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October 15, 1999

Mrs. Blanca S. Bayó  
Director, Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Re: Docket No. 990691-TP (ICG Arbitration)

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Revised Direct and Rebuttal Testimony of Alphonso J. Varner, which we ask that you file in the captioned docket. This testimony is redacted to reflect both the resolved and stricken issues.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

*Michael P. Goggin* (KR)  
Michael P. Goggin

cc: All Parties of Record  
Marshall M. Criser III  
R. Douglas Lackey  
Nancy B. White

AFA \_\_\_\_\_  
APP \_\_\_\_\_  
CAF \_\_\_\_\_  
CWU *Varner*  
CTR \_\_\_\_\_  
EAG \_\_\_\_\_  
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**CERTIFICATE OF SERVICE  
Docket No. 990691-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via

U.S. Mail this 15th day of October, 1999 to the following:

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Michael P. Goggin (KR)

BELLSOUTH TELECOMMUNICATIONS, INC.

DIRECT TESTIMONY OF ALPHONSO J. VARNER

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 990691-TP

AUGUST 2, 1999

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Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC. ("BELLSOUTH") AND YOUR BUSINESS ADDRESS.

A. My name is Alphonso J. Varner. I am employed by BellSouth as Senior Director for State Regulatory for the nine-state BellSouth region. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. PLEASE GIVE A BRIEF DESCRIPTION OF YOUR BACKGROUND AND EXPERIENCE.

A. I graduated from Florida State University in 1972 with a Bachelor of Engineering Science degree in systems design engineering. I immediately joined Southern Bell in the division of revenues organization with the responsibility for preparation of all Florida investment separations studies for division of revenues and for reviewing interstate settlements.

Subsequently, I accepted an assignment in the rates and tariffs organization with responsibilities for administering selected rates and tariffs including

1 preparation of tariff filings. In January 1994, I was appointed Senior Director  
2 of Pricing for the nine-state region. I was named Senior Director for  
3 Regulatory Policy and Planning in August 1994, and I accepted my current  
4 position as Senior Director of Regulatory in April 1997.

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

7  
8 A. My testimony provides BellSouth's policy position on numerous issues raised  
9 by ICG Telecom Group, Inc. ("ICG") in its Petition for Arbitration filed with  
10 the Florida Public Service Commission ("Commission") on May 27, 1999.  
11 Specifically, I respond to the following issues raised by ICG: 1-11 and 19-26. I  
12 will also address the ramifications of recent court decisions as they specifically  
13 relate to ICG Issues 1, 3, 4, 6, 7 and 8.

14  
15 Q. PLEASE SUMMARIZE HOW THE RECENT COURT DECISIONS  
16 APPEAR TO AFFECT THIS PROCEEDING.

17  
18 A. On June 10, 1999, the United States Court of Appeals for the Eighth Circuit  
19 ("Eighth Circuit") issued an order in the *Iowa Utilities Board, et al.* case  
20 reinstating many of the previously vacated Federal Communications  
21 Commission's ("FCC") Rules. These Rules were originally issued in the  
22 FCC's First Report and Order and Second Report and Order dated August 8,  
23 1996 in CC Docket 96-98. In light of the Eighth Circuit's recent and past  
24 decisions, along with the January 25, 1999 decision by the United States  
25

1 Supreme Court, the status of the FCC's rules can be divided into several  
2 categories as follows.

3  
4 Even though the FCC's pricing Rules 51.501-51.515 (Pricing of Elements) and  
5 51.701-51.717 (Reciprocal Compensation for Transport and Termination of  
6 Local Telecommunications Traffic) have been reinstated, they must still be  
7 reevaluated by the Eighth Circuit to consider the various challenges raised to  
8 these rules on their merits since the Eighth Circuit's earlier ruling was based  
9 solely upon jurisdictional arguments. While these rules are in effect as the  
10 Eighth Circuit revisits them, the final pricing rules will not likely be known  
11 until the Eighth Circuit acts, which could be several months in the future. In  
12 the interim, BellSouth is proposing prices that are consistent with the FCC's  
13 pricing methodology and with this Commission's decisions in its generic UNE  
14 proceeding. BellSouth also proposes that those prices be modified  
15 prospectively when the final rules are known.

16  
17 The FCC's Unbundled Network Element ("UNE") Rule 51.319 (Specific  
18 unbundling requirements) has been vacated and is being readdressed by the  
19 FCC. Until that time, which will probably be several months, there is no  
20 minimum list of UNEs that BellSouth is required to offer. There are numerous  
21 capabilities that competitive local exchange carriers ("CLECs") have requested  
22 from BellSouth. As an interim measure, BellSouth is proposing to provide  
23 those capabilities although, technically, they are not UNEs, until the FCC's  
24 new rules become final. Because the required list of UNEs is unknown, it  
25 would not be appropriate to require application of FCC rules that apply to

1           UNEs to these capabilities during this interim period. When the FCC rules  
2           become finalized, BellSouth should be permitted to modify the list of  
3           capabilities that it will offer in the interim to conform to the FCC's rules.

4  
5           Even though the FCC's Rule 51.315(b) (Pre-existing combinations) has been  
6           reinstated by the Eighth Circuit, it cannot be effectively applied until the FCC  
7           reestablishes the UNE list that was vacated by FCC Rule 51.319. The  
8           minimum list of UNEs and criteria for establishing UNEs will not be known  
9           until the FCC completes its proceeding on remand. Consequently, the UNEs  
10          that must remain combined cannot be known until the FCC completes its  
11          review of Rule 51.319.

12  
13          Finally, the FCC's Rules 51.315(c) through 51.315(f) (ILEC combination of  
14          UNEs) continue to be vacated. The Eighth Circuit, however, is seeking  
15          comments on whether it should take further action with respect to these rules.  
16          Since these rules are not in effect, any action by this Commission requiring  
17          BellSouth to combine network elements would be in direct conflict with the  
18          Telecommunications Act of 1996 ("Act").

19  
20          After the FCC and the Eighth Circuit take further action in response to the  
21          Supreme Court's decision, BellSouth's position on the issues raised in this  
22          proceeding may be affected. As a result, BellSouth may need to modify some  
23          of its positions in the months to come.

24  
25

1 Q. WHAT IMPACT DOES THE EIGHTH CIRCUIT'S RULING HAVE ON  
2 NETWORK ELEMENT COMBINATIONS?

3  
4 A. With respect to network element combinations, the Supreme Court's vacating  
5 of the FCC's Rule 51.319 and its reinstatement of other rules directly impacts  
6 the network elements BellSouth is required to provide. In accordance with the  
7 FCC's Rule 51.315(a), BellSouth is obligated to provide unbundled network  
8 elements in a manner that allows requesting telecommunications carriers to  
9 combine them in order to provide a telecommunications service. Though  
10 requesting telecommunications carriers may combine unbundled elements in  
11 any manner they choose, BellSouth is not required to combine unbundled  
12 elements for those carriers. The Eighth Circuit vacated the FCC's rules that  
13 purported to impose such a requirement (§§ 51.315(c)-(f)). The Eighth  
14 Circuit's decision vacating these rules was not challenged by any party, and  
15 because those rules are not in effect, BellSouth is not required to combine  
16 network elements. However, BellSouth is willing to perform this function  
17 upon execution of a commercial agreement that is not subject to the  
18 requirements of the Act.

19  
20 Q. WHAT IS BELLSOUTH'S POSITION WITH REGARD TO  
21 COMBINATIONS OF ELEMENTS THAT ALREADY EXIST IN  
22 BELLSOUTH'S NETWORK?

23  
24 A. Regarding the provision of combinations that already exist in the network,  
25 there are no requirements that the Commission can implement until the FCC

1 establishes a list of UNEs, and the associated pricing rules, that incumbent  
2 local exchange carriers ("LECs") must offer. As discussed previously, it is  
3 impossible to determine which unbundled network elements BellSouth is  
4 required to offer until the FCC reissues its UNE rules in accordance with the  
5 Supreme Court decision. Consequently, the UNEs that must remain combined  
6 cannot be determined at this time. Likewise, the pricing rules applicable to  
7 such combinations will not be known until the Eighth Circuit completes its  
8 evaluation. Therefore, with regard to this issue, a final determination of which  
9 UNEs must remain connected and functional, as well as the prices for those  
10 combinations, will depend upon the outcome of further proceedings before the  
11 FCC and the Courts.

12  
13 The Supreme Court specifically recognized the linkage between Rule  
14 51.315(b) and the list of UNEs. In its discussion of the legality of Rule  
15 51.315(b), the Court stated: "As was the case for the all-elements rule, our  
16 remand of Rule 319 may render the incumbents' concern on this score  
17 academic." (Sup. Ct. order, at pg. 26). This linkage should not be ignored by  
18 requiring provision of services which are allegedly pre-existing combinations  
19 of UNEs before the UNEs are defined.

20  
21 BellSouth is cooperating during this interim period by making numerous  
22 capabilities available to CLECs. To penalize BellSouth for its cooperative  
23 efforts by invoking a combination requirement at this time would not be  
24 reasonable. For the reasons outlined above, BellSouth proposes that all  
25 requests for combinations be negotiated between the parties until the FCC's

1 final and nonappealable pricing and UNE rules require different treatment.  
2 Should the Commission decline to adopt BellSouth's proposal on the provision  
3 of combinations while the final rules are still uncertain, the Commission  
4 should allow BellSouth to assess combination charges in order to avoid  
5 arbitrage of the tariffed service rates with UNE rates. Such charges are  
6 permissible under the Act and are necessary to retain sound pricing.

7  
8 Q. PLEASE FURTHER DESCRIBE WHY THE COMMISSION SHOULD  
9 WAIT ON ACTION BY THE FCC BEFORE SPECIFYING WHICH UNE  
10 COMBINATIONS MUST BE OFFERED.

11  
12 A. The impact of the Supreme Court's decision is such that, for the moment, no  
13 one knows for certain exactly *what* network elements must be made available  
14 to competing carriers. Even though the Eighth Circuit has simply reinstated  
15 the FCC's Rule 51.315(b) prohibiting ILECs from separating already-  
16 combined network elements before leasing them to competitors, that rule has  
17 no meaning without a determination of what elements meet the "necessary"  
18 and "impair" standards under the Act. The Supreme Court's vacating of FCC  
19 Rule 51.319 was based on the FCC's failure to apply those standards in  
20 deciding which UNEs were required. In short, there is no reasonable way for  
21 **this Commission to mandate combinations of network elements unless and**  
22 **until it is clear what those elements are.**

23  
24 Q. BRIEFLY DESCRIBE HOW THE SUPREME COURT ADDRESSED THE  
25 FCC'S RULE 51.319 (SPECIFIC UNBUNDLING REQUIREMENTS).

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A. In striking down Rule 51.319 and the FCC's underlying standard, the Supreme Court categorically rejected the FCC's notion of when an incumbent must provide unbundled network elements to CLECs under the FCC's "necessary" and "impair" requirements. In interpreting those statutory terms, the Supreme Court stated that the FCC's definition of an unbundled network element "cannot, consistent with the statute, blind itself to the availability of elements outside the incumbent's network." (Sup. Ct. Order, at pg. 22) The Supreme Court also observed that the "assumption that any increase in cost (or decrease in quality) imposed by denial of a network element renders access to that element 'necessary' and causes the failure to provide that element to 'impair' the entrant's ability to furnish its desired services is simply not in accord with the ordinary and fair meaning of those terms." (Id.) (emphasis not in original) In plainer terms, this language means that "elements" that are available from other sources, including elements that competitors can (and often do) provide for themselves, do not have to be provided by ILECs as unbundled network elements under the Act.

Thus, there can be no requirement for BellSouth to provide any combinations of a specific type or in a locality where there are ready alternatives to any of the constituent network elements. This proscription applies even where those alternatives may be somewhat more costly for the CLEC to obtain from another supplier or by providing them for itself. The Supreme Court anticipated precisely this kind of limitation on the availability of access to network elements when it observed that "if Congress had wanted to give

1 blanket access to incumbents' networks on a basis as unrestricted as the  
2 scheme the Federal Communications Commission has come up with, it would  
3 not have included § 251(d)(2) in the statute at all." (Sup. Ct. Order, at pg. 23)  
4 And in reacting to ILECs' concerns that the reinstatement of Rule 315(b) could  
5 obliterate the distinction between unbundled network elements and resale, the  
6 Supreme Court noted that "our remand of Rule 319 [i.e., requiring application  
7 of the "necessary" and "impair" standards] may render the incumbents'  
8 concern on this score academic." (Sup. Ct. Order, at pg.26)

9  
10 Q. WHAT PROCESS IS LIKELY TO BE FOLLOWED TO IMPLEMENT NEW  
11 UNE RULES?

12  
13 A. The FCC is holding further proceedings to determine what network elements  
14 must be unbundled, in accordance with the Supreme Court's interpretation of  
15 the necessary and impair test. In the interim, it would be inappropriate to  
16 assume that the FCC will merely reissue the list of UNEs originally contained  
17 in Rule 51.319. Determining what elements are essential will involve FCC  
18 proceedings of some complexity. In fact, FCC Chairman William E. Kennard  
19 acknowledged as much when he predicted: "We'll have to go back to the  
20 drawing board." (New York Times, 1/26/99 at C4.)

21  
22 This Commission presumably will have, and should have, a role in  
23 implementing the "necessary" and "impair" standards. However, this  
24 Commission's decisions should, as a practical matter, await the FCC's  
25 definition of those standards. Furthermore, even if this Commission eventually

1 is empowered to decide which elements must remain combined, there has been  
2 no determination by the FCC as to exactly which elements those are.

3

4 Q. IS BELLSOUTH WILLING TO OFFER ANY ELEMENTS OF ITS  
5 NETWORK ON AN UNBUNDLED BASIS BEFORE THE FCC  
6 READDRESSES RULE 51.319?

7

8 A. Yes. BellSouth still has obligations under the Act that BellSouth will continue  
9 to meet. BellSouth will continue to offer any individual UNE currently offered  
10 until Rule 51.319 is resolved. However, BellSouth will not offer combinations  
11 that replicate retail or access services at the sum of the UNE prices. Such  
12 action would cannibalize revenue streams for other services. BellSouth does  
13 not believe such action was intended by the Act, and BellSouth would certainly  
14 not voluntarily provide such combinations at UNE prices. However, as  
15 explained earlier, BellSouth is willing to provide combinations upon execution  
16 of a commercial agreement that is not subject to the requirements of the Act.

17

18 Q. PLEASE EXPLAIN BELLSOUTH'S PROPOSAL FOR SETTING RATES  
19 FOR CAPABILITIES IN THIS PROCEEDING.

20

21 A. Where ICG is requesting capabilities for which no rates have been established,  
22 BellSouth is filing cost studies that are consistent with the Commission-  
23 approved methodology in support of the rates it proposes to charge for those  
24 capabilities. BellSouth witness Ms. Daonne Caldwell presents and supports  
25 those cost studies.

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Even though, during this interim period, BellSouth is proposing prices equal to incremental costs in accordance with FCC rules, BellSouth does not agree that prices should be required to be set equal to incremental costs. As I have testified on several occasions, there are a number of reasons why such a pricing rule should not be established. However, during this interim period, the FCC's rules are in effect and, as a result, prices equal to incremental costs are required.

Q. WHAT HAS THIS COMMISSION PREVIOUSLY DECIDED IN REGARD TO UNE PRICING?

A. Rates for numerous UNEs were ordered by the Commission in its December 31, 1996 Order No. PSC-96-1579-FOF-TP ("December 31, 1996 Order") and subsequently in its April 29, 1998 Order No. PSC-98-0604-FOF-TP ("April 29, 1998 Order"). In its December 31, 1996 Order, at page 22, this Commission determined "that the appropriate cost methodology to determine the prices for unbundled elements is an approximation of Total Service Long Run Incremental Cost (TSLRIC)." Further, on page 23, the Commission quoted ¶678 of the FCC Order 96-325 in which the FCC states that "while we are adopting a version of the methodology commonly referred to as the TSLRIC as the basis for pricing interconnection and unbundled elements, we are coining the term 'total element long run incremental cost' (TELRIC) to describe our version of this methodology."

1 At page 24, the Commission stated that "upon consideration, we do not believe  
2 there is a substantial difference between the TSLRIC cost of a network element  
3 and the TELRIC cost of a network element." Then, on page 32, the  
4 Commission found that "BellSouth's cost studies are appropriate because they  
5 approximate TSLRIC cost studies and reflect BellSouth's efficient forward-  
6 looking costs." Finally, on page 33, the Commission stated that "we find it  
7 appropriate to set permanent rates based on BellSouth's TSLRIC cost studies.  
8 The rates cover BellSouth's TSLRIC costs and provide some contribution  
9 toward joint and common costs."  
10

11 Q. ARE BELLSOUTH'S COST STUDIES GENERALLY CONSISTENT WITH  
12 THE FCC'S PRICING METHODOLOGY?  
13

14 A. Yes. FCC Rule 51.505 defines the FCC's cost methodology for UNEs.  
15 BellSouth's Total Service Long Run Incremental Cost (TSLRIC) studies used  
16 to support prices for capabilities in this proceeding are generally consistent  
17 with those methods. Per the FCC's rules, such costs must be developed using  
18 an efficient network configuration which uses the existing location of the  
19 incumbent LEC's wire centers. Further, the costs should be developed using a  
20 forward-looking cost of capital and economic depreciation rates, and a  
21 reasonable allocation of forward-looking common costs is appropriate. The  
22 forward-looking economic costs may not include embedded costs, retail costs,  
23 opportunity costs or revenues to subsidize other services. Although the FCC  
24 uses the term Total Element Long Run Incremental Cost (TELRIC) to describe  
25 its method, Ms. Caldwell explains how TSLRIC, as adopted by this

1 Commission, is consistent with the FCC's TELRIC methodology.

2

3 In addition to Rule 51.505, there are several other rules that describe  
4 the rate structure requirements that the FCC applies to UNEs. With  
5 the exception of Rule 51.507(f), BellSouth has proposed prices for  
6 these interim capabilities that are consistent with the FCC's rate  
7 structure requirements.

8

9 Q. WHAT IS BELLSOUTH PROPOSING WITH REGARD TO GEOGRAPHIC  
10 DEAVERAGING?

11

12 A. FCC Rule 51.507(f) requires that each state commission establish at least three  
13 geographic rate zones for UNEs and interconnection that reflect cost  
14 differences. On May 7, 1999 the FCC released an order in CC Docket No. 96-  
15 98 issuing a stay of Rule 51.507(f). The stay will remain in effect until six  
16 months after the FCC issues its order in CC Docket No. 96-45 finalizing and  
17 ordering implementation of high-cost universal service support for non-rural  
18 local exchange carriers. Therefore, Rule 51.507(f) should not be applied to the  
19 unbundled network capabilities that BellSouth would offer at this time.

20

21 ***Issue 4: Should BellSouth be required to provide as a UNE "Enhanced Extended***  
22 ***Link" Loops ("EELs")?***

23

24 Q. WHAT IS BELLSOUTH'S POSITION ON THE PROVISION OF  
25 "ENHANCED EXTENDED LINKS"?

1

2 A. ICG has requested what it terms as an "enhanced extended link" or a local loop  
3 combined with dedicated transport. There is no question that these extended  
4 links or extended loops would be a combination of loops and dedicated  
5 transport. Such combinations would create opportunities for price arbitrage  
6 because they replicate private line and/or special access services. ICG's  
7 request for an "enhanced extended link" would require BellSouth to combine  
8 the loop and dedicated transport, a function that BellSouth is not required to  
9 perform. However, as previously stated, BellSouth is willing to perform this  
10 function upon execution of a voluntary commercial agreement that is not  
11 subject to the requirements of the Act.

12

13 *Issue 1 and Issue 8: Until the FCC adopts a rule with prospective application,*  
14 *should dial-up calls to Internet service providers ("ISPs") be treated as if they were*  
15 *local calls for purposes of reciprocal compensation?*

16

17 Q. WHAT IS BELLSOUTH'S POSITION ON THE APPLICABILITY OF  
18 RECIPROCAL COMPENSATION TO ISP-BOUND TRAFFIC?

19

20 A. Reciprocal compensation is not applicable to ISP-bound traffic. BellSouth's  
21 position is that payment of reciprocal compensation for ISP-bound traffic is  
22 inconsistent with the law and is not sound public policy. Further, BellSouth  
23 believes that carriers are entitled to be compensated appropriately based on the  
24 use of their network to transport and deliver traffic.

25

1 Q. IS THERE ANY REASON FOR THIS COMMISSION TO ADDRESS THIS  
2 ISSUE AT THIS TIME?

3  
4 A. No. The FCC's recent Declaratory Ruling, FCC 99-38 in CC Docket Nos. 96-  
5 98 and 99-68, released February 26, 1999, ("Declaratory Ruling"), clearly  
6 established that the FCC has, will retain, and will exercise jurisdiction over this  
7 traffic. As a practical matter, it appears fruitless for state commissions to deal  
8 with this issue at this time. Although the FCC appears to give states authority  
9 to create an interim compensation arrangement until the FCC establishes rules,  
10 the FCC's authority to confer this ability on the states is being challenged in  
11 court. Consequently, states could find that they do not have the authority to  
12 create even an interim compensation arrangement. Even if the states do have  
13 the authority, such authority is valid only until the FCC completes its  
14 rulemaking on the subject. Therefore, any effort devoted by this Commission  
15 to establishing an interim compensation arrangement for ISP-bound traffic  
16 would likely be wasted effort.

17  
18 Q. SHOULD THE COMMISSION ARBITRATE THIS ISSUE?

19  
20 A. No. BellSouth recommends this Commission not address this issue. Any  
21 arbitration of ISP compensation issues would necessarily be separate from  
22 Section 252 arbitration, which is the subject of this proceeding. Since ISP-  
23 bound traffic is not subject to reciprocal compensation, there is no basis for  
24 including the compensation determination for such traffic as a subject of  
25 arbitration under Section 252 of the Act. Although the FCC's Declaratory

1 Ruling attempts to authorize states to arbitrate the issue of inter-carrier  
2 compensation for ISP-bound traffic, the FCC cannot simply expand the scope  
3 of Section 252 to cover such arbitrations.

4  
5 Q. PLEASE EXPLAIN YOUR STATEMENT THAT COMPENSATION FOR  
6 TRAFFIC BETWEEN END USERS AND ISPs IS NOT SUBJECT TO  
7 ARBITRATION UNDER SECTION 252.

8  
9 A. Only local traffic is subject to reciprocal compensation obligations. As  
10 previously confirmed by the FCC's Declaratory Ruling, ISP-bound traffic is  
11 jurisdictionally interstate; therefore, reciprocal compensation for ISP-bound  
12 traffic under Section 251 is not applicable. Consequently, compensation for  
13 such traffic is not subject to arbitration under Section 252. Further, payment of  
14 such compensation is not a requirement under Section 271.

15  
16 Q. HOW IS THE ISSUE THAT ICG HAS RAISED DIFFERENT FROM THE  
17 ISP ISSUES ALREADY ADDRESSED BY THIS COMMISSION IN  
18 PREVIOUS PROCEEDINGS?

19  
20 A. In previous proceedings, this Commission dealt with interpretation of language  
21 in existing Interconnection Agreements. The issue at hand today deals with a  
22 new Interconnection Agreement; therefore, any previous rulings on language  
23 interpretation are irrelevant to this case. BellSouth notes, however, that its  
24 position, which was confirmed by the FCC, has always been that calls to ISPs

25

1           were not local calls; thus, BellSouth never anticipated paying reciprocal  
2           compensation on ISP-bound traffic.

3

4   Q.   HOW DO THE ACT AND THE FCC'S FIRST REPORT AND ORDER IN  
5       CC DOCKET 96-98 ADDRESS RECIPROCAL COMPENSATION?

6

7   A.   Reciprocal compensation applies only when local traffic is terminated on either  
8       party's network. One of the Act's basic interconnection rules is contained in  
9       47 U.S.C. § 251(b)(5). That provision requires all local exchange carriers "to  
10      establish reciprocal compensation arrangements for the transport and  
11      termination of telecommunications." Section 251(b)(5)'s reciprocal  
12      compensation duty arises, however, only in the case of local calls. In fact, in  
13      its August 1996 Local Interconnection Order (CC Docket No. 96-98),  
14      paragraph 1034, the FCC made it perfectly clear that reciprocal compensation  
15      rules do not apply to interstate or interLATA traffic such as interexchange  
16      traffic:

17               *We conclude that Section 251(b)(5), reciprocal compensation*  
18               *obligation, should apply only to traffic that originates and*  
19               *terminates within a local area assigned in the following paragraph.*

20               *We find that reciprocal compensation provisions of Section*  
21               *251(b)(5) for transport and termination of traffic do not apply to the*  
22               *transport and termination of interstate or intrastate interexchange*  
23               *traffic.*

24               This interpretation is consistent with the Act, which establishes a reciprocal  
25               compensation mechanism to encourage local competition.

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Further, in Paragraph 1037 of that same Order, the FCC stated:

*We conclude that section 251(b)(5) obligations apply to all LECs in the same state-defined local exchange areas, including neighboring incumbent LECs that fit within this description.*

Therefore, since ISP-bound traffic is not local traffic it is not subject to the reciprocal compensation obligations contained in Section 251 of the Act.

**Q. PLEASE DISCUSS THE FCC'S RECENT DECLARATORY RULING.**

**A.** The FCC has once again confirmed that ISP-bound traffic is subject to interstate jurisdiction and is not local traffic. In its Declaratory Ruling, the FCC concluded that "ISP-bound traffic is non-local interstate traffic." (fn 87) The FCC noted in its decision that it traditionally has determined the jurisdiction of calls by the end-to-end nature of the call. In paragraph 12 of this same order, the FCC concluded "that the communications at issue here do not terminate at the ISP's local server, as CLECs and ISPs contend, but continue to the ultimate destination or destinations, specifically at an Internet website that is often located in another state." Further, in paragraph 12 of its Declaratory Ruling, the FCC finds that "[a]s the Commission stated in *BellSouth MemoryCall*, this Commission has jurisdiction over, and regulates charges for, the local network when it is used in conjunction with the origination and termination of interstate calls."

1 The FCC's decision makes plain that no part of an ISP-bound communication  
2 terminates at the facilities of an ISP. Once it is understood that ISP-bound  
3 traffic "terminates" only at distant websites, which are almost never in the  
4 same exchange as the end-user, it is evident that these calls are not local.

5

6 Q. IS BELLSOUTH'S POSITION REGARDING JURISDICTION OF ISP  
7 TRAFFIC CONSISTENT WITH THE FCC'S FINDINGS AND ORDERS?

8

9 A. Absolutely. BellSouth's position is supported by, and is consistent with, the  
10 FCC's findings and Orders which state that for jurisdictional purposes, traffic  
11 must be judged by its end-to-end nature, and must not be judged by looking at  
12 individual components of a call. Therefore, for purposes of determining  
13 jurisdiction for ISP-bound traffic, the originating location and the final  
14 termination must be looked at on an end-to-end basis. BellSouth's position is  
15 consistent with long-standing FCC precedent.

16

17 Q. PLEASE DESCRIBE IN MORE DETAIL THE TRAFFIC THAT IS  
18 ELIGIBLE FOR RECIPROCAL COMPENSATION?

19

20 A. As I have previously stated, local traffic is eligible for reciprocal compensation.  
21 Exhibit AJV-1 to my testimony contains two diagrams. Both of these diagrams  
22 illustrate local calls between end users. Diagram A illustrates a typical local  
23 call where both ends of the call are handled by a single carrier's network  
24 which, in this example, is an ILEC's network. In this scenario, the ILEC  
25 receives a monthly fee from its end user to apply towards the cost of that local

1 call. For that payment, the ILEC provides the end user with transport and  
2 termination of local calls throughout the local calling area. End users typically  
3 do not pay for calls terminated to them. Importantly, in this case, the end user  
4 is the ILEC's customer, which means that the end user pays the ILEC revenue  
5 for the service.

6  
7 By comparison, Diagram B illustrates a typical local call that is handled by two  
8 carriers - one end of the call is handled by an ILEC, and a CLEC handles the  
9 other end of the call. In this scenario, when the ILEC's end user makes a local  
10 call to the CLEC's end user, the ILEC's end user is paying the ILEC the same  
11 price for local exchange service as in Diagram A. The ILEC, however, is not  
12 the provider of the entire network facilities used to transport and deliver the  
13 local call. The CLEC is providing part of the facilities and is incurring a cost.  
14 Since the end user is an ILEC customer, the CLEC has no one to charge for  
15 that cost. As previously noted, end users do not pay for local calls terminated  
16 to them, so the CLEC cannot be expected to charge its end user. While the  
17 ILEC is receiving the same revenues as shown in Diagram A, its costs are  
18 lower. Consequently, reciprocal compensation would be paid by the ILEC to  
19 compensate the CLEC for terminating that local call over its network. If the  
20 reciprocal compensation rate equals the ILECs cost, the ILEC is indifferent to  
21 whether the ILEC or the CLEC completes the call.

22  
23 Likewise, if a CLEC's end user completes a local call to an ILEC's end user,  
24 the CLEC receives the payment for local exchange service from the end user,  
25 and the CLEC pays the ILEC reciprocal compensation for the portion of the

1 ILEC's facilities used to terminate the local call. In accordance with the Act,  
2 the purpose of reciprocal compensation is to ensure that each carrier involved  
3 in carrying a local call is compensated for its portion of that call. The  
4 following table contains a simple illustration of the application of reciprocal  
5 compensation.

<b>DIAGRAM A:</b>	<b>ILEC</b>	<b>CLEC</b>
END USER REVENUE	\$15	\$0
SERVICE COST	(\$35)	\$0
NET MARGIN	(\$20)	\$0
<b>DIAGRAM B:</b>	<b>ILEC</b>	<b>CLEC</b>
END USER REVENUE	\$15	\$0
RECIPROCAL COMPENSATION	(\$2)	\$2
SERVICE COST	(\$33)	(\$2)
NET MARGIN	(\$20)	\$0

17  
18 Q. ARE ISP's CARRIERS?

19  
20 A. Yes. The fact that ISPs are carriers and that the service provided to them is  
21 access service is very important. This simple fact eliminates any possible  
22 claim for reciprocal compensation. The FCC has been very clear in its rulings  
23 that reciprocal compensation does not apply on access service.  
24  
25

1 Treating ISPs as carriers is not a recent creation of the FCC. From its inception  
2 over 30 years ago, the FCC has regulated data carriers as interstate carriers.  
3 These carriers were allowed to collect traffic at business rates. When access  
4 charges were established in the early eighties, the FCC reconfirmed that these  
5 carriers, i.e., ESPs, were being provided access service, but ESPs received an  
6 exemption from regular access charges and were allowed to continue collecting  
7 traffic for the price of business service. Importantly, the FCC was clear that  
8 the service being provided was access service, not local service. The business  
9 rate was simply the price charged for the access service. This same  
10 arrangement was undisturbed by the Act and was recently reconfirmed by the  
11 FCC in its Declaratory Ruling.

12  
13 Q. WHY IS THE FACT THAT ISPs ARE CARRIERS AND ARE  
14 PURCHASING ACCESS SERVICE IMPORTANT?

15  
16 A. The fact that ISPs are carriers is important because carriers must pay the full  
17 cost of the service provided to them. When an interexchange carrier ("IXC")  
18 or an ISP purchases access service, it is the IXC or the ISP, not the end user,  
19 who is the customer of the local exchange carrier ("LEC") for that service. It is  
20 the IXC or the ISP who must pay the full cost of the service. Since the IXC or  
21 the ISP (and not the end user) pays the full cost of the service, the cost of the  
22 local network used to provide access service is appropriately excluded from the  
23 cost of universal service. This arrangement is based on the fact that the ISP or  
24 IXC is the retail provider of service to the end user. The LEC provides an  
25 input (access service) that the ISP or IXC uses to provide its retail service.

1           Consequently, the ISP or the LXC, not the end user, pays the full cost of the  
2           access service provided to them.

3

4   Q.   YOU STATE, AND THE FCC HAS CONFIRMED, THAT ISP-BOUND  
5       TRAFFIC IS JURISDICTIONALLY INTERSTATE. DOES THIS AFFECT  
6       THE ISP ACCESS CHARGE EXEMPTION?

7

8   A.   No. The FCC concluded in its Declaratory Ruling that its determination that  
9       ISP-bound traffic is interstate does not alter the current ISP exemption. ISPs  
10      continue to be permitted to access the public switched telecommunications  
11      network by paying basic business local exchange rates rather than by paying  
12      interstate switched access tariff rates. The FCC's decision to exempt ISPs  
13      from paying access charges for policy and political reasons in no way alters the  
14      fact that ISP-bound traffic is access traffic, not local traffic. If the FCC had  
15      indeed concluded that ISP-bound traffic was local, there would be no need for  
16      the FCC to exempt that traffic from the access charge regime. Likewise, no  
17      decision regarding reciprocal compensation would affect this exemption.

18

19       Exhibit AJV-2 attached to my testimony consists of two diagrams. Diagram C  
20      illustrates a typical interstate call originating on a LEC's network and delivered  
21      to an LXC's Point of Presence. As shown by this illustration, the LEC receives  
22      access charges from the LXC as compensation for use of the LEC's facilities to  
23      deliver the traffic to the LXC. The LXC bills the end user.

24

25

1 Diagram D is different from Diagram C in only one respect. The IXC has been  
2 replaced by an ISP. The network used to transport ISP-bound traffic is exactly  
3 the same network used to deliver traffic to IXCs. However, rather than through  
4 receipt of normal switched access charges, the LEC is compensated for the  
5 access service it provides to the ISP by the business rates it charges the ISP.  
6 The important point is that both IXCs and ISPs receive the same service and,  
7 although they are charged different prices, the prices they pay are designed to  
8 cover the same costs. That cost is the full cost of providing service to them.  
9

10 Q. WHAT DOES BELLSOUTH CONSIDER TO BE THE APPROPRIATE  
11 COMPENSATION MECHANISM FOR ISP-BOUND TRAFFIC?  
12

13 A. In its Comments and Reply Comments to the FCC's Notice of Proposed  
14 Rulemaking in CC Docket No. 99-68, In the Matter of Inter-Carrier  
15 Compensation for ISP-Bound Traffic ("Inter-Carrier Compensation NPRM"),  
16 BellSouth puts forth its proposal for the appropriate inter-carrier compensation  
17 mechanism. (See Exhibit AJV-3) BellSouth's proposal is guided by and is  
18 consistent with FCC precedent regarding inter-carrier compensation for jointly  
19 provided interstate services. BellSouth's proposal recognizes, as does the  
20 FCC, that the revenue source for ISP-bound traffic is derived from the service  
21 provided to the ISP. (See In the Matter of Access Charge Reform, Price Cap  
22 Performance Review for Local Exchange Carriers, Transport Rate Structure  
23 and Pricing and End User Common Line Charges, CC Docket Nos. 96-262,94-  
24 1, 91-213 and 95-72, *First Report and Order*, 12 FCC Rcd 15982, 16133-16134  
25 (1997)) Equally important, BellSouth's proposal ties the level of inter-carrier

1 compensation directly to the level of compensation that each carrier derives  
2 from the jointly provided service.

3  
4 Exhibit AJV-4 to my testimony consists of two diagrams illustrating the  
5 consistency of compensating carriers for access traffic based on the revenue  
6 that is derived from the jointly provided service. Diagram E illustrates a call  
7 that originates on a LEC's network and is delivered to an IXC/ISP, and shows  
8 that the IXC/ISP pays the LEC for access services to cover the cost of getting  
9 the traffic to the IXC/ISP. Diagram F illustrates an IXC/ISP-bound call that  
10 originates on a LEC's network and interconnects with another carrier's  
11 network (ICO/CLEC) for routing of the call to the IXC/ISP. In this situation,  
12 the IXC/ISP is the other carrier's customer. The revenue this other carrier  
13 receives from the IXC/ISP for access services covers the cost of delivering the  
14 traffic to the IXC/ISP.

15  
16 Q. PLEASE DESCRIBE HOW ICG REQUESTS THAT IT BE  
17 COMPENSATED FOR ISP-BOUND TRAFFIC.

18  
19 A. Exhibit AJV-5 to my testimony consists of a Diagram G which illustrates  
20 ICG's request that BellSouth pay reciprocal compensation for ISP-bound  
21 traffic where the ISP is ICG's customer. It is obvious from this diagram that  
22 ICG is simply attempting to augment the revenues it receives from its ISP  
23 customer at the expense of BellSouth's end user customers. In other words,  
24 paying ICG reciprocal compensation for ISP-bound traffic would result in  
25 BellSouth's end user customers subsidizing ICG's operations. Indeed, the

1 FCC has recognized that the source of revenue for transporting ISP-bound  
2 traffic is the access service charges that ISPs pay. ICG receives this payment  
3 from its ISP customers. There is no legal or policy basis for ISPs to be  
4 subsidized simply because they choose a different carrier to provide their  
5 access service.

6

7 Q. WHY IS AN INTER-CARRIER COMPENSATION ARRANGEMENT  
8 APPROPRIATE FOR ISP TRAFFIC?

9

10 A. The interstate access connection that permits an ISP to communicate with its  
11 subscribers falls within the scope of exchange access and, accordingly,  
12 constitutes an access service as defined by the FCC:

13 *Access Service* includes services and facilities provided for the  
14 origination or termination of any interstate or foreign  
15 telecommunications. (Emphasis added)

16 The fact that the FCC has exempted enhanced service providers, including  
17 ISPs, from paying interstate switched access charges does not alter the fact that  
18 the connection an ISP obtains is an access connection. Instead, the exemption  
19 limits the compensation that a LEC in providing such a connection can obtain  
20 from an ISP. Further, under the access charge exemption, the compensation  
21 derived by a LEC providing the service to an ISP has been limited to the rates  
22 and charges associated with business exchange services. Nevertheless, the  
23 ISP's service involves interstate communications. The ISP obtains a service  
24 that enables a communications path to be established by its subscriber. The  
25 ISP, in turn, recovers the cost of the telecommunications services it uses to

1 deliver its service through charges it assesses on the subscribers of the ISP's  
2 service.

3

4 Where two or more carriers are involved in establishing the communications  
5 path between the ISP and the ISP's subscriber, the access service to the ISP is  
6 jointly provided. Such jointly provided access arrangements are not new or  
7 unique nor are the associated mechanisms to handle inter-carrier compensation.  
8 The services ISPs obtain for access to their subscribers are technically similar  
9 to the line side connections available under Feature Group A. For such line  
10 side arrangements, the FCC has relied on revenue sharing agreements for the  
11 purpose of inter-carrier compensation. The long history and precedent  
12 regarding inter-carrier compensation for interstate services are instructive and  
13 relevant to the FCC's determinations in this proceeding.

14

15 Q. PLEASE EXPLAIN FURTHER WHY A SEPARATE SHARING PLAN IS  
16 NEEDED FOR ACCESS SERVICE PROVIDED TO ISPs?

17

18 A. The need for a separate sharing plan is created by the FCC's decree that the  
19 price charged for access service provided to ISPs is the business exchange rate.  
20 Unlike other switched access services, which are billed on a usage-sensitive  
21 basis, business exchange service prices are flat-rated.

22

23 Because non-ISP switched access service is billed on a usage-sensitive basis, it  
24 is relatively easy for each carrier to be compensated for the portion of the  
25 access service that it provides. Generally, there are two methods used for such

1 compensation. Under the first method, each carrier bills the IXC directly for  
2 the portion of access service provided. For example, for originating access, the  
3 originating LEC bills the IXC for the switching and for the portion of transport  
4 that the originating LEC provides, and the terminating LEC bills the IXC for  
5 the portion of transport that it provides. Under the second method, the  
6 terminating LEC bills the IXC for all of the access service, and the originating  
7 LEC bills the terminating LEC for the portion of access services that it  
8 provides.

9  
10 With ISP traffic, these methods are unworkable. Since the ISP is billed  
11 business exchange service rates, only one LEC can bill the ISP. Also, since the  
12 rate paid by the ISP is a flat rate charge designed for another service, i.e.,  
13 business exchange service, there is no structural correlation between the cost  
14 incurred by the LEC and the price paid by the ISP. However, the business  
15 exchange rate paid by the ISP is the only source of revenue to cover any of the  
16 costs incurred in provisioning access service to the ISP. Therefore, a plan to  
17 share the access revenue paid by the ISP among all the carriers involved in  
18 sending traffic to the ISP is needed.

19  
20 Q. DOESN'T BELLSOUTH COVER THE COST OF ORIGINATING TRAFFIC  
21 TO ISPs FROM ITS OWN END USERS?

22  
23 A. No, nor would it be appropriate to do so. Again, ISPs purchase access services,  
24 albeit at business exchange rates. The local exchange rates paid by end user  
25 customers were never intended to recover costs associated with providing

1 access service and were established long before the Internet became popular.

2

3 ~~Q. YOU HAVE STATED THAT IT IS NOT APPROPRIATE FOR THE~~  
4 ~~COMMISSION TO ADDRESS ISP BOUND TRAFFIC IN THE CONTEXT~~  
5 ~~OF SECTION 251 OF THE ACT. SHOULD THE COMMISSION~~  
6 ~~ADDRESS ISP BOUND TRAFFIC AS ACCESS TRAFFIC?~~

7

8 ~~A. If the Commission wishes to address this issue at all in this arbitration, it~~  
9 ~~should be in the context of an interim compensation mechanism for ISP bound~~  
10 ~~access traffic. As I have stated previously, only local traffic is governed by~~  
11 ~~Section 251 of the Act. ISP bound traffic is not local traffic but is instead~~  
12 ~~access traffic under the jurisdiction of the FCC. Therefore, the Commission~~  
13 ~~could address ISP bound traffic as access traffic by establishing an inter-carrier~~  
14 ~~compensation mechanism. Such a mechanism would be interim until such~~  
15 ~~time as the FCC completes its rulemaking proceeding on inter-carrier~~  
16 ~~compensation.~~

17

18 Q. ~~SHOULD THIS COMMISSION ADOPT AN INTERIM INTER-CARRIER~~  
19 ~~COMPENSATION MECHANISM PRIOR TO THE FCC COMPLETING ITS~~  
20 ~~RULEMAKING PROCEEDING, WHAT DOES BELLSOUTH PROPOSE AS~~  
21 ~~AN APPROPRIATE INTERIM MECHANISM?~~

22

23 ~~A. BellSouth proposes an interim flat-rated sharing mechanism that is based on~~  
24 ~~apportionment of revenues collected for the access service among the carriers~~  
25 ~~incurring costs to provide the service. The revenue to be apportioned among~~

1 ~~carrier is the charge for the business exchange service that the ISP pays.~~  
2 ~~Typically, the ISP purchases Primary Rate ISDN ("PRI") service as the~~  
3 ~~business exchange product used to provide the access service. BellSouth~~  
4 ~~believes that, in the interim, a flat-rated compensation process is appropriate~~  
5 ~~since the revenues collected are based on flat-rated charges. Exhibit A IV 6,~~  
6 ~~attached to this testimony is BellSouth's Proposed Interim ISP Inter-Carrier~~  
7 ~~Access Service Compensation Plan ("Interim Plan").~~

8  
9 ~~In describing BellSouth's Interim Plan, I use the term "Serving LEC" to refer~~  
10 ~~to a LEC that has an ISP as an end-user customer and the term "Originating~~  
11 ~~LEC" to refer to a LEC whose end-user customers originate traffic that is~~  
12 ~~delivered to the Serving LEC's network and is bound for an ISP. BellSouth's~~  
13 ~~Interim Plan takes into account the following factors:~~

- 14 ~~1) Only the Serving LEC bills the ISP for access service. The ISP is billed~~  
15 ~~at rates established by the Serving LEC;~~
- 16 ~~2) The FCC has limited the price for an ISP dial-up connection to the~~  
17 ~~equivalent business exchange service rate;~~
- 18 ~~3) the Originating LEC incurs costs to carry ISP bound traffic to the~~  
19 ~~Serving LEC;~~
- 20 ~~4) the Originating LEC has no means to recover its costs directly from the~~  
21 ~~ISP (unless, of course, the Originating LEC and the Serving LEC are~~  
22 ~~one in the same); and~~
- 23 ~~5) The Originating LEC must recover its costs, to the extent possible,~~  
24 ~~from the Serving LEC.~~

25

1 ~~BellSouth's Interim Plan presumes that all LECs who carry ISPs will~~  
2 ~~participate in the plan. Otherwise, only those parties that will benefit will~~  
3 ~~participate - i.e., a LEC that originates more ISP bound traffic than it~~  
4 ~~transports to an ISP will be a net receiver.~~

5  
6 Q. PLEASE DESCRIBE THE SPECIFICS OF BELL SOUTH'S INTERIM  
7 PLAN.

8  
9 ~~A. BellSouth's Interim Plan contains the following steps that are further described~~  
10 ~~in Exhibit A-IV-6:~~

- 11 ~~(1) Each Serving LEC will be responsible for identifying all minutes of use~~  
12 ~~("MOUs") which are ISP bound that each Originating LEC delivers to~~  
13 ~~the Serving LEC's network;~~  
14 ~~(2) each trunk (DS0 equivalent) will be assumed to carry 9,000 MOUs on~~  
15 ~~average per month (equates to 150 hours per trunk per month);~~  
16 ~~(3) based on ISP bound MOUs identified by the Serving LEC and provided~~  
17 ~~to the Originating LEC, the Originating LEC will calculate the quantity~~  
18 ~~of DS1 facilities required to transport the Originating LEC's ISP bound~~  
19 ~~traffic to the Serving LEC as follows:~~  
20 ~~(ISP bound MOUs / 9,000 MOUs per trunk / 24 trunks per DS1);~~  
21 ~~(4) Serving LEC will advise Originating LECs of the average PRI rate~~  
22 ~~charged to ISPs. The Serving LEC can use either its tariffed rate or the~~  
23 ~~usage rate actually charged to ISPs;~~  
24 ~~(5) Originating LEC calculates compensation due to it by the Serving LEC~~  
25 ~~as follows:~~

1 ~~(Quantity of DSIs x Serving LEC's PPI rate x sharing percentage);~~  
2 ~~(6) Originating LEC bills the Serving LEC on a quarterly basis; and~~  
3 ~~(7) The ISP bound MOUs and the PPI rates as reported by the Serving~~  
4 ~~LEC are subject to audit by the Originating LEC(s). The amount of~~  
5 ~~compensation could be affected by results of an audit.~~

6  
7 ~~To the extent two parties have additional issues, contract negotiations between~~  
8 ~~the parties can determine other terms and conditions. For example, due to~~  
9 ~~technical capabilities, the two LECs may agree that the Originating LEC will~~  
10 ~~identify the ISP bound minutes of use.~~

11  
12 Q. ~~WHAT IS THE BASIS FOR USING 9,000 MOUs AS THE AVERAGE~~  
13 ~~MONTHLY USAGE PER TRUNK?~~

14  
15 A. ~~Nine thousand (9,000) MOUs is a proxy that was used by the FCC for FGA~~  
16 ~~access before actual usage could be measured. Further, this average level of~~  
17 ~~usage has been used in other situations as a proxy for EIC usage.~~

18  
19 Q. ~~WHAT SHARING PERCENTAGE DOES BELLSOUTH PROPOSE BE~~  
20 ~~APPLIED TO THE SERVING LEC'S REVENUES TO COMPENSATE~~  
21 ~~BELLSOUTH FOR ITS NETWORK USED TO CARRY ISP BOUND~~  
22 ~~TRAFFIC?~~

23  
24 A. ~~BellSouth proposes a sharing percentage of 8.6% that will be applied to the~~  
25 ~~Serving LEC's ISP revenues to calculate the compensation due BellSouth.~~

1 ~~when BellSouth is an Originating LEC. Likewise, when BellSouth is the~~  
2 ~~Serving LEC, BellSouth proposes that a sharing percentage of 0.6% will be~~  
3 ~~applied by the Originating LEC(s) when calculating compensation BellSouth~~  
4 ~~owes.~~

5  
6 Q. ~~HOW DID BELLSOUTH DETERMINE THE SHARING PERCENTAGE IT~~  
7 ~~PROPOSES?~~

8  
9 A. ~~BellSouth's calculation of its sharing percentage is shown in Exhibit A5V7~~  
10 ~~attached to this testimony. First, BellSouth considered that switching, transport~~  
11 ~~and loop costs are incurred to carry traffic from the Originating LEC's end~~  
12 ~~office to the ISP location. Since the Serving LEC incurs the loop cost between~~  
13 ~~its end office and the ISP location, the Serving LEC should retain revenues to~~  
14 ~~cover its loop cost. However, switching and transport costs are jointly incurred~~  
15 ~~by both the Originating LEC and the Serving LEC.~~

16  
17 ~~Therefore, BellSouth believes that an appropriate sharing percentage is~~  
18 ~~developed by determining the ratio of switching and transport costs to total~~  
19 ~~costs (switching, transport and loop), and then dividing that percentage by two~~  
20 ~~since each carrier bears a portion of the switching and transport cost. In order~~  
21 ~~to determine the ratio, BellSouth looked to the Benchmark Cost Proxy Model~~  
22 ~~("BCPM") results filed in Florida in the Universal Service Fund proceedings.~~  
23 ~~The average, statewide voice grade loop, switching and transport capital costs~~  
24 ~~produced by BCPM are \$14.62, \$2.90 and \$1.14, respectively. Therefore, the~~  
25 ~~loop capital cost represents 82.8% of the total average statewide capital cost,~~

1 ~~which means that the switching and transport capital costs represent 17.2% of~~  
2 ~~the total capital cost. Again, dividing the 17.2% by two in order to account for~~  
3 ~~the fact that both carriers incur switching and transport costs results in a~~  
4 ~~sharing percentage of 8.6%.~~

5  
6 ~~BellSouth also reviewed ARMS data and determined that the relationship~~  
7 ~~between loop, switching and transport investment as reported in ARMS is~~  
8 ~~very similar to the relationship calculated from the BCPM results. The ARMS~~  
9 ~~data shows that, for 1998, in Florida, total loop investment was~~  
10 ~~\$7,281,716,000, switching investment was \$989,297,000 and transport~~  
11 ~~investment was \$182,062,000 resulting in ratios of 86.30% for loop, 11.57%~~  
12 ~~for switching and 2.13% for transport which are close to the ratios that result~~  
13 ~~from the BCPM data.~~

14  
15 Q. ~~DOES BELLSOUTH'S PROPOSED SHARING PERCENTAGE ONLY~~  
16 ~~APPLY TO TRAFFIC IT ORIGINATES TO A SERVING LEG?~~

17  
18 A. ~~No. When BellSouth is the Serving LEC and a CLEC's end users call an ISP~~  
19 ~~owned by BellSouth, BellSouth should compensate the CLEC. BellSouth~~  
20 ~~proposes to use the same method and sharing percentage (8.6%) to compensate~~  
21 ~~the CLEC as it proposes for billing the CLEC.~~

22  
23 Q. ~~WHAT IMPACT WOULD BELLSOUTH'S PROPOSAL HAVE ON A CLEC~~  
24 ~~SUCH AS ICG?~~

25

1 A. ~~As an example, I will assume that ICG serves its ISP customers with PRI~~  
2 ~~service which is equivalent to a DS1 (24 DS0s). Further, I will assume that~~  
3 ~~ICG charges its ISP customers a market-based rate of \$850 per month per PRI.~~  
4 ~~If BellSouth as the Originating LEC generates 55 million ISP-bound MOUs per~~  
5 ~~month to ICG, then the amount of monthly compensation that BellSouth's~~  
6 ~~proposal would result in ICG owing to BellSouth is calculated as follows:~~

7 ~~$$55,000,000 / 9000 / 24 = 254.63 \text{ DS1s}$$~~

8 ~~$$254.63 \text{ DS1s} \times \$850.00 \times .086 = \$18,613.45$$~~

9 ~~At a PRI rate of \$850, ICG will collect \$216,436 in revenue from its ISP~~  
10 ~~customer(s) just for the traffic originated by BellSouth. Total compensation~~  
11 ~~ICG owes to BellSouth for the 55,000,000 MOUs BellSouth originated to ICG~~  
12 ~~would be \$18,613.45.~~

13  
14 Q. ~~HOW DOES YOUR PROPOSAL AFFECT THE RELATIVE COST~~  
15 ~~RECOVERY OF THE LECs INVOLVED IN PROVIDING THE ACCESS~~  
16 ~~SERVICE?~~

17  
18 A. ~~Since the FCC has ordered that ISPs are to be provided service at business~~  
19 ~~exchange rates, the fact is that when the access service is provided by a single~~  
20 ~~LEC to the ISP, the rates it charges the ISP are typically not fully~~  
21 ~~compensatory. This situation arises because the ISP is being charged a flat rate~~  
22 ~~charge (which was intended for another service) for a high volume usage~~  
23 ~~sensitive service. Under BellSouth's charging proposal, each carrier should~~  
24 ~~recover roughly the same percentage of its costs. For example, if the carrier~~  
25 ~~would have recovered 50% of its costs if it served the ISP alone, the underlying~~

1 ~~premise of this proposal is that each carrier should recover roughly 50% of its~~  
2 ~~costs.~~

3  
4 Q. ~~SHOULD THIS PLAN BE CONTINUED ONCE THE FCC ESTABLISHES~~  
5 ~~A USAGE-BASED COMPENSATION MECHANISM?~~

6  
7 A. ~~Probably not. The need for this plan was created by the fact that ISPs currently~~  
8 ~~pay business-exchange rates for access service. Should the FCC change the~~  
9 ~~application of access charges to ISPs or establish a different compensation~~  
10 ~~mechanism, this plan should be re-evaluated.~~

11  
12 Q. IN LIGHT OF YOUR COMMENTS WHAT ACTION ARE YOU  
13 RECOMMENDING TO THE FLORIDA PSC?

14  
15 A. The FCC has determined that ISP-bound traffic is interstate and has asserted  
16 jurisdiction. This issue is not subject to arbitration under Section 252 of the  
17 Act. Parties should be instructed to negotiate a revenue sharing arrangement  
18 for this traffic just as has been done for jointly-provided access service since  
19 divestiture. If those negotiations are not fruitful, however, they should be  
20 referred to the FCC. ~~Should, however, this Commission adopt an interim inter-~~  
21 ~~carrier compensation mechanism prior to the FCC completing its rulemaking~~  
22 ~~proceeding, BellSouth recommends the Commission adopt the Interim Plan~~  
23 ~~mechanism outlined above.~~

24  
25

1 Q. IS BELLSOUTH ECONOMICALLY INDIFFERENT TO PAYING  
2 RECIPROCAL COMPENSATION ON ISP-BOUND TRAFFIC?

3  
4 A. No. The Diagrams F and G described above should make clear that BellSouth  
5 is not economically indifferent to paying reciprocal compensation on ISP calls  
6 for the following reasons:

- 7 1) BellSouth is still incurring the cost to transport the call to the point  
8 of interconnection with the CLEC,  
9 2) The CLEC wants BellSouth to pay reciprocal compensation to  
10 cover the CLEC's cost from the point of interconnection to the  
11 CLEC's switch, and  
12 3) The ISP, which is the only source of revenue to cover the costs in 1)  
13 and 2) above, only pays the CLEC for access.

14  
15 The CLEC receives the revenues from its ISP customer, yet ICG apparently  
16 believes it is appropriate for BellSouth to incur a portion of the costs for  
17 providing the service without any reimbursement. This is exactly the opposite  
18 of the situation depicted in Diagram B, which illustrates when reciprocal  
19 compensation should apply. The CLEC should reimburse the originating  
20 carrier (BellSouth) for its cost of transporting the ISP-bound call to the CLEC  
21 point of interconnection. Instead, the CLEC wants the LEC to incur even more  
22 of the costs without any compensation. This is a perversion of the entire access  
23 charge system. There is no reason for this Commission to sanction this  
24 economic legerdemain and reward CLECs by subsidizing ISPs at the expense  
25 of the LEC's end users.

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Q. IF RECIPROCAL COMPENSATION IS NOT AUTHORIZED, WILL CLECS BE UNCOMPENSATED FOR THE COSTS THEY INCUR TO PROVIDE SERVICES TO ISPs?

A. No. The CLECs' ISP customers compensate the CLECs for services that are provided just like an ILEC's ISP customer compensates the ILEC. The CLECs' request for reciprocal compensation on ISP-bound traffic simply provides CLECs with unearned windfall revenues and further increases the unreimbursed cost of the ILEC.

Q. DOES LACK OF RECIPROCAL COMPENSATION ON ISP-BOUND TRAFFIC DISTORT THE ATTRACTIVENESS OF ISPs AS CLEC CUSTOMERS?

A. No. Payment of reciprocal compensation would create the distortion. The table below provides an illustrative example of this distortion.

	<i>SERVING AN ISP AND RECEIVING RECIPROCAL COMPENSATION</i>	<i>SERVING AN ISP WITHOUT RECEIVING RECIPROCAL COMPENSATION</i>
REVENUE FROM ISP FOR SERVICE	\$600	\$900
RECIPROCAL COMPENSATION REVENUE PAID	\$300	\$0
COST OF PROVIDING SERVICE TO ISP	(\$600)	(\$600)
NET MARGIN	\$300	\$300

1           What this illustration shows is that reciprocal compensation allows the CLEC  
2           to offer lower prices to ISPs without reducing their net margins. Reciprocal  
3           compensation subsidizes the prices the CLEC charges the ISP. When  
4           reciprocal compensation is not paid on ISP-bound traffic, all parties are  
5           competing on an equal footing for ISP customers. Hence, reciprocal  
6           compensation should not be used to subsidize the service provided to the ISP.

7

8   Q.    IS BELLSOUTH ATTEMPTING TO AVOID PAYING RECIPROCAL  
9           COMPENSATION ON UNBALANCED TRAFFIC?

10

11   A.   No. First, let me point out that BellSouth does not dispute payment of  
12           reciprocal compensation on unbalanced traffic. Rather, BellSouth disputes  
13           payment of reciprocal compensation on access traffic – i.e., ISP-bound traffic.  
14           Second, I would point out that BellSouth has an obligation to serve any  
15           customer, not simply to compete for the business of customers that generate  
16           more inbound than outbound calling as ICG does.

17

18   ~~Issue 2: Should BellSouth be required to offset the amount paid by ICG in the Bona~~  
19   ~~Fide Request process for BellSouth's costs in developing a project plan whenever other~~  
20   ~~parties subsequently request and receive the same service at a reduced rate (because~~  
21   ~~BellSouth has already developed the necessary project plan)?~~

22

23   ~~Q.    WHAT IS THE PURPOSE OF THE DONA FIDE REQUEST PROCESS WITH~~  
24   ~~CLECs?~~

25

1 ~~A. **Bona Fide Requests/New Business Requests (BFR/NBR)** are used to allow~~  
2 ~~CLECs to request BellSouth to provide a new or modified network element,~~  
3 ~~interconnection option, or other service pursuant to the Act, or to provide a new or~~  
4 ~~a customized capability or function to meet a CLEC's business needs. The~~  
5 ~~BFR/NBR process is intended to facilitate the two-way exchange of information~~  
6 ~~between the requesting party and BellSouth, which is necessary for accurate~~  
7 ~~processing of requests in a consistent and timely fashion.~~

8  
9 ~~Q. **DO CLECs MAKE USE OF THE BFR/NBR PROCESS?**~~

10  
11 ~~A. **Yes.** During a nine-month period in 1998, BellSouth received and processed~~  
12 ~~2,662 BFR/NBR requests. Of those requests, however, only 88 were accepted,~~  
13 ~~approved, developed, and implemented by CLECs.~~

14  
15 ~~Q. **HOW IS THE COST OF A BFR/NBR DETERMINED?**~~

16  
17 ~~A. **A special team evaluates the CLEC's request for feasibility, consults with Product**~~  
18 ~~**Managers, Subject Matter Experts, and others, and develops an estimate of the**~~  
19 ~~**costs involved. Normally, within 10 days after a BFR/NBR is received (maximum**~~  
20 ~~**of 25 days based on complexity), BellSouth notifies the CLEC, in writing, if the**~~  
21 ~~**request can be met and what the cost estimate is. If the CLEC accepts the offer,**~~  
22 ~~**then the CLEC must pay for the time and development of the service or UNE.**~~

23  
24  
25

1 ~~Q. SHOULD BELLSOUTH BE REQUIRED TO RECOVER PART OF A CLEC'S~~  
2 ~~BFR/ADR COST FROM SUBSEQUENT COMPANIES USING THE SERVICE~~  
3 ~~OR LINES?~~

4  
5 ~~A. No. To administer such a process for all BFR/ADRs would be extremely labor~~  
6 ~~intensive and expensive and such a process is not required by the Act.~~

7  
8 ~~Q. IS IT DISCRIMINATORY FOR BELLSOUTH TO RECOVER THE BFR/ADR~~  
9 ~~COST FROM THE FIRST CLEC TO REQUEST A NEW SERVICE OR LINE?~~

10  
11 ~~A. No. In most businesses, the first company to introduce or produce a new service~~  
12 ~~or product absorbs expenses for planning, developing and testing such a product~~  
13 ~~or service. Subsequently, other companies may make modifications or~~  
14 ~~improvements and produce the same thing at a lower price, for example,~~  
15 ~~computers or televisions. The benefit to the first requester is the ability to offer its~~  
16 ~~product in the marketplace before other providers can enter the market. This same~~  
17 ~~benefit applies on BFR/ADRs. BellSouth has no control over who submits a~~  
18 ~~BFR/ADR first or how many subsequent CLECs will request the same product or~~  
19 ~~service; therefore, BellSouth does not penalize or discriminate against the first~~  
20 ~~CLEC to submit a BFR/ADR.~~

21  
22 ~~Q. DID ICG PROPOSE A SPECIFIC PLAN TO RECOVER COSTS ASSOCIATED~~  
23 ~~WITH A BER? IF SO, PLEASE DESCRIBE THE PLAN.~~

24  
25

1 ~~A. No. ICG did not propose a plan. Any such plan would involve keeping track of~~  
2 ~~all BFR/NBR presented by all CLECs, as well as subsequent purchasers of a~~  
3 ~~BFR/NBR service or UNE in order to recover a portion of the developmental cost~~  
4 ~~from the succeeding CLECs. This process would increase the cost of BFR/NBRs~~  
5 ~~to all users. In one possible scenario, BellSouth would not know what portion of~~  
6 ~~the BFR/NBR cost each subsequent purchasing company would pay, because~~  
7 ~~BellSouth would not know how many, if any, other CLECs would want that~~  
8 ~~particular service or UNE. Another possible scenario would involve keeping~~  
9 ~~track of all CLECs buying a certain BFR/NBR service and reimbursing each one~~  
10 ~~equally every time another CLEC purchases the service. This process would be~~  
11 ~~even more administratively cumbersome and expensive than the first one. All of~~  
12 ~~this administrative effort is unnecessary. The first requester already receives the~~  
13 ~~same benefit that it would receive in any other marketplace.~~

14  
15 ~~Q SHOULD BELLSOUTH PROPOSE AN ALTERNATIVE TO ALLOW A CLEC~~  
16 ~~TO RECOVER PART OF THE BFR/NBR COSTS?~~

17  
18 ~~A. No. This is a process for which the CLEC should be responsible. In some~~  
19 ~~cases, the CLEC requesting the BFR/NBR service or UNE may be the only~~  
20 ~~CLEC to ever purchase or use the service or UNE. Even if other CLECs do~~  
21 ~~purchase the new service or UNE at a later date, the initial CLEC has already~~  
22 ~~had the advantage of implementing the service before anyone else.~~

23  
24 *Issue 3: Should BellSouth be required to make available as UNEs packet-switching*  
25 *capabilities, including but not limited to: (a) user-to-network interface ("UNI") at*

1 56 kbps, 64 kbps, 128kbps, 256 kbps, 384 kbps, 1.544 Mbps, 44.736 Mbps; (b)  
2 network-to-network interface ("NNI") at 56 kbps, 64 kbps, 1.544 Mbps, 44.736  
3 Mbps; and (c) data link control identifiers ("DLCIs"), at committed information  
4 rates ("CIRs") of 0 kbps, 8 kbps, 9.6 kbps, 16 kbps, 19.2 kbps, 28 kbps, 32 kbps, 56  
5 kbps, 64 kbps, 128 kbps, 192 kbps, 256 kbps, 320 kbps, 320 kbps, 384 kbps, 448 kbps,  
6 512 kbps, 640 kbps, 704 kbps, 768 kbps, 832 kbps, 896 kbps, 960 kbps, 1.024 Mbps,  
7 1.088 Mbps, 1.152 Mbps, 1.216 Mbps, 1.280 Mbps, 1.344 Mbps, 1.408 Mbps, 1.472  
8 Mbps, 1.536 Mbps, 1.544 Mbps, 3.088 Mbps, 4.632 Mbps, 6.176 Mbps, 7.720 Mbps,  
9 9.264 Mbps, 10.808 Mbps, 12.350 Mbps, 13.896 Mbps, 15.440 Mbps, 16.984 Mbps,  
10 18.528 Mbps, 20.072 Mbps?

11

12 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

13

14 A. It is BellSouth's understanding that ICG is requesting that BellSouth unbundle  
15 its existing tariffed Packet Switching Frame Relay Service. Subject to the  
16 conditions stated in my testimony, BellSouth has agreed to do that. Ms.  
17 Caldwell is sponsoring studies for the functions as they are found in  
18 BellSouth's tariff. One Frame Relay rate element, Data Link Connection  
19 Identifier ("DLCI") is offered in BellSouth's tariff at varying Committed  
20 Information Rates ("CIRs"). BellSouth studied this functionality in  
21 "groupings" of CIRs that mirror its tariff offering. BellSouth's costs and  
22 proposed rates applicable during this interim period for unbundled packet  
23 switching capabilities are found on Exhibit AJV-8 attached to my testimony.

24

25 *Issue 6: Should volume and term discounts be available for UNEs?*

1

2 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

3

4 A. BellSouth should not be required to provide volume and term discounts for  
5 UNEs. Neither the Act nor any FCC order or rule requires volume and term  
6 discount pricing. The UNE recurring rates that ICG will pay are cost-based in  
7 accordance with the requirements of Section 252(d) and are derived using least-  
8 cost, forward looking technology consistent with the FCC's rules. Furthermore,  
9 BellSouth's nonrecurring rates already reflect any economies involved when  
10 multiple UNEs are ordered and provisioned at the same time.

11

12 *Issue 7: For purposes of reciprocal compensation, should ICG be compensated for*  
13 *end office, tandem, and transport elements of termination where ICG's switch*  
14 *serves a geographic area comparable to the area served by BellSouth's tandem*  
15 *switch?*

16

17 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

18

19 A. BellSouth's position is that if a call is not handled by a switch on a tandem  
20 basis, it is not appropriate to pay reciprocal compensation for the tandem  
21 switching function. BellSouth will pay the tandem interconnection rate only if  
22 ICG's switch is identified in the local exchange routing guide ("LERG") as a  
23 tandem. A tandem switch connects one trunk to another trunk and is an  
24 intermediate switch or connection between an originating telephone call  
25 location and the final destination of the call. An end office switch is connected

1 to a telephone subscriber and allows the call to be originated or terminated. If  
2 ICG's switch is an end-office switch, then it is handling calls that originate  
3 from or terminate to customers served by that local switch, and thus ICG's  
4 switch is not providing a tandem function. ICG is seeking to be compensated  
5 for the cost of equipment it does not own and for functionality it does not  
6 provide. Therefore, this Commission should deny ICG's request for tandem  
7 switching compensation when tandem switching is not performed.

8  
9 Q. PLEASE RESPOND TO ICG'S CONTENTION THAT ICG'S SWITCH  
10 SERVES A GEOGRAPHIC AREA COMPARABLE TO BELLSOUTH'S  
11 TANDEM.

12  
13 A. At the present time ICG is not collocated in any BellSouth central office in  
14 Florida. Therefore, it is not possible to determine whether ICG's switch would  
15 actually serve a geographic area comparable to BellSouth's tandem. If ICG  
16 intends to provide service in Florida similar to how they are providing service  
17 in Alabama then their switch would not serve an area comparable to  
18 BellSouth's tandem. In Alabama, ICG has collocation arrangements in only  
19 two of BellSouth's central offices. For ICG to imply that this equates to  
20 serving a geographic area comparable to BellSouth's tandem switch is  
21 inappropriate. ICG ignores the fact that BellSouth's Alabama tandem switch  
22 serves six central offices in addition to the two central offices ICG has chosen  
23 to serve. Obviously, the area served by BellSouth's tandem switch (eight  
24 central offices) is not comparable to the area ICG has elected to serve (two  
25 central offices). The clear intent of the FCC's order and rules is that if the

1 CLEC serves a geographic area comparable to the ILEC's tandem switch, the  
2 CLEC would be incurring comparable costs as the ILEC. ICG's service  
3 arrangement does not even approximate BellSouth's service scenario.  
4

5 Q. PLEASE COMMENT ON ICG'S POSITION THAT ICG PROVIDES  
6 TRANSPORT BETWEEN ITS SWITCH AND ITS COLLOCATIONS.  
7

8 A. Without specific information from ICG to the contrary, the equipment in ICG's  
9 collocation space is most likely nothing more than a Subscriber Loop Carrier  
10 ("SLC"). An SLC is part of loop technology and provides no "switching"  
11 functionality. Thus, ICG is only providing the termination function, which is  
12 not the same as transport from the ILEC tandem to end offices as ICG  
13 contends.  
14

15 In paragraph 1039 of the FCC's First Report and Order, the FCC clearly  
16 defines transport:

17 "We conclude that transport and termination should be treated as two  
18 distinct functions. We define 'transport' for purposes of section  
19 251(b)(5), as the transmission of terminating traffic that is subject to  
20 section 251(b)(5) from the interconnection point between the two  
21 carriers to the terminating carrier's end office switch that directly serves  
22 the called party (or equivalent facility provided by the non-incumbent  
23 carrier)."  
24

25 Further, in paragraph 1040 of the FCC's First Report and Order,

1            "We define "termination" for purposes of section 251(b)(5), as the  
2            switching of traffic that is subject to section 251(b)(5) at the  
3            terminating carrier's end office switch (or equivalent facility) and  
4            delivery of that traffic from that switch to the called party's premises."

5

6            Additionally in that same paragraph, the FCC states:

7            "As such, we conclude that we need to treat transport and termination  
8            as separate functions – each with its own cost."

9

10           Clearly, the FCC recognized that transport and termination charges should  
11           apply only if those functions are provided. Transport includes any flat rated  
12           dedicated services, tandem switching function and "common" transport  
13           between the tandem switch and end office switch necessary to transport the call  
14           from the interconnection point to the end office. ICG's switch is not providing  
15           a common transport or tandem function, but is switching traffic through its end  
16           office for delivery of that traffic from that switch to the called party's premises.

17

18    Q.    IS ICG'S POSITION CONSISTENT WITH WHAT THE FCC  
19           DETERMINED TO BE THE "ADDITIONAL COST" OF TERMINATING A  
20           CALL?

21

22    A.    No. In paragraph 1057, the FCC clearly indicates what should be charged for  
23           terminating a call:

24

25

          "We find that, once a call has been delivered to the incumbent LEC end  
          office serving the called party, the 'additional cost' to the LEC of

1 terminating a call that originated on a competing carrier's network  
2 primarily consists of the traffic-sensitive component of local switching.  
3 The network elements involved with the termination of traffic include  
4 the end-office switch and local loop. The costs of local loops and line  
5 ports associated with local switches do not vary in proportion to the  
6 number of calls terminated over these facilities. We conclude that such  
7 non-traffic sensitive costs should not be considered 'additional costs'  
8 when a LEC terminates a call that originated on the network of a  
9 competing carrier."

10  
11 Obviously, the FCC intends for the terminating LEC to recover its loop costs  
12 from the end user customer, not the originating LEC. ICG is clearly attempting  
13 to recover its loop costs from BellSouth by inappropriately classifying their end  
14 office switch as a tandem switch.

15  
16 ~~ISSUE 9- In calculating PLU and PIU, should BellSouth be required to report the~~  
17 ~~traffic on a monthly basis?~~

18  
19 ~~Q ICG HAS STATED THEIR POSITION THAT THE PERCENT LOCAL USAGE~~  
20 ~~(PLU) AND PERCENT INTERSTATE USAGE (PIU) SHOULD BE~~  
21 ~~REPORTED ON A MONTHLY BASIS. WHAT ARE THE PLU AND THE~~  
22 ~~PIU?~~

23  
24 ~~A The PLU Percent Local Usage is a factor that determines the amount of local~~  
25 ~~terminating minutes for use in mutual compensation billing. The PLU is~~

1 ~~calculated and reported quarterly as outlined in BellSouth's "Percent Local Use~~  
2 ~~(PLU) Reporting Guidebook", in the "CLEC Activation Requirements" posted on~~  
3 ~~the Internet, and in the interconnection agreement between BellSouth and ICG.~~

4  
5 ~~The PIU - Percent Interstate Usage - is a factor that is used to apportion charges~~  
6 ~~between interstate and intrastate jurisdictions. It is the ratio of all interstate~~  
7 ~~minutes of use to the total minutes of use. Once the PIU or interstate percentage~~  
8 ~~is known, the intrastate percentage is calculated as 100% minus the PIU. The PIU~~  
9 ~~is calculated and reported quarterly as outlined in BellSouth's effective Access~~  
10 ~~Service tariffs approved in Alabama, Florida, Georgia, Kentucky, Louisiana,~~  
11 ~~Mississippi, North Carolina, South Carolina, Tennessee and by the FCC.~~

12  
13 ~~Q ARE THE QUARTERLY PIU AND PLU REPORTING PROCEDURES~~  
14 ~~REASONABLE AND EFFICIENT?~~

15  
16 ~~A Yes. The quarterly PIU and PLU reporting requirements are both reasonable and~~  
17 ~~efficient. Quarterly reporting is a reasonable balance of (1) the effort required by~~  
18 ~~all companies (CLECs, IXC's and ILECs) to gather the data to calculate the PIU~~  
19 ~~and PLU; (2) the effort required by companies to manually update their billing~~  
20 ~~systems to include those factors for all other companies; and (3) the degree of~~  
21 ~~variability of the factors within the reporting period, such as adds, disconnects,~~  
22 ~~seasonal peaks, etc.~~

23  
24 ~~Q SHOULD BELLSOUTH BE REQUIRED TO REPORT THE PIU AND PLU ON~~  
25 ~~A MONTHLY BASIS?~~

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A. ~~No. To calculate and report PUIs and PLIs more often than quarterly, as called for in the tariffs, would require additional manpower and expense, and would not improve the current methodology.~~

*Issue 10: Should BellSouth be required to provide to ICG a breakdown of the intrastate and interstate traffic that it reports to ICG?*

~~A. Although it is unclear what relief ICG is really seeking, to the extent that ICG is asking for the underlying data that is used to calculate the PUI, the Interconnection Agreement provides for either BellSouth or ICG to conduct an annual audit to ensure the proper billing and reporting of traffic.~~

*Issue 11: Should BellSouth be required to commit to provisioning the requisite network buildout and necessary support when ICG agrees to enter into a binding forecast of its traffic requirements in a specified period?*

Q. WHAT IS BELL SOUTH'S POSITION CONCERNING ENTERING INTO A BINDING FORECAST WITH ICG?

A. BellSouth is currently analyzing the possibility of providing a service whereby BellSouth commits to provisioning the necessary network buildout and support when a CLEC agrees to enter into a binding forecast of its traffic requirements. While BellSouth has not yet completed the analysis needed to determine if this is

1 a feasible offering, BellSouth is willing to discuss the specifics of such an  
2 arrangement with ICG.

3  
4 Q. SHOULD THIS COMMISSION ORDER BELLSOUTH TO COMPLY WITH  
5 THIS ISSUE AS ICG HAS STATED IT?

6  
7 A. No. Although BellSouth has been analyzing such an offering, BellSouth is not  
8 required by the Act to commit to a binding forecast with CLECs. While the  
9 specifics of such an arrangement have not been finalized, BellSouth is agreeable  
10 to continue to negotiate with ICG to meet their forecasting needs.

11  
12 ~~Issue 5: Should BellSouth be subject to liquidated damages for failing to meet the~~  
13 ~~time intervals for provisioning UNEs?~~

14  
15 ~~Issue 10: Should BellSouth be required to pay liquidated damages when BellSouth~~  
16 ~~fails to install, provision, or maintain any service in accordance with the due dates~~  
17 ~~set forth in an interconnection agreement between the Parties?~~

18  
19 ~~Issue 20: Should BellSouth continue to be responsible for any cumulative failure in~~  
20 ~~a one-month period to install, provision, or maintain any service in accordance with~~  
21 ~~the due dates specified in the interconnection agreement with ICG?~~

22  
23 ~~Issue 21: Should BellSouth be required to pay liquidated damages when~~  
24 ~~BellSouth's service fails to meet the requirements imposed by the interconnection~~  
25 ~~agreement with ICG (or service is interrupted causing loss of continuity or~~

1 ~~functionality?~~

2

3 ~~Issue 22: Should BellSouth continue to be responsible when the duration of~~

4 ~~service's failure exceeds certain benchmarks?~~

5

6 ~~Issue 23: Should BellSouth be required to pay liquidated damages when~~

7 ~~BellSouth's service fails to meet the grade of service requirements imposed by the~~

8 ~~interconnection agreement with ICG?~~

9

10 ~~Issue 24: Should BellSouth continue to be responsible when the duration of~~

11 ~~service's failure to meet the grade of service requirements exceeds certain~~

12 ~~benchmarks?~~

13

14 ~~Issue 25: Should BellSouth be required to pay liquidated damages when~~

15 ~~BellSouth's fails to provide any data in accordance with the specifications of the~~

16 ~~interconnection agreement with ICG?~~

17

18 ~~Issue 26: Should BellSouth continue to be responsible when the duration of its~~

19 ~~failure to provide the requisite data exceeds certain benchmarks?~~

20

21 ~~Q. HAS THIS COMMISSION PREVIOUSLY ADDRESSED THE ISSUE OF~~

22 ~~LIQUIDATED DAMAGES?~~

23

24 ~~A. Yes. This Commission has previously determined that the issue of "incentive~~

25 ~~payments" and/or liquidated damages is not subject to arbitration under Section~~

1 ~~251 of the Act. In the AT&T/MCI Arbitration proceeding, the Commission~~  
2 ~~concluded, "we should limit our consideration in this arbitration proceeding to~~  
3 ~~the items enumerated to be arbitrated in Sections 251 and 252 of the Act, and~~  
4 ~~matters necessary to implement those items. A liquidated damages provision~~  
5 ~~does not meet that standard." (Order No. PSC 96 1579 FOF TP, dated~~  
6 ~~December 31, 1996, page 74). The Commission further concluded "it is not~~  
7 ~~appropriate for us to arbitrate a liquidated damages provision under state law."~~  
8 ~~(Id.)~~

9  
10 ~~Even if a penalty or liquidated damage award could be arbitrated, it is~~  
11 ~~completely unnecessary. Florida law and Commission procedures are~~  
12 ~~available, and perfectly adequate, to address any breach of contract situation~~  
13 ~~should it arise.~~

14  
15 ~~Q. WHAT IS BELLSOUTH'S POSITION REGARDING LIQUIDATED~~  
16 ~~DAMAGES?~~

17  
18 ~~A. Nothing has changed that makes the Commission's previous determination~~  
19 ~~invalid. The Commission should not arbitrate this issue.~~

20  
21 ~~Q. WHAT IS BELLSOUTH'S POSITION REGARDING ICG'S REQUEST FOR~~  
22 ~~BELLSOUTH TO BE RESPONSIBLE FOR SERVICE FAILURES THAT~~  
23 ~~EXCEED CERTAIN BENCHMARKS?~~

24  
25 ~~A. BellSouth believes that the only remedies appropriate for inclusion in an~~

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~~interconnection agreement are those to which the parties mutually agree.  
BellSouth is currently working with the FCC to finalize BellSouth's proposal  
for self-effectuating enforcement measures. This is a voluntary proposal made  
by BellSouth which would take effect on a state-by-state basis concurrent with  
approval for BellSouth to enter into long distance in each state and subject to  
acceptance by the FCC. This proposal should not, however, be interpreted in  
any way as BellSouth's admission that the Commission or FCC have the  
authority to impose self-executing penalties or liquidated damages without  
BellSouth's agreement.~~

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

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