unlawful abuse of BellSouth's monopoly power; and (4) grant such other relief as the Commission deems appropriate.

Respectfully submitted,



KENNETH A. HOFFMAN, ESQ.

JOHN R. ELLIS, ESQ.

Rutledge, Ecenia, Underwood, Purnell &
Hoffman, P.A.

P. O. Box 551

Tallahassee, FL 32302

(850) 681-6788 (telephone)

(850) 681-6515 (telecopier)

and

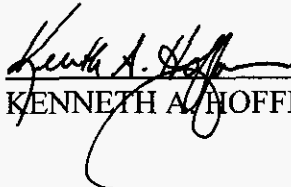
MICHAEL MCRAE, ESQ.
MR. PAUL KOUROUPAS
Teleport Communications Group Inc.
2 Lafayette Centre
1133 Twenty-First Street, N.W.
Suite 400
Washington, DC 20036
(202) 739-0032 (telephone)
(202) 739-0044 (telecopier)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the Complaint of Teleport Communications Group Inc./TCG South Florida against BellSouth Telecommunications, Inc. was furnished by U. S. Mail this 4th day of February, 1998 to the following:

Robert G. Beatty, Esq.
Nancy B. White, Esq.
c/o Nancy H. Sims
150 South Monroe Street
Suite 400
Tallahassee, FL 32301

Martha C. Brown, Esq.
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Room 370
Tallahassee, FL 32399-0850


KENNETH A. HOFFMAN, ESQ.

ISP.2

Ex #17



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 Ethelyn Pugh at 205-977-1124.

Sincerely,