

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

**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

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

Docket No. 980184-TP

**In re: Complaint of Intermedia Communica-)
tions, Inc. against BellSouth Telecommunica-)
tions, Inc., for breach of terms of Florida)
Partial Interconnection Agreement under)
Sections 251 and 252 of the Telecommuni-)
cations Act of 1996 and request for relief.)**

Docket No. 980495-TP

**In re: Complaint of MCImetro Access Trans-)
mission Services, Inc., against BellSouth)
Telecommunications, Inc., for breach of terms)
of interconnection agreement under Section 252)
of the Telecommunications Act of 1996 and)
request for relief.)**

Docket No. 980499-TP

REBUTTAL TESTIMONY OF

PAUL KOUROUPAS

ON BEHALF OF

TELEPORT COMMUNICATIONS GROUP INC.

AND

TCG SOUTH FLORIDA

MAY 1, 1998

DOCUMENT NUMBER-DATE

04939 MAY-1 88

FPSC-RECORDS/REPORTING

1 **Q. What is your name, address, and business affiliation?**

2 A. My name is Paul Kouroupas. I am Vice President, Regulatory and External
3 Affairs for Teleport Communications Group Inc.. My business address is 2
4 Lafayette Center, 1133 21st Street, N.W., Suite 400, Washington, D.C.
5 20036.

6 **Q. Are you the same Paul Kouroupas who filed direct testimony in this**
7 **proceeding?**

8 A. Yes.

9 **Q. What is the purpose of your rebuttal testimony?**

10 A. The purpose of my rebuttal testimony is to respond to the prefiled direct
11 testimony of BellSouth witness Jerry Hendrix. The testimony submitted by
12 Mr. Hendrix introduces extraneous and sometimes incorrect concepts to try
13 to disguise the core issues. The dispute at issue in this proceeding can be
14 resolved within the four corners of TCG's Interconnection Agreement with
15 BellSouth ("Interconnection Agreement"). Fundamentally, this is not the
16 forum to debate future issues concerning access charges. Such a debate is not
17 necessary to resolve this important contractual issue currently before the
18 Commission. The Commission clearly has the authority under the
19 Telecommunications Act of 1996 ("the Act") to interpret and enforce
20 interconnection agreements between local carriers subject to its jurisdiction.

21 **Q. Does the language in the Interconnection Agreement provide a basis or**
22 **bases for the resolution of this dispute?**

23 A. Yes. The language of the Interconnection Agreement supports granting
24 TCG's complaint in at least four ways. First, both the Interconnection
25 Agreement and the Act limit "exchange access service" to telephone toll

1 services. The Act defines "exchange access" as "the offering of access to
2 telephone exchange services or facilities for the purpose of the origination or
3 termination of telephone toll services." 47 U.S.C. §153(16). (emphasis
4 added). The 1934 Communications Act defines "Telephone toll service" as
5 "telephone service between stations in different exchange areas for which
6 there is made a separate charge not included in contracts with subscribers for
7 exchange service." 47 U.S.C. §153(48). Internet Service Provider ("ISP")
8 offerings are not telephone toll services by any stretch of the imagination.
9 They are not telecommunications services under current rules, therefore they
10 can hardly be "telephone toll services."

11 Second, calls to ISPs cannot be governed by the terms and conditions
12 of applicable federal and state tariffs for switched exchange access service,
13 referenced in Section V.B of the Interconnection Agreement, because there
14 are no such terms and conditions regarding ISP calls. There are no "terms
15 and conditions" in either state or federal tariffs that specifically apply to ISPs,
16 or that treat ISPs as anything other than end users. BellSouth would have the
17 Commission believe that the parties to the Interconnection Agreement
18 referenced tariff terms and conditions that do not exist.

19 Third, as I explained in my direct testimony, calls to ISPs are not
20 "interstate service" because the tariffed switched access services apply on a
21 mandatory basis only to interexchange carriers ("IXC") under current rules,
22 and ISPs are not IXCs.

23 Finally, when a BellSouth customer places a call to an ISP, BellSouth
24 rates that call as local.

- 1 **Q. Please identify the operative provisions in the Interconnection**
2 **Agreement which support TCG’s position this case.**
- 3 A. TCG’s position relies on Section IV.C of the Interconnection Agreement
4 which states that “Each party will pay the other for terminating its local
5 traffic on the other’s network at the local interconnection rates,” as set forth
6 in the Interconnection Agreement. Local traffic is defined in Section I.D of
7 the Interconnection Agreement as “any telephone call that originates and
8 terminates in the same LATA and is billed by the originating party as a local
9 call, including any call terminating in an exchange outside of BellSouth’s
10 service area with respect to which BellSouth has a local interconnection
11 arrangement with an independent LEC, with which TCG is not directly
12 interconnected.”
- 13 **Q. Does Mr. Hendrix assert that BellSouth has not billed or paid reciprocal**
14 **compensation to ALECs for traffic destined for ISPs?**
- 15 A. No. Mr. Hendrix claims that “BellSouth has not *knowingly* paid reciprocal
16 compensation to ALECs who have transported traffic to their ISP customers,
17 nor has BellSouth *knowingly* billed ALECs for performing that same service
18 (emphasis added).” (Hendrix at 7.) BellSouth does not deny paying, or
19 billing, reciprocal compensation for traffic destined to ISPs, but rather, denies
20 only knowing of such transactions. This distinction is important because it
21 illustrates that BellSouth cannot distinguish between traffic destined to ISP
22 providers and any other local traffic destined to end users within a local
23 calling area. The inescapable conclusion is that BellSouth is unaware of how
24 much of the local traffic being counted in its total minutes terminating to
25 ALECs is actually traffic destined for ISPs.

1 **Q. How does BellSouth's inability to distinguish traffic destined for ISPs**
2 **from other local traffic affect its decision to withhold reciprocal**
3 **compensation from TCG?**

4 A. The practical result is that in the absence of the ability to measure this traffic,
5 BellSouth has completely fabricated an estimate of the amount of traffic
6 destined for ISPs on TCG's network. BellSouth has unilaterally subtracted
7 the fabricated number of minutes from the total minutes bound for
8 termination on TCG's network, and has applied its declared Percent Local
9 Usage (PLU) to the remaining minutes. BellSouth has then withheld
10 reciprocal compensation payment for a portion of the amount billed by TCG
11 for termination of local traffic. The sum withheld by BellSouth is arbitrarily
12 and unilaterally determined, and clearly violates the terms of the
13 Interconnection Agreement.

14 **Q. Is BellSouth imprecise about the process it allegedly uses to identify calls**
15 **to ISPs?**

16 A. Yes. If BellSouth were to concede that accurate identification of ISP traffic
17 is not feasible (for any carrier, not just BellSouth), it would invalidate its
18 estimates of ISP traffic volumes for TCG and other ALECs. BellSouth's
19 testimony on this point is simply not credible. BellSouth witness Mr.
20 Hendrix apparently claims that, as the person responsible for all negotiations
21 with ALEC, he was oblivious during the course of the negotiation of the
22 Interconnection Agreement to the existence or treatment of calls to ISPs. In
23 the unlikely event that BellSouth was unaware of the existence of ISP traffic,
24 and therefore, of any need to make special provisions for the termination of
25 ISP traffic at the time the Agreement was entered, such an omission on

1 BellSouth's part cannot justify BellSouth's blatant violation of the
2 Interconnection Agreement.

3 **Q. What explanation do you find credible for the parties' decision to not**
4 **provide separate treatment for the termination of ISP traffic in the**
5 **Interconnection Agreement?**

6 A. Mr. Hendrix claims that BellSouth's main concern at the time of negotiation
7 was the balance of traffic between the parties, which led to BellSouth's
8 willingness to include the cap provision in the Interconnection Agreement.
9 (Hendrix at 7.) Clearly, BellSouth insisted upon the cap provision in the
10 Interconnection Agreement because it projected that traffic balance between
11 itself and TCG would be such that more traffic would be in-bound traffic
12 from BellSouth terminated on TCG's network than the reverse, and that in
13 the absence of a cap, BellSouth could potentially owe TCG large sums for
14 reciprocal compensation. This conclusion was easily arrived at during the
15 period in which the Interconnection Agreement was negotiated, because TCG
16 was in operation, and had ISP providers as customers at the time. Mr.
17 Hendrix's assertion that the cap provision in the Interconnection Agreement
18 was BellSouth's main concern is undoubtedly true *because* BellSouth was
19 keenly aware of the possibility that it would terminate substantial amounts of
20 in-bound traffic on TCG's network.

21 **Q. Why did BellSouth suddenly begin withholding payment from TCG**
22 **after both paying and billing reciprocal compensation for ISP traffic for**
23 **some time?**

24 A. The Commission has grounds to question the legitimacy of BellSouth's
25 unilateral decision to begin withholding disputed payments to TCG and other

1 ALECs. A likely motivating factor for BellSouth's action, and the similar
2 actions of other Regional Bell Operating Companies ("RBOCs") regarding
3 calls to ISPs, was the FCC's refusal in its Access Reform Order to agree to
4 incumbent carrier requests that ISPs should pay access charges. (In the
5 Matter of Access Charge Reform, First Report and Order, CC Docket No. 96-
6 262 (FCC 97-158), May 16, 1997, at para. 348.) The FCC Order was issued
7 May 16, 1997 and the RBOCs' disputes with ALECs regarding reciprocal
8 compensation for ISP traffic began soon after. The true motivation for
9 BellSouth, and the other RBOCs, is a condition that runs entirely counter to
10 BellSouth's stated rationale for withholding payments.

11 **Q. How does Mr. Hendrix attempt to justify the fact that BellSouth cannot**
12 **distinguish traffic destined for ISPs from other local traffic?**

13 A. Mr. Hendrix asserts that "It should be noted that this exchange access
14 arrangement parallels the Feature Group A arrangement, where interstate
15 access charges are applicable. On Feature Group A calls, as with ISP calls,
16 end users dial local numbers to make non-local calls. (Hendrix at 17). This
17 characterization of local traffic destined for ISPs as Feature Group A traffic
18 is an attempt to explain how traffic that meets every criteria of local traffic
19 can somehow be access traffic.

20 **Q. Is Mr. Hendrix's characterization of local traffic as Feature Group A**
21 **traffic reasonable?**

22 A. No. Mr. Hendrix incorrectly compares circuit switched feature group access
23 charges with packet switched, protocol-enhanced information calls. A call
24 to an ISP consists of one circuit switched call, the local call to the ISP's
25 telephone number, and one to perhaps dozens of packet switched connections

1 on the Internet. This is precisely the reason why the FCC, and BellSouth
2 itself, have referred to ISP traffic as involving two calls or two services. Mr.
3 Hendrix extends his inapt analogy by stating that “There is no interruption of
4 the continuous transmission of signals between the end user and the host
5 computers.” (Hendrix at 13.) This statement overlooks the fact that in the
6 process of transmission from the end user to the host computer, the “signal”
7 is transferred from a voice telephony network to a data network, and
8 therefore, involves two services, neither of which is access service.

9 **Q. What criteria have to be met to characterize this traffic as local traffic?**

10 A. Local traffic is defined as “any telephone call that originates and terminates
11 in the same LATA and is billed by the originating party as a local call...”
12 (Interconnection Agreement at 2; Sec. 1.D.) Traffic destined for TCG’s ISP
13 customers meets both criteria; it is originated and terminated within the
14 LATA, and is billed by the originating party as local.

15 **Q. How does BellSouth address the issue of whether traffic destined for
16 TCG’s ISP customers meets both criteria to be classified as local traffic?**

17 A. First, there does not seem to be any disagreement that BellSouth bills traffic
18 destined for ISP providers as local traffic. BellSouth admits this fact in
19 paragraph 15 of its Answer to TCG’s Complaint. Second, BellSouth
20 provides several conflicting and confused statements about where traffic
21 destined for ISPs terminates. The August 12, 1997 letter from Ernest Bush
22 of BellSouth to TCG and others stated that “BellSouth will neither pay, nor
23 bill, local interconnection charges for traffic terminated to an [enhanced
24 service provider.]” (Kouroupas Direct, Exhibit ___ (PK-2)). This statement
25 suggests that BellSouth recognizes that local traffic to ISPs terminates at the

1 ISP. However, Mr. Hendrix's direct testimony begins with the assertion that
2 "call termination does not occur when an ALEC serving as a conduit, places
3 itself between BellSouth and an ISP." (Hendrix at 3). Mr. Hendrix next states
4 that "...ISPs are permitted to obtain and use local exchange services to collect
5 and terminate their traffic (Hendrix at 12)," suggesting that the traffic to the
6 ISP is both local and terminated at the ISP's equipment. Continuing, Mr.
7 Hendrix asserts that "The ISP will have purchased flat-rated business service
8 lines from various local exchange company end offices and physically
9 terminated those lines at an ISP premises consisting of modem banks."
10 (Hendrix at 12). This is precisely the position TCG has advocated; that the
11 traffic to an ISP terminates at the ISP's routing equipment. Mr. Hendrix then
12 contradicts himself by saying that "...the call from an end user to the ISP only
13 transits through the ISP's local point of presence; it does not terminate there;
14 (Hendrix at 13), and "...if an ALEC puts itself in between BellSouth's end
15 office and the internet service provider, it is acting like an intermediate
16 transport carrier or conduit, not a local exchange provider." (Hendrix at 14).
17 Thus, BellSouth's position is, at best, contradictory.

18 **Q. What definition for "termination" do you recommend?**

19 A. A standard industry definition of "service termination point" is "Proceeding
20 from a network toward a user terminal, the last point of service rendered by
21 a commercial carrier under applicable tariffs.... In a switched
22 communications system, the point at which common carrier service ends and
23 user-provided service begins, *i.e.* the interface point between the
24 communications systems equipment and the user terminal equipment, under
25 applicable tariffs." (TCG's Complaint, at par. 18 and fn. 5). According to

1 this definition, traffic destined for ISPs is terminated within the LATA, as
2 both Mr. Bush and Mr. Hendrix recognize, and is local traffic.

3 **Q. Can you summarize BellSouth's attempt to recharacterize calls to ISPs**
4 **as long distance voice traffic?**

5 A. BellSouth's argument begins with inaccurate and contradictory statements
6 about the jurisdictional nature of ISP traffic. First, Mr. Hendrix asserts that
7 "the traffic is clearly interstate traffic..." (Hendrix at 9). He then asserts that
8 "the fact that a single internet call may simultaneously be interstate,
9 international and intrastate makes it inseverable for jurisdictional purposes."
10 (Hendrix at 14). Mr. Hendrix then draws an invalid and self-serving
11 conclusion from these contradictory premises by stating that "This inability
12 to distinguish the jurisdictional nature of each communication that traverses
13 an internet connection, coupled with the predominant interstate nature of
14 internet communications leads to the inescapable conclusion that all internet
15 traffic must be considered interstate." (Hendrix at 14).

16 **Q. Does Mr. Hendrix's misunderstanding of Internet or other information**
17 **service technology affect his analysis of the jurisdictional nature of ISP**
18 **traffic?**

19 A. Yes. By confusing telephone calls that involve only circuit switched
20 connections with data switched information services, Mr. Hendrix draws
21 incorrect and irrelevant conclusions about the jurisdictional nature of ISP
22 traffic.

23 As I stated in my direct testimony at pages 13-14, the standard
24 articulated by BellSouth in its comments in FCC Docket 96-149 was that
25 there are two calls involved in ISP situations. The same standard means that

1 the local call is not interstate. BellSouth's chosen characterization of ISP
2 calls as "two services" must also apply to determining the jurisdictional
3 character of the local call to the ISP. The transactions cannot be "two
4 services" for one purpose, but not for the other. In other words, BellSouth
5 accurately described the ISP calls in its comments using the same rationale
6 that the FCC later adopted in its Universal Service Order.

7 **Q. Have any state regulators considered abrogating a provision for**
8 **reciprocal compensation of local traffic as BellSouth suggests?**

9 A. Not to my knowledge. To adopt any such mechanism, even if there were no
10 Interconnection Agreement, this Commission would have to create a
11 disparate treatment for ISPs applicable only in Florida. ISPs would still be
12 treated as end users for interstate purposes and would still pay only the end
13 user charges. The Commission would, in effect, have to abandon its
14 jurisdictional authority to define ISPs as end users. Such an action would
15 clearly be at odds with every other state commission that has ruled on the ISP
16 issue. For example, the Virginia State Corporation Commission issued a
17 two-paragraph Order finding against Bell Atlantic on the same issue asserted
18 here by BellSouth.

19 [T]he companies are entitled to reciprocal
20 compensation for this type of call. Calls that are
21 placed to a local ISP are dialed using the traditional
22 local-service, seven digit dialing sequence. Local
23 service provides the termination of such calls at the
24 ISP, and any transmission beyond that point presents
25 a new consideration of service(s) involved. The
26 presence of CLECs does not alter the nature of this
27 traffic. (Petition of Cox Virginia Telecom, Inc. for
28 enforcement of interconnection agreement with Bell
29 Atlantic - Virginia, Inc., and arbitration award for
30 reciprocal compensation for the termination of local

1 calls to Internet service providers, Case No.
2 PUC970069, Final Order, October 24, 1997.)
3

4 **Q. Will you summarize your rebuttal testimony?**

5 A. Yes. TCG's complaint can be granted based solely upon the express terms
6 of the TCG-BellSouth Interconnection Agreement. BellSouth's past and
7 present treatment of calls to ISPs as local calls provides an independent basis
8 for granting the complaint. Another separate and independent basis rests on
9 the correct understanding of how ISP traffic has been characterized by both
10 the FCC and by BellSouth itself. Possible future issues involving Internet
11 voice traffic have no bearing upon TCG's clear right to receive all of the
12 reciprocal compensation for all types of local calls under the existing
13 Interconnection Agreement.

14 **Q. Does that conclude your rebuttal testimony?**

15 A. Yes.

CERTIFICATE OF SERVICE

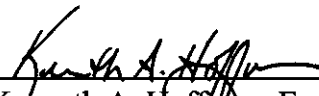
I HEREBY CERTIFY that a copy of the Rebuttal Testimony of Paul Kouroupas on behalf of Teleport Communications Group Inc. and TCG South Florida was furnished by hand delivery(*) and/or Federal Express this 1st day of May, 1998 to the following:

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

Patrick K. Wiggins, Esq.(*)
Donna Canzano, Esq.
Wiggins & Villacorta, P.A.
2145 Delta Boulevard
Suite 200
Tallahassee, FL 32302

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

William J. Ellenberg, II, Esq. (Fed. Ex)
Bennett L. Ross, Esq.
Suite 4300
675 W. Peachtree Street, NE
Atlanta, GA 30375

By: 
Kenneth A. Hoffman, Esq.

Richard D. Melson, Esq.(*)
Hopping Green Sams & Smith
P.O. Box 6526
Tallahassee, FL 32314

ISP.ser

Floyd R. Self, Esq.(*)
Norman Horton, Esq.
Messer, Caparello & Self
P. O. Box 1876
Tallahassee, FL 32302