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February 1, 1999

Mrs. Blanca S. Bayo
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

RE: Docket No. 981008-TP

Dear Mrs. Bayo:

Enclosed are an original and 15 copies of Late-Filed Hearing Exhibit No. 1 of Bert Halprin.

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,

Mary K. Keyer
Mary K. Keyer (pw)

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AFA _____

APP _____ Enclosures

CAF _____

CMU _____ cc: All Parties of Record

CTR _____ M. M. Criser, III

EAG _____ N. B. White

LEG _____ W. J. Ellenberg (w/o enclosures)

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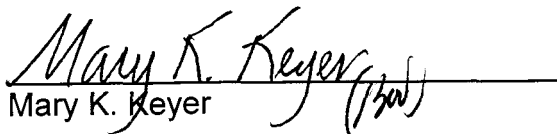
Docket No. 981008-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via U.S. Mail this 1st day of February, 1999 to the following:

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The Long History of Seven-Digit Dialing Arrangements Used to Provide Interstate Services

I. Introduction

When an end user uses the services of an Internet Service Provider ("ISP") to obtain access to the Internet, he or she typically dials a seven-digit telephone number to reach the ISP's local node, through which the end user is connected to the Internet. Competitive local exchange carriers ("CLECs") and ISPs have made much of this fact in the various proceedings in which state commissions have been asked to determine whether such calls are subject to reciprocal compensation obligations under local interconnection agreements between CLECs and incumbent local exchange carriers. The CLECs and ISPs have argued that calls that are connected to the Internet through an ISP are "local traffic" that originates and terminates in the same exchange, and are therefore subject to reciprocal compensation pursuant to the requirements of Section 251(b) of the Communications Act. They have based this claim in large measure on (1) the fact that end users dial a seven-digit "local" telephone number to reach the ISP's local node; and (2) the fact that the ISPs pay local business rates under state tariffs for the telephone lines that the end users dial into.

In fact, seven-digit dialing arrangements are -- and have for decades been -- used to provide interstate services. Indeed, the entire history of the development of long distance service competition revolves around the use of local exchange service, accessed by dialing a seven-digit "local" telephone number, to provide interexchange services. The Federal Communications Commission's ("FCC's") jurisdiction over local exchange facilities and services when used in connection with the provision of interstate service is clearly established and undisputed. This jurisdiction is, of course, based on the fact that the local exchange

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facilities are used as a part of an interstate "communication by wire"^{1/} -- the communication does not originate and terminate in the local exchange. Examples of interstate services provided through the use of seven-digit "local" dialing arrangements include interstate foreign exchange ("FX") service, common control switching arrangement (CCSA") service, interstate enhanced services, "dial-around" services, and certain pre-paid calling card services.

In addition, as explained below, all of the elements and features of ISP Internet communications that are cited by the CLECs and ISPs as evidence that the dialed call "terminates" in the local exchange are also present in one, or more, of the other interstate services provided through the use of seven-digit "local" dialing arrangements. ISP Internet communications and the other service arrangements described below are perfectly analogous. The local exchange facilities used to provide these other interstate services are deemed by the FCC to be in interstate use, and are regulated accordingly. For the exact same reasons, and to the exact same extent, the local exchange facilities used to communicate over the Internet via an ISP are in interstate use.

II. Interstate FX and CCSA Service

Perhaps the earliest use of seven-digit dialing arrangements in interstate communications was interstate foreign exchange service. FX service permits a company in one city to make calls from, and receive calls at, a local business number in a second city in another state, without paying per-minute interstate long distance charges. The company pays a

^{1/} 47 U.S.C. § 152(a).

local exchange carrier ("LEC") in the second city (the "open end") for a local business telephone line. It also leases a private line between the two cities from an interexchange carrier. The local business line is then connected to the private line. This service arrangement permits end users in the distant city to reach the company by dialing a seven-digit "local" telephone number. For example, assume that the Acme Food Distribution Co. is based in Atlanta. It wants its customers in Miami to be able to reach it by dialing a "local" number (perhaps because it wants to appear to be a "local" business or to be "close" to its customers). So it pays for a local business FX line in Miami, and leases a private line between Miami and Atlanta. When its customers dial the company's seven-digit local number in Miami, the call is routed (transparently) over the private line to the company's headquarters in Atlanta. The company can also use the service to obtain a "local" dial-tone in Miami and make calls to Miami at local rates.

Common Control Switching Arrangement service is another example of an interstate service provided through the use of seven-digit "local" calls. CCSA service permits a large customer (such as a company with offices in various locations around the country) to communicate over its internal private line network with the various locations on the network *and* with any telephone subscriber off the network in any city in which it has an office, through interconnection with local exchange service or FX service. For instance, assume that the Acme Food Distribution Co. has locations in Atlanta, Miami, Charlotte, and several other locations, all connected using CCSA over a private line network. An Acme employee at a customer site in Atlanta wants to call another customer in Charlotte. The employee calls Acme's local network node in Atlanta by dialing a seven-digit "local" number. Once

connected to the network, the employee enters a code (e.g., a PIN number) and the desired telephone number in Charlotte. The local node in Charlotte then dials the local number the employee is trying to reach. Thus, this interstate communication involves two seven-digit "local" dialing arrangements.

FX service and CCSA service are both closely analogous to ISP Internet communications. In all three cases, an end user dials a "local" seven-digit number to initiate the communication. In all three cases, the telephone line associated with the seven-digit number is tariffed and paid for at local business rates, under state tariffs. In all three cases, the communication is interstate in nature. In the case of both a CCSA call that originates "off-net" (*i.e.*, by someone dialing into the CCSA-based private network) and an ISP Internet communication, the end user enters additional digits or codes in order to complete the communication and reach the intended destination.

In 1980, the FCC asserted jurisdiction over the seven-digit "local" calls used in connection with the provision of interstate FX and CCSA services and preempted a New York Telephone Co. tariff filed with the New York Public Service Commission that sought to impose a surcharge on interstate FX and CCSA customers.^{2/} The U.S. Court of Appeals for the Second Circuit upheld the FCC's order, holding that the agency properly claimed "jurisdiction over local exchange service when used in connection with interstate FX and

^{2/} See *New York Telephone Co.*, Memorandum Opinion and Order, 76 FCC 2d 349 (1980).

CCSA services.^{3/}

III. The Role of Seven-Digit Dialing Arrangements In the Development of Long Distance Competition

This background on FX and CCSA services is instructive for several reasons. First, while there are significant technical differences between the way an interstate FX (or CCSA) call is offered over the network and the way an interstate interexchange call (*i.e.*, a traditional long distance or message telecommunications service) is offered, once the FX call is "set up," it is identical from the end user's perspective to a traditional interstate interexchange call. This similarity was used by MCI when it used FX arrangements to initiate the era of competition in U.S. (and global) telecommunications. In September 1974, MCI filed a tariff introducing a new service called "Execunet,"^{4/} which was the first competitive public switched long distance service.^{5/} Using this service, MCI's customers could call any telephone number anywhere in the U.S. To make such a call, the customer would first dial a seven-digit "local access" telephone number to reach MCI. Once the call was answered, the customer would enter an authorization code and then the telephone number he or she wanted to reach.^{6/}

^{3/} See *New York Telephone Co.*, 631 F. 2d 1059 (2nd Cir.) (1980) at 1062.

^{4/} Microwave Communications, Inc., Tariff FCC No. 1 (1974).

^{5/} MCI's national services were based in part on resale, and in part on the use of MCI's own facilities. All of MCI's facilities-based national services were FX/CCSA-based services.

^{6/} Because the equipment MCI used to answer calls to its local access numbers could recognize only tones, and not pulses, customers without touch-tone service had to buy little devices to use MCI's Execunet service. Such customers would enter their authorization code and the telephone number they wanted to reach into the device, and then hold the device up to the mouthpiece of the telephone. Some of these devices sold to generate these tones featured extra computational features just like calculators.

Because customers' calls to MCI's "local access" numbers were identical in all respects to regular seven-digit local telephone calls, many states initially viewed seven-digit "local" calls to MCI as falling within their jurisdiction. In addition, because MCI used FX service "open ends" to terminate calls, many states viewed MCI as engaging in the unlawful resale of local exchange services, which many states prohibited at that time. Indeed, many of the same issues discussed today in the context of ISP Internet communications were present in the jurisdictional debates of the 1970s about MCI's Execunet service. Then, as now, all of the following issues were raised in the debate over whether seven-digit calls into MCI's Execunet service were subject to FCC or state jurisdiction: the difficulty or impossibility of identifying and measuring "local" calls to MCI's local access numbers; the fact that additional calling information and validating information was entered after "completion" of the local call; and the fact that MCI had its own "separate" interstate network that it interconnected with the local telephone companies' exchange facilities were all raised as issues in these debates.

Nonetheless, the FCC quickly and successfully asserted jurisdiction over the "local" calls placed to MCI's Execunet local access numbers, notwithstanding the fact that such calls did not differ in any way technically from other local telephone calls that remained subject to the state commissions' jurisdiction. After asserting its jurisdiction, the FCC embarked on a multi-year series of negotiations and proceedings designed to develop an appropriate mechanism to compensate the local telephone companies for the use of their facilities to carry seven-digit calls made in connection with MCI's Execunet service. During the entire period of negotiations and proceedings -- that is, long after the FCC had asserted jurisdiction -- state-tariffed local exchange rates continued to be paid for such calls.

IV. "Déja Vu All Over Again"

One cannot help but be struck by the tremendous parallels between the issues confronted in the early years of long distance competition and the current issues surrounding interstate enhanced services and ISP Internet communications, particularly with respect to determining the appropriate mechanisms and rates to be charged for the use of local exchange facilities to provide these services. Just as it took years for the FCC to adopt the mechanisms and set the rates under which MCI and other long distance carriers compensate LECs for the use of their local exchange facilities to provide interstate services, there have been long years of FCC delay in determining the appropriate compensation to be paid to LECs for seven-digit calls used to provide interstate enhanced services or Internet communications.

Arguments to the effect that calls to an ISP (through which the end user is connected to the Internet) are purely "local" traffic that terminates at the ISP echo the claims of the 1970s about seven-digit "local" calls into MCI's Execunet service. The current claims also feature the resurgence of such themes as the lack of measurement capability, the unfairness of imposing the same universal service obligations as apply to other interstate service providers, and dire warnings that the imposition of access charges or other charges could potentially "kill" competition.⁷¹ As Mamie Eisenhower said, "things are more the same now than they ever were."

⁷¹ Of course, in the 1970s and 1980s, as now, most residential local exchange service was provided at a flat rate, so that no revenue whatsoever was collected on a per-minute or per-call basis from the residential end-users who placed calls to MCI's Execunet service.

Concerns about hampering competition were at the origin of the FCC's initial decision in 1983 to temporarily postpone the application of interstate access charges on interstate enhanced services. The FCC has repeatedly allowed this supposedly temporary exemption from access charges to last for 15 years, even though any legitimate claim to be assisting a struggling, "infant industry" has long since lost all validity. The interstate enhanced services industry now has a higher market capitalization than the entire telecommunications industry, and can hardly claim any more to need special protection in order to mature. However, the FCC's delay in removing the so-called ESP exemption -- admittedly caused in part by heavy political pressure -- cannot in any way be read as either an abdication or delegation of the FCC's authority over "local" calls to interstate enhanced services. In fact, as is well known, if a company selling products or services over FX lines changes the way it does business and provides automated voice storage as part of its technical configuration, the rate it pays for FX service changes from an interstate Feature Group A (FGA) rate to a local exchange service rate.^{8/}

For more than 15 years, the FCC has required fully subject local exchange carriers to price access for interstate enhanced services and Internet services at local exchange tariff rates, and it has prohibited states from developing innovative -- or indeed any -- approaches to ensure that LECs are compensated for such calls. Given that the FCC has thus frozen out consideration of any alternative compensation mechanisms for interstate ESP and Internet

^{8/} FGA is, of course, a serving arrangement -- that is, a type of access provided under interstate tariff (and perhaps also under state tariffs). Its chief feature is that it is a line-side connection that includes a local telephone number. Customers who purchase interstate FX service typically do so through a FGA arrangement (FX can also be purchased using a Feature Group B arrangement).

access traffic, and has prohibited states from permitting telephone companies to assess any special charge to consumers for these calls, it is ironic that the FCC is now anxious to endorse or validate the transfer of millions of dollars from incumbent LECs to CLECs.

Today, residential telephone subscribers can make seven-digit calls for a variety of purposes. A seven-digit number may be used to initiate an interstate interexchange call (using a dial-around service), interstate enhanced service or Internet call (ESP or ISP), interstate FX or CCSA call, or a local call.^{9/} Each of these interstate examples is charged at a different level -- all pursuant to FCC order. In each and every case, if the local number being called is served by a CLEC and the subscriber calling is served by BellSouth, BellSouth cannot identify the call as interstate or measure the duration of the call itself.^{10/} In each case, the only mechanism by which the interstate nature of the call could be determined (short of intercepting or monitoring calls) is if the interstate party (interexchange carrier, ISP, or ESP) were required to identify itself to its carrier (CLEC), and if the CLEC were required to report that information to BellSouth. If such a self-reporting approach were deemed to be undesirable or unenforceable, some alternative such as the flat monthly charge used for Execunet service (and its equivalents) could be employed. In any event, the ball is squarely in the FCC's court, as it has been for the 15 years in which the FCC has been anticipating a "permanent" solution to these issues.^{11/}

^{9/} Of course, it can also be for an intrastate toll or intrastate enhanced service call as well.

^{10/} If interstate service is provided over dedicated trunks, this usage over such trunks can be measured, but this requires the cooperation of the CLEC.

^{11/} Some parties have suggested that *because* BellSouth cannot identify which seven-digit calls that are placed to a telephone number served by a CLEC are jurisdictionally interstate, or measure the duration of such calls,

While it is important to recognize and focus upon the similarities between the issues and arguments faced today and those faced 15-20 years ago during the "birth of competition" era, it is also vitally important to recognize the differences. Most noteworthy among these is that, in the earlier era, there was a fundamental policy disagreement between federal and state regulators.

While federal regulators were (at least after the Execunet decision) attempting to promote competition, virtually all state regulators then believed that competition was inconsistent with the universal service policies they were following. Therefore, they vigorously opposed it. Consequently, the battle over whether "seven-digit calls" dialed to a local number assigned to an interexchange carrier were subject to FCC or state jurisdiction involved a choice of competing policy objectives.

In contrast, today, there is a broad and deep policy agreement between the FCC and the states. Indeed, the FCC apparently is seeking ways to validate state decisions concerning reciprocal compensation for calls that do not originate and terminate within the same local exchange. While clearly sympathetic to these state efforts to strengthen, and indeed subsidize, new entrants through the award of millions of dollars in reciprocal compensation for Internet access, the FCC has had no choice but to acknowledge more than two decades of its own

(. . .continued)

seven-digit calls to an ISP served by a CLEC are therefore "local" traffic subject to reciprocal compensation. This argument is absurd and ignores established precedent. The jurisdictional nature of traffic is in no way determined by or contingent upon the originating LEC's ability to identify or measure such traffic. It is determined by the end-to-end nature of the communication. When a BellSouth customer calls the seven-digit "local" telephone number served by a CLEC and used by a provider of "dial-around" interstate interexchange service, BellSouth cannot possibly identify or measure such traffic as interstate. Yet there is no question under FCC rules that such traffic is interstate in nature and subject to interstate access charges.

precedents and court rulings uniformly finding calls such as these to be part of end-end interstate communications. The FCC, however, has not done a sufficiently thorough job of placing in the proper historical context the "two-call" and local call arguments that have been raised with respect to ISP Internet communications. Further, the FCC cannot find any authority under the Communications Act to require BellSouth (or any incumbent LEC) to pay reciprocal compensation to a CLEC for the use of local plant in interstate service.