

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 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. 980184-TP

In re: Complaint of Intermedia Communications)
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. 980495-TP

In re: Complaint by MCI Metro Access)
Transmission Services, Inc. Against BellSouth)
Telecommunications, Inc. for Breach of Approved)
Interconnection Agreement by Failure To Pay)
Compensation for Certain Local Traffic)

Docket No. 980499-TP

REBUTTAL TESTIMONY OF GARY BALL
ON BEHALF OF
WORLD COM TECHNOLOGIES, INC.

May 1, 1998

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FPSC-RECORDS/REPORTING

1 **Q. ARE YOU THE SAME GARY J. BALL WHO FILED DIRECT**
2 **TESTIMONY ON BEHALF OF WORLDCOM TECHNOLOGIES,**
3 **INC. IN THIS CASE?**

4 **A. Yes, I am.**

5 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

6 **A. The purpose of my testimony is to respond to the direct testimony filed on**
7 **behalf of BellSouth in this docket.**

8 **Q. HAVE YOU REVIEWED THE TESTIMONY FILED BY MCIMETRO**
9 **ACCESS TRANSMISSION SERVICES, INC. ("MCIMETRO"),**
10 **TELEPORT COMMUNICATIONS GROUP INC. AND TCG SOUTH**
11 **FLORIDA ("TCG"), INTERMEDIA COMMUNICATIONS, INC.**
12 **("INTERMEDIA") AND BELLSOUTH TELECOMMUNICATIONS,**
13 **INC. ("BELLSOUTH") IN THIS PROCEEDING?**

14 **A. Yes, I have.**

15 **Q. DO YOU AGREE WITH THE TESTIMONY FILED BY THESE**
16 **PARTIES?**

17 **A. I have no issue with the testimony filed by TCG, MCIMetro or Intermedia.**
18 **All detail how and why calls placed between Telephone Exchange Service**
19 **customers within the same local calling area are local calls for all purposes,**
20 **including reciprocal compensation. Their testimony makes clear that this is**
21 **the case regardless of whether one of those customers happens to be an**
22 **Internet Service Provider ("ISP"). They further demonstrate that such calls**

1 are local regardless of the identity of the local exchange carrier ("LEC") from
2 which such customers purchase such Telephone Exchange Services. Finally,
3 their testimony also underscores the complete lack of substance of
4 BellSouth's contorted, and tortured reasoning evident in the testimony filed
5 by Mr. Hendrix.

6 **Q. DO YOU AGREE WITH MR. HENDRIX'S TESTIMONY**
7 **ADDRESSING THE PARTIES' OBLIGATIONS UNDER THE**
8 **BELLSOUTH/WORLDCOM INTERCONNECTION AGREEMENT?**

9 **A.** Absolutely not. Mr. Hendrix refers to the agreement, and quotes some of the
10 relevant provisions, but instead of acknowledging, as he rightly should, that
11 there is *no* express exclusion of calls terminating at Internet Service
12 Providers ("ISPs") from the definition of "Local Traffic" in the Agreement,
13 he selectively addresses some concepts in the definition and draws
14 conclusions as to the legal implications of those terms that more properly
15 should be drawn by this Commission. This is not surprising since there is
16 no way to read the actual language of the Agreement and still make the
17 argument BellSouth seeks to make here.

18 Mr. Hendrix refers, repeatedly, to BellSouth's "intent" when it comes
19 to the payment of reciprocal compensation for local calls terminating at ISPs,
20 concluding that BellSouth never intended to include such calls in the
21 calculation of reciprocal compensation. It's my understanding that, if an
22 agreement or contract is clear and unambiguous, as is the interconnection

1 agreement here, then the parties "intent" is irrelevant. As I stated in my
2 direct testimony, I believe that the interconnection agreement between
3 WorldCom and BellSouth is unambiguous, so BellSouth's after-the-fact
4 rendition of its "intent" is meaningless.

5 **Q. DO YOU AGREE WITH MR. HENDRIX'S ANALYSIS OF "THE**
6 **TYPE OF TRAFFIC IN DISPUTE?"**

7 **A.** No, I believe that he totally mis-characterizes the nature of a local telephone
8 call to an ISP and intentionally confuses the call to an ISP--plainly a
9 "telecommunications service" as that term is defined by the
10 Telecommunications Act of 1996 (the "1996 Act") and by regulations and
11 rules promulgated by the FCC implementing the 1996 Act--with the
12 "information service" offered by the ISP. The two are completely different
13 and severable components and are treated differently for regulatory purposes.

14 **Q. DOES THE AGREEMENT AT ANY POINT DISCUSS THE**
15 **"JURISDICTIONAL" NATURE OF THE TRAFFIC AT ISSUE?**

16 **A.** No, that was never at issue, and there's no reason why it should. Local traffic
17 is specifically defined for purposes of this Agreement and it does not rely in
18 any way on what BellSouth now claims is the "jurisdictional" nature of the
19 traffic at issue in this case. Even so, BellSouth continues to obfuscate a fairly
20 simple issue. Unquestionably, what transpires on the internet itself may
21 involve, at any given time, a combination of intrastate, interstate and
22 international transmissions. But what takes place on the internet is not the

1 issue before the Commission here. The only issue in this dispute is the
2 telephone call that is initiated by a BellSouth customer and is terminated by
3 a CLEC at the premises of a CLEC customer who happens to be an ISP. That
4 telephone call originates and terminates at numbers bearing "NPA-NXX
5 designations associated with the same local calling area of the incumbent
6 LEC or other authorized area (e.g., Extended Area Service Zones in adjacent
7 local calling areas)." As such, they fall within the definition of "Local
8 Traffic" in the interconnection agreement between BellSouth and WorldCom
9 and, therefore, are subject to the reciprocal compensation provisions of that
10 agreement.

11 **Q. DO YOU AGREE WITH MR. HENDRIX'S ANALYSIS OF FCC**
12 **DECISIONS RELATING TO THE JURISDICTIONAL STATUS OF**
13 **CALLS TERMINATED TO ISPs IN THE SAME LOCAL EXCHANGE**
14 **AREA?**

15 **A.** I disagree with Mr. Hendrix's view of the FCC's decisions on the
16 jurisdictional nature of the calls. Mr. Hendrix uses the terms "exemption"
17 and "waiver," terms that are much favored by BellSouth and other ILECs in
18 their endless lobbying and rhetoric on this subject, but those terms are not
19 accurate to describe the actions taken by the FCC in regard to the
20 jurisdictional nature of local calls to ISPs. Rather, the FCC continually has
21 affirmed the rights of ISPs to employ Telephone Exchange Services under the
22 same exact rates, terms and conditions as all other end users. This

1 demonstrates that traffic to and from ISPs is for all purposes exactly like
2 traffic to and from all other Telephone Exchange Service users.

3 If, as Mr. Hendrix's testimony implies, the FCC had merely waived
4 application of access rates to ISPs, then BellSouth and other ILECs would
5 merely have added provisions to their Feature Group A ("FGA") tariffs
6 waiving access element charges when such services were purchased by ISPs,
7 and would have required ISPs to purchase from such FGA tariffs. Neither
8 BellSouth nor any other ILEC did so. Instead, BellSouth and every other
9 ILEC provided Telephone Exchange Services to ISPs on a totally
10 undifferentiated basis. That they have done so, without exception,
11 demonstrates BellSouth's and the other ILECs' own conclusions that the
12 FCC's actions in this regard do not in fact constitute an exemption, but rather
13 an affirmation of ISPs' rights to employ Telephone Exchange Services
14 without distinction.

15 Moreover, as I read Mr. Hendrix's assessment of the FCC's alleged
16 "policy," Mr. Hendrix conveniently and totally ignores the post-1996 Act
17 pronouncements that confirmed the separable nature of internet connections
18 and affirmed the local nature of the call from the BellSouth customer to the
19 ISP. Specifically, in its recent *Report and Order on Universal Service and*
20 *First Report and Order on Access Charge Reform*, the FCC confirmed that
21 Internet access consists of severable components: the connection to the
22 Internet service provider via voice grade access to the public switched

1 network, and the information service subsequently provided by the ISP. In
2 other words, the first component is a simple local exchange telephone call.
3 Such a call is eligible for reciprocal compensation under the Interconnection
4 Agreement.

5 Most important, the FCC just reaffirmed the conclusions of this and
6 other post-1996 Act rulings in its Report to Congress. In the *Federal-State*
7 *Joint Board on Universal Service*, Report to Congress, released on April 10,
8 1998, the FCC reiterated the distinct difference between the
9 *telecommunications services* that customers use to connect to ISPs and the
10 *information services* which the ISPs provide. The FCC further concluded
11 that just because ISPs might provide their services via telecommunications,
12 that did not make them subject to regulation as telecommunications carriers.

13 **Q. HAVE YOU ANALYZED BELLSOUTH'S "ECONOMIC SENSE"**
14 **ARGUMENT?**

15 **A.** Yes, I have and, like the rest of Mr. Hendrix's testimony, it makes no sense
16 except when viewed as an after-the-fact rationalization.

17 BellSouth's assertion that "reciprocal compensation becomes one-way
18 compensation" misses the point completely. BellSouth has its own ISPs and,
19 presumably, will sign up many more as customers. In this scenario, which
20 BellSouth ignores, WorldCom will pay reciprocal compensation to BellSouth
21 for terminating traffic of WorldCom customers to BellSouth ISPs at the very
22 same rate that BellSouth now must compensate WorldCom. BellSouth fails

1 to explain how this is “one-way compensation” but urges, nonetheless, that
2 this is a basis for the Commission to void a voluntarily negotiated contract.

3 **Q. MR. HENDRIX STATES THAT BELLSOUTH NEVER INTENDED**
4 **FOR LOCAL TRAFFIC TO INCLUDE ISP CALLS THUS SUBJECT**
5 **TO RECIPROCAL COMPENSATION. ARE YOU AWARE OF ANY**
6 **TIME PRIOR TO THIS CASE WHEN THAT “INTENT” WAS**
7 **EXPRESSED?**

8 **A.** No, I am not. I recognize that I can’t speak for the BellSouth negotiators or
9 say what was on their mind, but I can say that despite ample opportunity to
10 openly express this intent, I am not aware of any time when BellSouth has
11 shared this “intent” with anyone.

12 **Q. WHEN YOU SAY THAT BELLSOUTH HAD AMPLE**
13 **OPPORTUNITY TO EXPRESS THEIR INTENT WITH REGARD TO**
14 **THE TREATMENT OF ISP TRAFFIC WHAT DO YOU MEAN?**

15 **A.** This Commission has heard days, if not weeks, of testimony regarding
16 interconnection issues both state and federal, and I’m not personally aware
17 of any time when BellSouth publicly and openly advanced their “intent” that
18 ISP traffic not be local and subject to reciprocal compensation. There have
19 been opportunities to express this view, even as early as in Docket No.
20 950985-TP which preceded the agreement and phrases at issue here. In
21 Docket No. 950985-TP there was extensive discussion of the competing
22 proposals for the appropriate methodology for compensation of parties for

1 terminating local traffic but nowhere is there any discussion — or hint — that
2 ISP traffic would not be local. BellSouth proposed a methodology of
3 compensation based on usage while at the same time acknowledged that as
4 a marketing matter, ALECs would seek to sign up more customers who
5 receive more calls than they place. If BellSouth never intended for local
6 traffic to include ISP traffic they had the opportunity to voice this intent.

7 **Q. SHOULD THE COMMISSION ACT IN LIGHT OF PENDING FCC**
8 **PROCEEDINGS?**

9 **A.** Absolutely, the pendency of the ALTS proceeding in no way impedes or
10 impacts the ability of the Commission to resolve the dispute here.

11 Despite BellSouth's assertions to the contrary, the proceeding
12 presently before this Commission does not address the same issue as the
13 matters before the FCC. In fact, it is clear that an NOI cannot resolve these
14 issues and it is possible that a ruling in the ALTS proceeding will not resolve
15 the state complaints at all. Furthermore, the Eighth Circuit has stated that
16 these matters are for state Commissions to resolve.

17 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

18 **A.** Yes.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Rebuttal Testimony of Gary Ball on behalf of WorldCom Technologies, Inc. in Docket Nos. 971478-TP, 980184-TP, 980495-TP and 980499-TP has been furnished by Hand Delivery (*) and/or U.S. Mail to the following parties of record this 1st day of May, 1998:

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