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DEC 15 PM 4:37

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RECORDS AND
REPORTING

December 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: 991605-TP (Time Warner)

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Direct Testimony of Alphonso J. Varner, which we ask that you file in the captioned docket.

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,

Nancy B. White (ke)
Nancy B. White

AFA _____
APP _____
CAF _____
CMU *March*
CTR _____
EAG _____
LEG 1
MAS 3
OPC _____
RRR _____
SEC 1
WAW _____
OTH _____

Enclosures

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

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[Signature]
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FPSC-RECORDS REPORTING

**CERTIFICATE OF SERVICE
991605-TP (Time Warner)**

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

(*) Hand Delivery and (+) Federal Express this 15th day of December, 1999 to the

following:

Staff Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

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Nancy B. White (ke)
Nancy B. White

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BELLSOUTH TELECOMMUNICATIONS, INC.
DIRECT TESTIMONY OF ALPHONSO J. VARNER
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 991605-TP
DECEMBER 15, 1999

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 PROVIDE 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. The purpose of my testimony is to present BellSouth's position on the one
9 remaining unresolved issue in the negotiations between BellSouth and Time
10 Warner Telecom of Florida, L.P. ("Time Warner"). The remaining issue to be
11 resolved by the Florida Public Service Commission ("Commission") concerns
12 the appropriate definition of local traffic for purposes of the parties' reciprocal
13 compensation obligations under Section 251(b)(5) of the Telecommunications
14 Act of 1996 (the "Act").

15

16 Q. WHAT IS THE DEFINITION OF LOCAL TRAFFIC THAT BELLSOUTH
17 PROPOSED TO TIME WARNER DURING NEGOTIATIONS?

18

19 A. BellSouth proposed the following definition of local traffic for inclusion in the
20 Interconnection Agreement with Time Warner:

21 Local Traffic is defined as any telephone call that originates and
22 terminates in the LATA and is billed by the originating party as a local
23 call. As clarification of this definition and for reciprocal
24 compensation, Local Traffic does not include traffic that originates
25 from or terminates to or through an enhanced service provider or

1 information service provider. As further clarification, Local Traffic
2 does not include calls that do not transmit information of the user's
3 choosing. In any event, neither Party will pay reciprocal compensation
4 to the other if the "traffic" to which such reciprocal compensation
5 would otherwise apply was generated, in whole or in part, for the
6 purpose of creating an obligation on the part of the originating carrier
7 to pay reciprocal compensation for such traffic.

8
9 This basic definition appears in several places in the proposed agreement,
10 including the General Terms and Conditions – Part B and Sections 1.1, 8.1 and
11 8.3 of Attachment 3.

12
13 Q. BASED ON BELLSOUTH'S DEFINITION OF LOCAL TRAFFIC, DOES
14 DIAL-UP TRAFFIC TO INTERNET SERVICE PROVIDERS QUALIFY AS
15 TRAFFIC WHICH IS ELIGIBLE FOR RECIPROCAL COMPENSATION?

16
17 A. No. Based on the Act, the Federal Communication Commission's ("FCC")
18 August 1996 Local Interconnection Order (CC Docket No. 96-98), and the
19 FCC's February 26, 1999 Declaratory Ruling, reciprocal compensation
20 obligations under Section 251(b)(5) only applies to local traffic. ISP-bound
21 traffic is access service subject to interstate jurisdiction and is not local traffic.

22
23 Q. WHAT IS TIME WARNER'S POSITION CONCERNING THE
24 DEFINITION OF LOCAL TRAFFIC?

25

1 A. Time Warner's position is that dial-up calls to Internet Service Providers,
2 which are a subset of Enhanced Service Providers or Information Service
3 Providers, which clearly constitute interstate traffic, should be included in the
4 definition of local traffic.

5

6 Q. DOES BELLSOUTH SEEK ARBITRATION OF RECIPROCAL
7 COMPENSATION FOR ISP-BOUND TRAFFIC?

8

9 A. No. ISP-bound traffic is interstate in nature and is within the exclusive
10 jurisdiction of the Federal Communications Commission ("FCC"). The
11 determination of the appropriate inter-carrier compensation for ISP-bound
12 traffic is an issue to be decided by the FCC and is not an appropriate issue for a
13 Section 252 arbitration. Reciprocal compensation in the Act is limited to
14 "local traffic." Clearly, ISP-bound traffic is not local traffic.

15

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

18

19 A. Reciprocal compensation applies only when local traffic is terminated on either
20 party's network. One of the Act's basic interconnection rules is contained in
21 47 U.S.C. § 251(b)(5). That provision requires all local exchange carriers "to
22 establish reciprocal compensation arrangements for the transport and
23 termination of telecommunications." Section 251(b)(5)'s reciprocal
24 compensation duty arises, however, only in the case of local calls. In fact, in
25 its August 1996 Local Interconnection Order (CC Docket No. 96-98),

1 paragraph 1034, the FCC made it perfectly clear that reciprocal compensation
2 rules do not apply to interstate or interLATA traffic such as interexchange
3 traffic:

4

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

11

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

14

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

16

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

20

21 The FCC's interpretation of reciprocal compensation applying only to local
22 traffic is consistent with the Act, which established a reciprocal compensation
23 mechanism to encourage local competition.

24

25

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

3

4 A. Since ISP-bound traffic is interstate traffic, not local traffic, it is not subject to
5 the reciprocal compensation obligations contained in Section 251 of the Act.
6 Payment of reciprocal compensation for ISP-bound traffic is inconsistent with
7 the law and is not sound public policy.

8

9 Q. IS BELLSOUTH'S POSITION REGARDING JURISDICTION OF ISP-
10 BOUND TRAFFIC CONSISTENT WITH THE FCC'S FINDINGS AND
11 ORDERS?

12

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

20

21 In its February 26, 1999 Declaratory Ruling, the FCC once again confirmed
22 that ISP-bound traffic is access service subject to interstate jurisdiction and is
23 not local traffic. In its Declaratory Ruling, the FCC concluded that "ISP-bound
24 traffic is non-local interstate traffic." (fn 87) The FCC noted in its decision
25 that it traditionally has determined the jurisdiction of calls by the end-to-end

1 nature of the call. In paragraph 12 of this same order, the FCC concluded "that
2 the communications at issue here do not terminate at the ISP's local server, as
3 CLECs and ISPs contend, but continue to the ultimate destination or
4 destinations, specifically at an Internet website that is often located in another
5 state." Further, in paragraph 12 of its Declaratory Ruling, the FCC finds that
6 "[a]s the Commission stated in *BellSouth MemoryCall*, this Commission has
7 jurisdiction over, and regulates charges for, the local network when it is used in
8 conjunction with the origination and termination of interstate calls."

9
10 The FCC makes plain that no part of an ISP-bound communication terminates
11 at the facilities of an ISP. Once it is understood that ISP-bound traffic
12 "terminates" only at distant websites, which are almost never in the same
13 exchange as the end-user, it is evident that these calls are not local.

14
15 Q. DOESN'T AN ISP PAY BASIC LOCAL EXCHANGE RATES FOR THE
16 SERVICE IT RECEIVES?

17
18 A. Yes. However, the fact that the FCC has exempted enhanced service
19 providers, including ISPs, from paying interstate switched access charges does
20 not alter the fact that the connection an ISP obtains is an access connection.
21 The FCC confirmed this fact in its Declaratory Ruling, at paragraph 16: "The
22 fact that ESPs are exempt from access charges and purchase their PSTN links
23 through local tariffs, does not transform the nature of traffic routed to ESPs."
24 Instead, the exemption limits the compensation that an ILEC in providing such
25 a connection can obtain from an ISP. Further, under the access charge

1 exemption, the compensation derived by an ILEC providing the service to an
2 ISP has been limited to the rates and charges associated with business
3 exchange services. Nevertheless, the ISP's service involves interstate
4 communications. The ISP obtains access service that enables a
5 communications path to be established by its subscriber. The ISP, in turn,
6 recovers the cost of the telecommunications services it uses to deliver its
7 service through charges it assesses on the subscribers of the ISP's service.

8

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

12 *Access Service* includes services and facilities provided for the
13 origination or termination of any interstate or foreign
14 telecommunications. (47 CFR Ch. 1 §69.2(b)) (emphasis added)

15

16 Q. WHAT DOES BELLSOUTH REQUEST OF THIS COMMISSION?

17

18 A. BellSouth respectfully requests that this Commission finds BellSouth's
19 proposed definition of local traffic to be consistent with the parties' reciprocal
20 compensation obligations under Section 251(b)(5) of the Act. Specifically,
21 BellSouth requests that this Commission find that the definition of local traffic
22 should expressly exclude traffic to Internet Service Providers, which is
23 jurisdictionally interstate traffic.

24

25 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

1

2 A. Yes.

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