

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
TALLAHASSEE, FLORIDA

IN RE: Complaint of WorldCom Technologies, Inc. against
BellSouth 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.

DOCKET NO. 971478-TP

COPY

BEFORE:	CHAIRMAN JULIA A. JOHNSON COMMISSIONER J. TERRY DEASON COMMISSIONER SUSAN F. CLARK COMMISSIONER JOE GARCIA COMMISSIONER E. LEON JACOBS
PROCEEDING:	AGENDA CONFERENCE
ITEM NUMBER:	12**PAA
DATE:	March 10, 1998
PLACE:	4075 Esplanade Way, Room 148 Tallahassee, Florida

BUREAU OF REPORTING

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APPEARANCES:

Nancy White, Esquire, representing BellSouth
 Floyd Self, Esquire, representing WorldCom

STAFF RECOMMENDATION

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.

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.

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.

Issue 4: Should this docket be closed?

Recommendation: Yes. This docket should closed if no person whose substantial interests are substantially affected by the proposed actions files a protest within the 21-day protest period.

P R O C E E D I N G S

1
2 CHAIRMAN JOHNSON: We are going to go back on the
3 record. I think we are on Item 12.

4 COMMISSION STAFF: Commissioners, Item 12 is the
5 complaint of WorldCom against BellSouth. BellSouth
6 refuses to pay reciprocal compensation for interoffice
7 Internet service provided traffic terminated by
8 WorldCom's affiliate, MFS. WorldCom is asking that
9 BellSouth be required to pay the reciprocal
10 compensation. Staff has recommended that it do so,
11 and we have also addressed a petition of Intermedia to
12 intervene and have recommended that be denied. Before
13 we hear from the parties, Mr. Pellegrini does have
14 some minor modifications to make.

15 MR. PELLEGRINI: Commissioners, with respect to
16 Footnote 2 on Page 5, I would like to acknowledge that
17 with respect to Item 20(A), Order PSC-98-0226 that was
18 issued on the 5th of February memorializing the
19 Commission's decision, and with respect to Item 20(B),
20 Order PSC-98-0227 that was issued on the same date
21 memorializing the Commission's decision in Item 20(B),
22 and with respect to the footnote on Page 11, we have
23 learned very recently that the Commission in North
24 Carolina on the 26th of February has ruled on this
25 issue as have others, as have the other state

1 commissions listed in the footnote.

2 CHAIRMAN JOHNSON: I'm sorry, you said North
3 Carolina also ruled that this -- consistently?

4 MR. PELLEGRINI: Yes, consistently with the
5 decisions of the other state commissions which are
6 listed in the --

7 CHAIRMAN JOHNSON: Okay. Anything else?

8 MR. PELLEGRINI: That's all at this point.

9 CHAIRMAN JOHNSON: Are we prepared then to hear
10 from the parties?

11 MS. MARSH: Yes, ma'am, unless you have questions
12 first.

13 CHAIRMAN JOHNSON: Any questions, Commissioners?

14 COMMISSIONER CLARK: Let me ask a question. Is
15 Intermedia here? We're on Item 12?

16 MR. PELLEGRINI: Yes.

17 MR. WIGGINS: (Inaudible, microphone not on.)
18 I'm just here to answer questions, Commissioner Clark.

19 COMMISSIONER CLARK: I don't have a question.
20 Where were you?

21 MR. WIGGINS: Not where I should have been
22 obviously.

23 CHAIRMAN JOHNSON: Commissioners, do you want to
24 go issue-by-issue starting with Issue 1 on the
25 petition to intervene, or what is your pleasure?

1 Would you like to hear from all the parties on the
2 other issues?

3 COMMISSIONER DEASON: Let's hear what they have
4 to say and then we can --

5 CHAIRMAN JOHNSON: Do you want to add anything?

6 MR. WIGGINS: No, ma'am. I just wanted to say
7 that the Commission has been consistent on the issue
8 of intervention, and I didn't intend to come here this
9 morning and make a big deal of what has been decided
10 similarly in other cases.

11 CHAIRMAN JOHNSON: Thank you. Mr. Pellegrini,
12 you have a -- MR. PELLEGRINI: Yes. I don't want
13 to raise the ruckus either, but I'm a bit concerned
14 about GTE's participation this morning. Consistent
15 with, again, the Commission's position on the rights
16 of parties to intervene in these proceedings, whether
17 they be arbitration proceedings or contract dispute
18 proceedings. I think it might be inappropriate for
19 GTE, since I don't think with regards to GTE isn't
20 personally affected by the Commission's action in this
21 proceeding, but it is certainly within the
22 Commission's discretion to permit GTE to participate.
23 But it is a concern, and I bring it up only because --

24 COMMISSIONER CLARK: Well, let me ask a question.
25 if Intermedia can't intervene then why should GTE?

1 MR. PELLEGRINI: That's exactly the point.

2 CHAIRMAN JOHNSON: Let me make sure I understand,
3 then, the rule. I know this is a proposed agency
4 action and interested parties may participate, so you
5 are saying the threshold question -- we have a
6 threshold test that they have to meet to participate
7 in this kind of proceeding, too?

8 MR. PELLEGRINI: Yes. This is a contract dispute
9 proceeding, which is very much like arbitration
10 proceedings in which this Commission has held that the
11 only rightful parties are the petitioning carrier and
12 the incumbent local exchange carrier.

13 CHAIRMAN JOHNSON: And nonparties cannot
14 participate.

15 MR. PELLEGRINI: That's right. That has been
16 this Commission's position for quite some time.

17 COMMISSIONER DEASON: Are you saying that for a
18 person, a party to participate and address the
19 Commission on something that has been noticed as PAA
20 they have to meet the same requirements as if they
21 were trying to intervene in a proceeding.

22 MR. PELLEGRINI: Yes, I think so, Commissioner
23 Deason. I think there is a similarity in the two
24 situations. This Commission has also had the practice
25 of permitting participation at agenda items that are

1 prior to hearing, so -- but I am concerned that
2 participation by GTE would somehow undermine this
3 Commission's stance on intervention in these types of
4 proceedings. And I raise the issue only because of
5 that concern.

6 CHAIRMAN JOHNSON: Ms. Brown.

7 MS. BROWN: I think Mr. Pellegrini just wanted to
8 bring that to your attention so that you were aware
9 that if we get further down the road in this case it
10 may be difficult. Probably we would recommend that no
11 other parties other than the parties to the contract
12 be permitted to participate. But this is an agenda
13 conference, and you do traditionally let interested
14 persons address you at your agendas. And we are
15 bringing this to your attention just so that you are
16 aware of it for the future.

17 CHAIRMAN JOHNSON: Okay. Thank you. Thank you,
18 Mr. Pellegrini. I guess we should start. We are on
19 -- we will hear from the parties. Should we hear from
20 BellSouth or WorldCom first? BellSouth.

21 MS. WHITE: Well, since I assume that WorldCom
22 supports the staff rec, I will be glad to go first.
23 BellSouth does not have a position on the first issue,
24 which is the intervention. I would like to say that
25 we don't mind if GTE intervenes, but we would rather

1 keep Intermedia out. But we really don't have a
2 position on either party.

3 We would like to discuss Issues 2 and 3. And we
4 have three major points there. The first point is
5 that Internet Service Provider traffic is not local
6 traffic subject to the act's reciprocal compensation
7 obligation. The second point is that the jurisdiction
8 over this traffic belongs to the FCC. Third, because
9 Internet Service Provider traffic is clearly subject
10 to the FCC's jurisdiction, this Commission should take
11 no action on WorldCom's complaint. The FCC at the
12 present time has two pending dockets in which it has
13 exercised primary jurisdiction over the issues raised
14 by WorldCom in its complaint. This Commission should
15 let those dockets run their course at the FCC and take
16 no action.

17 In 1983, the FCC adopted its regime of interstate
18 access charges and determined that all providers of
19 interstate service, they relied on a local telephone
20 company plant to reach local subscribers, must pay
21 their fair share of interstate costs. The FCC
22 initially imposed access charges on not only long
23 distance companies like AT&T, but also on small
24 resellers and non-carriers like Internet Service
25 Providers.

1 On reconsideration, however, the FCC carved out a
2 temporary exemption for resellers and Internet service
3 providers from this access charge requirement to
4 protect them from rate stock. Because these resellers
5 and Internet Service Providers have been obtaining
6 exchange access at ordinary business local exchange
7 service rates, the FCC said that immediate subjection
8 to access charges would harm the viability of these
9 firms.

10 Resellers and Internet Service Providers were
11 allowed to collect originating interstate traffic over
12 local business lines. A caller in Miami who wanted to
13 call San Francisco over MCI's facilities in the days
14 of Feature Group A access would pick up the phone,
15 make a local call using a seven-digit number to the
16 MCI point of presence and the number was switched and
17 carried by MCI across the country to San Francisco.

18 The access charge exemption did not convert
19 interstate traffic provided by the reseller, MCI in
20 this case, into local traffic. The end-to-end nature
21 of that call was a caller in Miami calling someone in
22 San Francisco. And the first part of it was using
23 local lines to MCI over the reseller's point of
24 presence per the FCC order, and then it was switched
25 and carried across the country. That call was an

1 interstate call. In 1986, the FCC removed the
2 access charge exemption for resellers and a year later
3 proposed removing the exemption for Internet Service
4 Providers. The FCC reconsidered, and decided to
5 preserve the exemption for Internet Service Providers,
6 allowing them to use local business lines to collect
7 interstate traffic.

8 Most recently in its May 1997 access reform
9 order, the FCC stated that this exemption would
10 continue and would, in fact, be permanent. In
11 Paragraph 342 of that order, the FCC acknowledged that
12 Internet Service Providers were paying only intrastate
13 rates despite their use of the local network for the
14 provision of interstate services. In Paragraph 342 of
15 that order, the FCC stated that Internet Service
16 Providers are purchasing, "Services from incumbent
17 LECs under the same intrastate tariffs available to
18 end users," rather than at, "Interstate access rates
19 even for calls that appear to traverse state
20 boundaries."

21 This brings us to the Telecommunications Act of
22 1996, which established a reciprocal compensation
23 mechanism to encourage local competition. In its
24 August 1996 local interconnection order, the FCC made
25 it perfectly clear that reciprocal compensation rules

1 did not apply to non-local traffic such as
2 interexchange traffic.

3 To quote from Paragraph 1034 of that order, "We
4 conclude that Section 251(B)(5), reciprocal
5 compensation obligation, should apply only to traffic
6 that originates and terminates within a local area
7 assigned in the following paragraph. We find that
8 reciprocal compensation provisions of Section
9 251(B)(5) for transport and termination of traffic do
10 not apply to the transport and termination of
11 interstate or intrastate interexchange traffic."

12 Following passage of the act, BellSouth entered
13 into hundreds of interconnection agreements with ALECs
14 across its region, and included in those
15 interconnection agreements language discussing payment
16 of reciprocal compensation. In none of those
17 interconnection agreements, including the one with
18 WorldCom, has BellSouth acknowledged or agreed to
19 define Internet Service Provider traffic as local
20 traffic subject to reciprocal compensation. From the
21 passage of the act until today, BellSouth has not
22 knowingly paid reciprocal compensation to ALECs who
23 have transported traffic to their ISP customers, nor
24 has BellSouth knowingly billed ALECs for performing
25 that same service.

1 On June 20th, 1997, a group of ALECs known as the
2 Association for Local Telecommunications Service, or
3 ALTS, A-L-T-S, wrote the FCC to ask the FCC to clarify
4 its interconnection order in a way that would require
5 the traffic collected by Internet Service Providers
6 over local business lines to be subject to reciprocal
7 compensation provisions of the act. The FCC has taken
8 comments on that issue. It is a pending docket, and
9 the FCC has not yet decided it.

10 Largely in response to the ALTS proceeding,
11 BellSouth wrote its ALEC customers in August of 1997
12 to remind them of three points. Number one, that
13 interconnection agreements apply only to local
14 traffic. Number two, that ISP traffic is interstate.
15 And, number three, that BellSouth would neither bill
16 ALECs for reciprocal compensation associated with
17 Internet Service Provider traffic, nor pay bills from
18 ALECs for transporting this traffic to an ISP.

19 ISP traffic is not local traffic for purposes of
20 reciprocal compensation. The ALECs have gone to great
21 lengths to attempt to separate the call from the end
22 user customer. They don't want you to look at the
23 continuation of that call and what happens to it after
24 it reaches the ISP point of presence.

25 It reminds me a little bit about the scene from

1 the Wizard of Oz where Toto has pulled the curtain
2 back from the imposter wizard who is manipulating all
3 the controls. And when he is discovered he explains
4 to the group, pay no attention to the man behind the
5 curtain. That's what WorldCom is doing here today.
6 Don't pay any attention to that part of the call that
7 leaves the Internet Service Provider's point of
8 presence and goes out to literally the world. Let's
9 not look at what happens or the real designation of
10 the call, let's just look at what happens when a
11 person logs onto their computer and some signal hits
12 the Internet Service Provider. Let's just look at
13 that part.

14 In the MTS market share order of 1983, the FCC
15 found in discussing whether they were going to exempt
16 IXCs from access charges, "Other users who employ
17 exchange service for jurisdictionally interstate
18 communications, including private firms, enhanced
19 service providers, and sharers who have been paying
20 the generally much lower business service rates would
21 experience severe rate impacts were we immediately to
22 access carrier access charges upon them."

23 The FCC also stated that, "At the time we
24 formulated our access charge rules, some interstate
25 service providers, including certain basic service

1 resellers and ESTs were using local business lines to
2 obtain access to the local interexchange for their
3 interstate traffic."

4 In an arrangement where an Internet Office
5 Provider is being served by BellSouth, people dial the
6 seven-digit number of the Internet Service Provider.
7 That call is going to first transit the BellSouth
8 central office, then it is transported to the Internet
9 Service Provider over local lines, and then that call
10 is switch forwarded by the Internet Service Provider
11 anywhere the customer wants to go.

12 For those of you who have logged onto the
13 Internet before, you know that once you dial your
14 seven-digit number in, and it may automatically be
15 preprogrammed into your computer, it may be
16 automatically routed to your provider. You have
17 established a communications path, and that
18 communications path remains open until the end of that
19 call. You can point and click your way anywhere you
20 want to go on the web or the Internet. You type on
21 addresses, you click on icons, you go to web sites in
22 England or anywhere in the world.

23 The vast majority of that traffic is interstate
24 in nature. It's not going to terminate within the
25 local exchange. When the ALEC goes to that Internet

1 Service Provider and says, "Become our customer, we
2 will serve you," they put themselves in between
3 BellSouth's end office and the Internet Service
4 Provider. Trunks from the BellSouth central office
5 run to the ALEC central office, and then their
6 facilities between the ALECs and the Internet Service
7 Provider. It again reaches the same computer for
8 routing anywhere. The path remains open all the time
9 the person is sitting at their computer until they log
10 off. In that time you can make multiple calls and
11 reach multiple destinations in all one call.

12 The FCC has long held that jurisdiction of
13 traffic is determined by the end-to-end nature of the
14 call. This point was clearly outlined in the 1992 FCC
15 order involving, oddly enough, Bellsouth's own voice
16 mail service. The Georgia Public Service Commission
17 had found that voice mail service, which is an
18 enhanced service, was a purely intrastate service and
19 stated its desire to regulate it. The Georgia
20 Commission said that even when an out-of-state caller
21 calls home to check his or her voice mailbox, two
22 jurisdictional transactions took place. The Georgia
23 Commission said you've got this person in Chicago and
24 they live in Miami and they want to check their voice
25 mail, so they call home. We will agree that's an

1 interstate call when it hits the terminating number at
2 the BellSouth end office, but the part of the call
3 from that end number to the voice mailbox, that
4 forwarding of that circuit, that's intrastate because
5 that all occurs just inside the local office inside
6 the local switch.

7 The FCC categorically repudiated that theory. In
8 an order dated February 14, 1992, in Number 92-18,
9 after setting forth the arguments that the Georgia
10 Commission made, they explained BellSouth's position:
11 Quote, "As explained by BellSouth, when a caller is
12 connected to BellSouth's voice mail service receives
13 instructions and/or a message and records a message,
14 there is a continuous two-way transmission path from
15 the caller location to the voice mail service. When
16 the caller is out-of-state, there is a continuous path
17 of communication across state lines between the caller
18 and the voice mail service, just as there is when a
19 traditional out-of-state long distance voice telephone
20 call is forwarded by the local switch to another
21 location in the state and answered by a person, a
22 message service bureau, or a customer premises
23 answering machines. In Paragraph 12, the FCC stated
24 that, "Our jurisdiction does not end at the local
25 switch, but continues to the ultimate termination of

1 the call. The key of jurisdiction is the nature of
2 the communication itself, rather than the physical
3 location of the technology. Jurisdiction over
4 interstate communications does not end at the local
5 switchboard, it continues to the transmission's
6 ultimate designation," end quote.

7 Clearly, using this analysis end users in Miami
8 who call that seven-digit number of an Internet
9 Service Provider are not making a local call. They
10 are not calling the Internet Service Provider to chat
11 with the Internet Service Provider. They are not
12 expecting a call back from the Internet Service
13 Providers to chat. They are making a one-way call and
14 they are not terminating it in Miami, Florida. They
15 are terminating it conceivably anywhere in the world.
16 Once that transmission path has been opened, an
17 Internet user can contact multiple locations all at
18 the same time all over the world.

19 Internet Service Providers do not classify,
20 record, or report jurisdictional categories. There is
21 no way to separate out any incidental calls that might
22 be, in fact, terminated within the local exchange.
23 For this reason, all of the traffic, as the FCC has
24 found, must be considered to be interstate.

25 Carriers like WorldCom who have positioned

1 themselves between an ILEC and end users and ISPs, are
2 acting as intermediate transport carriers, not local
3 exchange providers entitled to reciprocal
4 compensation.

5 Now, I'm not going to ignore Order Number 21815
6 of this Commission rendered on September 5th, 1989 in
7 the information services case. You heard the
8 BellSouth witness testify that connections to the
9 local exchanges network for purposes of providing an
10 information service should be treated like any other
11 local exchange service. This quote, however, must be
12 viewed in the context of that entire docket. First,
13 BellSouth lost that argument at the FCC. Second, this
14 Commission did not abrogate the jurisdictional nature
15 of calls. The PSC plainly stated that the local
16 exchange facilities provided to the ISP are used to
17 carry to local intrastate and interstate calls.
18 Third, at that point the time, the PSC was not sure of
19 its authority on these issues. Fourth, BellSouth
20 proposed a usage-sensitive pricing scheme for enhanced
21 service providers that was rejected by this Commission
22 on the basis that more information was needed. Fifth,
23 the PSC held that this was a preliminary finding only.

24 Point Two, because this Internet Service Provider
25 traffic is not local, jurisdiction over it belongs to

1 the FCC. It should be evident from my references to
2 the FCC orders here concerning Internet Service
3 Provider traffic that the FCC has exercised
4 jurisdiction over this traffic and continues to
5 exercise jurisdiction over it. The FCC granted ISPs
6 an exemption from interstate access charges for policy
7 reasons. In order to grant such an exemption, the FCC
8 by definition had to assume jurisdiction over this
9 traffic. That only makes common sense.

10 Point Three, because jurisdiction belongs to the
11 FCC, the Commission should refrain from acting upon
12 WorldCom's complaint until the FCC has conducted and
13 concluded its proceedings, which is expected to be
14 done in May.

15 In addition to the ALTS proceeding that I
16 mentioned to you, the FCC in a docket entitled usage
17 of the public switched network by information service
18 or Internet access providers, which is Docket Number
19 96-263, it sought comment on whether the current
20 exemption from access charges should continue for
21 ISPs. The FCC then has primary jurisdiction over both
22 the ALTS complaint and the access charge exemption
23 docket. Between now and the time the FCC acts in
24 either one of these dockets, the Commission should not
25 act. The Commission should simply maintain the status

1 quo.

2 In addition, no compelling public policy reason
3 exists to order payment of this compensation for this
4 type of traffic while we await the FCC's decision.
5 Contrary to WorldCom's allegations, ordering payment
6 of reciprocal compensation for this traffic would
7 impede rather than promote local competition, and this
8 is why: Forcing ILECs to pay reciprocal compensation
9 for ISP traffic may help fill the coffers of those
10 ALECs who have chosen to market their services to
11 large ISPs, but it doesn't introduce a single
12 competitive residence line or a single competitive
13 business line in this state. In fact, it incents the
14 opposite view and opposite motivation.

15 ALECs who win new residence customers,
16 facilities-based customers, would face reciprocal
17 compensation payments themselves for ISP traffic. A
18 high proportion of new residence lines, as you
19 probably know, are bought to access the Internet. To
20 the extent ALECS win residence customers who wish to
21 surf the net, they will feel the sting of paying for
22 terminating minutes to the ILEC or other ALECs who
23 serves the ISP. Thus, ALECs will not be incented to
24 service residence customers over their own facilities.

25 Finally --

1 CHAIRMAN JOHNSON: Could you hold up for a
2 second, because I know you have a lot.

3 MS. WHITE: No, I'm almost done, I promise.

4 CHAIRMAN JOHNSON: I'm confused on that argument
5 about why it's not -- could you go over that argument?

6 MS. WHITE: Yes. If you say this traffic is
7 local, then an ALEC who has chosen to serve a
8 residential customer will be forced to pay reciprocal
9 compensation on this type of traffic. That is -- if
10 most of the lines are bought, a high proportion of
11 residence lines are bought to interconnect with the
12 Internet, so they are going to lose money by paying
13 reciprocal compensation compared to what they get for
14 serving that residence customer. And I have an
15 example of that.

16 CHAIRMAN JOHNSON: Are you going to get to an
17 example?

18 MR. WHITE: Yes, right here. The traffic between
19 these is not going two ways, and that's the intent of
20 the act. The intent of the act was to have customers
21 talking to each other and the companies paying each
22 other for terminating traffic. An ILEC who charges
23 its end user a flat rate per month, like BellSouth
24 would do in Miami at \$10.65 per residence line, could
25 find itself easily paying twice that amount to an ALEC

1 for terminating minutes resulting from the end user
2 usage on the Internet.

3 An example of that is this. BellSouth serves a
4 residence customer in Miami at \$10.65. That customer
5 subscribes to an Internet Service Provider, and that
6 Internet Service Provider is served by an ALEC. That
7 customer uses the Internet two hours a day, hangs on
8 that line and keeps the circuit open for two hours a
9 day, which is probably a minimum amount of time when
10 people are on the Internet. That is paid at a rate of
11 less than a penny a minute, which is the
12 interconnection rate for termination of traffic of
13 WorldCom that BellSouth would pay.

14 To the ALEC terminating that traffic, BellSouth
15 would pay \$36 a month in terminating usage. That's
16 two hours a day, times 60 minutes, times 30 days in a
17 month, times one cent. That equal \$36 paid to the
18 ALEC. BellSouth is receiving \$10.65 for that
19 residence line. That's the type of action you would
20 incent these folks to do. And such a result can
21 easily be avoided by the Commission waiting for the
22 FCC to decide these issues.

23 In closing, we would like to ask and emphasize
24 that this Commission find that the ISP traffic is not
25 local, that it's subject to the FCC's jurisdiction,

1 and that the Commission should not rule on the
2 petition until the FCC has ruled on the two pending
3 dockets before it. In the alternative, and only if
4 this Commission accepts the staff recommendation on
5 Issue 3, BellSouth would request that the Commission
6 not require payment of the withheld amount within
7 three working days of the PSC's vote. This order
8 should be issued as a PAA. Requiring this action
9 within three working days of the Commission's vote
10 deprives BellSouth of its right in protesting the
11 order. BellSouth would be forced to file a
12 preliminary protest in order to stay the effect of the
13 order without benefit of the order and without benefit
14 of the 21 days for protesting the order given by the
15 administrative code. Thank you.

16 CHAIRMAN JOHNSON: Thank you. WorldCom.

17 MR. SELF: Thank you, Commissioners. I'm Floyd
18 Self representing WorldCom. As I have listened to Ms.
19 White, in essence she is making two arguments to you.
20 First, she is claiming that this Commission has no
21 jurisdiction or at least ought to wait to see what the
22 FCC might perhaps do in the various proceedings that
23 are pending up there.

24 In response to that, I would simply say to you
25 first there has been no preemption that is currently

1 effective on this issue, so you are free to act.

2 Secondly, as Ms. White pointed out in Order 21815
3 issued over eight years ago, you, in essence, decided
4 this issue. You determined that these calls are
5 indeed intrastate calls, and indeed BellSouth's own
6 witness in that proceeding testified that the digits
7 dialed provide a highly accurate method for
8 determining jurisdiction. And indeed you found that
9 these calls to ISPs in that order were, in fact, local
10 calls.

11 Finally, there has been no subsequent ruling by
12 the FCC that would deprive you of the ability to act
13 in this proceeding and enforce the contract that we
14 have with BellSouth. The essence of BellSouth's
15 argument is that in the future the FCC may make access
16 charges applicable to this or may make some other
17 determination that might affect on a going-forward
18 basis the relationship between the parties. The fact
19 of the matter is the issue before you today is the
20 enforcement of a contract, the very plain, and clear
21 and unambiguous language of which does not make any
22 exception such as Ms. White is talking about.

23 And indeed that is the second point, when she
24 discusses the reciprocal compensation issue. What she
25 is trying to do is read an exception into the language

1 that talks about NPA NXX routing as traditionally
2 local that simply does not exist. If BellSouth is
3 correct, then why can't they also read an exception in
4 for travel agents, or reservation services, or ticket
5 lines, or any of the innumerable other types of
6 customers who have predominantly, if not exclusively
7 one-way traffic? There is no exception that exists in
8 the contract for the definition of local service that
9 would allow the construction that BellSouth is trying
10 to advance today.

11 Indeed, to the extent that you or they believe
12 that there is some ambiguity there, I think BellSouth
13 has addressed that issue. If you ask them for one of
14 their model contracts today, they attempt to address
15 this issue and exclude this kind of traffic in their
16 new contracts that they are issuing today as models.

17 The issue here quite simply is whether or not
18 BellSouth is going to be made to comply with the
19 contract that it has with MFS, which is WorldCom's
20 subsidiary. And I would say to you that on the basis
21 of the well-reasoned and argued staff recommendation
22 on the jurisdictional issues, as well as the
23 reciprocal compensation and contract construction
24 issues, there is no choice for you to make except to
25 grant WorldCom's petition.

1 Now, finally, with respect to Issue 3, on the
2 compensation, we agree with the staff that BellSouth
3 should, in fact, pay the disputed money into an escrow
4 account. I would go a step farther and argue with you
5 that BellSouth is already in violation of Order Number
6 96-1508, which is the order that approved the
7 MFS/BellSouth interconnection agreement, and that
8 order -- in approving the interconnection agreement,
9 that interconnection agreement provides that when
10 there is a dispute that the disputed monies are, in
11 fact, to be deposited into escrow.

12 If at the time that BellSouth wrote the initial
13 letter that started this situation, if at that time
14 BellSouth did not believe that this is a disputed
15 matter, then certainly during the ensuing
16 correspondence they should have believed that the
17 matter was disputed. And if that didn't convince them
18 that this is a disputed matter, then indeed when we
19 file the petition that should have convinced them that
20 the matter is disputed.

21 I would argue with you that, in fact, BellSouth
22 is today in violation of Order 96-1508, and that, in
23 fact, with respect to the staff's recommendation that
24 the money be immediately deposited into the escrow
25 account that is required by the interconnection

1 agreement, and I don't think there is any dispute
2 about that, that that part of the order should at
3 least be a final order, and indeed pursuant to Chapter
4 364, if necessary, if they refuse to deposit that
5 money, even if they protest the granting of the staff
6 recommendation on this issue, that part should be a
7 final order.

8 Finally, with respect to the intervention issue,
9 we, in essence, take no position with respect to
10 Intermedia's attempted intervention. And I would
11 simply urge you to be consistent. If you are going to
12 allow people to intervene in these contract disputes,
13 then that should be true for all of the contract
14 disputes. Alternatively, if you are not going to
15 allow anyone to intervene, then, in fact, no one
16 should be allowed to intervene.

17 CHAIRMAN JOHNSON: Thank you.

18 Commissioners, I see that GTE is here to
19 participate. Mr. Pellegrini informed me that it was
20 within our discretion. What is the pleasure of the
21 Commission?

22 COMMISSIONER DEASON: I don't see how she can add
23 anything that Ms. White did not cover.

24 CHAIRMAN JOHNSON: Good point. Do you all want
25 to hear from them?

1 COMMISSIONER DEASON: I think if we hear from
2 them we will have to invite Mr. Wiggins to come in and
3 participate, too. I think we have heard enough on
4 this. We need to get moving. If it is within our
5 discretion, I don't care to hear from GTE in this
6 matter. That's my preference.

7 CHAIRMAN JOHNSON: Okay. Any other thoughts?

8 COMMISSIONER CLARK: Did I understand from the
9 recommendation that at one time BellSouth was paying
10 this?

11 COMMISSION STAFF: That is correct, yes.

12 MR. PELLEGRINI: Yes. At a very early stage and
13 following the contract there was a period of time in
14 which BellSouth was apparently paying invoices
15 rendered by WorldCom.

16 COMMISSIONER CLARK: Mr. Self, let me ask a
17 question. If it is ultimately -- as a result of the
18 FCC proceedings it is determined to be interstate,
19 within their jurisdiction and not local, what happens?

20 MR. SELF: I think we would have to read the FCC
21 order and see how it addresses -- how it addresses the
22 issue. I don't know to what extent that order,
23 especially in view of the multitude of orders that the
24 FCC has already issued, that that would certainly have
25 a retroactive effect. And if that order does not have

1 a retroactive effect, then clearly today we are
2 entitled to be compensated for those calls.

3 CHAIRMAN JOHNSON: Ms. Brown.

4 MS. BROWN: Chairman Johnson, I think GTE would
5 like to respond to whether or not she is allowed to
6 speak. And we really have no problem with your
7 hearing from her under these circumstances as long as
8 it's understood that she is just addressing the
9 Commission as an interested person at an agenda
10 conference.

11 COMMISSIONER CLARK: I think Commissioner
12 Deason's point was that if she is permitted then
13 Intermedia ought to be permitted to do the same thing.
14 And we have heard a lot already.

15 MS. BROWN: All right.

16 CHAIRMAN JOHNSON: Let me make sure I understand.
17 We can -- we don't have to allow parties to
18 participate.

19 MS. BROWN: I don't think you have to under these
20 circumstances, but you have traditionally allowed it.
21 And probably it is often your feeling that the more
22 views you have in these situations that the more
23 comfortable you are.

24 COMMISSIONER DEASON: I agree with that.
25 Normally we have been very liberal about hearing from

1 parties on PAA matters. But the reason I don't think
2 we need to hear from GTE, first of all, this involves
3 an arbitration, a dispute concerning an arbitrated
4 agreement, and we have been very strict on our
5 interpretation of who can be involved in an
6 arbitration proceeding, and this I think is closely
7 associated with that. Second of all, Mr. Wiggins is
8 not here, I guess. I think he left.

9 COMMISSIONER CLARK: No, he's here.

10 COMMISSIONER DEASON: Oh, he's still here? We
11 have indicated to him that -- we have not voted on
12 Issue 1, but I think that if we do hear from GTE we
13 need to hear from Mr. Wiggins. And then, thirdly,
14 this is a PAA. We have heard ample information. We
15 have already spent a half hour or longer on this item.
16 We need to get moving. That's the reason I don't want
17 to hear from GTE. And that's just one commissioner's
18 preference. I will just leave -- whatever the
19 majority wants is fine.

20 CHAIRMAN JOHNSON: I think there is a consensus
21 that we not hear from GTE on this matter.

22 COMMISSIONER JACOBS: I have a question of staff.
23 It has to do with the representation of the traffic
24 and the distinctions therein. In one instance it is
25 said that the traffic only is that which occurs

1 between that end customer and the point of presence of
2 the -- would it be the ALEC or the ISP that they are
3 going to call into?

4 COMMISSION STAFF: The call is made, I believe,
5 to the ALEC's facility and the ISP is the other
6 customer, just as if I called you. I'm calling you
7 from my phone to your phone. And if you were the ISP,
8 then you are simply the other phone.

9 COMMISSIONER JACOBS: And that's a local call.
10 And then that traffic is taken and it is broken up
11 into packets and send out over the public network or
12 is it a --

13 COMMISSION STAFF: No. From the ISP's point,
14 then it goes over other facilities. It's no longer on
15 the public network. That's my understanding anyway.

16 COMMISSIONER JACOBS: And indeed it could
17 terminate in-state.

18 COMMISSION STAFF: It could, yes. It could
19 terminate across the street if you are sending one of
20 your neighbors an E-mail or something, it could
21 terminate anywhere. It could terminate in Europe, in
22 China, anywhere in the world.

23 COMMISSIONER JACOBS: And because of the nature
24 of the network, it could all happen without any
25 particular intervention by the ALEC.

1 COMMISSION STAFF: That's correct. The ALEC has
2 no intervention on that at all.

3 COMMISSIONER JACOBS: Okay.

4 CHAIRMAN JOHNSON: Any other questions,
5 Commissioners?

6 COMMISSIONER DEASON: The FCC proceedings which
7 were addressed, do we anticipate that there will be a
8 definitive decision in the May time frame?

9 MS. BROWN: Well, I don't know. You're talking
10 about the FCC. What definitive would be, I'm not
11 sure.

12 COMMISSIONER DEASON: Well, let me tell you where
13 I'm coming from. It seems to me that this is an
14 extremely vital issue that we need to address. I
15 think it is -- it certainly has some important
16 ramifications, at least in my opinion. Obviously the
17 FCC, there is a question of jurisdiction, how things
18 are going to be interpreted. I think we need to take
19 this matter to hearing. But at the same time, if we
20 take it to hearing, would it be counter-productive
21 until we know where the FCC is coming from, from their
22 viewpoint. And I guess my question is should we keep
23 the status quo until we hear from the FCC and then
24 determine what we need to do from that point forward.

25 COMMISSION STAFF: Sir, let me answer that for

1 you. I've followed several of these proceedings. I'm
2 not familiar with the ALTS one, but I know about
3 several others that have gone on and they have been
4 looked at and comments taken for quite some time and
5 there really has been no action. In fact, in another
6 matter that I was on that was brought to this
7 Commission back in '96, an identical petition had been
8 filed with the FCC, it was an ISP matter dealing with
9 voice on the net. To date I don't think the FCC has
10 ever acted on that, but this Commission has, and the
11 matter was settled and done with. I would not wait
12 for the FCC.

13 COMMISSIONER DEASON: Okay. Well, that's fine.
14 I think we are going to end up in a hearing, even if
15 we issue a PAA either agreeing or disagreeing with
16 staff. I feel very confident that we are going to be
17 in a hearing. And I think we just need to get on with
18 it and go to the hearing. I am somewhat concerned,
19 though, that we are talking about a revenue stream
20 here and the potential for money to be paid in this
21 case to WorldCom there needs to be some type of
22 protection given there. And what I understand is that
23 within the agreement there are provisions when there
24 is a complaint or dispute, there is a mechanism that
25 is supposed to be triggered to ensure that neither

1 party is harmed nor benefitted during the time that
2 the dispute is being litigated. Am I correct on that?

3 MR. PELLEGRINI: It's that mechanism that is the
4 basis for staff's recommendation on Issue 3.

5 COMMISSIONER DEASON: Okay. And that is what
6 staff is recommending?

7 MR. PELLEGRINI: Yes.

8 COMMISSIONER DEASON: So I guess if a motion is
9 appropriate, I would move that we just go straight to
10 hearing. First of all, that we would approve staff on
11 Issue 1, that we would just go straight to hearing on
12 Issue 2, and that we would approve staff on Issue 3,
13 and that we not close the docket.

14 COMMISSIONER JACOBS: Issue 1 is intervention of
15 Intermedia.

16 COMMISSIONER DEASON: Yes. Staff is recommending
17 that intervention be denied, correct?

18 MR. PELLEGRINI: Be denied, that is correct.

19 COMMISSIONER DEASON: I would move staff on
20 Issue 1.

21 COMMISSIONER CLARK: Wait a minute. Issue 3 says
22 you pay WorldCom, and I thought the notion was that it
23 would go into an escrow.

24 MR. PELLEGRINI: Well, I think perhaps Issue 3
25 would need to be modified based on --

1 COMMISSIONER DEASON: I wanted whatever is within
2 their agreement that they signed and agreed to, I want
3 that mechanism to be triggered.

4 MR. PELLEGRINI: The funds in dispute ought to be
5 in escrow. At the moment they apparently are not, so
6 at a minimum that ought to occur.

7 MS. BROWN: Commissioner Clark, I think you can
8 read that to say pay WorldCom according to the terms
9 of the agreement. And under the agreement, as I
10 understand it, that money goes into escrow. But
11 that's what we meant. We want the funds to be
12 immediately disposed of in the way that they are
13 supposed to according to the agreement.

14 COMMISSIONER CLARK: Well, here is what is
15 confusing me. We had agreed with staff, we would say
16 it belongs to WorldCom right now, end of story. And
17 it would go to WorldCom. I didn't read your
18 recommendation as saying -- what we are, in a sense
19 saying is we're not resolving the dispute right now so
20 it's in dispute and it needs to go into escrow.

21 MR. PELLEGRINI: Issue 3 was based upon the
22 Commission making a finding favorable to staff's
23 recommendation in Issue 2.

24 COMMISSIONER DEASON: Well, Issue 3 then needs to
25 be modified.

1 MR. PELLEGRINI: It needs to be modified in the
2 event that you decide to go to hearing immediately on
3 Issue 2 and not make a disposition.

4 COMMISSIONER CLARK: Let me ask something.
5 BellSouth, how come you weren't putting it in escrow?

6 MS. WHITE: I think the bottom line was, is that
7 we didn't even realize there was a problem or there
8 was an issue until this all plead or was filed in June
9 of '97. We assumed that when parties enter into a
10 contract they do so under the existing law. And to
11 our mind under the existing law, it was interstate
12 traffic that was not covered by the contract. I guess
13 what I'm trying to --

14 COMMISSIONER CLARK: Well, you understand there
15 is a dispute now, and I presume the contract
16 provisions would require you to put it in escrow.

17 MS. WHITE: Yes, ma'am.

18 COMMISSIONER CLARK: I think that's what -- what
19 we're trying to do is just say everybody hold
20 everything, put that money in there. And once we
21 decide who it belongs to, then it will be distributed.

22 MS. WHITE: May I ask, in your motion,
23 Commissioner Deason, on Issue 3, are you saying put
24 the funds there within three days of the vote like the
25 staff has it or --

1 COMMISSIONER DEASON: Well, I understand that
2 there is a potential problem with that, but I thought
3 that problem was triggered because of the timing of
4 the protest. We are just going to go straight to
5 hearing so there is not going to be a PAA issued, so
6 is there still a problem?

7 MS. WHITE: Well, I don't know. I just wanted to
8 make sure that when I left here I knew how much time
9 we had to put it into escrow.

10 COMMISSIONER DEASON: Is three days sufficient,
11 since we're not going to use -- there is not going to
12 be a protest, we are just going to go straight to
13 hearing.

14 MS. WHITE: I have no idea. But if that's what
15 you order, we will certainly do our best.

16 COMMISSIONER CLARK: Let me ask, at one point you
17 were paying money.

18 MS. WHITE: Not knowingly. Not knowingly. We
19 did not have a way to track it, track the traffic. We
20 now have a way to do that, so --

21 COMMISSIONER CLARK: I guess what I'm trying to
22 get at it seems to me that the total amount is in
23 dispute, not just from today forward, but from when
24 you no longer paid it. All of that money ought to go
25 into the escrow.

1 MS. WHITE: So what you're saying, from the date
2 of the letter, August '97, to today.

3 COMMISSIONER CLARK: At least that. I would
4 think even when you stopped paying it.

5 MS. WHITE: And from what I understand, that's
6 August when the letter went out.

7 COMMISSIONER CLARK: Okay. And it's my view that
8 that money should be put into the escrow. I'm not
9 sure the timing of that is as critical as long as
10 there is an understanding as to when you start
11 counting how much you have to put in.

12 COMMISSIONER DEASON: I would agree with that.
13 The key thing is to make sure that the entire period
14 of time is covered. And as long as we have the
15 assurance, and I feel very confident BellSouth will
16 put the money in the escrow. Whether it's three days,
17 or seven days, or ten days, whatever, just as long as
18 it covers the proper time period, so that both parties
19 are protected during this time that we grapple with
20 this issue.

21 MR. SELF: Commissioners, whether it takes
22 BellSouth three days or seven days to get the money
23 into an escrow account is not an issue for us, just so
24 long, as you said, the money is there. The only issue
25 that arises out of that is it is supposed to be an

1 interest bearing escrow account. I'm sure they will
2 take into account some means of figuring what the
3 interest would have been from August forward.

4 COMMISSIONER JACOBS: I would like some clarity
5 on the issue upon which we are proceeding here. I
6 think we kind of said it was Issue 2 in the
7 recommendation, but I would like to -- I'm wondering
8 if it's possible to refine that somewhat. I think the
9 document speaks for itself for what it says. I think
10 we are going to hearing on really a more fundamental
11 issue.

12 MR. PELLEGRINI: I think, if I understand what
13 you are saying, Commissioner Jacobs, you are viewing
14 this as a matter that -- as a matter -- as a contract
15 dispute matter that perhaps needs to be resolved under
16 existing law?

17 COMMISSIONER JACOBS: Well, actually I want to be
18 clear about -- I think that's one interpretation of
19 what we will be going to hearing on. Alternatively,
20 we could be going to hearing to determine whether or
21 not this is interstate or intrastate traffic.

22 MR. PELLEGRINI: Well, in staff's view under
23 present law this traffic clearly is to be treated as
24 though it were local traffic. That may change.

25 COMMISSIONER JACOBS: But I think that is a point

1 of fundamental dispute here.

2 MS. WHITE: Absolutely.

3 COMMISSIONER JACOBS: I want to be clear on what
4 issue it is we are going to hearing on.

5 CHAIRMAN JOHNSON: I share your concern,
6 Commissioner Jacobs. Because as the issues have been
7 framed and even discussed by BellSouth, it is a more
8 fundamental policy argument as to whether the ISP
9 traffic is local or intrastate. And in that vein, I
10 know we have been in a box where we have only -- and a
11 box that I think is required by law where we are
12 dealing with these agreements, we were restricted to
13 dealing with a party. But if we are to decide such a
14 fundamental issue, it is going to have much broader
15 ramifications.

16 MR. SELF: Chairman Johnson, if I will may
17 respond to that. I think that to the extent that you
18 believe that there is a generic policy type issue that
19 requires the Commission's consideration, that's
20 totally separate and independent from the contract
21 dispute that is before you. And I think whether you
22 want to decide on a policy basis going forward whether
23 or not this should be local, intrastate,
24 interexchange, interstate, whatever it's going to be,
25 you are certainly free to open a docket and pursue

1 that matter.

2 But I would certainly say to you that with
3 respect to this hearing that is coming up, the issue
4 is solely on the basis of this contract what are the
5 requirements of the parties with respect to this
6 issue. And indeed I would go so far as to say that
7 the hearing that is probably required ought to simply
8 be briefs and a legal argument. Because factual
9 issues go more to the policy considerations and much
10 of what Ms. White discussed in terms of how some of
11 this stuff worked strike me more as policy issues,
12 which if you want to deal with those separately you
13 may, but I don't think they have any bearing on the
14 contractual dispute in terms of how do you read the
15 language in this contract on what is local.

16 COMMISSIONER DEASON: But if I understand the
17 concern it is that there is more of a generic type
18 issue which is is this type traffic intrastate,
19 interstate, or a hybrid, or whatever you want to --
20 however you want to describe it. And that that is
21 more of a generic issue and that that is an issue that
22 we may invite intervenors such as GTE and others to
23 participate in. And then once we answer that
24 question, then we can look at the specific facts of
25 your agreement, and having answered that question,

1 then determine how your dispute should be resolved.

2 COMMISSIONER JACOBS: Well, I was suggesting
3 actually the opposite. I think even if we were to go
4 forward, and let me say also that I wasn't proposing
5 expanding it, I just wanted to be clear of what -- but
6 even if we were to do it that way, and I may be
7 intervening somewhat in this argument between the
8 parties here, but I think we would want to do the
9 opposite, because I think these parties came to the
10 Commission under the prevailing law and the precedent
11 and then for us to go into proceedings where we make
12 that generic determination and apply it to this
13 dispute which preceded that determination might pose
14 problems, as well.

15 I would suspect that if we go forward you would
16 want to resolve that dispute. But my reason for
17 bringing it up is because that dispute in and of
18 itself is going to bring out this generic issue. And
19 if we can resolve that issue from that point forward,
20 and I may be speaking out of turn, but it would appear
21 to me that that might be a way of avoiding undue
22 controversy.

23 COMMISSIONER DEASON: Well, see, I don't think we
24 have a definitive interpretation of what the law is
25 right now to apply to their situation.

1 COMMISSIONER JACOBS: Okay. I buy that, too.

2 CHAIRMAN JOHNSON: Commissioner Jacobs, I
3 understood what you were saying, but I reached just
4 the opposite conclusion. I share the same conclusion,
5 but I thought the generic policy needed to be resolved
6 because it would be applicable to these facts.

7 COMMISSIONER JACOBS: Okay.

8 MR. PELLEGRINI: I think what the Commission has
9 before it, in my opinion, is a complaint by WorldCom
10 that asks this Commission to order performance by
11 BellSouth under the terms of the contract negotiated
12 by the parties.

13 COMMISSIONER CLARK: And what I hear BellSouth
14 saying is we had understood the law to be that this is
15 interstate traffic, that's why we didn't pay it.
16 WorldCom says, no, we understood the law to be it is
17 local and, therefore, it is due. So in one sense
18 you've got to determine --

19 MR. PELLEGRINI: Well, if the Commission is
20 uncomfortable with the state of the law, that is one
21 thing. But if it is not, that would be another thing.
22 Staff thinks the law is --

23 COMMISSIONER DEASON: Well, that's the reason I
24 said take it to hearing, because I'm not comfortable
25 making a finding one way or the other today even in a

1 PAA order.

2 MR. SELF: And, Commissioner Clark, if you are
3 right, then the issue is -- whether it's local or
4 whether it's not local, it would be at the time that
5 the contract was entered, what was the state of law at
6 that time, period. Which ought to be a
7 straightforward legal issue, which I would suggest you
8 ought to be able to do through briefs and an oral
9 argument ultimately. I mean, we don't need a factual
10 hearing to discuss what was the law when the contract
11 was entered.

12 MS. BROWN: Commissioners, if I might make a
13 suggestion. I think I have a little bit of problem
14 hearing you all talk about a very broad scope of this
15 process because we have been trying quite hard to deal
16 with these conflicts in terms of the contract
17 themselves, and our approach has been to focus on
18 that. But that being said, if you all want to hold a
19 hearing, we will have discussions with the parties on
20 the framing of the issues for the hearing and we can
21 bring any disputes that we have to the prehearing
22 officer on the scope of the issues that the hearing is
23 going to address. I just -- I don't want to -- I want
24 some guidance from you all on how we proceed with the
25 hearing, and I just want to make -- but I also want to

1 let you know that we want to keep it at least right
2 now, as often as we can in these contract dispute
3 proceedings focused on the contract and typical legal
4 contract interpretation.

5 COMMISSIONER DEASON: And I agree with that. We
6 have an agreement between two parties, we have a
7 complaint involving those two parties, and the
8 interpretation of the agreement. And in resolving
9 that, we need to keep that focus and involve just
10 those parties. I'm in total agreement on that. What
11 I understood to be a concern expressed is that in
12 resolving that, inherently we have got to answer a
13 question which does have broader implications. And
14 the question is do we want to take that out, address
15 it, and invite participation by others and then apply
16 that finding back to these parties in this case. I
17 don't know if that's the way to do it or not. I just
18 heard that there was a concern that we may be
19 addressing a more general question in trying to
20 resolve this dispute which then would have precedence
21 on others and they would not be able to participate.
22 That's what I understand there was a concern about.

23 MS. BROWN: Well, I'm not sure that I completely
24 agree with that, although I can understand you all's
25 position on that. I think the issue is whether the

1 contract contemplates service to Internet Service
2 Providers as local service. That's the issue. It's
3 not is Internet service provision interstate service,
4 in the broad greater scheme of things. It's what does
5 that contract say, what was the law at the time it was
6 entered into. How did the parties act at the time.

7 COMMISSIONER DEASON: That's fine. Let's go to
8 hearing on it.

9 CHAIRMAN JOHNSON: So you don't think we will
10 have to resolve the underlying question of --

11 MS. BROWN: I do not think you have to resolve
12 the underlying question. I think that that question
13 is obviously, clearly up for grabs in many forums, in
14 the federal forum, in other state forums, in
15 everybody's mind, because Internet service and the
16 worldwide web is different than usual
17 telecommunications. The two don't necessarily fit
18 together, and these are the ponderings that everyone
19 has on how you fit Internet service into the
20 telecommunications network.

21 But I don't think we or you have to resolve those
22 kinds of very difficult questions in this proceeding.
23 I think you need to look at the contract, what it says
24 is local traffic, what the law surrounding the
25 contract was at the time it was entered into, how the

1 parties acted at that time. And just because somebody
2 changes their mind on down the road and says, oh, no,
3 it's something else, that's not what you look for.

4 And I'm concerned about the scope of the hearing.
5 And I'm glad Commissioner Jacobs brought that up,
6 because I don't want us to go down a much broader road
7 that it's going to then mire these parties and this
8 contract in a very broad and difficult discussion.

9 COMMISSIONER DEASON: Let me say that it would be
10 nice if we went to hearing and were able to constrain
11 it to what you just described, but let me predict it
12 is going to expand to broader issues. I think that's
13 what is going to happen. BellSouth's position hinges
14 on that very -- the way you interpret it, you have
15 already decided the matter against BellSouth and in
16 WorldCom's favor the way you just described how you
17 want to have the hearing. Because you said what was
18 in the people's mind at the time they signed it and
19 how they acted. And because BellSouth paid two
20 months, in your mind it's already resolved. That's
21 what they had thought it was, so that's the way we
22 need to interpret it going forward.

23 MS. BROWN: Well, as you read the rec, these are
24 the staff's recommendations on the way you should
25 interpret this contract dispute and the terms in the

1 contract. Let me move on to one other little matter,
2 though. If we do get into a hearing and we do discuss
3 some things some of these things, I want to recommend
4 to you again, though, that if we are dealing with --
5 if the ultimate relief asked here is to resolve a
6 contract dispute, then that's what we need to do and
7 we need to keep that with respect to the two parties.
8 And the fact that you answer some difficult questions
9 along the way does not mean that you need to involve
10 everybody else who might somehow be influenced by your
11 ultimate decision.

12 COMMISSIONER DEASON: I'm perfectly content to do
13 that. That's fine with me. That's consistent with
14 the way we have treated --

15 MS. BROWN: It's like any other court decision.
16 It's going to affect other parties, but they are not
17 necessarily just by that entitled to participate.

18 CHAIRMAN JOHNSON: I would agree. But to the
19 extent that we are going to address the issue of
20 whether information service providers, whether the
21 calls were local or interstate, that has the kind of
22 ramifications that I think GTE, Intermedia, and the
23 other folks should provide us with some information
24 towards before we make a final decision. And as I
25 heard BellSouth at the last 25 minutes or so lay out

1 their case, that's almost the essence of what their
2 case is going to be about.

3 MS. BROWN: Well, then I think we ought to revise
4 this whole docket and have it be a generic
5 investigation if you want to do that. If you are
6 going to allow all these other parties to then come
7 into the fight that WorldCom has with BellSouth on the
8 terms, sort of indirectly on the terms of their
9 contract, then I don't know that you should keep this
10 as a contract dispute involving these two parties and
11 you ought to perhaps hold off on resolving this and do
12 the big generic investigation to start with.

13 COMMISSIONER GARCIA: I think Martha may be right
14 there. I mean, the issues here are very broad. And
15 no matter how we go with this, it's going to be
16 interpreted by other people. So why not take it on as
17 opposed to put it off?

18 MR. SELF: Because, Commissioner Garcia, if I
19 may, the reason is you have a dispute between two
20 parties on a contract that is a present, actual, real
21 dispute right now that you have to deal with, that you
22 are charged under the law with resolving. As the
23 others have pointed out, you can a lot of times have
24 cases that seem to imply other policy issues or have
25 implications for others.

1 If you have an airplane crash, for example, and
2 it is determined that the manufacturer of the aircraft
3 created a defective airplane, well, the party that is
4 suing the airliner and perhaps the manufacturer with
5 that that recovers the damages for the loss of someone
6 that was killed on that plane, that has implications
7 for all the other airlines, for all the other airline
8 passengers in the future that may apply.

9 But the court doesn't go an open a generic
10 proceeding to discuss airline safety and whether the
11 manufacturing of that was proper or not. It deals
12 with that dispute. And that's what we are asking you
13 to do. If BellSouth is raising what strike you as
14 generic and/or important policy questions that say
15 going forward, how should this traffic be treated,
16 should it be treated differently than whatever it is
17 that we are currently doing to it, I have no problem
18 with you opening a generic docket and inviting the
19 whole world to participate in that proceeding. But
20 that has no impact and no bearing upon the present
21 contractual dispute about what happened when this
22 contract was entered into a year and a half, two years
23 ago. And one does not impact the other.

24 COMMISSIONER CLARK: Excuse me, but I thought the
25 contract -- you have to look at it in the context it

1 was formulated, and that is the issue.

2 MR. SELF: Well, the first issue, Commissioner
3 Clark, as you know, is you have to determine what the
4 plain language of it says. If you can say on the
5 basis of the plain language what the contract means,
6 you don't have to look beyond that. That is the
7 contract instruction issue.

8 If you need to interpret the contract, then you
9 can go and look at what was in the mind of the parties
10 or whatever the applicable law is with respect to
11 contract instruction at that time. But you can
12 determine that, for example, that at the time that
13 that contract was entered that the service was indeed
14 local service and BellSouth is obligated to pay
15 compensation for it. You can on the same day decide
16 that on a going-forward basis in a generic docket that
17 that really should be not local traffic, not subject
18 to compensation, and that is a whole different issue.

19 COMMISSIONER DEASON: And then that would
20 retroactively apply to your contract?

21 MR. SELF: No. That's why I said on a
22 going-forward basis.

23 COMMISSIONER DEASON: So then BellSouth would be
24 obligated to pay the reciprocal compensation until the
25 contract expires.

1 MR. SELF: Yes.

2 MR. PELLEGRINI: These proceedings, I think,
3 these particular proceedings are difficult for you in
4 one respect because there always will be implications
5 that will affect others. That can't be avoided.

6 COMMISSIONER DEASON: Let me say I'm not opposed
7 to us litigating this dispute with these parties and
8 just make our decisions. I just don't want the issues
9 to be unfairly narrowed to where we say, well, we
10 don't want to address that because that's generic and
11 we don't have GTE here and we don't have other people
12 here. We have got to look at every conceivable issue
13 as it impacts this dispute and just make the decision
14 as we see fit and go forward. Do you have a problem
15 with that?

16 MS. BROWN: I have a little bit of a problem with
17 it. I have a little bit of a problem with the idea
18 that we have to look at every conceivable issue that
19 impacts this dispute. I think we need to look at the
20 issues that the petitioner has presented to us and the
21 respondents have presented to us just under 252, just
22 like we do with arbitrations. So I have a little
23 trouble with saying every conceivable issue, but other
24 than that I don't --

25 COMMISSIONER DEASON: Well, maybe I used too

1 broad of a term, okay? But let me tell you this, I
2 think I'm the prehearing officer on this,
3 unfortunately, and if I have to I will determine what
4 the issues are, okay?

5 MS. BROWN: Sure.

6 COMMISSIONER DEASON: Very well.

7 CHAIRMAN JOHNSON: And my only concern was that I
8 wouldn't want us to -- it was the same as Commissioner
9 Deason has made, I think, and it appeared to me that
10 we were going to end up resolving or discussing, or
11 that an issue would be whether or not ISP calls were
12 local or intrastate. But if there is a way to narrow
13 it, and we aren't dealing with that greater issue,
14 then fine. I hear Mr. Self saying that we can do
15 that.

16 COMMISSIONER GARCIA: (Inaudible, microphone not
17 on.)

18 MS. WHITE: No, I think we are. I mean, because
19 I think that is going to have an impact on the
20 contract.

21 COMMISSIONER CLARK: There are two questions.
22 Was it local traffic when they entered into the
23 contract or was it not; and should it be. The first
24 one, I think you do have to answer it to answer their
25 dispute. It's still a broad question. And I have

1 absolute faith in Commission Deason that he will
2 resolve it. And if he won't, he will bring it to the
3 rest of us and let us resolve it. There is no need to
4 discuss it further.

5 COMMISSIONER GARCIA: No, we have discussed the
6 heck out of it. But I think you're right,
7 Commissioner, and that second question is a key
8 question and we are going to have to --

9 COMMISSIONER CLARK: Yes. And I think the first
10 is, too.

11 COMMISSIONER GARCIA: The first is, too, but I
12 think that the second (inaudible, microphone not on.)

13 MR. SELF: And, Commissioner Garcia, I would say
14 whenever you ask should, what should happen, you are
15 talking about future conduct and that can be a generic
16 policy, rulemaking, however you wish to attack it.
17 And that's a different issue.

18 COMMISSIONER GARCIA: I think it's more than just
19 this dispute. I think it's a problem.

20 MS. WHITE: And I'm not going to add anything
21 more, than other I appreciate the amount of time the
22 Commission gave us.

23 COMMISSION CHAIRMAN: And you were pushing your
24 luck. But you did a good job of raising some
25 important issues. There was a motion?

1 COMMISSIONER DEASON: Well, let's take it one
2 step at the time. I would move staff on Issue 1.

3 CHAIRMAN JOHNSON: Is there a second?

4 COMMISSIONER GARCIA: Second.

5 CHAIRMAN JOHNSON: There is a motion and a
6 second. Any further discussion? Seeing none, show
7 that approved unanimously.

8 Issue 2.

9 COMMISSIONER DEASON: Okay. I would move that
10 the Commission go to hearing on its own motion
11 concerning the issue or issues within Issue 2.

12 COMMISSIONER CLARK: Second.

13 CHAIRMAN JOHNSON: There is a motion and a
14 second. Any further discussion? Seeing none, all
15 those in favor signify by saying aye.

16 (Unanimous affirmative vote.)

17 CHAIRMAN JOHNSON: Show that approved
18 unanimously.

19 COMMISSIONER DEASON: Now, in regard to Issue 3,
20 I think that since we are not issuing a PAA order
21 that's going to have to be protested, I think that we
22 should simply require the mechanism within the
23 agreement be activated and that there be an escrow
24 established and funds taken into it to cover the
25 entire period of time from when this dispute

1 originated. And that it's not essential that it has
2 to be done within three days, just require BellSouth
3 to act expeditiously to get those funds in an escrow
4 arrangement.

5 COMMISSIONER GARCIA: Forgive me, do we have to
6 do that? Or isn't that also comprehended by the terms
7 of their contracts? Why are we even interpreting that
8 part of it? They have an agreement, and when we
9 decide this they have to act by that agreement,
10 whichever way it comes out.

11 COMMISSIONER CLARK: Apparently there was a
12 misunderstanding as to whether there was a dispute and
13 the monies weren't being put in. I'm just indicating
14 -- I think it's just an indication that we think there
15 is a dispute and you ought to put the money in. I
16 think it's just a little added incentive to do it.

17 CHAIRMAN JOHNSON: So there is a motion and a
18 second. Any further discussion? Seeing none, all
19 those in favor signify by saying aye.

20 (Unanimous affirmative vote.)

21 MR. PELLEGRINI: Excuse me, have you voted Issue
22 3 with the recommendation as it stands?

23 CHAIRMAN JOHNSON: No.

24 COMMISSIONER CLARK: No. He just made the
25 motion.

1 MR. PELLEGRINI: I'm sorry, I didn't understand
2 that.

3 COMMISSIONER DEASON: Okay. Simply requiring
4 that the mechanism within these parties' agreement be
5 activated because there is a dispute.

6 MR. PELLEGRINI: Right.

7 COMMISSIONER DEASON: And that BellSouth be
8 required to pay funds into an escrow to cover the
9 entire period of time from when the dispute first
10 arose. And that it doesn't have to be done within
11 three days, but that BellSouth should act
12 expeditiously to get that escrow established.

13 MR. PELLEGRINI: Thank you.

14 COMMISSIONER DEASON: And, I'm sorry, was there a
15 vote?

16 CHAIRMAN JOHNSON: Yes, I think we voted.

17 COMMISSIONER DEASON: Issue 4, I would move that
18 we just keep the docket open, we're going to hearing.

19 COMMISSIONER GARCIA: Second.

20 CHAIRMAN JOHNSON: Any discussion? Show that
21 approve unanimously. Thank you.

22 MR. SELF: Thank you.

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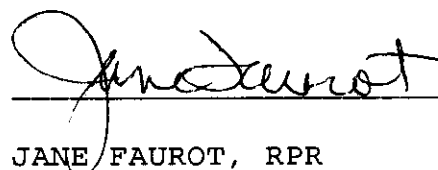
CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, JANE FAUROT, RPR, do hereby certify that the foregoing proceeding was transcribed from cassette tape, and the foregoing pages number 1 through 58 are a true and correct record of the proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor relative or employee of such attorney or counsel, or financially interested in the foregoing action.

DATED THIS 17th day of March, 1998.



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