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April 17, 1998

Mrs. Blanca S. Bayo  
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Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399

RE: **Docket Nos. 971478-TP (WorldCom), 980184-TP (Teleport),  
980495-TP (Intermedia) and 980499-TP (MCI)**

Dear Ms. Bayo:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Direct Testimony of Jerry Hendrix, which we ask that you file in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served on the parties shown on the attached Certificate of Service.

Sincerely,

*Nancy B. White*  
Nancy B. White (PW)

Enclosures

cc: All Parties of Record  
A. M. Lombardo  
R. G. Beatty  
W. J. Ellenberg

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

**CERTIFICATE OF SERVICE**

**Docket Nos. 971478-TP, 980184-TP, 980495-TP and 980499-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Federal Express this 17th day of April, 1998 to the following:

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BELLSOUTH TELECOMMUNICATIONS, INC.  
TESTIMONY OF JERRY HENDRIX  
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION  
DOCKET NOS. 971478-TP, 980184-TP, 980495-TP, 980499-TP  
April 17, 1998

Q. PLEASE STATE YOUR NAME AND COMPANY NAME AND ADDRESS.

A. My name is Jerry Hendrix. I am employed by BellSouth Telecommunications, Inc. as Director - Interconnection Services Pricing. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.

A. I graduated from Morehouse College in Atlanta, Georgia in 1975 with a Bachelor of Arts Degree. I began employment with Southern Bell in 1979 and have held various positions in the Network Distribution Department before joining the BellSouth Headquarters Regulatory organization in 1985. On January 1, 1996 my responsibilities moved to Interconnection Services Pricing in the Interconnection Customer Business Unit. In my position as Director, I oversee the negotiation of interconnection agreements between BellSouth and Alternative Local Exchange Companies (ALECs).

Q. HAVE YOU TESTIFIED PREVIOUSLY?

1

2 A. Yes. I have testified in proceedings before the Alabama, Florida, Georgia,  
3 Kentucky, Louisiana, Mississippi, South Carolina, and Tennessee Public  
4 Service Commissions and the North Carolina Utilities Commission.

5

6 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

7

8 A. The purpose of my testimony is to discuss whether reciprocal compensation for  
9 internet service provider (ISP) non-voice type traffic is required under the  
10 interconnection agreements that have been negotiated between BellSouth and  
11 the parties in this proceeding. As I explain below, calls made by an end user  
12 customer to access the internet or other services offered by an ISP do not  
13 constitute local traffic, but instead are in the nature of exchange access traffic  
14 that is jurisdictionally interstate. Therefore, these types of calls (ISP traffic)  
15 are not subject to the reciprocal compensation requirements in the  
16 interconnection agreements at issue.

17

18 Q. WHAT ARE THE RECIPROCAL COMPENSATION REQUIREMENTS  
19 INCLUDED IN THE INTERCONNECTION AGREEMENTS  
20 NEGOTIATED BETWEEN BELLSOUTH AND THE PARTIES IN THIS  
21 PROCEEDING?

22

23 A. All agreements require the termination of calls on either BellSouth's network  
24 or the other party's network for reciprocal compensation payments to occur.  
25 As I explain below in more detail, call termination does not occur when an

1 ALEC, serving as a conduit, places itself between BellSouth and an ISP. A  
2 second basic requirement is that traffic be jurisdictionally local as defined by  
3 the agreements. Clearly, that is not the case with ISP traffic, because the  
4 Federal Communications Commission (FCC) has concluded that enhanced  
5 service providers, of which ISPs are a subset, use the local network to provide  
6 interstate services.

7

8 Q. PLEASE DESCRIBE THE RECIPROCAL COMPENSATION  
9 REQUIREMENTS INCLUDED IN EACH OF THE INDIVIDUAL  
10 INTERCONNECTION AGREEMENTS NEGOTIATED BETWEEN  
11 BELL SOUTH AND THE PARTIES IN THIS PROCEEDING.

12

13 A. First, the agreement with WorldCom at Section 5.8.1 states:

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

18 Section 1.40 states:

19 "Local Traffic" refers to calls between two or more Telephone Exchange  
20 Service users where both Telephone Exchange Services bear NPA-NXX  
21 designations associated with the same local calling area of the incumbent  
22 LEC or other authorized area (e.g., Extended Area Service Zones in  
23 adjacent local calling areas). Local traffic includes traffic types that have  
24 been traditionally referred to as "local calling" and as "extended area  
25 service (EAS)." All other traffic that originates and terminates between

1 end users within the LATA is toll traffic. In no event shall the Local  
2 Traffic area for purposes of local call termination billing between the  
3 parties be decreased.

4 Clearly, at a minimum, this agreement requires the termination of traffic on  
5 either BellSouth's or WorldCom's network for reciprocal compensation to  
6 apply. Further, the definition of local traffic obviously hinges on the words  
7 "traffic types that have been traditionally referred to as 'local calling' and as  
8 'extended area service (EAS)'" ISP traffic has never been traditionally  
9 referred to as local traffic. Treatment of ISP traffic falls under section 5.8.3 of  
10 the agreement. It states, in part:

11 The reciprocal compensation arrangements set forth in this Agreement  
12 are not applicable to Switched Exchange Access Service.

13  
14 The Intermedia agreement at Section IV.A and a portion of IV.B states:

15 The delivery of local traffic between the parties shall be reciprocal and  
16 compensation will be mutual according to the provisions of this  
17 agreement. The parties agree that the exchange of traffic on BellSouth's  
18 EAS routes shall be considered as local traffic and compensation for the  
19 termination of such traffic shall be pursuant to the terms of this section.  
20 EAS routes are those exchanges within an exchange's Basic Local  
21 Calling Area, as defined in Section A3 of BellSouth's General  
22 Subscriber Services Tariff.

23  
24  
25

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

4           As can easily be seen, this agreement also requires the termination of traffic on  
5           either BellSouth's or Intermedia's network for reciprocal compensation to  
6           apply. It also states that the compensation is for the termination of local traffic  
7           as defined in Section A3 of BellSouth's Tariff. Local traffic as defined in  
8           Section A3 in no way implies ISP traffic. No Intermedia representative ever  
9           indicated to BellSouth that Intermedia assumed the traditional local calling  
10          area definition in Section A3 to include ISP traffic. If that was Intermedia's  
11          intent, that intent should have been made unmistakably clear.

12  
13          The MCImetro agreement states in Attachment IV, Section 2.2.1:

14                 The Parties shall bill each other reciprocal compensation at the rates set  
15                 forth for local interconnection in this Agreement and the Order of the  
16                 FPSC. Local traffic is defined as any telephone call that originates in  
17                 one exchange and terminates in either the same exchange, or a  
18                 corresponding Extended Area (EAS) exchange. The terms Exchange and  
19                 EAS exchanges are defined and specified in Section A3. of BellSouth's  
20                 General Subscriber Service Tariff.

21          Again, as in the previous two agreements, the call must terminate at MCImetro  
22          within the local calling area as specified by Section A3 of BellSouth's Tariff.  
23          This is simply not the case with ISP traffic; the call does not terminate at  
24          MCImetro's switch, and the call does not terminate in a local calling area as  
25          defined by Section A3 of BellSouth's Tariff.



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Finally, the Teleport agreement states in Section IV.B and part of IV.C:  
The delivery of local traffic between the parties shall be reciprocal and  
compensation will be mutual according to the provisions of this  
Agreement.

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

In sum, it is very clear is that traffic must terminate on each of the party's  
networks for reciprocal compensation to occur. This requirement is a common  
and well known fact in the industry. Common in all of the agreements is that  
the traffic must be jurisdictionally local as defined by the agreements and must  
terminate on either party's network.

ISSUE #1

Q. UNDER THEIR FLORIDA PARTIAL INTERCONNECTION  
AGREEMENT, ARE WORLDCOM TECHNOLOGIES, INC./MFS  
COMMUNICATIONS COMPANY, INC., AND BELLSOUTH  
TELECOMMUNICATIONS, INC., REQUIRED TO COMPENSATE EACH  
OTHER FOR TRANSPORT AND TERMINATION OF TRAFFIC TO  
INTERNET SERVICE PROVIDERS?

1 A. No. I am the person responsible for all negotiations with ALECs. Further, I  
2 either negotiated the agreements or have spoken with the persons responsible  
3 for the agreements. The main concern at the time most of these agreements  
4 were negotiated was the balance of traffic between the parties. This concern  
5 led to the cap provision being included in the Teleport and Intermedia  
6 agreements and in the initial MCI partial agreement. BellSouth has entered  
7 into hundreds of agreements with ALECs across its region and has included in  
8 those agreements language discussing payment of reciprocal compensation.  
9 No where in those agreements has BellSouth acknowledged or agreed to define  
10 ISP traffic as local traffic subject to reciprocal compensation. Further,  
11 BellSouth has not knowingly paid reciprocal compensation to ALECs who  
12 have transported traffic to their ISP customers, nor has BellSouth knowingly  
13 billed ALECs for performing that same service.

14  
15 Q. IF WORLDCOM TECHNOLOGIES, INC./MFS COMMUNICATIONS  
16 COMPANY, INC., AND BELLSOUTH TELECOMMUNICATIONS, INC.,  
17 DID NOT MUTUALLY INTEND TO TREAT THIS TYPE OF TRAFFIC AS  
18 LOCAL TRAFFIC FOR PURPOSES OF RECIPROCAL COMPENSATION,  
19 CAN EITHER PARTY BE REQUIRED TO PAY RECIPROCAL  
20 COMPENSATION FOR THAT TRAFFIC?

21  
22 A. No. If both of the parties did not mutually intend to treat this traffic as local  
23 for purposes of reciprocal compensation, then BellSouth is under no  
24 contractual obligation to pay reciprocal compensation for such traffic.

25

1 Moreover, given that the traffic is clearly interstate traffic and not local traffic  
2 as shown later, reciprocal compensation should not apply for that traffic.

3

4 ISSUE #2

5

6 Q. UNDER THEIR INTERCONNECTION AGREEMENT, ARE TELEPORT  
7 COMMUNICATIONS GROUP, INC./TCG SOUTH FLORIDA AND  
8 BELLSOUTH TELECOMMUNICATIONS, INC., REQUIRED TO  
9 COMPENSATE EACH OTHER FOR TRANSPORT AND TERMINATION  
10 OF TRAFFIC TO INTERNET SERVICE PROVIDERS?

11

12 A. No. For reasons stated previously, I can unequivocally state that it was not  
13 BellSouth's intent for ISP traffic to be subject to reciprocal compensation. In  
14 fact, the main concern was the balance of traffic which led to the cap provision  
15 being included in the Teleport agreement. BellSouth and Teleport did not  
16 mutually agree to treat this type of traffic as local traffic for purposes of  
17 reciprocal compensation. No where in that agreement has BellSouth  
18 acknowledged or agreed to define ISP traffic as local traffic subject to  
19 reciprocal compensation. Further, BellSouth has not knowingly paid  
20 reciprocal compensation to ALECs who have transported traffic to their ISP  
21 customers, nor has BellSouth knowingly billed ALECs for performing that  
22 same service.

23

24 Q. IF TELEPORT COMMUNICATIONS GROUP, INC./TCG SOUTH  
25 FLORIDA, AND BELLSOUTH TELECOMMUNICATIONS, INC., DID

1 NOT MUTUALLY INTEND TO TREAT THIS TYPE OF TRAFFIC AS  
2 LOCAL TRAFFIC FOR PURPOSES OF RECIPROCAL COMPENSATION,  
3 CAN EITHER PARTY BE REQUIRED TO PAY RECIPROCAL  
4 COMPENSATION FOR THAT TRAFFIC?

5  
6 A. No. If both of the parties did not mutually intend to treat this traffic as local  
7 for purposes of reciprocal compensation, then BellSouth is under no  
8 contractual obligation to pay reciprocal compensation for such traffic.  
9 Moreover, given that the traffic is clearly interstate traffic and not local traffic  
10 as shown later, reciprocal compensation should not apply for that traffic.

11  
12 ISSUE #3

13  
14 Q. UNDER THEIR INTERCONNECTION AGREEMENT, ARE MCIMETRO  
15 ACCESS TRANSMISSION SERVICES, INC., AND BELLSOUTH  
16 TELECOMMUNICATIONS, INC., REQUIRED TO COMPENSATE EACH  
17 OTHER FOR TRANSPORT AND TERMINATION OF TRAFFIC TO  
18 INTERNET SERVICE PROVIDERS?

19  
20 A. No. For reasons stated previously, I can unequivocally state that it was not  
21 BellSouth's intent for ISP traffic to be subject to reciprocal compensation. In  
22 fact, the main concern was the balance of traffic which led to the cap provision  
23 being included in the initial MCImetro agreement. BellSouth and MCImetro  
24 did not mutually agree to treat this type of traffic as local traffic for purposes of  
25 reciprocal compensation. No where in that agreement has BellSouth

1 acknowledged or agreed to define ISP traffic as local traffic subject to  
2 reciprocal compensation. Further, BellSouth has not knowingly paid  
3 reciprocal compensation to ALECs who have transported traffic to their ISP  
4 customers, nor has BellSouth knowingly billed ALECs for performing that  
5 same service.

6

7 Q. IF MCIMETRO ACCESS TRANSMISSION SERVICES, INC., AND  
8 BELLSOUTH TELECOMMUNICATIONS, INC., DID NOT MUTUALLY  
9 INTEND TO TREAT THIS TYPE OF TRAFFIC AS LOCAL TRAFFIC FOR  
10 PURPOSES OF RECIPROCAL COMPENSATION, CAN EITHER PARTY  
11 BE REQUIRED TO PAY RECIPROCAL COMPENSATION FOR THAT  
12 TRAFFIC?

13

14 A. No. If both of the parties did not mutually intend to treat this traffic as local  
15 for purposes of reciprocal compensation, then BellSouth is under no  
16 contractual obligation to pay reciprocal compensation for such traffic.  
17 Moreover, given that the traffic is clearly interstate traffic and not local traffic  
18 as shown later, reciprocal compensation should not apply for that traffic.

19

20 ISSUE #4

21

22 Q. UNDER THEIR INTERCONNECTION AGREEMENT, ARE INTERMEDIA  
23 COMMUNICATIONS, INC., AND BELLSOUTH  
24 TELECOMMUNICATIONS, INC., REQUIRED TO COMPENSATE EACH

25

1 OTHER FOR TRANSPORT AND TERMINATION OF TRAFFIC TO  
2 INTERNET SERVICE PROVIDERS?

3

4 A. No. For reasons stated previously, I can unequivocally state that it was not  
5 BellSouth's intent for ISP traffic to be subject to reciprocal compensation. In  
6 fact, the main concern was the balance of traffic which led to the cap provision  
7 being included in the Intermedia agreement. BellSouth and Intermedia did not  
8 mutually agree to treat this type of traffic as local traffic for purposes of  
9 reciprocal compensation. No where in that agreement has BellSouth  
10 acknowledged or agreed to define ISP traffic as local traffic subject to  
11 reciprocal compensation. Further, BellSouth has not knowingly paid  
12 reciprocal compensation to ALECs who have transported traffic to their ISP  
13 customers, nor has BellSouth knowingly billed ALECs for performing that  
14 same service.

15

16 Q. IF INTERMEDIA COMMUNICATIONS, INC., AND BELLSOUTH  
17 TELECOMMUNICATIONS, INC., DID NOT MUTUALLY INTEND TO  
18 TREAT THIS TYPE OF TRAFFIC AS LOCAL TRAFFIC FOR PURPOSES  
19 OF RECIPROCAL COMPENSATION, CAN EITHER PARTY BE  
20 REQUIRED TO PAY RECIPROCAL COMPENSATION FOR THAT  
21 TRAFFIC?

22

23 A. No. If both of the parties did not mutually intend to treat this traffic as local  
24 for purposes of reciprocal compensation, then BellSouth is under no  
25 contractual obligation to pay reciprocal compensation for such traffic.

1 Moreover, given that the traffic is clearly interstate traffic and not local traffic  
2 as shown later, reciprocal compensation should not apply for that traffic.

3

4 Q. DESCRIBE THE TYPE OF TRAFFIC IN DISPUTE.

5

6 The following describes how a call by an end user is routed to the internet.  
7 Internet service is a subset of the services that the FCC has classified as  
8 enhanced services. As I explain below in more detail, the FCC has exempted  
9 enhanced service providers from paying access charges. Hence, ISPs are  
10 permitted to obtain and use local exchange services to collect and terminate  
11 their traffic. End users gain access to the internet through an ISP. The ISP  
12 location, generally referred to as an ISP Point of Presence (POP), represents  
13 the edge of the internet. ISPs can use the public switched network to collect  
14 their subscribers' calls to the internet. In this case, ISP subscribers access the  
15 ISP by dialing a local telephone number via their computers and modems that  
16 connect the subscribers to the ISP. The ISP will have purchased flat-rated  
17 business service lines from various local exchange company end offices and  
18 physically terminated those lines at an ISP premises consisting of modem  
19 banks. The ISP converts the signal of the incoming call to a digital signal and  
20 routes the call over its own network to a backbone network provider, where it  
21 is ultimately routed to an internet-connected host computer. Backbone  
22 networks can be regional or national in nature. These networks not only  
23 interconnect ISP POPs but also interconnect ISPs with each other and with  
24 online content.

25

1 The essence of internet service is the ease with which a user can access and  
2 transport information from any host connected to the internet. The internet  
3 enables information and internet resources to be widely distributed and  
4 eliminates the need for the user and the information to be physically located in  
5 the same area. ISPs typically provide, in addition to internet access, internet  
6 services such as e-mail, usenet news, and Web pages to their customers. ISPs  
7 that have multiple local dial facility locations (as is the case for many ISPs)  
8 would not have duplicate hosts for such services in each local dial location.  
9 Indeed, such duplication would defeat a primary advantage of the internet.  
10 Thus, when a user retrieves e-mail or accesses usenet messages, for example, it  
11 is highly unlikely that the user is communicating with a host that is located in  
12 the same local calling area as the user. To the contrary, the concentration of  
13 information is more likely to result in an interstate, or even international,  
14 communication.

15  
16 In short, an ISP takes a call and, as part of the information service it offers to  
17 the public, transmits that call to and from the communications network of other  
18 telecommunications carriers (e.g., internet backbone providers such as MCI or  
19 Sprint) whereupon it is ultimately delivered to internet host computers, almost  
20 all of which are not located in the local serving area of the ISP.

21  
22 Thus, the call from an end user to the ISP only transits through the ISP's local  
23 point of presence; it does not terminate there. There is no interruption of the  
24 continuous transmission of signals between the end user and the host  
25 computers.



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The fact that an ISP can now obtain business service lines from an ALEC switch in no way alters the continuous transmission of signals between an incumbent local exchange company's (ILEC's) end user to a host computer. In other words, if an ALEC puts itself in between BellSouth's end office and the internet service provider, it is acting like an intermediate transport carrier or conduit, not a local exchange provider entitled to reciprocal compensation. See JDH exhibits 1 and 2 attached to this testimony.

Q. WHAT IS THE JURISDICTIONAL NATURE OF SUCH TRAFFIC?

A. Internet traffic is not local traffic subject to reciprocal compensation obligations. The vast majority of this traffic is interstate in nature. The dispersion of servers world-wide and the lack of duplication attests to the fact that use of the internet will invariably involve interstate communications. Further, the fact that a single internet call may simultaneously be interstate, international and intrastate makes it inseverable for jurisdictional purposes. This inability to distinguish the jurisdictional nature of each communication that traverses an internet connection coupled with the predominant interstate nature of internet communications leads to the inescapable conclusion that all internet traffic must be considered jurisdictionally interstate. The FCC has long held that jurisdiction of traffic is determined by the end-to-end nature of a call. The end-to-end nature of a call has been the subject of many workshops (i.e., PIU) with the Florida Public Service Commission ("FPSC" or "Commission") as well. It is, therefore, irrelevant that the originating end user

1 and the ISP's POP are in the same local calling area or that local  
2 interconnection trunks are used to transmit calls to ISPs, because the ISP's  
3 POP is not the terminating point of this ISP traffic. The FCC stated in  
4 Paragraph 12 in an order dated February 14, 1992, in Docket Number 92-18,  
5 that:

6 Our jurisdiction does not end at the local switch, but continues to the  
7 ultimate termination of the call. The key to jurisdiction is the nature of  
8 the communication itself, rather than the physical location of the  
9 technology.

10

11 The ending point of a call to an ISP is not the ISP switch, but rather the  
12 computer database or information source to which the ISP provides access. As  
13 such, calls to an ISP constitute exchange access traffic, not telephone exchange  
14 service (local service) subject to reciprocal compensation. Calls that merely  
15 transit an ALEC's network without terminating on it, cannot be eligible for  
16 reciprocal compensation.

17

18 The FCC has always recognized that the true nature of ISP traffic was access  
19 traffic. For example, in the 1983 order in which it initially established the ISP  
20 access charge exemption, the FCC stated: "Among the variety of users of  
21 access service are ... enhanced service providers." Likewise, in its 1987 Notice  
22 of Proposed Rulemaking in CC Docket No. 87-215 which it proposed to lift  
23 the ISP access charge exemption, the FCC stated:

24

25

1 We are concerned that the charges currently paid by enhanced service  
2 providers do not contribute sufficiently to the costs of the exchange  
3 access facilities they use in offering their services to the public. As we  
4 have frequently emphasized in our various access charge orders, our  
5 ultimate objective is to establish a set of rules that provide for recovery  
6 of the costs of exchange access used in interstate service in a fair,  
7 reasonable, and efficient manner from all users of access service,  
8 regardless of their designation as carriers, enhanced service providers, or  
9 private customers. Enhanced service providers, like facilities-based  
10 interexchange carriers and resellers, use the local network to provide  
11 interstate services. To the extent that they are exempt from access  
12 charges, the other users of exchange access pay a disproportionate share  
13 of the costs of the local exchange that access charges are designed to  
14 cover. (emphasis added)

15 In both of these dockets, the FCC decided not to impose access charges on  
16 ISPs. In each case, however, the FCC – after referring to the interstate nature  
17 of the call – cited only policy reasons for its decision, in particular, its concern  
18 that imposing access charges at that time upon enhanced service providers  
19 could jeopardize the viability of what was still a fledgling industry.

20  
21 Notably, absent from any of these decisions is a determination by the FCC, or  
22 even a question raised by it, that traffic to ISPs is local traffic, rather than  
23 access traffic. Instead, in each case, the FCC granted or perpetuated an  
24 exemption from the access charge regime, based solely on pragmatic (and  
25 political) considerations regarding the impact of existing access charges on the

1 ISP industry. Moreover, in each instance, the FCC specifically noted the  
2 possibility that access charges, either as currently structured or modified, might  
3 be applied at some point in the future to ISPs. If the FCC had concluded that  
4 traffic received by ISPs was local, there would have been no need for it to  
5 exempt that traffic from the access charge regime; access charges would not  
6 have been applied in the first place. Moreover, the FCC could not have held  
7 out the possibility that it might, in the future, assess some sort of access charge  
8 on such traffic. It should be noted that this exchange access arrangement  
9 parallels the Feature Group A arrangement, where interstate access charges are  
10 applicable. On Feature Group A calls, as with ISP calls, end users dial local  
11 numbers to make non-local calls.

12  
13 Therefore, under clear FCC precedent, calls bound for the internet through an  
14 ISP's switch can only be characterized as interstate exchange access traffic  
15 because they "terminate" not at the ISP's equipment, but rather at the database  
16 or information source to which the ISP provides access. The FCC has not held  
17 that ISP traffic is local traffic or that ISPs are end users for regulatory  
18 purposes. Rather the FCC, for policy reasons, has exempted ISPs from paying  
19 switched access charges to the local exchange companies for originating  
20 computer-based non-voice enhanced service traffic to them. This in no way  
21 alters the fact that the traffic they collect is access traffic, not local traffic. It is  
22 important to note that BellSouth's compliance with the FCC access charge  
23 exemption (not applying access charges for the origination of computer-based  
24 non-voice enhanced service traffic to ISPs) in no way implies that BellSouth  
25 must pay reciprocal compensation on such traffic.

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Q. WHEN BELLSOUTH NEGOTIATED THE INTERCONNECTION AGREEMENTS IN QUESTION, WAS IT AWARE OF FCC RULINGS ADDRESSING THE JURISIDICTIONAL NATURE OF ISP TRAFFIC?

A. Yes.

Q. DID BELLSOUTH CONSIDER ISP TRAFFIC AS LOCAL TRAFFIC SUBJECT TO RECIPROCAL COMPENSATION AT THE TIME IT NEGOTIATED THESE OR ANY OTHER INTERCONNECTION AGREEMENTS?

A. Absolutely not. BellSouth would have had no reason to consider ISP traffic to be anything other than jurisdictionally interstate traffic when it negotiated these agreements. Further, had BellSouth understood that the other parties considered ISP traffic to be local traffic subject to reciprocal compensation, the issue would have been discussed at length. During the negotiations of the agreements with the parties in this docket, as well as with any ALEC, no party questioned whether ISP traffic should be considered local traffic. Had any party raised the issue, BellSouth would have not agreed to either bill for or pay for reciprocal compensation associated with such traffic, because that traffic cannot possibly be considered to be local traffic, as reflected by a review of the FCC rulings discussed above.

1 Again, BellSouth's interconnection agreements intend for reciprocal  
2 compensation to apply only when local traffic is terminated on either party's  
3 network. This interpretation is consistent with the Telecommunications Act of  
4 1996, which established a reciprocal compensation mechanism to encourage  
5 local competition. The payment of reciprocal compensation for ISP traffic  
6 would impede local competition. The FCC, in its August 1996 local  
7 interconnection order, made it perfectly clear that reciprocal compensation  
8 rules did not apply to non-local traffic such as interexchange traffic. To quote  
9 from paragraph 1034 of that order:

10 We conclude that Section 251(B)(5), reciprocal compensation obligation,  
11 should apply only to traffic that originates and terminates within a local  
12 area assigned in the following paragraph. We find that reciprocal  
13 compensation provisions of Section 251(B)(5) for transport and  
14 termination of traffic do not apply to the transport and termination of  
15 interstate or intrastate interexchange traffic.

16  
17 Q. WOULD IT HAVE MADE ECONOMIC SENSE FOR BELL SOUTH TO  
18 HAVE AGREED TO CLASSIFY ISP TRAFFIC AS LOCAL TRAFFIC  
19 UNDER THE INTERCONNECTION AGREEMENTS AT ISSUE?

20  
21 A. Absolutely not, and this reality is further proof that BellSouth never intended  
22 for ISP traffic to be subject to reciprocal compensation. A simple example will  
23 illustrate that point. First, it should be realized that traffic collected by non-  
24 voice ISPs will always be one-way, not two-way, as intended by the Act. That  
25 is, the traffic will originate from an end user and terminate through the ISP

1 network to a host computer. Reciprocal compensation becomes one-way  
2 compensation to those ALECs specifically targeting large ISPs. Hence, if ISP  
3 traffic was subject to payment of reciprocal compensation, the originating  
4 carrier in most instances would be forced to pay the interconnecting carrier  
5 more than the originating carrier receives from an end user to provide local  
6 telephone service. BellSouth would have never agreed to such an absurd result.

7  
8 For example, assume a BellSouth residential customer in Miami subscribes to  
9 an ISP and that ISP is served by an ALEC. That customer uses the internet  
10 two hours a day, which is a reasonable assumption given the long holding  
11 times associated with internet usage. This usage would generate a reciprocal  
12 compensation payment by BellSouth to the ALEC of \$36.00 per month  
13 assuming a 1.0 cents per minute reciprocal compensation rate [ $\$.01 * 2 \text{ hours} * 60 \text{ minutes/hr.} * 30 \text{ days}$ ]. BellSouth serves residence customers in Miami at  
14 \$10.65 per month. Therefore, in this example, BellSouth would be forced to  
15 pay the ALEC \$25.35 per month more that it receives from the end user for  
16 local service. Further, a significant portion of additional residential lines are  
17 bought primarily to access the internet and would not require more than a  
18 simple flat-rate line with no additional features. The originating carrier,  
19 BellSouth in this example, would not only be forced to turn over to the ALEC  
20 that serves the ISP every penny of local revenue it receives from its end users,  
21 but it would also have to pay a significant amount more per month in  
22 reciprocal compensation alone. This situation makes no economic sense and  
23 would place an unfair burden on BellSouth and its customers. It is  
24 incomprehensible that BellSouth would have willingly agreed to pay the  
25

1 parties in this proceeding \$25 more per month per customer than it receives  
2 from those customers for providing local service.

3

4 Q. IN FPSC DOCKET NUMBER 880423-TP, THE BELLSOUTH WITNESS  
5 TESTIFIED THAT CONNECTIONS TO THE LOCAL EXCHANGE  
6 NETWORK FOR THE PURPOSE OF PROVIDING AN INFORMATION  
7 SERVICE SHOULD BE TREATED LIKE ANY OTHER LOCAL  
8 EXCHANGE SERVICE. HOW DOES THAT STATEMENT RELATE TO  
9 YOUR CURRENT POSITION?

10

11 A. First, the statement of the BellSouth witness must be reviewed in the  
12 context of that entire docket and the regulatory rulings in effect at the time. It  
13 is inappropriate to consider the testimony from a previous FPSC hearing which  
14 was held prior to the final FCC ruling on that issue. BellSouth ultimately lost  
15 the argument it had advanced to this Commission when the matter came before  
16 the FCC. Additionally, this Commission held that its finding was interim and  
17 that it would be revisited again. Moreover, in its Order in that docket, the  
18 Commission plainly recognized that local exchange facilities provided to the  
19 ISP are used to carry intrastate and interstate calls, not just local calls.

20

21 Q. IS THE FCC CURRENTLY CONSIDERING THE PRECISE ISSUE  
22 RAISED BY WORLDCOM AND THE OTHER PARTIES TO THIS  
23 PROCEEDING?

24

25



1 A. Yes. The FCC initiated a proceeding in response to a June 20, 1997 letter  
2 from the Association for Local Telecommunications Services (ALTS) in which  
3 ALTS seeks a ruling from the FCC that “nothing in the [FCC’s] Local  
4 Competition Order...altered the [FCC’s] long standing rule that calls to an  
5 [ISP] made from within a local calling area must be treated as local calls by  
6 any and all LECs involved in carrying those calls.” ALTS also asserted in its  
7 letter that the clarification it requested was “plainly within the [FCC’s]  
8 exclusive jurisdiction.” ALTS’ decision to seek relief from the FCC on this  
9 issue supports BellSouth’s position that even ALECs seeking reciprocal  
10 compensation for ISP traffic understand that the FCC has viewed this traffic as  
11 interstate, not local. If the traffic were truly local, how would the FCC have  
12 “exclusive jurisdiction” to provide ALTS with the relief it seeks? Indeed, as  
13 recently as April 10, 1998, in CC Docket No. 96-45 (Report to Congress), the  
14 FCC indicated that it does have jurisdiction to address whether ALECs that  
15 serve ISPs are entitled to reciprocal compensation. The FCC has received  
16 comments from numerous interested parties and is set to rule soon on the  
17 ALTS request in Docket No. CCB/CPD 97-30.

18  
19 In addition, in a docket entitled Usage of Public Switched Network by  
20 Information Service and Internet Access Providers, Docket Number 96-263,  
21 the FCC sought comments on whether the current exemption from access  
22 charges should continue for ISPs.

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1 Q. IN LIGHT OF THE PENDING FCC PROCEEDINGS, WHAT ACTION  
2 DOES BELLSOUTH RECOMMEND THIS COMMISSION TAKE IN THIS  
3 PROCEEDING?

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5 A. Between now and the time the FCC acts in either of these dockets, the  
6 Commission should take no action. Deferring a ruling in this proceeding will  
7 place WorldCom and the other parties at parity with BellSouth in the treatment  
8 of this traffic. ALECs and BellSouth would be required to hand off traffic to  
9 ISPs without receiving compensation (other than local service rates and related  
10 charges) either from the ISPs or from each other. This would leave the parties  
11 similarly situated -- would, in other words, maintain the status quo -- until the  
12 FCC determines how ISP traffic should be treated and priced in its pending  
13 proceedings. Alternatively, should the Commission decide to not defer ruling  
14 on the petitions, it should find that ISP traffic is not local traffic under the  
15 parties' interconnection agreements with BellSouth and, accordingly, is not  
16 subject to payment of reciprocal compensation.

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20 Q. WOULD YOU PLEASE SUMMARIZE YOUR TESTIMONY?

21  
22 A. Yes. First, BellSouth has not mutually agreed with any ALEC to treat the  
23 transport and termination of traffic to ISPs as local traffic for purposes of  
24 reciprocal compensation. Further, BellSouth has not acknowledged or agreed  
25 to define ISP traffic as local traffic. Hence, neither BellSouth nor the ALECs

1 can be required to pay reciprocal compensation for such traffic. Moreover,  
2 given that the traffic is clearly interstate traffic, such compensation should not  
3 apply. According to unbroken FCC and judicial precedent, the FCC's  
4 jurisdiction under the Communications Act extends from the inception of the  
5 communication to its completion, regardless of any intermediate facilities.  
6 This is the very jurisdictional underpinning that lies at the heart of the current  
7 enhanced service provider exemption to interstate access charges. While  
8 BellSouth realizes that the FPSC issued an order in 1989 addressing the issue  
9 of end user access to information service providers, BellSouth has been  
10 operating under subsequent FCC rulings that ISP traffic is interstate.

11

12 The Commission should defer ruling on the petitions filed by the parties  
13 regarding this issue until such time that the FCC has ruled in either of the  
14 dockets described in my testimony. Alternatively, should the Commission  
15 decide to not defer ruling on the petitions, it should find that ISP traffic is not  
16 local traffic under the parties' interconnection agreements with BellSouth and,  
17 accordingly, is not subject to payment of reciprocal compensation.

18

19 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

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21 A. Yes.

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