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FEBRUARY 26, 1998

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FPSC - Records/Reporting

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF COMMUNICATIONS (MARSH) *aw*
DIVISION OF LEGAL SERVICES (PELLEGRINI) *MB*

RE: DOCKET NO. 971478-TP - COMPLAINT OF WORLDCOM
TECHNOLOGIES, INC. AGAINST BELL SOUTH TELECOMMUNICATIONS,
INC. FOR BREACH OF TERMS OF FLORIDA PARTIAL
INTERCONNECTION AGREEMENT UNDER SECTIONS 251 AND 252 OF
THE TELECOMMUNICATIONS ACT OF 1996 AND REQUEST FOR RELIEF

AGENDA: 03/10/98 - REGULAR AGENDA - PROPOSED AGENCY ACTION -
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE.

SPECIAL INSTRUCTIONS: !/PSC/CMU/WP/971478TP.RCM

CASE BACKGROUND

MFS Communications Company, Inc., (MFS) and BellSouth Telecommunications, Inc., (BellSouth) entered into a Partial Florida Interconnection Agreement (Agreement) on August 26, 1996. The Commission approved the Agreement in Order No. 96-1508-FOF-TP, issued December 12, 1996, in Docket No. 961053-TP. The Commission approved an amendment to the Agreement in Order No. PSC-97-0772-FOF-TP, issued July 1, 1997, in Docket No. 970315-TP.

On November 12, 1997, WorldCom Technologies, Inc., (WorldCom) filed a Complaint Against BellSouth Telecommunications, Inc., and Request for Relief, alleging that BellSouth has failed to pay reciprocal compensation for certain telephone exchange service local traffic that is transported and terminated by WorldCom's affiliate, MFS. (Attachment A) Specifically, the traffic for which BellSouth refuses to pay is the traffic terminated with Internet Service Providers (ISPs).

On December 22, 1997, BellSouth filed its Answer and Response. (Attachment B) It asserted that it is not required by the terms of

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its interconnection agreement with MFS to pay reciprocal compensation because the traffic in question is interstate in nature, not local.

WorldCom asks that the Commission require BellSouth to cease and desist from taking threatened actions; rule that all telephone calls placed within the same calling area from a BellSouth provided telephone exchange service end user to an MFS provided telephone exchange service end user qualify as local traffic within the meaning of Section 1.40 of the Agreement; require 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 other appropriate relief.

In the event of a dispute arising under the Agreement, Section 33.0 of the Agreement requires that the parties' vice presidents for regulatory affairs, or equivalent officers, confer to seek a resolution before taking any action before a court or this Commission. In its complaint, WorldCom sets out in detail the events that preceded the complaint. The complaint includes copies of correspondence between Ernest L. Bush, BellSouth's Assistant Vice President, Regulatory Policy and Planning, and Alex J. Harris, MFS's Vice President, Regulatory Affairs, which are testimony to the impasse at which the parties have arrived.

On December 4, 1997, Intermedia Communications, Inc., (Intermedia) filed a petition for leave to intervene in this proceeding. No one filed a response to Intermedia's petition.

This recommendation addresses Intermedia's petition and the issues raised in WorldCom's complaint.

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DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant the petition of Intermedia for leave to intervene in this proceeding?

RECOMMENDATION: No. The complaint to be resolved by the Commission in this proceeding is one that arises from a dispute concerning the interpretation of a provision of the MFS-BellSouth interconnection agreement, an agreement that the Commission approved pursuant to the Telecommunications Act of 1996. Intermedia is not a party to that agreement and therefore should not be permitted to intervene. (PELLEGRINI)

STAFF ANALYSIS: As noted in the Case Background, on December 4, 1997, Intermedia filed a petition for leave to intervene in this proceeding. Intermedia observes that WorldCom's complaint in this proceeding alleges that BellSouth is in breach of its interconnection agreement with MFS with its refusal to recognize local calls to ISPs as local traffic for purposes of mutual compensation for termination of local calls. Intermedia states that, while it continues to negotiate a resolution to this same problem with BellSouth, it is in much the same position as WorldCom and therefore entitled to intervene in this proceeding. It asserts that the Commission's decision in this proceeding will be one of first impression and will have a direct effect on its substantial interests. Finally, Intermedia states that its experience with this issue will facilitate a fuller development of the record if it is permitted to participate.

Staff believes that Intermedia's participation in this contract dispute proceeding is inconsistent with the intent of the Telecommunications Act of 1996 (the Act). Section 252(b)(4)(A) of the Act provides that:

The State commission shall limit its consideration of any petition under paragraph (1) (and any response thereto) to the issues set forth in the petition and in the response, if any, filed under paragraph (3).

The arbitration proceedings are limited to the issues raised by the immediate parties to the particular negotiations. The outcome of arbitration proceedings is an agreement between those parties that is binding only on them. The Act does not contemplate participation by other entities who are not parties to the negotiations and who will not be parties to the ultimate interconnection agreement that results. Entities not party to the negotiations are not proper parties in arbitration proceedings,

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even though they may, in some indirect way, be affected by a particular decision. As a matter of logic, this is equally true in the context of contract dispute proceedings, such as the present one. This conclusion is consistent with the conclusion reached by the Prehearing Officer at page 2 in Order No. PSC-96-0933-PCO-TP, which established procedure in Docket No. 960833-TP¹:

Upon review of the Act, I find that intervention with full party status is not appropriate for purposes of the Commission conducting arbitration in this docket. Section 252 contemplates that only the party requesting interconnection and the incumbent local exchange company shall be parties to the arbitration proceeding. For example, Section 252(b)(1) of the Act states that the "carrier or any other party to the negotiation" may request arbitration. (emphasis added) Similarly Section 252(b)(3) says "a non-petitioning party to a negotiation may respond to the other party's petition" within 25 days. (emphasis added) Section 252(b)(4) requires this Commission to limit its consideration to the issues raised by the petition and the response. None of these statutory provisions provides for intervenor participation.

This proceeding is one in which WorldCom petitions the Commission to resolve its dispute with BellSouth concerning the interpretation of a compensation provision in the parties' interconnection agreement. The presence, therefore, of Intermedia or anyone else who would petition to intervene in this proceeding, is at odds with the Act. The only proper parties are WorldCom and BellSouth.

Staff notes that the Commission announced at a very early point in the arbitration proceedings that came before it that it would limit participation in these kinds of proceedings to the requesting carrier and the incumbent local exchange company. It has recently affirmed this position in denying reconsideration of Order No. PSC-98-0008-PCO-TP, in which the Prehearing Officer

¹Docket No. 960833-TP is the request for arbitration filed by AT&T of the Southern States, Inc., against BellSouth.

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denied the petitions of several carriers to intervene in consolidated Docket Nos. 960833-TP, 960846-TP and 960757-TP.²

Staff acknowledges Intermedia's argument that the Commission's resolution of the present dispute between WorldCom and BellSouth may have an effect on Intermedia. Staff believes, however, that in the new competitive paradigm, that argument cannot be joined to sustain intervention in arbitration and contract dispute proceedings. It is hardly surprising that business relationships and commercial terms to which certain market players agree influence, sometimes strongly, the nature of subsequent relationships and terms sought by others. This is not justification to return to the old regulatory routine where all interested persons could participate in matters involving regulated utility providers. This is a contract dispute between the parties to the specific contract. Under the Telecommunications Act of 1996, the rules are different.

²See Commission decisions on Items 20A, 20B and 20C at its January 20, 1998, agenda conference, concerning American Communications Services, Inc., and American Communications Services of Jacksonville, Inc., Sprint Communications, L.P., and Time Warner AxS of Florida, L.P., respectively. See also further Commission decision January 26, 1998, at hearing in Docket Nos. 960833-TP, 960846-TP and 960757-TP, concerning Time Warner AxS of Florida, L.P.

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ISSUE 2: Does the MFS and BellSouth Florida Partial Interconnection Agreement require BellSouth to pay WorldCom reciprocal compensation for the transport and termination of telephone exchange service local traffic that is handed off by BellSouth to WorldCom for termination with telephone exchange service end users that are Internet Service Providers or Enhanced Service Providers?

RECOMMENDATION: Yes. BellSouth should be required to pay WorldCom reciprocal compensation for the transport and termination of telephone exchange service local traffic that is handed off by BellSouth to WorldCom for termination with telephone exchange service end users that are Internet Service Providers or Enhanced Service Providers under the terms of the MFS and BellSouth Florida Partial Interconnection Agreement. Traffic that is terminated on a local dialed basis to Internet Service Providers or Enhanced Service Providers should not be treated differently from other local dialed traffic. (MARSH, PELLEGRINI)

STAFF ANALYSIS:

AGREEMENT AND ARGUMENT

Section 5.8 of the Agreement requires BellSouth and MFS to pay reciprocal compensation to each other for all local traffic that originates on one company's network and terminates on the other's network. Section 5.8.1 provides that:

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's network for termination on the other Party's network.

Section 5.8.2 provides further that:

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.

Exhibit 7.0 provides that the reciprocal local call termination rate shall be \$0.009 per minute of use.

In Section 1.40 of the Agreement, local traffic is defined as:

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[C]alls 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 [such as EAS]. 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.

WorldCom states that both MFS and BellSouth provide tariffed local exchange services over their respective networks to end user customers, including some business customers operating as ISPs. 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.

On August 12, 1997, BellSouth notified MFS that the reciprocal compensation requirement of the Act does not apply to traffic terminated to an ISP. BellSouth stated that it would not make payment for calls terminated to ISPs. The companies exchanged several more letters and telephone calls before determining that they were at an impasse.

Section 251(a)(5) of the Act states that each telecommunications carrier has "[t]he duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications." The question then to be answered is whether traffic terminated to an ISP is local or toll. In support of its position, WorldCom points out that BellSouth charges its own ISP customers local business line rates for local telephone exchange service that enables the ISP's customers within the local calling area to connect with the ISP by means of a local call. Such calls are rated and billed as local, not toll.

WorldCom points out that, in Order No. 21815, in Docket No. 880423-TP, issued September 5, 1989, the Commission found that end user access to information service providers, which include Internet service providers, is by local service. In that proceeding, BellSouth's witness testified that:

[C]onnections to the local exchange network for the purpose of providing an information

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service should be treated like any other local exchange service. Order, p.25.

The essence of BellSouth's response to the complaint is that:

[C]alls to the Internet through ISPs that originate on BellSouth's network do not "terminate" on WorldCom's network, as would be required for reciprocal compensation under BellSouth's interconnection agreement with WorldCom. Such calls traverse WorldCom's facilities to the ISP and the Internet and communicate with multiple destinations, often simultaneously, that may cross state and national boundaries; thus ISP traffic cannot be considered "local" as a legal matter. ¶25.

BellSouth argues that such traffic is instead interstate, the FCC's continued exemption from payment of switched access charges notwithstanding. BellSouth also points out that the exemption from payment of access charges does not in and of itself make such traffic local.

Staff believes that the first issue to be resolved is whether, under Section 1.40 of the Agreement, ISP traffic should be considered local. If so, a priori, reciprocal compensation for termination is required under Section 5.8.

Staff agrees with BellSouth that the federal exemption from payment of switched access charges does not automatically make ISP traffic local. Nevertheless, it appears that the FCC made a deliberate choice to treat ISP traffic as though local. In its complaint, WorldCom has called the Commission's attention to the decisions of the FCC on the question of the nature of ISP traffic. In In the Matter of Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, 3 FCC Rcd 2631, CC Docket No. 87-215, rel. April 27, 1988, the FCC acknowledged its first ruling on this issue, stating, at ¶2, that:

In 1983 we adopted a comprehensive "access charge" plan for the recovery by local exchange carriers (LECs) of the costs associated with the origination and termination of interstate calls At the time we adopted the original access charge plan, however, we concluded that the immediate application of that plan to certain providers of interstate services might unduly

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burden their operations and cause disruptions in providing service to the public. Therefore, we granted temporary exemptions from payment of access charges to certain classes of exchange access users, including enhanced service providers.⁸

* * *

⁸ Under our present rules, enhanced service providers are treated as end users for purposes of applying access charges. (citations omitted) Therefore, enhanced service providers generally pay local business rates and interstate subscriber line charges for their switched access connections to local exchange company central offices

In the Matter of Access Charge Reform, First Report and Order, CC Docket No. 92-262, rel. May 17, 1997, in Part IV.B, Treatment of Interstate Information Services, the FCC again affirmed its original ruling, noting that ISPs may purchase services from incumbent LECs under the same intrastate tariffs available to end users and that they 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. It stated further that:

We conclude that the existing pricing structure for ISPs should remain in place, and incumbent LECs will not be permitted to assess interstate per-minute access charges on ISPs ... Maintaining the existing pricing structure for these services avoids disrupting the still-evolving information services industry and advances the goals of the 1996 Act to "preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation. ¶344.

We decide here that ISPs should not be subject to interstate access charges. Moreover, given the evolution in ISP technologies and markets since we first established access charges in the early 1980s, it is not clear that ISPs use

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the public switched network in a manner analogous to IXCs. ¶345.

The access charge system was designed for basic voice telephony provided over a circuit-switched network, and even when stripped of its current inefficiencies it may not be the most appropriate pricing structure for Internet access and other information services. ¶347.

In In the Matter of Federal-State Joint Board on Universal Service, Report and Order, FCC 97-157, CC Docket No. 96-45, rel. May 8, 1997, the FCC, addressed the issue once more. While agreeing with the Joint Board that information service providers and enhanced service providers are not required to contribute to support mechanisms, ¶789, it acknowledged that many difficult questions arise in classifying information services, ¶790. It observed, however, that:

ISPs alter the format of information through computer processing applications such as protocol conversion and interaction with stored data, while the statutory definition of telecommunications only includes transmissions that do not alter the form of the content of the information sent. (footnote omitted) When a subscriber obtains a connection to an Internet service provider via voice grade access to the public switched network, that connection is a telecommunications service and is distinguishable from the Internet service provider's offering ¶789.³

³In its complaint, WorldCom also called the Commission's attention to the decisions of several other state commissions that have ruled that traffic terminated to an ISP is local traffic for purposes of reciprocal compensation. These decisions, as well as subsequent ones where state commissions have ruled in the same way, are as follows:

Arizona, Opinion and Order, issued October 29, 1996, Docket Nos. U-2752-96-362 and E-1051-96-362;
Colorado, Decision No. C97-739, Commission Order, adopted July 16, 1997, Docket No. 96A-331T;
Connecticut, Decision on Petition of the Southern New England Telephone Company for a Declaratory Ruling Concerning Internet Services Provider Traffic, issued September 17, 1997, Docket No. 97-05-22;
Delaware, Arbitration Award, issued December 16, 1997, Docket No. 97-323;
Maryland, Letter to Bell Atlantic-Maryland, Inc., dated September 11,

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Staff believes a finding on the part of the Commission that ISP traffic should be treated as local for purposes of the subject interconnection agreement would be consistent with the FCC's treatment of ISP traffic, all jurisdictional issues aside.

Staff also notes that the treatment of ISP traffic was an issue long before the Agreement was executed. The Commission found, in Order No. 21815, as discussed above, that such traffic should be treated as local in nature. Both MFS and BellSouth can be presumed to have been aware of this decision, and to have considered it when entering into the Agreement.

CONTRACT CONSTRUCTION

Staff futhermore believes that contract construction principles require the result urged by WorldCom. In James v. Gulf Life Insur. Co., 66 So.2d 62, 63 (Fla. 1953) the Florida Supreme Court cited with favor Contracts, 12 Am.Jur. § 250, pages 791-93, as a general proposition concerning contract construction in pertinent part as follows:

Agreements must receive a reasonable interpretation, according to the intention of the parties at the time of executing them, if that intention can be ascertained from their language ... Where the language of an agreement is contradictory, obscure, or ambiguous, or where its meaning is doubtful, so that it is susceptible of two constructions, one of which makes it fair,

1997;
Michigan, Opinion and Order, issued January 28, 1998, Case No. U-11554;
Minnesota, Order Resolving Arbitration Issues, issued December 2, 1996,
Docket Nos. P-442,421/M-96-855, P-5321,421/M-96-909 and P-3167,421/M-96-
729;
New York, Order Denying Petition and Instituting Proceeding, issued July
17, 1997, Case Nos. 97-C-1275, 93-C-0033, 93-C-0103, 97-C-0895, 97-C-0918
and 97-C-0979;
Oregon, Order No. 96-324, Arbitrator's Decision, issued November 8, 1996;
Texas, February 5, 1998, decision reversing Arbitration Award, issued
January 7, 1998, Docket No. 18082;
Washington, Order Approving Negotiated and Arbitrated Interconnection
Agreement, issued January 8, 1997, Docket No. UT-960323; and
West Virginia, Commission Order, issued January 13, 1998, Case No. 97-
1210-T-PC.

Staff is unaware of any state commission decisions contra.

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customary, and such as prudent men would naturally execute, while the other makes it inequitable, unusual, or such as reasonable men would not be likely to enter into, the interpretation which makes a rational and probable agreement must be preferred ... An interpretation which is just to both parties will be preferred to one which is unjust.

In the construction of a contract, the circumstances surrounding the parties, at the time the contract was made, should be considered in ascertaining their intention. Triple E Development Co. v. Floridagold Citrus Corp., 51 So.2d 435, 438, rhq. den. (Fla. 1951). In construing a contract, what a party did or omitted to do after the contract was made may be properly considered. Vans Agnew v. Fort Myers Drainage Dist., 69 F.2d 244, 246, rhq. den., (5th Cir.). Courts may look to the subsequent action of the parties to determine the interpretation that they themselves place on the contractual language. Brown v. Financial Service Corp., Intl., 489 F.2d 144, 151 (5th Cir.) citing LaLow v. Codomo, 101 So.2d 390 (Fla. 1958).

As noted above, Section 1.40 of the Agreement defines local traffic. The definition appears to be carefully drawn. Local traffic is said to be calls between two or more service users bearing NPA-NXX designations within the local calling area of the incumbent LEC. It is explained that local traffic includes traffic traditionally referred to as "local calling" and as EAS. No mention is made of ISP traffic. Therefore, nothing in Section 1.40 sets ISP traffic apart from local traffic. It is further explained that all other traffic that originates and terminates between end users within the LATA is toll traffic.

Calls to ISPs at issue in this complaint are calls between two service users bearing NPA-NXX designations within BellSouth's local calling area. At the time of the Agreement, the applicable law with respect to whether such calls are to be treated as local or not was set forth by this Commission in Order No. 21815, supra, and by the FCC in 3 FCC Rcd 2631, CC Docket No. 87-215, supra. Thus, the operative legal framework at the time of the Agreement supports the interpretation advanced by WorldCom.

Staff believes it is reasonable, therefore, to conclude on the basis of the language of the Agreement and of the effective law that the parties intended at the time of the Agreement that calls originated by an end user of one and terminated to an ISP of the other would be rated and billed as local calls; else one would

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expect the definition of local calls in the Agreement to set out an explicit exception.

Moreover, WorldCom alleges that 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. Complaint at 7. BellSouth admits that it charges its ISP customers local business rates and that BellSouth customers as well as customers of BellSouth's ISP customers can access their ISP by making a local phone call. Answer at 5.

WorldCom further alleges that BellSouth treats the revenues associated with local exchange traffic to its ISP customers to be local for purposes of interstate separations and ARMIS reports. Complaint at 7. BellSouth admits that it treats the revenues associated with local exchange traffic to its ISP customers as local for purposes of interstate separations and ARMIS reporting. Answer at 5.

Staff believes that, if the parties' agreement concerning reciprocal compensation can be said to be ambiguous or susceptible of different meanings, then it is proper to look to their subsequent conduct in order to divine their intent. BellSouth concedes that it rates its own ISP traffic, as well as the traffic of its ISP customers, as local traffic. It also concedes that it treats revenues generated by this traffic as local for separations and ARMIS purposes. It would hardly be just for BellSouth to conduct itself in this way while treating MFS differently. Moreover, BellSouth made payment on some of the earliest of the MFS billings. BellSouth's conduct is strong evidence of an intent that reciprocal compensation under the Agreement would apply to calls terminated to ISPs. A party to a contract cannot be permitted to impose unilaterally a different meaning than the one shared by the parties at the time of contracting when it later becomes enlightened or discovers an unintended consequence. Certainty could never be expected if this license were permitted.

Furthermore, it was not until August 1997, nearly a year after the Agreement was executed and eight months after it was approved by the Commission, that BellSouth advised MFS that its position is that traffic to and from enhanced service providers is jurisdictionally interstate and that BellSouth will, as a result, neither pay nor bill charges for traffic terminated to an ESP. Therefore, staff believes that BellSouth's conduct subsequent to the Agreement was for a long time consistent with the interpretation of Section 1.40 urged by WorldCom.

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In light of the FCC's statement in ¶344 of the Access Charge Reform First Report and Order, supra, that the pricing structure it determined for enhanced service providers in 1983 was fully consistent with the Act's goal of advancing the Internet and should therefore remain in place, the interpretation of Section 1.40 that ISP traffic is to be treated as though local makes a rational and probable agreement. It is to be preferred to the interpretation that such traffic is jurisdictionally interstate and cannot be considered local. It is an interpretation that is consistent with the law and with the conduct of the parties; it is one that is just to both parties; and it is one to which the language of the Agreement is certainly open.

CONCLUSION

Accordingly, staff recommends that BellSouth should be required to pay WorldCom reciprocal compensation for the transport and termination of telephone exchange service local traffic that is handed off by BellSouth to WorldCom for termination with telephone exchange service end users that are Internet Service Providers or Enhanced Service Providers under the terms of the MFS and BellSouth Florida Partial Interconnection Agreement. Traffic terminated on a local dialed basis to ISPs should not be treated differently from other local dialed traffic.

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ISSUE 3: Should BellSouth be required to compensate WorldCom with interest for all BellSouth originated traffic terminated by WorldCom to Internet Service Providers or Enhanced Service Providers that has been billed as of the date of the Commission's decision?

RECOMMENDATION: If the Commission approves staff's recommendation in Issue 2, the Commission should require BellSouth to compensate WorldCom according to Section 30 of the parties' interconnection agreement for all BellSouth originated traffic terminated by WorldCom to Internet Service Providers or Enhanced Service Providers that has been billed as of the date of the Commission's vote, with payment to be made within three working days of that vote. (PELLEGRINI, MARSH)

STAFF ANALYSIS: In a letter dated September 11, 1997, BellSouth advised MFS that BellSouth had no obligation to pay reciprocal compensation for ISP traffic and that MFS could have no reasonable expectation to receive compensation for such traffic. Complaint, Exh. C. On September 29, 1997, BellSouth again wrote MFS, advising that it had determined that 94% of the traffic originated by BellSouth customers and terminated by BellSouth to WorldCom was Information Services Providers traffic, based on a study performed in Georgia. It proposed to pay WorldCom 10% of the amount invoiced for terminating local traffic. Complaint, Exh.D. WorldCom alleges that as of November 12, 1997, MFS invoiced BellSouth more than \$125,000 for termination of local traffic originated by BellSouth customers that has gone unpaid.⁴

If the Commission approves staff's recommendation in Issue 2, the Commission will have construed the parties' interconnection agreement to require reciprocal compensation for termination of local traffic on the other's network, including ISP traffic. Thus, staff recommends that the Commission should in that event direct BellSouth to honor in full all invoices presented by WorldCom to date for termination of local calls originated by BellSouth customers.

Section 30 of the parties' interconnection agreement provides a process for treating disputed amounts. The nonpaying party is

⁴In response to an inquiry, WorldCom represented to staff that through January 1998, MFS has billed BellSouth in the amount of \$1.278 million for ISP traffic originated by BellSouth customers and terminated on MFS's network and that BellSouth has paid only \$32,000 to date. Also in response to an inquiry, BellSouth represented to staff that it made payments for such traffic, but only up to a point when it was able to devise a means for identifying the nature of this traffic.

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required to pay the billing party when due all undisputed amounts and to pay the disputed amounts into an interest-bearing escrow account with a third party escrow agent. Staff further recommends, therefore, that the Commission should direct that the provisions of Section 30 of the parties' interconnection agreement shall control the payment of any and all amounts that BellSouth has withheld from payment, and that payment of the withheld amounts shall be made within three working days of the Commission's vote.

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ISSUE 4: Should this docket be closed?

RECOMMENDATION: Yes. This docket should be closed if no person whose substantial interests are substantially affected by the proposed actions files a protest within the 21 day protest period.
(PELLEGRINI)

STAFF ANALYSIS: Intermedia in Issue 1 and WorldCom and BellSouth in Issues 2 and 3, as the persons whose substantial interests are affected by the Commission's decisions therein, issued as proposed agency action, will have 21 days from the issuance date of the Order to file a timely protest.