

ORIGINAL

Legal Department

NANCY B. WHITE
Assistant General Counsel-Florida

BellSouth Telecommunications, Inc.
150 South Monroe Street
Room 400
Tallahassee, Florida 32301
(305)347-5558

May 1, 1998

Mrs. Blanca S. Bayo
Director, Division of Records and Reporting
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 Rebuttal Testimony of Jerry Hendrix, which we ask that you file in the captioned dockets.

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

ACK ✓
AFK _____
APP _____
CAF _____
CMJ (circled) Enclosures

CTP — cc: All Parties of Record
EAC — A. M. Lombardo
LEG — 2 R. G. Beatty
LIN — 5 to W. J. Ellenberg

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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 1st day of May, 1998 to the following:

Charlie Pellegrini, Esq.
Staff Counsel
Florida Public Service
Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
Tel. No. (850) 413-6232
Fax. No. (850) 413-6233

Norman H. Horton, Jr., Esq.
Messer, Caparello & Self
215 South Monroe Street
Suite 701
P.O. Box 1876
Tallahassee, Florida 32302-1876
Atty. for WorldCom, Inc.
Tel. No. (850) 222-0720
Fax No. (850) 224-4359

Patrick K. Wiggins, Esq.
Donna L. Canzano, Esq.
Wiggins & Villacorta, P.A.
2145 Delta Boulevard
Suite 200
Tallahassee, FL 32303
Tel. No. (850) 385-6007
Fax. No. (850) 385-6008
Attys. for Intermedia

Lans Chase
Intermedia Comm. Inc.
3625 Queen Palm Drive
Tampa, Florida 33619-1309
Tel. No. (813) 829-0011
Fax No. (813) 829-4923

Cherie R. Kiser
Yaron Dori
Mintz, Levin, Cohn, Ferris,
Glovsky and Popeo, P.C.
701 Pennsylvania Avenue, N.W.
9th Floor
Washington, D.C. 20004-2608
Tel. (202) 434-7300
Fax. (202) 434-7400
Rep. American Online, Inc.

Mr. Brian Sulmonetti
1515 South Federal Highway
Suite 400
Boca Raton, FL 33432-7404
Tel. No. (561) 750-2940
Fax. No. (561) 750-2629

Teleport Communications Group, Inc.
Michael McRae/Paul Kouroupas
2 Lafayette Centre
1133 Twenty-First Street, N.W.
#400
Washington, D.C. 20036
Tel. No. (202) 739-0032
Fax. No. (202) 739-0044

Rutledge Law Firm
Kenneth Hoffman
215 South Monroe Street
Suite 420
Tallahassee, FL 32302
Tel. No. (850) 681-6788
Fax. No. (850) 681-6515
Represents Teleport

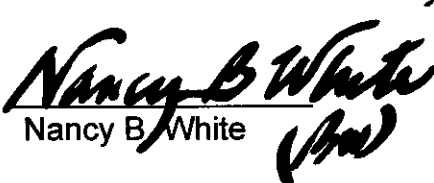
Beth Keating
Legal Counsel
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Richard Melson
Hopping Green Sams & Smith
123 South Calhoun Street
Post Office Box 6526
Tallahassee, FL 32314
Tel. No. (850) 222-7500
Fax. No. (850) 224-8551

MCI Metro Access Transmission
Services, Inc.
Dulaney L. O'Roark III
Thomas K. Bond
780 Johnson Ferry Road
Suite 700
Atlanta, GA 30342
Tel. No. (404) 267-6315
Fax. No. (404) 267-5992

Peter M. Dunbar, Esq.
Barbard D. Auger, Esq.
Pennington, Moore, Wilkinson
& Dunbar, P.A.
Post Office Box 10095
Tallahassee, FL 32302
Tel.No. (850) 222-3533
Fax. No. (850) 222-2126

Carolyn Marek
Vice President of
Regulatory Affairs
Southeast Region
Time Warner Communications
Post Office Box 210706
Nashville, Tennessee 37221
Tel. No. (615) 673-1191
Fax. No. (615) 673-1192


Nancy B. White
(P)

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

May 1, 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. ARE YOU THE SAME JERRY HENDRIX WHO FILED DIRECT TESTIMONY IN THIS PROCEEDING?

A. Yes.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to rebut the testimony filed in these dockets by Teleport's witness, Paul Kouroupas, MCImetro's witness, Ronald Martinez, WorldCom's witness, Gary Ball, and Intermedia's witness, Michael Viren, regarding whether reciprocal compensation for internet service provider (ISP)

1 traffic is required under the interconnection agreements that have been
2 negotiated between BellSouth and the parties in this proceeding.

3

4 **Rebuttal of Mr. Paul Kouroupas' Testimony**

5 Q. ON PAGE 2 OF MR. KOUROUPAS' TESTIMONY, MR. KOUROUPAS
6 STATES THAT "BELLSOUTH'S POSITION SUFFERS FROM THREE
7 FLAWS, ANY OF WHICH COULD CONSTITUTE A BASIS FOR THE
8 COMMISSION TO UPHOLD TCG'S COMPLAINT." DO YOU AGREE
9 WITH HIS ASSESSMENT OF BELLSOUTH'S POSITION?

10

11 A. No. BellSouth adamantly disagrees with Mr. Kouroupas' assessment.

12

13 Q. PLEASE ADDRESS MR. KOUROUPAS' FIRST PURPORTED FLAW,
14 WHICH STATES THAT "THE PLAIN LANGUAGE OF TCG'S
15 INTERCONNECTION AGREEMENT MAKES CLEAR THAT TRAFFIC
16 DESTINED FOR ISP END USERS IS SUBJECT TO RECIPROCAL
17 COMPENSATION ARRANGEMENTS."

18

19 A. Mr. Kouroupas is simply wrong when he states that the plain language in the
20 TCG interconnection agreement makes it clear that traffic destined for ISPs is
21 subject to reciprocal compensation arrangements. TCG's agreement, at
22 Section IV.C, states:

23

24

25

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

1 Given that ISP traffic is neither local nor terminates on TCG's network, which
2 must occur for reciprocal compensation to apply, it is very clear to BellSouth
3 that reciprocal compensation does not and should not apply for ISP traffic.
4 Indeed, at the time the contract was negotiated, BellSouth never intended for
5 reciprocal compensation to apply to such traffic. At a minimum, the current
6 TCG agreement does not state that traffic destined for ISPs is subject to
7 reciprocal compensation arrangements.

8

9 Q. PLEASE ADDRESS MR. KOUROUPAS' SECOND PURPORTED FLAW
10 TO BELLSOUTH'S POSITION, WHICH STATES THAT "AT THE TIME
11 TCG AND BELLSOUTH ENTERED INTO THE INTERCONNECTION
12 AGREEMENT, THIS COMMISSION HAD PREVIOUSLY CONCLUDED
13 IN A WRITTEN ORDER THAT END-USER ACCESS TO AN ISP IS
14 LOCAL EXCHANGE TRAFFIC."

15

16 A. As stated in my direct testimony, the Florida Public Service Commission
17 (FPSC) held that its finding on this issue was interim and that it would be
18 revisited again. On page 8 of the FPSC Order No. 21815, in Docket No.
19 880423-TP, the FPSC wrote:

20 We see this as an evolving process, and envision further proceedings to
21 refine the decisions made in this proceeding.

22 The FPSC further states on page 15 of the same order:

23 We again reiterate the caveat that the final determination of the
24 state/federal jurisdiction question currently resides in the federal

25

1 appellate process. We recognize that our decisions herein are subject to
2 modification based on the results of the Ninth Circuit Appeal.

3 The court, in the above referenced appeal, stated that the FCC would have
4 jurisdiction over information services when they were inseverable. The appeal
5 focused on the FCC's attempt to preempt states in the regulation of enhanced
6 or information services. The decision was that the FCC could not preempt
7 intrastate regulation solely based on it being an enhanced service, but that the
8 FCC could preempt intrastate regulation of information services that were
9 inseverable.

10
11 The FCC has long held that jurisdiction of traffic is determined by the end-to-
12 end nature of a call. As stated in my direct testimony, the fact that a single
13 internet call may simultaneously be interstate, international and intrastate
14 makes it inseverable for jurisdictional purposes. This inability to distinguish
15 the jurisdictional nature of each communication that traverses an internet
16 connection coupled with the predominant interstate nature of internet
17 communications leads to the inescapable conclusion that all internet traffic
18 must be considered jurisdictionally interstate. BellSouth has therefore been
19 operating under FCC rulings that ISP traffic is interstate.

20
21 **Q. PLEASE ADDRESS MR. KOUROUPAS' THIRD PURPORTED FLAW TO**
22 **BELLSOUTH'S POSITION, WHICH STATES THAT "BELLSOUTH'S**
23 **ATTEMPT TO CAMOUFLAGE ITS BEHAVIOR BY REFERENCING**
24 **FEDERAL COMMUNICATION COMMISSION ("FCC") POLICIES IS**
25 **ENTIRELY GROUNDLESS."**

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A. BellSouth is totally befuddled with this statement. BellSouth's position, based on its knowledge of several FCC orders, is that the FCC has jurisdiction over interstate communications services of enhanced service providers, which includes ISPs. The FCC has made it perfectly clear that communications involving enhanced services are interstate in nature, not local. The FCC has always recognized that ESPs/ISPs use local exchange facilities for interstate access. The ESPs/ISPs have been exempted from access charges, not because they provided local services outside the FCC's jurisdiction, but rather as a matter of policy to protect the new interstate businesses, over which the FCC does have jurisdiction, from rate shock during a vulnerable start-up time.

As stated in my direct testimony, the FCC recognized the true nature of ISP traffic in the 1983 Access Reconsideration Order, Docket No. 78-72, in which it initially established the access charge exemption for ESPs/ISPs. The FCC stated: "Among the variety of users of access service are ... enhanced service providers." Likewise, in its 1987 Notice of Proposed Rulemaking in CC Docket No. 87-215 which it proposed to lift the access charge exemption for ESPs/ISPs, the FCC stated: "Enhanced service providers, like facilities-based interexchange carriers and resellers, use the local network to provide interstate services."

BellSouth's interconnection agreements intend for reciprocal compensation to apply only when local traffic is terminated on either party's network. This interpretation is consistent with the Telecommunications Act of 1996, which

1 established a reciprocal compensation mechanism to encourage local
2 competition. The FCC, in its August 1996 local interconnection order, made it
3 perfectly clear that reciprocal compensation rules do not apply to non-local
4 traffic such as interexchange traffic. To quote from paragraph 1034 of that
5 order:

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

12

13 Q. MR. KOUROUPAS, ON PAGE 2 OF HIS TESTIMONY, REFERS TO THE
14 FACT THAT AT LEAST 14 STATES HAVE REQUIRED INCUMBENT
15 LOCAL EXCHANGE CARRIERS TO PAY RECIPROCAL
16 COMPENSATION FOR TRAFFIC TERMINATED TO ISPS. WHAT
17 IMPACT SHOULD THAT HAVE ON THE DECISION BY THIS
18 COMMISSION?

19

20 A. The fact that several states have required incumbent local exchange companies
21 (ILECs) to pay reciprocal compensation for ISP traffic should have no impact
22 on this Commission's decision. This Commission is known to chart its own
23 course, and as a result, has been a leader on many issues, as opposed to a
24 follower on issues. The FPSC should review the facts in this proceeding as
25 they relate to the unique interconnection agreements between the parties

1 involved. It should also be noted that appeals are pending or planned in at least
2 eight of the sixteen states that have required the ILECs to pay reciprocal
3 compensation for ISP traffic. Also, many decisions simply kept the status quo
4 pending explicit FCC decisions and did not make an affirmative finding.
5 Further, several state commissions have yet to rule on this issue.

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

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

Between now and the time the FCC acts in either of the two referenced FCC dockets addressing this issue, the FPSC should take no action. Deferring a ruling in this proceeding will keep Teleport and the other parties at parity with BellSouth regarding the treatment of this traffic.

Q. MR KOUROUPAS, ON PAGE 6, LINES 15 - 17, STATES THAT "ALTHOUGH THE TREATMENT OF ISPS HAS BEEN POPULARLY REFERRED TO AS AN 'EXEMPTION,' THIS SHORTHAND EXPRESSION DOES NOT ACCURATELY REFLECT INTERSTATE ACCESS CHARGE RULES." PLEASE COMMENT.

A. The FCC has obviously recognized that ESPs/ISPs collect interstate traffic much like interexchange carriers and therefore would be subject to access charges but for the FCC's decision not to allow such charges for this interstate traffic, which is , in no uncertain terms, an exemption. Mr. Kouroupas seems to be re-defining the FCC's authority. The FCC has the authority and responsibility to enforce the Telecommunications Act. The FCC created the term "exemption." As Mr. Kouroupas states himself on page 7, lines 21 and 22, " It is true that the FCC has referred to an 'exemption' several times since

1 the creation of access charge tariffs in 1984; ..." One would assume that the
2 FCC would be more familiar with the interstate access charge rules it created
3 than Mr. Kouroupas. Thus, the FCC's action truly was an exemption from the
4 application of access charges.

5

6 Q. MR. KOUROUPAS FURTHER STATES ON PAGE 8, LINES 1 AND 2,
7 THAT "NO SUCH EXEMPTION IS CODIFIED IN THE INTERSTATE
8 ACCESS CHARGE RULES." PLEASE RESPOND.

9

10 A. The FCC does not need to codify such an exemption. The exemption has been
11 labeled as temporary or transitional since its beginning. Common sense would
12 dictate that one should not codify a temporary arrangement. FCC orders
13 constitute binding requirements. As such, the FCC access charge "exemption"
14 for ISP traffic clearly applies here. But, the bottom line is that, whether or not
15 the exemption is codified, traffic to ISPs is interstate and not local!

16

17 Q. AT PAGE 7, ON LINES 10 THROUGH 12, OF MR. KOUROUPAS'
18 TESTIMONY, IT STATES THAT "BELLSOUTH HAD AVAILABLE TO IT
19 FACTS WHICH WOULD HAVE INDICATED THAT SOME PORTION OF
20 TCG'S AND BELLSOUTH'S LOCAL TRAFFIC INVOLVED CALLS TO
21 ISPS." DO YOU AGREE?

22

23 A. No. BellSouth's negotiators had no way of knowing who the customers of
24 ALECs were during negotiations. This information would not be needed to
25 negotiate an interconnection agreement. Further, Teleport did not advise

1 BellSouth that some portion of their traffic involved calls to ISPs. If it had,
2 BellSouth would never have agreed to include that traffic since it is interstate
3 in nature.

4
5 Q. MR. KOUROUPAS, ON PAGE 10, LINES 16 THROUGH 18, OF HIS
6 TESTIMONY, STATES THAT "BELLSOUTH'S CURRENT POSITION
7 WOULD HAVE THE EFFECT OF CREATING A CLASS OF INTER-
8 CARRIER TRAFFIC THAT WOULD NOT BE COMPENSABLE AS
9 EITHER LOCAL CALLS OR EXCHANGE ACCESS SERVICE." DO YOU
10 AGREE?

11
12 A. No. The FCC has ruled that ESPs, which includes ISPs, use local exchange
13 facilities to provide interstate communications services. Therefore, each
14 carrier would have to seek compensation from ISPs using local connection
15 charges. BellSouth has been collecting local exchange business rates from
16 ISPs in compliance with the FCC rulings. ALECs, in their provisioning of
17 telecommunications service, would also have to seek compensation by
18 charging appropriate rates to ISPs. Further, ALECs are not bound by the Part
19 69 Access Charge rules and regulations, and therefore are free to charge
20 whatever the market will allow.

21
22 Even more of a concern is the current position of Teleport and the other
23 ALECs in this proceeding. As I described in my direct testimony, their
24 position would have the effect of creating a class of inter-carrier traffic that
25 would require a carrier, such as BellSouth, serving end users originating calls

1 to ISPs to not only turn over to the ALECs that serve these ISPs every penny
2 of local exchange revenue it receives from its end users, but to also pay a
3 significant amount more per month in reciprocal compensation. This situation
4 makes no economic sense and would place an unfair burden on a carrier, such
5 as BellSouth, and its customers.

6

7 Q. ON PAGE 12 OF HIS TESTIMONY, MR KOUROUPAS STATES THAT
8 "THE FCC HAS ENDORSED THE CHARACTERIZATION THAT THE
9 INFORMATION SERVICE IS SEPARATE FROM THE LOCAL CALL."
10 PLEASE RESPOND TO THIS STATEMENT.

11

12 A. Mr. Kouroupas has taken the FCC's commentary totally out of context. The
13 purpose of the Non-Accounting Safeguards docket was to deal specifically
14 with the issue of separate subsidiary requirements for interLATA information
15 service. What the Regional Bell Operating Companies (RBOCs) argued, and
16 the FCC endorsed, was that there are two components of interLATA
17 information service: 1) interLATA transport and 2) information service. If an
18 entity other than the local exchange company (LEC) provides end users with
19 interLATA transport, the LEC would not be providing interLATA information
20 service, and therefore, would not be subject to the separate subsidiary
21 requirements. This ruling did not contradict the long standing FCC position
22 that ESPs/ISPs services include jurisdictionally interstate traffic. The
23 determination of jurisdiction must be based on the end-to-end nature of a call,
24 not one component or a few components of a call.

25

1 The ruling in the Non-Accounting Safeguards docket was driven by the FCC's
2 view as to the policies and statutory provisions that govern the provisions of
3 interLATA services by RBOCs – policies and provisions that are totally
4 unrelated to those governing the jurisdictional classification of calls and the
5 reciprocal compensation obligation.

6

7 However, BellSouth must admit to some confusion in one area of Teleport's
8 argument. That is, BellSouth understands that AT&T is in the process of
9 purchasing Teleport, and it is also BellSouth's understanding that AT&T has
10 admitted more than once that ISP traffic is overwhelmingly and inseparably
11 interstate in nature. AT&T stated the following on page 2 of its comments in
12 the FCC's Docket No. CCB/CPD 97-30:

13 AT&T has taken the position before the Commission that ISP traffic is
14 overwhelmingly and inseparably interstate in nature and is unlike local
15 business traffic because, for the vast majority of traffic, it is switched by
16 the ISP at its local point of presence (POP) to distant data centers or
17 Internet sites located in other states (or other countries).

18 AT&T also stated the following on page 4 of its reply comments in the same
19 docket:

20 Although the Eighth Circuit struck down the Commission's rules
21 governing the pricing of local intrastate telephone services (including the
22 terms of reciprocal compensation for the transport and termination of
23 local exchange traffic), it did not – nor could it – restrict or eliminate the
24 authority of the Commission to determine the compensation rules for
25 interstate communications services – which include Internet services.

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Rebuttal to Mr. Martinez's Testimony

Q. DOES BELLSOUTH AGREE WITH MR. MARTINEZ'S STATEMENT ON PAGE 3 OF HIS TESTIMONY WHERE HE STATES THAT "THE PROVISIONS MAKE IT CLEAR THAT BELLSOUTH IS REQUIRED TO PAY MCIMETRO AT THE AGREED-UPON RATE FOR ALL LOCAL CALLS ORIGINATED ON BELLSOUTH'S LINES AND TERMINATED ON MCIMETRO LINES?"

A. Yes.

Q. DO YOU AGREE WITH MR. MARTINEZ THAT MCIMETRO TERMINATES TELEPHONE CALLS TO THE INTERNET SERVICE PROVIDERS ON ITS NETWORK?

A. No. MCImetro, in fact, is only acting as an intermediate transport carrier or conduit. Moreover, the actual call to the ISP only transits through the ISP's local point of presence (POP). The ending point of a call to an ISP is not the ISP switch, but rather the computer database or information source to which the ISP provides access. As such, calls to an ISP constitute exchange access traffic, not telephone exchange service (local service) subject to reciprocal compensation. Calls that merely transit an ALEC's network without terminating on it cannot be eligible for reciprocal compensation.

1 Q. MR. MARTINEZ, ON PAGE 4, LINES 10 THROUGH 12, STATES: "THE
2 DEFINITION OF LOCAL TRAFFIC IN ATTACHMENT IV,
3 SUBSECTION 2.2.1, WHICH WAS INCLUDED AT BELLSOUTH'S
4 REQUEST, MAKES NO EXCEPTION FOR TELEPHONE CALLS
5 TERMINATED TO ISPS." WAS IT BELLSOUTH'S INTENT FOR THIS
6 DEFINITION TO INCLUDE ISP TRAFFIC?

7
8 A. No. BellSouth, as stated previously, considers ISP traffic to be interstate in
9 nature. As such, BellSouth never submitted a definition of local traffic that in
10 any way included ISP traffic. The basis for the submitted definition is found in
11 the FPSC approved Section A1 of the General Subscriber Service Tariff
12 (GSST), and ISP traffic is not included in this definition. Section A1 defines
13 Exchange, Local service, Local service area, and Extended area service.
14 Further, it should be noted that Section A1 also contains a separate and distinct
15 definition for Enhanced service. The definitions for Exchange, Local service,
16 Local service area and Extended area service are as follows:

17
18 Exchange: A central office or group of central offices, together with the
19 subscriber's stations and lines connected thereto, forming a local system
20 which furnishes means of telephonic intercommunication without toll
21 charges between subscribers within a specified area, usually a single city,
22 town or village.

23 When an exchange includes only one central office, it is termed a single
24 office exchange, but when it includes more than one central office, the
25 exchange is termed a multioffice exchange.

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Local service: A type of localized calling whereby a subscriber can complete calls from his station to other stations within a specified area without the payment of long distance charges.

Local service area: The area within which telephone service is furnished subscribers under a specified schedule of exchange rates and without long distance charges. A local service area may include one or more exchange service areas.

Extended area service: A type of telephone service furnished under tariff provisions whereby subscribers of a given exchange may complete calls to and, where provided by tariff, receive messages from one or more exchanges without the application of long distance message telecommunications charges.

Note that in none of these definitions is there a mention of internet services, information services or enhanced services. These traditional definitions do not consider traffic to such services as being local traffic. Compare these traditional definitions with the definition of enhanced service also found in Section A1 of the GSST.

Enhanced service: The term "enhanced service" shall refer to services, offered by using common carrier transmission facilities, which employ computer processing applications that act on the format, content, code,

1 protocol or similar aspects of the subscriber's transmitted information;
2 provide the subscriber additional, different or restructured information;
3 or involve subscriber interaction with stored information.

4
5 The enhanced service definition in no way implies that calls complete to other
6 stations within a specified area as required in the definition of local service
7 area. To the contrary, the definition states that common carrier transmission
8 facilities are used to provide a myriad of services that require some computer
9 processing or interaction with stored information. As stated in my direct
10 testimony, under clear FCC precedent, calls bound for the internet through an
11 ISP's switch can only be characterized as interstate exchange access traffic
12 because they "terminate" not at the ISP's equipment, but rather at the database
13 or information source to which the ISP provides access.

14

15 **Rebuttal to Mr. Ball**

16 Q. ON PAGES 3 AND 4 OF HIS TESTIMONY, MR. BALL STATES THAT
17 THE WORLDCOM AND BELLSOUTH INTERCONNECTION
18 AGREEMENT IS CLEAR AND UNAMBIGUOUS ON ITS FACE
19 REGARDING THE TREATMENT OF ISP TRAFFIC AS LOCAL TRAFFIC
20 FOR PURPOSES OF RECIPROCAL COMPENSATION. DO YOU
21 AGREE?

22

23 A. No. The only way that this agreement would be clear and unambiguous
24 regarding the treatment of ISP traffic as local traffic for purposes of reciprocal
25 compensation is if it was specifically stated in the agreement. The agreement

1 clearly does not contain such words. Further, the parties did not mutually
2 intend to treat this traffic as local for purposes of reciprocal compensation.

3 Section 1.40 of the agreement states:

4 Local traffic includes traffic types that have been traditionally referred to
5 as "local calling" and as "extended area service (EAS)."

6 ISP traffic has never been traditionally referred to as local traffic. As
7 previously stated, the traditional definition of local service does not consider
8 traffic to such services as enhanced services, information services or internet
9 services as being local traffic. Reciprocal compensation obligations only apply
10 to traffic that originates and terminates within a local area. Thus, reciprocal
11 compensation obligations do not apply for ISP traffic.

12

13 Further, as stated in section 5.8.1 of the agreement, there is a requirement for
14 the traffic to terminate on either party's network for reciprocal compensation to
15 apply. Call termination does not occur on the ALEC's network when an
16 ALEC places itself between BellSouth and an ISP. The ALEC is simply acting
17 like an intermediate transport carrier, or conduit, not a local exchange provider
18 entitled to reciprocal compensation.

19

20 Q. PLEASE ADDRESS MR. BALL'S ARGUMENT, BEGINNING ON THE
21 BOTTOM OF PAGE 5, THAT BELLSOUTH DID NOT EXCLUDE ISP
22 TRAFFIC FROM THE DEFINITION OF LOCAL TRAFFIC OR
23 RECIPROCAL COMPENSATION, AND AS A RESULT, SUPPORTS HIS
24 VIEW THAT THE CALLS ARE LOCAL.

25

1 A. First and foremost, it is BellSouth position that the interconnection agreement
2 between WorldCom and BellSouth does not require the payment of reciprocal
3 compensation for ISP traffic. Calls from end users to the ISP only transits
4 through ISP's local POP; it does not terminate there.

5

6 However, it should be noted that the exception quoted by WorldCom, in fact,
7 includes ISP traffic. As WorldCom noted, section 1.62 of the Agreement
8 states:

9 "Switched Exchange Access Service" means the following types of
10 Exchange Access Services: Feature Group A, Feature Group B, Feature
11 Group D, 800/888 access, and 900 access and their successors or similar
12 Switched Exchange Access services.

13

14 Like Feature Group A exchange access traffic, ISP exchange access traffic is
15 transmitted over local interconnection trunks. The ISP exchange access
16 arrangement parallels the Feature Group A arrangement. On Feature Group A
17 calls, as with ISP calls, end users dial local numbers to make non-local calls.
18 Hence, ISP traffic would be included in the words "similar Switched Exchange
19 Access services." Thus, BellSouth never intended for WorldCom, Intermedia,
20 MCImetro or Teleport to have reciprocal compensation apply to internet
21 traffic.

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23 Q. ON PAGE 7 OF MR. BALL'S TESTIMONY, HE STATES THAT
24 WORLDCOM SERVES ISPS VIA ITS LOCAL EXCHANGE SERVICES
25 TARIFF. PLEASE COMMENT ON THAT STATEMENT.

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A. The ability to serve ISP via local exchange service tariffs comes from the FCC's exemption of access charges to ISPs. This only confirms the fact that the FCC has jurisdiction over ISP traffic. The FCC allows ESPs/ISPs to use local exchange facilities to provide their interstate services.

Q. ON THE BOTTOM OF PAGE 8 OF WORLDCOM'S TESTIMONY, MR. BALL STATES THAT BELLSOUTH TREATS ISP TRAFFIC AS A LOCAL CALL FOR THE PURPOSES OF JURISDICTIONAL SEPARATIONS AND ARMIS REPORTS. PLEASE COMMENT ON THIS STATEMENT.

A. While I am not a separations expert, I will respond to this statement. The separations treatment of ISP traffic is not part of the interconnection agreement and was not part of the negotiations. Although irrelevant to the contract language, the statement is partially correct.

The separations process is controlled by Part 36 of the FCC rules. BellSouth cannot allocate cost based on actual jurisdiction, but is required to follow the separations rules. Separations rules make a number of broad-based allocations that are not precise (e.g., 25% gross allocator, 10% interstate special access allocated to interstate, etc.). BellSouth cannot report ISP traffic correctly -- as interstate calls -- until the FCC approves new separations rules. It is BellSouth's position that the separations rules must be followed regardless of their accuracy. Further, ARMIS rules must reflect separations rules.

1 Periodically, separations rules must be updated if they are to remain accurate,
2 even at a broad-based level. To my knowledge, separations rules have not
3 been updated to allow for the proper allocation of several new or growing
4 services such as services provided by ISPs and services using unbundled
5 network elements. Also, there was previously no need to update separations to
6 properly allocate ISP traffic to the interstate jurisdiction due to the ISP access
7 charge exemption initially being labeled as temporary or transitional. Similar
8 reporting problems existed when the FCC introduced Feature Group A service.
9 Separations and ARMIS reporting will not be accurate until the transitional
10 access charge exemption is revoked or until the FCC approves new separations
11 procedures.

12

13 Recent separation activities have focused on freezing separations rules rather
14 than making continual adjustments as in the past. To the extent separations
15 rules should be updated, rather than frozen, it is BellSouth's position that the
16 rules should be revised to reflect the actual jurisdiction of ISP traffic. In no
17 circumstances should the jurisdiction of the traffic be changed to agree with
18 separations rules as suggested by Mr. Ball.

19

20 **Rebuttal of Mr. Viren's Testimony**

21

22 Q. ON PAGE 4, LINES 8 THROUGH 12, MR. VIREN STATES THAT
23 "BELLSOUTH'S REFUSAL TO PROVIDE RECIPROCAL
24 COMPENSATION FOR LOCAL ISP TRAFFIC ORIGINATED BY ITS
25 END-USERS THAT TERMINATES ON INTERMEDIA'S NETWORK

1 CONSTITUTES A MATERIAL AND WILLFUL BREACH OF THE TERMS
2 OF THE INTERCONNECTION AGREEMENT.” DO YOU AGREE?

3

4 A. No. BellSouth strongly disagrees with this statement. As previously stated,
5 ISP traffic does not terminate on Intermedia’s network. Intermedia is only
6 acting like an intermediate transport carrier or conduit, not a local exchange
7 provider entitled to reciprocal compensation. Further, local traffic as defined
8 by the agreement does not include ISP traffic as stated in my direct testimony.

9

10 Q. MR. VIREN FURTHER STATES ON PAGE 4, LINES 12 THROUGH 15
11 THAT “BELLSOUTH’S ACTION ALSO VIOLATES SECTION 251(B)(5)
12 OF THE ACT WHICH SETS FORTH THE OBLIGATIONS OF ALL
13 LOCAL EXCHANGE COMPANIES (LECS) TO PROVIDE RECIPROCAL
14 COMPENSATION.” PLEASE COMMENT.

15

16 A. BellSouth’s position that reciprocal compensation applies only to local traffic
17 terminated on a party’s network is in direct agreement with the
18 Telecommunications Act of 1996 (“Act”).

19

20 Section 251(b)(5) of the Act imposes upon LECs the duty to establish
21 reciprocal compensation arrangements for the transport and termination of
22 telecommunications. Section 252(d)(2)(A) provides that for purposes of
23 compliance by an ILEC with Section 251(b)(5), a State commission shall not
24 consider the terms and conditions for reciprocal compensation to be just and
25 reasonable unless, inter alia, they allow recovery of costs “associated with the

1 transport and termination on each carrier's network of calls that originate on
2 the network facilities of the other carrier." (emphasis added)

3

4 The FCC, in paragraphs 1034-1035 of its August 8, 1996 First Report and
5 Order, CC Docket No. 96-98, explicitly held that Section 251(b)(5) reciprocal
6 compensation obligations

7 should apply only to traffic that originates and terminates within a local
8 area ... [R]eciprocal compensation for transport and termination is
9 intended for a situation in which two carriers collaborate to complete a
10 local call ... Traffic originating or terminating outside of the applicable
11 local area would be subject to interstate and intrastate access charges.

12

13 Q. ON PAGES 4 AND 5 OF HIS TESTIMONY, MR. VIREN STATES THAT
14 "[T]HE PARTIES OWE EACH OTHER RECIPROCAL COMPENSATION
15 FOR ANY LOCAL TRAFFIC TERMINATED ON THE OTHER'S
16 NETWORK. TRAFFIC TO ISPS MEETS THIS DEFINITION." PLEASE
17 RESPOND TO THESE STATEMENTS.

18

19 A. BellSouth agrees with Mr. Viren when he states that reciprocal compensation
20 applies for local traffic terminated on the parties' networks. However,
21 BellSouth strongly disagrees with the statement that traffic to ISPs meets this
22 definition for the reason stated earlier. First, ISP traffic is not terminated at the
23 ALEC's last point of switching or the ISP's switch. The call terminates at a
24 distant computer database or information source to which the ISP provides
25 access. Second, the main concern at the time of this agreement was negotiated

1 was the balance of traffic between the parties. This concern led to the cap
2 being included in the agreement. Finally, the compensation is for termination
3 of local traffic as defined in Section A3 of the Tariff. Local traffic as defined
4 in Section A3 in no way implies ISP traffic.

5
6 Further, it should be noted that Intermedia accepted the BellSouth standard
7 interconnection agreement. Included in that standard agreement was
8 BellSouth's definition of local traffic. Intermedia accepted our standard
9 agreement with our local definition. BellSouth can firmly state that our
10 definition of local traffic never included ISP traffic.

11
12 Q. AT PAGE 7, ON LINES 9 THROUGH 13, OF MR. VIREN'S TESTIMONY,
13 IT STATES THAT "WHEN WE AMENDED THE CONTRACT TO
14 INCLUDE THE PRESENT LANGUAGE, OUR LARGEST CUSTOMER
15 WAS AN ISP, SO OBVIOUSLY, RECIPROCAL COMPENSATION
16 REQUIREMENTS WERE SIGNIFICANT TO US AND PRESUMABLY
17 BELLSOUTH WAS AWARE OF THIS." WERE BELLSOUTH'S
18 NEGOTIATORS AWARE OF THIS?

19
20 A. No. BellSouth's negotiators had no way of knowing who the customers of
21 ALECs were during negotiations. This information would not be needed to
22 negotiate an interconnection agreement. Further, Intermedia did not advise
23 BellSouth that its largest customer was an ISP. If it had, BellSouth would
24 never have agreed to include that traffic since it is interstate in nature.

25

1 Q. CAN YOU SUMMARIZE YOUR REBUTTAL TESTIMONY?

2

3 A. Yes. Messrs. Kouroupas, Martinez, Ball, and Viren are incorrect in claiming
4 that the interconnection agreements between BellSouth and Teleport,
5 MCImetro, WorldCom, and Intermedia require payment of reciprocal
6 compensation for ISP traffic. When those agreements were negotiated,
7 BellSouth understood, based on FCC orders, that such traffic was interstate in
8 nature. Based on that understanding, BellSouth never intended to include such
9 traffic in the definition of local traffic for reciprocal compensation purposes.
10 The agreements therefore do not require such treatment and the Florida
11 Commission should so order.

12

13 Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

14

15 A. Yes.

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