

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Complaint of Intermedia Communications Inc., against BellSouth Telecommunications, Inc., for Breach of Terms of Florida Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996, and Request for Relief

DOCKET NO. 991534-TP

FILED: October 8, 1999

RECORDS AND REPORTING

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COMPLAINT OF INTERMEDIA COMMUNICATIONS INC.

Intermedia Communications Inc. ("Intermedia"), through its counsel, pursuant to Section 364.01, Florida Statutes, 47 U.S.C §252 (e)(1) and Iowa Utilities Board v. F.C.C., 120 F.3d 753 (8th Cir. 1997), aff'd in part and rev'd in part, AT&T Corp. v. Iowa Utilities Bd., 119 S.Ct. 721 (1999), hereby files this Complaint against BellSouth Telecommunications, Inc., ("BellSouth") for breach of the terms of the Interconnection Agreement dated June 21, 1996, by and between BellSouth and Intermedia (the "Agreement"). As grounds for this Complaint and demand for relief, Intermedia states as follows:

I. INTRODUCTION

1. This is an administrative action to enforce the terms of the Agreement, approved by this Commission in Order No. PSC-96-1236-FOF-TP, issued on October 7, 1996, in Docket No. 960769-TP.

II. JURISDICTION

2. The exact name and address of the Complainant is:

INTERMEDIA COMMUNICATIONS INC.  
3625 Queen Palm Drive  
Tampa, Florida 33619

3. All notices, pleadings, orders and other documents submitted in this proceeding should be provided to the following persons:

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FPSC-RECORDS/REPORTING

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Washington, D.C. 20036  
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4. The complete name and principal place of business of the Respondent to the Complaint is:

BellSouth Telecommunications, Inc.  
675 West Peachtree Street  
Atlanta, Georgia 30375

5. Intermedia is, and at all material times has been, a competitive local exchange carrier authorized to provide telecommunications services, including telephone exchange, exchange access, and telephone toll, in Florida. BellSouth is, and at all material times has been, an incumbent local exchange carrier in Florida.

6. Section 251(a)(1) of the Telecommunications Act of 1996 (the "Act"), 47 U.S.C. § 251(a)(1), obligates all telecommunications carriers to "interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." Section 251(b)(5) of the Act, 47 U.S.C. § 251(b)(5), obligates Intermedia and BellSouth, as "local exchange carriers" ("LECs") under the Act, to "establish reciprocal compensation arrangements for the transport and termination of telecommunications." Section 252 of the Act, 47 U.S.C. § 252, governs the manner in which interconnection is negotiated between interconnecting telecommunications carriers.

7. Pursuant to Section 252 of the Act, 47 U.S.C. § 252, Intermedia and BellSouth negotiated the Agreement and filed it with this Commission on June 25, 1996. In accordance with Section 252(e) of the Act, 47 U.S.C. § 252(e), the Commission approved the Agreement as noted above on October 7, 1996. The portions of the Agreement relevant to this Complaint (Section IV and Attachment B-1) are attached hereto and incorporated herein by reference as Exhibit A.<sup>1</sup>

8. Pursuant to the terms of the Agreement, Intermedia and BellSouth have interconnected their networks to enable end-user customers subscribing to Intermedia's local exchange service to place calls to end-user customers subscribing to BellSouth's local exchange service, and vice versa.

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<sup>1</sup> On February 16, 1999, Intermedia and BellSouth executed an amendment to the Agreement, which among other things, extended the effect of the Agreement as amended from time to time until December 31, 1999. This amendment was filed with the Commission for approval on February 18, 1999. It was approved in Order No. PSC-99-0632-FOF-TP, issued April 2, 1999, in Docket No. 990187-TP.

9. On June 3, 1998, Intermedia and BellSouth executed an "Amendment to Master Interconnection Agreement Between Intermedia Communications Inc. and BellSouth Telecommunications, Inc. Dated July 1, 1996" (the "Amendment"), which is material to this Complaint. The Amendment was filed with the Commission on July 13, 1998. In accordance with Section 252(e) of the Act, 47 U.S.C. § 252(e), the Commission approved the Amendment in Order No. PSC-98-1347-FOF-TP, issued October 21, 1998, in Docket No. 980879-TP. A copy of the Amendment is attached hereto and incorporated herein by reference as Exhibit B.

10. By the terms of the Agreement, the parties may petition the Commission for a resolution of any dispute that arises as to the interpretation of any provision of the Agreement.<sup>2</sup>

11. The Commission has jurisdiction to consider this Complaint pursuant to Sections 364.01, 364.03, and 364.285, Florida Statutes.

12. The Commission also is authorized under the Act to adjudicate disputes relating to the interpretation and enforcement of interconnection agreements. This authority was explicitly recognized by the Eighth Circuit Court of Appeals in Iowa Utilities Board v. F.C.C., supra.<sup>3</sup>

13. Thus, the Commission has jurisdiction to interpret and enforce the terms of the Agreement and the Amendment under both federal and state statutes.

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<sup>2</sup> Section XXIII.

<sup>3</sup>The court stated that "We believe that the state commission's plenary authority to accept or reject [interconnection agreements] necessarily carries with it the authority to enforce the provisions of agreements that the state commissions have approved." 120 F.3d at 804. That portion of the Eighth Circuit's opinion was vacated by the Supreme Court on ripeness grounds. AT&T Corp., supra.

### III. STANDING

14. Intermedia's substantial interest in this Complaint is the enforcement of the Agreement between Intermedia and BellSouth with respect to the application of the appropriate reciprocal compensation rate for transport and termination of local traffic.

15. Accordingly, Intermedia has standing to bring this Complaint for hearing before this Commission pursuant to Section 120.569(1), Florida Statutes, Agrico Chemical Co. v. Department of Environmental Regulation, 406 So. 2d 478,482 (Fla. 2d DCA 1981) and Section 252 of the Act.

### IV. ALLEGATIONS OF FACT

16. Section IV.B of the Agreement states, in relevant part, that "[e]ach party will pay the other for terminating its local traffic on the other's network the local interconnection rates as set forth in Attachment B-1." Attachment B-1, in turn, establishes the applicable reciprocal rate for local traffic termination as \$0.01056 per minute of use ("MOU"). Intermedia has exchanged local traffic with BellSouth on the basis of that provision.

17. On September 15, 1998, the Commission issued Order No. PSC-98-1216-FOF-TP<sup>4</sup> in Docket No. 980495-TP,<sup>5</sup> in which it determined that the parties were obligated under the Agreement to pay reciprocal compensation for the transport and termination of telephone exchange service that is terminated to end-user customers who are internet service providers. A copy of the Commission's decision is attached hereto and incorporated herein by reference as Exhibit C.

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<sup>4</sup> Pending decision in Case No. 4:98 CV 352-RH, U.S. District Court, Northern District of Florida.

18. On January 8, 1999, Intermedia made demand on BellSouth for payment in the amount of \$23,617,329.00 for reciprocal compensation due and owing as of November 30, 1998. A copy of the letter is attached hereto and incorporated herein by reference as Exhibit D. BellSouth was unresponsive to Intermedia's demand.

19. On April 20, 1999, the Commission issued Order No. PSC-99-0758-FOF-TP, in which it denied BellSouth's motion for a stay of Order No. PSC-98-1216-FOF-TP. A copy of the Commission's decision is attached hereto and incorporated herein by reference as Exhibit E.

20. On May 4, 1999, Intermedia made demand again on BellSouth for payment---this time in the amount of \$34,563,780.40---for reciprocal compensation due and owing as of March 30, 1999. A copy of the demand letter is attached hereto and incorporated herein by reference as Exhibit F. BellSouth responded on May 11, 1999, stating that it "will continue the status quo." A copy of BellSouth's response is attached hereto and incorporated herein by reference as Exhibit G.

21. On July 2, 1999, pursuant to the Commission's order, BellSouth sent Intermedia a check in the amount of \$12,723,883.38, claiming it to be payment of reciprocal compensation owed to Intermedia through April 1999. A copy of BellSouth's transmittal is attached hereto and incorporated herein by reference as Exhibit H.

22. On July 13, 1999, Intermedia wrote a letter to BellSouth stating that the amount of the check was not adequate to compensate Intermedia for the reciprocal compensation traffic that Intermedia had terminated for BellSouth through April 1999. Intermedia stated, moreover, that it

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<sup>5</sup> Docket No. 980495-TP was consolidated with Docket Nos. 971478-TP, 980184-TP and 980499-TP, the

could not discern the method BellSouth used to calculate the amount remitted on the basis of BellSouth's accompanying spreadsheet, but that it would shortly advise BellSouth of the correct amount to be paid. A copy of Intermedia's letter is attached hereto and incorporated herein by reference as Exhibit I.

23. On July 26, 1999, Intermedia wrote a follow-up letter to BellSouth, demonstrating with the support of a spreadsheet that the correct amount BellSouth still owed to Intermedia for the period in question, after accounting for prior BellSouth payments to date, was \$37,664,908.70,<sup>6</sup> leaving a balance outstanding of \$24,841,025.32. A copy of Intermedia's letter is attached hereto and incorporated herein by reference as Exhibit J.

24. In addition, in the July 26, 1999, letter, Intermedia advised BellSouth that for the months of May and June 1999, BellSouth owed still a balance outstanding of \$6,672,925.23.<sup>7</sup> Thus, accounting for the payment of \$12,723,883.38, BellSouth owes Intermedia still an amount of \$31,513,950.55<sup>8</sup> for reciprocal compensation traffic terminated through the end of June 1999 in Florida.

25. The rates established in the Agreement at Attachment B-1 have been effective at all times pertinent to this Complaint, and presently remain effective for the duration of the Agreement.<sup>9</sup> The composite rate for DS-1 tandem switching is \$0.01056 per MOU. Intermedia has, without exception, remitted monthly invoices to BellSouth for reciprocal compensation

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complaints of MCIMetro, TCG and WorldCom, respectively.

<sup>6</sup> \$3,546,628.85 of this amount consists of late payment charges, which were not calculated correctly according to Section IV.B. of the Agreement. Intermedia will advise BellSouth of the correct amount of late payment charges after recalculating it on the basis of BellSouth's obligation to pay quarterly.

<sup>7</sup> This amount consists of \$36,869.80 in late payment charges, subject to the same calculation error.

<sup>8</sup> This amount is subject to adjustment upon recalculation of late payment charges.

based on this rate, from the invoice for February 1997 services to the most recent invoice for July 1999 services. See Exhibit J.

26. BellSouth refuses to pay the composite rate of \$0.01056 per MOU for compensable traffic occurring after June 2, 1998. Rather, BellSouth unilaterally applies a rate of \$0.00200 per MOU for local tandem switching.<sup>10</sup> BellSouth justifies this five-fold reduction on the claim that the Amendment, by its terms, sets new rates that are unconditionally and universally applicable to every exchange of local traffic between BellSouth and Intermedia. Specifically, in a letter dated August 27, 1999, from Ms. Nancy White, General Counsel-Florida for BellSouth to Mr. Scott Sapperstein, Senior Policy Counsel for Intermedia, BellSouth takes the following position:

The intent of the June 3, 1998 Amendment to the Interconnection Agreement between Intermedia and BellSouth, which was signed by both parties, was to establish elemental rates for local traffic. The Amendment specifically states in paragraph 3 that "The Parties agree to bill Local traffic at the elemental rates specified in Attachment A." Additionally, paragraph 4 provides for "...reciprocal compensation being paid between the Parties based on the elemental rates specified in Attachment A." (emphasis added)

A copy of BellSouth's letter is attached hereto and incorporated herein by reference as Exhibit K.

27. The plain language and meaning of the Amendment is diametrically opposed to BellSouth's interpretation.

28. BellSouth's attempt to apply the elemental rates specified in the Amendment by improperly severing the rate provision from the rest of the Amendment must fail because of the

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<sup>9</sup> See supra note 1.



manner in which the rates are positioned in the Amendment. In particular, the elemental rates are placed beneath the following introductory statement:

Multiple Tandem Access shall be available according to the following rates for local usage.<sup>11</sup>

This language clearly ties the elemental rates in the Amendment to the implementation of MTA.

29. The Amendment states, in relevant part:

The Parties agree that BellSouth will, upon request, provide, and [Intermedia] will accept and pay for, Multiple Tandem Access, otherwise referred to as Single Point of Interconnection, as defined in 2. following<sup>12</sup>. (emphasis added).

Multiple Tandem Access, in turn, is defined as an

arrangement [which] provides for ordering interconnection to a single access tandem, or, at a minimum, less than all access tandems within the LATA for [Intermedia's] terminating local and intraLATA toll traffic and BellSouth's terminating local and intraLATA toll traffic along with transit traffic to and from other ALECs, Interexchange carriers, Independent Companies and Wireless Carriers. This arrangement can be ordered in one way trunks and/or two way trunks or Super Group. One restriction to this arrangement is that all of [Intermedia's] NXXs must be associated with these access tandems; otherwise, [Intermedia] must interconnect to each tandem where an NXX is "homed" for transit traffic switched to and from an Interexchange Carrier.<sup>13</sup>

30. The Amendment simply allows Intermedia to request from BellSouth Multiple Tandem Access (MTA), if desired by Intermedia, and sets the terms and conditions for the

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<sup>10</sup>Intermedia is unable to determine the source for this rate. It does not appear in Attachment A of the Amendment as BellSouth claims.

<sup>11</sup> Amendment, Attachment A.

<sup>12</sup> Amendment, Item 1.

provision of MTA where requested by Intermedia.

31. Intermedia has never requested that BellSouth provide MTA to Intermedia pursuant to the Amendment. BellSouth has never provided MTA to Intermedia under the Amendment pursuant to Intermedia's request. Likewise, Intermedia has never accepted the provisioning of MTA by BellSouth under the Amendment. Currently, and at all times material to this proceeding, Intermedia, to the best of its knowledge, has direct interconnection trunks to each and every tandem in the relevant Local Access and Transport Areas.

32. On information and belief, BellSouth has also applied an incorrect rate for computing compensation due to Intermedia for compensable local traffic occurring before June 3, 1998. Specifically, BellSouth appears to have applied a rate of \$0.01028 per MOU rather than the correct rate of \$0.01056 per MOU. See Exhibit H, page 6.

33. Thus, BellSouth has denied, continues to deny, Intermedia the full compensation to which it is entitled under the Agreement. Accordingly, BellSouth is in breach of the Agreement.

#### V. REQUEST FOR RELIEF

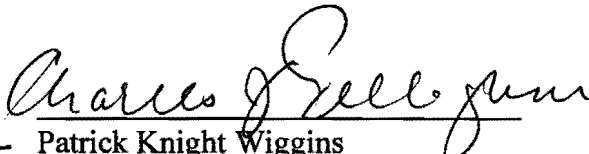
WHEREFORE, Intermedia requests that the Commission (1) find that BellSouth is in breach of the Agreement; (2) determine that the appropriate rate to be applied at all times under the Agreement for purposes of reciprocal compensation for the transport and termination of local traffic is the rate of \$0.01056 per MOU for DS-1 tandem switching as established in the Agreement at Attachment B-1; (3) upon that determination, order BellSouth to remit full

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<sup>13</sup> Amendment, Item 2.

payment to Intermedia without delay, including payment of late payment charges pursuant to the Agreement; (4) require BellSouth to apply the correct rate for compensable local traffic occurring before June 3, 1998; and (5) grant such other relief as the Commission deems appropriate.

Respectfully submitted,

*for* 

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Tel: (202) 955-9600  
Fax: (202) 955-9792

**Counsel for Intermedia Communications Inc.**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail or hand delivery\* this 8th day of October, 1999, to the following:

Nancy B. White\*  
c/o Nancy Sims  
BellSouth  
Telecommunications, Inc.  
150 South Monroe Street, #400  
Tallahassee, FL 32301

Cathy Bedell  
Florida Public Service  
Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

  
\_\_\_\_\_  
Charles J. Pellegrini

Service access provided by two or more LECs and/or ALECs or by one LEC in two or more states within a single LATA.

## II. Purpose

The parties desire to enter into this Agreement consistent with all applicable federal, state and local statutes, rules and regulations in effect as of the date of its execution including, without limitation, the Act at Sections 251, 252 and 271 and to replace any and all other prior agreements, both written and oral, including, without limitation, that certain Stipulation and Agreement dated December 7, 1995, applicable to the state of Florida concerning the terms and conditions of interconnection. The access and interconnection obligations contained herein enable ICI to provide competing telephone exchange service and private line service within the nine state region of BellSouth.

## III. Term of the Agreement

A. The term of this Agreement shall be two years, beginning July 1, 1996.

B. The parties agree that by no later than July 1, 1997, they shall commence negotiations with regard to the terms, conditions and prices of local interconnection to be effective beginning July 1, 1998.

C. If, within 135 days of commencing the negotiation referred to in Section II (B) above, the parties are unable to satisfactorily negotiate new local interconnection terms, conditions and prices, either party may petition the commissions to establish appropriate local interconnection arrangements pursuant to 47 U.S.C. 252. The parties agree that, in such event, they shall encourage the commissions to issue its order regarding the appropriate local interconnection arrangements no later than March 1, 1997. The parties further agree that in the event the Commission does not issue its order prior to July 1, 1998 or if the parties continue beyond July 1, 1998 to negotiate the local interconnection arrangements without Commission intervention, the terms, conditions and prices ultimately ordered by the Commission, or negotiated by the parties, will be effective retroactive to July 1, 1998. Until the revised local interconnection arrangements become effective, the parties shall continue to exchange traffic pursuant to the terms and conditions of this Agreement.

## IV. Local Interconnection

A. The delivery of local traffic between the parties shall be reciprocal and compensation will be mutual according to the provisions of this Agreement. The parties agree that the exchange of traffic on BellSouth's EAS routes shall be considered as local traffic and compensation for the termination of such traffic shall be pursuant to the terms of this section. EAS routes are those exchanges within an exchange's Basic

Local Calling Area, as defined in Section A3 of BellSouth's General Subscriber Services Tariff.

B. Each party will pay the other for terminating its local traffic on the other's network the local interconnection rates as set forth in Attachment B-1, by this reference incorporated herein. The charges for local interconnection are to be billed monthly and payable quarterly after appropriate adjustments pursuant to this Agreement are made. Late payment fees, not to exceed 1% per month after the due date may be assessed, if interconnection charges are not paid, within thirty (30) days of the due date of the quarterly bill.

C. The first six month period after the execution of this Agreement is a testing period in which the parties agree to exchange data and render billing. However, no compensation during this period will be exchanged. If, during the second six month period, the monthly net amount to be billed prior to the cap being applied pursuant to subsection (D) of this section is less than \$40,000.00 on a state by state basis, the parties agree that no payment is due. This cap shall be reduced for each of the subsequent six month periods as follows: 2nd period—\$40,000.00; 3rd period—\$30,000.00; and 4th period—\$20,000.00. The cap shall be \$0.00 for any period after the expiration of this Agreement but prior to the execution of a new agreement.

D. The parties agree that neither party shall be required to compensate the other for more than 105% of the total billed local interconnection minutes of use of the party with the lower total billed local interconnection minutes of use in the same month on a statewide basis. This cap shall apply to the total billed local interconnection minutes of use measured by the local switching element calculated for each party and any affiliate of the party providing local exchange telecommunications services under the party's certificate of necessity issued by the Commission. Each party will report to the other a Percentage Local Usage ("PLU") and the application of the PLU will determine the amount of local minutes to be billed to the other party. Until such time as actual usage data is available or at the expiration of the first year after the execution of this Agreement, the parties agree to utilize a mutually acceptable surrogate for the PLU factor. The calculations, including examples of the calculation of the cap between the parties will be pursuant to the procedures set out in Attachment A, incorporated herein by this reference. For purposes of developing the PLU, each party shall consider every local call and every long distance call. Effective on the first of January, April, July and October of each year, the parties shall update their PLU.

E. The parties agree that there are three appropriate methods of interconnecting facilities: (1) virtual collocation where physical collocation is not practical for technical reasons or because of space limitations; (2) physical collocation; and (3) interconnection via purchase of facilities from either party by the other party. Rates and charges for collocation are set forth in Attachment C-13, incorporated herein by this reference. Facilities may be purchased at rates, terms and conditions set forth in BellSouth's intrastate Switched Access (Section E6) or Special Access (Section E7)

Attachment B-1  
Local Interconnection Service

Service: Local Interconnection\*

Description: Provides for the use of BellSouth Switching and transport facilities and common subscriber plant for connecting calls between an ALEC's Point of Interface (POI) and a BellSouth end user.

It can also be used to connect calls between an ALEC and an Interexchange Carrier (IC), and Independent Exchange Telephone Company (ICO), or a Mobile Service Service Provider (MSP), or between two ALECs.

It is furnished on a per-trunk basis. Trunks are differentiated by traffic type and directionality. There are two major traffic types: (1) Local and (2) Intermediary. Local represents traffic from the ALEC's POI to a BellSouth tandem or end office and Intermediary represents traffic originated or terminated by an ALEC which is interconnected with an IC, ICO, MSP or another ALEC.

Rates and charges will be applied as indicated below.

State(s):	Alabama						Florida					
RATE ELEMENTS	Per MOU	Applied Per	Monthly Recur.	Applied Per	Non-Recur.	Applied Per	Per MOU	Applied Per	Monthly Recur.	Applied Per	Non-Recur.	Applied Per
DS1 Local Channel	--	--	\$133.81	LC	\$866.97	LC - First	--	--	\$133.81	LC	\$866.97	LC - First
					\$486.83	LC - Add'l					\$486.83	LC - Add'l
DS1 Dedicated Transport	--	--	\$23.50	per mile	--	--	--	--	\$16.75	per mile	--	--
			\$90.00	fac.term.	\$100.49	fac. term.			\$59.75	fac.term.	\$100.49	fac. term.
DS1 Common Transport	\$0.00004	per mile	--	--	--	--	\$0.00004	per mile	--	--	--	--
	\$0.00036	fac. term.	--	--	--	--	\$0.00036	fac. term.	--	--	--	--
Local Switching LS2 (FGD)	\$0.00755	access mou	--	--	--	--	\$0.00876	access mou	--	--	--	--
Tandem Switching	\$0.00074	access mou	--	--	--	--	\$0.00050	access mou	--	--	--	--
Information Surcharge	\$0.03218	100 mou	--	--	--	--	--	--	--	--	--	--
Tandem Intermediary Charge**	\$0.002	access mou	--	--	--	--	\$0.002	access mou	--	--	--	--
Composite Rate-DS1 Dedicated	\$0.00978						\$0.01028					
Composite Rate-DS1 Tandem Sw.	\$0.00991						\$0.01056					

State(s):	Georgia						Kentucky					
RATE ELEMENTS	Per MOU	Applied Per	Monthly Recur.	Applied Per	Non-Recur.	Applied Per	Per MOU	Applied Per	Monthly Recur.	Applied Per	Non-Recur.	Applied Per
DS1 Local Channel	--	--	\$133.81	LC	\$866.97	LC - First	--	--	\$133.81	LC	\$866.97	LC - First
					\$486.83	LC - Add'l					\$486.83	LC - Add'l
DS1 Dedicated Transport	--	--	\$23.50	per mile	--	--	--	--	\$23.50	per mile	--	--
			\$90.00	fac.term.	\$100.49	fac. term.			\$90.00	fac.term.	\$100.49	fac. term.
DS1 Common Transport	\$0.00004	per mile	--	--	--	--	\$0.00004	per mile	--	--	--	--
	\$0.00036	fac. term.	--	--	--	--	\$0.00036	fac. term.	--	--	--	--
Local Switching LS2 (FGD)	\$0.00787	access mou	--	--	--	--	\$0.00755	access mou	--	--	--	--
Tandem Switching	\$0.00074	access mou	--	--	--	--	\$0.00074	access mou	--	--	--	--
Information Surcharge	--	--	--	--	--	--	\$0.03218	Prem/100 mou	--	--	--	--
							\$0.01448	Trans/100 mou	--	--	--	--
Tandem Intermediary Charge**	\$0.002	access mou	--	--	--	--	\$0.002	access mou	--	--	--	--
Composite Rate-DS1 Dedicated	\$0.00978						\$0.00978					
Composite Rate-DS1 Tandem Sw.	\$0.00991						\$0.00991					

\*Rates are displayed at the DS1-1.544 Mbps. level. For rates and charges applicable to other arrangement levels, refer to Section E6 of BellSouth Telecommunication's, Inc.'s IntraState Access Tariff

\*\*The Tandem Intermediary Charge applies only to Intermediary Traffic.

-DS1 Local Channel: denotes a DS1 dedicated transport facility between the ALEC's serving wire center and the ALEC's POI, also called an Entrance Facility. This element will apply when associated with services ordered by an ALEC which utilizes a BellSouth facilities. This element is not required when an ALEC is collocated.

-DS1 Dedicated Transport: provides transmission and facility termination. The facility termination applies for each DS1 Interoffice Channel terminated. Can be used from the ALEC's serving wire center to the end users and office or from the ALEC's serving wire center to the tandem.

-Common Transport: Composed of Common Transport facilities as determined by BellSouth and permits the transmission of calls terminated by BellSouth.

-Access Tandem Switching: provides function of switching traffic from or to the Access Tandem from or to the end office switch(es). The Access Tandem Switching charge is assessed on all terminating minutes of use switched at the access tandem.

-Compensation Credit (CAP): BellSouth and the ALECs will not be required to compensate each other for more than 105% of the total billed local interconnection minutes of use of the party with the lower total billed local interconnection minutes of use in the same month.

ORDER NO. PSC-98-1347-FOF-TP  
DOCKET NO. 980879-TP  
PAGE 4

ATTACHMENT A

AMENDMENT  
TO  
MASTER INTERCONNECTION AGREEMENT BETWEEN  
INTERMEDIA COMMUNICATIONS, INC. and  
BELLSOUTH TELECOMMUNICATIONS, INC.  
DATED JULY 1, 1996

Pursuant to this Agreement (the "Amendment"), Intermedia Communications, Inc. ("ICI") and BellSouth Telecommunications, Inc. ("BellSouth") hereinafter referred to collectively as the "Parties" hereby agree to amend that certain Master Interconnection Agreement between the Parties effective July 1, 1996 ("Interconnection Agreement").

NOW THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, ICI and BellSouth hereby covenant and agree as follows:

1. The Parties agree that BellSouth will, upon request, provide, and ICI will accept and pay for, Multiple Tandem Access, otherwise referred to as Single Point of Interconnection, as defined in 2. following:
2. This arrangement provides for ordering interconnection to a single access tandem, or, at a minimum, less than all access tandems within the LATA for ICI's terminating local and intraLATA toll traffic and BellSouth's terminating local and intraLATA toll traffic along with transit traffic to and from other ALECs, Interexchange Carriers, Independent Companies and Wireless Carriers. This arrangement can be ordered in one way trunks and/or two way trunks or Super Group. One restriction to this arrangement is that all of ICI's NXXs must be associated with these access tandems; otherwise, ICI must interconnect to each tandem where an NXX is "homed" for transit traffic switched to and from an Interexchange Carrier.
3. The Parties agree to bill Local traffic at the elemental rates specified in Attachment A.
4. This amendment will result in reciprocal compensation being paid between the Parties based on the elemental rates specified in Attachment A.
5. The Parties agree that all of the other provisions of the Interconnection Agreement, dated July 1, 1996, shall remain in full force and effect.
6. The Parties further agree that either or both of the Parties is authorized to submit this Amendment to the respective state regulatory authorities for approval subject to Section 252(e) of the Federal Telecommunications Act of 1996.



ORDER NO. PSC-98-1347-FOF-TP  
DOCKET NO. 980879-TP  
PAGE 5

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed by their respective duly authorized representatives on the date indicated below.

Intermedia Communications, Inc.

James A. Lewis  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

BeSouth Telecommunications, Inc.

Jerry D. Hendrix  
Signature

Jerry D. Hendrix  
Name

Director-Interconnection Services  
Title

6/3/98  
Date

ORDER NO. PSC-98-1347-FOF-TP  
DOCKET NO. 980879-TP  
PAGE 6

ATTACHMENT A

Multiple Tandem Access shall be available according to the following rates for local usage:

1. Each Party's local usage will be determined by the application of its reported Percent Local Usage ("PLU") to its intrastate terminating minutes of use as set forth in Paragraph 1.D. in ICI's February 24, 1997, Amendment to its Interconnection Agreement.
2. The Parties agree to bill Local traffic at the elemental rates specified below:

ELEMENT	AL	FL	GA	KY	LA
<b>Local Switching</b>					
End Office Switching, per MOU	\$0.0017	\$0.0175	\$0.0016333	\$0.002562	\$0.0021
End Office Switching, add'l MOU <sup>(1)</sup>	NA	\$0.005	NA	NA	NA
End Office Interoffice Trunk Port - Shared, MOU	NA	NA	NA	NA	\$0.0002
Tandem Switching, per MOU	\$0.0015	\$0.00029	\$0.0006757	\$0.001096	\$0.0008
Tandem Interoffice Trunk Port - Shared	NA	NA	NA	NA	\$0.0003
Tandem Intermediary Charge, per MOU <sup>(2)</sup>	\$0.0015	NA	NA	\$0.001096	NA
<b>Local Transport</b>					
Shared, per mile, per MOU	\$0.00004	\$0.000012	\$0.000008	\$0.0000049	\$0.0000083
Facility Termination, per MOU	\$0.00036	\$0.0005	\$0.0004152	\$0.000426	\$0.00047

ELEMENT	MS	NC	SC	TN
<b>Local Switching</b>				
End Office Switching, per MOU	\$0.00221	\$0.0040	\$0.00221	\$0.0019
End Office Switching, add'l MOU <sup>(1)</sup>	NA	NA	NA	NA
End Office Interoffice Trunk Port - Shared, MOU	NA	NA	NA	NA
Tandem Switching, per MOU	\$0.003172	\$0.0015	\$0.003172	\$0.000676
Tandem Interoffice Trunk Port - Shared	NA	NA	NA	NA
Tandem Intermediary Charge, per MOU <sup>(2)</sup>	NA	NA	NA	NA
<b>Local Transport</b>				
Shared, per mile, per MOU	\$0.000012	\$0.00004	\$0.000012	\$0.00004
Facility Termination, per MOU	\$0.00036	\$0.00036	\$0.00036	\$0.00036

(1) This rate element is for use in those states with a different rate for additional minutes of use.

(2) This charge is applicable only to intermediary traffic and is applied in addition to applicable switching and/or interconnection charges.

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  
ORDER NO. PSC-98-1216-FOF-TP  
ISSUED: September 15, 1998

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

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

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

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman  
J. TERRY DEASON  
SUSAN F. CLARK  
JOE GARCIA  
E. LEON JACOBS, JR.

**FINAL ORDER RESOLVING COMPLAINTS**

APPEARANCES:

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On behalf of Worldcom Technologies, Inc.

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On behalf of Teleport Communications Group, Inc./TCG South Florida.

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On behalf of Intermedia Communications, Inc.

Thomas K. Bond, 780 Johnson Ferry Road, Suite 700, Atlanta, GA 30342.

On behalf of MCI Telecommunications Corporation

Ed Rankin, 675 West Peachtree Street, Suite 4300, Atlanta, Georgia 30375-0001.

On behalf of BellSouth Telecommunications, Inc.

Charles J. Pellegrini, Florida Public Service Commission, Division of Legal Services, 2540 Shumard Oak Boulevard, Tallahassee, FL 32399-0850.

ORDER NO. PSC-98-1216-FOF-TP  
DOCKET NOS. 971478-TP, 980184-TP, 980495-TP, 980499-TP  
PAGE 3

On behalf of the Commission Staff.

**CASE BACKGROUND**

MFS Communications Company, Inc. (MFS), and BellSouth Telecommunications, Inc. (BellSouth), entered into a Partial Florida Interconnection Agreement pursuant to the Telecommunications Act of 1996 (Act) on August 26, 1996. The Commission approved the Agreement in Order No. PSC-96-1508-FOF-TP, issued December 12, 1996, in Docket No. 961053-TP. The Commission approved an amendment to the Agreement in Order No. PSC-97-0772-FOF-TP, issued July 1, 1997, in Docket No. 970315-TP. On November 12, 1997, WorldCom Technologies, Inc. (WorldCom), filed a Complaint Against BellSouth and Request for Relief, alleging that BellSouth has failed to pay reciprocal compensation for local telephone exchange service traffic transported and terminated by WorldCom's affiliate, MFS, to Internet Service Providers (ISPs). The complaint was assigned Docket No. 971478-TP. BellSouth filed its Answer and Response on December 22, 1997. In Order No. PSC-98-0454-PCO-TP, issued March 31, 1998, the Commission directed that the matter be set for hearing.

Teleport Communications Group, Inc./TCG South Florida (TCG), and BellSouth entered into an Interconnection Agreement pursuant to the Act on July 15, 1996. The Commission approved the Agreement in Order No. PSC-96-1313-FOF-TP, issued October 29, 1996, in Docket No. 960862-TP. On February 4, 1998, TCG filed a Complaint for Enforcement of Section IV.C of its Interconnection Agreement with BellSouth, also alleging that BellSouth has failed to pay reciprocal compensation for local telephone exchange service traffic transported and terminated by TCG to ISPs. The complaint was assigned Docket No. 980184-TP. BellSouth filed its Answer and Response on February 25, 1998.

MCImetro Access Transmission Services, Inc. (MCIm), and BellSouth entered into an Interconnection Agreement pursuant to the Act on April 4, 1997. The Commission approved the Agreement in Order Nos. PSC-97-0723-FOF-TP, issued June 19, 1997, and PSC-97-0723A-FOF-TP, issued June 26, 1997, in Docket No. 960846-TP. On February 23, 1998, MCIm filed a Complaint against BellSouth, which was assigned Docket No. 980281-TP. Among other things, MCIm also alleged in Count 13 that BellSouth has failed to pay reciprocal compensation for local telephone exchange service traffic transported and terminated by MCIm to ISPs. On April 6, 1998, MCIm filed a separate Complaint embodying the complaint set forth in

ORDER NO. PSC-98-1216-FOF-TP  
DOCKET NOS. 971478-TP, 980184-TP, 980495-TP, 980499-TP  
PAGE 4

Count 13 of the first Complaint. The separate complaint was assigned Docket No. 980499-TP.

Intermedia Communications, Inc. (Intermedia), and BellSouth entered into an interconnection Agreement pursuant to the Act on July 1, 1996. The Commission approved the Agreement in Order No. PSC-96-1236-FOF-TP, issued October 7, 1996, in Docket No. 960769-TP. The Commission approved an amended Agreement in Order No. PSC-97-1617-FOF-TP, issued December 30, 1997, in Docket No. 971230-TP. On April 6, 1998, Intermedia filed a Complaint against BellSouth alleging that BellSouth has failed to pay reciprocal compensation for local telephone exchange service traffic transported and terminated by Intermedia to ISPs. That complaint was assigned Docket No. 980495-TP.

On March 9, 1998, GTE Florida Incorporated (GTEFL) filed a petition to intervene in this proceeding. By Order No. PSC-98-0476-PCO-TP, we denied GTEFL's petition. Subsequently, on May 6, 1998, GTEFL filed a petition to be permitted to file a brief. We denied that petition at the commencement of the hearing in these complaint dockets.

By Order No. PSC-98-0561-PCO-TP, issued April 21, 1998, the four complaints were consolidated for hearing purposes. The hearing was held on June 11, 1998.

#### DECISION

This case is about BellSouth's refusal to pay reciprocal compensation for the transport and termination of ISP traffic under the terms of its interconnection agreements with WorldCom, Teleport, Intermedia, and MCI. In a letter dated August 12, 1997, BellSouth notified the complainants that it would not pay compensation for the termination of ISP traffic, because "ISP traffic is jurisdictionally interstate" and "enjoys a unique status, especially [as to] call termination." The case is primarily a contract dispute between the parties, and that is the foundation of our decision below. As TCG stated in its brief, "This is a contract dispute in which the Commission must decide whose meaning is to be given to the term 'Local Traffic' in the Agreement."

Accordingly, in this decision we only address the issue of whether ISP traffic should be treated as local or interstate for purposes of reciprocal compensation as necessary to show what the

ORDER NO. PSC-98-1216-FOF-TP  
DOCKET NOS. 971478-TP, 980184-TP, 980495-TP, 980499-TP  
PAGE 5

parties might reasonably have intended at the time they entered into their contracts. Our decision does not address any generic questions about the ultimate nature of ISP traffic for reciprocal compensation purposes, or for any other purposes.

While there are four complainants in the consolidated case, their arguments contain many common threads. Also, BellSouth's position on each issue is the same, and its brief addresses all four together. For the sake of efficiency, we will address the main themes in our discussion of the WorldCom-BellSouth agreement. We will address the particular language of the other agreements separately.

### The WorldCom-BellSouth Agreement

On August 26, 1996, MFS (now WorldCom) and BellSouth entered into a Partial Interconnection Agreement, which we approved in Order No. PSC-96-1508-FOF-TP. WorldCom witness Ball testified on the pertinent provisions of that Agreement. Section 1.40 of the Agreement defines local traffic as:

[C]alls between two or more Telephone Exchange service users where both Telephone Exchange Services bear NPA-NXX designations associated with the same local calling area of the incumbent LEC or other authorized area [such as EAS]. Local traffic includes traffic types that have been traditionally referred to as "local calling" and as "extended area service (EAS)." All other traffic that originates and terminates between end users within the LATA is toll traffic. In no event shall the Local Traffic area for purposes of local call termination billing between the parties be decreased.

Section 5.8.1 provides that:

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

ORDER NO. PSC-98-1216-FOF-TP  
DOCKET NOS. 971478-TP, 980184-TP, 980495-TP, 980499-TP  
PAGE 6

The question presented for decision is, as it is in the other complaints, whether, under the WorldCom - BellSouth Florida Partial Interconnection Agreement, the parties are required to compensate each other for transport and termination of traffic to Internet Service Providers; and if they are, what relief should the Commission grant? The issue is whether the traffic in question, ISP traffic, is local for purposes of the agreements in question.

According to witness Ball, the language of the WorldCom-BellSouth Agreement itself makes it clear that the parties owe each other reciprocal compensation for the traffic in question. He stated that "if a BellSouth customer utilizes a BellSouth telephone exchange service that has a local NPA-NXX and they call a WorldCom customer that buys a WorldCom telephone exchange service that has a WorldCom NPA-NXX, that's local traffic." Witness Ball explained that this is what happens when a BellSouth local customer calls a WorldCom customer that happens to be an ISP. He pointed out that there is no exclusion for any type of customer based on what business the customer happens to be in. Witness Ball noted that where exceptions were needed for certain types of traffic, they were expressly included in the Agreement. He argued that WorldCom understood ISP traffic to be local, and if BellSouth wanted to exclude ISP calls, it was BellSouth's obligation to raise the issue at the time the Agreement was negotiated.

Witness Ball stated that "the Agreement is entirely clear and unambiguous" on the treatment of ISP traffic as local; but if we determine that the Agreement is ambiguous on this point, the ambiguities should be resolved by considering:

- (1) the express language of the Telecommunications Act of 1996;
- (2) relevant rulings, decisions and orders of this Commission;
- (3) relevant rulings, decisions and orders of the FCC interpreting the Act;
- (4) rulings, decisions and orders from other, similarly situated state regulatory agencies; and
- (5) the custom and usage in the industry.



ORDER NO. PSC-98-1216-FOF-TP  
DOCKET NOS. 971478-TP, 980184-TP, 980495-TP, 980499-TP  
PAGE 7

BellSouth witness Hendrix agreed that the contract did not specify whether ISP traffic was included in the definition of local traffic. Witness Hendrix argued, however, that it was WorldCom's obligation to raise the issue in the negotiations. In fact, the record shows that while BellSouth and the complainants all reached a specific agreement on the definition of local traffic to be included in the contracts, none of them raised the particular question of what to do with ISP traffic.

According to BellSouth, all the complainants assumed that BellSouth agreed to include ISP traffic as local. BellSouth asserts that it cannot be forced to pay reciprocal compensation just because it did not "affirmatively except ISP traffic from the definition of 'local traffic'" in negotiating the Agreement. BellSouth argues that the existing law at the time the contracts were negotiated "reflects that it was unreasonable for the Complainants to blithely assume that BellSouth agreed with their proposed treatment of ISP traffic."

It appears to us from our review of the record, however, that BellSouth equally assumed, and implied in its brief and testimony at the hearing, that the complainants in fact knew ISP traffic was interstate in nature. In its brief, BellSouth states that "parties to a contract are presumed to enter into their Agreement with full knowledge of the state of the existing law, which in turn is incorporated into and sheds light on the meaning of the parties' Agreement." BellSouth witness Hendrix asserted that the FCC had explicitly found that ISPs provide interstate services. Therefore, witness Hendrix argued, there was no need for BellSouth to believe ISP traffic would be subject to reciprocal compensation. The result of this misunderstanding, BellSouth asserts, was that the parties never had an express meeting of the minds on the scope of the definition of local traffic.

#### Discussion

Upon review of the language of the agreement, and the evidence and testimony presented at the hearing, we find that the Agreement defines local traffic in such a way that ISP traffic clearly fits the definition. Since ISP traffic is local under the terms of the Agreement, then, a priori, reciprocal compensation for termination is required under Section 5.8 of the Agreement. There is no ambiguity, and there are no specific exceptions for ISP traffic.

Since there is no ambiguity in the language of the agreement, we need not consider any other evidence to determine the parties' obligations under the agreement. Even if there were an ambiguity

ORDER NO. PSC-98-1216-FOF-TP  
DOCKET NOS. 971478-TP, 980184-TP, 980495-TP, 980499-TP  
PAGE 8

in the language of the agreement, however, the other evidence and argument presented at the hearing leads to the same result: the parties intended to include ISP traffic as local traffic for purposes of reciprocal compensation under their agreement.

#### Local vs. Interstate Traffic

The first area to explore is the parties' basis for considering ISP traffic to be jurisdictionally local or interstate. BellSouth witness Hendrix contended that for reciprocal compensation to apply, "traffic must be jurisdictionally local." He argued that ISP traffic is not jurisdictionally local, because the FCC "has concluded that enhanced service providers, of which ISPs are a subset, use the local network to provide interstate services." He added that they do so just as facilities-based interexchange carriers and resellers use the local network to provide interstate services. He stated that "[t]he FCC stated in Paragraph 12 in an order dated February 14, 1992, in Docket Number 92-18, that:

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

Further, according to Witness Hendrix, in its April 10, 1998, Report to Congress (CC Docket No. 96-45), "the FCC indicated that it does have jurisdiction to address whether ALECs that serve ISPs are entitled to reciprocal compensation." We will discuss that report in more detail below.

BellSouth does acknowledge in its brief that the "FCC has not held that ISP traffic is local traffic for purposes of the instant dispute before the Commission." Nor has the FCC "held that ISPs are end users for all regulatory purposes." We agree with this assessment. The FCC has not yet decided whether ISP traffic is subject to reciprocal compensation. While the FCC has determined that ISPs provide interstate services, it appears that the FCC may consider these services severable from telecommunications services, as we explain below. No FCC order delineates exactly for what purposes the FCC intends ISP traffic to be considered local. By the same token, the FCC has not said that ISP traffic cannot be considered local for all regulatory purposes. It appears that the FCC has largely been silent on the issue. This leads us to believe

ORDER NO. PSC-98-1216-FOF-TP  
DOCKET NOS. 971478-TP, 980184-TP, 980495-TP, 980499-TP  
PAGE 9

the FCC intended for the states to exercise jurisdiction over the local service aspects of ISP traffic, unless and until the FCC decided otherwise. Even Witness Hendrix agreed that the FCC intended ISP traffic to be treated as though local. He did not expound on what exactly that meant.

BellSouth contends in its brief that there is no dispute that an Internet transmission may simultaneously be interstate, international and intrastate. BellSouth also contends that the issue should be resolved in pending proceedings before the FCC. Those proceedings include one the FCC initiated in response to a June 29, 1997, letter from the Association for Local Telecommunications Services (ALTS). ALTS requested clarification from the FCC that ISP traffic is within the FCC's exclusive jurisdiction. ALTS has also asked the FCC for a ruling on the treatment of ISP traffic as local.

Regardless of what the FCC ultimately decides, it has not decided anything yet, and we are concerned here with an existing interconnection agreement, executed by the parties in 1996. Our finding that ISP traffic should be treated as local for purposes of the subject interconnection agreement is consistent with the FCC's treatment of ISP traffic at the time the agreement was executed, all pending jurisdictional issues aside.

#### Termination

In its brief, BellSouth places considerable emphasis on the point of termination for a call. The basic question is whether or not ISP traffic terminates at the ALEC premises. Witness Hendrix testified that "call termination does not occur when an ALEC, serving as a conduit, places itself between BellSouth and an ISP." "[I]f an ALEC puts itself in between BellSouth's end office and the Internet service provider, it is acting like an intermediate transport carrier or conduit, not a local exchange provider entitled to reciprocal compensation." "Thus, the call from an end user to the ISP only transits through the ISP's local point of presence; it does not terminate there. There is no interruption of the continuous transmission of signals between the end user and the host computers." BellSouth states in its brief that "the jurisdictional boundaries of a communication are determined by its beginning and ending points, and the ending point of a call to an ISP is not the ISP switch, but rather is the database or information source to which the ISP provides access."

ORDER NO. PSC-98-1216-FOF-TP  
DOCKET NOS. 971478-TP, 980184-TP, 980495-TP, 980499-TP  
PAGE 10

MCIm contends in its brief that BellSouth witness Hendrix' testimony that a call to an ISP terminates not at the local telephone number, but rather at a distant Internet host misunderstands the nature of an Internet call. MCIm witness Martinez contended that the ability of Internet users to visit multiple websites at any number of destinations on a single call is a clear indication that the service provided by an ISP is enhanced service, not telecommunications service. According to MCIm, this does not alter the nature of the local call. While BellSouth would have one believe that the call involved is not a local call, MCIm points out that in the case of a rural customer using an IXC to connect with an ISP, the call "is suddenly two parts again: a long distance call, for which BellSouth can charge access, followed by an enhanced service."

BellSouth argues in its brief that "in interpreting the language of a contract, words referring to a particular trade will be interpreted by the courts according to their widely accepted trade meaning." We agree, but it appears to us that BellSouth then chooses to ignore the industry standard definition of the word "termination." The other parties provided several examples of industry definitions on this point.

WorldCom witness Ball stated that "[s]tandard industry practice is that a call is terminated essentially when it's answered; when the customer that is buying the telephone exchange service that has the NPA-NXX answers the call by--whether it's a voice grade phone, if it's a fax machine, an answering machine or, in the case of an ISP, a modem."

TCG witness Kouroupas testified that the standard industry definition of "service termination point" is:

Proceeding from a network toward a user terminal, the last point of service rendered by a commercial carrier under applicable tariffs.... In a switched communications system, the point at which common carrier service ends and user-provided service begins, i.e. the interface point between the communications systems equipment and the user terminal equipment, under applicable tariffs.

Witness Kouroupas further explained that "A call placed over the public switched telecommunications network is considered 'terminated' when it is delivered to the telephone exchange bearing

ORDER NO. PSC-98-1216-FOF-TP  
DOCKET NOS. 971478-TP, 980184-TP, 980495-TP, 980499-TP  
PAGE 11

the called telephone number." Call termination occurs when a connection is established between the caller and the telephone exchange service to which the dialed telephone number is assigned, answer supervision is returned, and a call record is generated.

This is the case whether the call is received by a voice grade phone, a fax machine, an answering machine, or in the case of an ISP, a modem. Witness Kouroupas contended that this is a widely accepted industry definition.

MCIm argues in its brief that:

a "telephone call" placed over the public switched telephone network is "terminated" when it is delivered to the telephone exchange service premise bearing the called telephone number... specifically, in its Local Competition Order (Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, FCC 96-325 (rel. Aug. 8, 1996), ¶1040), the FCC defined terminations "for purposes of section 251(b)(5), as the switching of traffic that is subject to section 251(b)(5) at the terminating carrier's end office switch (or equivalent facility) and delivery of that traffic from that switch to the called party's premises." MCIm terminates telephone calls to Internet Service Providers on its network. As a communications service, a call is completed at that point, regardless of the identity or status of the called party.

Witness Martinez testified that "[w]hen a BellSouth customer originates a telephone call by dialing that number, the telephone call terminates at the ISP premises, just as any other telephone call terminates when it reaches the premises with the phone number that the end user dialed."

#### Severability

Recent FCC documents have described Internet traffic as calls with two severable parts: a telecommunications service part, and an enhanced service part. In the May 1997 Universal Service Order at ¶789, the FCC stated:

ORDER NO. PSC-98-1216-FOF-TP  
DOCKET NOS. 971478-TP, 980184-TP, 980495-TP, 980499-TP  
PAGE 12

When a subscriber obtains a connection to an Internet service provider via voice grade access to the public switched network, that connection is a telecommunications service and is distinguishable from the Internet service provider's offering.

In that Report, the FCC also stated that ISPs "generally do not provide telecommunications." (¶¶ 15, 55) WorldCom argues in its brief that:

The FCC's determination that ISPs do not provide telecommunications was mandated by the 1996 Act's express distinction between telecommunications and information services. "Telecommunications" is "The transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." 47 U.S.C. Section 153(48). By contrast, "information services" is "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service." 47 U.S.C. Sec. 153(20)

WorldCom adds that:

[t]he FCC recognized that the 1996 Act's distinction between telecommunications and information services is crucial. The FCC noted that "Congress intended 'telecommunications service' and 'information service' to refer to separate categories of services" despite the appearance from the end user's perspective that it is a single service because it may involve telecommunications components. (Report to Congress, ¶¶56, 58) [Emphasis supplied by WorldCom]

ORDER NO. PSC-98-1216-FOF-TP  
DOCKET NOS. 971478-TP, 980184-TP, 980495-TP, 980499-TP  
PAGE 13

BellSouth argues that the complainants misinterpret the FCC's decision. BellSouth points out that this passage is only discussing whether or not ISPs should make universal service contributions. That is true; but the passage is nevertheless as significant an indication of how the FCC may view ISP traffic as the passages BellSouth has cited.

In its brief, BellSouth claims that the FCC "specifically repudiated" the two-part theory. BellSouth cites the FCC's Report to Congress, CC Docket No., 96-45, April 10, 1998, ¶220. There the FCC stated:

We make no determination here on the question of whether competitive LECs that serve Internet service providers (or Internet service providers that have voluntarily become competitive LECs) are entitled to reciprocal compensation for terminating Internet traffic. That issue, which is now before the [FCC], does not turn on the status of the Internet service provider as a telecommunications carrier or information service provider.  
[emphasis supplied by BellSouth]

BellSouth claims that this means the FCC believes the distinction is "meaningless in the context of the FCC's pending reciprocal compensation decision." The other parties point out, however, that it is not at all clear what the FCC means in this passage. It appears to us that the FCC is talking here about the status of the provider, not about the severability of the telecommunications service from the information service. Indeed, in the same report, the FCC brought up the severability notion, as discussed above.

BellSouth also argues that the severability theory is contradicted by the FCC's description of Internet service in its Non-Accounting Safeguards Order (Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, As Amended, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-149 (released Dec. 24, 1996), note 291), where the FCC states:

The Internet is an interconnected global network of thousands of interoperable packet-switched networks that use a standard protocol...to enable information exchange. An

ORDER NO. PSC-98-1216-FOF-TP  
DOCKET NOS. 971478-TP, 980184-TP, 980495-TP, 980499-TP  
PAGE 14

end user may obtain access to the Internet from an Internet service provider, by using dial-up or dedicated access to connect to the Internet service provider's processor. The Internet service provider, in turn, connects the end user to an Internet backbone provider that carries traffic to and from other Internet host sites.

BellSouth claims that the significance of this is that calls to ISPs only transit through the ISP's local point of presence. Thus, the call does not terminate there. In support of this conclusion, BellSouth mentions several other services, such as Asynchronous Transfer Mode (ATM) technology, that use packet switching. BellSouth makes the point that the jurisdictional nature of a call is not changed through the conversion from circuit switching to packet switching.

BellSouth also discussed an example where an end user made a long-distance call to access voice mail. In that case the call was an interstate call, and the FCC found that it did not lose that interstate character upon being forwarded to voice mail. Petition for Emergency Relief and Declaratory Ruling Filed by BellSouth Corporation, 7 FCC Rcd 1619 (1992), aff'd, Georgia Public Service Commission v. FCC, 5 F.3d 1499 (11th Cir. 1993). We do not comprehend BellSouth's point. By that logic, if a local call is used to access an information service, it follows that the entire transmission would be local. In yet another case cited by BellSouth, the FCC found that interstate foreign exchange service was interstate service, and thus came under the FCC's jurisdiction. New York Telephone Co.--Exchange System Access Line Terminal Charge for FX and CCSA Service, Memorandum Opinion and Order, 76 FCC 2d 349 (1980). Once again, it is difficult to discern BellSouth's point. We do not find this line of argument at all persuasive.

BellSouth further argues that "[t]he FCC has long held that the jurisdiction of a call is determined not by the physical location of the communications facilities or the type of facilities used, but by the nature of the traffic that flows over those facilities." This, too, is a perplexing argument in light of BellSouth's claims that the distant location of the host accessed over the Internet makes ISP traffic interstate, and that the nature of ISP traffic as either telecommunications or information service is irrelevant.



ORDER NO. PSC-98-1216-FOF-TP  
DOCKET NOS. 971478-TP, 980184-TP, 980495-TP, 980499-TP  
PAGE 15

As mentioned above, witness Hendrix did admit that "the FCC intended for ISP traffic to be 'treated' as local, regardless of jurisdiction." He emphasized the word treated, and explained that the FCC "did not say that the traffic was local but that the traffic would be treated as local."

#### FPSC Treatment

BellSouth dismisses Commission Order No. 21815, issued September 5, 1989, in Docket No. 880423-TP, Investigation into the Statewide Offering of Access to the Local Network for the Purpose of Providing Information Services, as an interim order. In that order, the Commission found that end user access to information service providers, which include Internet service providers, is by local service. In the proceeding, BellSouth's own witness testified that:

[C]onnections to the local exchange network for the purpose of providing an information service should be treated like any other local exchange service. (Order 21815, p. 25)

The Commission agreed with BellSouth's witness. The Commission also found that calls to ISPs should be viewed as jurisdictionally intrastate local exchange calls terminating at an ISP's location in Florida. BellSouth's position, as stated in the Order, was that:

calls should continue to be viewed as local exchange traffic terminating at the ESP's [Enhanced Service Provider's] location. Connectivity to a point out of state through an ESP should not contaminate the local exchange. (Order, p. 24) (ISPs are a subset of ESPs.)

In this case, Witness Hendrix claimed that Order 21815 was only an interim order that has now been overruled. He could not identify any Commission order establishing a different policy; nor could he specify the FCC order that supposedly overrules the Florida Commission order. Further, and most importantly, BellSouth admitted that this definition had not been changed at the time it entered into its Agreements.

It is clear that the treatment of ISP traffic was an issue long before the parties' Agreement was executed. We found, in Order No. 21815, as discussed above, that such traffic should be

ORDER NO. PSC-98-1216-FOF-TP  
DOCKET NOS. 971478-TP, 980184-TP, 980495-TP, 980499-TP  
PAGE 16

treated as local. Both WorldCom and BellSouth clearly were aware of this decision, and we presume that they considered it when they entered into their Agreement.

#### Intent of Parties

In determining what was the parties' intent when they executed their contract, we may consider circumstances that existed at the time the contract was entered into, and the subsequent actions of the parties. As WorldCom argues in its brief, "the intent of the parties is revealed not just by what is said, but by an analysis of all the facts and circumstances surrounding the disputed issue."

In James v. Gulf Life Insur. Co., 66 So.2d 62, 63 (Fla. 1953) the Florida Supreme Court cited with favor Contracts, 12 Am.Jur. § 250, pages 791-93, as a general proposition concerning contract construction in pertinent part as follows:

Agreements must receive a reasonable interpretation, according to the intention of the parties at the time of executing them, if that intention can be ascertained from their language ... Where the language of an agreement is contradictory, obscure, or ambiguous, or where its meaning is doubtful, so that it is susceptible of two constructions, one of which makes it fair, customary, and such as prudent men would naturally execute, while the other makes it inequitable, unusual, or such as reasonable men would not be likely to enter into, the interpretation which makes a rational and probable agreement must be preferred ... An interpretation which is just to both parties will be preferred to one which is unjust.

In the construction of a contract, the circumstances in existence at the time the contract was made should be considered in ascertaining the parties' intention. Triple E Development Co. v. Floridagold Citrus Corp., 51 So.2d 435, 438, rehg. den. (Fla. 1951).

What a party did or omitted to do after the contract was made may be properly considered. Vans Agnew v. Fort Myers Drainage Dist., 69 F.2d 244, 246, rehg. den., (5th Cir.). Courts may look to the subsequent action of the parties to determine the interpretation that they themselves place on the contractual language. Brown v. Financial Service Corp., Intl., 489 F.2d 144, 151 (5th Cir.) citing LaLow v. Codomo, 101 So.2d 390 (Fla. 1958).

ORDER NO. PSC-98-1216-FOF-TP  
DOCKET NOS. 971478-TP, 980184-TP, 980495-TP, 980499-TP  
PAGE 17

As noted above, Section 1.40 of the Agreement defines local traffic. The definition appears to be carefully drawn. Local traffic is said to be calls between two or more service users bearing NPA-NXX designations within the local calling area of the incumbent LEC. It is explained that local traffic includes traffic traditionally referred to as "local calling" and as "EAS." No mention is made of ISP traffic. Therefore, nothing in Section 1.40 sets ISP traffic apart from local traffic. It is further explained that all other traffic that originates and terminates between end users within the LATA is toll traffic.

As evidence of its intent, BellSouth argues that the interpretation of a contract must be one consistent with reason, probability, and the practical aspect of the transaction between the parties. BellSouth contends that it was "economically irrational for it to have agreed to subject ISP traffic to payment of reciprocal compensation." BellSouth claims it "had no rational economic reason to have agreed to pay reciprocal compensation for the ISP traffic, because...such assent would have likely guaranteed that BellSouth would lose money on every customer it serves who subscribed to an ISP served by a complainant."

In an example provided by BellSouth, a BellSouth residential customer subscribes to an ISP that is served by an ALEC. The customer uses the Internet for two hours per day. This usage would generate a reciprocal compensation payment to the ALEC of \$36.00 per month, assuming a 1 cent per minute reciprocal compensation rate. A Miami BellSouth customer pays \$10.65 per month for residential service. Thus, BellSouth would pay \$25.35 per month more to the ALEC than it receives from its customer. BellSouth claims that this unreasonable result is proof that it never intended to include ISP traffic as local for reciprocal compensation purposes.

Not all parties receive reciprocal compensation of 1 cent per minute. The MCI Agreement specifies a rate of \$0.002 per minute, not \$0.01. In this case, using BellSouth's example, the total reciprocal compensation would be \$7.20. MCI points out in its brief that the contract containing the \$0.01 rate is one to which BellSouth agreed. They argue that "[w]hether BellSouth agreed to this rate because they mistakenly thought that a rate five times higher than cost would give it some competitive advantage, or whether BellSouth agreed to it without thinking at all, it is not the Commission's role to protect BellSouth from itself."

ORDER NO. PSC-98-1216-FOF-TP  
DOCKET NOS. 971478-TP, 980184-TP, 980495-TP, 980499-TP  
PAGE 18

In support of its position that ISP traffic was intended to be treated as local in the Agreement, WorldCom points out that BellSouth charges its own ISP customers local business line rates for local telephone exchange service that enables the ISP's customers within the local calling area to connect with the ISP by means of a local call. Such calls are rated and billed as local, not toll.

MCIm also points out that BellSouth treats calls to ISPs that are its customers as local calls. BellSouth also offers its own ISP customers service out of its local exchange tariffs. MCIm asserts that while it treats its own customers one way, BellSouth would have ISP customers of the ALECs treated differently.

Besides BellSouth's treatment of its own ISP customers' traffic, there is nothing in the parties' agreements that addresses the practical aspect of how to measure the traffic. As TCG points out in its brief, BellSouth failed to take any steps to develop a tracking system to separately account for ISP traffic. The TCG contract was entered into in July 1996, but BellSouth did not attempt to identify ISP traffic until May or June of 1997. If the agreement did in fact exclude ISP traffic from the definition of local traffic, and thus the reciprocal compensation provisions of the agreement, it would be necessary to develop a tracking system.

The evidence indicates that the tracking system currently used by BellSouth is based on identifying the seven-digit number associated with an ISP. Absent that, as BellSouth witness Hendrix conceded, BellSouth must rely on estimates.

Intermedia also points out in its brief that:

If ISP traffic is not local as BellSouth contends, it would have been imperative for the parties to develop a system to identify and measure ISP traffic, because there is no ready mechanism in place for tracking local calls to ISPs. The calls at issue are commingled with all other local traffic and are indistinguishable from other local calls.

If BellSouth intended to exclude traffic terminated to ISPs from other local traffic, it would have needed to develop a way to measure traffic that distinguishes such calls from all other types of local calls with long holding times, such as calls to airlines and

ORDER NO. PSC-98-1216-FOF-TP  
DOCKET NOS. 971478-TP, 980184-TP, 980495-TP, 980499-TP  
PAGE 19

hotel reservations, and banks. In fact, there is no such agreed-upon system in place today.

This is perhaps the most telling aspect of the case. BellSouth made no effort to separate out ISP traffic from its own bills until the May-June 1997 time frame. WorldCom argues in its brief that BellSouth's "lack of action is especially glaring given Mr. Hendrix's acknowledgment that there are transport and termination costs associated with calls terminating at an ISP." Prior to that time, BellSouth may have paid some reciprocal compensation for ISP traffic. Witness Hendrix admitted, "We may have paid some, I will not sit here and say that we did not pay any." The other parties made no effort to separate out ISP traffic, and based on their position that the traffic should be treated as local, this is as one would expect. In some cases the contracts were entered into more than a year before this time period.

It appears from the record that there was little, if any, billing of reciprocal compensation by the ALECs until just before BellSouth began to investigate the matter. It was the receipt of the bills for considerable amounts of reciprocal compensation that triggered BellSouth's investigation of the matter, and its decision to begin removing ISP traffic from its own bills. If these large bills were never received, would BellSouth have continued to bill the ALECs for reciprocal compensation on ISP traffic? There would have been no reason for BellSouth to investigate, and therefore no reason for them to start separating their own traffic. Under the circumstances, we have difficulty concluding that the parties all knew that ISP traffic was interstate, and should be separated out before billing for reciprocal compensation on local traffic, as BellSouth contends.

#### Impact on Competition

The potential impact of BellSouth's actions on local competition is perhaps the most egregious aspect of the case. As witness Hendrix testified, The Telecommunications Act of 1996 "established a reciprocal compensation mechanism to encourage local competition." He argued that "The payment of reciprocal compensation for ISP traffic would impede local competition." We are more concerned with the adverse effect that BellSouth's refusal to pay reciprocal compensation could have on competition. We agree with this assessment by TCG witness Kouroupas:

ORDER NO. PSC-98-1216-FOF-TP  
DOCKET NOS. 971478-TP, 980184-TP, 980495-TP, 980499-TP  
PAGE 20

As competition grows, the smaller, leaner ALECs may well win other market segments from ILECs. If each time this occurs the ILEC, with its greater resources overall, is able to fabricate a dispute with ALECs out of whole cloth and thus invoke costly regulatory processes, local competition could be stymied for many years.

### Conclusion

We think the question of whether ISP traffic is local or interstate can be argued both ways. While it appears that the FCC may believe Internet usage is an interstate service, it also appears that it believes that it is not a telecommunications service. The FCC itself seems to be leaning toward the notion of severability of the information service portion of an Internet call from the telecommunications portion, which is often a local call.

Further, the FCC has allowed ISPs to purchase local service for provision of Internet services, without ever ruling on the extent to which the "local" characterization should apply. Indeed, as recently as April, 1998, the FCC itself indicated that a decision has not been made as to whether or not reciprocal compensation should apply. Thus, while there is some room for interpretation, we believe the current law weighs in favor of treating the traffic as local, regardless of jurisdiction, for purposes of the Interconnection Agreement. We also believe that the language of the Agreement itself supports this view. We therefore conclude on the basis of the plain language of the Agreement and of the effective law at the the time the Agreement was executed, that the parties intended that calls originated by an end user of one and terminated to an ISP of the other would be rated and billed as local calls; else one would expect the definition of local calls in the Agreement to set out an explicit exception.

Even if we assume for the sake of discussion that the parties' agreements concerning reciprocal compensation can be said to be ambiguous or susceptible of different meanings, the parties' conduct at the time of, and subsequent to, the execution of the Agreement indicates that they intended to treat ISP traffic as local traffic. None of the parties singled ISP traffic out for special treatment during their negotiations. BellSouth concedes that it rates the traffic of its own ISP customers as local traffic. It would hardly be just for BellSouth to conduct itself in this way while treating WorldCom differently. Moreover, BellSouth made no attempt to separate out ISP traffic from its

ORDER NO. PSC-98-1216-FOF-TP  
DOCKET NOS. 971478-TP, 980184-TP, 980495-TP, 980499-TP  
PAGE 21

bills to the ALECs until it decided it did not want to pay reciprocal compensation for ISP traffic to the ALECS. BellSouth's conduct subsequent to the Agreement was for a long time consistent with the interpretation of Section 1.40 urged by WorldCom. A party to a contract cannot be permitted to impose unilaterally a different meaning than the one shared by the parties at the time of execution when it later becomes enlightened or discovers an unintended consequence.

BellSouth states in its brief that "the Commission must consider the extant FCC orders, case law, and trade usage at the time the parties negotiated and executed the Agreements." We have. By its own standards, BellSouth is found wanting. The preponderance of the evidence shows that BellSouth is required to pay WorldCom reciprocal compensation for the transport and termination of telephone exchange service local traffic that is handed off by BellSouth to WorldCom for termination with telephone exchange service end users that are Internet Service Providers or Enhanced Service Providers under the terms of the WorldCom and BellSouth Florida Partial Interconnection Agreement. Traffic that is terminated on a local dialed basis to Internet Service Providers or Enhanced Service Providers should not be treated differently from other local dialed traffic. We find that BellSouth must compensate WorldCom according to the parties' interconnection agreement, including interest, for the entire period the balance owed is outstanding.

**The Teleport/TCG South Florida-BellSouth Agreement**

Local traffic is defined in Section 1.D. of the Agreement between BellSouth and TCG as:

any telephone call that originates and terminates in the same LATA and is billed by the originating party as a local call, including any call terminating in an exchange outside of BellSouth's service area with respect to which BellSouth has a local interconnection arrangement with an independent LEC, with which TCG is not directly interconnected.

This Agreement was entered into by the parties on July 15, 1996, and was subsequently approved by the Commission in Docket No. 960862-TP. Under TCG's prior Agreement with BellSouth, ISP traffic was treated as local.

ORDER NO. PSC-98-1216-FOF-TP  
DOCKET NOS. 971478-TP, 980184-TP, 980495-TP, 980499-TP  
PAGE 22

The TCG Agreement states in Section IV.B and part of I.C:

The delivery of local traffic between parties shall be reciprocal and compensation will be mutual according to the provisions of this Agreement.

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

No exceptions have been made to the definition of local traffic to exclude ISP traffic. The facts surrounding this Agreement, and the arguments made by the parties, are essentially the same as the WorldCom Agreement, and we will not reiterate them here. Our decision is the same. The preponderance of the evidence shows that BellSouth is required to pay TCG reciprocal compensation for the transport and termination of telephone exchange service local traffic that is handed off by BellSouth to TCP for termination with telephone exchange service end users that are Internet Service Providers or Enhanced Service Providers under the terms of the TCG and BellSouth Florida Partial Interconnection Agreement. Traffic that is terminated on a local dialed basis to Internet Service Providers or Enhanced Service Providers should not be treated differently from other local dialed traffic. We find that BellSouth must compensate TCG according to the parties' interconnection agreement, including interest, for the entire period the balance owed is outstanding.

#### **The MCI-BellSouth Agreement**

The Agreement between MCI and BellSouth defines local traffic in Attachment IV, Subsection 2.2.1. That subsection reads as follows:

The parties shall bill each other reciprocal compensation at the rates set forth for Local Interconnection in this Agreement and the Order of the FPSC. Local Traffic is defined as any telephone call that originates in one exchange and terminates in either the same exchange, or a corresponding Extended Area (EAS) exchange. The terms Exchange and EAS exchanges are defined and specified in Section



ORDER NO. PSC-98-1216-FOF-TP  
DOCKET NOS. 971478-TP, 980184-TP, 980495-TP, 980499-TP  
PAGE 23

A3 of BellSouth's General Subscriber Service  
Tariff.

MCI witness Martinez testified that no exception to the definition of local traffic was suggested by BellSouth. MCI argues in its brief that "[i]f BellSouth wanted a particular exception to the general definition of local traffic, it had an obligation to raise it."

The facts surrounding this Agreement, and the arguments made by the parties, are essentially the same as the WorldCom Agreement, and we will not reiterate them here. Our decision is the same. The preponderance of the evidence shows that BellSouth is required to pay MCI reciprocal compensation for the transport and termination of telephone exchange service local traffic that is handed off by BellSouth to MCI for termination with telephone exchange service end users that are Internet Service Providers or Enhanced Service Providers under the terms of the MCI and BellSouth Florida Partial Interconnection Agreement. Traffic that is terminated on a local dialed basis to Internet Service Providers or Enhanced Service Providers should not be treated differently from other local dialed traffic. We find that BellSouth must compensate MCI according to the parties' interconnection agreement, including interest, for the entire period the balance owed is outstanding.

#### **The Intermedia-BellSouth Agreement**

The Agreement with Intermedia defines Local Traffic in Section 1(D) as:

any telephone call that originates in one exchange and terminates in either the same exchange, or a corresponding Extended Area Service (EAS) exchange. The terms Exchange, and EAS exchanges are defined and specified in Section A3 of BellSouth's General Subscriber Service Tariff. (TR 142-143)

The portion regarding reciprocal compensation, Section IV(A) states:

The delivery of local traffic between the parties shall be reciprocal and compensation will be mutual according to the provisions of this Agreement. (TR 143)

ORDER NO. PSC-98-1216-FOF-TP  
DOCKET NOS. 971478-TP, 980184-TP, 980495-TP, 980499-TP  
PAGE 24

Section IV(B) states:

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

The evidence shows that no exceptions were made to the definition of local traffic to exclude ISP traffic in the Intermedia-BellSouth Agreement. The facts surrounding this Agreement, and the arguments made by the parties, are essentially the same as the WorldCom Agreement, and we will not reiterate them here. Our decision is the same. The preponderance of the evidence shows that BellSouth is required to pay Intermedia reciprocal compensation for the transport and termination of telephone exchange service local traffic that is handed off by BellSouth to Intermedia for termination with telephone exchange service end users that are Internet Service Providers or Enhanced Service Providers under the terms of the Intermedia and BellSouth Florida Partial Interconnection Agreement. Traffic that is terminated on a local dialed basis to Internet Service Providers or Enhanced Service Providers should not be treated differently from other local dialed traffic. We find that BellSouth must compensate Intermedia according to the parties' interconnection agreement, including interest, for the entire period the balance owed is outstanding.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that under the terms of the parties' Interconnection Agreements, BellSouth Telecommunications, Inc. is required to pay Worldcom Technologies, Inc., Teleport Communications Group Inc./TCG South Florida, Intermedia Communications, Inc., and MCI Metro Access Transmission Services, Inc., reciprocal compensation for the transport and termination of telephone exchange service that is terminated with end users that are Internet Service Providers or Enhanced Service Providers. BellSouth Telecommunications, Inc. must compensate the complainants according to the interconnection agreements, including interest, for the entire period the balance owed is outstanding. It is further

ORDERED that these dockets shall be closed.

ORDER NO. PSC-98-1216-FOF-TP  
DOCKET NOS. 971478-TP, 980184-TP, 980495-TP, 980499-TP  
PAGE 25

By ORDER of the Florida Public Service Commission this 15th  
Day of September, 1998.

/s/ Blanca S. Bayó .

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

This is a facsimile copy. A signed  
copy of the order may be obtained by  
calling 1-850-413-6770.

( S E A L )  
MCB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

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**FAXED**  
January 8, 1999

**BY HAND DELIVERY**

Nancy White, Esq.  
Nancy Sims  
BellSouth Telecommunications, Inc.  
150 South Monroe Street  
Room 400  
Tallahassee, FL 32301

**Re: Demand for Payment of Reciprocal Compensation**

Dear Misses White and Sims:

Demand is made that BellSouth Telecommunications, Inc. pay to Intermedia Communications Inc. Twenty-Three Million, Six Hundred Seventeen Thousand, and Three Hundred Twenty-Nine Dollars (\$23,617,329.00), which represents the reciprocal compensation payments due and owing to Intermedia in Florida as of November 30, 1998, under the interconnection agreement between BellSouth and Intermedia dated July 1, 1996, as amended. Reciprocal compensation amounts accruing after November 30, 1998 will be submitted to you for payment in a separate demand letter.

Intermedia's right under its interconnection agreement to receive compensation from BellSouth for the transport and termination of local calls, including those calls destined to Internet Service Providers, has been confirmed by the Florida Public Service Commission in its Final Order Resolving Complaints, Order No. PSC-98-1216-FOF-TP, Consolidated Docket Nos. 971478-TP, 980184-TP, 980495-TP and 980499-TP (issued September 15, 1998). That Order states, in relevant part:

ORDERED by the Florida Public Service Commission that under the terms of the parties' Interconnection Agreement, BellSouth Telecommunications, Inc. is required to pay WorldCom Technologies, Inc., Teleport Communications Group Inc./TCG South Florida, Intermedia Communications Inc., and MCI Metro Access Transmission Services, Inc., reciprocal compensation for the transport and termination of telephone exchange service that is terminated with end users that are Internet Service Providers or Enhanced Service Providers. BellSouth

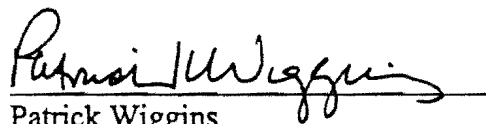
Nancy White, Esq.  
Nancy Sims  
January 8, 1999  
Page Two

Telecommunications. Inc. must compensate the complainants according to the interconnection agreements, including interest, for the entire period the balance owed is outstanding. (Order at 22.)

Please forward the aforementioned amount, on or before January 22, 1999, to Intermedia Communications Inc., P.O. Box 915238, Orlando, Florida 32891-5238. You may direct any inquiries concerning this demand letter to the undersigned counsel. Intermedia reserves the right to pursue other legal options in the event BellSouth fails to timely comply with this demand letter.

Sincerely,

INTERMEDIA COMMUNICATIONS INC.

By:   
Patrick Wiggins  
Its Attorneys

cc: Walter D'Haesleer  
Martha Brown, Esq.  
Heather Burnett Gold, Esq.  
Julia Strow  
Steve Brown  
Jonathan E. Canis, Esq.  
Enrico C. Soriano, Esq.

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.

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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.

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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.

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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.

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DOCKET NO. 980499-TP  
ORDER NO. PSC-99-0758-FOF-TP  
ISSUED: April 20, 1999

ORDER NO. PSC-99-0758-FOF-TP  
DOCKETS NOS. 971478-TP, 980184-TP, 980495-TP, 980499-TP  
PAGE 2

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman  
J. TERRY DEASON  
SUSAN F. CLARK  
JULIA L. JOHNSON  
E. LEON JACOBS, JR.

ORDER DENYING MOTION FOR STAY PENDING APPEAL

BY THE COMMISSION:

BACKGROUND

On October 15, 1998, BellSouth Telecommunications, Inc. (BellSouth) filed a Notice of Appeal of Commission Order No. PSC-98-1216-FOF-TP, issued September 15, 1998, in the complaint dockets referenced above. BellSouth has appealed the Commission's decision to the United States District Court for the Northern District of Florida, pursuant to 47 U.S.C. section 252(e)(6). In Order No. PSC-98-1216-FOF-TP, the Commission determined that BellSouth was required by the terms of its interconnection agreements to pay reciprocal compensation to WorldCom Technologies, Inc. (WorldCom), Teleport Communications Group, Inc. (TCG), Intermedia Communications, Inc. (Intermedia), and MCImetro Access Transmission Services, Inc. (MCIm) for the transport and termination of calls to Internet Service Providers (ISPs). At the time BellSouth filed its Notice of Appeal with the Commission, it also filed a Motion for Stay Pending Appeal of Order No. PSC-98-1216-FOF-TP. WorldCom, TCG, Intermedia and MCIm filed a Joint Response in Opposition to the motion for stay on October 28, 1998. No party filed a request for oral argument.

We addressed BellSouth's Motion at our March 30, 1999, Agenda Conference. We determined that BellSouth had failed to demonstrate that a stay pending appeal is warranted. Our reasons for that determination are set forth below.

ORDER NO. PSC-99-0758-FOF-TP  
DOCKETS NOS. 971478-TP, 980184-TP, 980495-TP, 980499-TP  
PAGE 3

DECISION

BellSouth contends that it is entitled to an automatic stay pending judicial review pursuant to Rule 25-22.061(1)(a), Florida Administrative Code, because the Commission's order on appeal "involves a refund of moneys to customers." In the alternative, BellSouth contends that we should grant its motion pursuant to Rule 25-22.061(2), Florida Administrative Code, because it has raised serious questions, acknowledged in our Order, about the jurisdictional nature of ISP traffic. BellSouth also contends that it will be irreparably harmed if we require it to pay the complainants charges for transport and termination of traffic to ISPs, because millions of dollars are at stake. BellSouth suggests that it may not be able to recoup some of the payments to the complainants if it ultimately prevails on appeal. BellSouth argues that the delay in implementation of the Commission's order will not be contrary to the public interest or cause substantial harm to the complainants, because BellSouth has already placed monies due to WorldCom under the Order in escrow, and will be able to return the amounts owed to the other complainants as well, when the appeal is final. Finally, BellSouth contends that it will not be necessary to require BellSouth to post a bond or issue some other corporate undertaking as a condition of the stay, as Rules 25-22.061(1)(a) and 25-22.061(2), Florida Administrative Code, permit.

The Complainants urge us to deny the motion for stay for three reasons. First, they claim that we do not have authority to grant a stay pending review of a case in the Federal District Court. Second, they argue that if we determine that we do have the authority to grant a stay, BellSouth is clearly not entitled to one under Rule 25-22.061(1)(a), Florida Administrative Code, because the refund in question here is not due to "customers", as the rule contemplates. Third, they contend that BellSouth is not entitled to a stay pursuant to the discretionary stay available under Rule 25-22.061(2), Florida Administrative Code. They argue that BellSouth is not likely to prevail on appeal, and will not suffer irreparable harm if the stay is not granted. They contend that further delay will harm the development of competition and the public interest.

Authority to Grant a Stay Pending Appeal

The Telecommunications Act of 1996, at 47 U.S.C. § 252(e)(6), provides that determinations of state commissions made under the provisions of section 252 are reviewable in an appropriate Federal



ORDER NO. PSC-99-0758-FOF-TP  
DOCKETS NOS. 971478-TP, 980184-TP, 980495-TP, 980499-TP  
PAGE 4

District Court. BellSouth has appealed the Commission's order to the District Court of the Northern District of Florida. Relying on a recent decision by the 7th Circuit that the District Court for the Northern District of Illinois should not have granted a stay of the Illinois Commerce Commission's ISP reciprocal compensation order<sup>1</sup>, the complainants argue, somewhat obliquely, that because BellSouth must seek an injunction in the District Court, rather than a stay, to delay the effectiveness of this Commission's order there, we somehow lose authority to grant a stay of the order. We do not agree. The Commission's rules provide for a stay of its decisions under certain circumstances, and both Florida appellate rules and Federal appellate rules provide that a party may seek a stay from the lower tribunal of an order on appeal, whether the lower tribunal is an administrative agency or a lower court. See Section 120.68(3), Florida Statutes, Rule 9.010, Florida Rules of Appellate Procedure, and Rule 18, Federal Rules of Appellate Procedure. While we do not believe that we should grant a stay of Order No. PSC-98-1216-FOF-TP, we do believe that we have the authority to do so.

Rules 25-22.061(1)(a) and 25-22.061(2), Florida Administrative Code

Rule 25-22.061(1)(a), Florida Administrative Code, provides:

When the order being appealed involves the refund of moneys to customers or a decrease in rates charged to customers, the Commission shall, upon motion filed by the utility or company affected, grant a stay pending judicial proceedings. The stay shall be conditioned upon the posting of good and sufficient bond, or the posting of a corporate undertaking, and such other conditions as the Commission finds appropriate.

BellSouth relies upon this rule as authority for an automatic stay of our decision interpreting the local traffic transport and

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<sup>1</sup>Illinois Bell Telephone Company v. WorldCom Technologies, Inc., 157 F.3d 500 (7th Cir. 1998).

ORDER NO. PSC-99-0758-FOF-TP  
DOCKETS NOS. 971478-TP, 980184-TP, 980495-TP, 980499-TP  
PAGE 5

termination provisions of its interconnection agreements with the complainants. This rule does not apply to this case, because, contrary to BellSouth's assertion, the complainants, competitive telecommunications carriers, are not "customers" for purposes of this rule. The rule is designed to apply to rate cases or other proceedings involving rates and charges to end user ratepayers or consumers, not to contract disputes between interconnecting telecommunications providers. Furthermore, this case does not involve a "refund" or a "decrease" in rates. It involves payment of money pursuant to contractual obligations.

Rule 25-22.061(2), Florida Administrative Code, is applicable to this case. That rule provides:

Except as provided in subsection (1), a party seeking to stay a final or nonfinal order of the Commission pending judicial review shall file a motion with the Commission, which shall have authority to grant, modify, or deny such relief. A stay pending review may be conditioned upon the posting of a good and sufficient bond or corporate undertaking, other conditions, or both. In determining whether to grant a stay, the Commission may, among other things, consider:

- (a) Whether the petitioner is likely to prevail upon appeal;
- (b) Whether the petitioner has demonstrated that he is likely to suffer irreparable harm if the stay is not granted; and
- (c) Whether the delay will cause substantial harm or be contrary to the public interest.

In its motion, BellSouth claims that it has raised issues of great importance regarding the appropriate treatment of ISP traffic. BellSouth's fundamental point is that if ISP traffic is jurisdictionally interstate, then the transport and termination of that traffic is not subject to the local traffic reciprocal compensation provisions of its interconnection agreements with the complainants.

ORDER NO. PSC-99-0758-FOF-TP  
DOCKETS NOS. 971478-TP, 980184-TP, 980495-TP, 980499-TP  
PAGE 6

At the time Order No. PSC-98-1216-FOF-TP was issued, and at the time this motion for stay and response were filed, the FCC had not decided whether it would consider ISP traffic interstate traffic, or whether such traffic would be subject to reciprocal compensation under the local interconnection provisions of the Act. We addressed the uncertainty regarding the FCC's characterization of ISP traffic in detail in our Order, and we decided that the issue was not critical to our decision. Basing our decision on traditional principles of contract construction, we decided that the language of the interconnection agreements, the intent of the parties, and Federal and State law at the time the agreements were executed showed that ISP traffic was local traffic for purposes of reciprocal compensation under the agreements. We said:

Regardless of what the FCC ultimately decides, it has not decided anything yet, and we are concerned here with an existing interconnection agreement, executed by the parties in 1996. Our finding that ISP traffic should be treated as local for purposes of the subject interconnection agreement is consistent with the FCC's treatment of ISP traffic at the time the agreement was executed, all pending jurisdictional issues aside.

Order No. PSC-98-1216-FOF-TP, page 9.

On February 26, 1999, the FCC issued Order 99-38, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 98-68. In that Order, the FCC declared that it considered ISP traffic to be jurisdictionally interstate. It did not decide, however, whether ISP traffic should be treated as interstate traffic for purposes of local interconnection agreements. It issued a NPRM inviting comments on that issue. It also declared that it considered this determination to be prospective only, and specifically stated that its decision should not affect existing interconnection agreements or decisions by state commissions and Federal courts. The FCC stated:

[I]n the absence of any contrary Commission rule, parties entering into interconnection agreements may reasonably have agreed, for the purposes of determining whether reciprocal compensation should apply to ISP-bound

ORDER NO. PSC-99-0758-FOF-TP  
DOCKETS NOS. 971478-TP, 980184-TP, 980495-TP, 980499-TP  
PAGE 7

traffic, that such traffic should be treated in the same manner as local traffic. When construing the parties' agreements to determine whether the parties so agreed, state commissions have the opportunity to consider all the relevant facts, including the negotiation of the agreements in the context of this Commission's longstanding policy of treating this traffic as local, and the conduct of the parties pursuant to those agreements. . .

While to date the Commission has not adopted a specific rule governing this matter, we note that our policy of treating ISP-bound traffic as local for purposes of interstate access charges would, if applied in the separate context of reciprocal compensation, suggest that such compensation is due for that traffic.

Order 99-38 at pages 15-17.

As mentioned above, BellSouth based its argument that it is likely to prevail on appeal on the fact that the FCC would determine that ISP traffic was jurisdictionally interstate. While the FCC has now done that, its firm assertion that the determination is prospective and should not affect existing interconnection agreements convinces us that BellSouth is not likely to prevail on appeal.

With regard to BellSouth's assertion that it will suffer irreparable harm if it must comply with the order at this time, and its concomitant assertion that there will be no harm to the public interest if the stay is granted, we adopt the reasoning of the 7th Circuit Court of Appeals when it denied Ameritech's motion for stay in Illinois Bell:

In this case the cost of false negatives ("irreparable injury," to use the traditional term) are negligible. Ameritech can easily recover the money if it prevails on appeal. All of the other carriers are solvent, and Ameritech can recoup by setoff in the ongoing reciprocal-compensation program. . . . Even if

ORDER NO. PSC-99-0758-FOF-TP  
DOCKETS NOS. 971478-TP, 980184-TP, 980495-TP, 980499-TP  
PAGE 8

Ameritech pays the market cost of capital during the period of delay, so that the other carriers are indifferent between money now and money later, delay impedes the ability of the Illinois Commerce Commission to implement a policy of reciprocal compensation. Delay effectively moves regulatory power from the state commission to the federal court (or to Ameritech, which can determine when orders take effect). Although such transfers may be of little moment one case at a time they are disruptive when repeated over many cases - and the struggle in the communications business between the Baby Bells and their rivals is a repeat-play game in markets, agencies, and courts alike.

Illinois Bell Telephone Company v. WorldCom Technologies, 157 F.3d 500, 503.

The harm to the development of competition from further delay is the discernible harm in this case. Harm to the development of competition is harm to the public interest.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that, for the reasons set forth above, BellSouth Telecommunications, Inc.'s Motion for Stay Pending Appeal is denied. It is further

ORDERED that these dockets shall be closed.

By ORDER of the Florida Public Service Commission this 20th day of April, 1999.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

By: /s/ Kay Flynn  
Kay Flynn, Chief  
Bureau of Records

This is a facsimile copy. A signed copy of the order may be obtained by calling 1-850-413-6770.

ORDER NO. PSC-99-0758-FOF-TP  
DOCKETS NOS. 971478-TP, 980184-TP, 980495-TP, 980499-TP  
PAGE 9

( S E A L )

MCB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

WIGGINS & VILLACORTA, P.A.  
ATTORNEYS AT LAW

POST OFFICE DRAWER 1657  
TALLAHASSEE, FLORIDA 32302

2145 DELTA BOULEVARD, SUITE 200  
TALLAHASSEE, FLORIDA 32303

TELEPHONE (850) 385-6007  
FACSIMILE (850) 385-6008  
INTERNET: wiggvill@nettally.com

May 4, 1999

**BY HAND DELIVERY**

Ms. Nancy Sims, Director of Regulatory  
BellSouth Telecommunications, Inc.  
150 South Monroe Street  
Room 400  
Tallahassee, FL 32301

**Re: Demand for Payment of Reciprocal Compensation**

Dear Ms. Sims:

Further to my letter of January 8, 1999, demand is hereby renewed that BellSouth Telecommunications, Inc. pay to Intermedia Communications Inc., thirty four million, five hundred sixty three thousand, seven hundred and eighty dollars and forty nine cents (\$34,563,780.49), which represents the reciprocal compensation payments now due and owing to Intermedia in Florida as of March 30, 1999,<sup>1</sup> under the interconnection agreement between BellSouth and Intermedia dated July 1, 1996, as amended. Reciprocal compensation amounts accruing after March 30, 1999, will be submitted to you for payment in a separate demand letter.

Intermedia's right under its interconnection agreement to receive compensation from BellSouth for the transport and termination of local calls, including those calls destined to Internet Service Providers, was confirmed by the Florida Public Service Commission in its Final Order Resolving Complaints, Order No. PSC-98-1216-FOF-TP, Consolidated Docket Nos. 971478-TP, 980184-TP, 980495-TP and 980499-TP (issued September 15, 1998). That Order states, in relevant part:

ORDERED by the Florida Public Service Commission that under the terms of the parties' Interconnection Agreement, BellSouth Telecommunications, Inc. is required to pay WorldCom Technologies, Inc., Teleport Communications Group Inc./TCG South Florida, Intermedia Communications Inc., and MCI Metro

<sup>1</sup> Net, including payments received in April 1999.

Nancy Sims.  
April 30, 1999  
Page Two

Access Transmission Services, Inc., reciprocal compensation for the transport and termination of telephone exchange service that is terminated with end users that are Internet Service Providers or Enhanced Service Providers. BellSouth Telecommunications, Inc. must compensate the complainants according to the interconnection agreements, including interest, for the entire period the balance owed is outstanding. (Order at 22.)

On April 20, 1999, the Commission issued Order No. PSC-99-0758-FOF-TP. In that Order, the Commission denied BellSouth's motion for stay of Order No. PSC-98-1216-FOF-TP pending appeal.

Please forward the aforementioned amount, on or before May 17, 1999, to Intermedia Communications Inc., P.O. Box 915238, Orlando, Florida 32891-5238. You may direct any inquiries concerning this demand letter to the undersigned counsel. Intermedia reserves the right to pursue other legal options in the event BellSouth fails to timely comply with this demand letter.

Sincerely,

**INTERMEDIA COMMUNICATIONS INC.**

By:

\_\_\_\_\_  
Patrick Knight Wiggins  
Its Attorney

cc: Walter D'Haeseleer  
Catherine Bedell, Esq.  
Heather Burnett Gold, Esq.  
Julia Strow  
Steve Brown  
Lans Chase  
Scott Sapperstein



Mary K. Keyer  
General Attorney

BellSouth Telecommuni  
Legal Department - Suite  
675 West Peachtree Str  
Atlanta, Georgia 30375-  
Telephone 404-395-6722  
Facsimile 404-658-9022

May 11, 1999

Patrick Wiggins, Esq.  
Intermedia Communications, Inc.  
2145 Delta Boulevard  
Suite 200  
Tallahassee, Florida 32303

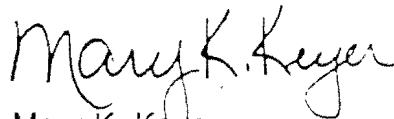
Re: Demand for Payment of Reciprocal Compensation

Dear Mr. Wiggins:

I am responding to your letter dated May 4, 1999, to Nancy Sims, Director of Regulatory, demanding payment of reciprocal compensation for traffic terminated to internet service providers. Your letter refers to the interconnection agreement between BellSouth Telecommunications, Inc., and Intermedia, as well as the Florida Public Service Commission Order No. PSC-98-1216-FOF-TP issued September 15, 1998, and Order No. PSC-98-1216-FOF-TP issued April 20, 1999.

As you know, BellSouth has appealed the Order issued September 15, 1998, and has filed with the United States District Court for the Northern District of Florida a motion to stay that Order. Until this matter is fully resolved, BellSouth will continue the status quo with respect to Intermedia.

Sincerely,



Mary K. Keyer

cc: Nancy White  
Nancy Sims

WIGGINS & VILLACORTA, P.A.

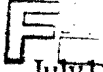
ATTORNEYS AT LAW

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TALLAHASSEE, FLORIDA 32302

2145 DELTA BOULEVARD, SUITE 200  
TALLAHASSEE, FLORIDA 32303

TELEPHONE (850) 385-6007  
FACSIMILE (850) 385-6008  
INTERNET: wiggvill@netally.com

TELECOPY

DATE:  ~~July 15, 1999~~

TO: Julia Strow 813 829 7723

FROM: Charles Pellegrini

---

This telecopy consists of 5 page(s) including this cover page. Please deliver as soon as possible. If you have any questions, please call (850) 385 6007.

\*\*\*\*\*

BellSouth reciprocal compensation spreadsheets.

*This message contains information that is confidential, may be protected by the attorney/client or other applicable privileges, and may constitute non-public information. It is intended to be conveyed only to the designated recipient(s). If you are not an intended recipient of this message, please notify the sender at 850 385 6007. Unauthorized use, dissemination, distribution, or reproduction of this message is strictly prohibited and may be unlawful.*

NANCY B. WHITE  
General Counsel-Florida

BellSouth Telecommunications, Inc.  
150 South Monroe Street  
Room 400  
Tallahassee, Florida 32301  
(305) 347-5555

VIA FEDERAL EXPRESS

July 2, 1999

Patrick K. Wiggins, Esq.  
Wiggins & Villacorta  
2145 Delta Boulevard  
Suite 200  
Tallahassee, FL 32303

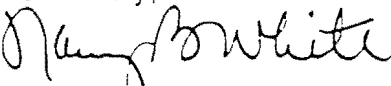
Re: BellSouth Telecommunications, inc. v. WorldCom Technologies,  
Inc., et al., USCA No. 4:98cv352-RH

Dear Mr. Wiggins:

On June 1, 1999, the United States District Court for the Northern District of Florida denied BellSouth's request for a stay in the above captioned matters. Therefore, pursuant to Order No. PSC-98-1216-FOF-TP, issued by the Florida Public Service Commission on September 15, 1998, BellSouth is enclosing its check for \$12,723,883.38 for April, 1999 and all prior periods. A spreadsheet detailing BellSouth's calculation of this amount is also attached for your convenience. BellSouth will continue calculating and begin remitting monies owed to you on a monthly basis beginning with the June, 1999 bills.

It remains BellSouth's position that such calls to Internet Service Providers are interstate in nature and not subject to reciprocal compensation. Be advised that any payments made by BellSouth due to the denial of its request for stay does not constitute a waiver of BellSouth's position or a waiver of BellSouth's rights currently on appeal. When a final, non-appealable order is rendered upholding BellSouth's position, BellSouth will seek refund of any monies paid plus interest. In the unlikely event that BellSouth's position is not upheld by a final non-appealable order, BellSouth will bill your company for all monies due BellSouth for this interstate traffic.

If your client desires to discuss the specifics of the calculation, please contact Jerry Hendrix at (404) 927-7503.

Sincerely,  
  
Nancy B. White

Enclosures

cc: David Smith, Esq.  
Raoul Cantero, Esq.

169213



Explanation of Payment  
(Detach and retain for your records)

EXHIBIT H  
PAGE 4 OF 9

2-05968387/8

\*\*\*\*\*  
\* SPECIAL HANDLING INSTRUCTIONS \*  
\* Overnight / Alternate Mailing YQ8 \*  
\*\*\*\*\*

GROSS	DISCOUNT	NET	INVOICE/DESCRIPTION/FOR QUESTIONS CALL
12,723,883.38	0.00	12,723,883.38	NA
		12,723,883.38	LAGRANGE, LORRAINE E (205) 714-0237
			PAID TO INTERMEDIA COMMUNICATIONS INC
			ON JUL 01 1999

To Detach Check, Fold and Tear Along Perforation

THE FACE OF THIS DOCUMENT IS MULTICOLORED WITH AN ARTIFICIAL WATERMARK ON THE BACK.

0001037076

2-05968387/8



Date: 07/01/99 64-79  
611

Pay \*12,723,883 DOLLARS AND 38 CENTS

PAY ONLY 1272388338

To: INTERMEDIA COMMUNICATIONS INC  
The Order of: ATTN-ACCOUNTS RECEIVABLE  
PO BOX 915121  
ORLANDO, FL 32891-5121

VOID AFTER 180 DAYS



*Phyllis Camp*  
Treasury Cashier

BELLSOUTH  
Telecommunications, Inc.

61



059683870001272388338V70130100004042000001037076000000

Financial Services  
P.O. Box 467623  
Atlanta, GA 31146-7623

 **BELLSOUTH**

07/01/99

**URGENT**

NANCY WHITE  
STE 1910  
150 WEST FLAGLER ST  
MIAMI, FL 33130

**OPEN IMMEDIATELY**

Local ISP Payment Due Intermedia

EXHIBIT H  
PAGE 6 OF 9

Columns	1	2	3	4	5
	Total MOUs Invoiced	ISP Factor	Local Rate	Total ISP Local Due	LPC at 1.0% per month
Feb-97	17,516,426	0.9	\$ 0.01028	\$ 182,061.97	
Mar-97	19,939,435	0.9	\$ 0.01028	\$ 184,479.85	\$ 1,620.62
Apr-97	22,527,478	0.9	\$ 0.01028	\$ 208,424.23	\$ 3,465.42
May-97	34,413,962	0.9	\$ 0.01028	\$ 318,397.98	\$ 5,549.66
Jun-97	44,135,205	0.9	\$ 0.01028	\$ 406,338.92	\$ 8,733.64
Jul-97	49,567,876	0.9	\$ 0.01028	\$ 458,601.99	\$ 12,817.03
Aug-97	58,136,603	0.9	\$ 0.01028	\$ 537,879.85	\$ 17,392.64
Sep-97	61,062,697	0.9	\$ 0.01028	\$ 564,952.07	\$ 22,759.23
Oct-97	71,802,321	0.9	\$ 0.01028	\$ 664,315.07	\$ 28,395.93
Nov-97	74,405,899	0.9	\$ 0.01028	\$ 688,403.38	\$ 35,024.00
Dec-97	85,832,175	0.9	\$ 0.01028	\$ 794,119.28	\$ 41,892.41
Jan-98	113,421,542	0.9	\$ 0.01028	\$ 1,049,378.11	\$ 49,815.57
Feb-98	111,986,235	0.9	\$ 0.01028	\$ 1,036,098.65	\$ 60,285.52
Mar-98	135,281,170	0.9	\$ 0.01028	\$ 1,251,621.38	\$ 70,622.97
Apr-98	148,785,338	0.9	\$ 0.01028	\$ 1,376,581.95	\$ 83,110.77
May-98	136,439,971	0.9	\$ 0.01028	\$ 1,262,342.61	\$ 96,834.86
Jun-98	17,065,675	0.9	\$ 0.00200	\$ 30,718.22	\$ 109,486.33
	108,656,674	0.9	\$ 0.00200	\$ 195,582.01	
	9,878,399	0.9	\$ 0.00200	\$ 17,781.12	
Jul-98	19,936,070	0.9	\$ 0.00200	\$ 35,884.93	\$ 110,769.89
	127,306,655	0.9	\$ 0.00200	\$ 229,151.98	
	11,163,384	0.9	\$ 0.00200	\$ 20,094.09	
Aug-98	22,045,623	0.9	\$ 0.00200	\$ 39,682.12	\$ 112,339.76
	155,759,111	0.9	\$ 0.00200	\$ 280,366.40	
	11,099,766	0.9	\$ 0.00200	\$ 19,979.58	
Sep-98	22,443,065	0.9	\$ 0.00200	\$ 40,397.52	\$ 114,211.89
	168,018,749	0.9	\$ 0.00200	\$ 302,433.75	
	10,302,585	0.9	\$ 0.00200	\$ 18,544.65	
Oct-98	23,077,272	0.9	\$ 0.00200	\$ 41,539.09	\$ 116,146.63
	171,655,628	0.9	\$ 0.00200	\$ 308,980.13	
	10,201,624	0.9	\$ 0.00200	\$ 18,362.92	
Nov-98	210,777,124	0.9	\$ 0.00200	\$ 379,398.82	\$ 116,722.50
Dec-98	154,977,667	0.9	\$ 0.00200	\$ 278,959.80	\$ 117,314.78
	64,064,865	0.9	\$ 0.00200	\$ 115,316.76	
Jan-99	267,928,952	0.9	\$ 0.00200	\$ 482,272.11	\$ 118,983.56
Feb-99	254,990,416	0.9	\$ 0.00200	\$ 458,982.75	\$ 124,152.55
Mar-99	308,363,755	0.9	\$ 0.00200	\$ 555,054.76	\$ 107,420.33
Apr-99	333,628,373	0.9	\$ 0.00200	\$ 600,531.07	\$ 108,296.40
			Column Totals	\$ 15,435,987.67	\$ 1,794,164.89
			Total ISP Local Due	\$ 17,230,152.56	





Intermedia Non ISP Payments

EXHIBIT H  
PAGE 8 OF 9

Columns	1	2		3	4	5	6	
	Total MOUs Invoiced	Non ISP Factor	PLU	Correct Local Rate	Non-ISP Local Due	Local Rate Paid	Non-ISP Local \$ Paid	Difference In Amt Due & Amt Pd
Feb-97	17,516,426	0.1	0.750	\$ 0.01028	\$ 13,505.16	0.01028	\$13,505.16	\$ -
Mar-97	19,939,435	0.1	0.750	\$ 0.01028	\$ 15,373.30	0.01028	\$15,373.30	\$ -
Apr-97	22,527,478	0.1	0.750	\$ 0.01028	\$ 17,368.69	0.01028	\$17,368.69	\$ -
May-97	34,413,962	0.1	0.750	\$ 0.01028	\$ 26,533.16	0.01028	\$26,533.16	\$ -
Jun-97	44,135,205	0.1	0.750	\$ 0.01028	\$ 34,028.24	0.01028	\$34,028.24	\$ -
Jul-97	49,567,876	0.1	0.750	\$ 0.01028	\$ 38,216.83	0.01853	\$39,257.76	\$ (1,040.93)
Aug-97	58,136,603	0.1	0.750	\$ 0.01028	\$ 44,823.32	0.01853	\$46,044.19	\$ (1,220.87)
Sep-97	61,062,697	0.1	0.750	\$ 0.01028	\$ 47,079.34	0.01853	\$48,361.66	\$ (1,282.32)
Oct-97	71,802,321	0.1	0.750	\$ 0.01028	\$ 55,359.59	0.01853	\$56,867.44	\$ (1,507.85)
Nov-97	74,405,899	0.1	0.750	\$ 0.01028	\$ 57,368.95	0.01853	\$58,929.47	\$ (1,562.52)
Dec-97	85,832,175	0.1	0.750	\$ 0.01028	\$ 66,178.61	0.01853	\$67,979.08	\$ (1,802.47)
Jan-98	113,421,542	0.1	0.750	\$ 0.01028	\$ 87,448.01	0.01853	\$89,829.86	\$ (2,381.85)
Feb-98	111,986,235	0.1	0.750	\$ 0.01028	\$ 86,341.39	0.01853	\$88,693.10	\$ (2,351.71)
Mar-98	135,281,170	0.1	0.750	\$ 0.01028	\$ 104,301.78	0.01853	\$107,142.69	\$ (2,840.91)
Apr-98	148,785,338	0.1	0.997	\$ 0.01028	\$ 152,492.47	0.01853	\$156,645.96	\$ (4,153.49)
May-98	136,439,971	0.1	0.997	\$ 0.01028	\$ 139,839.51	0.01028	\$137,031.30	\$ 2,805.21
Jun-98	17,065,675	0.1	0.997	\$ 0.00200	\$ 3,402.90	0.01056	\$17,967.29	\$ (14,564.39)
	108,656,674	0.1	0.997	\$ 0.00200	\$ 21,866.14	0.01056	\$114,397.22	\$ (92,731.08)
	9,878,399	0.1	0.997	\$ 0.00200	\$ 1,969.75	0.01056	\$10,400.29	\$ (8,430.54)
Jul-98	19,936,070	0.1	0.997	\$ 0.00200	\$ 3,975.25	0.01028	\$20,022.91	\$ (16,047.66)
	127,306,655	0.1	0.997	\$ 0.00200	\$ 25,384.95	0.01028	\$127,861.20	\$ (102,476.25)
	11,163,384	0.1	0.997	\$ 0.00200	\$ 2,225.98	0.01028	\$11,212.01	\$ (8,986.03)
Aug-98	22,045,623	0.1	0.997	\$ 0.00200	\$ 4,395.90	0.01028	\$22,141.65	\$ (17,745.75)
	155,759,111	0.1	0.997	\$ 0.00200	\$ 31,058.37	0.01028	\$156,437.60	\$ (125,379.23)
	11,099,766	0.1	0.997	\$ 0.00200	\$ 2,213.29	0.01028	\$11,148.12	\$ (8,934.83)
Sep-98	22,443,065	0.1	0.997	\$ 0.00200	\$ 4,475.15	0.01056	\$23,151.78	\$ (18,679.63)
	168,018,749	0.1	0.997	\$ 0.00200	\$ 33,502.94	0.01056	\$173,346.96	\$ (139,844.02)
	10,302,585	0.1	0.997	\$ 0.00200	\$ 2,054.34	0.01056	\$10,629.30	\$ (8,574.96)
Oct-98	23,077,272	0.1	0.98	\$ 0.00200	\$ 4,523.15	0.0175	\$39,577.52	\$ (35,054.38)
	171,655,628	0.1	0.98	\$ 0.00200	\$ 33,844.50	0.0175	\$294,389.40	\$ (260,744.90)
	10,201,624	0.1	0.98	\$ 0.00200	\$ 1,999.52	0.0175	\$17,495.79	\$ (15,496.27)
Nov-98	210,777,124	0.1	0.98	\$ 0.00200	\$ 41,312.32	0.0175	\$361,482.77	\$ (320,170.45)

## Intermedia Non ISP Payments

	Total MOUs Invoiced	Non ISP Factor	PLU	Correct Local Rate	Non-ISP Local Due	Local Rate Paid	Non-ISP Local \$ Paid	Difference In Amt Due & Amt Pd
Dec-98	154,977,667	0.1	0.98	\$ 0.00200	\$ 30,375.82	0.0175	\$265,786.70	\$ (235,411.08)
	64,064,865	0.1	0.98	\$ 0.00200	\$ 12,558.71	0.0175	\$4,544.48	\$ 8,012.23
Jan-99	267,928,952	0.1	0.978	\$ 0.00200	\$ 52,406.90	0.0175	\$17,779.67	\$ 34,627.23
Feb-99	254,990,416	0.1	0.978	\$ 0.00200	\$ 49,876.13	0.0175	\$2,182,080.48	\$ (2,132,204.35)
Mar-99	308,363,755	0.1	0.978	\$ 0.00200	\$ 60,315.95	0.0175	\$527,764.57	\$ (467,448.62)
Apr-99	333,628,373	0.1	0.972	\$ 0.00200	\$ 64,857.36	0.0175	\$567,501.86	\$ (502,644.51)
				<b>Total Non-ISP Local Due</b>	<b>\$ 1,474,447.46</b>		<b>\$5,980,716.64</b>	<b>\$ (4,506,269.18)</b>

WIGGINS & VILLACORTA, P.A.  
ATTORNEYS AT LAW

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TALLAHASSEE, FLORIDA 32302

2145 DELTA BOULEVARD, SUITE 200  
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FACSIMILE (850) 385-6008  
INTERNET: wiggvill@nettally.com

July 13, 1999

Ms. Nancy B. White  
General Counsel – Florida  
BellSouth Telecommunications, Inc.  
150 South Monroe Street  
Room 400  
Tallahassee, FL 32301

Dear Ms. White:

This letter is sent in response to your letter dated July 2, 1999 to me, which accompanied BellSouth's check in the amount of \$12,723,883.38, payable to Intermedia Communications, Inc. ("the check"). By this letter we inform you that the amount of the check is not adequate to compensate Intermedia for the reciprocal compensation traffic that Intermedia has terminated for BellSouth through April 1999 and all prior periods.

After reviewing the spreadsheets that were submitted with the check, Intermedia is unable to discern how BellSouth computed the amounts due Intermedia. The total amount of the check, however, is well below the total amount of compensation BellSouth owes to Intermedia. In the near future, Intermedia will provide BellSouth with a detailed accounting of the amounts due.

Please be advised that Intermedia expressly reserves its right to take additional action against BellSouth for full payment of Intermedia's claim. The check should in no way be considered by BellSouth to be an accord and satisfaction of any dispute over the amount of reciprocal compensation due to Intermedia from BellSouth. As BellSouth acknowledged in your letter of July 2, 1999, the dispute between BellSouth and Intermedia over reciprocal compensation payments is ongoing, and may not be resolved for some time.

Moreover, if BellSouth continues to compute reciprocal compensation payments due to Intermedia for services provided in May 1999, and going forward, using the same formula that is reflected in the July 2 letter, please be advised that those payments will also fall far short of the amounts that BellSouth is obligated to pay Intermedia under the Interconnection Agreement executed between the two companies. As noted above, in the near future, we will provide you with additional information that demonstrate how to compute the correct amount of compensation due Intermedia, both retroactively, and going forward.

Sincerely,

*Patrick Knight Wiggins*  
Patrick Knight Wiggins

July 26, 1999

BY FEDERAL EXPRESS

Nancy B. White  
General Counsel – Florida  
BellSouth Telecommunications, Inc.  
160 South Monroe Street  
Room 400  
Tallahassee, FL 32301

Dear Ms. White:

I am sending this letter on behalf of Intermedia Communications Inc. This letter follows the letter from Patrick Wiggins to you dated July 13, 1999 ("July 13 letter"). In the July 13 letter, Intermedia informed you that it was cashing the check in the amount of \$12,723,883.38 that BellSouth tendered to Intermedia in response to the Florida Public Service Commission's Order No. PSC-98-1216-FIF-TP, but made clear that the amount of that check falls far short of the amount that BellSouth owes to Intermedia for the transport and termination in Florida of traffic subject to reciprocal compensation. Intermedia made clear in its July 13 letter that it expressly reserved its right to challenge the adequacy of BellSouth's payment, and to seek additional payments. In that letter, Intermedia also noted that it would provide a further explanation of Intermedia's position, and would detail how the amounts due to Intermedia for reciprocal compensation must be computed. This letter and its attachments provide that additional information.

**A balance of \$24,841,025.32 remains in the amount owed to  
Intermedia through April 30, 1999**

**Reciprocal compensation payments of \$6,672,925.23 are owed to  
Intermedia for May and June, 1999**

**BellSouth's total remaining amounts due to Intermedia for reciprocal compensation  
traffic terminated through the end of June, 1999 is \$31,513,950.55**

In your letter accompanying BellSouth's check for \$12,723,883.38, you noted that the check was enclosed "for April, 1999 and all prior periods." The amount of the check, however, falls far short of the full amount that BellSouth owes to Intermedia for the transport and termination of traffic – including dial-up calls to ISPs – under the interconnection agreement between BellSouth and Intermedia. BellSouth accompanied the check with a spreadsheet purporting to show how the \$12.7 M figure was calculated. Intermedia is not clear as to how that figure was computed, and does not concede its accuracy.

In fact, the remaining balance owed by BellSouth to Intermedia for reciprocal compensation traffic in the state of Florida for periods up to April 30, 1999, is \$24,841,025.32. This amount reflects the total traffic minutes subject to reciprocal compensation that Intermedia terminated for BellSouth between February 1997 and April 1999, multiplied by the per-minute reciprocal compensation rate from the Intermedia/BellSouth interconnection agreement, which was in effect at all relevant times in the past, and which remains in effect at present. From this amount, Intermedia deducted amounts paid by BellSouth to date. As you may know, Intermedia has been sending BellSouth invoices for reciprocal compensation since February, 1997. BellSouth has made partial payments, based on its assumption that approximately 10% of the invoiced traffic represented non-ISP-bound traffic. As a result, BellSouth for the last two years has been paying Intermedia approximately 10% of the full amounts invoiced. These payments, in addition to the \$12,723,883.38, have been deducted from the computation of the remaining balance due Intermedia.

Intermedia has attached to this letter a spreadsheet that shows how the amounts due from BellSouth for reciprocal compensation traffic in Florida have been calculated. It shows the following computations:

- The attached spreadsheet is based on amounts invoiced by Intermedia for Florida traffic, at the reciprocal compensation rate of \$0.01056, which is the compensation rate negotiated by Intermedia and BellSouth that has been in effect at all relevant times in the past, and that remains in effect currently. The amounts originally invoiced are listed under the column entitled "Actual Billed Charges."
- There is one anomaly in the attached spreadsheet, which shows two entries for December 1998. This reflects the fact that some minutes were not correctly captured for the December invoice.
- As Intermedia shows in the attached spreadsheet, between February and September 1997, Intermedia erroneously billed amounts in excess of the effective reciprocal compensation rate – these amounts have been identified and backed out of the calculation of the current balance due, which is listed under the column titled "Corrected Charges."

- From the Actual Billed Charges, or when applicable, the Corrected Charges, Intermedia subtracted the amounts that have been paid by BellSouth. The amounts paid by BellSouth reflect a consistent 12% of the amounts invoiced by Intermedia – at the \$.01056 rate that was in effect since February, 1997, and that remains in effect to date. This apparently reflects BellSouth's estimation – which has not been corroborated by Intermedia – that approximately 88% of the minutes reported by Intermedia reflect calls to ISPs.
- Finally, Intermedia applies a late payment charge, which was computed by adding together the late payment charges listed on each invoice from February 1997 to April 1999. This amount is \$3,546,628.85, and is reflected in the row titled "Late Payment Charge."
- The total resulting from the computations described above is listed in the "Subtotal" row. From this amount, the \$12,723,883.38 that BellSouth tendered to Intermedia was subtracted. The net balance due Intermedia for reciprocal compensation traffic in Florida is listed in the row titled "Balance" and amounts to \$24,841,025.32.

In addition to the spreadsheet showing the computation of the \$24.8 M figure for amounts owing through April 30, 1999, we provide an additional spreadsheet that computes the amounts that BellSouth owes to Intermedia for Florida reciprocal compensation traffic for May and June of 1999. These figures were computed in the same way as the amounts described above. As the spreadsheet shows, these amounts total \$6,672,925.23.

In sum, the total amounts due Intermedia for reciprocal compensation traffic terminated up through and including June 30, 1999 is \$31,513,950.55.

We are in the process of preparing spreadsheets for the amounts due Intermedia in the other BellSouth states in which Intermedia has terminated reciprocal compensation traffic for BellSouth. These will be provided to the appropriate BellSouth personnel in the near future.

We look forward to following up with you at your earliest convenience to make arrangements for payment in full of the remaining balances due Intermedia for April 1999 and prior periods, and for May and June of 1999. On a going forward basis, we anticipate that BellSouth will pay Intermedia's monthly invoices in full in a timely manner, and that further spreadsheets will not be necessary.

Finally, please address all further correspondence regarding this matter – including checks in payment for any reciprocal compensation amounts – to our in-house counsel, at the following address:

Scott Sapperstein, Senior Policy Counsel  
Intermedia Communications Inc.  
3625 Queen Palm Drive  
Tampa, Florida 33619

Thank you for your attention to this matter.

Sincerely,



Heather Burnett Gold  
Vice President, Regulatory  
and External Affairs

BELL SOUTH RECIPROCAL COMPENSATION BILLING- FLORIDA

Month	Messages	MOU	Rate	Actual Billed Charges	Bell South Payments To Date	Overbilled Amount	Corrected Charges	Amount Still Due
Feb-97	674,783	17,516,426	\$0.01058	\$184,973.46	\$22,533	317.13	\$184,656.33	\$162,123.18
Mar-97	763,086	19,939,435	\$0.01056	\$210,560.43	\$25,650	454.27	\$210,106.16	\$184,456.05
Apr-97	818,427	22,527,478	\$0.01056	\$237,890.17	\$28,979	399.99	\$237,490.18	\$208,510.80
May-97	1,186,304	34,413,962	\$0.01056	\$363,411.44	\$44,270	533.82	\$362,877.62	\$318,607.48
Jun-97	1,484,211	44,135,205	\$0.01056	\$466,067.76	\$56,778	526.52	\$465,541.24	\$408,766.66
Jul-97	1,721,589	49,672,978	\$0.01056	\$524,546.65	\$63,899	1,109.88	\$523,436.77	\$459,537.39
Aug-97	2,035,950	58,285,711	\$0.01056	\$615,497.11	\$74,979	1,574.58	\$613,922.53	\$538,943.72
Sep-97	2,065,145	61,254,312	\$0.01056	\$646,845.53	\$78,798	2,023.45	\$644,822.08	\$566,024.46
Oct-97	2,460,961	71,802,321	\$0.01056	\$758,232.51	\$92,367			\$665,865.91
Nov-97	21,604,514	74,405,899	\$0.01056	\$785,726.29	\$95,716			\$690,010.45
Dec-97	3,180,511	85,832,175	\$0.01056	\$906,387.77	\$110,415			\$795,973.15
Jan-98	4,255,022	113,421,542	\$0.01056	\$1,197,731.48	\$145,906			\$1,051,825.87
Feb-98	4,605,093	111,986,235	\$0.01056	\$1,182,574.84	\$144,059			\$1,038,515.41
Mar-98	5,461,678	135,281,170	\$0.01056	\$1,428,569.16	\$174,026			\$1,254,543.29
Apr-98	5,984,044	148,785,338	\$0.01056	\$1,571,173.17	\$191,398			\$1,379,775.63
May-98	5,403,179	136,439,971	\$0.01056	\$1,440,806.09	\$175,517			\$1,265,289.54
Jun-98	5,508,882	135,600,748	\$0.01056	\$1,431,943.90	\$174,437			\$1,257,506.93
Jul-98	6,543,050	158,406,109	\$0.01056	\$1,672,768.51	\$203,774			\$1,468,994.69
Aug-98	7,833,305	188,904,500	\$0.01056	\$1,994,831.52	\$243,007			\$1,751,824.54
Sep-98	8,265,385	200,764,399	\$0.01056	\$2,120,072.05	\$258,264			\$1,861,808.49
Oct-98	8,312,544	204,934,524	\$0.01056	\$2,164,108.57	\$263,828			\$1,900,480.54
Nov-98	8,334,011	211,777,124	\$0.01056	\$2,226,806.43	\$271,144			\$1,954,662.47
Dec-98	6,358,466	154,977,667	\$0.01056	\$1,838,564.16	\$199,363			\$1,437,200.70
Jan-99	2,649,840	64,064,885	\$0.01056	\$678,524.97	\$82,419			\$596,105.85
Feb-99	10,388,354	267,928,952	\$0.01056	\$2,829,328.73	\$344,684			\$2,484,665.59
Mar-99	10,436,380	254,990,416	\$0.01056	\$2,892,698.79	\$328,020			\$2,384,678.80
Apr-99	11,837,708	308,363,755	\$0.01056	\$3,256,321.25	\$396,880			\$2,859,641.73
May-99	12,774,129	333,628,373	\$0.01056	\$3,523,115.62	\$429,180			\$3,093,936.66
Total	183,065,551	4,670,041,590		\$38,745,079.18	\$4,719,860	6,839.64	\$38,738,140	\$34,018,279.84
Late Payment Charge				\$3,647,283.81		634.96	\$3,646,628.85	\$3,646,628.85
Subtotal				\$42,282,342.97	\$4,719,860	7,574.60	\$42,284,768	\$37,664,908.70
7/99 Check								\$12,723,863.38
Balance								\$24,941,025.32

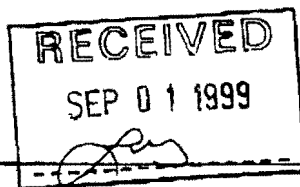


BELL SOUTH RECIPROCAL COMPENSATION BILLING-FLORIDA (continued)

Month	Messages	MOU	Rate	Actual Billed Charges	Bell South Payment To Date	Amount Still Due	
May-89	13,224,954	349,145,809	\$0.01058	\$3,886,979.74	\$449,142	\$3,237,838.14	
Jun-89	14,119,279	366,439,975	\$0.01056	\$3,869,606.14	\$471,389	\$3,398,217.29	
<b>Total</b>	<b>27,344,233</b>	<b>715,585,784</b>		<b>\$7,656,585.88</b>	<b>\$920,530.15</b>	<b>\$6,636,056.43</b>	
				Lite Payment Charge		\$36,869.80	
				<b>Balance</b>	<b>\$7,593,455.68</b>	<b>\$920,530</b>	<b>\$6,672,925.23</b>

- Notes: <sup>1</sup> BellSouth payments to date were received on a regional basis. Florida's payment to April is based on the percent usage in Florida against the total region.  
<sup>2</sup> The overbilled amounts are due to the incorrect billing of some Tampa MOUs during the first eight months. The problem was corrected but an adjustment has not been made. The corrected charges reflect the removal of the Tampa-only charges.  
<sup>3</sup> The highlighted row indicates a backbilled amount for usage not included on the initial invoice for that particular month. The actual invoice for the backbilling was submitted in a later month.

Miller/Canis  
7/20/99



NANCY B. WHITE  
General Counsel-Florida

BellSouth Telecommunications, Inc.  
150 West Flagler Street  
Suite 1910  
Miami, FL 33130  
(305) 347-5558

August 27, 1999

Scott Sapperstein, Esq.  
Senior Policy Counsel  
Intermedia Communications, Inc.  
3625 Queen Palm Drive  
Tampa, FL 33619

Dear Mr. Sapperstein:

I am writing in response to Ms. Heather Burnett Gold's letter dated July 26, 1999, regarding the Florida Public Service Commission's Order No. PSC-98-1216-FIF-TP. Per her request, I am addressing this and all future correspondence regarding this matter to you.

According to Ms. Gold's letter and the attached spreadsheets, BellSouth owes Intermedia a total of \$31,513,950.55 for reciprocal compensation payments through the end of June 1999. Based on the information contained in the spreadsheets, Intermedia is using an outdated rate of \$0.01056 to compute reciprocal compensation payments.

The intent of the June 3, 1998 Amendment to the Interconnection Agreement between Intermedia and BellSouth, which was signed by both parties, was to establish elemental rates for local traffic. The Amendment specifically states in paragraph 3 that "The Parties agree to bill Local traffic at the elemental rates specified in Attachment A." [Emphasis added] Additionally, paragraph 4 provides for "...reciprocal compensation being paid between the Parties based on the elemental rates specified in Attachment A."

I am attaching the June 3<sup>rd</sup> Amendment, which details the elemental rates for Local traffic. The approved rates for End Office Switching and Tandem Switching/Transport are \$0.002000 and \$0.00125, respectively.

The correctly compute the reciprocal compensation amount owed by BellSouth, please adjust your reciprocal compensation calculations to reflect the appropriate rates as outlined in the June 3, 1998 Amendment.

Sincerely,

  
Nancy B. White

**Attachments**

cc: Mary Jo Peed, Esq. (w/attachments)  
Jerry Hendrix, Sr. Dir.-Interconnection Svcs. (w/attachments)  
Patrick Finlen, Mgr.-Interconnection Svcs. (w/attachments)

175175

AMENDMENT  
TO  
MASTER INTERCONNECTION AGREEMENT BETWEEN  
INTERMEDIA COMMUNICATIONS, INC. and  
BELL SOUTH TELECOMMUNICATIONS, INC.  
DATED JULY 1, 1996

Pursuant to this Agreement (the "Amendment"), Intermedia Communications, Inc. ("ICI") and BellSouth Telecommunications, Inc. ("BellSouth") hereinafter referred to collectively as the "Parties" hereby agree to amend that certain Master Interconnection Agreement between the Parties effective July 1, 1996 ("Interconnection Agreement").

NOW THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, ICI and BellSouth hereby covenant and agree as follows:

1. The Parties agree that BellSouth will, upon request, provide, and ICI will accept and pay for, Multiple Tandem Access, otherwise referred to as Single Point of Interconnection, as defined in 2. following:
2. This arrangement provides for ordering interconnection to a single access tandem, or, at a minimum, less than all access tandems within the LATA for ICI's terminating local and intraLATA toll traffic and BellSouth's terminating local and intraLATA toll traffic along with transit traffic to and from other ALECs, Interexchange Carriers, Independent Companies and Wireless Carriers. This arrangement can be ordered in one way trunks and/or two way trunks or Super Group. One restriction to this arrangement is that all of ICI's NXXs must be associated with these access tandems; otherwise, ICI must interconnect to each tandem where an NXX is "homed" for transit traffic switched to and from an Interexchange Carrier.
3. The Parties agree to bill Local traffic at the elemental rates specified in Attachment A.
4. This amendment will result in reciprocal compensation being paid between the Parties based on the elemental rates specified in Attachment A.
5. The Parties agree that all of the other provisions of the Interconnection Agreement, dated July 1, 1996, shall remain in full force and effect.
6. The Parties further agree that either or both of the Parties is authorized to submit this Amendment to the respective state regulatory authorities for approval subject to Section 252(e) of the Federal Telecommunications Act of 1996.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed by their respective duly authorized representatives on the date indicated below.

Intermedia Communications, Inc.

BellSouth Telecommunications, Inc.

James F. Seiger  
Signature

Jerry D. Hendrix  
Signature

James F. Seiger  
Name  
SENIOR VICE PRESIDENT  
SALES AND MARKETING  
Title

Jerry D. Hendrix  
Name  
Director-Interconnection Services  
Title

6/3/98  
Date

6/3/98  
Date

## ATTACHMENT A

Multiple Tandem Access shall be available according to the following rates for local usage:

- Each Party's local usage will be determined by the application of its reported Percent Local Usage ("PLU") to its intrastate terminating minutes of use as set forth in Paragraph 1.D. in ICI's February 24, 1997. Amendment to its Interconnection Agreement.
- The Parties agree to bill Local traffic at the elemental rates specified below:

ELEMENT	AL	FL	GA	KY	LA
<b>Local Switching</b>					
End Office Switching, per MOU	\$0.0017	\$0.0175	\$0.0016333	\$0.002562	\$0.0021
End Office Switching, add'l MOU <sup>(1)</sup>	NA	\$0.005	NA	NA	NA
End Office Interoffice Trunk Port - Shared, MOU	NA	NA	NA	NA	\$0.0002
Tandem Switching, per MOU	\$0.0015	\$0.00029	\$0.0006757	\$0.001096	\$0.0008
Tandem Interoffice Trunk Port - Shared	NA	NA	NA	NA	\$0.0003
Tandem Intermediary Charge, per MOU <sup>(2)</sup>	\$0.0015	NA	NA	\$0.001096	NA
<b>Local Transport</b>					
Shared, per mile, per MOU	\$0.00004	\$0.000012	\$0.000008	\$0.0000049	\$0.0000083
Facility Termination, per MOU	\$0.00036	\$0.0005	\$0.0004152	\$0.000426	\$0.00047

ELEMENT	MS	NC	SC	TN
<b>Local Switching</b>				
End Office Switching, per MOU	\$0.00221	\$0.0040	\$0.00221	\$0.0019
End Office Switching, add'l MOU <sup>(1)</sup>	NA	NA	NA	NA
End Office Interoffice Trunk Port - Shared, MOU	NA	NA	NA	NA
Tandem Switching, per MOU	\$0.003172	\$0.0015	\$0.003172	\$0.000676
Tandem Interoffice Trunk Port - Shared	NA	NA	NA	NA
Tandem Intermediary Charge, per MOU <sup>(2)</sup>	NA	NA	NA	NA
<b>Local Transport</b>				
Shared, per mile, per MOU	\$0.000012	\$0.00004	\$0.000012	\$0.00004
Facility Termination, per MOU	\$0.00036	\$0.00036	\$0.00036	\$0.00036

(1) This rate element is for use in those states with a different rate for additional minutes of use.

(2) This charge is applicable only to intermediary traffic and is applied in addition to applicable switching and/or interconnection charges.